



CDBG-MIT

PROGRAM GUIDELINES

**LEVERAGE FOR LOW-INCOME HOUSING TAX CREDITS PROGRAM
(LIHTC - MIT)**



DEPARTMENT OF

HOUSING

GOVERNMENT OF PUERTO RICO

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PUERTO RICO DEPARTMENT OF HOUSING
CDBG-MIT PROGRAM GUIDELINES
LEVERAGE FOR LOW-INCOME HOUSING TAX CREDITS PROGRAM
VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	November 18, 2024	Original version.
2	April 8, 2026	A minor change was incorporated in the Program Eligibility section to clarify the correct website to access the published QAPs. Section 20 was updated to align it with the current version of 2 C.F.R. § 200.321. The update expands contracting requirements to include veteran-owned businesses and businesses located in labor surplus areas. In addition, general revisions and corrections were made. All edits have been highlighted in gray.

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1 Overview

The top threatening hazards for Puerto Rico at an island-wide level are hurricane-force winds, flooding, earthquakes, landslides, and liquefaction.¹ These hazards have prominently manifested in Puerto Rico's recent history, as evidenced by eight (8) emergency and major disaster declarations between 2017 and 2020.² Annually, the Island braces for tropical storms and hurricanes, which unleash significant rainfall, thus increasing the vulnerability of thousands of rental units to floods and flood-induced landslides.

Puerto Rico has approximately **three hundred and ninety thousand (390,000)** renter-occupied housing units, making up roughly one-third of all occupied housing units on the Island.³ More than **seventy-six percent (76%)** of the Island's rental stock was constructed before 1990.⁴ A significant portion of the renter population needs housing options capable of mitigating the risks that affect Puerto Rico to the greatest extent possible. The Puerto Rico Department of Housing (**PRDOH**) realizes that the challenges Puerto Rico faces to recover from disastrous events are countless opportunities to institute true mitigation measures to address the pressing risk mitigation needs of renters who are disproportionately likely to reside in high-risk areas for flooding and/or landslides.

The Leverage for Low-Income Housing Tax Credits Program (**LIHTC-MIT** or **Program**) will provide Community Development Block Grant – Mitigation (**CDBG-MIT**) funds to qualifying entities that propose projects that incorporate at least one of the mitigation strategies described in the **CDBG-MIT Action Plan** and prioritize projects in areas with the lowest proportion of rental housing units outside the highest-risk areas.

These risks can be mitigated through strategic site selection, as the severity of risk is based heavily on the geographic characteristics of a given area, unlike other risks

¹ Based on the Risk Assessment results published in the Puerto Rico CDBG-MIT Action Plan.

² Some of these major disaster declarations include: DR-4571-PR declared on November 5, 2020; DR-4560-PR declared on September 9, 2020; EM-3537-PR declared on August 22, 2020; EM-3532-PR declared on July 29, 2020; DR-4473-PR declared on January 16, 2020; EM-3426-PR declared on January 7, 2020; EM-3417-PR declared on August 27, 2019; DR-4339-PR declared on September 20, 2017, among others. Source: https://www.fema.gov/disasters/disaster-declarations?field_dv2_state_territory_tribal_value=PR&field_year_value=All&field_dv2_declaration_type_value=All&field_dv2_incident_type_target_id_selective=All.

³ American Community Survey, Census 2022, S2502 at <https://data.census.gov/table?q=S2502&g=040XX00US72>.

⁴ Estudios Técnicos, Inc. (Ed.). (2018). Report on the Housing Industry Situation (pp. 5-6). San Juan, PR: Puerto Rico Builder's Association.

associated with exceptional natural events. Any assisted housing development, however, must still incorporate building standards and methods that mitigate other risks that threaten structures in Puerto Rico, as identified in the Action Plan.

2 Definitions

- **Accessible:** When used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, it means that the facility or portion of the facility, when designed, constructed, or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase *accessible to and usable by* is synonymous with accessible.⁵
- **Americans with Disabilities Act of 1990 (ADA):** The ADA, 42 U.S.C. § 12101 *et seq.*, is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the public.
- **Applicant:** For-profit or non-profit organizations awarded or reserved Low-Income Housing Tax Credits (**LIHTCs**) under the applicable Qualified Allocation Plan (**QAP**).
- **Area Median Family Income (AMFI):** Median household income adjusted by family size for a given area. HUD has adjusted income limits for all of Puerto Rico. Adjusted income limits are updated annually by HUD and can be accessed at the HUD Exchange website.⁶
- **Award:** The amount of funding reserved for the Applicant as determined by the Puerto Rico Housing Finance Authority (**PRHFA**). Means the CDBG-MIT allocation provided to qualified LIHTC projects that incorporate at least one of the mitigation strategies and prioritize projects in areas with the lowest proportion of rental housing units outside the highest-risk areas.
- **Broadband infrastructure:** Cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure, including wireless infrastructure, as long as the installation results in broadband infrastructure in each dwelling unit

⁵ 24 C.F.R. § 8.3.

⁶For information on Income Limits for All Areas in Puerto Rico, see <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>

meeting the Federal Communications Commission's (**FCC**) definition in effect at the time the pre-construction estimates are generated. The FCC defines broadband speeds of one hundred (100) Megabits per second (Mbps) download and twenty (20) Mbps upload.⁷

- **CDBG-MIT Agreement:** The contractual agreement between PRHFA and the Developer for using CDBG-MIT funds as leverage for projects with LIHTCs. Funds cannot be released without a signed agreement in place.
- **Conciliation Agreements:** A voluntary, legally binding agreement facilitated by HUD to resolve housing discrimination complaints and ensure compliance with fair housing laws.⁸
- **Developer:** Any individual, association, corporation, joint venture, or partnership undertaking a LIHTC development under this Program. When referring to the operational aspect of a project, the applicable entity may be the Owner.
- **LIHTC Rent Rate:** LIHTC rents are based on a geographic area's income levels and the use restriction tied to the unit. These rates are communicated annually by HUD and, for this Program, by PRHFA. Under this Program, LIHTC incomes are considered LMI.
- **Living Area:** The area of a living unit measured from the interior faces of the corridor and exterior walls and from the inside faces of partitions separating the living unit from other living or commercial areas. For multifamily projects/developments, the living area includes balconies and hallways/corridors providing direct access to an apartment/living unit.
- **Low-Income Housing Tax Credits (LIHTC):** Included in the Tax Reform Act of 1986, 26 U.S.C. § 1 *et seq.*, which introduced the Internal Revenue Code Section 42 to incentivize the development of affordable housing. There are two types of credits: nine percent (9%) available for new construction or rehabilitations that are not financed with tax-exempt bonds; and four percent (4%) available for existing housing (acquisition) or for new construction or rehabilitations financed with tax-exempt bonds.

⁷ <https://docs.fcc.gov/public/attachments/DOC-401205A1.pdf>

⁸ 24 C.F.R. § 103.310.

- **Low to Moderate Income (LMI):** Low- and moderate-income populations have incomes not more than eighty percent (80%) of the AMFI established by HUD. This income standard changes yearly and varies based on household size and geography. The U.S. Department of Housing and Urban Development (**HUD**) has calculated adjusted income limits for Puerto Rico, which are used to make an LMI determination.
- **Management Agent:** An entity with day-to-day direct responsibilities for a HUD-insured and/or assisted multifamily housing property. The Developer is responsible for seeking and selecting a management agent that meets the standards outlined in Chapter 2 of HUD's *The Management Agent Handbook* (Handbook 4381.5). The HUD-Developer and management agent relationship is defined and subject to the requirements and procedures established in Handbook 4381.5.⁹
- **Placed-in-Service:** The date when at least one (1) unit of the project is suitable for occupancy. In Puerto Rico, this is validated with the submittal of a Use Permit ("Permiso de Uso") issued by the Municipal Permits Office with a hierarchy from I to V, or the Puerto Rico Permits Management Office ("Oficina de Gerencia de Permisos" (**OGPe**, by its Spanish acronym)).
- **Public Housing:** All housing developed with funds from the United States Government and/or the Government of Puerto Rico, that is safe, hygienic, and adequate to rent to low-income families.¹⁰
- **Puerto Rico Department of Housing (PRDOH):** PRDOH has been designated as the Grantee responsible for administering the CDBG-MIT funds allocated to Puerto Rico and providing oversight of this Program.
- **Puerto Rico Housing Finance Authority (PRHFA):** PRHFA (also referred to as **AFV**, for its Spanish acronym) is a government instrumentality of Puerto Rico. It is the designated Subrecipient tasked with administering this Program.

⁹HUD's The Management Agent Handbook (4381.5) can be accessed at https://www.hud.gov/program_offices/adminis-tration/hudclips/handbooks/hsg/4381.5.

¹⁰ 17 LPR § 1001.

- **Qualified Allocation Plan (QAP):** The official Tax Credit allocation plan for Puerto Rico that describes the application and selection process to obtain an allocation of LIHTC –either through the competitive selection criteria for 9% LIHTC or the allocation of 4% LIHTC projects financed with tax-exempt obligations subject to the annual private activity bond (**PAB**) volume cap limitations under Section 146 of the Internal Revenue Code.¹¹
- **Qualified Basis:** The amount of eligible basis to be used to generate low-income housing tax credits. The appropriate base is determined by the percentage of the property that will be used to provide affordable housing.
- **Subrecipient Agreement:** The contract between PRDOH and PRHFA to administer and implement the Program.
- **Substantial Improvement:** Defined as any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (2) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.¹²
- **Substantial Rehabilitation:** Unless otherwise defined by the Program, and to determine when installation of broadband infrastructure is required, means

¹¹ The term “Qualified Allocation Plan” means any plan (i) which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions; (ii) which also gives preference in allocating housing credit dollar amounts among selected projects to: (I) projects serving the lowest income tenants, (II) projects obligated to serve qualified tenants for the longest periods, and (III) projects which are located in qualified census tracts (as defined in 26 U.S.C. § 42(d)(5)(B)(ii) and the development of which contributes to a concerted community revitalization plan; and (iii) which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of this section and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits. 26 U.S.C. § 42(m)(1)(B).

¹² 44 C.F.R. § 59.1.

work that involves: (1) significant work on the systems¹³ of the multifamily rental housing. “Significant work” means a complete replacement of the systems for which the preconstruction cost estimate is equal to or greater than seventy-five percent (75%) of the cost of replacing the entire system. In the case of multifamily rental housing with multiple buildings with more than four (4) units, “entire system” refers to all the systems of the building undergoing rehabilitation, or (2) the rehabilitation of the multifamily rental housing in which the pre-construction estimated cost of the rehabilitation is equal to or greater than seventy-five percent (75%) of the total estimated cost of replacing the multifamily rental housing after the rehabilitation is complete. In the case of multifamily rental housing with multiple buildings with more than four (4) units, the replacement cost must be the replacement cost of the building undergoing rehabilitation.¹⁴

- **Uniform Federal Accessibility Standards (UFAS):** Prescribes uniform standards for the design, construction, and alteration of buildings that ensure individuals with disabilities have ready access to and use of them in accordance with the Architectural Barriers Act of 1968 (**ABA**), 42 U.S.C. §§ 4151-4157.
- **Voluntary Compliance Agreement (VCA):** Voluntary and full settlement of a disputed complaint, under the Federal Fair Housing Act of 1968 (Title VIII), 42 U.S.C. § 3601 *et seq.*, between HUD and a public agency, such as PRHFA or PRDOH. PRHFA is currently subject to the following VCA: *Voluntary Compliance Agreement between HUD, Office of Fair Housing and Equal Opportunity, and M.J. Consulting & Development, Inc., Rio Plata Housing, LLC, Desarrolladora Rio Plata, Inc., Rio Plata Development, Puerto Rico Housing Finance Authority Under Section 504 of the Rehabilitation Act of 1973 (case 02-20-0030-4) and Title II of the Americans with Disabilities Act of 1990 (case 02-20-0016-D) of April 26, 2021.* The document, which is in writing and signed by the parties, addresses each cited violation, specifies the corrective or remedial action to be taken within a stated period to come into compliance, assures that discrimination will not

¹³ The term “systems” may include electrical, structural, potable water, sanitary and other systems.

¹⁴ Substantial rehabilitation definition was modified to integrate the needs of the program. 24 C.F.R. § 5.100 allows for the modification by stating “unless otherwise defined by a program.”

recur, and provides for enforcement by the Attorney General of the United States.

3 Program Description

On its own, LIHTC-MIT offers two (2) forms of tax credits: nine percent (9%) for new construction or substantial rehabilitation projects without federal subsidies, and four percent (4%) for new construction or rehabilitation projects that are partially financed with tax-exempt bond financing. According to the U.S. Internal Revenue Code (**IRC**), the respective applicable tax credit percentages are those that will yield amounts of credit, over a ten (10) year period, which have a present value equal to (i) seventy percent (70%) of the qualified basis of a new building which is not federally subsidized for the taxable year; and (ii) thirty percent (30%) of the qualified basis of a building not described in (i).¹⁵ The nine percent (9%) credit is generally reserved for new construction and rehabilitation projects not utilizing tax-exempt bonds, and is intended to deliver up to a seventy percent (70%) subsidy. The four percent (4%) credit covers projects utilizing federally tax-exempt bonds, including the acquisition of properties for rehabilitation, and is designed to deliver up to a thirty percent (30%) subsidy.¹⁶ Currently, the Puerto Rico LIHTC Program, administered by PRHFA, is the federal government's primary policy tool for encouraging the development and rehabilitation of affordable rental housing. The program awards developers with federal income tax credits to offset construction costs in exchange for agreeing to reserve a certain fraction of units that are rent-restricted for lower-income households.

The LIHTC-MIT Program will address the need for safe, quality, resilient, and affordable rental housing in Puerto Rico. Consequently, the Program will help expedite the construction and availability of affordable housing units on the Island. The CDBG-MIT funds will provide up to **eighty percent (80%)** of the Developer's funding for constructing affordable rental housing units. The Developer can secure the remaining funds from a construction and/or permanent loan from a private lender or private source, and equity in exchange for tax credits.

¹⁵ 26 U.S.C. § 42(b)(1)(B).

¹⁶ See <https://sgp.fas.org/crs/misc/RS22389.pdf>.

Projects funded through the LIHTC-MIT Program will mitigate risk for rental housing by one of the following:

1. Rehabilitation of existing structures to incorporate modern building codes and methods, such as elevations to make the residential structures more resilient against the impacts of natural disasters. This effort may also entail acquiring properties for rehabilitation purposes; and
2. New construction of resilient rental housing options utilizing strategic site selection outside areas where the geography presents localized risks. This initiative may also include the acquisition of properties for new construction.

The LIHTC-MIT Program will additionally encourage the conversion of non-residential (commercial, industrial, etc.) vacant structures located outside of high-risk areas into affordable rental housing.

As a fundamental aspect of the Program's success, Program representatives are responsible for fulfilling their due diligence and ensuring accuracy, timeliness, quality, and completion of all tasks to avoid unnecessary delays in Program deliverables.

4 National Objective

All CDBG-MIT Program activities must meet one (1) of the HUD national objectives at 24 C.F.R. § 570.483, as modified by the waiver and alternative requirements published in Federal Register Vol. 84, No. 169 (August 20, 2019), 84 FR 45838, 45839. All projects in the LIHTC-MIT Program must meet one (1) of the following national objectives:

1. LMI Housing (**LMH**) – benefits low- and moderate-income (**LMI**)¹⁷ persons; that is, income below the 80% Area Median Family Income (**AMFI**). This is validated through the collection of information on household composition and income.¹⁸

¹⁷ Low-to moderate-income people are those having incomes not more than the "moderate-income" level (80% Area Median Family Income, adjusted for family size) set by the federal government for the HUD-assisted Housing Programs. Federal Register Vol. 86, No. 3 (January 6, 2021), 86 FR 569, Section V.B states, "In order to ensure consistency with the use of CDBG-DR funds that are governed by alternative income limits authorized by the Department, the Department is extending the income limit adjustments of the August 14, 2018 notice to all CDBG-DR funds allocated under Public Laws 115-56, 115-123, and 116-20 and to CDBG-MIT funds allocated to Puerto Rico for mitigation activities under Public Law 115-123. Under this extension, Puerto Rico may use these alternative income limits when determining those activities undertaken with CDBG-DR or CDBG-MIT funds meet the low- and moderate-income benefit CDBG national objective criteria." The applicable income tables change annually and are posted on the U.S. Department of Housing and Urban Development webpage at <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>.

¹⁸ 24 C.F.R. § 570.483 (b)(3).

2. Urgent Need Mitigation (**UNM**) – pursuant to the waiver at 84 FR 45838, 45857 (section V.A.13.C.), the criteria for the urgent need national objective at 24 C.F.R. § 570.483(d) and § 570.208(c) are replaced with the alternative criteria that the assisted activities (i) address the current and future risks as identified in the CDBG-MIT Action Plan Mitigation Needs Assessment of most impacted and distressed (**MID**) areas; and (ii) result in a measurable and verifiable reduction in the risk of loss of life and property.

4.1 Additional National Objective Criteria Applicable to MIT Funding

The provisions of 24 C.F.R. § 570.483(e) and § 570.208(d) are modified by an alternative requirement to add conditions as specified at 84 FR 45838, 45856, section V.A.13.a. *Additional criteria applicable to all mitigation activities funded with CDBG-MIT funds.* All CDBG-MIT activities must meet additional alternative requirements detailed in 84 FR 45838, 45857, to meet a national objective, namely: (i) demonstrating the ability to operate for the useful life of the project; and (ii) being consistent with other mitigation activities by not increasing the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG-MIT funds.

5 Eligible Activities and Use of Funds.

5.1 Eligible Activities

All projects funded by CDBG-MIT must meet a HUD-eligible activity, as defined by Section 105(a) of the Housing and Community Development Act of 1974 (**HCDA**), as amended, 42 U.S.C. § 5305. Eligible activities for the LIHTC-MIT Program include:

- Clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements, (including interim assistance; and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately-owned properties, and including the renovation of closed school buildings)¹⁹.
- New housing construction, as allowed by the waiver and alternative requirement in Federal Register Notice 84 FR 45838, at 45863.

5.2 Eligible Use of Funds

¹⁹ 42 U.S.C. § 5305(a)(4).

All Program costs must adhere to 2 C.F.R. Part 200, Subpart E, Cost Principles. In general, eligible costs for this Program include, but are not limited to:

- Soft costs incurred in support of eligible construction activities, including but not limited to site surveys, permit acquisition, legal,²⁰ engineering and architecture fees, and other PRHFA and/or PRDOH reviewed and approved soft costs.
- Clearance of environmental contamination from sites to be used for renovation and reconstruction projects;
- Staff costs and related expenses required for management of contractors procured for the Project, outreach efforts for marketing the Program, screening of potential applicant households, and other eligible services related to the completion of the Program;
- New Construction of housing as part of a commercial structure (mixed-use); and
- Costs of permanent or structural fixtures.

5.3 Ineligible Use of Funds

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

- Entertainment, including amusement, recreation, and social activities; food and alcohol associated with parties or socials, meals, lodging, transportation, and gratuities associated with entertainment;
- Pre-award costs, including preparation of the Applications;
- Donations and contributions, including cash, services, or properties;
- Fundraising activities;
- Lobbying;
- Supplanting Federal and State funds;
- Operating costs associated with day-to-day functions of the organization not associated with the approved project;
- Support service-only activities;
- Overhead costs;

²⁰ Costs such as legal fees related to the resolution of disputes or litigation, as well as any other expenses not directly tied to the support of eligible construction activities, are excluded.

- Furniture and equipment not an integral structural fixture;²¹
- Project reserves, including operating reserves, rent-up reserves, insurance reserves, replacement reserves, and escrow reserves;
- Contingency fees (construction);
- Commercial facilities and costs attributable to the commercial portion of the project;
- Rental assistance;
- Reimbursement of bond transaction fees;
- Reimbursement of construction interest on an interim or permanent construction loan; and
- Any other items unallowable under federal cost principles, as stated in 2 C.F.R. Part 200 and under the HCDA.

6 Eligible Applicants and Projects

Eligible applicants under the LIHTC-MIT Program are for-profit and non-profit Developers who have qualified for and been awarded or reserved LIHTCs under the applicable QAP. Eligible projects include rental housing developments awarded or reserved LIHTCs in the applicable QAP. All projects must mitigate a risk-based need identified in the rental housing risk assessment. Therefore, each project must (1) rehabilitate an existing structure into rental housing to mitigate against the impacts of natural disasters, or (2) build new rental housing developments outside areas where the geography presents localized risks.

7 Program Method

Under the PRHFA Qualified Allocation Plan (**QAP**) and the subsequent Notice of Funding Availability (**NOFA**) that incorporates LIHTC-MIT criteria, PRHFA may provide an allocation of LIHTC, either through the competitive selection criteria for 9% LIHTC, or the allocation of 4% LIHTC to projects financed with tax-exempt obligations subject to the annual private activity bond (**PAB**) volume cap limitations under Section 146 of the Internal Revenue Code.

Contingent on available CDBG-MIT funding, PRHFA will plan subsequent funding rounds and continue to address the increased need for affordable rental housing

²¹ The costs of moveable equipment, furnishings, or machinery is not covered as an eligible activity under the category of Real Property Acquisition. See 24 C.F.R. § 570.207(b).

stock. CDBG-MIT funds, in conjunction with LIHTCs and other financing, will be leveraged to maximize funding sources and create projects that accomplish multiple goals.

The completion period for each project depends on the type of LIHTC approved:

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

All projects are expected to begin construction within **sixty (60) to seventy-five (75) days** after the CDBG-MIT Agreement is signed.

Projects funded through this Program must maintain affordable housing in accordance with the affordability period and levels required by 83 FR 40314.²² For the LIHTC-MIT Program, affordable rents will be established as the lower of the following: (1) the calculation of the High HOME Rent; (2) the maximum of thirty percent (30%) of the annual income for an LMI household; or (3) the level at which the LIHTC allocation was conditioned. Affordability periods, which begin once **fifty-one percent (51%)** of the total number of units have been occupied by LMI individuals or households, are as follows:

- Rehabilitated or reconstructed multi-family rental projects with **eight (8) or more units** must remain affordable for **at least fifteen (15) years**.
- Newly constructed multi-family rental projects with **five (5) or more units** must remain affordable for **at least twenty (20) years**.

²² For consistency between grant allocations, PRDOH adopts the CDBG-DR affordability period requirements at Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314 for the LIHTC-MIT Program.

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

All approved projects under these Guidelines are governed by Section 42 of the Internal Revenue Code, 24 C.F.R. Part 570, Federal Register Vol. 84, No. 169 (August 30, 2019), 84 FR 45838, and any other applicable federal and local statutes or regulations.

8 Program Eligibility

The applicable QAP, along with its annexes, available at <https://www.afv.pr.gov>, should be referenced alongside these Program Guidelines to understand responsibilities and compliance requirements. Applicants are encouraged to review the information in the QAP, CDBG-MIT Action Plan, and these Guidelines before applying during the NOFA funding round.

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

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

All applications will undergo a preliminary review to determine if they meet the threshold requirements, including the following:

- Compliance with national objectives;
- Compliance with eligible activities;
- Duplication of Benefits Review;
- Authorization to do business in Puerto Rico;
- Feasibility analysis; and
- Any other requirements established in these Program Guidelines.

Projects in areas with the lowest proportion of rental housing units outside the highest-risk areas and those that are shovel-ready (able to begin construction once the CDBG-MIT Agreement is signed) will be prioritized.

Should any CDBG-MIT funds remain after the prioritized projects' financial needs are satisfied, the remaining applications may be reviewed for eligibility.

8.1 Developer Responsibilities

The following documentation must be received and accepted by PRHFA and the LIHTC-MIT Program before executing a CDBG-MIT Agreement:

- A written report by PRHFA that includes:
 - Blueprints received and approved by all pertinent Governmental Authorities;
 - New construction and/or rehabilitation, as shown in the Blueprints, will comply with all applicable zoning and construction laws, ordinances, and regulations;
 - Construction Contract that satisfactorily provides for the new construction and/or rehabilitation;
 - Roads and utilities necessary for the full utilization of the new construction and/or rehabilitation project, in accordance with its intended purpose, have been completed or are contemplated in the design documents, or the presently installed and existing roads and utilities are sufficient for the full utilization of the new construction and/or rehabilitation; and
 - Any new construction or rehabilitation completed prior to this point, if any, has been carried out in accordance with the approved plans and will be fully completed, including all necessary roads and utilities, on or before the Construction Completion Date.
- Current Financial Statements of the Authorized Representative of the Developer and/or Owner, and any other financial documents and data deemed reasonably required by PRHFA.
- Evidence of performance bonds, payment bonds (covering labor and materials), each for penal sums equal to the amount of the Construction Contract, and a Wage Payment Bond for twenty percent (20%) of such amount, or as otherwise provided by law. These bonds must name PRHFA and PRDOH as beneficiaries (co-obligees) and be issued by a company rated "A" or higher with a financial size of "V" or greater, according to Best's Rating Service, and approved by PRHFA. Additionally, provide evidence of compliance with the

Workman's Compensation Fund, required insurance policies (including proof of premium payment) required by the Program or under any loan document, and all relevant construction documents, such as the Construction Contract and agreements with the Contractor and Developer's Architect.

- Copies of the Construction Contract and the Agreement between the Developer and the project Architect, certified by the Developer.²³
- The Project Cost Statement.
- A copy of the legal document (such as a deed, lease agreement, sales contract, option agreement) establishing the Developer's acquisition or interest in the premises, along with any related documentation.
- The Developer must provide evidence that all conditions outlined in the LIHTC Operating Agreement have been met as of the date of the Initial Advance, demonstrating compliance with the Capital Contributions to the fullest extent possible.
- Environmental Review Record. The Developer will perform the full environmental review of the project, adhering at all times to the guidelines provided by PRHFA, PRDOH, and their designated representatives, who will be responsible for monitoring compliance. See the Environmental Review section of these Guidelines. This includes the approved RROF and FONSI, if applicable.
- Copies of all inspection and test records or reports prepared by or on behalf of the Developer's Architect.
- A construction schedule for the new construction and/or rehabilitation.
- A progress schedule showing the interval of time over which each item of Direct Cost and Indirect Cost is projected to be incurred and paid, and a breakdown of all Direct Costs to be incurred for the construction of the new construction and/or rehabilitation;
- Compliance with the VCA requirements; and
- Evidence of compliance with CDBG-MIT funding requirements, including but not limited to, adherence to at least one Green Building Standard, and the inclusion of Broadband Infrastructure requirements.

PRHFA's Legal Counsel must receive and review the following items before executing a CDBG-MIT Agreement with a Developer:

²³ The terms and conditions of such agreements must be acceptable to PRHFA.

- The Loan Documents and any other document reasonably required by PRHFA;
- Evidence of paid title insurance policy;²⁴
- Evidence that all taxes and levies on the Premises, the Developer's interest in the Premises, and the new construction and/or rehabilitation are fully paid and current;
- Copies of all applicable authorizations, as determined by PRHFA or PRHFA's Counsel (on behalf of PRHFA):
 - Plot plan and subdivision approvals;
 - Zoning variances;
 - Sewer, building, flood, and all permits required for construction, use, occupancy, and operation of the Premises;
- Agreements between the Developer and the project Architect and Contractor, including but not limited to design and/or engineering agreements and construction contract agreement;
- A survey of the Premises, certified by a licensed civil engineer or surveyor duly authorized to practice, and acceptable to PRHFA and the title insurer showing:
 - The perimeter of the Premises with courses and distances;
 - All easements, rights-of-way, and utility lines referred to in the title policy, required by the Agreement, or which actually service or cross the Premises;
 - The lines and widths of streets bordering the Premises, including any established building lines;
 - Any encroachments on the Premises, with details on their extent;
 - The location and relationship of any new construction and/or rehabilitation to the Premises' perimeter, established building lines, and street lines; and
 - A legend correlating the survey to any filed map, if applicable;
- A copy of the Developer's Operating Agreement, including any amendments, a copy of the organizational documents for the Developer's Managing Member, and any required legal authorizations for the Developer issued by the Government of Puerto Rico or the state of incorporation; and

²⁴ The paid title insurance policy must cover the full mortgage amount and be issued by the title insurer. The policy must confirm that the mortgage is a valid first lien on the Property, free from defects, liens, claims, and encumbrances, and must include a reference to a survey.

- A legal opinion from the Developer's counsel addressing the Developer's organization and existence, its authority to execute the Loan Documents and perform the transactions outlined, and the proper execution, validity, and enforceability of the Loan Documents, Notes, Security Agreement, and all related loan documents.

9 Award Caps

The maximum award amount will depend on the type of project proposed by the Applicant. Applicants for projects that will convert abandoned non-residential buildings (commercial, industrial, etc.) into affordable housing can receive up to **eighty percent (80%)** funding of the project's cost. Applicants rehabilitating existing residential structures or constructing new residential structures for affordable rental housing can receive up to **sixty percent (60%)** funding of the project's cost.

10 Cost Reasonableness

Only construction costs that are deemed reasonable and consistent with market costs at the time and place of construction in compliance with notice 84 FR 45838, 45848, are allowable under the Program. As outlined in 2 C.F.R. § 200.404, a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

To ensure that the scope requirements of LIHTC Projects are fulfilled, the Program has established the following thresholds:

- **For Substantial Rehabilitation**, total development costs must not exceed **\$734.04** per square foot of living area.
- **For New Construction**, total development costs must not exceed **\$616.00** per square foot of living area.

11 Design Considerations and Construction Requirements

LIHTC-MIT proposals submitted by eligible applicants will be evaluated based on the site-specific risks being addressed and the structural and nonstructural measures taken to mitigate such risks based on the Risk Assessment Tool publicly available in

English and Spanish at
<https://recuperacion.pr.gov/iframes/PRhazardandriskslFRM.html> and

<https://recuperacion.pr.gov/iframes/PRpeligrosyriesgosIFRM.html>, or other available data sources, such as site assessments.

Additional evaluation criteria concerning compliance, innovation, and eco-conscious measures will include, but are not limited to:

- Whether the natural infrastructure is preserved or other eco-conscious measures are included in project design to minimize the unintended consequences of grey infrastructure and other development. Applicants are encouraged to incorporate innovative nature-based solutions and natural or green infrastructure²⁵ solutions during project development that reduce the negative impacts on the surrounding human and natural environment.
- Whether the project is accessible to public transportation, grocery shopping, recreation, socialization, etc.
- Whether the project considered innovative design solutions that:
 - Improve the quality of life;
 - Stimulate sustainable growth and development;
 - Improve site accessibility and safety;
 - Preserve historic and cultural resources;
 - 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.

To support the development of resilient housing, the Program will offer assistance designed to help homes withstand future disasters. The scope of work will outline the required measures, which may include, but are not limited to, the following activities:

²⁵ Natural or green infrastructure is defined at 84 FR 45838, 45848, as the integration of natural processes or systems (such as wetlands or land barriers) or engineered systems that mimic natural systems and processes into investments in resilient infrastructure, including, for example, using permeable pavements and amended soils to improve infiltration and pollutant removal.

1. **Floodproofing:** This can include property elevation where feasible, using concrete instead of wood or other flood-vulnerable structural materials, and mold-resistant materials.
2. **Wind Proofing:** This can include using materials and structural design elements that resist wind, per current and applicable codes.
3. **Earthquake Retrofit:** This can include reinforced foundations, floors, walls, and roof systems structurally designed and built to withstand lateral and vertical forces present in an earthquake event as per current and applicable codes.
4. **Landslide Control:** This can include reinforced foundations and site-level geotechnical engineering.

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

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

11.1 Green Building Standards

11.1.1 New Construction and Replacement of Substantially Damaged Residential Buildings

As outlined in 84 FR 45838, 45863, all new construction of residential buildings and all replacement of substantially damaged residential buildings are encouraged to comply with an industry-recognized and HUD-approved Green Building Standard and achieve certification under at least one (1) of the following programs. The Program requires compliance with at least one (1) of these standards:

- ENERGY STAR® (Certified Homes or Multifamily High-Rise or latest version);
- Enterprise Green Communities;
- Leadership in Energy and Environmental Design (**LEED**) (New Construction, Homes, Midrise, Existing Buildings Operations, and Maintenance, or Neighborhood Development);
- ICC-700 National Green Building Standard;
- Environmental Protection Agency (**EPA**) Indoor Air Plus (ENERGY STAR® a prerequisite); or

- Any other equivalent comprehensive green building program acceptable to HUD, such as the “Permiso Verde” issued by the applicable Puerto Rico permits office.

11.1.2 Rehabilitation of Non-substantially Damaged Residential Building

Rehabilitation of non-substantially damaged residential building projects shall adhere to the guidelines specified in the HUD Community Planning and Development (**CPD**) Green Building Retrofit Checklist,²⁶ as it applies to the rehabilitation work undertaken, including the use of mold-resistant products when replacing surfaces such as drywall. When rehabilitation work includes replacing older or obsolete products, the rehabilitation must use ENERGY STAR® -labeled, Water Sense-labeled, or Federal Energy Management Program (**FEMP**)-designated products and appliances.

11.2 Broadband Infrastructure Requirements

Any substantial rehabilitation or new construction of a building with more than four (4) rental units must include the installation of broadband infrastructure.²⁷

PRDOH aims to narrow the digital divide in low-income communities served by HUD. Installing unit-based broadband infrastructure in multifamily rental housing that is newly constructed or substantially rehabilitated with or supported by HUD funding will allow individuals and families residing in such housing to participate in the digital economy and increase their access to economic opportunities.

Projects are excluded from this requirement only if one (1) of the below exclusions can be documented and validated by PRDOH:

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

²⁶ See <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/>.

²⁷ 84 FR 45838, 45864.

While projects are only required to include one (1) form of broadband infrastructure, it is recommended that more than one (1) form be installed, as this will promote competition among service providers regarding quality and price for residents.

As part of the required technical review before the CDBG-MIT Agreement is executed, PRHFA will verify the CDBG-MIT project applications' compliance with Broadband Infrastructure requirements.

11.3 Construction Permit Issues

In accordance with Regulation No. 9473 of June 16, 2023, known in Spanish as "Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios" of the Puerto Rico Planning Board, or as per current version, all requests concerning land development or use in Puerto Rico, including construction work, must be initiated by the property owner to obtain a construction permit.

Applicants who lack required documents or authorizations to complete construction and obtain a construction permit must address permitting issues prior to the construction meeting.

If at the end of the construction process, the Applicant is unable to obtain a clear title over the property due to causes entirely attributable to the applicant, PRDOH may recapture the awarded funds.

11.4 Project Inspections

All projects undertaken for the LIHTC-MIT Program are required to be inspected by a licensed Professional Engineer (**PE**) or Registered Architect (**RA**) authorized to practice their profession in compliance with Act No. 173 of August 12, 1988, as amended, 20 LPRA § 711 *et seq.*, known as the "Board of Examiners of Engineers, Architects, Surveyors, and Landscape Architects of Puerto Rico Act." The project's inspector will serve the purpose of but is not limited to: (i) evaluating the overall progress of construction works; (ii) confirming that local building codes and Program standards are being met; and (iii) confirming that all requirements of the construction documents have been met by the contractors implementing the construction works.

PRHFA will be responsible for the procurement of inspection services for construction projects.

11.5 Accessibility Requirements

Pursuant to the Conciliation Agreement and applicable Voluntary Compliance Agreement (**VCA**),²⁸ all CDBG-MIT LIHTC Program-funded developments must comply with the following accessibility requirements:

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

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

- Preliminary drawings of the proposed new construction and/or rehabilitation, including a site plan, building elevations, and unit floor plans.
- The project designer shall certify that the development will comply with the accessibility requirements of the Federal Fair Housing Act of 1968 (Title VIII), 42 U.S.C. § 3601 *et seq.*, (**FHA**) and, wherever applicable, the 2010 ADA Standards and UFAS.
- Proof of professional liability insurance covering the project's designer for an amount not less than ten percent (10%) of the estimated construction cost, in case of negligence.
- Proof of performance or surety bond for one hundred percent (100%) of the construction contract.
- A signed certification from a qualified licensed registered architect (RA) and/or professional engineer (PE) retained for the accessibility inspection of the new construction and/or project rehabilitation must be provided as verification that covered units and the project's common areas comply with the accessibility mandates of the FHA and, wherever applicable, the 2010 ADA standards and UFAS.

²⁸ The applicable and current VCA to which PRHFA is a party is referenced in the *Voluntary Compliance Agreement* definition outlined in section 2 of these Program Guidelines.

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

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

12 Duplication of Benefits (DOB)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. § 5121 et seq., prohibits any person, business concern, or other entity from receiving Federal funds for any part of such loss for which they have received financial assistance under any other program, from private insurance, charitable assistance, or any other source. As such, PRDOH must consider disaster recovery aid received by Program applicants from any other federal, state, local, or other source, and determine if any assistance is duplicative. Any assistance determined to be duplicative must be deducted from the Program's calculation of the Applicant's total need prior to awarding assistance. To be eligible to receive CDBG-MIT funds under the Program and as part of the application process, all Applicants must confirm and provide assurance that efforts will be made to avoid a "duplication of benefits." PRDOH understands and expects that some projects funded through this Program may also be able to receive other types of Federal funding. Therefore, a DOB analysis will be performed for each funded project.

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

- Certification that the Applicants will notify PRDOH of all potential DOBs as part of the information submitted in their applications;
- Verification of specific DOBs through various available sources such as FEMA, the Small Business Administration (SBA), insurers, and any other sources of funding;
- Requiring Applicants to authorize PRDOH to contact all potentially duplicative funding sources on their behalf to verify all funding sources received and/or approved; and

- Calculation of DOB per Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836.

The DOB guidance included in 84 FR 28836 (DOB 2019 Notice), updates the DOB guidance issued in Federal Register Vol. 76, No. 221 (November 16, 2011), 76 FR 71060 for CDBG-DR grants received in response to disasters declared between January 1, 2015, and December 31, 2021. Provisions at 84 FR 45838, 45840, require CDBG-MIT Grantees to comply with the DOB requirements of 84 FR 28836. As such, the DOB policy outlined in these Guidelines follows the guidance issued in the 2019 DOB Notice.²⁹

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

12.1 Assistance Considered a Duplication of Benefits

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

12.2 Small Business Administration (SBA) Loans

Pursuant to a recent amendment to the Stafford Act by the Disaster Recovery Reform Act of 2018 (DRRA), Pub. L. 115-254, a subsidized loan was not a duplication of other forms of financial assistance, provided that all federal assistance was used toward a loss suffered due to a major disaster or emergency. However, the DRRA provisions, which applied to disasters that occurred from 2016 to 2021, expired on October 5, 2023.

²⁹ The 2019 DOB notice updates the treatment of declined loans. A grantee shall not take into consideration or reduce the amount of assistance provided to an applicant where such applicant applied for and was approved, but declined assistance from the SBA, related to disasters that occurred from 2014 to 2017. FEMA, as per recent amendments to the Disaster Recovery Reform Act of 2018 (DRRA), Pub. L. No. 115-254, advises that a loan is not a duplication of other forms of financial assistance, provided that all federal assistance is used toward a loss suffered due to major disaster or emergency. The DRRA provisions, which applied to disasters that occurred from 2016 to 2021, expired on October 5, 2023. Therefore, the determining factor for applying the DRRA amendment is the date the agreement for loan assistance is awarded (signed by all the required parties, made and entered, and final). Subsidized loans awarded after the amendment sunset date are to be included in the DOB evaluation.

Therefore, the determining factor for applying the DRRRA amendment is the date the agreement for loan assistance is awarded (signed by all the required parties, made and entered, and final). As such, subsidized loans awarded after the amendment sunset date are to be included in the DOB evaluation.

Federal regulations deem SBA loans for repairs to be DOBs for federally funded repair programs. If an Applicant has executed a loan with the SBA to cover the costs of repairs and such repairs will be provided for the same purpose and allowable use (cost) as the award received from the Program, such amount will be considered a DOB.

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

12.3 Declined SBA Loans

Declined loans are loan amounts offered by a lender but turned down by the Applicant, meaning the Applicant never signed loan documents to receive loan disbursements. The 2019 DOB Notice updated the treatment of declined loans. A grantee shall not consider or reduce the amount of assistance provided to an Applicant, where such Applicant applied for and was approved but declined assistance from the SBA related to disasters that occurred from 2014 to 2017.³⁰

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

12.4 Canceled SBA Loans

Canceled loans are loan amounts offered by a lender, accepted by the Applicant, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the Applicant. Canceled SBA loans may be excluded from the

³⁰ 84 FR 28836, 28842.

calculation of DOB if it can be documented that the undisbursed portion of an accepted loan is canceled and no longer available to the Applicant.³¹

To document that an SBA loan is canceled, the Applicant must provide either: written communication from the lender confirming the loan is canceled and no longer available to them; or a legally binding agreement between PRDOH and the Applicant that indicates the period of availability of the loan has passed and the Applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts. In addition, PRDOH must notify SBA that the Applicant has agreed not to take any actions to reinstate the loan or draw additional amounts.

12.5 FEMA National Flood Insurance Program (NFIP)

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

12.6 Private Insurance

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

12.7 Other Funds

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

Applicants must disclose all federal funds obtained from any source from the date of a disaster until the date of the application. That is, must report any funding received for the same purpose of a Program award, such as funding provided by a non-profit entity; assistance received under the Gap Subsidy Programs, the HOME Investment Partnerships Program (**HOME**), HOME Investment Partnerships ARP Program (**HOME-ARP**), the National Housing Trust Program (**HTF**); the U.S. Army Corps of Engineers (**USACE**) or FEMA Hazard Mitigation Grant Program (**HMGP**), to assist them with rebuilding their property. In addition, Applicants must provide any supporting documentation related to other duplicative funding sources. The Program will then verify and apply these funds as a DOB.

Further, CDBG-MIT funds may not be used in conjunction with PRHFA's HOME Program. However, projects may receive HOME funds from other Participating Jurisdictions.

12.7.1 Exceptions to Duplication of Benefits

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

12.8 Funds for a Different Purpose

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

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

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

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

12.10 Funds Not Available to the Applicant

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

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

12.11 Private Loans

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

12.12 Other Assets or Lines of Credit

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

13 Financing Requirements

13.1 Subsidy Layering Review and Underwriting

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

To perform this review, PRHFA will evaluate each project to determine a reasonable level of profit or return for the Developer or a Developer's investment. Based on this determination, PRHFA will determine whether and how much the Developer must invest and/or which other funding sources and types can be applied to the project. The review will ensure that the proposed project costs are eligible, all income and expenses are reasonable and within the prescribed standards, and underwriting parameters align with PRHFA's QAP. PRHFA will prepare pro-forma statements based on the analysis described above, which will include recommended sources and uses of funds, as well as projected operating income for the term of affordability. These will include the amount of LIHTCs that a project would be eligible to receive and the amount of permanent financing based on the established parameters, governmental subsidies, capital contributions, CDBG-MIT funds, and funds from PRHFA or other state or private programs.

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

- Project costs are reasonable;
- All sources of project financing are committed;
- To the extent practicable, CDBG-MIT funds are not substituted for non-Federal financial support;

- The project is financially feasible;
- To the extent practicable, the return on the Developer's equity investment will not be unreasonably high; and
- To the extent practicable, CDBG-MIT funds are reimbursed on a needed pro-rata basis with other finances provided to the project.

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

13.2 Allowable Expenditures

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

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

The development budget will identify the payment source of each line item. Developers must ensure that only CDBG-MIT-eligible costs are included in invoices submitted to the Program. PRHFA personnel responsible for each project will also verify

invoices. CDBG-MIT funds may be used for capital investment in eligible LIHTC projects. Capital investments are costs included in the eligible basis of a project under the IRC.³²

Certain “soft” costs for construction, such as surveys, site and utility plans, professional fees, and other pertinent costs, will be considered at the discretion of PRHFA³³ if such costs are determined to be necessary and appropriate to achieve the national objective(s) of the Program.

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

13.3 Additional Funding Requirements

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

Developers shall commit to the development funding plan³⁴ (schedule of performance and development budget) outlined in their respective CDBG-MIT Agreements, which must be acceptable to PRHFA, and acknowledge that:

- The qualified rental property will be constructed and placed in service by the date stipulated in the LIHTC Carryover Allocation Agreement.
- Developers shall file a monthly report confirming progress toward meeting the established expenditure deadlines. The assigned PRHFA personnel will review the plan and enforce compliance.

³² 26 U.S.C. § 42.

³³ Costs such as legal fees related to the resolution of disputes or litigation, as well as any other expenses not directly tied to the support of eligible construction activities, are excluded and will not be considered under PRHFA’s discretion.

³⁴ The development funding plan refers to the development budget and schedule of performance for each project. It is incorporated as part of the CDBG-MIT Agreement.

- A project that is not completed in accordance with the terms and conditions of the CDBG-MIT Agreement may be considered terminated prior to completion, and all CDBG-MIT funds will be recaptured.

The CDBG-MIT Agreement will outline all requirements of the CDBG-MIT Program, along with applicable crosscutting federal grant regulations. These requirements will be enforceable through a recorded restriction that binds all developers and their successors. In Puerto Rico, this restriction is formalized through a public deed and recorded in the appropriate Property Registry.

14 Environmental Requirements

The Environmental Review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. All projects undertaken with federal funds and all associated activities are subject to the provisions of the National Environmental Policy Act of 1969 (**NEPA**), 42 U.S.C. § 4321 *et seq.*, and HUD's environmental review regulations at 24 C.F.R. Part 58. Therefore, an environmental review process is required for all awards to be issued under the Program to ensure that the proposed activities will not negatively impact the surrounding environment and that the property itself will not have an adverse environmental or health effect on end users.

24 C.F.R. § 58.22(a) prohibits the commitment or spending of federal or non-federal funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives before the completion of an environmental review. Each project must obtain environmental clearance before committing federal or non-federal funds. Failure to comply with this requirement may jeopardize federal funding for the Program and disallow all costs incurred before completion of the environmental review.

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

- National Environmental Policy Act (**NEPA**), 42 U.S.C. § 4321 (40 C.F.R. Parts 1500-1508)
- Protection of Historic Properties (**NHPA**) (36 C.F.R. Part 800)

- Floodplain Management and Protection of Wetlands (24 C.F.R. Part 55, Executive Order No. 11988, Executive Order No. 11990, Executive Order No. 13690, and Executive Order No. 14030)
- Sections 307 (c) and (d) of the Coastal Zone Management Act of 1972 (**CZMA**) (16 U.S.C. § 1456), as amended
- Sole Source Aquifers (**SSAs**) (40 C.F.R. Part 149)
- Section 7 of the Endangered Species Act of 1973 (16 U.S.C. §1536), as amended, and implementing regulations at 50 C.F.R. Part 402
- Section 7 (b)(c) of the Wild and Scenic Rivers Act of 1968 (**WSRA**) (16 U.S.C. § 1278 - Restrictions on Water Resources Projects), as amended
- Air quality provisions as found in Sections 176 (c) and (d) of the Clean Air Act (42 U.S.C. § 7506), as amended, and Title 40 of the Code of Federal Regulations (40 C.F.R. Parts 6, 51, and 93)
- Sections 1540 (b) and 1541 of the Farmland Protection Policy Act (**FPPA**) (7 U.S.C. §§ 4201-4202) under the Agriculture and Food Act of 1981, as amended, and implementing regulations at 7 C.F.R. Part 658)
- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898)
- Noise Abatement and Control (**NCA**) (24 C.F.R. §§ 51.100 - 51.106)
- Contamination and Hazardous Substances (24 C.F.R. § 58.5 (i)(2)(i))
- HUD Environmental Standards (24 C.F.R. Part 58)
- Airport Clear Zones (**CZ**) and Accident Potential Zones (**APZ**) (24 C.F.R. Part 51, Subpart D)

All Program awards must have documentation that certifies they comply 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 proposed project's scope, (b) the existence of negative impacts on the project site, (c) the means to mitigate negative impacts, (d) alternatives to the project (if needed), and (e) the decision to implement, reject, or modify the proposed activities, as appropriate.

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

before the firm commitment of federal or non-federal funds. (24 C.F.R. § 58.22). A violation of this requirement may jeopardize federal funding to a project and disallow all costs incurred before the Environmental Review's completion.

Applicants to the Program must immediately cease any choice-limiting action regarding the project.³⁵ Failure to stop activities such as acquisition, demolition, disposition, rehabilitation, repair, new construction, site preparation, and leasing or any other activities that commit to future actions for a proposed project before obtaining an environmental clearance will result in the project no longer being eligible for HUD assistance.

14.1 Environmental Level of Review

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

14.2 Exempt Activities

These are activities that, by their nature, are highly unlikely to have any direct impact on the environment. These activities are not subject to most of the procedural requirements of environmental review. If a project is determined to be exempt, the Program must document in writing that the project is exempt and meets the conditions for exemption set forth in 24 C.F.R. § 58.34. In addition to making the written determination of exemption, the Program must also determine compliance with the requirements at 24 C.F.R. § 58.6.

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

These activities require no Environmental Impact Statement (**EIS**) or Environmental Assessment (**EA**) and finding of no significant impact (**FONSI**) under NEPA.³⁶ Examples of categorically excluded activities not subject to related laws and authorities under 24 C.F.R. § 58.5 include tenant-based rental assistance; supportive services; operating costs; economic development activities; activities to assist homebuyers in purchasing

³⁵ 24 C.F.R. § 58.22.

³⁶ 24 C.F.R. § 58.35.

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 Environmental Review Record. When these kinds of activities are undertaken, it is not required to issue a public notice or to submit a request for release of funds (**RROF**).

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

Examples of categorically excluded activities subject to related laws and authorities under 24 C.F.R. § 58.5 include acquisition, repair, improvement, reconstruction, or repair of public facilities; special projects directed toward the removal of material and architectural barriers; and repair of buildings and improvements for residential units and non-residential buildings. The Environmental Review Record 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 any circumstances required compliance with 24 C.F.R. § 58.5 and § 58.6.

The documentation must support its determinations related to compliance, including correspondence with applicable agencies having jurisdiction. Upon completion there should be one of three (3) environmental findings: (1) the project converts to Exempt (i.e., 24 C.F.R. § 58.34(a) (12)); (2) the project invokes compliance with one or more of the laws and/or authorities and, therefore, requires public notification and approval from HUD; or (3) the unusual circumstances of the project result in a significant environmental impact and, therefore, compliance with NEPA is required. If, upon completion, it is determined that compliance is required for one or more of the Federal laws and authorities listed in 24 C.F.R. § 58.5, then a public notification known as the Notice of Intent to Request Release of Funds (**NOI/RROF**) must be posted.³⁷ After a seven (7) day comment period, a Request for Release of Funds and Environmental Certification must be prepared. The Environmental Certification certifies compliance with all environmental review requirements.

³⁷ 24 C.F.R. §58.70.

14.5 Environmental Assessment

These activities are neither exempt nor categorically excluded and will require an Environmental Assessment documenting compliance with NEPA, HUD, and the environmental requirements of other applicable federal laws. Once the Environmental Review has been completed and any comments addressed appropriately, the project may be found not to 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 may be found to constitute 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, the Program will post 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.³⁸ 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.

14.6 Floodplain Management

The Program will use the most current, approved version of FEMA's Flood Insurance Rate Map (**FIRM**) or Preliminary Flood Insurance Rate Map (**PFIRM**) to identify whether a property is located within or outside of the 100-year floodplain. A 100-year floodplain, as defined by FEMA, includes areas that have a one percent (1%) annual chance of flooding any given year. Following large storm events such as Hurricanes Irma and María, FEMA reassesses FIRM/PFIRM maps by implementing local topographical data that was likely altered due to the large storm event. These alterations are referred to as advisories, and their implementation ensures that the region correctly depicts the latest flood hazards. Shortly after Hurricane Maria, the FIRM/PFIRM updated the Advisory Base Flood Elevations (**ABFE**), adopted by the Puerto Rico Permits

³⁸ 24 C.F.R. §58.45.

Management Office (“Oficina de Gerencia de Permisos”) (**OGPe**, by its Spanish acronym) and the Puerto Rico Planning Board. While FEMA ABFE maps often use more stringent parameters for floodplain determination, they are not used to set flood insurance rates, which are determined by the National Flood Insurance Program (**NFIP**). When FEMA provides ABFE maps or PFIRMs, along with accompanying studies, HUD or the responsible entity must use the most recent of these sources, unless the ABFE or PFIRM indicates a lower Base Flood Elevation (**BFE**) than the current FIRM and the Flood Insurance Study (**FIS**).

Substantial improvement is defined as either:

1. Any repair, reconstruction, modernization, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either: (1) before the improvement or repair is started; or (2) if the structure has been damaged and is being restored, before the damage occurred³⁹; or
2. Any repair, reconstruction, modernization, or improvement of a structure that results in an increase of more than 20% in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.

Substantial improvement may not be defined to include either:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that is solely necessary to assure safe living conditions; or
2. Any structure alteration listed on the National Register of Historical Places or a State Inventory of Historic Places.

Structural repairs, reconstruction, or improvements not meeting the definition of substantial improvement are considered “minor improvements”.

³⁹ Current assessed value is used due to the limited availability of island-wide data for pre-disaster values.

Federal regulations prohibit substantial improvements whenever a property is located within a floodplain without elevating or floodproofing the structure to the required height above the BFE.⁴⁰

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

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

14.7 Flood Insurance Program Requirements

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

Section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C.A. § 5154a, as amended, on Prohibited flood disaster assistance, implies a responsibility for a grantee that receives CDBG-MIT funds. That responsibility is to inform property owners

⁴⁰ If the project involves Substantial Improvement, National Flood Insurance Program (**NFIP**) regulations require the affected structure(s) be elevated to the BFE. Local law or program policy may require additional elevation (or "freeboard") beyond FEMA's minimum elevation requirements. See <https://www.hudexchange.info/programs/environmental-review/floodplain-management/>.

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 to maintain flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.⁴¹

14.8 Special Flood Hazard Areas (SFHA)

Floodplain management of SFHA for the Program has been designed and will be accomplished in accordance with 24 C.F.R. Part 55 and 24 C.F.R. § 58.6 (a) and (b). Floodplain data (most recent maps available) are reviewed to identify whether a project is located within a 100-year floodplain, 500-year floodplain, or a Regulatory Floodway. The environmental reviewer must document the flood zone, Flood Insurance Rate Map (**FIRM**) panel number, the Preliminary Flood Insurance Rate Map (**PFIRM**) panel number, and the Advisory Base Flood Elevation (**ABFE**) floodplain designation (A/AE/AO), if applicable; as well as the Panel effective dates.

PRHFA will not provide funding for activities located in a regulated floodway. In the case of “Coastal High Hazard” areas (“V” or “VE” Zones on the most recent FEMA-issued maps), the property must have adhered to construction standards, methods, and techniques active at the time of original construction to be eligible for funding. Minor improvements are eligible for funding if the structure meets the above requirements. Any construction aside from minor improvements is not allowed for any structure in a Coastal High-Hazard zone. Plans must demonstrate the design meets the applicable standards for V zones in FEMA regulations as required by HUD.

14.9 Historic Preservation

The Program recognizes the significant role and value of historic properties in Puerto Rico’s cultural heritage and considers them part of the plan to build a resilient Puerto Rico.

If a property is deemed to hold historic value according to the environmental review and/or Puerto Rico’s State Historic Preservation Office (**SHPO**), its mitigation assistance

⁴¹ 42 U.S.C. § 4012a.

and construction measures should abide by the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. As a result, the Program will analyze the project proposals to determine the allowable hard costs to be funded under the project. If additional funding is required for the selection of materials for a specific project, due to the level of craftsmanship involved, the request for funding will be evaluated by the PRHFA in a technical feasibility evaluation, and, in some cases, it may also require PRDOH's evaluation.

14.10 Lead-Based Poisoning Prevention Act

To successfully fulfill the requirements in the Environmental Review, funded projects must comply with the Lead-Based Poisoning Prevention Act⁴² and related federal and local regulations, including HUD's Lead Safe Housing Rule (**LSHR**)⁴³ and EPA's Renovation, Repair, and Painting (**RRP**) Rule.⁴⁴ Additionally, all projects must comply with testing, clearance, abatement, and disposal requirements of the Puerto Rico Department of Natural and Environmental Resources (**DRNA**, for its Spanish acronym) Regulation No. 9098 for the Proper Management of Lead-based Paint Activities, of July 16, 2019.

These regulations are in place to address any potential presence of lead-based paint or other lead hazards in the target structures receiving federal assistance and protect against environmental contamination as a result of handling and disposing of lead-contaminated materials. Whenever federal funds, such as CDBG-MIT, are used to assist housing built before 1978, steps must be taken to address lead hazards. A lead-based paint hazard is any condition that causes exposure to lead from dust-related hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects.

The Program will require a lead-based paint assessment, conducted by a licensed lead-based paint assessor, on buildings built before 1978, and a visual assessment for all developments after 1978. In addition, the Program will require that Developers

⁴² 42 U.S.C. §§ 4821-4846.

⁴³ 24 C.F.R. Part 35.

⁴⁴ 40 C.F.R. Part 745.

adhere to safe lead work practices in compliance with 29 C.F.R. § 1926.62 for any lead-based paint disturbances.

14.11 Asbestos Surveys

Because of its fiber strength and resistance to heat, asbestos has been used in various 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 disturbing 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 the 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 and the DRNA Regulation No. 5300 for the Control of Atmospheric Pollution, of July 26, 1995, as amended by Regulation No. 9420, of November 21, 2022, specify work practices for asbestos to be followed during demolitions and renovations of all structures, installations, and buildings. The NESHAP regulations require notification to the pertinent State agency before any demolition or renovations of buildings that could contain a certain threshold amount of asbestos or asbestos-containing material. Therefore, the Program must perform an asbestos survey before conducting any reconstruction work.

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

During the survey process, every effort shall be made to collect the 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 to test asbestos presence in materials. Asbestos content determination shall be performed, as necessary, by utilizing Polarized Light Microscopy, Point Counting, and Transmission Electron Microscopy.

15 Construction Phase

The Developer must begin construction no later than **sixty (60) days** from signing the CDBG-MIT Agreement with PRHFA. In the case of delays caused by events beyond the Developer's control, construction may begin within **seventy-five (75) days**. Further delays beyond the aforementioned time requirements will be handled case-by-case.

15.1 Invoicing and Payments

Upon signature of the CDBG-MIT Agreement with PRHFA, the Developer shall provide proof of payment of performance bonds, labor bonds, and materials payment bonds before the initial disbursement. Prior to the initial CDBG-MIT disbursement, the Developer shall furnish proof of compliance with and fulfillment of all CDBG-MIT requirements.

Funding draws will be disbursed monthly. No disbursements are allowed unless the CDBG-MIT Agreement is signed and dated by both parties (PRHFA and Developer). Payment will only be allowed if the work is completed within the period specified in the executed contract and all required deliverables have been received.

15.2 Contractor Management

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

- The Contractor will deliver copies of all major subcontracts, change orders, and any other contract, purchase order, or subcontract covering labor, materials, equipment, or furnishings related to the new construction and/or rehabilitation to PRHFA;

- The names of all individuals or entities contracted by the Contractor for the construction, rehabilitation, or provision of labor or materials.

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

15.3 Construction Progress Monitoring

Throughout the duration of the construction, the Developer shall comply with all restrictions, covenants, and easements affecting the Premises, the Developer's Interest in the Premises, or the new construction and/or rehabilitation, and ensure satisfaction of all material conditions of the Agreement.

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

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

Until the Date of Conversion to permanent financing, the Developer shall submit on or before the 5th day of the month reports to PRHFA indicating and evidencing the state of completion of the new construction and/or rehabilitation compared to estimates and such other information as PRHFA may reasonably request. The reports shall be delivered to PRHFA in an acceptable form and substance.

15.4 Change Order Requests

Depending on each project's percentage of completion and an assessment of whether any project delays will affect meeting CDBG-MIT deadlines, Developers may be responsible for any equity gap they may face. Changes in plans or specifications

after the CDBG-MIT Agreement have been executed, including any increase or decrease in the quantity of work to be performed or materials, equipment, or supplies to be furnished, shall not be allowed without the express written permission of PRHFA.

Requests for change orders shall only be considered if the Developer demonstrates that the change is necessary, reasonable, and cannot be funded through the Project's contingency budget or through funding sources other than CDBG-MIT. PRHFA will evaluate all requests for a change order to determine whether costs are necessary and reasonable for the timely completion of the Project or to protect the initial investment of CDBG-MIT funds. Approval of change orders is subject to the discretion of PRHFA, and the availability of CDBG-MIT funds. Requests for change orders should not result in an increase of more than five percent (5%) of the approved budget in the CDBG-MIT Agreement executed. Change order requests for an increase in the value of the CDBG-MIT Agreement in excess of five percent (5%) will only be considered if the Developers can demonstrate that the change order is required due to a substantial or unexpected change in Project circumstances beyond the control of the Developer. Requests for change orders in excess of five percent (5%) will be considered on a case-by-case basis.

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

15.5 Substantial Completion

Upon Substantial Completion, the Developer shall pay the amounts retained from the Contractor in accordance with the terms of the CDBG-MIT Agreement, the Construction Contract, and the Bonds. To release the funds, the following is required:

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

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

For the purposes of the LIHTC-MIT Program, projects will achieve substantial completion only after all units are one hundred percent (100%) construction complete and a Use Permit (“Permiso de Uso”) has been issued.

15.6 Rent Up Phase

Projects financed with 9% LIHTC must be placed in service by December 31 of the second year after signing the LIHTC Carryover Allocation Agreement. If not, the Developer may lose the LIHTCs. For all projects financed with LIHTCs, after placed-in-service is reached, the Developer has **one (1) year** to certify full occupancy of the project. If not, the LIHTCs will be prorated by the number of occupied units, and the portion of vacant units may result in lost LIHTCs.

Once the project is approved for occupancy, the Rent-up/Lease-up phase is initiated. In this phase, the Management Agent is responsible for facilitating the leasing process and ensuring households in LIHTC units meet the income eligibility requirements. To

ensure eligibility, the Management Agent shall verify all income, household characteristics, and any circumstances that may affect income eligibility and compliance with LIHTC requirements prior to signing a lease agreement.

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

15.7 Occupancy Requirements

To be considered an eligible housing activity under CDBG-MIT funding, rental housing must be occupied by LMI households. The rent must be considered “affordable” to meet this criterion. HUD defines **“affordable housing”** as housing on which the occupant is paying no more than **thirty percent (30%)** of gross income for housing costs, including utilities; this varies from city to city. For the LIHTC-MIT Program, PRDOH will set affordable rents as the lesser of (1) the calculated high HOME rent; (2) the maximum of thirty percent (30%) of annual household income for an LMI household; or (3) the level upon which the LIHTC award was conditioned. For guidance on determining maximum rents and income limits for Puerto Rico LIHTC-MIT projects, limits are annually published by HUD and PRHFA.⁴⁵

Household income at move-in must not exceed the applicable income limit designated for the household’s family size in accordance with the income limits published by HUD. Before moving in or taking possession of a unit, the Developer or Management Agent is required to certify that the household meets the income requirements. Certification of residents after move-in may impact the Developer’s ability to claim tax credits for the unit. For compliance guidance, refer to the **Compliance Monitoring Plan section of the current QAP, available on the official website: <https://www.afv.pr.gov>.**

If a family’s income increases after they move in, the family is not disqualified from staying in the unit, even if the increase is above the unit’s income requirements. In buildings that have a mix of tax credits units and other types of units (such as units that are market rate), the Developer must follow the “next available unit rule”. This means that if a tenant’s income in a LIHTC unit increases to more than one hundred

⁴⁵ To learn about the income limits for Fiscal Year 2025 in Puerto Rico, please refer to <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>.

forty percent (140%) of the AMI, the next available unit must be rented to someone within the appropriate income level for admission. However, the tenant with the increased income is still eligible to remain in their unit.

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

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

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

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

15.8 Regulatory Compliance

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

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

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

The Contractor shall cooperate and deliver data or documents in connection with the new construction and/or rehabilitation to PRHFA as requested. PRHFA reserves the right to request copies of all contracts, bills of sale, statements, receipted vouchers, or agreements, including but not limited to the following cases:

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

15.9 Financial Management

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

- All document and stamp taxes, recording and filing expenses, and fees in connection with the transactions contemplated hereby;
- All taxes, insurance premiums, liens, security interests, or other claims or charges against the Premises, Developer's Interest in the Premises, or new construction and/or rehabilitation; and
- All costs associated with completing the work required both within the space to be occupied by the new construction and/or rehabilitation, as well as in the public space outside the property boundaries, to ensure lawful occupancy for the purposes contemplated in the Operating Agreement.

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

The Developer shall, within **one hundred twenty (120) days** after the end of its fiscal year, provide PRHFA with its audited Financial Statements without any qualification or exception reasonably deemed material by PRHFA. In addition, the Developer may be required to provide an unaudited Financial Statement signed by its Managing Member.

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

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

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

15.10 Legal Considerations

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

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

16 Project Closeout

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

Records will also be safeguarded to demonstrate that the rents charged on the set-aside units are restricted and that income-eligible households occupy the units for at least:

1. **Fifteen (15) years** for rehabilitation or reconstruction of multi-family rental projects with **eight (8)** or more units, or a longer use period imposed by Section 42 of the IRC; or
2. **Twenty (20) years** for new construction of multi-family rental projects with **five (5)** or more units, or a longer use period imposed by Section 42 of the IRC.⁴⁶

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

16.1 Compliance Monitoring

⁴⁶ For consistency between grant allocations, PRDOH adopts the CDBG-DR affordability period requirements at Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314 for the LIHTC-MIT Program. For Section 42 use periods, see 26 U.S.C. § 42.

Developers are advised that PRHFA is required to monitor compliance. PRHFA and/or PRDOH will monitor all projects to ensure the Program achieves its purpose and objectives. For endorsed projects, monthly progress reports must be submitted. Developers must comply with reporting, records, and audit obligations.

The PRHFA QAP includes a Compliance Monitoring Plan, pursuant to the requirements stated in 26 U.S.C. § 42. PRHFA will notify the Developer, in writing and, as necessary, the U.S. Internal Revenue Service (**IRS**) or other federal agencies of any noncompliance with the LIHTC Program. Further, regardless of the status of the noncompliance incident (resolved or not), all incidents related to the LIHTC laws and regulations will be reported to the IRS.

In accordance with the QAP's Compliance Monitoring Plan, Developers or Management Agents are required to provide:

- Annual certifications of qualified low-income tenants, including tenant income and rents charged;
- The number of qualifying low-income units; and
- Any other pertinent information to determine compliance.⁴⁷

To facilitate monitoring, PRHFA and its designees will have access to all project information, including, but not limited to, physical access to the project, financial records, and tenant information, to monitor compliance with 26 U.S.C. § 42 and CDBG-MIT requirements.

16.2 Additional Documents

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

17 Civil Rights and Non-Discrimination

As a program receiving CDBG-MIT funding, it shall be implemented in a manner that does not deny any individuals the opportunity to participate in, access, or benefit from the Program on the basis of any federally or locally designated protected classes. PRHFA and PRDOH have adopted several policies that the Program, its awardees, and

⁴⁷ For specific compliance requirements for the LIHTC Program, see the most current Compliance Monitoring Plan at: <https://www.afv.pr.gov>.

all contractors must adhere in the design and implementation of the Program. All CDBG-DR/MIT Program policies are available in English and Spanish on PRDOH website at <https://recuperacion.pr.gov/en/resources/policies/general-policies/> and <https://recuperacion.pr.gov/recursos/politicas/politicas-generales/>.

17.1 Affirmative Marketing and Fair Housing and Equal Opportunity

PRDOH's Fair Housing and Equal Opportunity (**FHEO**) Policy establishes requirements and provides guidance for ensuring that CDBG-DR/MIT programs do not discriminate against protected classes of people. Included in this policy is a summary of all civil rights-related and anti-discrimination laws that 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 LIHTC-MIT Program.

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

1. Identify the groups it seeks to serve within the Program, assess which groups and/or protected classes are historically underserved and are least likely to apply to the Program, and employ affirmative marketing strategies to encourage Program participation from these groups.
2. Retain documentation of all marketing measures used, including copies of all advertisements and announcements that are made available for public viewing upon request.
3. Provide reasonable accommodation as needed to make the Program accessible to people with disabilities, hold informational meetings and in-person application intake meetings in buildings or areas that are compliant with ADA, and provide appropriate assistance to those who are hearing or visually impaired when requested.
4. Use the Fair Housing logo in advertising, publicly post Fair Housing posters and advertisements, and provide related information to generally inform the public of its rights and PRDOH and PRHFA's obligations under Fair Housing regulations.

5. Monitor Program participation to assess how marketing strategies are working and ensure that protected classes of people are not being intentionally or unintentionally discriminated against.

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

- Advertise with media outlets that provide unique access for persons who are considered members of the protected classes under the FHA.
- Applications will be accepted digitally to make the Program accessible. Language interpretation services will be provided upon request.

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

17.2 Reasonable Accommodations Policy

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

PRHFA and Management Agents must evaluate requests for reasonable accommodations to determine if and how requests can be accommodated. PRHFA and its agents can deny the request if it constitutes a fundamental alteration in the program's nature or an undue financial and administrative burden. The determination not to grant reasonable accommodation shall not be made without the concurrence

of PRHFA's 504 Administrator. The 504 Administrator is the person PRHFA designates as responsible for ensuring that PRHFA complies with federal, state, and local laws that protect the rights of people with disabilities.

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

17.3 Language Access

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 as a result of national origin, are limited in their Spanish or English proficiency. The LAP provides concrete action steps that shall be followed by PRDOH, subrecipients, and contractors to ensure that appropriate language services and translated vital documents are made available to potential and actual LIHTC-MIT Program beneficiaries in accordance with the LAP. The LAP and all CDBG-DR/MIT Program policies are available in English and Spanish on PRDOH website at <https://recuperacion.pr.gov/en/resources/policies/general-policies/> and <https://recuperacion.pr.gov/recursos/politicas/politicas-generales/>.

18 Labor Standards

Projects receiving CDBG-MIT 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-MIT funding to execute program activities. Each of these laws requires important recordkeeping practices to ensure compliance and allow for accurate and efficient reporting as required by PRDOH.

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

19 Section 3 Requirements

Pursuant to HUD's notice at 84 FR 45838, all entities receiving CDBG-MIT funding, including Recipients, Awardees, Contractors, Subcontractors, and/or Developers, are required to comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) and implementing regulations at 24 C.F.R. part 75. Section 3 ensures that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible and consistent with existing federal, Government of Puerto Rico, and local laws and regulations, be directed to Section 3 eligible persons and business concerns.

Provisions, including reporting requirements, apply to Section 3 projects receiving more than \$200,000 of CDBG-MIT assistance or more than \$100,000 in designated Lead Hazard project cases. In addition, Section 3 requirements apply to all programs receiving public housing financial assistance regardless of the amount of assistance received from HUD.

The PRDOH Section 3 Policy and all CDBG-DR/MIT General Policies are available in English and Spanish at: <https://recuperacion.pr.gov/en/resources/policies/general-policies/> and <https://recuperacion.pr.gov/recursos/politicas/politicas-generales/>.

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

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

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

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

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

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

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

Compliance is ensured by requiring, as applicable, subrecipients, contractors, subcontractors, and/or developers take all reasonable and documented steps to promote the participation of M/WBE, VOB, and Labor Surplus Areas in contracting opportunities funded with CDBG-MIT.

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

21 Uniform Relocation Act

As a HUD-assisted program, the LIHTC-MIT Program must be administered in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (**URA**), as amended, 42 U.S.C. § 4601 *et seq.*; implementing regulations found at 49 C.F.R. Part 24; and Section 104(d) of the HCDA, except where waivers or alternative requirements have been provided by HUD. The primary purpose of these laws and regulations is to provide uniform, fair, and equitable treatment of

persons whose real property is acquired or who are displaced in connection with federally funded projects.

All programs in the PRDOH CDBG-MIT portfolio, including this Program, are subject to URA regulations. Therefore, any project that will result in temporary relocation or displacement of any form is required to submit a URA Plan and any applicable URA Notices as part of their Application. All URA Plans must be approved by HUD before executing the CDBG-MIT Agreement. PRHFA shall also review and approve URA Notices before executing the CDBG-MIT Agreement. The Developer shall provide PRHFA and any of their authorized representatives with access to all URA documentation, including, but not limited to, tenant relocation files, URA notices, implementation progress reports, and any other record as determined by PRDOH, PRHFA, and any of their authorized representatives.

The Uniform Relocation Assistance Guide & Residential Anti-Displacement and Relocation Assistance Plan (**URA & ADP Guide**) is available in English and Spanish on PRDOH website at <https://recuperacion.pr.gov/en/download/ura-adp-guidelines/> and <https://recuperacion.pr.gov/download/guias-ura-adp/>.

22 Program Income

For the purpose of the CDBG-MIT Program, Program Income is defined as gross income generated from the use of CDBG-MIT funds received by a State or local government, except net income from the use or rental of real property owned by a State, local government, or subrecipient thereof, constructed or improved with CDBG-MIT funds.

When applicable, as specified in the agreement, Subrecipients may be required to report program income quarterly and will be subject to applicable regulations from PRDOH and HUD directives. Retention of program income will be in compliance with any subgrant agreements.

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

23 Recapture

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

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

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

24 General Provisions

24.1 Program Guidelines Scope

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

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

24.2 Program Guidelines Amendments

PRDOH reserves the right to modify the policies established in these Guidelines if they, as written, do not reflect the intended policy or cause procedures to be impracticable, among any other circumstances. If an amended version of these Guidelines is

approved, the amended version fully supersedes all other previous versions and should be used as the basis when evaluating any situation encountered in the implementation and/or continuance of the Program from the date of its issuance, that is, the date appearing on the cover of the Guidelines. Each version of the Program Guidelines will contain a detailed version control log that outlines any substantive amendments, inclusions, and/or changes.

24.3 Extension of Deadlines

The Program could extend deadlines on a case-by-case basis. The Program may decline to extend a deadline if such an extension jeopardizes 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.

24.4 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 LPRA Ap. V, R. 68.1.

24.5 Written Notifications

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

24.6 Conflict of Interest

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

Several federal and state conflict of interest laws can govern CDBG-MIT-assisted activities. Therefore, PRDOH has **considered** the regulations listed below in the development and implementation of the Conflict of Interest and Standards of Conduct Policy (**COI Policy**) for the CDBG-DR/MIT Program:

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

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

As defined in the COI Policy, a conflict of interest is a situation in which any person who is a public servant, employee, agent, consultant, officer, or elected official or appointed official of PRDOH, or any designated public agencies, or of subrecipients that are receiving funds under the CDBG-DR/MIT Programs may obtain a financial or personal interest or benefit that is or could be reasonably incompatible with the public interest, either for themselves, or those with whom they do business, or for any 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** thereafter.

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

According to Act No. 1-2012, no public servant shall intervene, either directly or indirectly, in any matter in which they have a conflict of interests that may result in their benefit. No public servant shall intervene, directly or indirectly, in any matter in which any member of their family unit, relative, partner, or household member has a conflict of interest that may result in benefit for any of the above-mentioned. In the

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

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

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

24.7 Citizen Participation

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

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

- **Via phone:** 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)
Attention hours are Monday through Friday from 8:00am-5:00pm
- **Via email to:** infoCDBG@vivienda.pr.gov
- **Online at:** <https://recuperacion.pr.gov/en/contact-us/contact/>
(English)
<https://recuperacion.pr.gov/contactanos/contacto/>

(Spanish)

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

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

24.8 Citizen Complaints

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

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

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

Although formal complaints are generally required to be submitted in writing, they may also be received verbally and by other means necessary, as applicable, when PRDOH determines that the complainant's particular circumstances do not allow them

to submit the complaint in writing. However, in these instances, PRDOH shall convert these complaints into written form. These alternate methods for submitting complaints include, but are not limited to:

- **Via telephone:** * 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)
- **In-person at:** * PRDOH's Headquarters Office or Program-Specific Intake Centers
* Attention hours are Monday through Friday from 8:00am-5:00pm.

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

24.9 Anti-Fraud, Waste, Abuse or Mismanagement

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

Pursuant to 84 FR 45838, 45845, PRDOH implements adequate measures to detect and prevent fraud, waste, abuse, or mismanagement in all programs administered with CDBG-MIT funds. Additionally, PRDOH encourages any individual who is aware of or suspects any kind of conduct or activity that may be considered an act of fraud, waste, abuse, or mismanagement, regarding the CDBG-MIT Program, to report such acts to the CDBG-DR/MIT Internal Audit Office, directly to the Office of Inspector General (**OIG**) at HUD, or any local or federal law enforcement agency.

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

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

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

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

[policies/general-policies/](https://recuperacion.pr.gov/recursos/politicas/politicas-generales/) and
<https://recuperacion.pr.gov/recursos/politicas/politicas-generales/>.

24.10 Related Laws & Regulations

These Guidelines refer to the provisions of certain laws applying to the LIHTC-MIT Program. However, the regulations and applicable laws mentioned in these Guidelines are not an exhaustive list of all regulations applicable to the Program. The lack of mention does not negate or preclude the Program from applying the provisions of those laws, nor from an Applicant from receiving services when applicable. If there are any discrepancies between the Guidelines and the applicable laws and/or regulations, then the latter will prevail. If, at any time, the applicable laws and/or regulations are amended, the new provisions will apply to the Program.

24.11 Cross-Cutting Guidelines

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

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

26 Severability Clause

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

Guidelines shall be severed from any applications deemed invalid, leaving the valid applications in full force.

END OF GUIDELINES.