



DEPARTMENT OF
HOUSING



CDBG-DR PROGRAM GUIDELINES

NON-FEDERAL MATCH PROGRAM

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PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR PROGRAM GUIDELINES
NON-FEDERAL MATCH PROGRAM
VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	September 11, 2019	Original Version
2	December 10, 2020	<p>Major revisions to streamline the whole document and consolidate information and to further explain CDBG-specific items, as well as provide details about the application review and award processes. The changes are not marked, as this copy replaces the original in its entirety.</p> <p>As per Action Plan Amendment 3, effective on February 24, 2020, the program name changed from FEMA Coordination to Non-Federal Match Program.</p>
3	June 16, 2021	<p>Added Section 4.1.1 Faith Based Organizations. Changes made to the Procurement section to include language from new Administrative Order 21-19 and 21-28. Changes to the Cross-Cutting Guidelines section, Program-based Reconsideration and Administrative Review, and General Provisions sections. Edits are highlighted in grey for ease of reference.</p>

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1 Overview

On September 2017, Hurricanes Irma and María made landfall in Puerto Rico causing catastrophic island wide damage, knocking out power, water, and telecommunications for the entire island and its island municipalities. Hurricane María caused major structure and infrastructure damage to family homes, businesses and government facilities triggering the displacement of thousands of residents of the Island from their homes and jobs. Recognizing the devastation caused by both events, Congress appropriated federal recovery funding through the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant – Disaster Recovery (CDBG-DR) program. As part of the Government of Puerto Rico's published CDBG-DR Action Plan¹, and any substantial amendments, the Puerto Rico Department of Housing (PRDOH), the administering agency for CDBG-DR funds, has established the Non-Federal Match Program (the **NFM Program and/or Program**) to accelerate recovery from Hurricanes Irma and María by leveraging CDBG-DR funds to meet the Island's Non-Federal cost-share requirements for federal grant programs.

This Program is designed to assist state agencies, public entities, local non-profit organizations, and other eligible entities by leveraging CDBG-DR funds with Federal Emergency Management Agency (FEMA) resources to maximize and ensure recovery efforts. The use of CDBG-DR funds to cover the required Non-Federal share, or local match, will ease the fiscal strain for communities struggling to recover from the catastrophic events of Hurricanes Irma and María.

In this Program, PRDOH will use CDBG-DR funds to match the required Non-Federal cost share match portion of FEMA-eligible Project Worksheets (PWs). CDBG-DR funds may not be used to expand a project beyond what is approved by FEMA in a PW. Additionally, the project must implement a CDBG-eligible activity and meet a HUD national objective. The project must also comply with all applicable rules and regulations, to include Davis-Bacon and Related Acts, Section 3, Section 504, 2 C.F.R. 200.318-200.326 Procurement Standards as validated by FEMA, Environmental Review, CDBG-DR Cross-Cutting Guidelines and applicable local statutes, rules, and regulations. All Program payments will be reimbursed based on actual costs incurred.

2 National Objective

All projects funded in whole or in part by CDBG-DR must meet a HUD eligible activity as defined by the Code of Federal Regulations, 24 CFR § 570.483. To ensure the eligibility of all NFM Program projects using CDBG-DR funds as the Non-Federal Cost Share, program records must demonstrate that funded activities meet one of the national objectives required by HUD CDBG-DR as defined by the Code of Federal Regulations, 24 C.F.R. §

¹ The Action Plan, as amended, can be found in English and Spanish at the CDBG-DR website, <https://www.cdbg-dr.pr.gov/en/action-plan> and <https://www.cdbg-dr.pr.gov/plan-de-accion/>.

570.483 and detailed in HUD's Guide to National Objectives and Eligible Activities for State CDBG Programs². Given that the Program will use CDBG-DR funds as a match to address the wide range of recovery projects that FEMA funds, PRDOH expects that all three (3) HUD national objectives apply in this Program:

- Benefit to low- and moderate-income persons (LMI) (24 C.F.R. § 570.483(b));
 - LMI- Area Benefit
 - LMI- Housing
 - LMI- Limited Population
- Aid in prevention or elimination of Slums or Blight (SB) (24 C.F.R. § 570.483(c)), and
- Urgent Need (UN) activities (24 C.F.R. § 570.483(d))

The types of records to be maintained for each CDBG-DR funded activity depend on the national objective category for which they qualify. The national objectives most likely to be used under the Non-Federal Match Program include LMI and Urgent need activities. **To satisfy HUD requirements placed on these disaster funds, PRDOH will make reasonable efforts to meet the low-to-moderate income benefit national objective, wherever possible.**

CDBG-DR regulations state that a project is not considered as meeting a national objective until the project is complete. However, once a FEMA-funded project enters the selection process and begins to be reviewed by the Program, PRDOH will need to assess and determine that it will meet a national objective before funding is approved.

2.1 LMI- Area Benefit

As is required by HUD and shown in the Federal Register at 83 FR 5844, 5855 and the Puerto Rico CDBG-DR Action Plan, as amended, seventy percent (70%) of the total CDBG-DR allocation must be used on projects that benefit LMI persons and communities. PRDOH expects to collaborate with COR3 in implementing a strategic funding approach for permanent reconstruction projects that will include the prioritization of CDBG-DR funding towards LMI areas, whenever possible.

To demonstrate the national objective for each activity which benefits a particular service area, PRDOH will draw upon the best available HUD-approved data. To determine the service area of an activity, PRDOH will analyze the information contained within the FEMA project worksheet to assess the scope, location, and accessibility of the activity. To determine if a project meets the LMI area benefit national objective, PRDOH will define a service area that is appropriate to the scope of the project and use HUD's online census data³ to assess if at least fifty one percent (51%) of beneficiaries in that

² HUD's Guide to National Objectives and Eligible Activities for State CDBG Programs:

<https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/>

³ HUD's online Low- and Moderate-Income Summary Data, based on 2011-2015 ACS, <https://arcc.is/1PS90i>.

service area are LMI persons. Where applicable, for LMI area benefit activities, state and federal data is used to determine whether the areas are primarily residential. **Please note: An activity that serves an area that is not primarily residential in nature shall not qualify under this national objective.**

PRDOH will determine the service area based on an in-depth analysis of the information included in the PWs and by securing additional information from the Entity as needed. PRDOH will consider the following when making a determination regarding the service area:

- **The nature of the activity:** In general, the size and the equipment associated with the activity should be taken into consideration. A small park with a limited number of slides and benches would not be expected to serve a large neighborhood. In the same way, a larger park that can accommodate a considerable number of people would not be expected to serve just the immediately adjacent properties. The same applies to improvements or assistance to an alleyway versus a small two-lane street versus an arterial four-lane street within the same neighborhood. The service area for each of these infrastructure projects will be different in size and population;
- **The location of the activity:** In general, the immediate area surrounding a facility or improvement is expected to be included in the service area. Additionally, when a facility is located near the boundary of a particular block group, its service area could likely include portions of the adjacent block groups as well as the one in which it is located. If the activity's service area overlaps into multiple block groups, the entirety of the data for all block groups may be used;
- **Accessibility issues:** Geographic barriers can separate and preclude persons residing in a nearby area from taking advantage of a facility or improvement. Other limits to accessibility can include access fees, language barriers, time, or duration that an activity is available, access to transportation and parking, etc.;
- **The availability of comparable activities:** Comparable activities within the service area should be taken into account so that the service area does not overlap with the service area of another comparable activity; and
- **Boundaries for facilities and public services:** The service area for some public facilities and services are determined based on specified and established boundaries or districts. Examples of such services and facilities are police precincts, fire stations, and schools.

An area is considered to meet the test of being LMI if there is a sufficiently large percentage (fifty one percent (51%) or more) of LMI persons residing in the service area as determined by:

- The most recently available decennial Census/American Community Survey (**ACS**) information;
- Or a current survey of the residents of the service area if using the ACS data is not appropriate for the specific project

If the area benefit can be used, PRDOH will document this by using the ACS data located on the HUD Exchange website to record:

- A listing of all census tracts and block groups in the community's jurisdiction;
- The number of persons that resided in each such tract/block group at the time of the last census; and
- The percentage of such persons who were LMI at that time. No beneficiary data may be determined using a percentage of a block group.

2.1.1 LMI- Housing

For projects eligible under a FEMA approved project or program that **directly benefit** particular residential populations, documentation to record household income, race and ethnicity data on all residents who receive a direct benefit as a result of the NFM program will be required by PRDOH. All assistance provided that directly benefits low-to-moderate income households shall be categorized as meeting the national objective of LMI housing. Assistance that provides a direct benefit to households earning greater than eighty percent (80%) of the area median income shall be categorized as meeting the national objective of urgent need.

2.1.2 LMI- Limited Population

For projects eligible under a FEMA approved project or program that provide assistance for an activity which benefits a limited population, at least fifty one percent (51%) of whom are low-to-moderate income persons, the entire project or program may be categorized as meeting the national objective of LMI limited persons. In order to qualify under this national objective, the activity must meet one of the following tests and the support documentation in the file must clearly explain and support the methodology used to demonstrate how a project meets one of the following tests:

- Benefit a population who are generally presumed to be principally low- and moderate-income persons. Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, fifty one percent (51%) of whom are low- and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or
- Require information on family size and income so that it is evident that at least fifty one percent (51%) of the population are persons whose family income does not exceed the low- and moderate-income limit; or

- Have income eligibility requirements which limit the activity exclusively to low- and moderate-income persons; or
- Be of such nature and be in such location that it may be concluded that the activity's population will primarily be low- and moderate-income persons.

2.2 Prevention/Elimination of Slums or Blight

The Program will determine a Slum and Blight national objective for an activity where the state or local recipient certifies that the activity is designed to address one or more of the conditions which have contributed to the deterioration of an area designated as a slum or blighted area. The focus of activities under this national objective is a change in the physical environment of a deteriorating area. There are three categories that can be used to qualify activities under this national objective:

- Prevent or eliminate slums and blight on an area basis;
- Prevent or eliminate slum and blight on a spot basis; or
- Be in an urban renewal area.

Within the Program, the approved FEMA PW shall serve as basis of justifying the use of this national objective by the Entity. Additional documentation may be requested on a case-by-case basis.

2.3 Urgent Need

The Program will determine an Urgent Need national objective for an activity where the state or local recipient certifies that the activity is designed to respond to a disaster-related impact and the activity does meet one of the aforementioned national objectives. Within the Program, the approved FEMA PW shall serve as the justification of urgent need by the Entity. For each activity that will meet an urgent need national objective, PRDOH must verify that its Action Plan needs assessment identifies, in general, the type, scale, and location of the disaster-related impacts that each urgent need activity is addressing. As stated above in the HUD National Objectives section, PRDOH will make reasonable efforts to meet the low-to-moderate income benefit national objective, wherever possible. If LMI is not able to be used, urgent need should be considered.

3 Tie to the Disaster

All entities applying to the Program must have been impacted by Hurricanes Irma and/or María to receive assistance. By federal statute, the FEMA PA and IA programs are only used to provide grants in response to disasters. In its system of record, PRDOH will maintain copies of project worksheets that provide detailed narratives of the source and extent of the disaster damage as it relates to each project. The Program may not provide

assistance for activities that: (1) address a need arising **solely from a disaster other than** Hurricanes Irma and/or María; or (2) address a need that has been met in full.⁴

4 Eligible Use of Funds

In order to be eligible for CDBG funding under the NFM Program, the Entity must be eligible to apply, and the project must meet the following criteria:

1. Participate in the FEMA program;
2. Be in compliance with FEMA's program eligibility criteria;
3. Perform a CDBG-DR eligible activity;
4. Meet a HUD national objective; and
5. Have a direct tie back to the declared disaster.

4.1 Eligible Entities

Eligible entities for the NFM Program shall have been deemed as eligible by the Federal Agency providing the federal portion of the cost of the work and are limited to the following:

- Government of Puerto Rico Agencies, Authorities, Trusts and Boards;
- Local and Municipal Governments (including departments and divisions);
- Administrative Agency or Department of the Government of Puerto Rico
- Free-standing local and municipal governments (including libraries, parks, fire departments, first responder facilities, wastewater treatment facilities, etc.);
- Public Schools (including School Districts and Charter Schools);
- Public Universities and Colleges;
- Public Hospitals and Health Systems; and
- Non-Profits determined by the source Federal Agency to be eligible for funding

4.1.1 Faith Based Organizations

Faith-based organizations are eligible, on the same basis as any other organization, to participate in any HUD program or activity. Neither the Federal Government, nor a State, tribal or local government, nor any other entity that administers any HUD program or activity, shall discriminate against an organization on the basis of the organization's religious character, affiliation, or lack thereof, or on the basis of the organization's religious exercise.

- **Explicitly religious activities:** If an organization engages in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization), the explicitly religious activities must be offered separately, in time or location, from the programs or activities supported

⁴ Please refer to the CDBG-DR Policy Guidance for Grantees 2019 located at <https://files.hudexchange.info/resources/documents/CDBG-DR-Policy-Guide.pdf>

by direct Federal financial assistance and participation must be voluntary for the beneficiaries of the programs or activities that receive direct Federal financial assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts HUD's authority under applicable Federal law to fund activities that can be directly funded by the Federal Government.⁵

4.1.2 Project Prioritization

Because municipal governments and agencies of the Government of Puerto Rico are conducting a significant portion of the PA recovery work on the Island, PRDOH will have municipalities and government agencies opt-in to the program first, followed by non-governmental organizations, and then any other eligible Entity. PRDOH plans to initially analyze PWs for both Hurricanes Irma and María corresponding to PWs that have already been obligated under the FEMA PA Program including emergency work, (Category A and B) and permanent work categories (Category C-G). PRDOH expects that cost share related to the emergency work categories will be provided before long-term, permanent recovery work. PRDOH also anticipates that small projects, in general, will be completed prior to large projects. Thus, review priority will be given to those projects that have work that has already been completed or that is closer to implementation (“shovel ready”).

4.2 Eligible Activities

All projects funded in whole or in part by CDBG-DR must meet a HUD eligible activity as defined by Section 105(a) of the Housing and Community Development Act (**HCDA**)⁶, as amended, 42 U.S.C. § 5305. When CDBG-DR funds are used as match for another federal Entity, HUD requires that not only must the project meet the requirements of the primary federal agency and the non-federal match activity (HCDA, as amended, Section 105(a)(9)) but the Entity must also demonstrate that the project meets one (1) additional HUD eligible activity. Those activities may include:

- Section 105(a)(1) – Acquisition of Real Property;
- Section 105(a)(2) – Public Facilities and Improvements;
- Section 105(a)(4) – Clearance, Rehabilitation, Reconstruction, and Construction of Buildings;
- Section 102(a)(7) – Disposition of Real Property
- Section 105(a)(8) - Public Services;
- Section 105(a)(11) – Relocation;
- Section 105(a)(12) – Planning;
- Section 105(a)(13) – Payment of reasonable administrative costs;
- Section 105(a)(14) – Activities Carried Out through Nonprofit Development Organizations;

⁵ Equal participation of faith-based organizations in HUD programs and activities, 24 CFR 5.109(e)

⁶ The HUD Guide to National Objectives and Eligible Activities for State CDBG Programs can be accessed online at <https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/>

- Section 105(a)(15) – Assistance to Eligible Entities for Neighborhood Revitalization, Community Economic Development and Energy Conservation;
- Section 105(a)(16) – Energy Use Strategies Related to Development Goals (resiliency);
- Section 105(a)(17) – Economic Development Assistance to For-Profit Business; and
- Section 105(a)(21) – Assistance to Institutions of Higher Education

5 Program Description

Every project in the Non-Federal Match Program will leverage CDBG-DR funding with other federal disaster recovery funding sources that act as the primary funding source. This section briefly describes those other federal funding sources. PRDOH has initially focused on addressing the cost share requirements for the FEMA grant programs associated with the disasters. As PRDOH continually assesses unmet needs, it may also elect to match cost share requirements for other federal agencies' programs, at which time these program guidelines will be appropriately amended.

5.1 FEMA Public & Individual Assistance Program Overview

After a major disaster occurs, it is common that the combined resources and recovery efforts of local and State entities are not sufficient to address the impact of the disaster. These situations call for federal assistance to supplement recovery efforts. The Stafford Disaster Relief and Emergency Assistance Act (**Stafford Act**), as amended, 42 U.S.C. §5121 *et seq.*, authorizes the president of the United States to provide such assistance. Assistance is coordinated through FEMA, the primary disaster response agency in the Federal government. The Government of Puerto Rico's Central Office of Recovery, Reconstruction and Resiliency (**COR3**) is the local recipient agency and authorized administrator for FEMA grant funding.

FEMA provides grants to states and communities that allow them to address immediate, post-disaster response needs and long-term rebuilding needs through the Public Assistance (**PA**) program. FEMA also provides funds to assist individuals in addressing a number of needs including housing needs resulting from the disaster in the immediate aftermath of an event through the Individual Assistance program (**IA**). The only IA program for which CDBG-DR will provide cost share will be the FEMA Transitional Sheltering Assistance (**TSA**) program, whereby the Federal government, through FEMA, pays for impacted citizens to stay in hotels or available rental units until communities and homes are safe for their return. FEMA generally provides those funds to state-level entities with a cost sharing requirement.

The FEMA federally funded portion is typically seventy-five percent (75%) requiring a twenty-five percent (25%) match by the receiving Entity. For larger disasters, the federally funded portion can go to ninety percent (90%), or even one hundred percent (100%), depending on FEMA's calculations. In the case of Hurricane Irma (EM 3384/DR 4336), the

cost share or match requirement for the receiving Entity is twenty-five percent (25%) for PA projects. For Hurricane María (DR 4339), the cost share requirement is reduced to ten percent (10%) for PA. The cost share requirement for TSA projects for Irma is twenty-five percent (25%) and for María ten percent (10%). These cost share percentages represent the maximum non-federal share that PRDOH may provide. On a per-project basis, PRDOH may fund less than the full cost share requirement amount if items within the scope of work do not meet HUD eligibility criteria or if there is insufficient support documentation to meet HUD requirements. In such event, the Entity must demonstrate an alternate funding source to cover the corresponding cost share amount.

5.1.1 FEMA Public Assistance Categories

FEMA has a detailed process that categorizes eligible projects by the type of work that needs to be repaired, restored, or removed following a disaster. FEMA PA projects are described as either being for emergency protective measures and debris removal, emergency work (response related), or for permanent restoration of damaged facilities, including cost-effective hazard mitigation to protect the facilities from future damage (permanent work). Emergency work takes place immediately prior to and after an event and is comprised of two categories, debris removal (Category A) and emergency protective measures (Category B). Permanent work restores or rebuilds a damaged asset, allowing for mitigation, and is comprised of five (5) categories, Categories C-G, described in further detail below.

FEMA's Public Assistance Program and Policy Guide⁷ clearly distinguishes the eligible work through the series of work categories outlined below to prevent a Duplication of Benefits. PA entities can have work at the same facility that is both response and recovery related and across multiple categories. Only public entities, organizations, and specific not-for-profit entities are eligible for FEMA PA funding and they must demonstrate a direct tie to the storm to be eligible.

Emergency Work: Response Related (Categories A and B)

- **Category A: Debris Removal**
 - Clearance of trees and woody debris; certain building wreckage; damaged/destroyed building contents; sand, mud, silt, and gravel; and other disaster-related material deposited on public and, in very limited cases, private property.
- **Category B: Emergency Protective Measures⁸**

⁷ FEMA Public Assistance Program and Policy Guide: <https://www.fema.gov/media-library/assets/documents/111781>

⁸ A notable and critical Category B project for the people of Puerto Rico was FEMA's Sheltering and Temporary Essential Power (STEP) program, which provided homeowners with limited, temporary repairs to make their homes safe, clean, and secure for emergency sheltering. These repairs allowed homeowners whose dwellings were uninhabitable to shelter in their damaged homes while long-term repairs continued. Known as "Tu Hogar Renace", STEP was administered by PRDOH and all work performed after September 15, 2018 is subject to cost share matching requirements. Puerto Rico's STEP program was the largest in history, with over one hundred and eight thousand (108,000) homes repaired and expenditures totaling

- Measures taken before, during and after a disaster to eliminate/reduce an immediate threat to life, public health, or safety, or to eliminate/reduce an immediate threat of significant damage to improved public and private property through cost-effective measures.

Permanent Work: Recovery Related (Categories C – G)

- **Category C: Roads and Bridges**
 - Repair of roads, bridges, and associated features, such as shoulders, ditches, culverts lighting, and signs.
- **Category D: Water Control Facilities**
 - Repair of drainage channels, pumping facilities, and some irrigation facilities. Repair of levees, dams and flood control facilities fall under Category D, but the eligibility of these facilities is restricted.
- **Category E: Buildings and Equipment**
 - Repair or replacement of buildings, including their contents and systems; heavy equipment and vehicles.
- **Category F: Utilities**
 - Repair of water treatment, and delivery systems; power generation facilities, and distribution facilities⁹; sewage collection and treatment facilities; and communications.
- **Category G: Parks, Recreation Facilities, and Other Facilities**
 - Repair and restoration of parks, playgrounds, pools, cemeteries, mass transit facilities, and beaches. This category is also used for any work or facility that cannot be characterized by Categories A-F.

5.1.2 Project Size

When FEMA obligates a Project Worksheet, it provides funds to an Entity to initiate work. To facilitate how FEMA processes and reimburses entities for work, FEMA categorizes the work into two (2) categories, "Small" and "Large" Projects, based on the total dollars provided to the project. The split between the Small and Large categories is determined by using the annual Consumer Price Index (**CPI**), resulting in project threshold size varying by year. For example, for Hurricanes Irma and María, a Small Project is any eligible work, either emergency or permanent, costing up to \$123,100.00. Projects above this threshold are classified as large projects.

In most disasters, the vast majority of FEMA recovery work consists of Small Projects. Large projects are not only more expensive but also typically more complex to manage. Small

over \$1.1 billion. PRDOH has prioritized review of the STEP program collaboratively with COR3, FEMA, and HUD, for the reimbursement of the non-federal share of eligible STEP expenses.

⁹ Per the Appropriations Act, HUD approved the expenditure of \$2 billion to enhance or improve Puerto Rico's electrical power systems. Prior to approving and implementing any project involving electrical power systems, HUD requires adherence to forthcoming guidance and coordination with an Energy Technical Coordination Team.

project funding is based on a cost estimate, whereas large projects funding is based on actual documented expenses. When FEMA receives a request for reimbursement of a Small Project it provides the entire federal share as a single reimbursement. For Large projects FEMA reimburses only for work completed and “interim or progress payments” can be made while work is ongoing.

FEMA does not typically collect the same amount of documentation for small projects as for large projects. For projects applying for funding from the NFM Program PRDOH will collect documentation equally for large and small projects to determine eligibility. For small projects, PRDOH will work with Entities to obtain needed items.

5.1.3 Public Assistance Alternative Procedures (PAAP / “428”) Projects

The Sandy Recovery Improvement Act of 2013 (P.L. 113-2) amended the Stafford Act, as amended, 42 U.S.C. §5121 *et seq.*, by adding section 428, authorizing alternative procedures for the FEMA PA Program. FEMA has implemented this authority by establishing the Public Assistance Alternative Procedures (**PAAP**) Pilot Program for Permanent Work.

Under PAAP, FEMA will fund all facilities for which entities opt in, and all critical service facility Category C-G large projects, on the basis of fixed estimates. This procedure varies from that used for standard large projects, which provides for funding the actual cost of completing the eligible scope of work. The Entity is responsible for any actual costs that exceed the estimate.

FEMA has established specific guidance for the implementation of PAAP in Puerto Rico, which will:

- Allow Section 406 mitigation funds to be included in the fixed cost subaward if the recovery measures implemented include reduction of risk from future similar damage;
- Require a third-party independent expert panel to validate any project with a cost estimate for which the federal share is \$25 million or more, or at the request of COR3 or the Entity;
- Allow for the consolidation of funds associated with fixed-cost subawards across all the facilities of an Entity based upon the agreed-upon cost estimates. This allows project costs for all projects included under a 428 PW to be consolidated into a total PW amount; and
- Allow the Entity to use all or part of any excess funds for cost-effective activities that reduce risk of future damage, hardship or suffering from a major disaster, and/or other activities that improve future PA operations or planning.

On October 30, 2017, COR3 elected to participate in PAAP for all large project funding for PA Categories C-G, pursuant to Section 428 of the Stafford Act, as amended, 42 U.S.C.

§5121 *et seq.*, for permanent work following Hurricane María. On January 23, 2020, FEMA made PAAP optional for non-critical service facilities. Participation in PAAP is still mandatory for all large permanent work projects for critical service facilities.

5.1.4 Bipartisan Budget Act (BBA) Authority

Due to the pre-disaster condition of infrastructure in Puerto Rico and the catastrophic damage caused by Hurricanes Irma and María, FEMA requested enhanced authority under Section 428 of the Stafford Act, as amended, 42 U.S.C. §5121 *et seq.*, to give it greater flexibility in providing funding toward restoring critical service infrastructure. Section 20601 of the Bipartisan Budget Act of 2018 (**BBA**) allows FEMA to provide assistance to restore disaster-damaged facilities or systems that provide the specifically-identified critical services to an industry standard without regard to pre-disaster condition; and to restore components not damaged by the disaster when necessary to fully effectuate restoration of the disaster-damaged components to restore the function of the facility or system to industry standards. The authority is exclusive to assistance authorized by the major disaster declarations issued to Puerto Rico.

This BBA policy applies to facilities or systems when:

- The facility or system provides power, water, sewer, wastewater treatment, communications, education, emergency medical care, emergency services, or is an administrative or support building essential to the provision of the critical service;
- The facility or system is part of a PA Alternative Procedures Permanent Work Pilot Project (Section 428);
- The cost to repair only the disaster damage at the site equals or exceeds \$123,100.00 prior to any insurance reductions; and
- The disaster damage adversely impacts the function of the facility or system as it relates to the critical service.

5.2 FEMA Transitional Shelter Assistance (TSA) Program

The FEMA IA program is authorized under Sections 403 and 408 of the Stafford Act, 42 U.S.C. §§ 5170b, 5174. The IA program provides a variety of assistance that is designed to help meet disaster survivors' immediate sustenance, shelter, and medical needs after the storm. One specific IA program is applicable to these guidelines: FEMA's Transitional Shelter Assistance (**TSA**) Program. TSA aided disaster survivors who were unable to return to their primary residences because their homes were either uninhabitable or inaccessible due to Hurricanes Irma or María. TSA provided short-term lodging assistance for evacuees who were not able to return home for an extended or indeterminate period of time following the disaster. The Government of Puerto Rico is required to provide a twenty-five percent (25%) cost share for assistance provided for Hurricane Irma and ten percent (10%) Non-Federal cost share for assistance provided for Hurricane María. TSA is

a part of FEMA's Individual Assistance Program and is the only IA program eligible for reimbursement under this Non-Federal Match Program.

5.3 Applicable FEMA Policies and Guidelines

Each FEMA program is controlled by the Stafford Act, 42 U.S.C § 5121, FEMA Regulations at 44 C.F.R. § 206, Uniform Administrative Requirements at 2 C.F.R. § 200, the FEMA Public Assistance Program and Policy Guide (PAPPG), the FEMA Individual Assistance Program and Policy Guide (IAPPG), and the FEMA Hazard Mitigation Assistance Program Guidance and Addendum, available at www.fema.gov.

5.4 Hazard Mitigation Grant Program

This guideline document is applicable to the FEMA PA and FEMA TSA IA programs. In addition to these programs, PRDOH is committed to match the twenty-five percent (25%) required cost share for FEMA's Hazard Mitigation Grant Program (**HMGP**) as it relates to Hurricanes Irma and María via a global match method¹⁰. This cost share commitment will ease the local burden of implementing projects that reduce or eliminate long-term risk to people and property from future disasters. Separate program guidelines will apply to the FEMA HMGP Match and, upon publication, will be available in English and Spanish at www.cdbg-dr.pr.gov.

6 Required Non-Federal Cost Share Amount

The FEMA Non-Federal cost share match payment amount varies by disaster. PRDOH will only fund the match amount for the portion of a project that meets HUD and CDBG-DR eligibility requirements, as described in the Non-Federal Match Program CDBG-DR Eligibility section below. In some cases, PRDOH may fund less than the full cost share requirement amount if costs are not fully CDBG-DR eligible or if support documentation is not sufficient. In such event, the Entity must demonstrate an alternate funding source to cover the corresponding cost share amount.

The following table shows the declared match percentage by disaster and federal program. As such, the match rates below represent the maximum Non-Federal share that PRDOH may provide:

Table 1: FEMA Programs and Cost Share Requirements

FEMA Program	Federal Share	Non-Federal Share	Disaster
Individual Assistance	75%	25%	Irma
Individual Assistance	90%	10%	María
Public Assistance	75%	25%	Irma

¹⁰ Global match is a method by which the local match requirement is met on the program level rather than the project level. When using Global Match, the Non-Federal cost share does not need to be twenty-five percent (25%) for each individual project, rather the Non-Federal cost share for all of the Applicant's submitted projects combined must equal 25 percent for the overall disaster program. Information about HMGP can be found here: https://www.fema.gov/sites/default/files/2020-08/fema_hma_cost-share-guide.pdf.

Public Assistance	90%	10%	María
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In addition to the percentages above, the specific amount of Non-Federal match required for PWs under certain categories can vary based on the date that work was completed. The table below identifies dates where cost share requirements changed due to FEMA-granted waivers:

Table 2: PA Match Rates by Disaster and PW Category

Project Type	Irma (EM 3384/DR 4336)	María (DR 4339)
Category A - Debris Removal	25%	10% after 6/17/18
Category B - Emergency Protective Measures	25%	10% after 5/18/18
Emergency Power Restoration	N/A	10% after 8/16/18
Sheltering and Temporary Essential Power Pilot Program (STEP)	N/A	10% after 9/15/18 ¹¹
Category C - Roads and Bridges	N/A	10%
Category D - Water Control Facilities	N/A	10%
Category E - Buildings and Equipment	N/A	10%
Category F - Utilities	N/A	10%
Category G - Parks, Recreational, and Other	N/A	10%

7 Agency Collaboration

PRDOH will work directly with COR3 and other applicable agencies to identify the most efficient methodology for administering the Program. To minimize the need for entities to provide the same documentation multiple times, PRDOH, through its relationship with COR3, will access FEMA and Government of Puerto Rico systems to obtain project documentation. Collaboration shall occur wherever possible to minimize collecting duplicative documentation from state agencies and local FEMA PA and IA recipients. However, if requested, eligible entities under the Non-Federal Match Program will provide PRDOH with all requisite support documentation and application information in order for PRDOH to ensure the files contained within the program's system of record are complete, accurate, and compliant. Additional documentation may include procurement documentation, copies of contracts and proof of payments, among others. PRDOH will issue funding only after reviewing and ensuring that support documentation for the project is maintained in the PRDOH system of record.

8 Project Application Submission, Review, and Award Process

¹¹ As per Amendment 1 of the Federal Register Notice: Disaster 4339 published on September 20, 2017, to authorize a 100 percent Federal cost share for debris removal and emergency protective measures, including direct Federal assistance, for 180 days from the date of the declaration.

8.1 Application Submission

The NFM Program is currently open to FEMA PA Program entities with obligated PWs as a result of Hurricanes Irma or María. PRDOH will contact those entities to assess if they wish to take part in the Program. As part of PRDOH's outreach efforts, potential entities will be informed about additional PRDOH and HUD-specific requirements with which they must comply. These entities will then decide if they wish to opt into the Program.

Entities who opt into the program will attend a mandatory Technical Assistance (TA) workshop, where PRDOH will provide an overview of HUD and CDBG-DR requirements.

Once opted-in, and before executing the Subrecipient Agreement, PRDOH staff will preliminarily review and document the currently obligated FEMA PA Project Worksheets (PWs) for each potential subrecipient. PRDOH may recommend to include all obligated PWs as a part of the Subrecipient Agreement.

However, there may be times due to extenuating circumstances that an exception is warranted. PRDOH will accept modifications to remove or update PWs as needed. This will require a written request to be submitted to PRDOH.

No request will be considered if rules that are based in regulations or state law will be violated. PRDOH will determine whether the Entity has made the case that the need for an exception is critical to the community's recovery.

8.2 Subrecipient Agreement

PRDOH will enter into agreements with each eligible Entity. These Subrecipient Agreement (SRA) documents will ensure compliance with all CDBG-DR, HUD and applicable federal and local requirements, rules and regulations, as well as in PRDOH's objectives of the Action Plan, as amended, and adequately coordinating and monitoring all CDBG-DR related activities. The SRA will outline all FEMA PWs covered under the Agreement and their corresponding budget allocation and will bind eligible entities to all terms and conditions of the Program. Amendments will be executed as necessary for additional projects or changes in project cost or match amounts. Language in the SRA will outline specific CDBG-DR Program requirements and payment processes and shall serve to duly inform subrecipients of additional documentation required to verify project compliance.

Additionally, the eligible Entity must open an appropriate bank account per 2 C.F.R. § 200.305 to receive CDBG-DR funds, as well as establish an account in PRDOH's financial management system. No funds can be drawn until these accounts are established.

8.3 Eligibility Determination

The PA and IA programs are managed by FEMA and administered by COR3. For the purpose of cost share eligibility, the project worksheet is already processed through the

FEMA system of approval and information has been input into COR3's system for review. In order to be deemed eligible for the NFM Program, the project must have been approved and obligated by COR3.

The NFM Program will then proceed to review and validate all HUD-specific information (national objective, eligible activity, target area, beneficiary information, procurement, labor, Section 3, etc.) for each project. Any additional information that may be required and is not available in the COR3 file will be requested from the Entity by the NFM Program to complete the preliminary evaluation for CDBG-DR funding.

The NFM Program may request additional information from FEMA PA recipients if the payment and support documentation provided by COR3 and/or supporting documentation that is available from the Entity is determined to be insufficient.

If the information provided by COR3 and/or the FEMA recipient is insufficient, does not demonstrate full eligibility, or indicate how the project will meet a national objective, then the project will not be eligible for the Program.

8.4 National Objective Determination

PRDOH staff will work with entities who enter this Program to determine the appropriate national objective to apply to a project. As stated in the National Objectives section above, a project must either be an LMI, Slum and Blight, or Urgent Need project. To meet requirements set forth by HUD on these disaster funds, PRDOH will attempt to classify as many projects as possible as a project meeting an LMI national objective. For projects that provide an area benefit PRDOH will determine if the service area submitted for the project meets the LMI objective as described in the LMI Area Benefit Section above. Additional beneficiary data, if needed, will be obtained by using US Census datasets at <https://data.census.gov/>.

8.5 Award Cost Determination

Funds provided by this Program can only be used to support and reimburse projects that address the cost share requirement of the following FEMA programs: PA, TSA¹², and HMGP (partially). CDBG-DR funds are limited to FEMA eligible project amounts and may not be used to expand a project beyond what is approved by FEMA. PRDOH will work with the FEMA recipients to identify eligible expenses under the Program.

For FEMA PA projects, the total eligible project costs will be identified via review of the FEMA PW, and the applicable cost share amount will be calculated by the NFM Program. In order to ensure that the project has enough costs that are CDBG-DR compliant, PRDOH will identify the applicable cost share amount worth of eligible costs. For projects tied to

¹² As stated in the Program Description section of these guidelines, PRDOH is also committed to providing the 25% local cost share requirement for FEMA's Hazard Mitigation Grant Program, the guidelines of which will be independent from this document and will be published to www.cdbg-dr.pr.gov.

Hurricane Irma, twenty five percent (25%) must be eligible costs to cover the cost share match of the PW. For projects tied to Hurricane María, ten percent (10%) must be eligible costs and comply to cover the cost share match of the PW. The Program will match costs up to the amount FEMA has validated as eligible under their criteria and will validate costs of at least the Non-Federal match share required amount. Costs that are not eligible for FEMA are automatically ineligible for match payment under the Program.

If possible, CDBG-DR match funds will be applied to a single contract. The preference is to have to verify CDBG-DR compliance for as few contracts as possible in order to minimize the burden of documentation required. Generally, a construction-only project will be required to comply with CDBG-DR requirements entirely, including but not limited to Davis-Bacon, Section 3, M/WBE and Fair Housing.

Program staff will perform their analysis of each PW and issue a final Review and Recommendation (**R&R**) Report, initially approving the costs submitted under the PW to justify cost share payments under the evaluated PW. The R&R shall serve as the basis for the revision of submitted progress payments under the project.

8.5.1 Potential for a “Flexible Match”

As described in the Public Assistance Alternative Procedures Projects section above, section 428 of the Stafford Act, as amended, 42 U.S.C. §5121 *et seq.*, authorized alternative procedures for the FEMA PA Program. For projects pursuant with Section 428, PRDOH is collaborating with COR3, HUD, and FEMA, to develop joint guidance on the flexible application of CDBG-DR funds to meet the Non-Federal share of PWs that contain multiple projects under one PW.

This “flexible match” approach will include the option of grouping sites within a project worksheet in a manner such that one group of sites corresponding to the ninety percent (90%) federal share may be funded with only FEMA funds and the additional ten percent (10%) Non-Federal share may be funded by another group of sites with only CDBG-DR funds. Entities would meet cost share requirements on the PW level, while all other CDBG-DR specific eligibility requirements would be met at a site or facility level. All requirements for eligibility and regulations for FEMA PA must be met for all sites, while only those sites using CDBG-DR funds must also meet HUD eligibility and regulatory requirements. This approach will prove beneficial to entities as more stringent CDBG-DR compliance requirements would only be required for a reduced number of projects included within the same PW.

8.6 Funding Process

Different types of projects are expected to be implemented during the Program's implementation. For each scenario, a different path for invoice and payment processing may be established. PRDOH will work with the recipients to make the payment and project processes as efficient as possible. The Program funding process is designed to

ensure compliance with HUD CDBG-DR regulations while also reducing administrative burdens for entities, who will have their match payments reimbursed directly by PRDOH's payment processing system. Payment processing will be managed directly between PRDOH and the entities, facilitating any necessary coordination. **All payments will be issued for cost share corresponding to invoices with prior validation by FEMA/COR3.**

8.6.1 Payments for FEMA PA Projects

For completed Small projects, PRDOH expects to issue a single cost share payment upon substantial project completion. For Large, long-term cost-intensive permanent reconstruction projects, PRDOH anticipates that it will issue multiple progress payments following the payment schedule agreed-upon within the corresponding agreements. **Please note that funds will be paid only for work completed and invoiced, no advances are allowed.** PRDOH will monitor payment data to provide match payments for such projects on a recurring basis, at the same time maintaining constant coordination with COR3 to keep track of the FEMA-funded reimbursement progress.

Entities will receive the federal share from the established COR3 system, and Non-Federal share match amount through the PRDOH system of funds distribution. Both agencies will work together to ensure that Entities comply with the corresponding FEMA and HUD regulations, with PRDOH providing oversight on HUD requirements, and COR3 on FEMA requirements.

Payment processing includes PRDOH program staff conducting a review of submitted documentation to ensure it has enough documentation to support a match payment. PRDOH will then request CDBG-DR funds from HUD using the HUD Disaster Recover Grant Reporting (**DRGR**) system.

Once the CDBG-DR funds for the program are provided by HUD, PRDOH will transfer the funds to the subrecipient through the PRDOH financial system. Each match payment will be tracked by disaster, PW, and Entity. In each project's file, PRDOH will maintain a transactional record documenting the amount of CDBG-DR funds requested for each PW along with a voucher or record number that shows that all funds were transferred to the entities' dedicated CDBG-DR bank account. Transactional records shall include evidence of FEMA fund transfers through COR3's system to each Entity, for each PW.

8.6.1.1 Process for Agencies Receiving Initial Match from Government of Puerto Rico

Some Government of Puerto Rico agencies have annual appropriations and are eligible to receive funds from a dedicated disaster account established by the Government of Puerto Rico. These agencies may initially use funds from this dedicated account to meet their Non-Federal match requirements. PRDOH, working in collaboration with COR3, will coordinate with these agencies to ensure that any Non-Federal cost share provided to these agencies is reimbursed with CDBG-DR funding. After performing an eligibility review

and following its standard operating procedures, PRDOH will draw funds and provide the match payment for these agencies directly. COR3 will provide PRDOH confirmation of the transfer of the corresponding federal funds to each Entity.

8.6.2 Payments for FEMA TSA Projects

PRDOH plans to issue a single match payment specifically for the FEMA TSA Program as work has already been completed. PRDOH will work with COR3 and FEMA's IA section on the IA Match, reimbursing the Government of Puerto Rico for the corresponding cost share, after PRDOH determines that the documentation provided by the FEMA IA section via COR3, is CDBG-DR eligible. PRDOH will review all TSA documentation to ensure that all payments are made in accordance with HUD guidance and CDBG-DR regulations. After review, PRDOH will request funds from HUD. Subsequently, PRDOH will provide the TSA match payment to COR3.

8.7 Monitoring

Monitoring and evaluation of program performance and compliance by recipients of CDBG-DR funds is a requirement of the Department of Housing and Urban Development (HUD). Monitoring program, statutory and/or regulatory requirements is the responsibility of PRDOH. Grantees are responsible for carrying out their programs to meet program compliance requirements, including monitoring their project administrators, contractors, and subcontractors. Refer to the Cross-Cutting Requirements section below for more information about the CDBG-DR Cross-Cutting Guidelines.

8.8 Closeout

Project closeout is the process by which PRDOH determines that all costs paid with CDBG-DR funds have been incurred, the work has been completed and all responsibilities of the Entity have been completed in accordance with the terms and conditions of the executed agreement and applicable laws and regulations. A program/activity cannot be closed out until all funds have been expended, all activities associated with the activity have been completed, and the National Objective has been met.

Given that the Program provides the match for FEMA PA, IA and HMGP projects, project closeout will need to occur in coordination with COR3 and FEMA. Since FEMA programs traditionally take longer to close-out than HUD CDBG-DR projects, PRDOH will work with COR3 to develop processes that show which funded projects have no future work and that no audit or open issues remain. PRDOH will solely determine if all the requirements for a specific project have been completed and if project closeout should occur. Entities are responsible for timely submission of closeout documents.

For instances where one subrecipient agreement includes multiple projects, each individual project will be closed out upon its individual completion. The agreement cannot be closed out until all projects contained therein are closed. Ultimately, the NFM Program as a whole will be closed out only after all subrecipient agreements are closed.

8.8.1 Project Closeout Procedures

Project closeout will begin when:

- All project expenses related to the CDBG-DR match payment, except closeout costs, if any, have been paid on the project by PRDOH;
- When COR3 has certified that the federal share for the project has been paid and that no more FEMA federal share funds for the project will be provided;
- When COR3 has certified that all approved project work has been completed and no future work will take place;
- Any responsibilities detailed in an interagency or subrecipient agreement or other binding agreements with PRDOH, including agreements the sub-recipient has with FEMA, have been fulfilled; and
- All monitoring or audit findings have been cleared, whether with HUD or FEMA.

Project closeout consists of:

- A closeout request, with applicable project documents attached, submitted to PRDOH for review;
- PRDOH review of closeout documents and resolution of any outstanding issues;
- A project closeout letter/memo is placed in the projects file;
- A final HUD quarterly narrative report submitted to reflect the project's status;
- An updated project in HUD's Disaster Recovery Grant Reporting (DRGR) system; and
- Reconciliation and, when necessary, recoupment of the Non-Federal share of any funds de-obligated by FEMA during PW closeout.

9 Treatment of Pre-Award Costs

Most emergency work performed by Entities was completed prior to PRDOH executing its Grant Agreement with HUD for CDBG-DR funds. At the time the Entities performed their work, FEMA was the only source of grant funds available and, accordingly, entities were only required to comply with FEMA programmatic requirements.

Consistent with other Non-Federal match programs implemented by HUD grantees, PRDOH has established the HUD Grant Agreement execution date of September 20, 2018 as the effective date for the applicability of certain Cross-Cutting Guidelines. Any work started by an Entity after the Grant Agreement date is subject to full compliance with these Cross-Cutting Guidelines. Additionally, any work started by an Entity and not substantially complete at the time of the Grant Agreement execution date is also subject to full compliance with these Cross-Cutting Guidelines.

PRDOH notes that work funded by FEMA was required to be completed in accord with FEMA's Office of Equal Rights, notably the Civil Rights Program section. A summary of the office's responsibilities is listed on FEMA's website at

<https://www.fema.gov/about/offices/equal-rights>. Precedent set by other HUD grantees for prior programs providing CDBG-DR match of FEMA disaster expenditures, while unspoken, accepts FEMA Civil Rights actions. PRDOH will accept FEMA Civil Rights actions for work completed or substantially completed prior to September 20, 2018, only.

10 Cross-Cutting Requirements

Some federal and local requirements apply to all programs funded by CDBG-DR. These Cross-Cutting Guidelines cover topics such as: financial management; environmental review; labor standards; acquisition; relocation; civil rights; fair housing; among others. The requirements described in the above referenced Cross-Cutting Guidelines, apply to all programs described in PRDOH's CDBG-DR Initial Action Plan and its amendments, including the Non-Federal Match Program and thus, are incorporated into these guidelines as reference.

Some of the requirements found at the Cross-Cutting Guidelines are particularly important to infrastructure and construction related projects, including projects that will be funded through the Program. As part of PRDOH's partnership with entities in the Program, PRDOH will provide technical assistance and training to recipients regarding these guidelines. As projects in the Program go into construction and into differing phases, the PRDOH CDBG-DR Program staff is committed to working with entities to ensure that they remain compliant until project close out.

The Cross-Cutting Guidelines and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website at <https://cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

Subrecipients of the Program are urged to review the CDBG-DR Cross-Cutting Guidelines, as they apply to all programs in PRDOH's CDBG-DR Action Plan and its amendments.

10.1 Civil Rights and Fair Housing

As recipients of Federal funding, Entities must administer all programs and activities in a manner that complies with Title VI of the Civil Rights Act, and that affirmatively furthers the purpose of the Fair Housing Act (42 U.S.C. § 3608(e)(5), E.O. 12259, and 24 C.F.R. § 570.601). Entities must also agree to develop and maintain records of the efforts taken to assure fair housing compliance.

Additionally, recipients of CDBG-DR funding must comply with section 109 of the Housing and Community Development Act of 1974 (implemented at 24 CFR parts 6 and 8) which prohibits discrimination on the basis of race, color, national origin, religion, sex, or age in programs or activities funded under the Act. Entities that are a municipality or Public Housing Agency are required to conduct Fair Housing activities during the life of the SRA between PRDOH and the Entity. Activities may include, but are not limited to, the following:

- **Information Outreach:** Having landlords post Fair Housing Notices and providing Fair Housing brochures in leasing offices, places where customers pay utility bills, media campaigns or communities with local-oriented media outlets;
- **Training Seminar for the General Public:** Topics would include overview of the Fair Housing laws, (classes, illegal acts, and penalties) rights and responsibilities in buying/selling homes, tenant selection criteria, family issues (occupancy standards, safety and renting to the disabled etc.;
- **Training Seminar for Rental Managers, Agents and Landlords:** Topics would include overview of the Fair Housing laws, (classes, illegal acts, and penalties) tenant selection criteria, family issues (occupancy standards, safety) renting to the disabled, record keeping, advertising and evictions;
- **Training Seminar for Real Estate Brokers:** Topics would include protected classes, violations, penalties and dealing with potentially illegal questions; and
- **Training Seminar for Real Estate Lenders:** Topics would include Fair Housing statutes, recording keeping, prohibited inquiries, and prohibited credit uses.

For infrastructure activities, PRDOH and its subrecipients must consider how they will avoid disproportionate impacts on vulnerable populations and create opportunities to address economic inequities facing local communities.

If work on a project receiving a match payment was completed prior to September 20, 2018, or if the construction contract had been officially accepted by the Entity as substantially complete by September 20, 2018, the Fair Housing activity requirement above does not apply to that specific project. The Entity is not relieved from complying with the Fair Housing requirement for projects covering work performed after September 20, 2018.

The Fair Housing and Equal Opportunity Policy and all CDBG-DR Program policies, are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

Subrecipients of the Program are urged to review the Fair Housing and Equal Opportunity Policy, as it applies to all programs in PRDOH's CDBG-DR Action Plan and its amendments.

10.2 Section 504

Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 701) prohibits exclusion from participation, denial of benefits, or discrimination under any federally funded program on the basis of disability.

Applicants receiving federal funding shall operate each program or activity receiving federal financial assistance so that the program or activity, when viewed in its entirety, is

readily accessible to and usable by individuals with handicaps. PRDOH and its subrecipients shall also provide reasonable accommodations to afford persons with disabilities the opportunity to participate in and benefit from federally funded programs in accordance with the CDBG-DR Reasonable Accommodation Policy.

The Entity shall submit an assurance to PRDOH that the CDBG-DR program funded activity will be in compliance with Section 504 requirements (24 C.F.R. § 8.50(a)).

Additionally, if the Entity employs fifteen (15) or more persons:

1. The Entity must designate a responsible employee to coordinate the Entity's efforts to comply with Section 504;
2. The Entity must adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. Such procedures need not be established with respect to complaints from persons regarding employment or admission to housing;
3. The Entity shall publish a statement of compliance to notify participants, beneficiaries, citizens, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the Entity that it does not discriminate on the basis of handicap in violation of Section 504. The notification shall state, where appropriate, that the entity does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated above; and
4. The Entity shall make the initial notification required by this paragraph within 90 days of receipt of the executed SRA with PRDOH. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

If work on a project receiving a match payment was completed prior to September 20, 2018, or if the construction contract had been officially accepted by the Entity as substantially complete by September 20, 2018, Section 504 requirement does not apply to that specific contract. The Entity is not relieved from complying with Section 504 requirement for contracts covering work performed after September 20, 2018.

The Fair Housing and Equal Opportunity Policy and all CDBG-DR Program policies, are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

Subrecipients of the Program are should refer to the CDBG-DR Fair Housing and Equal Opportunity Policy to ensure compliance with all section 504 related requirements that have the goal of providing equal opportunity to participation and benefit for people with disabilities.

10.3 Labor Standards

Federal labor standards apply to all projects receiving match funding through the Program. The CDBG authorizing statute requires that laborers and mechanics employed by contractors and subcontractors on construction work financed in whole or in part with CDBG funds be paid not less than locally prevailing wages, as determined by the United States Department of Labor (DOL) under the Davis-Bacon Act, 40 U.S.C. § 3141-3148, and HCDA 42 U.S.C. § 5310. These provisions ensure that when disaster recovery work is financed with CDBG-DR assistance, construction workers are paid the appropriate wage rate prevailing in the locality where the work is performed, furthering economic recovery. The Program team will coordinate with the PRDOH Davis-Bacon Team to ensure all contracts are reviewed for compliance.

Consistent with HUD CPD Notice 15-07: Guidance for Charging Pre-Application Costs of Homeowners, Businesses, and Other Qualifying Entities to CDBG Disaster Recovery Grants, PRDOH has established the following date thresholds for applicability with federal labor standards for work that began prior to the execution of the Grant Agreement between PRDOH and HUD¹³:

- If construction was completed prior to September 20, 2018, or if the construction contract had been officially accepted by the Entity as substantially complete by September 20, 2018, Davis-Bacon provisions do not apply. Regarding construction projects, PRDOH has defined the completion date as the date the project was officially accepted as substantially complete. The Entity must provide proof of the substantial completion date.
- If construction was ongoing as of September 20, 2018, Davis-Bacon provisions apply. Contract specifications must include the applicable Davis-Bacon wage determination in effect as of September 20, 2018. The Entity has the option to include the wage determination in effect as of September 20, 2018, retroactive to the start of construction work. Both parties to the construction contract (e.g. the Entity and the construction contractor) must agree to amend the contract specifications.
- If construction has not started as of September 20, 2018, Davis-Bacon provisions and all other HUD CDBG-DR requirements apply. Advertisements for bids, bid solicitations, and contracts must incorporate Davis-Bacon labor standards and

¹³ As of the publication of these Program Guidelines, the application of this date threshold as it relates to construction contracts is pending approval from HUD. If HUD provides guidance that differs from the information contained herein, this program guideline document will be amended as needed.

wage determinations and CDBG-DR compliance provisions for construction contracts.

If multiple separate construction contracts are covered by one PW, compliance with the September 20, 2018 threshold is evaluated on a contract-by-contract basis.

The Davis Bacon and Related Acts Policy and all CDBG-DR Program policies, are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

10.4 Section 3

HUD Section 3 requirements at 24 C.F.R. § 135 apply to all Entities and projects receiving match funding through the Program. Section 3 seeks to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible and consistent with existing federal, state, and local laws and regulations, be directed to low- and very low-income persons, so that they can take part in recovery activities in proximity to work location.

If Section 3 requirements are triggered, the Entity shall ensure that:

- The Section 3 Clause (24 C.F.R § 135.38) is included in all applicable contracts;
- Section 3 covered contractors and subcontractors submit a Section 3 Plan; and
- Section 3 covered contractors and subcontractors report, as needed, to PRDOH information on Section 3 new hires and contracts awarded to Section 3 business concerns.

If work on a project receiving a match payment was completed prior to September 20, 2018, or if the construction contract had been officially accepted by the Entity as substantially complete by September 20, 2018, the Section 3 requirement does not apply to that specific contract. The Entity is not relieved from complying with the Section 3 requirement for contracts covering work performed after September 20, 2018.

The Section 3 Policy and all CDBG-DR Program policies, are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

Subrecipients of the Program are urged to review these guidelines as they apply to all programs in PRDOH's CDBG-DR Action Plan and its amendments.

10.5 Minority / Women Owned Business Enterprises (MWBE)

All Entities who receive CDBG-DR funding are required to comply with all CDBG-DR requirements enumerated in 2 C.F.R. § 200.321, known as the Minority and Women Owned Business Enterprise (MWBE) goals. It is required that the Non-Federal Entity takes the necessary steps to ensure that all subrecipients, contractors, subcontractors and/or developer funded in whole or in part with CDBG-DR financial assistance ensure that,

when possible, contracts and other economic opportunities are directed to small and minority firms, women-owned businesses, and labor surplus area firms.

The Program team will coordinate with the PRDOH MWBE team to ensure that all contracts are reviewed for compliance.

If work on a project receiving a match payment was completed prior to September 20, 2018, or if the construction contract had been officially accepted by the Entity as substantially complete by September 20, 2018, the MWBE requirement does not apply to that specific contract. The Entity is not relieved from complying with the MWBE requirement for contracts covering work performed after September 20, 2018.

The MWBE Policy and all CDBG-DR Program policies, are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

Subrecipients of the Program are urged to review these guidelines as they apply to all programs in PRDOH's CDBG-DR Action Plan and its amendments.

10.6 Programmatic Compliance for Certain Cross-Cutting Guidelines

PRDOH has also established specific procedures to emphasize in detail how the Program demonstrates compliance with certain Cross-Cutting Guidelines, regardless of when the Entity performed work.

10.6.1 Environmental Review

FEMA conducts an environmental review for each project prior to obligating funds and, for most permanent work projects, before the Entity can begin work. For all match payments, PRDOH will adopt FEMA's Records of Environmental Consideration (**REC**) for the Program. All CDBG-DR projects require an environmental review, and proof of a completed environmental review must be maintained in the project's file. A copy of the FEMA REC may not initially be contained in the project documentation. In these cases, PRDOH will work with COR3 to confirm and obtain the FEMA environmental review for the file before initiating a review.

PRDOH will conduct a brief review of the project scope and environmental review to verify that the environmental review is still applicable to the proposed project. If still applicable, a Request for Release of Funds will be prepared for inclusion into the project file. If not applicable, a re-evaluation in accordance with 24 C.F.R. § 58 will be required, and PRDOH will work with COR3 to ensure FEMA provides an updated environmental review.

If a project has any scope changes beyond what was approved in the project worksheet, an additional HUD environmental review must be completed. If additional work is anticipated, the Entity should seek guidance from PRDOH for assistance

immediately. The Entity should not execute any change orders or additional contracts that include work not listed in the approved and obligated project worksheet if the intent is to request CDBG-DR funds as matching funds.

10.6.2 Duplication of Benefits (DOB)

A duplication of benefits occurs when a person, household, business, or other Entity receives disaster assistance from multiple sources for the same recovery purpose, and the total assistance received for that purpose is more than the total need¹⁴. The amount of the DOB is the amount received in excess of the total need for the same purpose. PRDOH is prohibited from making a blanket determination that CDBG-DR assistance, under the Program, does not duplicate another source of assistance. In addition to FEMA funding, which is provided with each project, other sources of funding include SBA, local, or Government of Puerto Rico funding, insurance or other financial assistance programs.

For the PA Program, FEMA conducts a duplication of benefits review as part of its project obligation workflow process and removes any DOB items from each project's cost estimate. Upon project worksheet closeout, FEMA again reconciles other project funding sources to confirm the accuracy of its prior DOB calculations.

Through its document collection process, PRDOH will ensure FEMA's DOB review process for each PW is stored in its system of record. PRDOH will also perform its own DOB analysis for each match payment in the Program using a calculation worksheet based on HUD's DOB calculation guidance.

10.6.2.1 Donated Resources

As per the FEMA Public Assistance Program and Policy Guide (**PAPPG**), individuals and organizations often donate resources (equipment, supplies, materials, or labor) to assist with response activities. The Grantee may use the value of donated resources to offset the non-Federal share of its eligible Emergency Work projects and Direct Federal Assistance.

FEMA prepares the donated resource project separate from the Emergency Work projects for the Grantees incurred costs. FEMA does not obligate the donated resource project until after it obligates all of the Grantee's Emergency Work projects. The value of the donated resources paid by FEMA will be deducted from the match amount on any Category A and B PWs. Any remaining eligible match percentage may be eligible for funding through the CDBG-DR Non-Federal Match Program.

10.6.3 Acquisition

The Uniform Relocation Act (**URA**) regulations at 49 C.F.R. § 24 are triggered whenever federally funded programs require the acquisition, rehabilitation, or demolition of real

¹⁴ Per [84 FR 28836](https://www.federalregister.gov/documents/2012/07/16/2012-14183). Duplication of Benefits regulations can be found at <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>

property, or result in activities that displace persons from their homes, businesses, or farms as a result. The URA establishes uniform standards for administering such acquisition and relocation projects and includes notice requirements to all occupants timed in conjunction with proposed acquisition and federal funding.

As part of its review process for all match payments, PRDOH will review each PW's scope of work to determine whether it includes actions that will invoke URA requirements. Due to the nature of the PA Program's focus on restoration of public infrastructure and facilities, few PWs will include activities that are subject to URA compliance. However, in cases where URA is triggered, PRDOH will maintain all documentation of URA compliance and will not recommend a match payment for any case of noncompliance.

If CDBG-DR financial assistance is used in any part of the project, the URA governs the acquisition of real property for the project and any resulting displacement, even if local or private funds are used to pay the acquisition costs. Entities should contact PRDOH for technical assistance if the project involves the acquisition of real property.

10.6.4 Procurement

Due to the Program's nature of only providing matching funds for the Non-federal Share of eligible FEMA PA costs, PRDOH will assess procurement reviews conducted by FEMA and COR3 in conjunction with the obligation and reimbursement of FEMA-eligible costs. For all work submitted for cost share payment, the NFM Program shall document the validation issued by FEMA/COR3 regarding the compliance of procurement processes.

To streamline the use of CDBG-DR funds, the procurement for projects receiving CDBG-DR match funding under the NFM Program must abide the procurement requirements established by FEMA as recommended in the Implementation Guidance for Use of Community Development Block Grant Disaster Recovery Funds as Non-Federal Cost Share for the Public Assistance Program an adopted through the Administrative Order 21-19.

PRDOH, as grantee of the CDBG-DR funds, has determined to exempt all Subrecipients from compliance with the *Procurement Manual for the CDBG-DR Program* and specifically order the NFM Program to follow the recommendations set forth in the *Implementation Guidance for Use of Community Development Block Grant Disaster Recovery Funds as Non-Federal Cost Share for the Public Assistance Program*, Art. VII, section D(3), the procurement requirements established by FEMA.¹⁵ The Art. VII, section D (3) establishes:

¹⁵ OA 21-19- To grant the Non-Federal Match Program an exemption from compliance with the *Procurement Manual for CDBG-DR Program*; OA 21-28 - To clarify that the exemption to the Non-Federal Match Program of compliance with *Procurement Manual for CDBG-DR* applies to all subrecipients; OA-21-27- To make it permissible for all Subrecipients of CDBG-DR funds to use the provisions of C.F.R. 200.318 through 2 C.F.R. 200.327 in their procurement procedures in connection with CDBG-DR programs.

HUD CDBG-DR grants to local governments are subject to the same procurement requirements that apply to procurements by local governments using FEMA PA funds. To streamline the use of CDBG-DR funds for Local Match, State CDBG-DR Grantees (and other CDBG-DR Grantees subject to State CDBG rules under a waiver and alternative requirement) should consider including a provision in their procurement requirements that adopts FEMA procurement requirements for activities that will be used to satisfy FEMA Local Match. This will eliminate confusion about which procurement rules apply. CDBG-DR Grantees should consider including this provision when submitting documentation to support the Secretary's certification of proficient procurement processes. If the CDBG-DR Grantee did not include this provision in its original submission and wishes to modify its certifications, it should do so immediately by formally resubmitting its certifications to HUD to reflect the material changes.

State CDBG-DR Grantees that adopt FEMA PA procurement requirements for activities that satisfy PA Local Match must obtain and maintain records to document how the procurement complied with PA procurement requirements. Additionally, if not completed by FEMA, the CDBG-DR Grantee may need to take additional steps to evaluate the cost or price of the product or service. PA Applicants that procure goods or services before they know whether CDBG-DR grants are available for Local Match may wish to include in the procurement solicitation documents that the contract may be amended from time to time to expand the scope to include work funded by other Federal sources, subject to applicable requirements. This will allow the contract to be modified in the future to include terms mandated for CDBG-DR assisted contracts (e.g., ability to hire section 3 residents, ability to subcontract with section 3 businesses, comply with Davis Bacon, or add a liquidated damage provision).

Consequently, procurement for projects receiving CDBG-DR match funding under the NFM Program are subject to full compliance with FEMA PA procurement requirements. Participants of the NFM must provide PRDOH with the necessary records to document that they have met the FEMA Procurement requirements, which FEMA may establish and amend from time to time.

However, the Participants of the NFM are not excluded from complying with Article VI Minority, Small and Section 3 Business Participation, Article X Official Records and Article XIII Low and Very Low-Income Persons or Firms Participation of the Procurement Manual, Regulation 9205. Also, in the event that FEMA does not complete a Cost and Price analysis, the sections of the Procurement Manual pertinent to the process of such analysis will apply to the NFM Program. PRDOH will take maximum efforts to provide technical assistance to all Entities to inform them of Davis-Bacon, Section 3, and other applicable Cross-Cutting Guidelines. PRDOH will document all technical assistance provided and will not recommend match funding for noncompliant procurements.

The Procurement Manual and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website: <https://www.cdbg-dr.pr.gov/en/resources/policies/> y <https://www.cdbg-dr.pr.gov/recursos/politicas/> .

Furthermore, in response to the possible landfall of Hurricanes Irma and María in Puerto Rico, on September 2017, former governor of Puerto Rico, Ricardo Rosselló, emitted Executive Order No. 2017-047, Administrative Bulletin Num. OE-2017-047, and Executive Order No. 2017-053, Administrative Bulletin Num. OE-2017-053 declaring a state of emergency in Puerto Rico and, thus, ordered state agencies to be exempt from compliance with any requirements provided by law, regulation, administrative order or applicable guidelines that regulates the government contracting process. Such exemptions lasted until December 8, 2017. After this date, such exemptions were repealed by Executive Order 2017-072, Administrative Bulletin Num. OE-2017-072.

Given these considerations, PRDOH will evaluate the reimbursement of projects based on the applicable procurement regulation at the time of project commencement, including all applicable Cross-Cutting Guidelines. As such, the PRDOH will use the following timeline and applicable regulations in their evaluation:

- Projects that started on or before **December 8, 2017**: subject to 2 C.F.R. 200.318-200.326 Procurement Standards (as validated by FEMA/COR3), but exempt from state requirements as stated in Administrative Bulletin Num. EO-2017-047 & EO-2017-053 and from HUD-approved PRDOH Contractual Requirements for CDBG-DR.
- Projects that started after **December 8, 2017**, through **September 20, 2018**: subject to 2 C.F.R. 200.318-200.326 Procurement Standards (as validated by FEMA/COR3), but exempt from HUD-approved PRDOH Contractual Requirements for CDBG-DR.
- Projects that started after **September 20, 2018**, subject to 2 C.F.R. 200.318-200.326 Procurement Standards (as validated by FEMA/COR3) and HUD-approved PRDOH Contractual Requirements for CDBG-DR specific sections regarding MWBE, Section 3 and Official Records.

11 Additional Requirements

11.1 Equipment

The purchase of equipment that is not an integral structural fixture with CDBG-DR funds is generally ineligible unless eligible as part of an administration or public service activity. If equipment is purchased, the equipment must be used by the Entity in the program or project for which it was acquired, and as long as needed, whether or not the program or project continues to be supported by federal funds. Entities purchasing equipment with CDBG-DR funds must implement property management controls. Entities are encouraged to contact PRDOH for technical assistance prior to the purchase of equipment.

11.2 Elevation of Non-Residential Structures

In a non-federal match program, each project is subject to different federal requirements established by both FEMA and HUD with respect to the elevation of non-residential structures in a floodplain, with the latter having more stringent requirements than the former. Generally, many FEMA funded projects commence soon after a disaster and well in advance of the availability of CDBG-DR funding. If CDBG-DR funds are intended to be used as match for a FEMA project that is already underway, the alignment of HUD's elevation standards with alternative standards allowed by FEMA¹⁶ often proves difficult and may not be cost reasonable to implement mid-stream. To address this, a waiver was granted by HUD to allow PRDOH to apply different elevation and flood proofing requirements based on the criteria described below.

11.2.1 FEMA-Assisted Activities that Commenced¹⁷ after September 20, 2018¹⁸

Non-residential projects that wish to utilize CDBG-DR funding to match FEMA assistance that incurred a project cost that has or will be charged to an approved FEMA PW **after September 20, 2018** are required to follow the elevation and floodproofing requirements outlined in HUD Federal Register notice 83 FR 5844, 5865(C)(41). These HUD requirements specify that non-residential structures must be elevated, or flood proofed in accordance with FEMA flood proofing standards at 44 C.F.R. 60.3(c)(3)(ii) or successor standard, up to at least two (2) feet above the one percent (1%) annual floodplain. All Critical Action projects, as defined at 24 C.F.R. 55.2(b)(3), within the 0.2 percent (0.2%) annual (or 500-year) floodplain must be elevated or flood proofed (in accordance with the FEMA standards) to the higher of the 0.2 percent (0.2%) annual floodplain flood elevation or

¹⁶ FEMA regulations require that new construction and substantially improved buildings in the Special Flood Hazard Area (SFHA) must be elevated or floodproofed to the base flood elevation as defined in 44 CFR § 60.3 and 44 C.F.R. § 9.11(d). Those structures housing "critical actions" as defined in 44 C.F.R. § 9.4 must be elevated or floodproofed to the 500-year flood elevation.

¹⁷ Per the October 2020 "Implementation Guidance for Use of Community Development Block Grant Disaster Recovery Funds as Non-Federal Cost Share for the Public Assistance Program", HUD considers the FEMA-assisted activity to have "commenced" on the date on which the HUD grantee has incurred a project cost that has or will be charged to an approved FEMA PW. This may include pre-award costs if FEMA determines that the costs are eligible.

¹⁸ The date of HUD's original CDBG-DR grant agreement with PRDOH.

three (3) feet above the one percent (1%) annual floodplain. If the 0.2 percent (0.2%) annual floodplain or elevation is unavailable for Critical Actions, and the structure is in the one percent (1%) annual floodplain, then the structure must be elevated or flood-proofed at least three (3) feet above the one percent (1%) annual floodplain level.

11.2.2 FEMA-Assisted Activities that Commenced Prior to September 20, 2018

Non-residential projects that wish to utilize CDBG-DR funding to match FEMA assistance are provided alternate elevation and floodproofing requirements per the waiver found in Federal Register Notice 85 FR 60821, 60822(II) (A) if the FEMA-assisted activity commenced **prior to September 20, 2018**. The HUD notice waives the original elevation requirements detailed in section 11.2.1 above, and approves the use of FEMA-approved flood standards when the following conditions are met:

1. The FEMA-assisted activity, for which CDBG funds will be used as match, commenced prior to September 20, 2018; and
2. The grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG-DR elevation or flood proofing up to two feet is not reasonable.

11.2.3 Other Applicable Standards

Any State, local, and tribal codes and standards for floodplain management that exceed the applicable requirements, including elevation, setbacks, and cumulative substantial damage requirements, will be followed. Entities in this situation will be required to prove that they have elevated to the appropriate elevation height by providing an elevation certificate.

12 Program-Based Reconsideration and/or Administrative Review

The Program works in tandem with COR3 and FEMA. By the time projects within this program are reviewed for HUD eligibility, they will have undergone a review and received a FEMA determination of eligibility that provides a connection to one of the Hurricanes. CDBG-DR funds are only provided after the FEMA funding for the project has been determined and assessment of CDBG-DR compliance is complete. Program-based Reconsiderations and/or Administrative Reviews are therefore expected to be minimal.

For the larger PAAP projects, Program-based Reconsiderations and/or Administrative Reviews are expected to be minimal, as well, since PRDOH will be working with the Entities and COR3 to certify that the work is FEMA eligible and that documentation and activity is sufficient to meet CDBG-DR requirements.

Entities participating in the Non-Federal Match Program may contest any determinations or denials based on Program Policy. However, entities may not challenge a federal statutory requirement. Entities 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 Applicant fails to contest a determination within the time allotted, the inaction will be deemed as an acceptance of the determination.

12.1 Program-Based Reconsideration Request

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

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

The Program will review and address the Reconsideration Request within **fifteen (15) calendar days** of its receipt. Any Reconsideration Request that relies on COR3 or the FEMA determinations, shall follow COR3/FEMA's applicable policy and requirements.¹⁹

Entities 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 an Entity has to challenge a determination made by the Program. Therefore, Applicants who believe the initial determination of the Program to be erroneous, may submit, at their discretion, either a Program-based Reconsideration Request or a petition for review of the decision made by the Program by filing an Administrative Review Request at PRDOH in accordance with Regulation Number 4953, of August 19, 1993, which regulates the Formal Adjudication Process for PRDOH and its Adjunct Agencies (Regulation 4953)²⁰.

¹⁹ As per 44 C.F.R § 206.206.

²⁰ 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>

12.2 Administrative Review Request

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

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

13 General Provisions

13.1 Program Guidelines Scope

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

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

13.2 Program Guidelines Amendments

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

13.3 Disaster Impacted Areas

As described in the initial Action Plan, and its amendments, the Government of Puerto Rico will use CDBG-DR funds solely for necessary expenses related to disaster relief, long-term recovery, restoration of housing, infrastructure, and economic revitalization in the impacted and distressed areas in Puerto Rico as identified in disaster declaration numbers DR-4336 and 4339. Through the Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314, HUD identified that, for Puerto Rico, all components of the Island are considered "most impacted and distressed" areas. Therefore, these guidelines apply to all 78 municipalities of Puerto Rico.

13.4 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 these guidelines or** any applicable federal or state law or regulation, or to the terms of times established in these guidelines to request a Program-based Reconsideration, Administrative Review and/or Judicial Review.

13.5 Established Periods of Time

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

13.6 Written Notifications

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

13.7 Conflict of Interest

As stated in the Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, Federal regulations require that State grantees, in the direct Grant administration and means of carrying out eligible activities, be responsible with program administrative requirements, including those established in 24 C.F.R. § 570.489(h) related to conflicts of interest.

Several federal and state conflict of interest laws can govern CDBG-DR 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 and 24 C.F.R. § 85.36;
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 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 1-2012, as amended, 3 L.P.R.A. § 1854 *et seq.*

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

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

Such conflicts of interests will not be tolerated by PRDOH. The PRDOH, Program officials, their employees, agents and/or designees are subject to state ethic laws and regulations, including, but not limited to the Puerto Rico Government Ethics Act of 2011, Act 1-2012, as amended, in regard to their conduct in the administration, granting of awards and program activities.

According to the aforementioned Act, no public servant shall intervene, either directly or indirectly, in any matter in which they have a conflict of interests that may result in their benefit. No public servant shall intervene, directly or indirectly, in any matter in which any member of their family unit, relative, partner or housemate has a conflict of interest that may result in benefit for any of the abovementioned. In the case that any of the abovementioned relationships has 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 this guideline. PRDOH Program officials, their employees, agents and/or designees should disclose their relationship with PRDOH at the time of their application.

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

13.8 Citizen Participation

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

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

- **Via phone:** 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)
Attention hours: Monday – Friday from 8:00 a.m. to 5:00 p.m.
- **Via email at:** infoCDBG@vivienda.pr.gov
- **Online at:** <https://www.cdbg-dr.pr.gov/en/contact/> (English)
<https://www.cdbg-dr.pr.gov/contact/> (Spanish)
- **In writing at:** Puerto Rico CDBG-DR Program
P.O. Box 21365
San Juan, PR 00928-1365

The Citizen Participation Plan and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/citizen-participation/> and <https://www.cdbg-dr.pr.gov/participacion-ciudadana/>. For more information on how to contact PRDOH, please refer to www.cdbg-dr.pr.gov.

13.9 Citizen Complaints

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

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

- **Via email at:** 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 Program
Attn: CDBG-DR 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 these complaints into written form. These alternate methods include, but are not limited to:

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

*Attention hours: Monday – Friday from 8:00 a.m. to 5:00 p.m.²¹

The Citizen Complaints Policy and all CDBG-DR Program policies are available in English and Spanish on the PRDOH website at <https://www.cdbg->

²¹ Hours may vary due to COVID-19. PRDOH recommends calling ahead prior to arrival to corroborate.

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

13.10 Anti-Fraud, Waste, Abuse or Mismanagement of Funds

PRDOH, as grantee, is committed to the responsible management of CDBG-DR 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-DR funds as well as encourages any individual who is aware or suspects any kind of conduct or activity that may be considered an act of fraud, waste, abuse, or mismanagement, regarding the CDBG-DR Program, to report such acts to the CDBG-DR Internal Audit Office, directly to the Office of Inspector General (**OIG**) at HUD, or any local or federal law enforcement agency.

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

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

REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT DIRECTLY TO HUD OIG	
HUD OIG Hotline	1-800-347-3735 (Toll-Free) 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-DR Program policies are available in English and Spanish on the PRDOH website at <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

13.11 Related Laws and Regulations

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

14 Program Oversight

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

15 Severability Clause

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

END OF GUIDELINES