



DEPARTMENT OF  
**HOUSING**



# CDBG-DR

## Optional Relocation Assistance Policy

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## 1 Overview

The Puerto Rico Department of Housing (**PRDOH**), as a grantee of the CDBG-DR/MIT Programs, is authorized to provide Optional Relocation Assistance (**ORA**) to persons displaced by assisted activities who do not meet the definition of a “displaced person”, 49 C.F.R. § 24.2 (a)(9)(i), and would therefore not be eligible for assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (**URA**), as amended, 42 U.S.C. § 4601 *et seq.*<sup>1</sup>

PRDOH has established this ORA Policy and related procedures for select programs with activities that may require such assistance on a limited basis to CDBG-DR/MIT Programs’ participants whose voluntary participation may require relocation. ORA will be provided only in programs which have explicitly allowed for such assistance in their program guidelines, and in accordance with the PRDOH Residential Anti-Displacement and Relocation Assistance Plan (**PRARAP**).<sup>2</sup> Additionally, and as outlined in a HUD waiver, PRDOH may authorize its Subrecipients receiving CDBG-DR/MIT funds to establish separate optional relocation policies.<sup>3</sup>

PRDOH and its Subrecipients will take all reasonable steps and make every effort to minimize displacement as a result of Programs’ activities in accordance with the PRARAP.

## 2 Definitions

- **Alien not lawfully present in the United States:** The phrase “alien not lawfully present in the United States” means an alien who is not “lawfully present” in the United States as defined in 8 C.F.R. § 1.3 and includes:
  - (i) An alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*) and whose stay in the United States has not been authorized by the United States Attorney General; and,
  - (ii) An alien who is present in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.
- **Citizen:** The term citizen for purposes of this part includes both citizens of the United States and noncitizen nationals.

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<sup>1</sup> Authorizing regulation for Optional Relocation Assistance can be found at 24 C.F.R. § 570.606(d).

<sup>2</sup> See PRDOH URA-ADP Guide available in English and Spanish at <https://cdbg-dr.pr.gov/en/download/ura-adp-guidelines/>, and <https://cdbg-dr.pr.gov/download/guias-ura-adp/>.

<sup>3</sup> See Federal Register Notice Vol. 83, No. 28 (February 9, 2018) 83 FR 5844, 5858 and Federal Register Notice Vol. 84, No. 169 (August 30, 2019) 84 FR 45838, 45860.

- **Dwelling:** The term dwelling means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.
- **Household income:** The term household income means total gross income received for a **twelve (12) month** period from all sources (earned and unearned) including, but not limited to: wages, salary, child support, alimony, unemployment benefits, workers compensation, social security, or the net income from a business. It does not include income received or earned by dependent children and full-time students under 18 years of age.
- **Owner of a dwelling:** The term owner of a dwelling means a person who is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:
  - (i) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least fifty (50) years to run from the date of acquisition; or
  - (ii) An interest in a cooperative housing project which includes the right to occupy a dwelling; or
  - (iii) A contract to purchase any of the interests or estates described in 49 C.F.R § 24.2(a)(1)(i) or (ii); or
  - (iv) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.
- **Person:** The term person means any individual, family, partnership, corporation, or association.
- **Program or project:** The phrase program or project means any activity or series of activities undertaken by a Federal Agency or with Federal financial assistance received or anticipated in any phase of an undertaking in accordance with the Federal funding Agency guidelines.
- **Subrecipient:** Means an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

### 3 Acronyms

The following acronyms are commonly used in the implementation of programs subject to this regulation:

- Federal Emergency Management Agency (**FEMA**)
- Federal Housing Administration (**FHA**)
- Federal Highway Administration (**FHWA**)
- Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (**FIRREA**)
- Housing and Community Development Act of 1974 (**HCDA**)
- Housing of last resort (**HLR**)
- U.S. Department of Housing and Urban Development (**HUD**)
- Optional Relocation Assistance (**ORA**)
- Puerto Rico Department of Housing (**PRDOH**)
- Replacement housing payment (**RHP**)
- U.S. Department of Transportation (**USDOT**)

## 4 Waivers

### 4.1 Optional Relocation Policies

The waivers established in 83 FR 5844, 5858 and 84 FR 45838, 45860 authorize CDBG-DR/MIT grantees to allow their subrecipients to establish separate optional relocation policies for CDBG-DR/MIT programs, which is otherwise not contemplated by 24 C.F.R. § 570.606 (d). This waiver is intended to provide States with maximum flexibility in developing optional relocation policies with CDBG-DR/MIT funds.

PRDOH will inform subrecipients explicitly and in writing when they are authorized to establish a separate ORA Policy for the program they are administering.

## 5 Optional Relocation Assistance

Applicant households who must temporarily relocate from their hurricane-impacted property for construction activities associated with their acceptance of a CDBG-DR/MIT Programs' award are not considered "displaced persons".<sup>4</sup> As such, these households who are voluntarily participating in the displacing CDBG-DR/MIT Program are not entitled to relocation assistance benefits under URA. As determined necessary and appropriate by PRDOH, ORA may be available to such households participating in select programs.

### 5.1 ORA Eligibility

PRDOH has chosen to implement this Optional Relocation Assistance Policy under which households may qualify for ORA during program-sponsored activities. Households who are not residing in the hurricane-impacted property for any reason other than program-

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<sup>4</sup> For the full definition of displaced persons, see 49 C.F.R. § 24.2 (a) (9)(i), and for non-displaced persons, see 49 C.F.R. § 24.2 (a) (9)(ii).

sponsored activities may not be eligible for ORA, however such situations may be evaluated on a case-by-case basis given the needs of the specific program utilizing ORA.

In order to qualify for ORA, the Applicant must:

1. Be determined to be eligible to receive the assistance that requires the Applicant to vacate the damaged property;
2. Have an income of less than eighty percent (80%) of Area Median Income (**AMI**), according to the CDBG-DR/MIT HUD Modified Income Limits for All Areas in Puerto Rico;<sup>5</sup> and
3. Have no duplication of benefits issues that could prevent the Program(s) from providing services.

In addition to these ORA eligibility requirements, a program may establish other criteria for determining an Applicant's eligibility for ORA.

Once a household is deemed eligible for ORA, they will be sent an ORA Eligibility Notice which details the amount and types of assistance for which they are eligible and the steps required to be taken to receive the offered ORA funds. This notice will inform the applicant of their right to contest a determination made by the Program(s) and the process for requesting a Program-Based Reconsideration or an Administrative Review. For more information about the reconsideration process, please refer to Program-Based Reconsideration and/or Administrative section of this Policy.

## 5.2 ORA Assistance Types

### 5.2.1 Rental Assistance

The Program(s) will compensate eligible Applicants up to an amount based on the Applicant's household income and the applicable HUD Metro Area Fair Market Rent (**FMR**) rate<sup>6</sup> for a home large enough to accommodate the household in or near the municipality where the assisted property is located, as established below:

- For Applicant Households below 30% AMI : 150% HUD Metropolitan Area Fair Market Rent Rate
- For Applicant Households 31% to 50% AMI: 130% HUD Metropolitan Area Fair Market Rent Rate
- For Applicant Households 51% to 80% AMI: 110% HUD Metropolitan Area Fair Market Rent Rate
- For Applicant Households above 80% AMI: not eligible for ORA Assistance

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<sup>5</sup> HUD CDBG Income Limits are available at: <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>.

<sup>6</sup> [https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022\\_code/select\\_Geography.odn](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2022_code/select_Geography.odn).



ORA will be provided for a period based on the duration of construction activities requiring the temporary relocation. Assistance will begin once documentation requirements have been met, and conclude once the Applicant is able to move back in, plus a reasonable allowance of time to complete their move back to the assisted property. An assisted property will be considered ready for move-in when the assisted property passes a final inspection, and it is confirmed that work was completed in accordance with the agreed scope of work and use permit ("permiso de uso") is obtained, if applicable.

### 5.2.2 Moving Expenses

Applicants may receive ORA to cover expenses related to moving of personal property in the program-assisted property while it is under construction. Moving expenses shall not exceed the Federal Highway Authority Fixed Residential Moving Schedule. Moving expenses are based on the number of furnished rooms to be moved and may be paid only for a single move from the assisted property, and again for a single move to return the assisted property, a maximum of two (2) moves.<sup>7</sup> The actual ORA moving assistance amount provided will be based on a written estimate or paid invoice, denoting the moving company's name, contact information and summary of rooms to be moved is required to receive this assistance.

Applicants who opt to self-move may be reimbursed for actual costs incurred in completing the move, such as transportation and equipment rental costs. In such cases, the Applicant must submit evidence to support the costs incurred. Under no circumstances will self-moving assistance exceed the FHWA Fixed Residential Moving Schedule.

### 5.2.3 Storage Expenses

Applicants may also receive ORA to reimburse eligible storage expenses of personal property. Storage expenses must be reasonable based on the prevailing area market price for a storage space suitable for the amount of possessions to be stored. They may only be reimbursed upon production of a paid invoice or receipt for a storage facility business and for a period that aligns with the construction duration. Storage expenses will not be reimbursed:

- When they are incurred for the use of a private residence or other non-storage facility property as storage; or
- For any storage fees/invoices presented for a term beyond the construction duration plus **one (1) month**.

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<sup>7</sup> The Fixed Residential Moving Expense and Dislocation Allowance 2021 Payment Schedule was recently provided by Federal Highway Administration (FHWA) in Federal Register Vol. 86, No. 141 (July 27, 2021) 86 FR 40227. This is the first update to the Schedule since 2015. [https://www.fhwa.dot.gov/real\\_estate/uniform\\_act/relocation/moving\\_cost\\_schedule.cfm](https://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm)

## 6 Program-Based Reconsideration and/or Administrative Review

Applicants of the Programs may contest any determinations or denials based on Programs' policy. However, an Applicant may not challenge a federal statutory requirement. Applicants 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.

### 6.1 Program-Based Reconsideration Request

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

Applicants who file a Program-based Reconsideration Request are encouraged to provide individual facts or circumstances, as well as supporting document to justify their petition. In the Reconsideration Request process, the Program will only review facts and information already included in an Applicant'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. Applicants will be notified of the reconsideration determination via a Reconsideration Request Approved or a Reconsideration Request Denied notification.

Filing a Program-based Reconsideration Request does not substitute, negate, or preclude any legal right that an Applicant 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).<sup>8</sup>

## 6.2 Administrative Review Request

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

If the Applicant disagrees with any **final** written determination on an Administrative Review Request notified by PRDOH after completing the Administrative Adjudicative Procedure, said party may file a Judicial Review petition before the Court of Appeals of Puerto Rico within **thirty (30) calendar days** 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.

**END OF POLICY.**

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<sup>8</sup> For more details, you can access Regulation 4953 (in Spanish) at: <https://www.vivienda.pr.gov/wp-content/uploads/2015/09/4953-Reglamenta-los-procedimientos-de-adiudicacion-formal.pdf>.