



DEPARTMENT OF
HOUSING



CDBG-MIT PROGRAM GUIDELINES

**Multi-Sector Community Mitigation Program
(MSC Program)**

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PUERTO RICO DEPARTMENT OF HOUSING
CDBG-MIT PROGRAM MITIGATION GUIDELINES
MULTI-SECTOR COMMUNITY MITIGATION PROGRAM
VERSION CONTROL

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1 Overview

Through Federal Register Vol. 84, No. 169 (August 30, 2019), 84 FR 45838, and Federal Register Vol. 85, No. 17 (January 27, 2020), 85 FR 4676, the U.S. Department of Housing and Urban Development (**HUD**) allocated Community Development Block Grant – Mitigation (**CDBG-MIT**) funds to support activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage or loss of property, suffering, and hardship, by lessening the impact of future disasters. The Multi-sector Community Mitigation Program (**MSC Program** or **Program**) will consider mitigation needs of communities living in high-risk areas, as identified in the Action Plan Risk Assessment.

The Program focuses on a community-scale level and aims to relocate entire communities or group of households from identified high-risk areas. The MSC Program will make every effort to reduce the impact of activities that might either displace families or disrupt the community, such efforts may encompass, but not limited to, rehabilitation and reconstruction activities in properties outside high-risk areas within the Targeted Community. The multi-sector approach of the Program includes assistance to single and multi-family housing, infrastructure, and businesses.

The Program will be overseen, and implemented by the Puerto Rico Department of Housing (**PRDOH**), as grantee of the CDBG-MIT funds, and selected Subrecipients.¹

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 the facility or portion of the facility, when designed, constructed, or altered, can be approached, entered, and used by individuals with physical handicaps. The phrases “accessible to” and “usable by” are synonymous with accessible (see 24 C.F.R. § 8.3).
- **Area Median Family Income (AMFI):** The median household income adjusted by family size for a given area.²
- **Broadband Infrastructure:** Cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure—including wireless infrastructure—as long as the installation results in broadband infrastructure in each dwelling unit meeting the Federal Communications Commission's (**FCC**) definition in effect at the time the pre-construction estimates are generated.³ The FCC defines broadband speeds as twenty-five (25) Megabits per second (Mbps) download and three Mbps upload.⁴
- **Community-Based Development Organization (CBDO):** CBDOs are generally nonprofit organizations that undertake specific varieties of CDBG-funded activities.

¹ The rules for administering the funds are outlined in 84 FR 45838 and 85 FR 4676.

² See https://www.huduser.gov/portal/datasets/il.html#2022_faqpr and <https://cdbg-dr.pr.gov/en/action-plan/>.

³ For purposes of determining when the installation of broadband infrastructure is required, refer to the substantial rehabilitation definition.

⁴ See Federal Register Vol.81, No. 244 (December 20, 2016), 81 FR 92626.

CBDOs can be for-profit or nonprofit organizations but cannot be governmental entities. A CBDO may be designated as a subrecipient by the grantee (PRDOH).⁵

- **Community Relocation Project Proposal:** Document which contains the strategies originating from within the community (with the assistance of other entities, as relevant) which will address risk reduction needs. Strategies should be tailored to the particularities and needs of the community and can include buyout, relocation, acquisition, rehabilitation, among other. It is the End product of the Participatory Design Process.
- **Cost reasonableness:** Construction costs deemed reasonable and consistent with market costs at the time and place of construction in compliance with 84 FR 45838. See also 2 C.F.R. §200.404.
- **Decent, Safe, and Sanitary Dwelling:** The term means a dwelling which meets local housing and occupancy codes. However, any of the standards outlined in 49 C.F.R. § 24.2 (a)(8) not met by local code shall apply unless waived for good cause by the Federal Agency funding the project.
- **Expert Group:** Refers to an interdisciplinary group of local experts in the disciplines of Participatory Design, Sustainable Architecture, Planning & Urban Development, Engineering, & Law.
- **Fair Housing Act of 1968 (FHA):** The FHA, 42 U.S.C. § 3601 *et seq.*, prohibits discrimination against protected classes of people in the sale or rental housing, in the provision of housing assistance, or other housing-related activities. The FHA requires HUD, grantees, and their awardees to take reasonable steps to ensure meaningful access to their program and activities for protected classes. The FHA also requires HUD and its program participants to affirmatively further the purposes of the FHA.
- **Hardening:** The improvements or retrofits applied to existing structures to mitigate identified risks.
- **Housing and Community Development Act of 1974 (HCDA):** Section 109 of the HCDA, 42 U.S.C § 5301 *et seq.*, prohibits the discrimination on the basis of race, color, national origin, disability, age, religion, and sex within CDBG programs or activities.⁶
- **Low-and Moderate-Income Persons (LMI):** As defined by HUD, refers to low-income individuals that have an annual family income of less than fifty percent (50%) of the HUD area median income and moderate-income individuals that have an annual

⁵ See <https://files.hudexchange.info/resources/documents/Basically-CDBG-Chapter-1-Overview.pdf>.

⁶ See 42 U.S.C § 5301 *et seq.*, Housing and Community Development Act of 1974 and <https://www.hud.gov/programdescription/sec109>.

family income between fifty percent (50%) and eighty percent (80%) of the HUD area median income.⁷

- **Placed-in-Service:** The date when at least one (1) unit of the project is suitable for occupancy. In Puerto Rico, this is validated through the submittal of a Certification of Occupancy ("Permiso de Uso"), issued by the Municipal Permits Office, or the Puerto Rico Permits Management Office ("Oficina de Gerencia de Permisos" **OGPe**, by its Spanish acronym).
- **Participatory Design Process:** An approach to project design involving the active participation of communities, technical assistance, partners, citizens, designers, and other stakeholders.
- **Rehabilitation:** The improvement of an existing structure, which shall be used as a replacement property, through alterations, incidental additions, or enhancements. It includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.
- **Social Vulnerability Index (SoVI):** SoVI measures the social vulnerability of U.S. counties to environmental hazards. The index is a comparative metric that facilitates the examination of the differences in social vulnerability among counties and graphically illustrates the variation in social vulnerability. SoVI shows where there is uneven capacity for preparedness and response. Also, demonstrates where the resources might be used, most effectively, to reduce the pre-existing vulnerability. The index synthesizes twenty-seven (27) socioeconomic variables, which contribute to the reduction in a community's ability to prepare for, respond to, and recover from hazards. SoVI data sources include primarily those from the United States Census Bureau.⁸
- **Subrecipient:** Means an entity, usually but not limited to non-Federal entities, which receives a sub-award from a pass-through entity to carry out part of a federal program; but does not include an individual who is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.⁹
- **Substantial Damage:** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred (see 44 C.F.R. § 59.1).

⁷ HUD's adjusted income limits for Puerto Rico are available at: <https://www.huduser.gov/portal/datasets/il.html>.

⁸ As defined by the University of South Carolina. The definition and more information regarding SoVI can be found at: <https://www.vulnerabilitymap.org/Resources#sovi-model>.

⁹ 45 C.F.R. § 75.2

- **Substantial Improvement:** 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 the improvement's construction. This includes structures which have incurred substantial damage, regardless of the actual repair work performed. It does *not*, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (2) any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure" (see 44 C.F.R. § 59.1).
- **Substantial rehabilitation:** For the purposes of determining when installation of broadband infrastructure is required, as part of substantial rehabilitation of multifamily rental housing, unless otherwise defined by a program, it means work involving: (1) significant work on the electrical system of the multifamily rental housing. "Significant work" means complete replacement of the electrical system or other work for which the pre-construction cost estimate is equal to or greater than seventy five percent (75%) of the cost of replacing the entire electrical system. In the case of multifamily rental housing with multiple buildings with more than four (4) units; "entire system" refers to the electrical system of the building undergoing rehabilitation; or (2) rehabilitation of the 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. 24 C.F.R. § 5.100.
- **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**, see 42 U.S.C. §§ 4151 – 4157).
- **Targeted Community:** groups of people that share a common vulnerability, whether physical, economic, social, cultural, or environmental, and are often disproportionately affected by disruptions and disasters. To determine which communities will be targeted, PRDOH will review available data on social and economic risks and vulnerability.
- **Targeted Community Representative (TCR):** an entity that enters into Subrecipient Agreement (**SRA**) to represent the community through all phases of the MSC Program. The TRC will be entrusted with decision making authority on behalf of the community and will serve as a liaison between the community, the MSC Program and PRDOH.

- **Technical Assistance:** refers to the support the Targeted Community Representatives will receive on behalf of PRDOH for the purpose of fulfilling the requirements of the Participatory Design process.

3 Program Description

Most communities in Puerto Rico which have suffered hardship and damages from past natural disasters are situated within high-risk zones. Prevalent high-risk zones include floodplains, landslide and liquefaction prone areas, and coastal zones under the threat of sea level rise, among others. This vulnerability was recently highlighted by the widespread damages, communities faced in the wake of Hurricane Fiona in September 2022, which caused severe flooding and landslides. The MSC Program will provide vulnerable communities the opportunity to relocate outside high-risk zones while keeping communities *together*.

Targeted communities will enter a Participatory Design process facilitated by PRDOH and/or its Subrecipients. The process will help determine the appropriate mitigation strategies to design a feasible project for each community. When relocation is involved, the *Participatory Design* process will include participatory selection of: the area or zone, housing models, desired communal infrastructure, and values and priorities the community wishes to translate into their new design. Throughout this entire process, PRDOH and its Subrecipients will consider the input received by communities via meetings, outreach efforts, among others, in any decision-making process.

3.1 Program Objectives

The MSC Program aims to fulfill the following objectives:

- **Raise community risk awareness** – Engage with vulnerable communities and their stakeholders to address the specific natural threats they face, and the current and projected impacts of climate change to their communities. This includes partnering with trusted voices and leaders of the communities to facilitate information-sharing across their networks.
- **Relocate communities out of high-risk zones** – Work with residents, stakeholders, and leaders to ensure a community-driven relocation to safer, low-risk areas and away from high-risk zones.
- **Technical Assistance** – Provide equitable access to participatory design experts, design, construction, and other related technical assistance as needed, thereby facilitating direct citizen participation and implementation of community scale mitigation projects.
- **Keep communities together**– Protect the integrity of each community by making the residents key participants of the design of the mitigation project to be implemented in their community throughout the application of a *Participatory Design* process.

- **Restore floodplains** – Reinststate the natural absorption capacity of floodplains.

3.2 Program Budget

The total allocation for the MSC Program is **\$300,000,000** and the maximum award amount available for an Awardee is **\$100,000,000**. Final award amounts will be based on the needs and project design of participating communities. Allocations are subject to change through amendments to the Action Plan and funding availability, as determined by PRDOH.

3.3 Eligible Beneficiaries

The MSC Program is developed to benefit communities in high-risk zones. Therefore, beneficiaries of this Program include households and businesses in communities or community subsector's targeted by the MSC Program.¹⁰

3.4 Eligible Infrastructure Types

The Eligible Infrastructure Types under the MSC Program are the following:

- Single Family Housing Structures
- Multifamily Housing Structures
- Businesses

4 National Objectives

All projects in the MSC Program must meet one (1) of the HUD, CDBG-MIT national objectives at 24 C.F.R. § 570.483 or otherwise provided for by waiver or alternative requirement as published in 84 FR 45838, 45839. The determined national objective must correspond to a HUD eligible activity, as defined by the Housing and Community Development Act of 1974 (**HCDA**), as amended, 42 U.S.C. § 5305. The can be found in the Eligible Activities section of the Program Guidelines.

Considering the nature of the MSC Program, PRDOH anticipates the following national objectives will apply:

- Benefit to low- and moderate-income persons:
 - LMI Housing (**LMH**) –benefit low- and moderate-income (**LMI**)¹¹ persons whose income is below the eighty percent (80%) Area Median Family Income

¹⁰ The MSC Program Approach is contingent on an amendment of the Puerto Rico Mitigation Action Plan.

¹¹ 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 which 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 that 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 by HUD in the following web address <https://www.huduser.gov/portal/datasets/cdbg-income-limits.html#2022>

(AMFI).¹² This is validated through the collection of information on household composition and income. (24 C.F.R. § 570.483 (b)(3)).

For CDBG-MIT, HUD established an alternative requirement to include two (2) new LMI national objective criteria for buyouts (**LMB**) and housing incentives (**LMHI**) that benefit LMI households. The following activities shall qualify under the criteria, and must meet the eligibility criteria of the notices governing the use of the CDBG-MIT funds:

- LMB - when CDBG-MIT funds are used to acquire housing owned by a qualifying LMI household, where the award amount (including optional relocation assistance) is greater than the post-disaster (current) fair market value of that property.
- LMHI - when CDBG-MIT funds are used for a LMHI, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the CDBG-MIT funds have been provided for an eligible activity that benefits LMI households, supporting their move from high-risk areas.

Activities that meet the above criteria will be considered to benefit LMI persons unless there is substantial evidence to the contrary. Any activities that meet the newly established national objective criteria described above will count towards the calculation of a CDBG-MIT grantee's overall LMI benefit.¹³

- Urgent Need Mitigation (**UNM**)— The provisions of 24 C.F.R. §570.483(d) and §570.208(c) are waived at 84 FR 45838, 45857, V.A.13.C. and replaced with the alternative requirement to document how the activity: (i) Addresses the current and future risks as identified in grantee's Mitigation Needs Assessment of MID areas;¹⁴ and (ii) will result in a measurable and verifiable reduction in the risk of loss of life and property.

4.1 Additional Criteria Applicable to CDBG-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 specified in 84 FR 45838, 45857. To meet a national objective, all CDBG-MIT activities must:

- Projects must demonstrate the ability to operate for the useful life of the project via long-term operation and maintenance plans;

¹² According to HUD's Modified Income Limits for Puerto Rico under the Community Development Block Grant Mitigation Program, HUD identifies all municipal jurisdictions in Puerto Rico as Most Impacted and Distressed Areas (MID) as designated in Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314, 40315.

¹³ 84 FR 45838.

¹⁴ This must be tied to the PRDOH CDBG-MIT Action Plan in the Risk-Based Mitigation Needs Assessment.

- Projects must be consistent with other mitigation activities

Funds expended for planning are considered to address national objectives requirements. Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844 and 24 C.F.R. § 570.208(d)(4).

5 Use of Funds

5.1 Eligible Activities

This section sets forth the eligible uses of CDBG-MIT funds for the MSC Program, as listed in the HCDA, as amended, 42 U.S.C. § 5305.¹⁵

- Section 105(a)(1) – Acquisition of Real Property
- Section 105(a)(2) – Public Facilities and Improvements
- Section 105(a)(3) – Code Enforcement
- Section 105(a)(4) – Clearance, Rehabilitation, and Reconstruction of Buildings
- Section 105(a)(5) – Architectural Barrier Removal
- Section 105(a)(7) – Disposition of Real Property
- Section 105(a)(8) – Public Service
- Section 105(a)(9) – Payment of Non-Federal Share
- Section 105(a)(11) – Relocation
- Section 105(a)(12) – Planning Activities
- Section 105(a)(14) – Activities Carried Out through Non-profit Development Organizations
- Section 105(a)(15) – Assistance to Eligible Entities for Neighborhood Revitalization, Community Economic Development and Energy Conservation
- Section 105(a)(17) – Economic Development Assistance to For-Profit Business
- Section 105(a)(19) – Assistance to Public or Private Non-profit Entities
- Section 105(a)(22) – Microenterprise Assistance, Economic Development; Job Creation and Retention
- New housing construction that addresses disaster risks identified in PRDOH's Mitigation Needs Assessment.¹⁶

5.2 Ineligible Activities

The following activities may not be assisted under the MSC Program. The activities shall not be interpreted as all-encompassing, as the list may be subject to further changes by HUD:

- Development within the floodway.
- Proposed new construction located in the 100-year floodplain, as identified in FEMA's most current Flood Maps.

¹⁵ For a detailed description of the Eligible Activities visit <https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-State-National-Objectives-Eligible-Activities-Appendix-A.pdf>.

¹⁶ See 84 FR 45838, 45863 V.B.1 (Housing-related eligibility waiver).

- Operating and maintenance costs.¹⁷
- Support service only activities.
- Rental assistance.
- Privately-owned land site improvements, which are not the responsibility of the Recipient/Subrecipient, with the purpose of enabling the property to be used for the MSC-approved project (provided, the improvements are undertaken while the property remains under private ownership).
- Pre-award costs, including grant proposal preparation.
- Donations and contributions, including cash, services, or properties.
- Fundraising activities.
- Lobbying.
- Power grid improvements.
- Supplanting Federal and State Funds.
- Any other items unallowable under federal cost principles as stated in 2 C.F.R. Part 200.

5.3 Eligible Use of Funds

Funding must be used as outlined in the Program Guidelines, the PRDOH CDBG-MIT Action Plan, as amended, and the executed Subrecipient Agreements (**SRAs**). Other eligible uses of CDBG-MIT funds include, but are not limited to the following:

- Data gathering and analysis; participating and contributing to necessary studies or mapping efforts; outreach and coordination with citizens and stakeholders; communications and messaging; participation in development of vision, goals, objectives, and activities for the community; and participation in development of implementation strategies, feasibility studies, and drafting of community plans.
- Soft costs incurred in support of eligible construction activities which include but are not limited to site surveys, permit acquisition, legal, engineering and architecture fees, and other soft costs approved by PRDOH.
- 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 project outreach efforts or Program marketing, screening potential applicant households and structures, and other eligible services related to Program completion.
- New housing construction as part of a mixed-use commercial structure.
Note: Any costs clearly attributable to the commercial portion of the project are ineligible under this program. All costs must comply with the federal cost principles requirements at 2 C.F.R. Part 200, Subpart E, and applicable laws and regulations.

¹⁷ 24 C.F.R §570.207(b)(2) limits the use of CDBG funds for expenses associated with repairing, operating, or maintaining public facilities, improvements, and services. Certain exceptions are listed in these Guidelines (see Eligible Activities section).

- Site improvements to publicly owned land which enable the property to be used for new housing construction (provided the improvements are undertaken while the property is still under public ownership).
- Permanent fixtures and furnishing costs for the facility.¹⁸

6 Subrecipients

During implementation of the MSC Program, PRDOH may use reasonable criteria to select a Subrecipient, including but not limited to a Direct Selection process. Direct Selection may be utilized in situations in which:

- An entity is uniquely qualified due to having specialized or sole jurisdiction.
- PRDOH reasonably concludes that the minimum needs of a particular project could only be satisfied by the skillset of the selected Subrecipient; or
- There is a reasonable basis for concluding that this process will increase efficiency and produce quicker results, thereby better addressing the unmet need.

6.1 Subrecipient Capacity Assessment

Selected Subrecipients must undergo a capacity assessment prior to execution of a SRA.¹⁹ The PRDOH Federal Compliance and Subrecipient Management (**FCSM**) Team completes a Capacity Assessment of potential Subrecipients to determine their capacity and readiness to manage CDBG-MIT award funds. This assessment considers the entity's monitoring and audit history, current staffing internal controls, systems, and citizen engagement experience.

6.2 Subrecipient Roles and Responsibilities

The Roles and Responsibilities delegated to Subrecipients may include:

- Project Management and Development,
- Program operational support,
- Data gathering,
- Community outreach and engagement,
- Participatory Design process implementation.
- Identification of suitable areas for buyout, and measurement of those areas needs and interests,
- Identification of relocation sites and acquisition strategies
- Community dispute resolution,
- Project Design (Schematic and Construction Drawings),
- Environmental Review,
- Construction and Construction Oversight, and

¹⁸ Equipment, as defined in 2 C.F.R. §200.1, must be purchased, maintained, and disposed of according to provisions found at 2 C.F.R. § 200.313 and § 200.439, Equipment and Capital Expenditures. Purchases of this nature must also demonstrate that they are reasonable and necessary costs for the CDBG-MIT MSC Program.

¹⁹ The SRA establishes the applicable CDBG-MIT award requirements, as well as state and local laws that the Subrecipient must meet. It includes provisions to reduce risk of noncompliance and to ensure that PRDOH meets its own responsibility to HUD for performance and financial reporting.

- Project Closeout.

PRDOH reserves the right to determine which Roles and Responsibilities will be assigned to Subrecipients.

7 Phase I: Outreach

PRDOH will conduct outreach events with stakeholders and other professionals with expertise (“Expert Group”) in diverse areas to gather information on potential targeted communities. Stakeholder expertise included participatory design, sustainability, urban and social planning, community development and capacity building, engineering, and legal concepts.

The MSC Program will focus on projects that propose the relocation of vulnerable communities out of high-risk zones.²⁰ PRDOH is conducting a survey for each of the seventy-eight (78) municipalities to collect data about communities within their jurisdictions, who have expressed desire to relocate. The survey also asks municipalities to provide: 1) quantitative data about the relocations (ex. how many families from the community wish to relocate); and 2) historical data about the damages faced by those communities during previous natural disaster events or other natural hazards.

Table A: PRDOH Fall 2022 PR Municipality Community CDBG-MIT Survey

General Community Information	Natural Disasters and the Community
<ul style="list-style-type: none"> • Community name • Community sector • Community coordinates • Community Population (Number of families/households residing in community) • # of families/households who wish to relocate 	<ul style="list-style-type: none"> • Has the community suffered damages due to flooding or landslides/liquefaction caused by (list all that apply)? <i>Hurricanes Fiona, María, Irma, Tropical Storm Isaac, or name other(s).</i> • Did the community suffer damages due to the 2020 earthquakes? • If the community suffered damages due to other natural disasters, please specify damages, causes and natural disaster.

PRDOH is also identifying potential community scale relocation project proposals included in the following sources. However, PRDOH may consider additional sources of information and other data gathering strategies.

- **CDBG-MIT Public Hearings** - Citizen participation through Presentations or Executive Summary submittals.

²⁰ The MSC Program Approach is contingent on an amendment of the Puerto Rico Mitigation Action Plan.

- **Proposed Mitigation Project Log** – Proposals received by PRDOH as part of the outreach efforts for the development of the *Puerto Rico Mitigation Action Plan*.²¹
- **Municipal Recovery Plans** – Submitted to PRDOH by participants of the CDBG-DR Municipal Recovery Planning (**MRP**) Program.²² Municipal Recovery Plans that propose relocating a community out of harm's way will be prioritized.
- **Community Planning and Capacity Building Programs Relocation List** – Provided to PRDOH by the Federal Emergency Management Agency's (**FEMA**) Community Planning and Capacity Building Program (**CPCB**).²³
- **Hazard and Mitigation Plans** – Municipal Hazard Mitigation Plans developed for FEMA's Hazard Mitigation Grant Program (**HMGP**). The plans incorporate input from communities to identify risks as part of the island's recovery efforts after Hurricane María. Mitigation plans include proposed projects that may be developed once funding becomes available.²⁴
- **Expert Group Consultation** – Counsel received by Expert Group.

PRDOH will extend an *Invitation to Apply* to communities ("Targeted communities") by balancing the following criteria:

- **Risk Score** – As determined by the Risk and Hazards Dashboard
- **SoVI Score** – As determined by the Risk and Hazards Dashboard
- **Community Support** – Measured by the amount of community or community sector residents that wish to relocate. This criterion may also consider stakeholder support for the relocation of the community.

Feasibility – Measured by the scale of the potential community relocation and the availability of the required resources to carry out the relocation.²⁵

One of the outcomes of the MSC Program will be the creation of the **Puerto Rico Community Relocation Proposals Database ("Relocation Database")**, a list of community relocation proposals that identifies each community's Risk Score and Social Vulnerability Index Score (**SoVI**) as determined by the Puerto Rico Risk and Hazards Dashboard.²⁶

7.1 Targeted Communities Representative (TCR)

Community participation in the Program is contingent upon the community's designation of an eligible entity to apply on their behalf, a Targeted Community Representative (**TCR**). The TCR must be entrusted with decision making authority on behalf of the community and will serve as a liaison between the community and the MSC Program.

²¹ See Appendix E of the Puerto Rico Mitigation Action Plan.

²² Municipal Recovery Planning Program (**MRP**). Available at <https://estudiostecnicos.com/proyectos-de-participacion-ciudadana/mrp/>.

²³ See Appendix F of the Puerto Rico Mitigation Action Plan.

²⁴ See <https://www.fema.gov/news-release/20200724/puerto-rico-builds-back-stronger-through-local-mitigation-plans>.

²⁵ The MSC Program Approach is contingent on an amendment of the Puerto Rico Mitigation Action Plan.

²⁶ To see the Puerto Rico Risk and Hazards Dashboard, visit: <https://cdbq-dr.pr.gov/iframes/PRhazardandriskslFRM>.

PRDOH will also use the Relocation Database to identify possible entities willing to serve as TCRs for targeted communities.²⁷ PRDOH will also provide guidance and assistance to communities that wish to organize a leadership group and designate it as their TCR.

To be considered a TCR, an entity must meet one of the following criteria:

- Unit of General Local Government (Municipal Governments);
- Non-Governmental Organizations (**NGOs**) (501(c)(3)) or Not-for-Profit Entities, such as:
 - Faith-Based Organizations
 - Community-Based Development Organizations
 - Conservation or Natural Resource Organizations
- Public Housing Authorities
- Public-Private Partnerships with one (1) or more of the above entities.

TCRs must comply with the following requirements:

1. Demonstrate community and local stakeholder support and decision-making authority on behalf of the community and its residents. This may include documentation of consultation with the local municipality(ies) in which the targeted community is located, letter(s) of support from community organizations or leaders representing the targeted community, or through instruments such as formalized consortia or executed Memoranda of Understanding (**MOU**).
2. Represent a community or community sector located within a **Medium, Medium High, or High-Risk Area** as determined by the Puerto Rico Risk and Hazards Dashboard. Visit the Puerto Rico Risk and Hazards Dashboard at the following link: <https://storymaps.arcgis.com/stories/fa284b8baeb04fddbed791cb478410a2>.²⁸
3. Registered and authorized by the Puerto Rico State Department to do business in the island.
4. Have a Unique Entity ID. For registration and/or obtaining a Unique Entity ID visit the System for Award Management (**SAM**) website at: <https://sam.gov/content/entity-information>.

7.2 TCR Evaluation process

Once a targeted community proposes a TCR to apply to the Program on their behalf, the proposed TCR must submit to PRDOH a **Community Letter of Intent** that demonstrates community and local stakeholder support, as well as decision-making authority on behalf of the community and its residents. This may include documentation of consultation with the local municipality(ies) in which the project area and persons of benefit reside, letter(s)

²⁷ The social vulnerability score will be considered by PRDOH to issue invitations to participate. The evaluation of project proposals will be governed by the provisions contained in the Action Plan and these Guidelines.

²⁸ See: <https://cdbg-dr.pr.gov/iframes/PRpeligrosyriesgosIFRM>.

of support from community organizations or leaders representing the project area and persons of benefit, or through instruments such as formalized consortia or executed MOU.

Community Letters of Intent must provide evidence of:

1. Executed community scale outreach efforts to invite community residents to participate in meetings celebrated for the purpose of designating the entity as the community's TCR. Community meetings must be publicly advertised (bulletin boards, brochures, "tumba coco," social media, etc.) as to provide residents a feasible and reasonable opportunity to participate.
2. That their designation was approved during a community meeting through a democratic process.

Once the *Community Letter of Intent* is approved by PRDOH, the proposed TCR will receive an **Award Notice Letter** which will enable them sign a Subrecipient Agreement in representation of the Targeted Community, and they will be able to receive Technical Assistance facilitated by PRDOH and/or its Subrecipients to implement a Participatory Design process with the targeted community residents.²⁹ As part of the evaluation process, and prior to signing an SRA, PRDOH will perform a capacity assessment of proposed TCRs.

8 Phase II: Participatory Design Process

The Participatory Design process shall consist, but not limited to:

1. Community meetings to raise awareness of the community's environmental risks and to identify the community's priorities and needs.
2. Community design workshops to determine the site to be relocated, new housing development typology, and any other design requirements for their new community.

TCRs will be responsible for submitting a Community Relocation Project Proposal for each assigned community or community subsector to PRDOH. Community Relocation Project Proposals must include:

1. Community Profile

- + Community(ies) territorial boundary map
- + Demographics
- + Environmental characteristics
- + Historical and cultural background

2. **Relocation Plan**³⁰ – A roadmap of the relocation strategy that includes, but not limited to:

²⁹ The MSC Program Approach, which targets communities that wish to relocate out of risk zones, is contingent on an amendment of the Puerto Rico Mitigation Action Plan.

³⁰ The MSC Program Approach Section is contingent on an amendment of the Puerto Rico Mitigation Action Plan.

- + Map identifying households and businesses that opt for the relocation project.
 - + List of all the households and business owners participating in the relocation strategy.
 - + Relocation site
 - + Relocation strategy (See Buyout, Uniform Relocation Act, End Use of Real Property, and Property Acquisition Requirements sections)
- 3. Owner (Community) Project Requirements (OPR)** - The OPR shall document the new community project functional requirements and the expectations of how it will be used and operated.
 - 4. Basis of Design (BOD)** - Documentation of the thought processes and assumptions behind the major design decisions to meet the Owner Project Requirements.
 - 5. Schematic Design Package** – Design drawings to the thirty percent (30%) mark and outline specifications.

The end product of the Participatory Design Process will be the Community Relocation Proposal.

9 Phase III: Community Relocation Project Proposal

9.1 Evaluation

PRDOH will evaluate submitted Community Relocation Project Proposals based on the following criteria:

1. **Community “Buy In”:** Priority will be given to project proposals with the highest number of communities “Buy In” (Number of community households whose residents wish to relocate). Nevertheless, project proposals must obtain the support of at least sixty percent (60%) of the community’ residents. The percentage of community support will be measured in proportion to the community’s or community subsector’s population. For example, if a community has a population equivalent to ten (10) households, sixty percent (60%) community “buy in” is represented by six (6) or more households support to relocate.³¹
2. **Feasibility of Relocation Strategy:** Relocation strategies must be feasible and tailored to the particularities and needs of the community(ies).
3. **Integrative Solutions:** Projects must provide solutions to the community's immediate concerns and challenges beyond its main natural risk and demonstrate compatibility with other regional efforts. Project strategies should be holistic in their approach and resolve a variety of concerns, such as natural risk, communal, social, etc.

³¹ The prioritization of community “buy in” thresholds is contingent on an amendment of the Puerto Rico Mitigation Action Plan.

4. **Buyout/Acquired area design:** Buyout/Acquired areas within floodways or floodplains must include strategies to restore the floodways natural functions.³²

If a community has a cultural and historical attachment to the buyout/acquired area, project design should preserve the community's attachment to the area by repurposing it an eligible activity approved by the community. For example, if the project strategy is to relocate a fishermen's community out of a floodplain, and the design includes green infrastructure pedestrian access to the community's historical fishing sites, then it would help preserve the community's collective memory. See Buyout, End Use of Real Property, and Property Acquisition Requirements sections of the Program Guidelines.

5. **Alternative transportation availability** (multimodal mobility): Basic needs and services should be within a 0.5-mile radius and accessible through transportation alternatives such as pedestrian, cycling, micro transportation (ex. scooters), among other transportation options. Examples of basic services include health centers, grocery markets, drug stores, public spaces, and recreational areas.
6. **Lifeline security:** Projects must integrate state of the art food, water, and energy security design strategies such as community gardens, water harvesting systems, and localized energy generation technologies from renewable sources (Ex. Photovoltaic systems, microgrids).

The following relocation strategies are highly encouraged:

1. Resettlement of the community in urban centers.
2. Resettlement of the community in existing households, multifamily projects, or other existing infrastructure not situated in high-risk zones and that gets rehabilitated or "repurposed" to fit the targeted community's needs

9.1.1 Resilient Housing Design Requirement

PRDOH will implement resilient housing design and construction methods that follow sustainable architecture principles to emphasize quality, durability, energy sustainability, and adaptability. The term *resilient housing* refers to a household capacity to *resist, recover, and adapt* to adverse conditions or profound changes.³³ Though the changes can be environmental, (such as natural disasters), social, and economical, they can also respond to diverse climates, lateral forces, passage of time, diverse social lifestyles, and fluctuant necessities. The *resilient housing design* criteria are as follows:

- **Sustainability:** Housing designs must comply with *Sustainable Design* principles, which include the ability to:

³² As per 84 FR 45838, 45865, Real Property Acquisition using CDBG-MIT funds, including buyout, is subject to URA, including real property acquisitions requirements at 49 C.F.R. Subpart B.

³³ Rivera-Crespo, O., and Colón Rodríguez, Y. (2021). Casas resilientes en Puerto Rico: resistir al desastre redefiniendo la vivienda. *Revista de Arquitectura (Bogotá)*, 23(2), 84-93. <https://doi.org/10.14718/RevArg.2021.2793>. See also <https://arquitecturaviva.com/works/viviendas-villa-verde-10>.

- + Optimize site potential;
 - + Minimize non-renewable energy consumption;
 - + Use environmentally preferable products;
 - + Protect and conserve water;
 - + Enhance indoor environmental quality; and
 - + Optimize operational and maintenance practices.³⁴
- **Affordable:** The sale or rent price of the household must be *accessible* to LMI persons and families.
 - **Accessible:** Housing designs must incorporate *Universal* or *“Inclusive” Design* principles and strategies to ensure accessibility to all regardless of age, ability, or any other demographic.
 - **Adaptable, Flexible, and Incremental:** Housing design must be *adaptable, flexible, and incremental*.
 - + *Adaptability* - An adaptable house is a home in which, without the need to relocate walls or other components, spaces can be used in various ways. This is achieved by not establishing a hierarchy, so that each inhabitant chooses which will be the public and private spaces of their house. In this way, any space can be, more than a living room, a bedroom or a workplace, a place to inhabit it according to the way of life or particular need.³⁵
 - + *Flexibility* - Physical changes of walls or components with mechanisms that help them to be relocated continuously or over time.³⁶
 - + *Incrementality* - An incremental house is one that can grow over time, as the number of its inhabitants increases or the needs of use of the spaces change. This commonly occurs in any model of individual or single-family housing in which its inhabitants add spaces according to the size of the lot in which it is located or on a second floor. However, through design, this growth can be anticipated so that factors such as structural integrity or ventilation of spaces are not compromised.³⁷
 - **Modular:** Housing design must be based on prefabricated components or modules with standardized repair features which as a result fast-track construction timelines while facilitating cost efficiency. The components could be basic

³⁴ For more information, visit: <https://www.gsa.gov/real-estate/design-and-construction/design-excellence-program-overview/sustainability/sustainable-design>.

³⁵ See Rivera-Crespo, O., and Colón Rodríguez, Y. (2021). Casas resilientes en Puerto Rico: resistir al desastre redefiniendo la vivienda. *Revista de Arquitectura (Bogotá)*, 23(2), 84-93. <https://doi.org/10.14718/RevArq.2021.2793>. See also, Till, J., & Schneider, T. (2007). *Flexible housing*. Architectural Press.

³⁶ See Rivera-Crespo, O., and Colón Rodríguez, Y. (2021). Casas resilientes en Puerto Rico: resistir al desastre redefiniendo la vivienda. *Revista de Arquitectura (Bogotá)*, 23(2), 84-93. <https://doi.org/10.14718/RevArq.2021.2793>. See also, Habraken, J. (2000). *El diseño de soportes* (2 ed.). Editorial Gustavo Gili. (Documento original publicado en 1974).

³⁷ See Rivera-Crespo, O., and Colón Rodríguez, Y. (2021). Casas resilientes en Puerto Rico: resistir al desastre redefiniendo la vivienda. *Revista de Arquitectura (Bogotá)*, 23(2), 84-93. <https://doi.org/10.14718/RevArq.2021.2793>.

enclosures such as walls, floor and ceiling slabs, doors and windows, but they could also be complete volumes of bathrooms, kitchens, rooms, or even complete housing modules.³⁸

9.1.2 Cost Reasonableness

The MSC Program only allows construction costs that are deemed reasonable and consistent with market costs at the time and place of construction. All projects will be reviewed by an independent, qualified party to establish the cost reasonableness of proposed items as part of project submissions. A cost is reasonable if, in its nature and amount, 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.³⁹

- **New construction** - Hard construction contingency costs shall not exceed five percent (5%).
- **Intermediary costs** - Shall not exceed five percent (5%) of the total development costs.

9.1.3 Approval of Project Proposals

As part of the approval process, projects will undergo an Environmental Review process (see Environmental Review section). Proposal will be approved once PRDOH receives an Authorization to Use Grant Funds (**AUGF**) by HUD. PRDOH approval is contingent on the MSC Program budget availability.

9.1.4 Project Approval Notification

Once PRDOH receives the AUGF by HUD, the TCR will receive a **Project Approval Letter** informing them of final project approval. PRDOH-approved project proposals will enter Phase IV of the MSC Program.

10 Program Set-Aside: Caño Martín Peña Community

PRDOH designated \$52 million for the implementation of community-based projects to serve the needs of the *Caño Martín Peña* (**CMP**, for its Spanish acronym) given the community development and capacity building success the CMP communities have obtained. CMP is a group of eight (8) vulnerable communities in the Municipality of San Juan with an estimated population of thirty thousand (30,000) inhabitants.

PRDOH conducted stakeholder engagement meetings with CMP leading entities, including Group of Eight Communities Surrounding Caño Martín Peña ("*Grupo de las Ocho Comunidades Aledañas al Caño Martín Peña*" or **G-8**), and Corporation of the ENLACE project of Caño Martín Peña ("*Corporación del Proyecto ENLACE del Caño Martín Peña*" or **ENLACE**), of the Company for the Comprehensive Development of the Cantera Peninsula ("*Compañía para el Desarrollo Integral de la Península de Cantera*" or **CDIPC**, for its Spanish acronym), and the Caño Martín Peña Land Trust

³⁸ *Id.*

³⁹ See 2 C.F.R § 200.404.

("Fideicomiso de la Tierra del Caño Martín Peña"), to identify a lead representative who will serve as liaison between the CMP community and the MSC Program. The organizations requested the designation of both ENLACE and CDIPC, as Subrecipients of the CMP Set Aside due to their experience, history, and independent leadership within different areas of the CMP community. PRDOH thus selected both entities as Subrecipients of the CMP Set Aside.

ENLACE and CDIPC are uniquely qualified to manage the CMP community's relocation projects under the MSC Program. The entities already have relocation planning in progress, and both are built upon a recognized history of citizen participation.

Both ENLACE and CDIPC propose the relocation of households that lie within the footprint, or are indirectly impacted, by the dredging of the CMP channel project.

10.1 Beneficiaries

For the CMP set aside, eligible beneficiaries must be located in one (1) of the CMP communities:

1. Barrio Obrero
2. Barrio Obrero – Marina
3. Buena Vista – Santurce
4. Buena Vista – Hato Rey
5. Las Monjas
6. Parada 27
7. Israel-Bitumul
8. Península de Cantera

11 Phase IV: Design and Construction

11.1 Project Design

Once the project is approved, PRDOH Architecture and Engineering (**A/E**) contractor(s) will develop proposal design and construction documents. The documents will be evaluated by PRDOH and PRDOH contractor(s) at thirty percent (30%), sixty percent (60%), and a hundred percent (100%) completion to ensure completeness, compliance, and review specifications.

11.2 Environmental Review and Permits

PRDOH's A/E contractor(s) will be responsible for completing Environmental Reviews and for acquiring all applicable permits.

No property acquisitions can take place until the project has received environmental clearance. Refer to the Environmental Review section of the Guidelines.

11.3 Project Construction

PRDOH Construction vendors will carry out construction of the project, subject to the following thresholds:

- **Pre-Construction:** Before the release of construction funds, each project must obtain and provide documentation of applicable permits and satisfy any specific land-use regulations for site selection at the local level. Any acquisition for new construction should be completed prior to the start of construction.
- **Construction:** Construction vendor will maintain a ledger of all expended funds and oversee construction throughout the project.
- **Construction Completion/Administrative Closeout:** A/E contractor(s) must conduct a Final Inspection after the construction activities are completed. Also, all project plans (as built) must be submitted. Any expenditures and funds obligated must be fully documented, along with all other required financial documentation and controls (monitoring). For final project compliance, all the appropriate beneficiary eligibility documentation must be fully documented and submitted as part of the closeout process.

Any changes to previously approved plans will require review and approval by PRDOH and may be subject to a contract and/or SRA amendment. In the case of non-compliance due to an unapproved construction project, a de-obligation or recapture of funds may result along with a project cancellation.

A detailed description of the Roles and Responsibilities of A/E contractor(s) and construction vendors will be included in the Scope of Service within each contract.

11.4 Codes, Laws, and Regulations Compliance

Project Managers must ensure work for the MSC Program complies with all applicable federal, state, and local codes and regulations, including but not limited to the following:

- Project work must be performed only after obtaining the initial required permits and endorsements, in compliance with local, state, or federal requirements;
- New construction or alterations of existing housing units will abide by all local design and architectural standards;
- New construction or alterations of existing housing units and non-housing facilities must comply with the Americans with Disabilities Act of 1990 (**ADA**), as amended, 42 U.S.C. § 12101 *et seq.*, 2010 ADA Standards for Accessible Design,⁴⁰; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.*; and /or the Uniform Federal Accessibility Standards (**UFAS**);⁴¹
- New construction of multifamily housing projects that contains four (4) or more dwelling units, as well as any multifamily housing development built for first occupancy after March 13, 1991, must comply with the design and construction requirements of the Fair Housing Act, as amended, 42 U.S.C. § 3601 *et seq.*;

⁴⁰ See HUD Minimum Property Standards at <https://archive.gda.gov/regs2010/2010ADASTandards/2010ADASTandards.pdf>

⁴¹ HUD issued Federal Register Notice Vol. 79, No. 100 (May 23, 2014), 79 FR 29671, which allows grantees of Federal funding to use the 2010 Standards to satisfy Section 504 accessibility requirements, with certain exceptions specified in the Notice where the Section 504 and UFAS requirements provide a higher accessibility standard and therefore prevail.

- HUD Minimum Property Standards;⁴²
- Policy-planning-management capacity activities (Section 105(a)(12) of Title I of the HCDA, as amended, 42 U.S.C. § 5305);
- Energy Development Goals (Section 105(a)(16) of the HCDA, 42 U.S.C. § 5305);
- Puerto Rico Building Code, most current approved version;
- Most current approved zoning requirements for Puerto Rico;
- Environmental regulations, as applicable to specific projects; and
- HUD terms and conditions, as applicable to specific projects.⁴³

The project must also comply with the latest applicable local building codes. The current International Building Code® (**IBC Codes**) establishes minimum requirements for building systems using prescriptive and performance-related provisions. The IBC Codes are fully compatible with all the International Codes® (**I-Codes**) published by the International Code Council (**ICC**). This regulation arises from the adoption of ten (10) codes of the ICC family with its amendments to conform to the requirements of Laws and Regulations of construction and occupancies in Puerto Rico.⁴⁴ This edition of the Puerto Rico Codes, like other Codes published by the ICC, is arranged and organized to follow sequential steps that generally occur during a plan review or inspection and must be used with the corresponding code of the I-Codes family as follows:

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

⁴² See https://www.hud.gov/program_offices/housing/rmra/mps/mpshome.

⁴³ See <https://www.hudexchange.info/resources/documents/CDBG-DR-Resources-Summary.pdf>.

⁴⁴ Puerto Rico Codes 2018, Regulation No. 9049 can be found here: <http://app.estado.gobierno.pr/ReglamentosOnline/Reglamentos/9049.pdf>

All performed work must also comply with current federal, state, and local codes, laws, regulations, and standards including, but not limited to:

- Joint Regulation of Project Evaluation and Permitting regarding Land Development and Use, and Business Operations of 2020 or the applicable regulation at the moment of the construction ("Reglamento conjunto para la evaluación y expedición de permisos relacionados al desarrollo, uso de terrenos y operación de negocios");
- Local planning and zoning requirements;
- Planning and Capacity Building (Section 105(a)(12) of the HCDA);
- Energy Development Goals (Section 105(a)(16) of the HCDA);
- Current Puerto Rico Firefighters Code;
- Applicable Environmental Regulations;
- Applicable HUD Terms and Conditions;
- Fair Housing Act, as amendment;
- ADA (where required).

Puerto Rico is in an area of high seismic and cyclonic activity. As such all design and construction on the Island must comply with the Puerto Rico Planning Board's requirements, which further guarantee greater security to life and property. This regulation is designed specifically for the conditions found in Puerto Rico. The Puerto Rico Planning Board's requirements establish construction and design parameters related to mitigating the impact of catastrophic events, fire prevention and energy conservation, among others. Historic preservation regulations or recommendations may be an exception to these requirements as per consultation with the State Historic Preservation Office (**SHPO**).

Other permit requirements include, but are not limited to:

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

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

- Construction Stamps as required in Section 11 of Act No. 319 of May 15, 1938, an amended, 20 L.P.R.A. § 741 *et seq.*, known as the “Law that created the College of Engineers and Surveyors of Puerto Rico.”
- Act No. 107-2020 as amended, 21 L.P.R.A. § 7001 *et seq.*, known as the “Municipal Code of Puerto Rico”.

Under no circumstances should financial commitments be made, or construction work be started prior to a project obtaining an environmental clearance by PRDOH.

11.5 Quality Control and Assurance

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

11.6 Inspection of Construction Projects

All MSC Program projects are required to be inspected by a licensed Professional Engineer (**PE**) or Registered Architect (**RA**) in compliance with Act No. 173 of August 12, 1988, as amended, 20 L.P.R.A. §711, *et seq.*, known as “Board of Examiners of Engineers, Architects, Surveyor and Landscape Architects of Puerto Rico Act.” The tasks performed by the project's designated inspector include but are 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 contracts have been met by the contractors implementing the construction works.

PRDOH will be responsible for procuring construction inspection services for construction projects.

11.7 Green Building Standards

As required by 84 FR 48538, 45863, all new construction of residential buildings and all replacement of substantially damaged residential buildings –are encouraged– to comply with a HUD-approved Green Building Standard. New construction undertaken under the MSC Program must comply with an industry recognized standard and achieve certification under at least one (1) of the following Programs:

- ENERGY STAR® (Certified Homes or Multifamily High-Rise);
- Enterprise Green Communities;
- Leadership in Energy and Environmental Design (**LEED**) (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development);
- ICC–700 National Green Building Standard;
- Environmental Protection Agency (**EPA**) Indoor Air Plus (ENERGY STAR® a prerequisite); or
- Any other equivalent comprehensive green building Program acceptable to HUD.

11.8 Broadband Infrastructure Requirements

Under 84 FR 45838, 45864, the projects are required to include broadband infrastructure installation at the time of new construction or substantial multifamily rental housing rehabilitation. 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 provide a platform for individuals and families residing in such housing to participate in the digital economy and increase their access to economic opportunities.

Exclusions from this requirement can be considered by PRDOH if the Subrecipient can document and demonstrate one (1) of the following:

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

While Projects are only required to include one (1) form of broadband infrastructure, installing more than one (1) form is recommended as this will promote competition among service providers on quality and price for residents.

MSC Program vendors will verify projects comply with applicable Broadband Infrastructure design requirements.

12 Property Acquisition Requirements

12.1 Applicable Rules

PRDOH may use CDBG-MIT funds to acquire real property for any public purpose. As stated in CPD Notice 17-09,⁴⁵ acquisition methods include purchase, long-term lease (more than fifteen (15) years), donation, or other. When long-term lease is used as the acquisition method, renewable short-term lease agreements (e.g., one year) are not considered long-term leases, even if the lease is renewed annually for fifteen (15) years.

In addition, PRDOH may acquire real property directly or provide CDBG-DR/MIT assistance to another public agency or public or private non-profit subrecipient to acquire real property. This means the property need not be publicly owned to serve a public purpose. The public purpose requirement may also be met when a non-profit organization uses CDBG-DR/MIT funds to acquire a property for a CDBG-DR/MIT eligible activity and the assisted property is open for use by the general public during all regular hours of operation.

⁴⁵ See <https://www.hud.gov/sites/dfiles/OCHCO/documents/17-09cpdn.pdf>.

Acquisition rules apply whenever an acquiring entity:

- Undertakes the purchase of property directly;
- Provides a non-profit or for-profit entity with funds to purchase the property;
- Hires an agent or consultant to act on its behalf in acquisition;
- Undertakes acquisition on or after a CDBG-DR/MIT application submission date unless the acquiring entity demonstrates that the acquisition was unrelated to the proposed activity; and
- Undertakes an acquisition before the application submission date, and the the intention to acquire was to support a subsequent CDBG-DR/MIT activity.

Acquisition by a private for-profit entity is not eligible under 24 C.F.R. § 570.201 (a). Whether a property is acquired by PRDOH or by a subrecipient, it must also meet a CDBG-MIT national objective to be considered an eligible activity.⁴⁶

Each property owner must be adequately informed of their rights, as required by law, and the acquiring entity must document compliance with rules and regulations. Each property owner is entitled to the payment of just compensation for their land, even if they are a direct beneficiary of the project. Before requiring the property owner to surrender possession of the real property, the acquiring entity must pay the owner the agreed purchase price.

In cases where the acquisition is only for a portion of a property but would leave the owner with an uneconomic remnant, the acquiring entity must offer to acquire the uneconomic remnant along with the portion of the property needed for the project.

- Environmental Review requirements are applicable to eminent domain, as it is a type of acquisition. Municipalities will have to complete the Environmental Review before filing the case in the Court.

12.2 Acquisition for Redevelopment

Entities authorized to carry out acquisition activities must identify the planned end use for all properties to be acquired. A property may be redeveloped if it was not acquired through a buyout program and if the purchase price was based on the property's post-disaster value. In conducting real property acquisition activities, entities must ensure that they comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), including the real property acquisitions requirements at 49 C.F.R. Part 24, Subpart B, except where waivers or alternative requirements are

⁴⁶ Acquisition by a private for-profit entity is not eligible under 24 C.F.R. § 570.201 (a). However, for-profit entities might qualify under 24 C.F.R. § 570.202, "Eligible rehabilitation and preservation activities". To acquire for the purpose of rehab properties, for use or resale for residential purposes. However, it might be limited to privately owned buildings, LMI public housing, commercial or industrial buildings, manufactured housing as part of a housing stock. (Economic Development and Revitalization).

provided for CDBG–MIT funds. Additionally, the must comply with their long-term redevelopment plan.⁴⁷

Entities that opt to pursue acquisitions rather than implement a buyout program may benefit from the fact that it allows CDBG funds to be used for the acquisition of properties for any public purpose, as set forth in 24 C.F.R. §570.201(a) and Section 105(a)(4) of the HCDA.

Some of the advantages of acquisitions are:

- Acquisition of the property allows multiple options, including redevelopment and open space (e.g., green space, parks, flood storage area, open fields) or disposal through sale, lease, donation, or other means.
- The intended use of the acquired property determines which CDBG national objective is to be satisfied, thus offering more alternatives to meet them than a buyout program.

13 Buyout

HUD defines “buyout” as the acquisition of properties located in a floodplain or floodway intended to reduce risk from future flooding or the acquisition of properties in Disaster Risk Reduction Areas as designated by the grantee.⁴⁸ Properties (commercial and residential) acquired through buyout are subject to land use restrictions post-acquisition and must be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or floodplain and wetlands management practices.

HUD allows grantees to use CDBG-MIT funds to purchase properties, both commercial and residential, in a target area with the intent of demolishing structures and creating, for example, park amenities, open space, or flood storage/overflow areas. However, property acquisitions, including buyouts, are subject to URA provisions, as amended, 42 U.S.C. § 4601 *et seq.*, including the property acquisition requirements at 49 C.F.R. Part 24, Subpart B.

Typically, this is part of a multi-pronged approach to community revitalization which includes the relocation of residents and businesses in addition to business development activities. Buyouts have proved effective in communities who have endured multiple disasters and/or sustained severe damages and are at high-risk of other disasters.

⁴⁷ In addition to the purchase price, those entities that carry out voluntary acquisition activities may also provide relocation assistance or housing incentives to the owner of a property that will be redeveloped, as long as the owner’s need for additional assistance is documented.

⁴⁸ 84 FR 45838, 45865. “To conduct a buyout in a Disaster Risk Reduction Area, the grantee must establish criteria in its policies and procedures to designate the area subject to the buyout, pursuant to the following requirements: (1) The hazard must have been caused or exacerbated by the Presidentially declared disaster for which the grantee received its CDBG-MIT allocation; (2) the hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries, as evidenced by the best available data (e.g. FEMA Repetitive Loss Data) and science; and (3) the Disaster Risk Reduction Area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.”

As provided in 84 FR 45838, 45865, PRDOH must comply with the following requirements to implement a buyout program:

- Any property acquired, accepted, or from which a structure will be removed pursuant to the project will be dedicated and maintained in perpetuity for a use consistent with open space, recreational, or floodplain and wetlands management practices.
- No new structure will be erected on property acquired, accepted, or from which a structure was removed under the acquisition or relocation program other than:
 - (a) A public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area);
 - (b) a restroom; or
 - (c) a flood control structure, provided that structure does not reduce valley storage, increase erosive velocities, or increase flood heights on the opposite bank, upstream, or downstream and that the local floodplain manager approves, in writing, before the commencement of the construction of the structure.
- After receipt of the assistance, with respect to any property acquired, accepted, or from which a structure was removed under the acquisition or relocation program, no subsequent application for additional disaster assistance for any purpose or to repair damages or make improvements of any sort will be made by the owner of the buyout property (including subsequent owners) to any Federal entity in perpetuity. The entity acquiring the property may lease it to adjacent property owners or other parties for compatible uses in return for a maintenance agreement. Although Federal policy encourages leasing rather than selling such property, the property may also be sold. In all cases, a deed restriction or covenant running with the property must require that the buyout property be dedicated and maintained for compatible uses in perpetuity.
- PRDOH property valuation method will be based on post-disaster appraisals.
- All buyout activities must be classified using the “buyout” activity type in the Disaster Recovery Grant Reporting (**DRGR**) system.
- When undertaking buyout activities, to demonstrate a buyout meets the LMI Housing national objective, PRDOH must meet all HCDA requirements and applicable regulatory criteria.
- The operation and maintenance of the “buyout” areas will be determined on a case-by-case basis addressing the particularities of each community *Relocation Project Proposal*.

13.1 Benefits of a Buyout Program

Some of the proven advantages of a buyout program are:

- Relocates families to higher ground and out of harm's way;
- Eliminates future flood damages and health and safety risks for owners;
- Reduces repetitive subsidized flood insurance payments and federal disaster assistance;
- Restores natural function of the floodplain;
- Protects surrounding built environment;
- Creates open space with the potential for community amenities (i.e., parks, gardens, playing fields, etc.); and

14 Uniform Relocation Act (URA)

As a HUD-assisted program, and in accordance with URA, 42 U.S.C. § 4601 *et seq.*, and the government wide implementing regulations found at 49 C.F.R. Part 24, all programs in the PRDOH CDBG-MIT portfolio, including the MSC Program, are subject to URA regulations.

Generally, URA regulations have different requirements for voluntary and involuntary acquisition. Voluntary acquisitions are those carried out with no use or threat of eminent domain (condemnation).⁴⁹ Involuntary acquisitions are those that do not meet the Voluntary Acquisition requirements and are initiated with the use of eminent domain.

The requirements and the process for carrying out any involuntary acquisition of real estate with CDBG-MIT funds are outlined in the Acquisition Requirements section of the PRDOH Uniform Relocation Assistance Guide and Residential Anti-Displacement and Relocation Assistance Plan (**URA and ADP Guide**).

For more information, refer to the URA and ADP Guide available in English and Spanish at: <https://www.CDBG-DR.pr.gov/en/download/ura-adp-guidelines/> and <https://www.CDBG-DR.pr.gov/download/guias-ura-adp/>.

14.1 Eminent Domain

Eminent domain is the authority of government to acquire citizens' private property for public use.⁵⁰ Exercising the power of eminent domain includes the following limitations: (i) properties must be taken for public use, and (ii) just compensation must be paid to the owner. As provided in 84 FR 45838, 45869, "public use" shall not be construed to include economic development activities primarily benefiting private entities. In addition, the Constitution of the Commonwealth of Puerto Rico, Article II, section 9, states that "private property shall not be taken or damaged for public use except upon payment of just compensation and in the manner provided by law."

⁴⁹ 49 C.F.R. § 24.101 (b) (1) through (5).

⁵⁰ U.S. Const. Amend. V. Provides that the government may only exercise the power of eminent domain if they provide just compensation to the property owners. For more information about the steps of Eminent Domain, refer to the Involuntary Acquisition section of the PRDOH URA & ADP Guide available in English and Spanish at <https://cdbq-dr.pr.gov/en/download/ura-adp-guidelines/> and <https://cdbq-dr.pr.gov/download/guias-ura-adp/>.

Pursuant to Act No. 97 of June 10, 1972, as amended, known as the "Organic Act of the Department of Housing", 3 L.P.R.A. § 441 *et seq.*, PRDOH has authority to exercise eminent domain. Likewise, Act No. 107-2020, known as the "Municipal Code of Puerto Rico", 21 L.P.R.A. § 7101 *et seq.*, grants eminent domain authority to municipalities.⁵¹

Per the Expropriation Act of Puerto Rico of March 12, 1903, 32 L.P.R.A. § 2901 *et seq.*, governmental agencies and municipalities must file a petition in Court to exercise their power of eminent domain. Such proceedings shall be conducted in accordance with the provisions of Rule 58 of the Puerto Rico Rules of Civil Procedure, as applicable.⁵² Rule 58 requires the petition to be filed along with certain documents, including a description of the property, a Property Registry Certification, measurements, an appraisal, as well as a description or narrative of the intended public use. It is also required the judicial consignment of the amount of money estimated to constitute just compensation. According to the Municipal Code of Puerto Rico, City Councils must approve a Municipal Resolution ("Ordenanza Municipal") declaring the public use to be pursued with the eminent domain.⁵³

There are multiple considerations the acquiring agency should contemplate before exercising the power of eminent domain. The threat of eminent domain may be used by the acquiring agency during involuntary acquisitions. Involuntary acquisitions are those that do not meet the Voluntary Acquisition requirements (See the Voluntary Acquisition section from the URA and ADP Guide) and are initiated using the threat or use of eminent domain. Involuntary acquisitions are subject to the provisions of 49 C.F.R. Part 24, Subpart B.

15 End Use of Real Property

Except as provided by Federal statutes or the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed. During that time, the non-Federal entity must not dispose of or encumber its title or other interests.

Disposition, for purposes of this section, refers to the sale, lease, donation, or otherwise of any real property acquired pursuant to HCDA, or its retention for public purposes. It includes the costs incurred by PRDOH to restrict the use of the land as required under applicable Program Guidelines and CDBG-MIT requirements.⁵⁴

16 Duplication of Benefits (DOB)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988 (**Stafford Act**), as amended, 42 U.S.C. §5121 *et seq.*, prohibits any person, business concern, or other

⁵¹ For more information about the eminent domain in Puerto Rico, see the Eminent Domain Act of March 12, 1903, 32 L.P.R.A. §§ 2901 - 2913.

⁵² 32 L.P.R.A. Ap. V, R. 58.1.

⁵³ Municipalities that will acquire properties with CDBG-DR/MIT funds with eminent domain will have to provide documentation to PRDOH about said public use declaration, along with all other documents filed in Court.

⁵⁴ See <https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-2.pdf>.

entity from receiving Federal funds for any part of such loss as to which he/she has 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.

The Program will review any duplication of benefits according to the CDBG-DR Duplication of Benefits Policy, which can be found in English and in Spanish at <https://cdbg-dr.pr.gov/en/download/duplication-of-benefits-policy/> and <https://cdbg-dr.pr.gov/download/politica-sobre-la-duplicacion-de-beneficios/>.

16.1 HUD Continuum of Care Program

This section applies to those entities that currently receive Continuum of Care (**CoC**) Program funding in Puerto Rico⁵⁵ and are adhering to the CoC components and types of assistance.⁵⁶

CDBG-MIT funds must *not* duplicate or supplant funds provided by the HUD CoC Program.⁵⁷ As outlined within the guidelines, the Program will provide funding for housing unit construction or rehabilitation, and potentially in combination with—and not exclusively—some portion of supportive services. The supportive services funding is *not* required, and to a feasible extent, should be funded by the CoC or other funding services.

Under this section, a “project” means any activity or series of activities assisted with CoC funds (either received or anticipated) in any phase of a project’s undertaking. Projects may *not* require CoC program participants to relocate temporarily if —upon project completion and under reasonable terms and conditions— they cannot be offered a decent, safe, and sanitary unit in the same building or housing complex.⁵⁸

17 Environmental Review

Environmental review is the process of reviewing a project intent and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. Every project undertaken with Federal funds, and all activities associates with such project, are subject to the provisions of the National Environmental Policy Act of 1969 (**NEPA**), 42 U.S.C. § 4231 *et seq.*, as well as the HUD environmental review regulations at 24 C.F.R. § 58 on Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. Therefore, an environmental review process is required for all awards to be issued under the Program to ensure that the proposed

⁵⁵ See [Fiscal Year 2019 CoC program funds in Puerto Rico](#).

⁵⁶ As outlined in 24 C.F.R sec. 578.37. See [24 CFR § 578.37 - Program components and uses of assistance](#).

⁵⁷ See [HUD Continuum of Care Program](#).

⁵⁸ Other requirements and conditions may apply under § 578.83, as well. If an MSC Program project involves an existing housing project that is assisted under Title IV of the McKinney-Vento Act,⁵⁸ then the requirements under 24 C.F.R. § 578.83 regarding displacement, relocation, and acquisition will apply.

activities do not negatively impact the surrounding environment and that the property itself will not have an adverse environmental or health effect on end users.

Specifically, 24 C.F.R. § 58.22 on limitations on activities pending clearance, prohibits the commitment or spending federal or non-federal funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environmental review. Environmental clearance must be obtained for each project prior to the commitment of Federal or non-federal funds. A violation of this requirement may jeopardize Federal funding for the Program and disallow all costs that were incurred before completion of the environmental review.

No work may start on a proposed project before the environmental review process is completed, even if that work is being done using non-HUD funds, such as signing a construction contract, etc. Specifically, environmental clearance must be obtained for each project prior to the commitment of federal or non-federal funds.⁵⁹ All program recipients must comply with all applicable Federal, State, and local environmental laws and regulations.

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

- Protection of Historic Properties (36 C.F.R. Part 800);
- Floodplain Management and Protection of Wetlands (24 C.F.R. Part 55, Executive Order 11988, and Executive Order 11990);
- Sections 307 (c) and (d) of the Coastal Zone Management Act of 1972 (**CZMA**), as amended, 16 U.S.C. § 1456, *et seq.*;
- Sole Source Aquifers (40 C.F.R. Part 149);
- Interagency Cooperation - Endangered Species Act of 1973, as amended (50 C.F.R. Part 402);
- Section 7 (b)(c) of the Wild and Scenic Rivers Act of 1968 (**WSRA**), as amended, 16 U.S.C. § 1278, *et seq.*;
- Air quality provisions as found in Sections 176 (c) and (d) of the Clean Air Act, as amended, 42 U.S.C. § 7506, *et seq.* and in Title 40 of the Code of Federal Regulations (40 C.F.R. Parts 6, 51, and 93);
- Farmland Protection Policy Act (**FPPA**) 7 U.S.C. § 4201 *et seq.*, implementing regulations 7 C.F.R. Part 658, of the Agriculture and Food Act of 1981, as amended;
- Environmental Criteria and Standards;
- Noise Abatement and Control (24 C.F.R. §§ 51.100 - 51.106)
- Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature (24 C.F.R. §§ 51.200 - 51.208)

⁵⁹ 24 C.F.R. § 58.22.

- Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields (24 C.F.R. § 51 §§ 51.300 - 51.305)
- Toxic/Hazardous Materials (24 C.F.R. § 58.5(i)(2)(i));
- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898 signed on 1994).

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 existence of negative impacts on a site, (b) the means to mitigate negative impacts, (c) alternatives to the project (if needed), and (d) the rejection of the proposed activities if all other options fail and it becomes the most prudent action to take. For more information on Environmental Review, please refer to the Cross-Cutting Guidelines available in English and Spanish on the PRDOH website at <https://cdbg-dr.pr.gov/en/download/cross-cutting-guidelines/> and <https://cdbg-dr.pr.gov/download/guias-intersectoriales/>.

Environmental reviews for the MSC Program will be conducted by PRDOH or PRDOH contractors as part of the Community Relocation Project Proposals Evaluation.

17.1 Level of Environmental 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 three (3) major environmental classifications for projects and their descriptions are as follows.

17.1.1 Exempt Activities

Exempt Activities are activities which, by their nature, are highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. If a project is determined to be exempt, the Program must document in writing that the project is exempt and meets the conditions for exemption spelled in 24 C.F.R. § 58.34. In addition to making the written determination of exemption, the Program must also determine whether any of the requirements of 24 C.F.R. § 58.6 are applicable and address as appropriate.

17.1.2 Categorically Excluded Activities

Categorically Excluded Activities are activities for which no Environmental Impact Statement or Finding of No Significant Impact (**FONSI**) under NEPA is required. The activities are divided into those that are and those that are not subject to related laws and authorities at 24 C.F.R. § 58.5.

Examples of categorically excluded activities not subject to related laws and authorities under 24 C.F.R. § 58.5 include: tenant based rental assistance; supportive services; operating costs; economic development activities; activities to assist homebuyers to purchase existing dwelling units or units under construction; and affordable housing predevelopment costs with no physical impact. To complete environmental requirements for categorically excluded activities not subject to 24 C.F.R. § 58.5, the Program must make a finding of categorical exclusion and include such finding in the 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. In any case, environmental compliance is required for the items listed in 24 C.F.R. § 58.6.

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

The documentation must support 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 Notice of Intent to Request Release of Funds must be posted. 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.

17.1.3 Activities Requiring an Environmental Assessment

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

that significantly affects the quality of the human environment and, therefore, requires the preparation of an Environmental Impact Statement.

If it is determined that the action does not significantly affect the quality of the environment, then the Program will post a public notice called a Combined/Concurrent Notice of **FONSI** and Notice of Intent to Request Release of Funds (**NOI/RROF**). The NOI/RROF Environmental Certification must be submitted to HUD no sooner than **fifteen (15) days** after publishing the combined/concurrent notice NOI/RROF and FONSI and HUD will hold the Release of Funds for a **fifteen (15) day** period to allow for public comments on the RROF. If no comments are received, during this time, HUD will send a signed Authorization to Use Grant Funds and the project may proceed.

17.2 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, which as defined by FEMA includes areas that have a 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 likely altered, as a result of the large storm event. The alterations are referred to as advisories and their implementation ensures that the latest flood hazards are correctly depicted within the region. Shortly after Hurricane Maria, the FIRM/PFIRM updated the Advisory Base Flood Elevations (**ABFE**) which was then adopted by the OGPe and the Puerto Rico Planning Board. While FEMA ABFE maps have more stringent parameters for floodplain determination, they are not used for flood insurance rates, as NFIP still determines those. When FEMA provides ABFE maps or PFIRMs and studies, HUD or the responsible entity must use the latest of these sources unless the ABFE or PFIRM allow a lower Base Flood Elevation (**BFE**) than the current FIRM and Flood Insurance Study (**FIS**).

17.3 Tiered Environmental Review

To streamline the environmental review process and prevent duplication of efforts, the Program will use a tiered approach for environmental compliance. A tiered approach is appropriate when a specific type of activity that will take place in several locations, will serve the same function, and will have the same level of environmental impact regardless of the location where it is to be implemented. The tiered approach has two (2) parts: the broad environmental review that focuses on a targeted geographic area (the Tier 1), and the unspecified site review (the exact physical location of the project not presently known) (the Tier 2).

The Tier 1 review will address and analyze those environmental impacts related to the proposed action that might occur on a typical site within the geographic area (e.g., floodplain, coastal zone, wetlands, aboveground storage tanks, etc.). The Tier 2 review will identify those environmental impacts that will vary by site and may only be observed

when specific project locations are known (e.g., historic preservation, hazardous materials, noise abatement, asbestos removal, etc.)

The components of the Tier 1 review will include all the following:

- A clear statement of all the related activities and funding sources;
- Identification of the targeted geographic area;
- Identification and evaluation of the environmental factors and effects which can be decided upon immediately;
- Publishing and dissemination notice for entire action;
- Submission of a Request for Release of Funds and Certification for the entire action;
- HUD approval of the Tier 1 Review; and
- Documentation of compliance with "Other Requirements" set forth at 24 C.F.R. §58.6.

The Tier 2 review will include specific written strategies for addressing the environmental effects that can only be determined when specific sites become known (i.e., site acceptability criteria and standards-including mitigation measures, historic preservation, archeological preservation, airport clear zones, explosive and flammable operations, toxic/hazardous/radioactive materials, contamination, chemicals, or gases).

Tier 2 reviews will not require notices or approval from HUD, unless it is determined that there are unanticipated impacts or impacts not adequately addressed in the prior tiered review. There must be written documentation of compliance before funds are committed to specific sites. If any project deviates from the tiered review -and the approved site-specific compliance strategies- then separate environmental reviews must be prepared for those projects.

Tiered reviews for the Program will be valid for up to **five (5) years** unless conditions or circumstances change. To be certain that conditions or circumstances have not changed, the Program will assess the tiered Environmental Review, at least once a year, to ensure the scope of the target area has not changed, the list of activities evaluated for environmental impacts has not changed, and the information contained in the tiered environmental review is still current and relevant to the environmental findings that were made.

Tier 1 reports for the Program will be available in English and Spanish at <https://cdbg-dr.pr.gov/> and <https://cdbg-dr.pr.gov/en/>.

17.4 Environmental Review for Eminent Domain

Environmental Review requirements are applicable to eminent domain, as it is a type of acquisition. Municipalities will have to complete the Environmental Review before filing the case in the Court.⁶⁰

⁶⁰ For more information on eminent domain in Puerto Rico, refer to the Eminent Domain Section of these Guidelines.

17.5 Lead Hazard Assessments

Lead is a highly toxic metal that may cause a range of health problems, especially on young children. When lead is absorbed into the body, it can cause damage to the brain and other vital organs, such as the kidneys, nerves, and blood. Both inside and outside the home, deteriorated lead-paint mixes with household dust and soil and becomes introduced to the home. Children may become lead poisoned by touching or putting lead-contaminated objects in their mouths, eating paint chips found in homes with peeling or flaking lead-based paint, or playing in lead-contaminated soil.

Most of the lead found in homes comes from lead-based paint, which was used in homes built before 1978. When old paint cracks and chips, it creates lead dust. Often, the dust is so small that it cannot even be seen. Lead poisoning is most often caused by swallowing or breathing in lead dust by accident. Lead can also be found in other places within a home. Sometimes lead can be found in water that travels through lead pipes or in soil.

Whenever federal funds, such as CDBG-MIT funds, 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 comply with provisions for lead reduction found at 24 C.F.R. § 35- Lead-Based Paint Poisoning Prevention in Certain Residential Structures.

Lead hazard assessments are on-site investigations to determine the existence, nature, severity, and location of lead-based paint hazards accompanied by a report explaining the results and options for reducing lead-based paint hazards, see 40 C.F.R. § 745.227(d)(11) for report guidelines. All lead hazard assessments for the Program will be performed by Risk Assessors or Lead-Based Paint Inspectors certified by the U.S. Environmental Protection Agency (**EPA**) or the Department of Natural and Environmental Resources (**DRNA**, for its Spanish acronym).

Lead hazard assessments for the Program will cover:

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

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

The lead hazard assessment will entail:

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

The Program will pursue the testing of paint with X-ray fluorescence (**XRF**) analyzers but sometimes the collection of paint chip samples may be required. Environmental samples will be sent to a certified laboratory for analysis of lead in paint, dust, or soil, as applicable.

When the lab results or XRF measurements are received, the Risk Assessor or Lead-Based Paint Inspector will review and analyze the data, including visual assessment results, environmental sampling results, among others. The Risk Assessor will then draft the report identifying lead-based paint hazards and acceptable lead hazard reduction options. Lead hazard reduction options must include abatement of all identified lead hazards.

17.6 Asbestos Surveys

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

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

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

The National Emission Standards for Hazardous Air Pollutants (**NESHAP**) regulations under the Clean Air Act specify work practices for asbestos to be followed during demolitions and renovations of all structures, installations, and buildings. The regulations require notification to the pertinent State agency before any demolition, or before any renovations of buildings that could contain a certain threshold amount of asbestos or asbestos-containing material. Therefore, the Program must perform an asbestos survey before conducting any repair/retrofit or 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 the EPA or the DRNA. The asbestos surveys will visually review all suspect asbestos-containing materials associated with the buildings' interior and will collect samples for laboratory analysis.

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

18 Civil Rights and Non-Discrimination

CDBG-MIT Programs shall be implemented in a manner that does not deny any individuals the opportunity to participate in, access, or benefit from the Program on a discriminatory basis of any federally or locally designated protected classes. Funded activities shall be designed and implemented in a manner that avoids disproportionate negative impacts on protected classes of people and vulnerable communities, as well as creates opportunities to address economic inequities facing communities. PRDOH has adopted several policies to which it, its Subrecipients, and all contractors must adhere in the design and implementation of the Program and funded projects.⁶¹

18.1 Fair Housing and Equal Opportunity

The Fair Housing Act (FHA), 42 U.S.C. §3601 *et seq.*, prohibits discrimination in the sale, rental, and financing of housing, and in other housing-related activities based on race, color, religion, sex, familial status⁶², national origin or disabilities. The Act requires HUD and its grantees to administer its programs in a manner that affirmatively furthers fair housing.

In compliance with the FHA as well as other applicable laws,⁶³ the Program implementation will be conducted avoiding discrimination and/or discriminatory

⁶¹ CDBG-MIT Program policies are available in English and Spanish on the PRDOH website at <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>

⁶² Exceptions exist for housing covered under the Housing for Older Persons Act of 1995, 42 U.S.C. § 3607(b).

⁶³ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d) *et seq.*; • Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act), 42 U.S.C. § 3601 *et seq.*; • Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.*; • Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*; • Section 109 of the Housing and Community Development Act of 1974 (HCDA), as amended, 42 U.S.C. § 5309; • Housing for Older Persons Act of 1995 (HOPA), Pub. L. 104-76; • Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*; CDBG-DR Program Fair Housing and Equal Opportunity for All Programs July 29, 2020 (V.1) Page 20 / 40 • Executive Order No. 11063 (1962), Federal Register, Vol. 27, No. 228, p.11527, 27 FR 11527 (November 24, 1962); • General HUD Program Requirements: Equal Access to HUD-assisted or Insured Housing (24 C.F.R. § 5.106) • Act No. 131 of May 13, 1943, 1 LPR § 13, known as the "Puerto Rico Civil Rights Act" – Discrimination in Public Places, Businesses, Transportation, and Housing • Act No. 238-2004, as amended, 1 LPR § 512(a), known as the "Bill of Rights of Persons with Disabilities" • Constitution of the Commonwealth of Puerto Rico-1952, 1 LPR Constitution of the Commonwealth of Puerto Rico • Act. No. 44 of July 2, 1985, as amended, 1 LPR § 501 *et seq.*, known as the "Act to Prohibit Discrimination Against People with Physical, Mental, or Sensory Impairments" • Act No. 22-2013, Law to Prohibit Discrimination for Sexual Orientation and Gender Identity.

practices to the extent that no person be excluded from participation in; denied Program benefits of; or be subjected to discrimination under any Program or activity receiving CDBG-MIT funds on the basis of race, color, national origin, religion, sex, age, disability, familial status, sexual orientation (in employment and in HUD-funded or insured housing programs) or marital status (in HUD-funded or insured housing programs). Additionally, the Program will ensure that all activities are conducted in a manner that will affirmatively further fair housing.

The FHEO Policy and all CDBG-DR/MIT General Policies are available in English and Spanish on the PRDOH website at: <https://www.cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

18.2 Reasonable Accommodation Policy

Additional modifications to increase accessibility for Program beneficiaries and/or household members who have access and functional needs, is an allowable part of the repair/retrofit, reconstruction, or relocation assistance provided by the Program. Eligible beneficiaries who have a household member with a disability may submit a Reasonable Accommodation and Modification Request Form (**RA/RM**) to indicate any accessibility accommodations needed to meet their disability-related needs.

Each RA/RM will be handled and evaluated in accordance with the PRDOH Reasonable Accommodation Policy. If the RA/RM is approved, the beneficiary will be provided with accessibility options. The costs associated with reasonable accommodations may be considered in addition to the Program caps and evaluated for cost reasonableness.

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

18.3 Section 3

Section 3 regulations at 24 C.F.R. Part 75 and 84 FR 45838 require that Recipients, Awardees, Contractors, Subcontractors, and/or Developers funded in whole or in part by CDBG-DR/MIT funding, to the greatest extent feasible, extend hiring opportunities and contracts to Section 3 eligible persons and business concerns. The implementation of this provision is intended to ensure employment and other economic opportunities generated by CDBG-DR/MIT funding.

Provisions, including reporting requirements, apply to Section 3 projects receiving more than \$200,000 of CDBG-DR/MIT assistance, or more than \$100,000 in cases of designated Lead Hazard projects.

The PRDOH Section 3 Policy and all CDBG-DR/MIT General Policies are available in English and Spanish on the PRDOH website at:

<https://www.cdbgdr.pr.gov/en/resources/policies/general-policies/> and
<https://www.cdbgdr.pr.gov/recursos/politicas/politicas-generales/>.

18.4 Language Access

PRDOH and 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 SIH Program beneficiaries in accordance with the LAP.

The LAP and all CDBG-DR Program policies are available in English and Spanish on PRDOH website at <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

19 Procurement Processes

All procurement transactions undertaken by PRDOH for work to be funded by CDBG-MIT must be conducted in a manner providing full and open competition. Objective performances must be ensured, and unfair competitive advantages must be avoided (i.e., a contractor involved in the development of a procurement cannot compete for any such procurement). Refer to the Procurement Manual for the CDBG-DR Program for detailed requirements.⁶⁴

Consistent with federal standards, PRDOH adopted the Procurement Manual for the CDBG-DR Program, Regulation No. 9205, effective on September 3, 2020.⁶⁵ The document is available in English and Spanish on PRDOH website at: <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

20 Monitoring

PRDOH is required by regulations and Grant Agreement conditions to monitor each CDBG-MIT funded Program function or activity—including activities carried out by Subrecipients, contractors, and PRDOH vendors—to ensure compliance with applicable federal requirements and to determine achievement of performance expectations.⁶⁶

21 Program Closeout

⁶⁴ See Procurement Manual for the CDBG-DR Program in English and Spanish at: <https://cdbg-dr.pr.gov/en/download/procurement-manual-cdbg-dr-program/> and <https://cdbg-dr.pr.gov/download/manual-de-adquisiciones-programa-cdbg-dr/>.

⁶⁵ Procurement Manual for the CDBG-DR Program, Regulation 9205, is currently under review.

⁶⁶ The PRDOH Monitoring Manual is available in English and Spanish: <https://cdbg-dr.pr.gov/en/download/monitoring-manual/> and <https://cdbg-dr.pr.gov/download/manual-de-monitoreo/>.

Program closeout is the process by which PRDOH determines if the program has been successfully completed by Subrecipients. A program is deemed complete upon PRDOH's final review and/or inspection, and as applicable, by submitting proof of having met performance milestones and the agreed-upon performance indicators.

General requirements for closeout are as follows:

- All milestones have been met and deliverables submitted, each in accordance with Program requirements;
- All required forms and reports have been duly completed and executed by the appropriate parties throughout the entirety of the Program;
- All used CDBG-MIT funds have been properly accounted for and reconciled with payments to PRDOH's Contractors and Subrecipients;
- All required construction work permits have been properly closed out with the pertinent governmental entities;
- Other contracts and requirements for closeout have been met, as established in the Subrecipient Agreement.

PRDOH will reach out to the Subrecipients if any additional information is necessary to close out the Program. Once all levels of quality control review are met, the Subrecipients will receive a CDBG-MIT Final Notice, and their individual contracts will be placed in a closeout complete status.⁶⁷

22 Program-Based Reconsideration and/or Administrative Review

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

22.1 Program-Based Reconsideration Request

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

⁶⁷ PRDOH's Closeout Policy is available at: <https://cdbg-dr.pr.gov/download/politica-de-cierre/> (Spanish) and <https://cdbg-dr.pr.gov/en/download/closeout-policy/> (English).

sent beforehand. Program notices will include the electronic and postal information where these will be received, as they may vary.

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

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

Filing a Program-based Reconsideration Request does not substitute, negate, or preclude any legal right that beneficiary has to challenge a determination made by the Program. Therefore, beneficiaries who disagree with the initial determination of the Program may submit, at their discretion, either a Program-based Reconsideration Request or a petition for review of the decision made by the Program by filing an Administrative Review Request at PRDOH in accordance with Regulation Number 4953, of August 19, 1993, which regulates the Formal Adjudication Process for PRDOH and its Adjunct Agencies (Regulation 4953)⁶⁸.

22.2 Administrative Review Request

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

⁶⁸ For more details, you can access Regulation 4953 (in Spanish) at: <https://www.vivienda.pr.gov/wp-content/uploads/2015/09/4953-Reglamenta-los-procedimientos-de-adjudicacion-formal.pdf>

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

23 General Provisions

23.1 Program Guidelines Scope

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

23.2 Program Guidelines Amendments

PRDOH reserves the right to modify the policies established in the guidelines if the Program Guidelines, as written, do not reflect the intended policy or cause procedures to be impracticable, among any other circumstances. If an amended version of the guidelines is approved, the amended version fully supersedes all other previous versions and should be used as the basis for the evaluation of all situations encountered in the implementation and/or continuance of the Program from the date of its issuance, that is, the date that appears on the cover of the guidelines. Each version of the Program Guidelines will contain a detailed version control log that outlines any substantive amendment, inclusions and/or changes.

23.3 Disaster Impacted Areas

As described in the initial Action Plan, and its amendments, the Government of Puerto Rico will use CDBG-MIT funds solely for necessary expenses related to providing resiliency and mitigation measures to reduce the loss of life and property, restoration of housing, infrastructure and economically impacted and distressed areas in Puerto Rico, as identified in disaster declaration numbers DR-4336 and 4339. Through the Federal Register Vol. 84, No. 169 (August 30, 2019), Vol. 85, No. 17 (January 27, 2020), HUD identified that,

for Puerto Rico, all components of the Island are considered "most impacted and distressed" areas. Therefore, the guidelines apply to all 78 municipalities of Puerto Rico.

23.4 Extension of Deadlines

The Program could extend deadlines on a case-by-case basis. The Program may decline to extend a deadline if such extension will jeopardize the Program's completion schedule or the schedule of an individual construction project. The aforementioned strictly applies to Program deadlines or established Program terms. Under no circumstance(s) does the faculty to extend deadlines apply to the established terms of time in the guidelines or any applicable federal or state law or regulation, or to the terms of times established in the guidelines to request a Program-based Reconsideration, administrative review and/or judicial review.

23.5 Established Periods of Time

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

23.6 Written Notifications

All determinations made by the Program will be notified in writing by certified mail and email (if available). If an applicant believes that any determination was made without being written, the applicant may request that such decision be made in writing and duly substantiated.

23.7 Conflict of Interest

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

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

1. HUD conflict of interest regulations, 24 C.F.R. §570.611;
2. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 at § 200.112 and §200.318 (c)(1);
3. Puerto Rico Department of Housing Organic Act, Act No. 97 of June 10, 1972, as amended, 3 L.P.R.A. § 441 *et seq.*;
4. The Anti-Corruption Code for the New Puerto Rico, Act No. 2-2018, as amended, 3 L.P.R.A. § 1881 *et seq.*; and
5. The Puerto Rico Government Ethics Act of 2011, Act No.1-2012, as amended, 3 L.P.R.A. § 1854 *et seq.*

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

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

Such conflicts of interests will not be tolerated by PRDOH. Program officials, their employees, agents and/or designees are subject to state ethic laws and regulations, including, but not limited to Puerto Rico Government Ethics Act of 2011, Act No. 1-2012, as amended, in regard to their conduct in the administration, granting of awards and Program activities.

According to Act No. 1-2012, no public servant shall intervene, either directly or indirectly, in any matter in which they have a conflict of interests that may result in their benefit. No public servant shall intervene, directly or indirectly, in any matter in which any member of their family unit, relative, partner or housemate has a conflict of interest that may result in benefit for any of the abovementioned. In the case that any of the abovementioned relationships have ended during the **two (2) years** preceding the appointment of the public servant, they shall not intervene, either directly or indirectly, in any matter related to them until **two (2) years** have elapsed after their appointment. This prohibition shall remain in effect insofar 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 the guidelines. PRDOH Program officials, their employees, agents and/or designees should disclose their relationship with PRDOH at the time of application.

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

23.8 Citizen Participation

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

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

- **Via phone:** 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)
Attention hours Monday through Friday from 8:00am-5:00pm
- **Via email at:** infoCDBG@vivienda.pr.gov
- **Online at:** <https://www.cdbg-dr.pr.gov/en/contact/> (English)
<https://www.cdbg-dr.pr.gov/contact/> (Spanish)
- **In writing at:** 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://www.cdbg-dr.pr.gov/en/citizenparticipation> and <https://www.cdbg-dr.pr.gov/participacion-ciudadana/>. For more information on how to contact PRDOH, please refer to <https://www.cdbg-dr.pr.gov>

23.9 Citizen Complaints

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

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

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

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

- Via telephone*: 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)
- In-person at*: PRDOH Main Offices or Program-Specific Intake Centers

*Attention hours: Monday – Friday from 8:00 a.m. to 5:00 p.m.⁶⁹

The Citizen Complaints Policy and all CDBG-MIT Program policies are available in English and Spanish on the PRDOH website <https://cdbg-dr.pr.gov/en/download/citizen-complaints-policy/> and <https://cdbg-dr.pr.gov/download/politica-sobre-presentacion-de-quejas/>.

23.10 Anti-Fraud, Waste, Abuse or Mismanagement

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

Pursuant to 83 FR 40314, 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 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-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

⁶⁹ Hours may vary due to COVID-19. PRDOH recommends calling ahead prior to arrival to corroborate.

mismanagement of CDBG-MIT funds. This Policy applies to any allegations or irregularities, either known or suspected, that could be considered acts of fraud, waste, abuse, or mismanagement, involving any citizen, previous, current, or potential applicant, beneficiary, consultant, contractor, employee, partner, provider, subrecipient, supplier, and/or vendor under the CDBG-MIT Program.

REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT TO PRDOH CDBG-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	Fill out the AFWAM Submission Form available in English and Spanish at https://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud and https://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud
In person	Request a meeting with the Deputy Audit Director of the CDBG-MIT Internal Audit Office located at PRDOH's Main Offices at 606 Barbosa Avenue, Building Juan C. Cordero Davila, Río Piedras, PR 00918.

REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT DIRECTLY TO HUD OIG	
HUD OIG Hotline	1-800-347-3735 (Toll-Free) 787-766-5868 (Spanish)
Postal Mail	HUD Office of Inspector General (OIG) 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-MIT Program policies are available in English and Spanish on the PRDOH website at <https://cdbg-dr.pr.gov/en/download/afwam-policy/> and <https://cdbg-dr.pr.gov/download/politica-afwam/>

23.11 Related Laws and Regulations

These guidelines refer as to how the provisions of certain laws apply to the Program. However, other related laws may exist which are not included in the Guidelines. This does not negate or preclude the Program from applying the provisions of those laws, nor an Applicant from receiving services, when applicable. Moreover, PRDOH can enact, or may have enacted, regulations that address how the laws mentioned in the guidelines are managed. If there are any discrepancies between the guidelines and the laws and/or regulations mentioned in them, then the latter will prevail over the guidelines. If at

any time the laws and/or the applicable regulations mentioned in the guidelines are amended, the new provisions will apply to the Program without the need to amend the guidelines.

23.12 Cross-Cutting Guidelines

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

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

24 Program Oversight

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

25 Severability Clause

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

Appendix A: Eligible Project Types

Eligible Project Types	
Single Family Housing Structures	Property Owners
	Renters (displaced renters are entitled to relocation assistance under URA)
	Property Types <ul style="list-style-type: none"> • Single family homes • Duplex
Multifamily Housing Structures	Property Owner Multifamily property owners seeking funding assistance must meet eligibility requirements to prove: <ul style="list-style-type: none"> • Ownership of the building • Must pass underwriting • Must pass a capacity assessment
	Renters When a multifamily project is included as part of the community strategy, community renters will be offered housing options within the rehabilitated or newly developed building. Displaced renters will be eligible for relocation assistance as required by URA.
	Properties must comply with the following: <ul style="list-style-type: none"> • A number of units proportional to the LMI percentage of residents that are rehabilitated or developed must comply with a 20-year affordability period which ensures LMI households earning 80% or less of the AMFI can maintain affordable rents. • All units to be occupied by LMI households must have similar finishes and access to the same amenities as any market rate (non-LMI) units. • New housing construction and replacement of substantially damaged buildings must include compliance with ONE of the following green building standards: <ol style="list-style-type: none"> a. ENERGY STAR (Certified Homes or Multifamily High-Rise); b. Enterprise Green Communities; c. LEED (New Construction, Homes, Midrise, Existing Building Operations and Maintenance, or Neighborhood Development); or d. ICC-700 National Green Building Standard. • Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with more than four (4) rental units must include installation of broadband infrastructure.⁷⁰

⁷⁰ Except where the grantee documents that: (a) the location of the new construction or substantial rehabilitation makes installation of broadband infrastructure unfeasible; (b) the cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or (c) the structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure unfeasible. For the purposes of this program broadband service can either be hardwired or wireless, but it must be provided at 25 Mbps down and 3 Mbps up.

	<ul style="list-style-type: none"> • Any new construction or substantial rehabilitation, as defined by 24 CFR 5.100, of a building with eight (8) or more rental units is subject to the requirements of the Davis-Bacon and Related Acts.⁷¹
Public Facilities	<p>Property Types and eligible activities for public facilities projects include, but are not limited to:</p> <ul style="list-style-type: none"> • Acquisition, construction, renovation, rehabilitation, or other improvement of a property; • Construction costs and other infrastructure improvements related to a project; • Soft costs related to an eligible construction project including, but not limited to, architectural, engineering, permits, surveying, and overhead and profit margins of construction costs.⁷² • Public infrastructure extension and/or improvements; • Clearance, demolition, and removal; • Undertakings that support community lifelines; • Non-federal share payment; • Clearance of environmental contamination.
Businesses	<ul style="list-style-type: none"> • Businesses displaced by community activities will be eligible for assistance as required under URA. • Relocation of businesses and business development.

⁷¹ 24 CFR § 570.603 Labor standards. (a) Section 110(a) of the Act contains labor standards that apply to nonvolunteer labor financed in whole or in part with assistance received under the Act. In accordance with section 110(a) of the Act, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than eight (8) units.

⁷² Architects and engineers must be licensed, to practice in Puerto Rico to design in accordance with PRDOH and HUD standards, as well as all applicable local codes and regulations.