



DEPARTMENT OF  
**HOUSING**



# CDBG-DR

ELECTRICAL POWER SYSTEM ENHANCEMENTS & IMPROVEMENTS

## PROGRAM GUIDELINES

Electrical Power Reliability and Resilience Program (ER2)

January 23, 2025

V.4

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PUERTO RICO DEPARTMENT OF HOUSING  
 CDBG-DR ELECTRICAL POWER SYSTEM ENHANCEMENTS & IMPROVEMENTS  
 PROGRAM GUIDELINES  
**ELECTRICAL POWER RELIABILITY AND RESILIENCE PROGRAM**  
 VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	June 2, 2023	<b>Original Version</b>
2	June 26, 2024	<b>Modified Definitions section. Provided additional details to the Eligible and Ineligible Activities sections. Removed requirements for and language regarding underwriting and replaced with general financial feasibility requirements. Modified Project Selection Prioritization Categories to include more descriptive language contained in the Competitive Application Form. Modified Competitive Application evaluation process to clarify each review phase. Other miscellaneous changes.</b>
3	July 19, 2024	<b>Included information regarding a Program Commitment Letter that pre-selected Applicants must sign before entering the Implementation Plan and Financial Feasibility phase.</b>
4	January 23, 2025	<b>Modified the Definitions section to remove the Technical Coordination Team (TCT) definition. Modified Section 5.8 to clarify financial capacity documentation. Modified Section 6.4.1 to reflect the updated implementation strategy and the new subrecipient for the Centro Médico Microgrid project. Modified Sections 6.5.4 and 6.5.5 to remove the Evaluation Committee and TCT involvement in the Competitive Application Financial Feasibility Review and Final Project Selection process. All edits made throughout the document are highlighted in gray.</b>

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## 1 Overview

Hurricanes Irma and María struck Puerto Rico<sup>1</sup> in September of 2017, and the impact on the electrical power system remains ever present in the daily lives of Island residents. Power outages are common and unpredictable, electricity prices continue to rise, and rolling blackouts due to insufficient generation and faulty substations are common. The impact of the hurricanes on the power system was devastating and led to the longest sustained blackout in modern United States (**U.S.**) history. As such, energy remains the most critical factor for the Island's future.

To help address the electrical power challenges, the U.S. Department of Housing and Urban Development (**HUD**) has allocated \$1.932 billion<sup>2</sup> to Puerto Rico for energy reliability and resilience activities under the Community Development Block Grant – Disaster Recovery Program (**CDBG-DR Energy**). The Electrical Power Reliability and Resilience Program (**ER2 Program** or the **Program**) is designed to benefit Puerto Rican communities by funding projects that enhance electric system reliability, affordability, and resiliency. The Program's design will be carried out through the development and interconnection of microgrids and distributed energy resources, including renewable energy generation, combined heat and power (**CHP**) systems, and battery energy storage systems (**BESS**), among other eligible project types.

## 2 Definitions

- **Applicant** – An entity that requests to participate in the ER2 Program by submitting a Competitive Application. Applicants must be one of the entity types described in the *Eligible Entities* section of these Guidelines.
- **Battery Energy Storage System (BESS)** – An electrochemical device that charges (or collects energy) from the grid or a power generation source and then discharges that energy at a later time to provide electricity or other grid services when needed.<sup>3</sup> It consists of several components, including batteries to store energy, an islanding device to disconnect from the utility when grid power is down, power conversion systems to convert direct current (**DC**) to alternating current (**AC**) and vice versa, an energy management system, and mounting, cabling, and other electrical equipment to extend the power available to the designated project area.

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<sup>1</sup> Puerto Rico is an archipelago that consists of one (1) main island, two (2) small, inhabited islands, and over 130 smaller islands and cays. Throughout this document, the term Island is used interchangeably with Puerto Rico, and is meant to encompass the entire archipelago of Puerto Rico.

<sup>2</sup> Federal Register Vol. 86, No. 117 (June 22, 2021), 86 FR 32681. <https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-12934.pdf>.

<sup>3</sup> National Renewable Energy Laboratory's (NREL) *Grid-Scale Battery Storage*. [www.nrel.gov](http://www.nrel.gov). Retrieved April 6, 2023, from <https://www.nrel.gov/docs/fy19osti/74426.pdf>.

- **Beneficiary** – A private entity selected by PRDOH through an open Competitive Application process to develop a proposed electrical power system improvement project. Beneficiaries must demonstrate an ownership interest in the project and have control over the project's site. They must plan, obtain permits, and manage the project from start to finish, assuming part of the risk of the project.
- **Capital Costs/Expenditures** – Funds an entity spends buying and managing physical assets, such as property, equipment, and technology. For the purposes of this Program and the activities anticipated to be funded, these costs may include, but are not necessarily limited to, all major power system/plant components, electrical infrastructure and interconnection, generation equipment and infrastructure, installation and indirect costs, owners' costs, and site costs.<sup>4</sup>
- **Combined Heat and Power (CHP)** – Also known as cogeneration, is the concurrent production of electricity or mechanical power and useful thermal energy (heating and/or cooling) from a single energy source. A type of Distributed Generation, which, unlike central station generation, is located at or near the point of consumption. A suite of technologies that can use a variety of fuels to generate electricity or power at the point of use, allowing the heat that would usually be lost in the power generation process to be recovered to provide needed heating and/or cooling.<sup>5</sup>
- **Commissioning** – A systematic process that ensures and documents that all building systems perform interactively according to the design intent and the owner's operational needs and, where applicable, do not adversely impact the electric grid or neighboring customers. The commissioning process includes documentation, equipment startup, control system calibration, testing, balancing, and performance testing, among other items.<sup>6</sup>
- **Community Solar** – A solar energy project or purchasing program within a geographic area in which the benefits of the project flow to multiple customers, such as individuals, businesses, non-profits, and other groups. In most cases, customers benefit from the energy generated by solar panels at an off-site array.<sup>7</sup> Customers can either buy or lease a portion of the solar panels in the array, and they typically receive an electric bill credit for electricity generated by their share

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<sup>4</sup> National Renewable Energy Laboratory's (NREL) *Annual Technology Baseline, Definitions*. [www.nrel.gov](https://atb.nrel.gov/electricity/2021/definitions). Retrieved May 16, 2023, from <https://atb.nrel.gov/electricity/2021/definitions> and U.S. News and World Report's *Capital Expenditure*. (2022, July 26). Retrieved May 18, 2023, from <https://money.usnews.com/investing/term/capital-expenditure>.

<sup>5</sup> U.S. Department of Energy's Office of Energy Efficiency & Renewable Energy *Combined heat and power basics*. Energy.gov. (n.d.). Retrieved March 2, 2023, from <https://www.energy.gov/eere/amo/combined-heat-and-power-basics>.

<sup>6</sup> U.S. Department of Energy's Office of Energy Efficiency & Renewable Energy *Commissioning for Federal Facilities*. Energy.gov. (n.d.). Retrieved April 6, 2023, from <https://www.energy.gov/eere/femp/articles/commissioning-federal-facilities>.

<sup>7</sup> U.S. Department of Energy's *National Community Solar Partnership*. Energy.gov. (n.d.). Retrieved April 6, 2023, from <https://www.energy.gov/communitysolar/community-solar>.



of the community solar system. The Puerto Rico Energy Bureau (**PREB**) may use the term “Community Solar” to refer to all such renewable energy projects following this deployment model, regardless of the energy generation source (solar, wind, hydro, etc.).

- **Critical Facilities** – Facilities and infrastructure critical to the population's health and welfare and especially important following hazard events. Includes facilities and infrastructure tied to community lifelines such as health, energy, food and water, safety, and security, among others. Typical critical facilities include hospitals, fire stations, police stations, gas stations, emergency shelters, and water storage and distribution facilities, among others.<sup>8</sup>
- **Days of Autonomy** – The number of days a fully charged battery can satisfy the load without contribution from a photovoltaic array, or the number of days a power system can operate without wind or solar power.<sup>9</sup>
- **Distributed Generation** – A term used when electricity is generated from sources, often renewable energy sources, near the point of use instead of centralized generation sources from power plants.<sup>10</sup> The electricity is typically generated from modular, energy generation and storage technologies referred to as Distributed Energy Resources (**DER**). DER systems may be either connected to the local power grid or isolated from the grid in stand-alone applications. DER technologies include photovoltaics, fuel cells, microturbines, reciprocating engines, combustion turbines, cogeneration, and energy storage systems.<sup>11</sup>
- **Electric Power Service Company (EPSC)** – Any natural or legal person or entity, including Energy Cooperatives, engaged in rendering energy generation, transmission and distribution services, billing, wheeling, grid services, energy storage, and/or the resale of electric power.<sup>12</sup> Per Act No. 57-2014, as amended, known as the “Puerto Rico Energy Transformation and RELIEF Act”, 22 LPRR § 1051

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<sup>8</sup> U.S. Federal Emergency Management Agency (FEMA). Fema.gov. Retrieved April 6, 2023, from <https://www.fema.gov/glossary/critical-facility> and Chelan County Comprehensive Flood Hazard Management Plan Critical Facilities Definition. Co.chelan.wa.us. Retrieved April 6, 2023 from [http://www.co.chelan.wa.us/files/public-works/documents/fczd/Chelan\\_FMP\\_CriticalFacilitiesDefinition\\_Examples\\_v2.pdf](http://www.co.chelan.wa.us/files/public-works/documents/fczd/Chelan_FMP_CriticalFacilitiesDefinition_Examples_v2.pdf).

<sup>9</sup> National Renewable Energy Laboratory's (NREL) *Procedures for Determining the Performance of Stand-Alone Photovoltaic Systems and Integrating High Levels of Variable Renewable Energy into Electric Power Systems*. www.nrel.gov. Retrieved November 7, 2023, from: <https://www.nrel.gov/docs/fy99osti/27031.pdf> and <https://www.nrel.gov/docs/fy18osti/70430.pdf>.

<sup>10</sup> U.S. Department of Energy's Office of State and Community Energy Programs *Renewable Energy: Distributed Generation Policies and Programs*. Energy.gov. (n.d.). Retrieved April 6, 2023 from <https://www.energy.gov/scep/slsc/renewable-energy-distributed-generation-policies-and-programs#:~:text=Distributed%20generation%20is%20the%20term,generation%20sources%20from%20power%20plants>.

<sup>11</sup> National Renewable Energy Laboratory's (NREL) *Using Distributed Energy Resources*. www.nrel.gov. Retrieved October 5, 2023, from: <https://www.nrel.gov/docs/fy02osti/31570.pdf>.

<sup>12</sup> Puerto Rico Energy Bureau Regulation No. 9374, *Regulation on Electric Energy Wheeling*. <https://energia.pr.gov/wp-content/uploads/sites/7/2022/06/9374ING-Wheeling-APril-20-2022.pdf>.

*et seq.*, all electric power companies in Puerto Rico shall receive a certification from PREB to provide services.<sup>13</sup>

- **Electrical Power System** - An interconnected or autonomous set of transmission lines, distribution lines, substations, central power generation stations, other sources of power, distributed energy resources, or enabling technologies and services, such as industry-standard billing, accounting information technology, cybersecurity enhancements, microgrids, and fuel transfer delivery systems, that are necessary for the provision of reliable, resilient, stable, and cost-effective electrical service.<sup>14</sup>
- **Electrical Power System Improvements** – Refers to the acquisition, construction, reconstruction, rehabilitation, or installation of facilities, improvements, or other components that are undertaken to extend, upgrade, and otherwise enhance and improve the cost-effectiveness, reliability, efficiency, sustainability, or long-term financial viability of the grantee’s electrical power system. These improvements include activities to increase the electrical power system’s resilience to future disasters and address the impacts of climate change. This definition includes interim assistance and the financing of public or private acquisition for reconstruction or rehabilitation and of reconstruction or rehabilitation of privately-owned property.<sup>15</sup>
- **Evaluation Committee** – Refers to a committee **that** may be composed of representatives from different governmental entities or key stakeholders with the purpose of evaluating, qualifying, and recommending the selection of Applicants and projects under the ER2 Program competitive process.
- **Government** – Refers to the Government of Puerto Rico, its agencies, public corporations, offices, and subdivisions, including municipalities.
- **Household** – All persons occupying the same unit, regardless of familial status or relationship to one another. Household members are all persons, including minor children and adults, whose current primary residence is within the designated project area.
- **Independent Power Producer (IPP)** – An electric power generation company that does not have a Provider of Last Resort obligation. An IPP may, but is not required to, be qualified as an exempt business under Article 1, Section 2 of Act No. 73-

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<sup>13</sup> 22 LPRA § 1054I.

<sup>14</sup> 86 FR 32681.

<sup>15</sup> 86 FR 32681.

2008, as amended, known as the “Economic Incentives Act for the Development of Puerto Rico,” 13 LPRR § 10642 *et seq.*<sup>16</sup>

- **Levelized Cost of Energy (LCOE)** – A metric that allows for the comparison of the combination of capital costs, operations and maintenance costs, and performance and fuel costs. LCOE represents the cost of generating energy (usually electricity) for a particular system. It is an economic assessment of the cost of the energy-generating system including all the costs over its lifetime: initial investment, operations and maintenance, cost of fuel, and cost of capital. It is the minimum price at which energy must be sold for an energy project to break even.<sup>17</sup>
- **Low to Moderate Income (LMI)** – Refers to the residents of Puerto Rico below eighty percent (80%) of the Area Median Family Income (**AMFI**) as established by HUD.<sup>18</sup>
- **Major Event Day** – Designates days during an event (such as extreme weather) where the electric power system design and/or operational limits are exceeded.<sup>19</sup>
- **Microgrid** – A group of interconnected electrical loads and distributed energy resources within defined electrical boundaries that acts as an independent, controllable entity within the primary grid. A Microgrid can be connected and disconnected from the primary grid to function in both grid-connected and off-grid (islanded) modes.<sup>20</sup>
- **Non-Major Event Days** – Days other than major event days. See the definition of Major Event Day.
- **Operations and Maintenance (O&M) Plan** – A set of specific system operating parameters, maintenance inspections and periodic testing reports, maintenance procedures and schedules, and documentation methods to ensure that an asset or asset protection measure performs as intended over the project's useful life.
- **Photovoltaic System (PVS)** – A power system designed to supply usable solar power by converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels

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<sup>16</sup> Puerto Rico Energy Bureau Regulation No. 9374, *Regulation on Electric Energy Wheeling*. <https://energia.pr.gov/wp-content/uploads/sites/7/2022/06/9374ING-Wheeling-APRil-20-2022.pdf>.

<sup>17</sup> National Renewable Energy Laboratory's (NREL) *Simple Levelized Cost of Energy (LCOE) Calculator Documentation*. [www.nrel.gov](https://www.nrel.gov/analysis/tech-lcoe-documentation.html). Retrieved May 15, 2023, from <https://www.nrel.gov/analysis/tech-lcoe-documentation.html>.

<sup>18</sup> Current income limits for Puerto Rico CDBG-DR purposes only, can be found on the HUD website: <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>.

<sup>19</sup> As defined in IEEE Std 1366-2022 Guide for Electric Power Distribution Reliability Indices.

<sup>20</sup> Puerto Rico Energy Bureau Regulation No. 9028, *Regulation on Microgrid Development*. <https://energia.pr.gov/wp-content/uploads/sites/7/2018/08/Reglamento-9028-Regulation-on-Microgrid-Development.pdf>.

to absorb and convert sunlight into electricity, an inverter to change the electric current from DC to AC, as well as mounting (racks and others), cabling, metering systems and other electrical accessories to set up a working system.<sup>21</sup>

- **Power Purchase Agreement (PPA)** – Any PREB-approved agreement or contract allowing and binding an Electric Power Generation Company to sell electric power to another natural or legal person at a fair and reasonable rate. Such other person is, in turn, bound to acquire said electric power.<sup>22</sup>
- **Provider of Last Resort (POLR)** – The entity maintaining the primary responsibility for providing any of the electrical power system's generation, transmission, distribution, commercialization, and operating functions. The POLR shall be the Puerto Rico Electric Power Authority (**PREPA**) or its agent or successor.<sup>23</sup>
- **Renewable Energy** – Energy from sources that are naturally replenishing but flow-limited. Renewable resources are virtually inexhaustible in duration but limited in the amount of energy available per unit of time.<sup>24</sup> The major types of renewable energy sources are solar, wind, hydropower, biomass, and geothermal.
- **Retail Electricity Supplier** – A certified EPSC, microgrid, energy cooperative, municipal venture, community solar enterprise, or other demand aggregator that produces or acquires generation services from one or more IPPs to be supplied to one or more wheeling customers. A Retail Electricity Supplier may, but is not required to, be qualified as an exempt business under Article 1, Section 2 of Act No. 73-2008, as amended, known as the "Economic Incentives Act for the Development of Puerto Rico", 13 LPRC § 10642 *et seq.*<sup>25</sup>
- **Subrecipient** – An entity that receives a subaward from a grantee to carry out part of a Federal program on behalf of that grantee; but does not include an individual or private entity that is a beneficiary of such program.<sup>26</sup> An example of a subrecipient under the ER2 Program is the Municipality of San Juan for the implementation of the Centro Médico Microgrid project.

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<sup>21</sup> For more information about Photovoltaics Systems, see: [https://www.energy.gov/eere/solar/photovoltaics#:~:text=Photovoltaic%20\(PV\)%20technologies%20%E2%80%93%20more%20electrical%20energy%20through%20semiconducting%20materials](https://www.energy.gov/eere/solar/photovoltaics#:~:text=Photovoltaic%20(PV)%20technologies%20%E2%80%93%20more%20electrical%20energy%20through%20semiconducting%20materials).

<sup>22</sup> Puerto Rico Energy Bureau Regulation No. 9374, *Regulation on Electric Energy Wheeling*. <https://energia.pr.gov/wp-content/uploads/sites/7/2022/06/9374ING-Wheeling-APril-20-2022.pdf>.

<sup>23</sup> Puerto Rico Energy Bureau Regulation No. 9374, *Regulation on Electric Energy Wheeling*. <https://energia.pr.gov/wp-content/uploads/sites/7/2022/06/9374ING-Wheeling-APril-20-2022.pdf>.

<sup>24</sup> U.S. Energy Information Administration *Renewable energy explained*. EIA.gov (n.d.) Retrieved March 2, 2023 from <https://www.eia.gov/energyexplained/renewablesources/#:~:text=Renewable%20energy%20is%20energy%20from%20available%20per%20unit%20of%20time>.

<sup>25</sup> Puerto Rico Energy Bureau Regulation No. 9374, *Regulation on Electric Energy Wheeling*. <https://energia.pr.gov/wp-content/uploads/sites/7/2022/06/9374ING-Wheeling-APril-20-2022.pdf>.

<sup>26</sup> 2 C.F.R. § 200.1.

- **Targeted Project** – A project selected by PRDOH through a collaborative, data-driven evaluation and selection process and carried out by an eligible subrecipient.
- **Transmission and Distribution Operator (T&D Operator)** – The entity responsible for operating and maintaining the POLR's electric power transmission and distribution infrastructure. In Puerto Rico, it is the public utility's transmission and distribution operator, currently LUMA Energy.
- **Wheeling** – The delivery of electricity by a Retail Electricity Supplier from one or more IPPs to a Wheeling Customer through the Electric Power Grid owned and operated by a regulated electric utility. An IPP and Retail Electricity Supplier may be the same entity or have a separate contractual arrangement. Wheeling does not include any form of Distributed Generation to which net metering is applied.<sup>27</sup>

### 3 Program Description

The ER2 Program will serve the needs of Puerto Rico by funding qualified projects that are not currently anticipated to be funded by other Federal or local sources. The objective of the ER2 Program is to enhance and improve the electrical power system's reliability, affordability, and resiliency by funding projects that qualify under federal regulations. Efforts are focused on creating decentralized sources of power generation, distribution, and storage to minimize blackouts, furthering the goals defined by Act. No. 17-2019, as amended, known as the "Puerto Rico Energy Public Policy Act", 22 LPRA § 1141 *et seq.*, which sets the Island on a path to forty percent (40%) and one hundred percent (100%) renewable energy by 2025 and 2050, respectively.

Since several components of the electrical power system, as defined by HUD, overlap or may have the same or similar meaning (e.g., distributed energy, other sources of power, and microgrids), PRDOH organizes the components into functional groupings. A project, for instance, a microgrid, may include localized improvements to transmission and distribution assets, which would be considered ancillary to the microgrid improvement. The component groupings are:

- Transmission and Distribution;
- Substations;
- Central Power Generation;
- Other sources of power, distributed energy, microgrids; and
- Enabling Technology.<sup>28</sup>

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<sup>27</sup> Puerto Rico Energy Bureau Regulation No. 9374, *Regulation on Electric Energy Wheeling*. <https://energia.pr.gov/wp-content/uploads/sites/7/2022/06/9374ING-Wheeling-APril-20-2022.pdf>.

<sup>28</sup> For more information on component groupings, access the CDBG-DR Electrical Systems Enhancements & Improvements Action Plan, in English and Spanish, at: <https://recuperacion.pr.gov/en/electrical-system-enhancements/> and <https://recuperacion.pr.gov/optimizacion-del-sistema-electrico/>.

Projects are encouraged to integrate energy assets and contribute to the diversification of energy resources. Projects pursued as microgrids shall conform to the Microgrid Regulations, as approved by PREB.<sup>29</sup> Through collaboration with relevant government agencies, such as PREB, PREPA, its T&D Operator, the Puerto Rico Department of Economic Development and Commerce (**DEDC**), and other stakeholders in Puerto Rico's energy sector, the ER2 projects' focus areas will be cross-referenced with existing and planned efforts in search of alignment opportunities. Analyzing alignment opportunities is inherent and imperative for every eligible project's evaluation and selection process.<sup>30</sup>

Eligible ER2 Program activities may include, but are not limited to, the range of eligible activities allowable under PREB's microgrid and renewable energy regulations such as renewable, hybrid, and CHP Microgrids, and compliant with Presidential Executive Order 14008 of January 27, 2021, Tackling the Climate Crisis at Home and Abroad; electric power based on renewable energy to foster distributed power generation; innovative, centralized renewable energy generation solutions; and BESS. Potential project business models may include business structures such as Community Solar, Energy Wheeling, PPAs, IPPs, or other PREB-approved business models.

PRDOH will procure a Program Manager (**PM**) to assist with Program implementation, including the projects' evaluation, selection, environmental compliance, design and permitting, and construction. PRDOH and its designated representatives will oversee and implement the ER2 Program through the phases described in Figure 1. Additional project selection and implementation details are included in the Project Selection and Project Award and Implementation sections of these Program Guidelines.

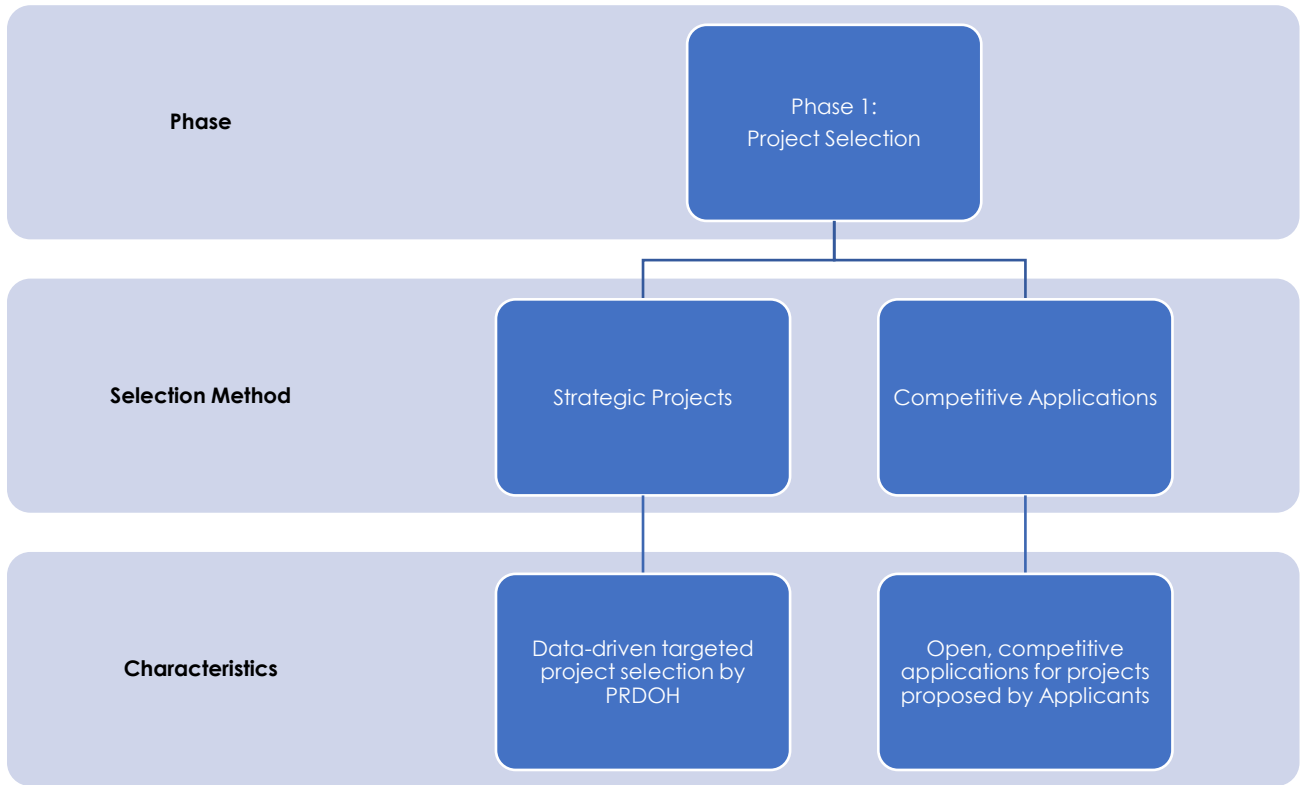
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<sup>29</sup> Microgrids may use either renewable, combined-heat-and-power, or hybrid generation resources, as described by the PREB Regulation on Microgrid Development, Section 3.03, Regulation No. 9028, May 16, 2018. <https://energia.pr.gov/wp-content/uploads/sites/7/2018/10/20181025152622240.pdf>.

<sup>30</sup> Eligible projects are further detailed in Section 7.1.

## Phase 1 – Project Selection



## Phase 2 – Project Implementation

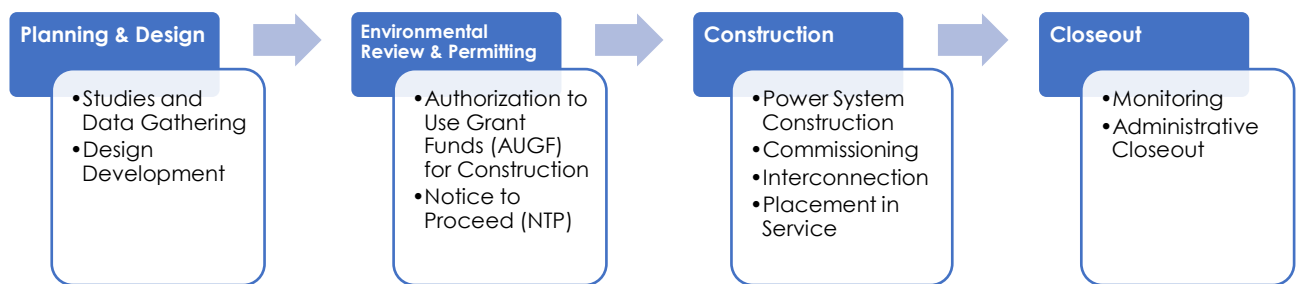


Figure 1: ER2 Program Project Selection and Implementation Phases



## 4 National Objective

As detailed in Federal Register Vol. 86, No. 117 (June 22, 2021), 86 FR 32681, at least 70% of the aggregated CDBG-DR Energy funds allocated for electrical power system enhancements and improvements must benefit LMI persons. All electrical power system improvement activities funded through the ER2 Program must meet either the LMI or the Urgent Need (**UN**) National Objectives specified at 24 C.F.R. § 570.483 or otherwise provided for by waiver or alternative requirement as published in 86 FR 32681.

- Benefit to LMI persons:<sup>31</sup>
  - i. Eligible activities will be considered to meet the criteria for activities benefitting LMI persons —area benefit activities at 24 C.F.R. § 570.483 (b)(1)—if at grant closeout at least 70% of the funds, not including planning and administrative costs, have been used to:
    - Provide at least 51% of the grantee's LMI residents with either a subsidized rate for electricity below that charged to other residential ratepayers or a lower rate for electricity than was charged prior to complete implementation of the CDBG-DR funded electrical power system improvements; or
    - Measurably improve the reliability of the electrical power system in LMI areas that are primarily residential. Measurably improved reliability shall mean a documented decrease in power supply interruptions, excluding planned interruptions and interruptions caused by major events.<sup>32</sup>
  - ii. To meet the 70% overall LMI benefit requirement, grantees may also use the LMI benefit national objective criteria at 24 C.F.R. § 570.483 (b) to the extent that an eligible activity authorized by 86 FR 32681 qualifies under the criteria for that national objective.
- Meet an UN:
  - i. PRDOH may also use CDBG-DR funds allocated to meet the UN national objective for addressing community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, that the grantee is unable to finance the activity on its own, and other financial

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<sup>31</sup> For purposes of this allocation, documentation of LMI is different. To document compliance with this national objective criterion, a grantee's policies and procedures shall provide for the measurement of improved reliability in LMI areas that are primarily residential, using relevant legal and regulatory standards, as amended from time to time, including those identified by Puerto Rico Act No. 17-2019; FEMA Section 1235(b) of the Disaster Recovery Reform Act of 2018 (**DRRA**) "Consensus-Based Codes and Standards"; Rural Utilities Service (**RUS**) Bulletins for Electric Power; Institute of Electrical and Electronics Engineers (**IEEE**) standards and guidance; Environmental Protection Agency (**EPA**) environmental protections; and, as appropriate, North American Electric Reliability Corporation (**NERC**) standards and guidance.

<sup>32</sup> Additional details on the applicable methods for measuring reliability improvements can be found in the *Project Selection* section of these Guidelines.



resources are not available to meet such needs, pursuant to the waiver and alternative requirement provided by HUD in 86 FR 32681.

- The provisions of 24 C.F.R. § 570.483 (d) are waived at 86 FR 32681 and replaced with the alternative requirement to document how the activity responds to and addresses a disaster-related impact as identified in the Action Plan's Unmet Needs Assessment.

Even though projects may qualify under the UN national objective, the 70% LMI target for the allocation must still be met. Additionally, unless PRDOH has received prior approval from HUD, CDBG-DR funds for electrical power system improvements cannot meet the CDBG national objective for the elimination of slums and blight as provided at 24 C.F.R. § 570.208 (b) and 24 C.F.R. § 570.483 (c).

## 5 Eligibility

### 5.1 Eligible Use of Funds

The ER2 Program will fund the improvement of electrical power systems, including the construction of new systems, as defined by the Government of Puerto Rico and HUD, making the electrical power system more resilient, adaptable to changing conditions, and able to withstand and recover rapidly from disruptions caused by future disasters. The Program also seeks to ensure that electrical power system improvement investments carry multiple community benefits, creating public amenities, reducing hazards, and contributing to economic revitalization.

### 5.2 Eligible Activities

HUD has determined the aggregate of electrical power system improvements to be completed with CDBG-DR funds subject to 86 FR 32681 as critical factors to the region's long-term recovery from Hurricanes Irma and María and its resilience to future weather events. As per 86 FR 32681, HUD recognizes that the broad scope of these activities may limit the ability of grantees to categorize these CDBG-DR funds into discrete categories of CDBG eligibility and to appropriately assign a CDBG national objective to each component of the planned improvements. As such, HUD waived section 105(a) (42 U.S.C. § 5305(a)) of the Housing and Community Development Act of 1974 (**HCDA**), as amended, and established an alternative requirement only to the extent necessary to create a new eligible activity, *electrical power system improvements*, which shall be applicable only for the grant funded pursuant to the Electrical Power System Enhancements and Improvements Action Plan.

Therefore, eligible activities for the ER2 Program include the acquisition, construction, reconstruction, rehabilitation, or installation of facilities, improvements, or other components undertaken to extend, upgrade, and otherwise enhance and improve the cost-effectiveness, reliability, efficiency, sustainability, or long-term financial viability of the grantee's electrical power system. Additional eligible activities include interim

assistance; financing for public or private acquisition for reconstruction or rehabilitation, or for the reconstruction or rehabilitation of privately owned property; and activities undertaken to increase the resilience of the electrical power system to future disasters and to address the impacts of climate change.<sup>33</sup>

### 5.3 Eligible Costs

In general, eligible costs for this Program include, but are not limited to:

- Staff costs and related expenses required for contract and project management, outreach efforts for marketing the Program, and other eligible services related to completion of the Program.
- Costs of environmental review and/or related studies.
- Costs of required mitigation of hazardous materials.
- Inspection and monitoring costs related to the installed systems.
- Costs of design and engineering services for systems, including costs for any required design or engineering studies or surveys.
- Cost of any required permits for the systems.
- Cost of equipment, including but not limited to cogeneration systems, photovoltaic panels, wind turbines, hydropower systems, or other renewable energy generation mechanisms, charge controllers, sensors, transfer switches, inverters, metering equipment, balance equipment, safety equipment, batteries, as well as mounting, cabling, and other electrical accessories or incidental expenses required to set up working systems.
- Cost of mounting and anchoring structures such as racking systems and other structures that provide primary support for the system equipment.
- Cost of installation and commissioning of the system.
- Any power grid interconnection costs related to the typical requirements of interconnecting an electrical power system improvement project to the grid.

All program costs and project estimates must comply with HUD directives and adhere to 2 C.F.R. Part 200, Subpart E, Cost Principles.

### 5.4 Ineligible Activities

Ineligible activities include, but are not limited to:

- Activities performed in relation to the proposed project conducted prior to the execution of an Agreement with PRDOH.
- O&M of the proposed system.
- Operation and maintenance costs of a public utility or the costs of fuel or energy purchase contracts.
- Purchase and installation of backup power generators.
- Buildings or portions thereof, used for the general conduct of government.
- General government expenses required to carry out its regular responsibilities.

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<sup>33</sup> Federal Register Vol. 86, No. 117 (June 22, 2021), 86 FR 32681.

- Use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration.
- New housing construction.
- Income payments.
- Purchase of equipment, except as provided at 24 C.F.R. § 570.207:
  - Construction equipment. The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing or depreciation pursuant to 2 C.F.R. Part 200, Subpart E, as applicable for an otherwise eligible activity, is an eligible use of CDBG funds.
  - Fire protection equipment. Fire protection equipment is considered for this purpose to be an integral part of a public facility, and thus, the purchase of such equipment would be eligible under § 570.201 (c).
  - Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property, not an integral structural fixture, is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation in accordance with 2 C.F.R. Part 200, Subpart E, for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as firefighting equipment, or when such items constitute all or part of a public service pursuant to § 570.201 (e).
- Any other unallowable items under Federal cost principles as stated in 2 C.F.R. Part 200.

## 5.5 Eligible Entities

To be eligible to receive funds under the ER2 Program, Applicants or Subrecipients must be one (1) of the following types of entities:

- Government of Puerto Rico Agency, Authority, Trust, or Board (undertaking projects to support electrical power system improvements);
- Municipal Governments;
- Public-private partnership as defined by Act No. 29-2009, as amended, known as the "Public-Private Partnership Act", 27 LPRA § 2601 *et seq*;
- For-Profit Business;<sup>34</sup>
- Public Hospital and Health System Entity;
- Non-Governmental Organization (501(c)(3))<sup>35</sup> or Not-for-Profit Entity that meets the capacity and experience requirements.

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<sup>34</sup> Eligible entities may include private, for-profit utilities, as allowed through the Waiver and Alternative Requirements in Federal Register Vol. 87, No. 236 (December 9, 2022), 87 FR 75644.

<sup>35</sup> To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and none of its earnings may inure to any private shareholder or individual. *Exemption Requirements – 501(c)(3) Organizations*. <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-501c3-organizations>.

As allowed by 87 FR 75644, private for-profit, non-profit, or publicly owned utilities are eligible entities to carry out disaster-related activities eligible under Section 105(a) of the HCDA, or otherwise made eligible through a waiver or alternative requirement, provided that the following alternative requirements are met:

- The funded activity must comply with applicable CDBG-DR Energy requirements, including meeting a national objective and addressing an electrical power system unmet need.
- The costs of the activity to assist a utility must be necessary and reasonable and may not duplicate other financial assistance.
- If the activity assists privately owned, for-profit utilities:
  - a. PRDOH will prioritize assistance to for-profit utilities that will benefit areas where at least 51% of the residents are LMI persons and demonstrate how assisting the private, for-profit utility will benefit those areas.
  - b. To achieve a targeted use of funds and to safeguard against the potential over-subsidization when assistance is used to carry out activities that benefit private, for-profit utilities, PRDOH will document that the level of assistance addresses only the utility's actual identified needs.
  - c. PRDOH will ensure that the funds that assist private, for-profit utilities reflect the assisted businesses' actual identified financing needs by establishing a mix of financing terms for each assisted private, for-profit utility, based on the business's financial capacity.

PRDOH may resort to direct and subrecipient methods of distribution, depending on the type of entity selected to develop an eligible activity and the method of project selection. Additional details on eligible entity types, applicable terminology, and project selection methodology can be found in Figure 2.

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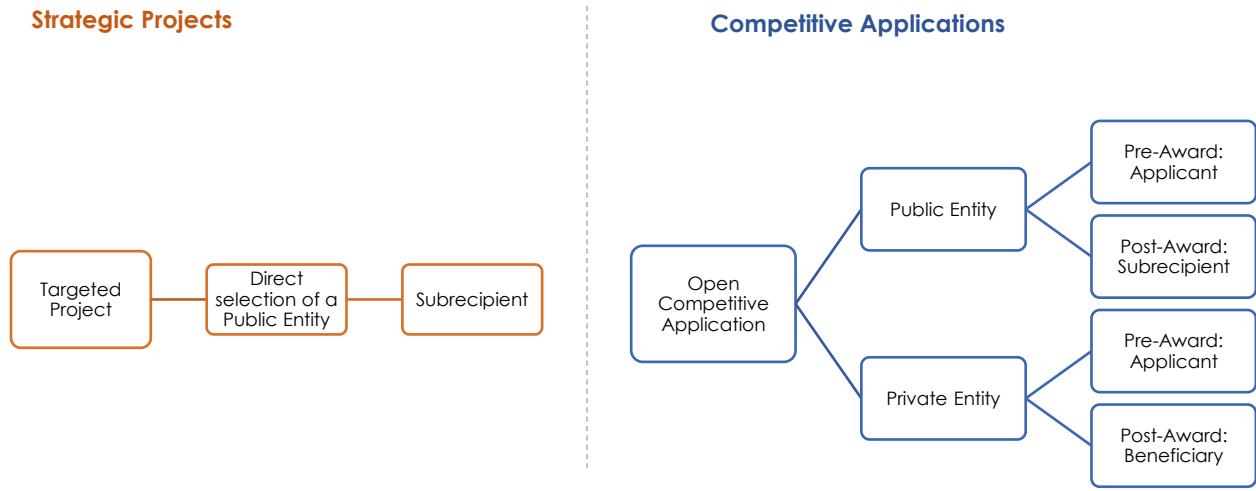


Figure 2: ER2 Program Entity Designation

## 5.6 Public Entity Participation

Certain projects slated to be developed and implemented by other Government agencies or public entities may be eligible to receive funding from the ER2 Program. These projects may be funded under either the strategic or competitive selection process of the Program. The Program will cover up to 100% of the costs for the selected projects of public ownership, excluding O&M costs.

PRDOH will consider a subrecipient distribution model for these projects, with the public entity developing the selected project becoming a Subrecipient of PRDOH. In these instances, PRDOH may select a suitable Subrecipient by either direct selection or through a **competitive selection** method. A capacity analysis and risk assessment of a potential Subrecipient will be performed. Consideration will be given to a Subrecipient's experience with CDBG-funded projects, staff capacity, knowledge, infrastructure projects, and financial management systems and controls.

A Subrecipient Agreement (**SRA**) between PRDOH and the Subrecipient will be executed. The SRA serves as the mechanism to obligate funds for the Subrecipient and requires compliance with applicable federal and local laws and regulations. The SRA includes items such as a scope of work, project budget, and project schedule, among others.

Projects implemented by a Subrecipient must comply with the PRDOH's *Subrecipient Manual for CDBG-DR & CDBG-MIT*, available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/subrecipient-manual/> and <https://recuperacion.pr.gov/download/manual-del-subrecipiente/>. The Subrecipient is responsible for compliance with applicable PRDOH and CDBG-DR rules and regulations

including procurement, contracting, civil rights, environmental review, Section 3, labor standards, and property acquisition. However, regarding CDBG-DR rules on program income, it is anticipated that revenue generated by an entity operating as a public utility from the funds collected from electric energy consumers will not be considered program income. PRDOH will provide technical assistance, oversight, and monitoring of Subrecipient activities, as needed.

### **5.7 Private Entity Participation**

PRDOH anticipates that some projects funded under the Program will be developed and owned by eligible private for-profit and nonprofit entities. The Program will cover up to 60% of the costs for the selected projects of private ownership, excluding O&M costs. The remaining 40% of funds must come from non-CDBG funding sources.

Projects developed and owned by private entities will be selected only through the Competitive Application process. These Applicants and projects must meet the financial and operational feasibility requirements outlined in section 5.10.4 of these Guidelines as well as applicable federal and local regulations. In addition, sufficient documentation must be provided to demonstrate that the funds received will be used to meet the actual identified needs of the project. PRDOH will conduct a financial analysis to ensure the best use of funds and avoid over-subsidization, taking into consideration differences in the size and scope of the proposed projects, and differences in the capacity and level of sophistication of Applicants. Consideration will be given to a private entity's experience with comparable projects, organizational and financial capacity, knowledge, project management systems, and controls.

A Grant Agreement (**GA**) between PRDOH and the private entity will be executed. The GA serves as the mechanism to obligate funds to the private entity and requires compliance with applicable federal and local laws and regulations. The GA includes items such as a scope of work, project budget, and project schedule, among others.

Eligible private entities under the Competitive Application process will be considered Beneficiaries. These entities will assume part of the risk of the endeavor, must demonstrate an ownership interest in the project, and have control over the site on which the project will be developed. Furthermore, these entities are expected to have the capacity, feasibility, and the technical and specialized knowledge to develop the project from inception through completion. This includes, but is not limited to, planning, obtaining permits, and managing all aspects of the project from start to finish.

Eligible entities designated as Beneficiaries are not required to follow CDBG-DR regulations regarding program income, procurement, and reporting rules that ordinarily apply to Subrecipients.

## 5.8 Program Eligibility

Eligible entities under the ER2 Program will be screened to ensure compliance with eligibility requirements. They will be required to provide complete and accurate information regarding their proposed projects and the program's eligibility criteria. Failure to disclose accurate and complete information may affect eligibility and all such instances will be referred to the ER2 Program for further action.

All eligible entities submitting project applications and those that are chosen through the direct selection method for strategic projects must meet the following threshold requirements to receive CDBG-DR funding:

- Be authorized to do business in Puerto Rico;
- Demonstrate control of the site on which the project will be developed. This could be through demonstration of ownership of property via deed, a property acquisition plan, or, on a case-by-case basis, an executed long-term lease agreement with property owner consent and agreement to participate;
- Demonstrate capacity to carry out the project through:
  - Current financial and organizational structure;
  - Business plan;
  - Past performance of similar projects;
  - Audited financial statements, most recent tax returns, or other documentation the Program deems acceptable to demonstrate financial capacity to carry out the project.
- Demonstrate experience developing and implementing projects with a similar scope to the proposed improvement. This requirement also applies to the eligible entity's proposed contractors, inspection services, designers, and any other critical service providers. Specific organization and staff experience requirements will be outlined in the Application instructions, as applicable.
- Demonstrate that it has the resources and strategy to ensure ongoing O&M during the project's useful life. Applicants and Subrecipients must provide for the cost of year-round O&M expenses for projects funded through this Program, including daily operations and funding strategies. CDBG-DR funds cannot be used for O&M.
- Utilize the services of an architect or engineer licensed to practice in Puerto Rico, to design the facilities, if applicable. Improvements must be in accordance with PRDOH, HUD, and FEMA standards, PREB regulations, electrical utility requirements, and relevant legal and regulatory standards, as amended from time to time, including those identified by Act No. 17-2019, known as the Puerto Rico Energy Public Policy Act, FEMA Section 1235(b) of DRR "Consensus-Based Codes and



Standards", RUS Bulletins for Electric Power, IEEE standards and guidance, EPA regulations and standards, and, as appropriate, NERC standards and guidance.<sup>36</sup>

## 5.9 Eligible Projects

This Program is designed to fund a wide range of activities that address the reliability and resiliency of electrical power systems across Puerto Rico. To be provided CDBG-DR funding, all projects must meet the following baseline requirements:

- Meet a HUD national objective (see the *National Objective* section of these Guidelines);
- Meet an "electrical power system improvements" CDBG-DR eligible activity (see the *Eligible Use of Funds* section of these Guidelines);
- Address an eligible unmet need after accounting for all duplication of benefits (see *Duplication of Benefits* section of these Guidelines);
- Project is feasible and sustainable, and all other funding sources are firmly committed, if applicable.

A variety of projects may be eligible and deployed through several types of business/deployment models, including Community Solar, PPAs, wheeling, and other PREB-approved business/deployment models. Types of potential eligible projects include, but are not limited to:

- Utility-scale renewable energy, hybrid, and/or cogeneration Microgrids;
- Community-scale renewable energy, hybrid, and/or cogeneration Microgrids;
- Critical facility renewable energy, hybrid, and/or cogeneration Microgrids;
- Commercial complex renewable energy, hybrid, and/or cogeneration Microgrids;
- Distributed Renewable Energy Generation projects (solar, hydro, wind, geothermal, bioenergy, etc.);
- Front-of-Meter and Behind-the-Meter BESS projects;
- Virtual Power Plant projects;
- Centralized renewable energy generation solutions; and/or
- Enabling technology solutions.

## 5.10 Program Participation Requirements

Details on the Program Implementation process are provided in the subsections that follow. The following items may be included as part of the Competitive Application process or included in the **Agreement**,<sup>37</sup> as applicable.

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<sup>36</sup> Please refer to <https://energia.pr.gov/wp-content/uploads/sites/7/2019/05/17-2019.pdf>; [https://www.fema.gov/sites/default/files/2020-07/fema\\_DRRA-1235b-public-assistance-codes-standards-interim-policy.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1235b-public-assistance-codes-standards-interim-policy.pdf); <https://www.rd.usda.gov/resources/regulations/bulletins>; <https://standards.ieee.org/>; <https://www.epa.gov/laws-regulations>; and <https://www.nerc.com/pa/comp/guidance/Pages/default.aspx>.

<sup>37</sup> The capitalized term "Agreement" is used throughout this document to collectively refer to the Grant Agreement and Subrecipient Agreement.



### 5.10.1 Description of Intended Use of Funds

Applicants and Subrecipients must describe the proposed use of CDBG-DR funding needed to complete the project. While PRDOH may not require Applicants and Subrecipients to include final costs at the time of their initial submission, they will be required to provide an estimated cost for the proposed project.

### 5.10.2 Agreeing to PRDOH Capacity Assessment

To be eligible to receive CDBG-DR funds under the Program, Subrecipients must confirm and provide assurance of their agreement to assist in the completion of the PRDOH capacity assessment of its organization. This assessment will provide PRDOH with the information needed to determine the organizational capacity to manage the CDBG-DR funds and to implement and operate the project. The Program will not fund those organizations lacking capacity.

### 5.10.3 Agreeing to PRDOH Technical Assistance

To be eligible to receive CDBG-DR funds under the Program and as part of the project selection process, Applicants and Subrecipients must confirm and provide assurance of their agreement to participate in all PRDOH technical assistance training to ensure compliance with all PRDOH and CDBG-DR requirements.

### 5.10.4 Agreeing to PRDOH Financial Feasibility Analysis

To be eligible to receive CDBG-DR funds under the ER2 Program and as part of the project selection process, private entities must confirm and provide assurance of their agreement to participate in all PRDOH financial feasibility activities. Proposed projects must meet financial feasibility requirements from inception to completion.

PRDOH recognizes that various levels of and approaches to financial feasibility review may be required due to the differences in entity and project types as well as the size and scope of proposed projects submitted under the ER2 Program. Nonetheless, consideration will be given to the applicant's financial capacity, the reasonableness of costs, the financial viability of the project's capital and O&M expenditures, and the long-term economic sustainability of the project.

The financial feasibility analysis may include, but not be limited to, an assessment of the following criteria:

- The current and future financial and organizational structure and fiscal condition of the applying entity and proposed system operator, if one is identified in the O&M documentation submissions;
- Past execution of similar projects and their economic performance;
- Cost reasonableness of capital and O&M expenditures;
- Proposed project budget, cash flows, financing, risk, returns, and economic feasibility, as applicable; and

- Levelized Cost of Energy (**LCOE**) and Levelized Cost of Storage (**LOCS**), as applicable.

#### 5.10.5 Agreeing to Participate in PRDOH Outreach and Stakeholder Engagement

To be eligible to receive CDBG-DR funds under the Program and as part of the project selection process, Applicants and Subrecipients must confirm and provide assurance of their agreement to participate with PRDOH and/or its designated representatives on all outreach and stakeholder engagement activities that may be required for the specific project. The extent and type of outreach and stakeholder engagement may depend on the type and location of the proposed project. Outreach and stakeholder engagement activities may be led by PRDOH and/or its designated representatives or may be subcontracted to a qualified, reputable vendor at PRDOH's discretion.

Additionally, Applicants and Subrecipients may be required to demonstrate engagement with local communities or other relevant stakeholders where the proposed project is located. Outreach and engagement may be performed in various ways, including online participation and informational resources, in-person and virtual briefings with local community organizations, broad public meetings with presentations, questions and answers (**Q&A**) sessions, and other opportunities to share and gather input. Community-focused projects —such as those utilizing the Community Solar business model and regulatory framework or including a distributed generation component involving individual households— may require a more formalized mechanism for demonstrated support and documentation. Depending on the project, this requirement may be met through documentation of consultation with or notification to the local municipality(ies) in which the project area and persons of benefit reside, official letter(s) of support from community organizations or leaders representing the project area and persons of benefit, or through instruments such as formalized consortia, executed memoranda of agreement (**MOA**), or project participation consent forms. Additional details on the community and stakeholder engagement requirements that Applicants and Subrecipients may be required to adhere to will be provided in the Competitive Application and in the Agreement, as applicable.

#### 5.10.6 Leveraging Funds – Non-CDBG-DR Funding

Given the anticipated magnitude of projects in this Program, Applicants and Subrecipients will be required to provide a description, if applicable, regarding the source and amount of non-CDBG-DR funds committed to the project and what actions have been taken to assess if additional funding is available to bring to the project. For private entities, non-CDBG-DR funds must account for at least 40% of the project's total cost.

#### 5.10.7 Defining Long-Term Operation and Maintenance (O&M) Plan

All projects for which CDBG-DR funding is being sought must have a long-term O&M plan that is determined by PRDOH to be viable as CDBG-DR funds cannot be used for O&M.

Applicants and Subrecipients are strongly advised of the prohibition on allocating CDBG-DR funding for O&M purposes. Applicants and Subrecipients will be required to describe in detail how O&M will be provided for the Project. Consequently, if an Applicant or Subrecipient is unable to demonstrate a viable long-term O&M plan, the project concept will not be accepted.

Any project or activity funded by CDBG-DR should have a plan for the useful life of the electrical power system improvement. As per HUD requirements, Applicants and Subrecipients must:

- Describe plans for ensuring the long-term O&M of the electrical power system improvements funded with CDBG-DR funds.
- Identify the sources of funding to be used for the O&M of electrical power system improvements.
- Describe how it will use reserve funds, borrowing authority, or retargeting of existing financial resources to support the O&M plan, and how it plans to ensure that public utility resources and other sources of funding, as applicable, are committed to the O&M of improvements assisted with CDBG-DR funds over the useful life of the improvements.
- Describe any proposed changes to existing taxation policies or collection practices or changes to public utility revenue billing and collection and other financing policies that are to be used to support the O&M plan. If O&M plans are reliant on any proposed changes to existing taxation policies, tax collection practices, or changes to public utility revenue billing and collection, those changes and relevant milestones should be expressly included in the project implementation plan.
- Describe any State, local, or other resources (e.g., public utility financing) that have been identified for the O&M costs of electrical power system improvements assisted with CDBG-DR funds.
- Describe how it plans to ensure and monitor funding of long-term O&M for CDBG-DR electrical power system improvements.<sup>38</sup>

#### 5.10.8 Consideration of Green Initiatives or Standards

HUD and PRDOH encourage entities, to the extent that it is practicable and possible, to use methods and materials that support elements of green initiatives or standards that show that green policies are part of the project. Through this Program's processes, Applicants and Subrecipients will be asked to describe what green initiatives will be built into the project. Projects that demonstrate and utilize green components and/or designs may have a scoring preference. Tools for green initiatives are available at the EPA's website:

- <https://www.epa.gov/green-infrastructure>
- <https://www.epa.gov/smartgrowth/location-and-green-building>

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<sup>38</sup> 86 FR 32681, 32687.

In addition, PRDOH will require that applicable construction meets an industry-recognized green building standard and that it achieves certification under at least one of the following programs: (i) ENERGY STAR (certified homes or multifamily high-rise), (ii) Enterprise Green Communities, (iii) LEED (new construction, homes, midrise, existing buildings operations and maintenance, or neighborhood development), (iv) ICC-700 National Green Building Standard, (v) EPA Indoor AirPlus (ENERGY STAR a prerequisite), (vi) the "Permiso Verde," (vii) Performance Excellence in Electricity Renewal (**PEER**) Certification, or (viii) any other equivalent comprehensive green building program acceptable to HUD.

## 6 Project Selection

ER2 Program projects selected by PRDOH will be categorized as one of the following project types:

- Strategic – Direct selection of a targeted project to be implemented by a Subrecipient.
- Competitive Application – Projects selected through an open competitive application process.

PRDOH and its designated representatives will evaluate and select each electrical improvement project, regardless of whether it is strategically or competitively selected, based on the established evaluation criteria below. PRDOH anticipates that competitive application projects may be developed and owned by both eligible public and private entities. As a reminder, projects owned by public entities may receive up to 100% of the project's total up-front capital costs. For projects owned by private entities, those entities will need to demonstrate financial leverage, and the Program will provide up to 60% of the project's total up-front capital costs. The remaining 40% of project funds must come from non-CDBG-DR funding sources.

### 6.1 Project Selection Criteria

Potential projects will be evaluated by PRDOH using criteria that incorporates ER2 Program priorities in addition to core eligibility thresholds. Threshold Criteria are required as a baseline for the project to be considered preliminarily eligible. Prioritization Criteria will be used to select, prioritize, or otherwise award a project as part of the Program.<sup>39</sup> Selected projects must meet a HUD National Objective, have a logical nexus with the Unmet Needs Assessment, and consist of CDBG-DR eligible activities under the Action Plan and Program Guidelines.

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<sup>39</sup> Threshold Criteria and Prioritization Criteria are applicable to all projects, as stated in the CDBG-DR Electrical Systems Enhancements & Improvements Action Plan, available in English and Spanish at: <https://recuperacion.pr.gov/en/electrical-system-enhancements/> and <https://recuperacion.pr.gov/optimizacion-del-sistema-electrico/>.

## 6.2 Threshold Criteria

- a. Non-Duplication of Benefits: Funds are for uses that meet electrical power system needs or result in electric power system improvements that are not likely to be addressed by FEMA or other sources of funds. See the *Duplication of Benefits* section.
- b. Construction and Resiliency Standards: Project construction will meet quality, durability, resiliency, efficiency, and sustainability standards as defined by:
  - i. Puerto Rico Building Codes;
  - ii. PREB Regulations and Utility Requirements;
  - iii. NERC; and
  - iv. National Electrical Code.
- c. Funding sources:
  - i. For projects developed and owned by private entities, the Applicant has identified non-CDBG-DR fund sources to cover at least 40% of the total project cost.
  - ii. For all projects, funding has been identified to cover long-term O&M of the project after it has been placed in service, including vegetation management, as applicable.
- d. Cost Reasonable: Controls for assuring that improvement costs are reasonable.

## 6.3 Prioritization Criteria

- a. Reliability: Measurably improves the reliability of the system as it relates to households or critical service facilities that serve areas that are primarily residential through a reduction in the frequency of power supply interruption.<sup>40</sup> Projects will be evaluated on the extent to which they reduce the frequency and duration of power outages for the population and services impacted during non-major event days, as well as the severity of the existing electric reliability issues of the feeders to which the project is connected.
- b. Resilience: Measurably improves the system's resilience through a reduction in the projected impact after a hazard event on the number of total accumulated Customer Minutes Interrupted (**CMI**), or another applicable resilience metric. Projects will be evaluated on the number of days of autonomy they provide to the power system serving the population and services impacted after a hazard event, as well as the severity of the post-Irma and María outages of the feeders to which the project is connected.
- c. High-impact Area: Provides targeted service to a vulnerable population, underserved communities, and/or LMI areas, including protected classes and

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<sup>40</sup> In addition to a reduction in the frequency of power supply interruptions, projects are encouraged to reduce the duration of these outages.

- racially and ethnically concentrated areas of poverty (**R/ECAPs**).<sup>41</sup> High-impact Areas may also include areas with demonstrated loss of power or reliability issues on an extended scale.
- d. **Cascading Impact**: Demonstrated benefits during non-major event days to community services tied to electrification, including but not limited to:
    - i. Economic benefits (i.e., impact on economic activity, improved land use, or underused land development)
    - ii. Public Health benefits (i.e., power and water nexus)
  - e. **Critical Facility**: Provides targeted service to a critical facility tied to community lifelines such as health, energy, food and water, safety, and security, among others. Typical critical facilities include hospitals, fire stations, police stations, gas stations, grocery stores, emergency shelters, and water storage and distribution facilities, among others.
  - f. **Feasibility and Leverage**: Based on the information in the application form, PRDOH may consider project feasibility, readiness, and financial leverage as criteria when prioritizing projects for selection. Projects will be evaluated on their feasibility and readiness, the extent to which they leverage other financial or existing generation assets to increase the value of CDBG-DR funds spent and reduce time to commercial operation, and the quality of their O&M plans and capacity.<sup>42</sup>
  - g. **Renewable Energy Sources**: PRDOH may consider prioritizing projects that maximize electricity production from renewable energy sources.

#### 6.4 Strategic Projects

Strategic projects are projects of significant public benefit to Puerto Rico selected directly by PRDOH in collaboration with critical federal, state, and local government stakeholders. PRDOH anticipates that these projects will be owned only by eligible public entities who become Subrecipients of PRDOH to carry out the selected project. Strategic projects will be selected with the intention of satisfying LMI National Objective criteria; however, strategic projects that satisfy UN National Objective criteria may also be considered.

In general, the strategic project selection process will follow the steps detailed below:

1. **Project and Subrecipient Identification** – This includes the identification of locations by PRDOH and other critical stakeholders within the existing electrical power system that have demonstrated electrical power vulnerability, social vulnerability, and availability of critical community services, and the identification of eligible

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<sup>41</sup> Appendix H.0 of the Action Plan includes an Enhanced Analysis on Vulnerable Populations and Protected Classes. The document is available in English and Spanish at <https://recuperacion.pr.gov/en/action-plans/action-plan-electrical-system-enhancements/> and <https://recuperacion.pr.gov/planes-de-accion/plan-de-accion-optimizacion-del-sistema-electrico/>.

<sup>42</sup> Projects that can be completed faster and easier, demonstrate greater leverage of non-CDBG-DR financial and physical assets, and demonstrate O&M plans that ensure a useful life of the system of at least 20 years will be prioritized.



public entities with the capacity to own and operate projects at those locations. Projects may also be identified that align with and complement existing or planned electrical system projects under consideration by the POLR, other critical Government stakeholders, and other PRDOH programs.

2. Technical Feasibility – The existing electrical power infrastructure in those pre-selected locations will be reviewed to consider the technical feasibility of the proposed improvement and its interconnection to the electrical power grid.
3. Grant Compliance – PRDOH will verify that the identified locations and projects can fulfill grant compliance and programmatic requirements such as national objectives and functional component grouping as described in the Action Plan and notice 86 FR 32681.
4. Threshold and Prioritization Criteria – PRDOH will evaluate each location and proposed improvement project based on the threshold and prioritization criteria included in the Action Plan and these Program Guidelines.

Upon selection of the strategic projects, PRDOH will execute an SRA with each identified Subrecipient. Each SRA will establish the anticipated scope of services required to complete the project, specific technical, qualification, and performance requirements, as well as state and local laws that the Subrecipient must meet. It will include provisions to reduce the risk of non-compliance and to ensure PRDOH meets its own responsibility to HUD for performance and financial reporting. PRDOH may assist Subrecipients with procuring the necessary goods and services required for the project on an as-needed basis.

Once an SRA is executed between PRDOH and the Subrecipient, PRDOH and its designated representatives will begin working with the Subrecipient to implement the project.

#### 6.4.1 Centro Médico Hospital Complex Microgrid

One strategic project to be funded through the Program will be the Centro Médico Hospital Complex Microgrid (**CMM**). As outlined in the Action Plan's Unmet Needs Assessment, key medical facilities across the Island experienced cascading failures due to sustained loss of power after the hurricanes. This resulted in loss of life and compounded impact on public health. Centro Médico is a hospital complex that serves as the main center for trauma cases in Puerto Rico and the Caribbean. The hospital complex includes the University of Puerto Rico Medical Science Campus, Oncological Hospital, and Industrial Hospital. A microgrid project is essential for the hospital complex's operation to receive essential energy savings and provide resilience to the facility. Targeted funds will provide design, construction, and turn-key development for the CMM.

PRDOH has selected the Municipality of San Juan (**MSJ**) as the Subrecipient for the CMM project. MSJ and PRDOH will enter into an SRA, which will specify the applicable CDBG-DR award requirements and state and local laws and regulations that MSJ must comply

with. PRDOH will support MSJ with the procurement of the turn-key development of this microgrid.

MSJ will have ultimate responsibility for ownership of the microgrid assets as well as ensuring the O&M of the system for the entirety of its useful life. Additionally, MSJ will be responsible for, at a minimum, development of the project's procurement documents, leading the contractor selection process, provision of necessary data for the project's development and monitoring, and facilitating the project's stakeholder engagement and outreach process.

#### 6.4.2 DEDC Set-Aside

Another initiative to be funded under the ER2 Program is DEDC's Energy Support Incentive Program ("Programa de Incentivo de Apoyo Energético"). To provide energy resilience to small- and medium-sized businesses, which are critical for Puerto Rico's economy and often serve as community lifelines, PRDOH will set aside up to \$30,000,000 to DEDC for utilization in this program. Through the Energy Support Incentive Program, DEDC has been using a \$20,000,000 allocation of American Rescue Plan Act (ARPA) funds to provide financial assistance to small businesses for their acquisition of renewable energy resilience measures. By providing this set-aside to DEDC, PRDOH would be leveraging other available funds to broaden the impact of the CDBG-DR electrical power system improvements allocation. For this effort, DEDC will be a Subrecipient and will enter into an SRA with PRDOH. The SRA establishes the applicable CDBG-DR award requirements, as well as state and local laws or regulations that DEDC must meet.

#### 6.4.3 Other Potential Strategic Projects

Other potential strategic projects under consideration for the Program include the following:

- *Public Microgrids* – in close collaboration with the public utility and its operators, Program funds may be used for the development of new microgrids across Puerto Rico operated by the public utility.
- *PRDOH Program Portfolio Collaboration* – to maximize the benefit of projects funded by other PRDOH energy programs, these Program funds may be used to develop complementary enabling technology or grid improvement projects aimed at optimizing the integration of PVS and BESS projects across Puerto Rico.

This is not a definitive list of all potential strategic projects, and other strategic projects may be identified and selected through the collaborative process detailed above.

### 6.5 Competitive Applications

Projects will also be selected for the Program through a competitive application process. Competitive projects satisfying either LMI or UN National Objective criteria will be considered for selection under this category. Eligible projects will be identified by Applicants and submitted to PRDOH through an open application for evaluation and



selection based on the threshold and prioritization criteria detailed in the Project Selection Criteria section above.

Interested applicants may apply to the ER2 Program by completing an online application in the Grant Application Portal (**GAP**) accessed via the Program's webpage. Applicants will be required to provide supporting documents necessary for eligibility review, entity capacity evaluation, financial assessment, and duplication of benefits review. All documentation submitted by the Applicant must be complete and valid at the time of submission.

As part of the Program application process, each Applicant must sign an Acknowledgement and Consent Statement, among other required forms and certifications detailed in the application documents. The Acknowledgement and Consent Statement includes the following acknowledgements and authorizations, at a minimum:

- Authorizes the Program to obtain third-party data directly related to determining Program eligibility, Program award, and/or compliance with Program requirements;
- Gives the Program access to the Applicant's property, as needed, to conduct required Program inspections;
- Applicant agrees to cooperate with the Program and not to interfere with the work or inspections, among others;
- Applicant grants subrogation rights to the Program regarding the right to recover any funds to which they may be entitled.

The implementation of the competitive application process will consist of various phases: Application Intake, Completeness and Preliminary Eligibility, and Project Implementation Plan and Feasibility Analysis phase. This last phase will involve an in-depth project implementation plan review, preliminary environmental review, project feasibility analysis review, and financial feasibility analysis. PRDOH and its designated representatives will conduct final project selection.

#### 6.5.1 Application Intake

The competitive application intake period will be open for a minimum of **ninety (90) calendar days**. Depending on the amount and quality of applications submitted, PRDOH may extend the initial application intake period or issue another application window at another time. After the application intake period closes, Applicants will receive a confirmation of receipt of the application from PRDOH. Throughout the application process, Applicants will be able to monitor their application's status in the GAP. PRDOH will employ multiple methods of communication to ensure Applicants receive timely and accurate information regarding their application and the Program, which may include,

but not be limited to, the Program GAP, recurring and ad hoc meetings, email, telephone, PRDOH CDBG-DR website, social media, and/or physical mail.

This period will serve as an opportunity for interested Applicants to submit their initial applications which will include, but not necessarily be limited to, the following:

- Business Documentation;
- Eligibility Information;
- Duplication of Benefits Information;
- Entity Capacity Information;
- Relevant Past Performance;
- Project Concept Description and Preliminary Project Plan;
- Proposed Ownership/Operations Structure;
- Proposed Financing/Funding Sources;
- Coordination with relevant utilities and regulatory agencies; and
- Any other items deemed necessary for the initial application submission.

The project concept description shall include, but may not be limited to, descriptive details and information on the following:

- Project team;
- Project location and geographic area being served;
- Compliance with the National Objective being pursued;
- Background information;
- Stakeholders;
- **Include at a minimum** a conceptual project design document for the power system elements;
- Technology type;
- Load profiles;
- Risks;
- Performance requirements;
- Proposed project financing including proposed non-CDBG-DR financing sources and uses;
- Proof of or plan for preliminary community engagement or notification, if applicable;
- Initial estimated project costs, including Levelized Cost of Energy and Storage (**LCOE/LCOS**), if applicable;
- Utility and regulator coordination considerations;
- Environmental Review considerations;
- Estimated implementation schedule;
- Project beneficiaries;
- Proposed O&M strategy;
- How the project addresses a reliability or resiliency need; and
- Any other factors that may be deemed applicable.

The project concept within the application will serve as the core document establishing the project's CDBG-DR eligibility and performance parameters.

### 6.5.2 Completeness and Preliminary Eligibility

PRDOH will utilize multiple review processes and a scoring system to determine which projects to fund. Once the application intake period closes, PRDOH and its designated representatives will conduct a completeness and preliminary eligibility review of each application.<sup>43</sup> This review will include, but will not necessarily be limited to, the following:

- Completeness Review;
- Eligibility Review;
- Threshold Review;
- Prioritization Review;
- Duplication of Benefits Review;
- Compliance Review;
- Project Concept Review;
- Entity Capacity Assessment;<sup>44</sup>
- O&M Preliminary Form and Funding Strategy Review

Once the review is completed, each preliminarily eligible application will be scored and ranked by points based on the established evaluation criteria. If preliminarily eligible applications exceed available funding, Applicants will be funded in rank order based on evaluation scores until the funding threshold is reached.

Application eligibility determinations, scoring summary report, and ranking list will be developed and routed to the Evaluation Committee for review prior to the issue of Applicant notifications.

### 6.5.3 Program Commitment

Applicants whose projects have been deemed preliminarily eligible and for which it is anticipated that sufficient funding will be available, will be issued a Preliminary Eligibility and Selection Notice. These Applicants will be required to submit a signed Commitment Letter (Program-provided template) prior to progressing to the next phase of Project Implementation Plan and Feasibility Analysis. By signing the Commitment Letter, Applicants will demonstrate their intent and commitment to continuing with the application review process. The Program will then proceed to reserve the funding needed for the Project and will condition final Program eligibility and award upon Applicants successfully completing the Project Implementation Plan and Feasibility Analysis phase and other applicable requirements.

The Program will conduct an informative session to provide detailed information on the Commitment Letter requirements and next steps. Failure to return to the Program the

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<sup>43</sup> PRDOH may require Applicants to present additional information if needed to evaluate the information and documentation submitted along with the application.

<sup>44</sup> Not to be confused with the Capacity Assessment that PRDOH performs on potential subrecipients prior to signing the SRA.

signed Commitment Letter within **fourteen (14) calendar days** from the date of the informative session may result in an Applicant's ineligibility to receive assistance under the Program.

#### 6.5.4 Project Implementation Plan and Feasibility Analysis

Applicants who submit a signed Commitment Letter will be required to develop and submit their full, detailed Project Implementation Plan and Feasibility Analysis. PRDOH will request Project Implementation Plans and Feasibility Analysis from preliminarily eligible Applicants who have signed a Commitment Letter, in rank order, from highest score to lowest until the funding limit is reached.<sup>45</sup>

The Project Implementation Plan and Feasibility Analysis must provide details on a variety of factors such as budget limitations and cost estimates, applicable business model and financing, current conditions of the project site and its buildings, controls and communications, design and permitting requirements, technical and economic modeling, project implementation schedule, required improvements to meet project goals, environmental review, regulatory framework, O&M, and any other factor that may affect a project's feasibility for implementation. Project Implementation Plans must include, but may not be limited to, descriptive details and information on the following:

- Project Finance Plan/Structure, including detailed non-CDBG-DR financing sources, if applicable, as well as a Simplified Project Financial Model or project LCOE using a discount rate of 3.0%;<sup>46</sup>
- Project design documentation for the power system elements **not to exceed 30% of the actual design for submitted applications that have not yet completed an environmental review;**
- Business Model Structure;
- Proof of pre-consultation with the POLR, T&D Operator, and PREB, if applicable;
- Proof of community engagement or notification, if applicable;
- Ownership and Operations Management Structure, including project team;
- Geographic service area and project location with impacted feeders, boundaries, architecture, existing and proposed electrical infrastructure, generation, storage, and energy costs, as applicable;
- LMI Benefit and/or UN National Objectives description and data;
- Historical and present-day reliability, resilience, and/or electric service rate performance metrics for the establishment of baselines;
- Proposed Rate Structure, if applicable;

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<sup>45</sup> At least 70% of the aggregated CDBG-DR Energy funds allocated for electrical power system enhancements and improvements must benefit LMI persons. As such, once funding for UN projects reaches 30% of the funds allocated to the Program, and to meet the 70% LMI target for the allocation, projects benefiting LMI persons may be given preference, despite rank order. The project's benefits to LMI persons will be based on the Program's determination of National Objective compliance.

<sup>46</sup> LCOE must be determined based on the calculation methodology provided by the National Renewable Energy Laboratory at <https://www.nrel.gov/analysis/tech-lcoe-documentation.html> and <https://www.nrel.gov/analysis/tech-lcoe.html>.

- Technology Type;
- Total and Critical Loads;
- Total Estimated Project Cost budgeted by Component Category and including interconnection costs;
- O&M Plan and costs for the useful life of the improvement;
- Interconnection Plan;
- Preliminary Environmental Compliance Plan;
- Project Implementation Schedule;
- Risk Analysis and Mitigation Plan;
- Performance requirements;
- Controls and Communications; and
- Any other factors that may be deemed applicable as detailed in the application or otherwise communicated by PRDOH at that stage of the process.

A training and informative session will be conducted to provide detailed information on the requirements for the submission of the Project Implementation Plan and Feasibility Analysis. Entities will have **forty-five (45) calendar days** from the date of the training and informative session to submit their Project Implementation Plans and Feasibility Analysis.

Upon receipt of the Project Implementation Plans and Feasibility Analysis, PRDOH and its designated representatives will conduct an in-depth review to include, but not necessarily be limited to, the following:

- Feasibility Analysis Review;
- Preliminary Environmental Review;
- Final Regulatory Compliance Review and Verification;
- Evaluation of Cost Reasonableness;
- Ownership/Operations Structure Verification;
- Implementation Schedule Review;
- Business Model and Financial Feasibility Analysis, to include review of long-term project O&M plan and viability;
- Proposed Award Calculation.

After completing the Project Implementation Plan and Feasibility Analysis review and conducting any necessary project financial feasibility activities, a Recommended Projects Package containing the results of the reviews and recommendations of projects for funding and execution will be developed.

#### 6.5.5 Final Project Selection and Award

Once a project has gone through all necessary levels of review and is selected for funding, the applicable Agreement will be sent by PRDOH to the Applicant informing them of the ER2 Program determination. The Agreement establishes the applicable CDBG-DR award requirements, as well as state and local laws that the Beneficiary or Subrecipient must meet. It also includes provisions to reduce the risk of non-compliance and to ensure that PRDOH meets its own responsibility to HUD for performance and

financial reporting. Once the Agreement is executed, PRDOH and its designated representatives will work with the awarded entity to implement the project. PRDOH reserves the option to fund all, a portion of, or none of the applications submitted by an Applicant.

## 7 Project Award and Implementation

The ER2 Program has a minimum award requirement of \$5,000,000. PRDOH may consider awards below the threshold on a case-by-case basis, considering criteria such as the project alignment with larger energy grid development activities or projects underway, or the meeting of other program requirements. There is no maximum award. Program funds will be disbursed based on the completion/achievement of performance milestones. Specific payment milestones will be determined on a project-by-project basis and further detailed in each project-specific Agreement.

Once an Agreement has been executed, the project will progress to the project implementation stage. The following project implementation phases apply to both strategic and competitive projects.

### 7.1 Design, Permitting, and Environmental Review

Project implementation begins with project design, permitting, and environmental review and clearance. Throughout this phase, the PM will meet with PRDOH, its designated representatives, Beneficiaries, and Subrecipients to coordinate and agree on the design, permitting, and environmental review aspects of the project. For additional details on the Environmental Review requirements for all projects, please refer to the *Environmental Review* section of these Guidelines.

The Beneficiary or Subrecipient will be responsible for the preparation of the environmental review record and design and construction documents, drawings, and technical specifications for selected projects, and obtaining all required project permitting. Studies, outreach, and planning efforts required to complete these activities are also included as part of this phase. At this stage, the Beneficiary or Subrecipient will be responsible for establishing and implementing reporting mechanisms to demonstrate how the project will achieve the proposed improvements.

This phase will be monitored by PRDOH or its designated representatives. Beneficiaries and Subrecipients will control and manage the budget, scheduling, and implementation of these activities for the selected projects, with the PM overseeing and monitoring these activities. Projects will be evaluated by PRDOH or its designated representative at the 30%, 60%, and 100% design marks for completeness, compliance, and specifications review.

#### 7.1.1 Construction, Commissioning, and Placement in Service

The construction process for the selected projects will be conducted throughout this phase by the Beneficiaries and Subrecipients. Projects will be evaluated by PRDOH

and/or its designated representative throughout the construction's progress for compliance with construction documents and Program requirements. Recurrent reports will be required from the PM, the Beneficiary, and Subrecipient to track the projects' progress. The PM will provide comprehensive oversight and track every stage of assigned projects while supporting PRDOH, Beneficiaries, and Subrecipients with proven strategies to deliver the best possible projects, on time and within budget. The Beneficiaries and Subrecipients shall lead the construction-related activities and shall be available to collaborate with PRDOH, its designated representatives and other vendors or key stakeholders as needed during construction.

This phase of the project will include all construction-related and functional testing activities, grid interconnection, construction closeout, commissioning, and performance testing, as well as placing the project into service and commencing O&M activities. Beneficiaries and Subrecipients will be responsible for the implementation and management of all activities required for this phase of the project, in coordination with PRDOH and its designated representatives, providing oversight, monitoring, and verification services.

#### 7.1.2 Project Closeout

PRDOH will lead the project closeout phase in collaboration with the Beneficiaries or Subrecipients. The Closeout process will begin by ensuring that all work performed has been accepted by PRDOH and its designated representatives, and that work has been performed in compliance with Program requirements. This process will include a one-year monitoring period during which PRDOH and its designated representatives will verify that the project has produced the intended electrical system improvement, as detailed in the project implementation plan. The Beneficiaries and Subrecipients will be responsible for regularly reporting to PRDOH and its designated representatives on progress towards achieving the improvement specified.

Acceptance of the work by all required parties should be established during the final inspection of the work performed. PRDOH and/or its designated representative must perform a complete review of the application/project file to ensure all necessary documentation is present and to ensure that the project is ready for closeout. Additional details on closeout requirements are provided in the *Closeout* section of these Guidelines and will be further defined in each project-specific Agreement. This will include, at a minimum, additional details regarding reporting, documentation, site inspections, and power system performance requirements as well as grant fund recapture provisions in the event recapture is required.

The selected entities are required to collaborate with PRDOH's vendors and/or other key stakeholders throughout all phases to support project development, construction, and closeout.



## 8 Design and Construction Requirements

Projects in the ER2 Program that require construction activities must:

- Support project longevity by using durable construction materials and appropriate methods that increase resiliency and reduce maintenance costs post-project completion;
- Include efficient energy and water design as a standard practice, as applicable;
- Balance quality of materials with cost containment principles;
- Comply with all federal, state, and local laws, regulations, and standards, including but not limited to all permitting requirements; and
- Comply with specific standards for Critical Action<sup>47</sup> facilities, if applicable.

### 8.1 Real Property for Project Site and Easements

Real property where the project will be developed must be identified by the Applicant or Subrecipient, where not provided by PRDOH or an asset owner. Evidence that the owners of the property are committed to lending the property for the proposed project must be included with the application, if applicable. Beneficiaries and Subrecipients must complete the real property processes for the project once the environmental review has been completed and authorization provided. This includes securing the applicable interconnection permit required to complete the project.

Property for the main project facilities can be managed through direct ownership or long-term lease agreements of a minimum of twenty (20) years with specific provisions for exclusive use for the project. Interconnection lines can be constructed on permanent or long-term easements with the right to access and maintain the infrastructure. Easements must not alter the safe occupancy of the impacted property.

Beneficiaries and Subrecipients must provide evidence that the property and easements are registered in the Puerto Rico Property Registry before project closeout.

#### 8.1.1 Project Design Requirements

Project design should consider, where practicable, the following:

- Project sites should be accessible to electric grid interconnection points, critical facilities, and access roads for safe O&M activities;
- Telecommunications systems that include broadband must be installed to promote the enabling technologies for electric system monitoring, operation, and maintenance;
- Services and property construction address risk-based needs;
- Must consider, where practicable, innovative design solutions that:
  - Improve site accessibility and safety;
  - Preserve historic and cultural resources;
  - Preserve or improve views and local character;

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<sup>47</sup> 24 C.F.R. § 55.2.



- Encourage stakeholder involvement;
- Address conflicting regulations and policies;
- Extend the project facility lifespan;
- Reduce energy consumption;
- Make use of recycled materials;
- Make use of local or regional materials;
- Divert waste from landfills; and
- Reduce waste during construction.

PRDOH reserves the right to waive minimum design requirements herein stated on a case-by-case basis. Waivers will be made available by PRDOH after careful analysis and consideration of a waiver request.

### 8.1.2 Codes, Laws, and Regulations Compliance

Construction work on the projects can be performed only after obtaining the initially required permits and endorsements. Beneficiaries and Subrecipients must ensure that all work for the Program, including new construction and alteration of existing structures, complies with the most recent and applicable federal, state, and local codes and regulations which include but are not limited to the following:

- National Electrical Code (**NEC**) – the most complete set of electrical code requirements that lead to electrical installation in the safest way for property and individuals.
- IEEE Code – commitments to the highest standards of integrity, responsible behavior, and ethical and professional conduct.
- New construction or alterations of existing structures must comply with current ADA Standards for Accessible Design (**ADA Standards**), as well as Section 504 of the Rehabilitation Act (**Section 504**), 29 U.S.C.A. § 794, and/or the Uniform Federal Accessibility Standards (**UFAS**);
- HUD Minimum Property Standards;
- Occupational Safety and Health Administration (**OSHA**), Puerto Rico Occupational Safety and Health Administration (**PROSHA**), and Puerto Rico Department of Labor and Human Resources (**PRDLHR**) safety provisions and mandates;
- Puerto Rico Building Code, most current version approved;
- Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101), when required;
- Most current approved zoning requirements for Puerto Rico;
- Energy regulations, as applicable to specific projects, including but not limited to PREB's regulations on Interconnection, Microgrid Development, and Electric Energy Wheeling, among others;
- Environmental regulations, as applicable to specific projects; and
- HUD terms and conditions, as applicable to specific projects.

The design and construction completed under the ER2 Program must comply with the latest applicable local building codes and regulations. The current Puerto Rico Codes and the International Codes® (**I-Codes®**) provide minimum requirements to safeguard the public health, safety and general welfare of the occupants of new and existing buildings and structures. The Puerto Rico Codes adopts several codes of the I-Codes family with amendments to conform to Puerto Rico laws and regulations. The adopted codes, which establish minimum requirements for building systems using prescriptive and performance-related provisions, are known and published as follows:

- Puerto Rico Building Code (**PRBC**), as amended from the International Building Code® (**IBC**);
- Puerto Rico Mechanical Code (**PRMC**), as amended from the International Mechanical Code® (**IMC**);
- Puerto Rico Plumbing Code (**PRPC**), as amended from the International Plumbing Code® (**IPC**);
- Puerto Rico Fire Code (**PRFC**), as amended from the International Fire Code® (**IFC**);
- Puerto Rico Fuel Gas Code (**PRFGC**), as amended from the International Fuel Gas Code® (**IFGC**);
- Puerto Rico Energy Conservation Code (**PRECC**), as amended from the International Energy Conservation Code® (**IECC**);
- Puerto Rico Existing Building Code (**PREBC**), as amended from the International Existing Building Code® (**IEBC**); and
- Puerto Rico Private Sewage Disposal Code (**PRPSDC**), as amended from the International Private Sewage Disposal Code® (**IPSDC**).

Other permit requirements include, but are not limited to:

- Demolition Permits issued by the Puerto Rico Permits Management Office (**OGPe**, for its Spanish acronym);
- Construction Permits issued by OGPe;
- General Consolidated Permits which include Erosion and Sedimentation Control; Permit for Activities Generating Non-Hazardous Solid Waste; Permit for Emission Sources; and Permit for the Removal and Disposition of Lead-Containing Materials, all issued by the Environmental Quality Board through OGPe;
- Local and Federal Environmental Permits, as applicable to specific projects; and
- Regulatory Agencies Endorsements including but not limited to, those from the PREPA, the Puerto Rico Aqueducts and Sewers Authority (**PRASA**), the Puerto Rico Telecommunications Regulatory Board (**TRB**), the State Historic Preservation Office (**SHPO**), the Institute of Puerto Rican Culture (**ICP**, for its Spanish acronym), and the Puerto Rico Department of Transportation and Public Works (**DTOP**).

Other local requirements for construction works include, but are not limited to:

- Construction Stamps as required by Act No. 319 of May 15, 1938, as amended, 20 LPRR § 731 *et seq.*, known as the “Law that created the College of Engineers and Surveyors of Puerto Rico”.
- Act No. 83-1991, as amended, 21 LPRR § 5803 *et seq.*, known as the “Municipal Property Tax Act”.

### 8.1.3 Quality Control and Assurance

The eligible projects must comply with the highest quality parameters for the construction industry. The projects' specific quality control and quality assurance procedures, testing, and reporting will be developed by the Beneficiaries or Subrecipients as part of the technical specifications for each project, which will be reviewed and approved by PRDOH or its representatives.

### 8.1.4 Inspection and Commissioning of Construction Projects

All projects undertaken for the ER2 Program are required to be inspected by a licensed Professional Engineer or Registered Architect in compliance with Act No. 173 of August 12, 1988, as amended, 20 LPRR § 711 *et seq.*, known as the “Board of Examiners of Engineers, Architects, Surveyor and Landscape Architects of Puerto Rico Act.” All ER2 projects are also required to undergo a commissioning process to ensure all systems and components of the project are designed, installed, tested, operated, and maintained according to the operational requirements.

The project's inspector and commissioning agent will serve the purpose of, but not limited to: (i) evaluating the overall progress of construction works; (ii) confirming that local building codes and Program standards are being met; (iii) confirming that all requirements of the contracts have been met by the contractors implementing the construction works; and (iv) conducting final commissioning of the system.

### 8.1.5 Interconnectivity with Power Grid

All ER2 Program projects are **required** to interconnect with the existing power grid in Puerto Rico and therefore must submit an interconnection request to the utility, if applicable. If interconnection is not feasible (due to installation of off-grid systems or lack of power grid capacity for interconnection), the **Beneficiary** or Subrecipient must submit a Justification of No Interconnection stating the reasons why the project/system will not be interconnected with the local power grid. Off-grid systems are only allowed in situations where the Applicant or Subrecipient can reasonably demonstrate that interconnection with the power grid is not feasible due to specific site constraints, such as the lack of power lines to the site. In these instances, should conditions at the project site change in a manner that makes interconnection feasible at a later date, PRDOH may require the Beneficiary or Subrecipient to interconnect to the existing electric power system.

## 9 Duplication of Benefits (DOB)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (**Stafford Act**), as amended, 42 U.S.C. § 5155 *et seq.*, prohibits any person, business concern, or other entity from receiving Federal funds for any part of such loss as to which they have received financial assistance under any other program, from private insurance, charitable assistance, or any other source. DOB verification and analysis ensure that program funds compensate applicants for damages and needs that have not been addressed by an alternate source, either through funding or assistance. As such, PRDOH must consider disaster recovery aid received by Applicants and Subrecipients 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 total need prior to awarding assistance. DOB occurs when financial assistance is received from another source that is provided for the same purpose as the CDBG-DR funds. PRDOH will perform a DOB analysis for each funded project.

The duplication of benefits guidance included in Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836, updates the duplication of benefits guidance issued in Federal Register Vol. 76, No. 221 (November 16, 2011), 76 FR 71060, for CDBG-DR and CDBG-MIT grants received in response to disasters declared between January 1, 2015 and December 31, 2021. As such, the duplication of benefits policy outlined in these Guidelines follows the guidance issued in 84 FR 28836. The 2019 DOB notice updates the treatment of declined loans, specifying that 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 Small Business Administration (**SBA**), related to disasters that occurred from 2014 to 2017. The 2019 DOB notice also includes requirements applicable only to CDBG-MIT funds. FEMA, as per recent amendments to the Disaster Recovery Reform Act of 2018 (**DRRA**), Pub. L. 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 apply 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.

To be eligible to receive CDBG-DR funds under the Program and as part of the application process, all Applicants and Subrecipients must confirm and provide assurance that efforts will be made to avoid a duplication of benefits. PRDOH understands and expects that for some projects funded through this Program, other Federal forms of funding may be possible and that for each project, PRDOH will need to work with funded entities to determine and address issues surrounding DOB. As part of the Competitive Application process, Applicants will be required to allow PRDOH to work with the Central Office of Recovery, Reconstruction, and Resilience (**COR3**), FEMA, SBA,

the National Flood Insurance Program (**NFIP**), U.S. Army Corps of Engineers (**USACE**), and other applicable entities to address DOB issues. Through the life of the grant, PRDOH will work with funded entities to address DOB.

Applicants and Subrecipients will be required to provide supporting documentation, including award letters, decline letters, and other documentation supporting the amount, sources, and uses of funding received/declined to assist in the completion of the project that was provided in the recovery from the covered disaster. PRDOH may contact other funders and agencies directly to confirm the information submitted by an Applicant or Subrecipient. When possible, PRDOH will electronically verify disaster recovery assistance received through federally and locally maintained datasets, such as FEMA IA, NFIP, and SBA disaster loan datasets.

The basic framework for a DOB calculation is:

1. Identify Applicant or Subrecipient's total need;
2. Identify total assistance available (insurance, FEMA, SBA, etc.);
3. Identify the "amount to exclude as non-duplicative" (amounts used for a different purpose, or same purpose, different allowable use);
4. Identify total DOB amount (total assistance minus non-duplicative exclusions);
5. Calculate maximum award (total need minus total DOB amount);
6. Determine the Final Award.

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

## 10 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. Every project undertaken with federal funds, and all activities associated with such project, are subject to the National Environmental Policy Act of 1969 (**NEPA**), 42 U.S.C. § 4321 *et seq.*, provisions, as well as to the HUD 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 do 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 prior to completion of an environmental review. Environmental clearance must be obtained for each project prior to the commitment of federal or non-federal funds.

For the purposes of the environmental review process, "commitment of funds" includes:

- Execution of a legally binding agreement (such as a property purchase or construction contract);
- Expenditure of CDBG-DR funds;
- Use of non-CDBG-DR funds on actions that would have an adverse impact (e.g., demolition, dredging, filling, excavating); and
- Use of non-CDBG-DR funds on actions that would be "choice limiting" (e.g., acquisition of real property; leasing property; rehabilitation, demolition, or construction of buildings or structures; relocating buildings or structures, conversion of land, buildings, or structures).

For the purposes of this Program and given the types of projects PRDOH anticipates funding through this allocation, PRDOH will include, whenever applicable, an Agreement addendum allowing for the selection of a contractor prior to the completion of the environmental review but limiting the activities the contractor can perform until the environmental review process is complete and clearance has been obtained. Under no circumstances will any construction activity occur, including site preparations, until environmental clearance has been obtained.

Additionally, prior to the completion of the environmental review process, PRDOH may execute agreements including non-legally binding clauses. These clauses constitute a stipulation in which the subrecipient or applicant acknowledges that it does not have a legal claim to any amount of CDBG-DR funds to be used for the specific project or site until the environmental review process is satisfactorily completed and approved.

Laws and regulations which contain environmental provisions with which the Program must comply include, but are not limited to:

- Historic Preservation (36 C.F.R. Part 800)
- Floodplain Management (24 C.F.R. Part 55, Executive Order 11988)
- Wetlands Protection (24 C.F.R. Part 55, Executive Order 11990)
- Coastal Zone Management Act (16 U.S.C. § 1456)
- Sole Source Aquifers (40 C.F.R. Part 149, Subpart A and Subpart B)
- Endangered Species Act (16 U.S.C. § 1536 and 50 C.F.R. Part 402)
- Wild and Scenic Rivers Act (16 U.S.C. § 1278)
- Air Quality (42 U.S.C. § 7506 and 40 C.F.R. Parts 6, 51, and 93)
- Farmland Protection Policy Act (7 U.S.C. §§ 4201-4202 and 7 C.F.R. Part 658)
- Environmental Justice (Executive Order 12898)
- Noise Abatement and Control (24 C.F.R. Part 51, Subpart B)
- Toxic/Hazardous Materials (24 C.F.R. § 58.5(i)(2))
- HUD Environmental Standards (24 C.F.R. Parts 50 and 58)
- Airport Clear Zones and Accident Potential Zones (24 C.F.R. Part 51, Subpart D)
- NEPA Review (40 C.F.R. Part 1508)

All Program awards must have documentation demonstrating compliance with NEPA and other environmental requirements. Therefore, all projects shall have an Environmental Review Record (**ERR**) as required by NEPA and related laws. The ERR for the projects shall set forth (a) the existence of negative impacts on a site; (b) the means to mitigate negative impacts; (c) alternatives to the project (if needed); and (d) the rejection of the proposed activities if all other options fail and it becomes the most prudent action to take.

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. Environmental clearance must be obtained for each project prior to the firm commitment of federal or non-federal funds. 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.

### **10.1 Agreeing to PRDOH Environmental Review**

To be eligible to receive CDBG-DR funds under the ER2 Program and as part of the project selection process, all entities must confirm and provide assurance that, if the project is selected and CDBG-DR funding is awarded, the entity will comply with the following:

- the entity will perform the full environmental review for the Project, with PRDOH and its designated representatives monitoring for compliance; and
- the entity will, in all cases, adhere to the guidance provided by the PRDOH Environmental Review team.

### **10.2 Environmental Level of Review**

To conduct the appropriate level of environmental review, the Program will determine the environmental classification of the project. The term "project" may be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the Program in whole or in part to accomplish a specific objective.<sup>48</sup> PRDOH will approve the classification determination. The major environmental classifications for projects and their descriptions are as follows.

#### **10.2.1 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 spelled out 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 as appropriate.

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<sup>48</sup> 24 C.F.R. § 58.2 (a)(4).



### 10.2.2 Categorically Excluded Activities

These are activities for which no Environmental Assessment and finding of no significant impact under NEPA is required. These activities are divided into those that are and those that are not subject to related laws and authorities at 24 C.F.R. § 58.5. Examples of categorically excluded activities not subject to related laws and authorities under 24 C.F.R. § 58.5 (**CENST**) include those items at 24 C.F.R. § 58.35(b) such as tenant-based rental assistance, supportive services, operating costs, economic development activities, activities to assist homebuyers to purchase existing dwelling units or units under construction, and affordable housing predevelopment costs with no 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.

Examples of categorically excluded activities subject to related laws and authorities under 24 C.F.R. § 58.5 (**CEST**) include those items at 24 C.F.R. § 58.35(a) such as acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities; special projects directed toward the removal of material and architectural barriers; and rehabilitation 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 categorically 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. The documentation must support its determinations related to compliance including correspondence with applicable agencies having jurisdiction. Upon completion, there should be one (1) of three (3) environmental findings: (1) the project converts to Exempt (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 must be posted (24 C.F.R. § 58.70). After a seven-day (7) comment period, a Request for Release of Funds and Environmental Certification must be prepared. The Environmental Certification certifies the compliance with all environmental review requirements.

### 10.2.3 Environmental Assessment

These are activities which are neither exempt nor categorically excluded and, therefore, will require an Environmental Assessment documenting compliance with NEPA, HUD, and with 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 need to post or publish a public notice called a Combined/Concurrent Notice of Finding of No Significant Impact (**FONSI**) and Notice of Intent to Request Release of Funds (**NOI/RROF**). After publication of the FONSI NOI/RROF, there will be a fifteen (15) day period in which the public can submit comments to the ERR. The RROF and Environmental Certification must be submitted to HUD no sooner than fifteen (15) days after publishing the combined/concurrent notice and HUD will hold the Release of Funds for a fifteen (15) day period to allow for public comment (24 C.F.R. § 58.45). 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.

### 10.3 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. 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 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 or demolition 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 Puerto Rico Department of Natural and Environmental Resources (**PRDNER**, or **DRNA**, for its Spanish acronym). 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.

#### 10.4 Flood Insurance Program Requirements

Projects located in a Special Flood Hazard Area (**SFHA**) —as designated by FEMA on an effective Flood Insurance Rate Map (**FIRM**) or Flood Insurance Study (**FIS**)— that receive assistance under CDBG-DR must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) 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.

Section 582 of the National Flood Insurance Reform Act of 1994, as amended, 42 U.S.C. § 5154a, on Prohibited flood disaster assistance, implies a responsibility for a grantee that receives CDBG-DR funds or that designates annually appropriated CDBG-DR funds for mitigation activities. That responsibility is to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so.

The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.<sup>49</sup>

#### 10.5 Floodplain Management and Elevation Standards

Until HUD adopts a federal tool that facilitates the use of the Climate-Informed Science Approach (**CISA**), the ER2 Program will rely on the most current, approved version of FEMA's FIRM, Preliminary Flood Insurance Rate Map (**PFIRM**), or Advisory Base Flood Elevation Map (**ABFE**) —whichever reflects the highest Base Flood Elevation<sup>50</sup> (**BFE**)— to identify whether a property is located within or outside of the Federal Flood Risk Management Standard (**FFRMS**) floodplain. The FFRMS floodplain, as defined at 24 C.F.R.

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<sup>49</sup> 42 U.S.C. § 4012a.

<sup>50</sup> Per 24 C.F.R. § 9.4 Base flood elevation (**BFE**) means the elevation to which floodwater is anticipated to rise during the 1 percent annual chance flood (also known as the base flood or 100-year flood)

§ 55.2 (b)(4), includes the 100-year and 500-year (or 0.2% annual chance) floodplains charted on FEMA's maps.

As required in 86 FR 32698 and 24 C.F.R. § 55.7, PRDOH will apply elevation standards for new construction and substantial improvements of nonresidential structures located in the FFRMS floodplain. All Critical Actions, as defined at 24 C.F.R. § 55.2 (b)(3), within the 500-year floodplain must be elevated or floodproofed, in accordance with the FEMA standards, to the higher of the 500-year floodplain elevation or three feet above the BFE. If the 500-year floodplain or elevation is unavailable, and the Critical Action is at or below the FFRMS floodplain that results from adding an additional three feet to the BFE (BFE +3'), then the structure must be elevated or floodproofed to at least the BFE +3' elevation. Critical Actions are defined 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." Some critical actions, in accordance with 24 C.F.R. § 55.8, are not allowed in certain areas of the FFRMS floodplain.

Non-structural infrastructure must be resilient to flooding. The vertical flood elevation establishes the level to which a facility must be resilient. This may include using structural or nonstructural methods to reduce or prevent damage; or, designing it to withstand and rapidly recover from a flood event. In selecting the appropriate resilience approach, grantees should consider several factors such as flood depth, velocity, rate of rise of floodwater, duration of floodwater, erosion, subsidence, the function or use and type of facility, and other factors.

Applicable local codes and standards for floodplain management that exceed these requirements, including elevation, setbacks, and cumulative substantial damage requirements, must be followed.

To determine whether to elevate structures and their cost reasonableness relative to other alternatives, PRDOH will evaluate:

- Whether the cost of elevating an electrical power system component is at or below 30% of the cost for a newly constructed in place for an original electrical power system component that can be raised;
- Whether or not raising an electrical power system component to the BFE plus three (3) feet is feasible when considering the potential for transferring flood risk to the surrounding area.

## 10.6 Insurance Requirements

In accordance with 2 C.F.R. § 200.310, a recipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by PRDOH.

## 11 Change Orders to Contracts

Changes in plans or specifications after the Agreement has been executed, including any increase or decrease to 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 PRDOH. Requests for change orders shall only be considered if the proposed change is necessary, reasonable, and can be funded through funding sources other than CDBG-DR. Change orders may include, but are not limited to, explanations of the type of work and scope to be added or deleted from the contract, the additional time (if any) required for the work, a justification for why the work is necessary, and evidence of any conditions identified that resulted in the request.

PRDOH 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. Change order requests with the potential to increase the amount of the CDBG-DR award will only be considered if the change order is required due to unforeseen circumstances and the project's contingency budget has been expended as approved by PRDOH. Approval of change orders with potential to increase the amount of the CDBG-DR award is subject to PRDOH's discretion, and availability of CDBG-DR funds. Any work performed outside of the approved scope of work without prior authorization by means of a Change Order may not be reimbursable under the Agreement. Beneficiaries and Subrecipients 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 Uniform Relocation Act

Activities and projects undertaken with CDBG-DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (**URA**), as amended, 42 U.S.C. § 4601 *et seq.*, and section 104(d) of the HCDA (42 U.S.C. § 5304(d)).

Projects funded under the Program, which include acquisition 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.

As a condition of receiving CDBG-DR assistance, entities agree to fully comply with all applicable provisions of the URA and waivers and alternative requirements issued by HUD for CDBG-DR activities found at 86 FR 32681. For more information on how URA regulations apply, 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/>.

## 13 Property Management and Distribution

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

For any real property acquired in whole or in part with CDBG-DR funds in excess of \$25,000.00, the recipient must control the use of the property in accordance with its intended purpose and take good care of it and may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property is not a building for general government conduct, the use of the property may be changed with citizen approval if it meets one of the HUD national objectives. If the recipient changes the use of the property, the recipient may either retain or dispose of the property and reimburse the CDBG-DR Program the amount of the current fair market value of the property.

Further details on property management and disposition can be found in the Cross Cutting Guidelines available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/cross-cutting-guidelines/> and <https://recuperacion.pr.gov/download/guias-intersectoriales/>.

## 14 Civil Rights and Non-Discrimination

The CDBG-DR Program shall be implemented in a manner that does not deny any individuals the opportunity to participate in, access, or benefit from the Program on a discriminatory basis of any federally or locally designated protected classes. Funded activities shall be designed and implemented in a manner that avoids disproportionate negative impacts on protected classes of people and vulnerable communities, as well as create opportunities to address economic inequities facing communities. PRDOH has adopted several policies to which it, its Subrecipients, contractors, and all entities receiving Program awards, are required to adhere to in the design and implementation of the Program and funded projects. All CDBG-DR General 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/>.

### 14.1 Fair Housing & Equal Opportunity Policy (FHEO Policy)

The FHEO Policy establishes requirements and provides guidance for ensuring that CDBG-DR programs do not discriminate against protected classes of people. Included in this policy is a summary of all civil rights-related and anti-discrimination laws, which must be complied with, strategies and requirements for the affirmative marketing of programs to potential participants, the handling of discrimination complaints, equal opportunity employment requirements, communication requirements, recordkeeping requirements,



and other information critical for ensuring compliant design and implementation of the CDBG-DR Program.

For more information refer to the CDBG-DR Fair Housing and Equal Opportunity Policy available in English and Spanish at <https://recuperacion.pr.gov/en/download/fair-housing-and-equal-opportunity-fheo-policy-for-cdbg-dr-programs/> and <https://recuperacion.pr.gov/download/politica-de-equidad-de-vivienda-e-igualdad-de-oportunidades-para-los-programas-cdbg-dr/>.

## **14.2 Section 504, Americans with Disabilities Act (ADA), and Equal Employment Opportunity**

All entities receiving an award from the Program are required to comply with Section 504, ADA, and Equal Employment Opportunity (**EEO**) requirements in the execution of both infrastructure and job creation or retention activities. Based on the applicant entity type and the project activities, infrastructure, facilities, and employment practices will need to comply with Section 504 and ADA to be physically accessible to persons with disabilities. Employers must comply with employment requirements under these statutes as well as EEO.

## **14.3 Reasonable Accommodation Policy**

Federally funded programs are required under Section 504 of the Rehabilitation Act of 1973 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 accommodations (changes to a rule, policy, practice, or service) and 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.

Any person with disability-related needs may submit a request for accommodation or modification to PRDOH or any entity receiving a Program award, as well as their contractors, involved in the implementation of CDBG-DR programs. PRDOH has established the Reasonable Accommodation Policy to guide individuals on how to submit a non-employment related request, and instruct PRDOH employees, subrecipients, contractors, and other participating entities on how to receive and evaluate reasonable accommodation and modification requests. Any employment-related reasonable accommodation request should be directed to the individual's employer.

PRDOH will ensure that every effort is made to meet the disability-related needs of requesting individuals to the maximum extent feasible, provided the requested accommodations or modifications are reasonable.



The Reasonable Accommodation Policy is available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/reasonable-accommodation-policy/> and <https://recuperacion.pr.gov/download/politica-de-acomodo-razonable/>.

#### 14.4 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 and all entities receiving an award from the Program, as well as their contractors, to ensure that appropriate language services and translated vital documents are made available to potential and actual Program participants, as well as in outreach activities, in accordance with the LAP.

The CDBG-DR 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 Labor Standards

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

Policies have been adopted by PRDOH for the CDBG-DR Programs, which Subrecipients and Beneficiaries, as well as their contractors, are required to follow and comply with in the implementation of CDBG-DR funded activities. These policies are available in English and Spanish at <https://recuperacion.pr.gov/en/resources/policies/> and <https://recuperacion.pr.gov/recursos/politicas/politicas-generales/>.

#### 15.1 Section 3

All entities who receive CDBG-DR funding are required to comply with HUD regulation at 24 C.F.R. Part 75, commonly referred to as the Section 3 Final Rule. Section 3 ensures that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible and consistent with existing federal, Government of Puerto Rico, and local laws and regulations, be directed to low- and very low-income persons, so that they can take part in recovery activities in proximity to work location. Through the program notification process, technical assistance workshops, and

monitoring protocols, PRDOH will communicate and work with entities to ensure that each project adheres to the Section 3 regulations and HUD's established benchmarks for the percentage of total work hours to be completed by Section 3 Workers and Targeted Section 3 Workers.

For more information about Section 3 refer to the CDBG-DR Section 3 Policy available in English and Spanish at <https://recuperacion.pr.gov/en/download/section-3-policy/> and <https://recuperacion.pr.gov/download/politica-sobre-seccion-3/>.

## 16 Financial Management

All financial processes and procedures shall be made in accordance with the requirements set forth in the CDBG-DR Financial Policy, to ensure full compliance with cost principles and effective use of funds, maximizing operational and financial performance, minimizing risk, and providing optimal service.

All Beneficiaries and Subrecipients' invoicing and payments will be managed through PRDOH's Financial Management Systems. Refer to the CDBG-DR Financial Policy available in English and Spanish at <https://recuperacion.pr.gov/en/download/financial-policy/> and <https://recuperacion.pr.gov/download/politica-financiera/>.

## 17 Cost Reasonableness

Federal Register Notice 86 FR 32681 requires PRDOH to ensure “that electrical power system improvement costs, including acquisition and construction costs, are reasonable and consistent with market costs at the time and place of construction.” Cost reasonableness is described as the price that a prudent businessperson would pay for an item or service under competitive market conditions, given a reasonable knowledge of the marketplace. The method and degree of analysis may vary depending upon the circumstances surrounding a particular project (e.g., project type, risk, costs). HUD may issue guidance to PRDOH and may require PRDOH to verify cost reasonableness from an independent and qualified third-party architect, civil engineer, or construction manager. To establish the cost reasonableness of the goods and services under the CDBG-DR Program, PRDOH may perform one or more of the following analyses: comparison of proposed prices and historical contracts; independent cost estimates; market research, among others.

## 18 Procurement

As grantee of CDBG-DR funds, PRDOH requires that the procurement processes and policies of the CDBG-DR Program be governed by federal regulation at 2 C.F.R. § 200.317. Consistent with federal standards, Subrecipients can adhere to their own written procurement policies and procedures, provided that these are consistent with the provisions at 2 C.F.R. §§ 200.318 – 200.327. Alternatively, they may use the PRDOH

Procurement Manual<sup>51</sup> as a reference for developing or revising their own procurement procedures, or they may adopt it, modifying any clauses that conflict with their operations and specific needs.

All Subrecipients of the ER2 Program must follow the provisions of 2 C.F.R. §§ 200.318 – 200.327 and maintain comprehensive records of all acquisition processes. All related records shall be available to PRDOH or other State or Federal agencies with oversight capacity to effectively carry out monitoring processes of procurement documents when required.

Subrecipients will be required to prepare and submit to PRDOH a certification of compliance with all applicable procurement regulations. Purchase orders, contracts, and similar documentation resulting from procedures of procured goods or services shall be submitted to PRDOH before requesting reimbursement or payments of costs incurred to implement Program activities.

Further guidance on specifics related to procurement will be included in the executed Agreements with selected entities.

## 19 Reporting

All entities receiving federal award funds must complete a quarterly report in which they provide an overview on the project's progress to date, compliance with job creation/retention (if applicable), and include a summary of the progress expected for the next quarter. Additional compliance reporting including, but not limited to, that for Section 3 of the Housing and Urban Development Act of 1968 and Davis Bacon and Related Acts will be maintained in accordance with the reporting requirements under the CDBG-DR regulations, applicable PRDOH CDBG-DR policies, and executed Agreements.

Additional reports, which will be detailed in the executed Agreements, must be submitted on the agreed-upon schedule. Specific measures related to electrical system improvement activities that may be required for reporting to PRDOH and HUD include, but are not necessarily limited to, the following:<sup>52</sup>

- Percent reduction in loss of service;
- Number of green infrastructure projects constructed;
- Number of fewer outages of critical facilities and utilities;
- Percent decrease in disruption hours to residents and businesses from impacts of storm events;
- Percent reduction in energy costs;
- Number of Electrical Inspections;

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<sup>51</sup> Procurement Manual for the CDBG-DR, CDBG-MIT, and CDBG State Programs, Regulation. No. 9506 of September 25, 2023.

<sup>52</sup> This is not an exhaustive list of the measures that may be applicable to the various project types anticipated to be funded by the ER2 Program and that may require reporting to PRDOH and HUD. Additional applicable measures and metrics may be identified and required to be reported on throughout the implementation of the program.

- Percent of area electrical demand generated from facility;
- Percent reduction in number of kWh of electricity consumed on-site;
- Number of microgrids constructed to sustain critical services during a power outage;
- Percent decrease in number of inaccessible days;
- Percent reduction in kWh used; and
- Percent reduction in utility costs.

## 20 Monitoring

The PRDOH is required by regulations and Grant Agreement conditions to monitor each program or activity funded by CDBG-DR funds to ensure compliance with applicable Federal requirements and to determine if performance expectations are being achieved. This includes monitoring of CDBG-DR funded activities carried out by PRDOH's Beneficiaries and Subrecipients.

PRDOH must ensure compliance with HUD regulations, which include but are not limited to recordkeeping, administrative and financial management, environmental compliance, citizen participation, conflict of interest, procurement, labor standards, Section 3, Fair Housing, Title VI, Section 504, duplication of benefits, property management, and property acquisition and relocation. PRDOH is required to monitor all programs and projects for conformance with the goals, objectives, and policy set forth in the Action Plan and its Amendments.

Program monitoring serves to identify risks, deficiencies, and remedies related to programs, projects, and Beneficiaries and Subrecipients' performance. The objectives of the Program monitoring include:

- Determine if activities are being carried out as described in the Action Plan, as amended, for the CDBG-DR Program;
- Determine if activities are being carried out in a timely manner;
- Determine if costs charged to the Program and projects are eligible under applicable laws and CDBG-DR regulations and if are reasonable in light of the services or products delivered;
- Determine if activities are being conducted with adequate control over the Program and financial performance, and in a way that minimizes opportunities for waste, mismanagement, fraud, and abuse;
- Determine if the activities are being carried out in conformance with the Agreement;
- Assist in resolving compliance problems through discussion, negotiation, technical assistance, and training;
- Provide adequate follow-up measures to ensure that performance and compliance deficiencies are corrected and not repeated;
- Comply with the monitoring requirements at 24 C.F.R. § 570.501 (b) and 2 C.F.R. § 200.328, if applicable;

- Determine if any conflict of interest exist in the operation of the CDBG-DR Program per 24 C.F.R. § 570.611; and
- Ensure that required records are maintained to demonstrate compliance with applicable regulations.

The Monitoring Manual for the CDBG-DR Program is available in English and Spanish on PRDOH website at <https://recuperacion.pr.gov/en/download/monitoring-manual/> and <https://recuperacion.pr.gov/download/manual-de-monitoreo/>.

## 21 Closeout

The closeout process is designed to ensure that all CDBG-DR funded activities are completed, and funds are spent in accordance with the Agreement, Program Guidelines, and state and federal requirements. Closeout is the process by which it is determined that all CDBG-DR program costs have been fully expended and were reasonable and necessary, the work has been completed in accordance with all applicable laws and regulations, and all responsibilities of PRDOH and the Beneficiary or Subrecipient have been completed in accordance with the terms and conditions of the Agreement. This process certifies that the CDBG-DR funded activities described in the CDBG-DR Energy Action Plan and the Program Guidelines have benefited the persons affected by the eligible disasters.

The CDBG-DR Closeout Policy is available in English and Spanish at <https://recuperacion.pr.gov/en/download/closeout-policy/> and <https://recuperacion.pr.gov/download/politica-de-cierre/>.

### 21.1 Project Closeout

For projects comprised of multiple funding sources, project closeout occurs when all funds are spent, not just the CDBG-DR funded portions. PRDOH will solely determine if all the project requirements have been completed in accordance with the terms and conditions of the Agreement. After PRDOH makes this assessment, it can initiate closeout at a time and frequency of its choosing. Additional details on project closeout requirements will be provided in each **Agreement**. This will include, at a minimum, additional details regarding reporting, documentation, site inspections, and power system performance requirements, as well as grant fund recapture provisions in the event recapture is required.

Project closeout will begin when:

- Approved work has been finished and is completed;
- A project is deemed complete upon final review and an on-site inspection by PRDOH and, when applicable, the submission of proof that all appropriate code and permit approvals have been secured, including Certificates of Occupancy, the closing of project permits, and the project being placed in service;

- All project expenses (including non-CDBG-DR funds), except closeout costs, to be paid have been completed and payment requested;
- Any other responsibilities detailed in the **Agreement** have been fulfilled;
- PRDOH has reviewed closeout documents and has a resolution of any outstanding issues;
- All monitoring or audit findings have been cleared;
- All milestones have been met and deliverables submitted, and each in accordance with all requirements of this Program; and
- A CDBG-DR National Objective has been documented.

#### 21.1.1 HUD Notification of Project Closeout

In addition to the steps listed above, the project's status must be updated in HUD's Disaster Recovery Grant Reporting (**DRGR**) system, and a final HUD quarterly narrative report must be submitted to reflect the project's status.

### 21.2 Program Closeout

Program closeout is the process by which PRDOH determines that all activities within the Program have been successfully completed. A program is deemed complete upon final review and/or inspection by PRDOH and, when applicable, the submission of proof that all agreed upon performance indicators have been reported as well as performance milestones met.

General requirements for Program closeout are as follows:

- All milestones have been met and deliverables submitted, and each in accordance with all requirements of this Program;
- All Program forms and reports required throughout the entirety of program processes have been duly completed and executed by the appropriate parties;
- All CDBG-DR funds used have been properly accounted for and reconciled with payments made to the PRDOH's Beneficiaries and Subrecipients;
- All payments have been issued to PRDOH's Beneficiaries and Subrecipients;
- All permits required for construction work have been properly closed-out with the pertinent governmental entities;
- Other requirements for closeout as established in the **Agreements** have been met.

Outreach will be made to the project entities if any additional information is necessary to close out the Program. Once all levels of quality control review are passed, the entities will receive a CDBG-DR Final Notice, and their individual Agreements will be placed in a closeout complete status.

## 22 Voluntary Withdrawal

An entity may request to withdraw from the Program at any time before an Agreement is signed and CDBG-DR funds are committed. The voluntary withdrawal process will be



followed in the event an Applicant or a Subrecipient requests to withdraw from the Program.

To withdraw, the Subrecipient or Applicant will notify the Program of their desire to withdraw from the Program by completing a Voluntary Withdrawal Request Form. The Subrecipient or Applicant may submit the Form to PRDOH in writing, by e-mail or postal mail. Subsequently, a Voluntary Withdrawal Notice will be sent to the Applicant or Subrecipient, and the withdrawal process will commence. Before authorizing a withdrawal request, the Program will update the **case** file to reflect the receipt and verify the status of the Agreement and award disbursement. The Program will only approve withdrawal requests for **cases** where an Agreement has not yet been signed and CDBG-DR funds have not been committed. After **fifteen (15) calendar days** have passed from the issuance of the Voluntary Withdrawal Notice, a Voluntary Withdrawal Confirmation Notice will be sent to the Applicant or Subrecipient informing them that the status of their case has been updated to “withdrawn” and the case has been closed, so the Subrecipient or Applicant will no longer be able to participate in the Program.

### 23 Non-responsive Entities

The ER2 Program will make reasonable attempts to contact **participating entities** to schedule meetings, collect documentation, or obtain other **necessary** information.

If the ER2 Program has made three (3) consecutive unsuccessful attempts to contact a **participating entity** with no follow up contact from the entity, a Non-responsive Notice will be sent.

If the ER2 Program sends a Required Documents Notice to **participating entities** and no response is received within **thirty (30) calendar days** of the date of the letter, a **Non-Responsive Notice** will be sent .

If the ER2 Program inspected the **Beneficiary** or Subrecipient project site, and from such inspection it was determined that the system is in non-compliance with the terms and conditions of the Agreement, the **Beneficiary** or Subrecipient will be given **ninety (90) calendar days** from the date of the inspection to correct deficiencies and request a re-inspection. If the identified deficiencies cannot be corrected in **ninety (90) calendar days**, the **Beneficiary** or Subrecipient must submit in writing adequate justification and evidence for why the deficiencies cannot be corrected in the allotted time. If within the **ninety (90) calendar day** period no re-inspection is requested or no justification is provided explaining why the deficiencies cannot be addressed in the time allotted, the **Beneficiary** or Subrecipient will be sent a Non-responsive Notice.

Contact attempts should be made using different methods of communication and at different times of the day/week. The Non-responsive Notice provides contact information for the ER2 Program, advises the **participating entity** of the reasons for the Non-responsive Notice, and notifies them **that** they must contact the Program or complete an action



within **fourteen (14) calendar days** of the date of the letter. If the participating entity fails to contact the program or complete the action within the **fourteen (14) calendar days** allowed, the application will be closed. After **fourteen (14) calendar days** have passed from the issuance of the Non-responsive Notice, a Non-responsive Confirmation Notice will be sent to the participating entity informing them that their case has been officially closed.

## 24 Program-based Reconsideration and Administrative Review

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

### 24.1 Program-based Reconsideration Request

Subrecipients or Applicants 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 or Applicants 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 or Applicant's file, unless the Subrecipient or Applicant submits new documentation. The Program has the discretion to accept or reject new documentation based upon its relevance to the Program-based Reconsideration Request.

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

Filing a Program-based Reconsideration Request does not substitute, negate, or preclude any legal right that a Subrecipient or Applicant has to challenge a

determination made by the Program. Therefore, Subrecipients and Applicants who believe the initial determination of the Program to be erroneous, may submit, at their discretion, either a Program-based Reconsideration Request or an Administrative Review Request at PRDOH in accordance with the Regulation on Formal Adjudicative Procedures of the Department of Housing and its Affiliated Agencies, Regulation No. 9618 of November 21, 2024 (Regulation **9618**).<sup>53</sup>

#### 24.1.1 Administrative Review Request

If a Subrecipient or Applicant disagrees with a Program determination or with the Reconsideration Request Denial determination, said party may file directly with PRDOH, as grantee, an Administrative Review Request in accordance with the aforementioned Regulation 9618. The Subrecipient or Applicant must submit such request, in writing, within **twenty (20) calendar days** from the date a copy of the Program determination or a Reconsideration Request Denial determination notice was filed in the records 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 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.

Submit the request via email to: [LegalCDBG@vivienda.pr.gov](mailto:LegalCDBG@vivienda.pr.gov); via postal mail to: CDBG-DR Legal Division, P.O. Box 21365, San Juan, PR 00928-1365; or in person at PRDOH's Headquarters at: CDBG-DR Legal Division, 606 Barbosa Avenue, Juan C. Cordero Dávila Building, Río Piedras, P.R. 00918.

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

## 25 General Provisions

### 25.1 Program Guidelines Scope

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

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<sup>53</sup> For more details, you can access Regulation 9618 (in Spanish) at <https://www.vivienda.pr.gov/wp-content/uploads/2024/11/REGLAMENTO-9618-SOBRE-PROCEDIMIENTOS-ADJUDICATIVOS-FORMALES-DEL-DEPARTAMENTO-DE-LA-VIVIENDA-Y-SUS-AGENCIAS-ADSCRITAS.pdf>.

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

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

## **25.2 Program Guidelines Amendments**

PRDOH reserves the right to modify the policies established in these Guidelines if the Program Guidelines, as written, do not reflect the intended policy or cause procedures to be 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.

## **25.3 Extension 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 circumstances does the faculty to extend deadlines apply to the established terms of time in these Guidelines or any applicable federal or state law or regulation, or to the terms of times established in these Guidelines to request a Program-based Reconsideration, Administrative Review and/or Judicial Review.

## **25.4 Established Periods of Time**

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

## **25.5 Written Notifications**

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

## 25.6 Conflict of Interest

As stated in the Federal Register Vol. 86, No. 117 (June 22, 2021), 86 FR 32681, Federal regulations require that State grantees, in the direct Grant administration and means of carrying out eligible activities, be responsible with program administrative requirements, including those established in 24 C.F.R. § 570.489(h) related to conflicts of interest.

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

- HUD conflict of interest regulations, 24 C.F.R. § 570.611;
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 at § 200.112 and § 200.318 (c)(1);
- Puerto Rico Department of Housing Organic Act, Act 97 of June 10, 1972, as amended, 3 LPRA § 441 *et seq.*;
- The Anti-Corruption Code for the New Puerto Rico, Act No. 2-2018, as amended, 3 LPRA § 1881 *et seq.*; and
- The Puerto Rico Government Ethics Office Organic Act, Act No. 1-2012, as amended, 3 LPRA § 1854 *et seq.*

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

As defined in the COI Policy, a conflict of interest is a situation in which any person who is a public servant, employee, agent, consultant, officer, or elected official or appointed official of 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 those with whom they have business ties, or an organization which employs or is about to employ any of the parties indicated herein, or a member of their family unit during their tenure or for two (2) years after.

Such conflicts of interests will not be tolerated by 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, regarding their conduct in the administration, granting of awards and program activities.

According to the Act, no public servant shall intervene, either directly or indirectly, in any matter in which they have a conflict of interests that may result in their benefit. No public servant shall intervene, directly or indirectly, in any matter in which any member of their family unit, relative, partner, or housemate has a conflict of interest that may result in

benefit for any of the abovementioned. In the case that any of the abovementioned relationships have ended during the two (2) years preceding the appointment of the public servant, they shall not intervene, either directly or indirectly, in any matter related to them until two (2) years have elapsed after their appointment. This prohibition shall remain in effect insofar as the beneficial ties with the public servant exist. Once the beneficial ties end, the public servant shall not intervene, either directly or indirectly, in such matter until two (2) years have elapsed.

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

The COI Policy and all CDBG-DR and CDBG-MIT Program policies are available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/conflict-of-interest-and-standards-of-conduct-policy/> and <https://recuperacion.pr.gov/download/politica-de-conflictos-de-interes-y-estandares-de-conducta/>.

## 25.7 Citizen Engagement and 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 and CDBG-MIT funds, including all programs funded by this Grant, are welcomed.

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

**Via phone:** 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)  
Attention hours Monday through Friday from 8:00am-5:00pm

**Via email at:** [infoCDBG@vivienda.pr.gov](mailto:infoCDBG@vivienda.pr.gov)

**Online at:** <https://recuperacion.pr.gov/en/contact-us/contact/> (English)  
<https://recuperacion.pr.gov/contactanos/contacto/> (Spanish)

**In writing at:** Puerto Rico CDBG-DR Program  
P.O. Box 21365  
San Juan, PR 00928-1365

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

[recuperacion-ciudadana/](https://recuperacion-ciudadana/). For more information on how to contact PRDOH, please refer to <https://recuperacion.pr.gov/welcome/en/home/>.

## 25.8 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 and CDBG-MIT 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. 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 and CDBG-MIT funded activities may do so through any of the following means:

**Vía e-mail at:** [CDBGResponde@vivienda.pr.gov](mailto: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  
Attn: 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.

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

## 25.9 Anti-Fraud, Waste, Abuse or Mismanagement

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



Pursuant to 86 FR 32681, PRDOH implements adequate measures to detect and prevent fraud, waste, abuse, or mismanagement in all programs administered with CDBG-DR and CDBG-MIT funds as well as encourages any individual who is aware or suspects any kind of conduct or activity that may be considered an act of fraud, waste, abuse, or mismanagement, regarding the CDBG-DR and CDBG-MIT Program, to report such acts to the CDBG-DR Internal Audit Office, directly to the Office of Inspector General (**OIG**) at HUD, or any local or federal law enforcement agency.

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

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

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



The AFWAM Policy and all CDBG-DR and CDBG-MIT Program policies are available in English and Spanish, on the PRDOH website at <https://recuperacion.pr.gov/en/download/afwam-policy/> and <https://recuperacion.pr.gov/download/politica-afwam/>.

### **25.10 Related Laws & Regulations**

These Guidelines refer to how the provisions of certain laws apply to the ER2 Program. However, other related laws may exist which are not included in these Guidelines. This does not negate or preclude the ER2 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.

### **25.11 Cross-Cutting Guidelines**

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

The Cross-Cutting Guidelines and all CDBG-DR and CDBG-MIT Program policies are available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/cross-cutting-guidelines/> and <https://recuperacion.pr.gov/download/guias-intersectoriales/>.

### **25.12 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.

### **25.13 Severability Clause**

If any provision of these Guidelines, or the application thereof to any person, partnership, corporation, or circumstance, is deemed invalid, illegal, or incapable of being enforced to any extent by a competent court, the remainder of 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 PROGRAM GUIDELINES**