



CDBG-DR/MIT

REAL PROPERTY ACQUISITION AND DISPOSITION GUIDELINES



DEPARTMENT OF

HOUSING

GOVERNMENT OF PUERTO RICO

April 23, 2026

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PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR/MIT PROGRAMS
REAL PROPERTY ACQUISITION AND DISPOSITION GUIDELINES
VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	April 23, 2025	Original version.

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1 Overview

The Puerto Rico Department of Housing (**PRDOH**), as grantee, is committed to the responsible management of a \$20.2 billion federal grant. The U.S. Department of Housing and Urban Development (**HUD**) allocated Community Development Block Grant – Disaster Recovery (**CDBG-DR**) funds to address Puerto Rico’s long-term recovery needs caused by Hurricanes Irma and María in September 2017. Afterward, HUD also allocated Community Development Block Grant – Mitigation (**CDBG-MIT**) funds to support activities that increase resilience to disasters and reduce or eliminate the long-term risks of loss of life, injury, damage or loss of property, suffering, and hardship by lessening the impact of future disasters.

PRDOH has developed a comprehensive program portfolio that includes Housing, Economic Recovery, Infrastructure, Planning, and Multi-sector programs. CDBG-DR/MIT programs are intended to help rebuild families and communities, generate long-term investments in social capital, fortify the economy, and set the stage for stability and continuity in government modernization and efficiency. To fulfill those commitments and implement CDBG-DR/MIT programs, PRDOH and its Subrecipients may need to acquire real property, as eligible and allowed by HUD regulations.

2 Scope

The Real Property Acquisition and Disposition Guidelines outline the federal standards that PRDOH and Subrecipients of CDBG-DR/MIT allocations must comply with when implementing acquisition, management, and disposition procedures. PRDOH will evaluate and implement, on a case-by-case basis, the sections that apply to specific program goals. Therefore, the options provided hereinafter will be carefully chosen based on staff size, capacity, property portfolio, and intended use of the real property.

PRDOH CDBG-DR/MIT programs make a substantial community investment. To ensure continued compliance, it is recommended that applicable programmatic and cross-cutting requirements, agreements, and the assisted projects’ inventory be reviewed to confirm that change of use and disposition requirements are met in each transaction.

PRDOH will support the collection and maintenance of data to create an up-to-date inventory of vacant properties, which will assist in housing and relocation programs and other CDBG-DR/MIT programs. However, each Subrecipient is responsible for understanding and adhering to the federal and state requirements that apply to these funds.

3 Definitions

The terms used in these Guidelines are defined below. Their definition will be considered final unless a different definition is used in any other part of this document with its corresponding disclaimer.

- **Acquire** – The transfer to PRDOH of title or any ownership interest in real property, in accordance with these Guidelines and the laws of Puerto Rico.
- **Acquiring Entity/ Acquiring Agency** – These terms are used interchangeably and refer to PRDOH (or, in some cases, the Subrecipient) performing the acquisition or under whose authority the acquisition is performed.
- **Acquisition** – For the purposes of these Guidelines, refers to the acquisition of real property—whether in whole or in part—by PRDOH or a Subrecipient through purchase, long-term lease, donation, or other means, to be utilized to meet a National Objective.¹
- **Bid or Sealed Bid** – The competitive procurement method that requires offerors to submit sealed bids in response to the solicitation’s requirements. This procurement method does not allow negotiation.
- **Buyout** – A type of property acquisition intended to reduce risk from future hazards or the acquisition of properties in a Disaster Risk Reduction Area (**DRRA**). Properties acquired through buyout are subject to post-acquisition land use restrictions and must be dedicated and maintained in perpetuity for a use compatible with open space, recreational, or floodplain and wetlands management practices.²
- **Citizen participation** – An open process in which the community members have the right to be informed, provide comments to the Government, and receive responses. This process ensures that individuals have a full opportunity to participate and express their needs and goals.
- **Clearance** – Site cleanup or demolition activities. Often combined with other eligible activities.³
- **Disaster Risk Reduction Area** – An area designated by PRDOH, as Grantee, that meets the criteria for risk reduction, pursuant to the following requirements: (1)

¹ See 42 U.S.C. § 5305(a)(1), (a)(2), and (a)(4), and 24 C.F.R. § 570.201(a).

² Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844.

³ 42 U.S.C. § 5305(a)(4)

the hazard must have been caused or exacerbated by a Presidentially declared disaster; (2) the hazard must be a predictable environmental threat to the safety and well-being of program beneficiaries; and (3) the area must be clearly delineated so that HUD and the public may easily determine which properties are located within the designated area.⁴

- **Disposition** – The sale, lease, donation, or other transfer of any real property acquired pursuant to 42 U.S.C. § 5305, or its retention for public purposes. It includes costs incurred by PRDOH to restrict land use as required under applicable Program Guidelines and CDBG-DR/MIT requirements.⁵
- **Dwelling** – Any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one (1) or more families. This also includes any vacant land offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.⁶
- **Fair Market Value (FMV)** – The value of real property based on the prospective sale price the property would yield if sold in an arms-length transaction under current market conditions.⁷
- **Grantee** – An entity receiving an award of financial assistance from a federal agency to carry out a public purpose of support or stimulation as authorized by a law of the United States. PRDOH is the entity designated by the Government of Puerto Rico as Grantee of the CDBG-DR and CDBG-MIT funds allocated to Puerto Rico.
- **Maintenance** – Refers to the maintenance and repair costs as costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements that add to the permanent value of the buildings and equipment or appreciably prolong

⁴ See Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, 5863.

⁵ See <https://www.hudexchange.info/sites/onecpd/assets/File/CDBG-National-Objectives-Eligible-Activities-Chapter-2.pdf>.

⁶ 42 U.S.C. § 3602

⁷ See <https://www.hud.com/glossary/fair-market-value>.

their intended life must be treated as capital expenditures.⁸ These costs are only allowable to the extent not paid through rental or other agreements.⁹

- **PRDOH** – Refers to the Puerto Rico Department of Housing.
- **Program Income** – Refers to gross income received by the recipient or Subrecipient directly generated by a CDBG-DR/MIT activity or earned as a result of an award, regardless of when the funds were appropriated and whether the activity has been closed out, according to applicable regulations.
- **Public Use** – Includes uses such as schools, streets, highways, hospitals, government buildings, parks, water reservoirs, flood control facilities, slum clearance and redevelopment projects, public housing, public theaters and stadiums, safety facilities, harbors, bridges, railroads, airports, terminals, prisons, jails, public utilities, canals, and other purposes designated as beneficial to the public.¹⁰
- **Real Property** – Lands, lands under water, structures and any easements, air rights, franchises, incorporeal hereditaments, and all estates and rights therein—both legal and equitable—including terms for years and liens by way of judgment, mortgage, or otherwise, and any fixtures and improvements located thereon, excluding any movable machinery or equipment.
- **Subrecipient** – An entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal awards directly from a Federal agency.¹¹
- **Subrecipient Agreement (SRA)** – The formal agreement between PRDOH and a Subrecipient.
- **Vacant Land** – Unimproved property, underutilized lands, and abandoned and blighted homes.

⁸ 2 C.F.R. § 200.439

⁹ 2 C.F.R. § 200.452

¹⁰ See Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314, 40318

¹¹ 2 C.F.R. § 200.1

4 Real Property Acquisition

4.1 Acquisition Eligible Activities

PRDOH may use CDBG-DR/MIT funds to acquire real property for any public purpose, subject to the limitations set forth in 24 C.F.R. § 570.207, unless otherwise allowed by waivers and alternative requirements.

PRDOH may acquire real property directly or provide CDBG-DR/MIT assistance to another public agency or public or private non-profit Subrecipient to acquire real property. This means the property need not be publicly owned to serve a public purpose. The public purpose requirement may also be met when a non-profit organization uses CDBG-DR/MIT funds to acquire property for a CDBG-eligible activity, and the assisted property is open for use by the general public during all regular hours of operation.¹²

Real property to be acquired may include but is not limited to, land, air rights, easements, water rights, rights-of-way, buildings, and other real property improvements.

Acquisition rules apply whenever an acquiring entity:

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

Real property acquisition with CDBG-DR/MIT funds is also subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (**URA**), as amended, as set forth in 24 C.F.R. § 570.606 and at 49 C.F.R. Part 24.

For more information on URA requirements, refer to the URA and ADP Guide, available in English and Spanish at: <https://recuperacion.pr.gov/en/resources/ura/> and <https://recuperacion.pr.gov/recursos/ura/>.

¹² HUD CPD Notice CPD-17-09, "Management of Community Development Block Grant Assisted Real Property". Available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/17-09cpdn.pdf>.

4.2 Acquisition Methods

Acquisition methods include donation, purchase, long-term lease (more than fifteen (15) years), or otherwise, as further described below.

4.2.1 Donation

A transaction may be considered a donation only if the property owner agrees to give, rather than sell, the property to PRDOH. The owner must be fully informed by PRDOH of their right to receive just compensation before making the donation. The owner may donate the entire property or any part thereof, any interest therein, or any compensation paid therefore, to PRDOH as such owner may determine.¹³

PRDOH and the property owner must then enter into a donation agreement, and the deed must be recorded in accordance with State regulations. Title clearance activities may also be required before deed transfer.

PRDOH is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the agency from such obligation, except as provided in 49 C.F.R. § 24.102(c)(2). In the case of a property donation under 49 C.F.R. § 24.108, an appraisal is not required if the property owner releases PRDOH from such obligation and has been informed of their right to receive just compensation.

4.2.2 Purchase

4.2.2.1 Just Compensation Purchase

Before initiating negotiations, PRDOH will establish the amount it considers to be just compensation for the real property. Just compensation is a fair and reasonable payment not less than the property's fair market value, considering the value of allowable damages or benefits to the remaining property.

The acquisition price is determined by an appraiser duly authorized and qualified to conduct real estate appraisals in Puerto Rico. PRDOH will promptly thereafter make a written offer to the property owner to acquire the property for the full amount established as just compensation.

4.2.2.2 Negotiated Purchase

A negotiated purchase refers to the acquisition of real property at a price different from the amount determined as just compensation. In such cases, the rationale for the negotiated amount must be documented in an administrative settlement, which provides justification for the deviation.

¹³ 49 C.F.R. § 24.108.

In the context of a buyout or housing acquisition program, a negotiated purchase may include incentives to resettle beneficiaries. PRDOH and its Subrecipients must ensure that the intent of the housing incentive is met at the time of the award.

4.2.2.3 Long-term Lease (Fifteen (15) years or more)

A long-term lease—a lease with a term of fifteen (15) years or more—is considered a permissible acquisition method under CDBG-DR/MIT regulations. However, short-term lease agreements, such as one-year leases with renewal options, do not qualify as long-term leases, even if renewed annually for a total of fifteen (15) years or more.

5 National Objective

Whether a property is acquired by PRDOH or a Subrecipient, it must meet a HUD national objective to be considered an eligible activity. Likewise, for disposition costs to be eligible, the post-disposition use of the CDBG-acquired property must meet a national objective.

The national objective is based on the actual use of the acquired property. While PRDOH and its Subrecipients will identify the planned end use of each property at the time of acquisition to assess preliminary compliance with a national objective, the final determination shall be based on the actual use of the property.

Acquisition and disposition activities may qualify under any of HUD's national objectives, as outlined below:

5.1 Low- and Moderate-Income (LMI)¹⁴

5.1.1 Low-Mod Area Benefit Category (LMA)

An acquisition may qualify under the LMA category if the property is used for an activity that benefits the residents of a primarily residential area where at least fifty-one percent (51%) of those residents are low- and moderate-income (LMI) persons, based on census or survey data. LMA eligibility is based on the residence of the beneficiaries and not on the location where the activity takes place.

Before implementing the activity, PRDOH or the Subrecipient must define the service area of the activity.

¹⁴ 24 C.F.R. § 570.483(b)

5.1.2 Limited Clientele Category (LMC)

An acquisition may qualify under the LMC category if the real property acquired will be used for an activity that benefits a specific group of people, at least fifty-one percent (51%) of whom are LMI persons.

LMC activities benefit a specific group of individuals rather than everyone in an area (i.e., services for seniors, homeless shelters).

5.1.3 Jobs (LMJ)

An acquisition may qualify under the LMJ category if the acquired property is to be used for an economic development project that creates or retains permanent jobs, and at least fifty-one percent (51%) of those jobs will be held by, or made available to, LMI individuals.

HUD has issued a waiver and alternative requirement¹⁵ that simplifies how job benefit to LMI individuals is documented:

- The business must document, for each person employed, the name of the business, type of job, and the annual wages or salary of the job.
- HUD will consider the person income-qualified if the annual wages or salary of the job is at or below the HUD-established income limit for a one-person family.
- The new method streamlines the documentation process by allowing the collection of wage data for each position created or retained from the assisted businesses, rather than from each individual household.

5.1.4 Housing (LMH)

This category is appropriate for activities that provide or improve housing for LMI individuals and households. An acquisition may qualify under the LMH category if the property will be used for housing to be occupied by LMI individuals. The LMH national objective is satisfied by documenting occupancy.

- For a one-unit property, it must be occupied by an LMI household.
- For a two-unit property, at least one unit must be occupied by an LMI household.
- For properties with three or more units, at least 51% of the units must be occupied by LMI households.

This category may also be used for buyout activities if used in conjunction with an activity that helps LMI households occupy a new residence.

¹⁵ See 83 FR 5844, 5866; 84 FR 45838, 45868; 87 FR 6364, 6375.

5.1.5 Housing Incentives (LMHI)¹⁶

This category is appropriate when providing a safe housing incentive to LMI households to relocate to a lower-risk area. An acquisition may qualify under the LMHI national objective if it involves CDBG-DR/MIT funds used for housing incentive awards tied to buyouts or other voluntary acquisition to allow the LMI household to move out of the floodplain to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.

In addition to other applicable criteria, CDBG-MIT activities can also meet an LMI national objective if they meet the criteria established in an alternative requirement in Section V.B.5. of 84 FR 45838, 45866 notice applicable to buyout activities.

5.1.6 Urgent Need (UN)¹⁷

The UN national objective is intended to address urgent needs of recent origin for which no other funding is available. This national objective does not apply to CDBG-MIT grants. An acquisition may qualify under the UN national objective if the funded activity, as outlined in the Action Plan, responds to the urgency, type, scale, and location of the disaster-related impact as described in the PRDOH's Impact and Unmet Needs Assessment.

5.1.7 Urgent Need Mitigation (UNM)¹⁸

The UNM national objective may only be used for activities funded by a CDBG-MIT grant. To qualify under this objective, the project must address the current and future risks identified in the PRDOH's Mitigation Needs Assessment of the most impacted and distressed areas. The activity must result in a measurable and verifiable reduction in the risk of loss of life and property from future disasters and yield community development benefits.

5.2 Slum and Blight (SB)¹⁹

The Slum and Blight national objective is divided into two subcategories, as described below:

¹⁶ 83 FR 5844

¹⁷ 24 C.F.R. § 570.483(d) certification requirements are waived for 36 months per the Consolidated Notice. As per HUD's Consolidated Notice, this certification requirement is waived for 36 months from the date of the Allocation Announcement Notice (AAN). During this time, grantees may use the UN objective without full certification.

¹⁸ 84 FR 45838, 45839

¹⁹ 24 C.F.R. § 570.483(c)

5.2.1 Slum or Blight Area Basis (SBA)

An acquisition may qualify under the SBA category if the acquired real property is in an area designated by the grantee as a slum or blighted area, and the property will be used in a manner that addresses one or more of the conditions which contributed to the physical deterioration of the area. This category is not based on residents' income. Specific details are outlined in 24 C.F.R. § 570.483(c).

5.2.2 Slum or Blight Spot Basis (SBS)

This category is appropriate when addressing specific conditions of blight, physical decay, or environmental contamination not found within a designated slum or blighted Area. An acquisition qualifies under the SBS category if the acquired property is located outside a designated slum or blighted area and is required for clearance to eliminate specific conditions of blight or physical decay on a spot basis.

5.2.3 Slum and Blight in CDBG-MIT

PRDOH shall not rely on the Slum and Blight (**S&B**) elimination national objective criteria without prior HUD's approval when carrying out activities under CDBG-MIT, since this national objective is generally considered not appropriate in the context of mitigation activities. Instead, PRDOH should consider other national objectives, such as benefiting LMI persons or meeting urgent needs, that include additional requirements to address current and future risks and achieving measurable and verifiable risk reduction.

6 Property Management

PRDOH and its Subrecipients must establish a recordkeeping system to document compliance with federal, state, local, and program requirements. PRDOH will have an effective real property inventory system to track the acquired properties, including ownership and use, while the properties are subject to CDBG-DR/MIT requirements. Thus, by establishing and maintaining adequate internal controls, PRDOH will ensure that the property is used solely for purposes authorized under the CDBG-DR/MIT Program.²⁰

Recordkeeping responsibilities are governed by 24 C.F.R. 570.490(d). Accordingly, PRDOH and its Subrecipients shall retain records for the longer of the following periods:

- Three (3) years from the time of closeout of HUD's grant to the State, or

²⁰ 24 C.F.R. § 570.489(k)

- The period provided in the CDBG regulations at 24 C.F.R. § 570.487 (other applicable laws and program requirements), and 24 C.F.R. § 570.488 (displacement, relocation, etc.), or
- Five (5) years after the completion of a CDBG-funded project pursuant to 42 U.S.C. § 12707(a)(4), related to citizen participation.

Furthermore, PRDOH must keep records involving the acquisition and improvement of real property, as outlined in 24 C.F.R. § 570.489(j)(2), for five (5) years after the closeout of the local government's grant, to the extent this period exceeds the three-year requirement outlined at 24 C.F.R. § 570.490(d).²¹

HUD recommends that states and state recipients retain all applicable documents for five (5) years after grant closeout to the State to ensure that the grant has met all applicable record retention requirements.²²

The real property inventory system will help provide accurate records, conduct regular property inventories, ensure adequate maintenance and control, and establish disposition procedures. Even during the Federal award closeout period, PRDOH and its Subrecipients shall account for the acquired real property, following the regulations cited in these Guidelines.

7 Change of Use of Real Property

Real property acquired with CDBG-DR/MIT funds must be used for the originally authorized purpose, as long as needed, except as provided by Federal statutes or HUD.²³

In accordance with HUD's alternative requirements at 83 FR 5844, 5856, PRDOH, as State Grantee carrying out activities directly, will follow the change of use of real property rule under 24 C.F.R. § 570.489(j). Pursuant to 83 FR 5856, VI. 2. (c) 17, all references to "unit of general local government" (UGLG) in 24 C.F.R. § 570.489(j) shall be read as "State, UGLG or State Subrecipient."

The change of use standards at 24 C.F.R. § 570.489(j) allow PRDOH to change the use or planned use (including activities undertaken by Subrecipients) of any real property

²¹ HUD CPD Notice CPD-22-14, "Closeout Instructions for Community Development Block Grant (CDBG) Programs". Available at <https://www.hud.gov/sites/dfiles/OCHCO/documents/2022-14cpdn.pdf>.

²² *Id.*

²³ Where the acquisition is for the purpose of clearance that will eliminate specific conditions of blight or physical decay, the clearance activity may be considered the actual use of the property. However, as applicable, any subsequent use or disposition of the cleared property must be treated as a "change of use" under 24 C.F.R. § 570.489(j).

acquired with CDBG-DR/MIT funds **in excess of the threshold for small purchase procurement**.²⁴ However, before implementing any such change, PRDOH must provide notice to affected citizens and offer an opportunity for public comment on the proposed change of use.

7.1 Change of Use Criteria

The change of use standards described in 24 C.F.R. § 570.489(j) apply to real property under PRDOH's control (including activities undertaken by Subrecipients) that were acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement. These standards apply from the date CDBG funds are first spent on the property until five (5) years after the CDBG-DR/MIT Grant Closeout.

Accordingly, if PRDOH wants to change the use or planned use (including activities undertaken by Subrecipients) of any real property from that for which the acquisition or improvement was made, it will need to provide the affected citizens with reasonable notice of and opportunity to comment on any proposed change, and determine that either:

- (a) The new use meets one of the national objectives and is not a building for the general conduct of government; or
- (b) The new use is deemed appropriate (after consultation with affected citizens) but will not meet a national objective.

If PRDOH determines that the new use is appropriate (after consultation with affected citizens) but will not meet a national objective, it may retain or dispose of the property for the new use after reimbursing either the Program account or its State CDBG Program account. The reimbursement shall be equal to the property's current FMV, less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, and improvements to, the property. However, if the change in use occurs after and within five (5) years of the Grant's closeout, PRDOH shall reimburse the State CDBG Program account.

Notwithstanding, if the CDBG-assisted property *never met* a national objective, PRDOH must reimburse the Program or its State CDBG Program account from non-federal

²⁴ The threshold for small purchase procurement, follows the simplified acquisition threshold (**SAT**). Office of Federal Financial Management, "Memorandum for Chief Financial Officers and Heads of Small Executive Agencies", June 20, 2018: The SAT can vary depending on the acquisition situation and the National Defense Authorization Acts (**NDAA**)'s determination for a given Fiscal Year. As established in the Federal Acquisition Regulation (**FAR**), the SAT is currently set at \$250,000.

funds. The reimbursed amount is treated as program income and must be spent in accordance with CDBG program income requirements, as specified in CPD-17-09 Notice and PRDOH's Program Income Policy.²⁵

Following the reimbursement in accordance with 24 C.F.R. § 570.489(j)(2), the property will no longer be subject to any CDBG requirements.

8 End Use

Properties purchased through buyout may not be redeveloped, except for the following specific purposes: (1) a public facility that is open on all sides and functionally related to a designated open space (e.g., a park, campground, or outdoor recreation area); (2) a rest room; or (3) a flood control structure, provided that the local floodplain manager approves the structure in writing before the start of construction.

Once a property is acquired through a buyout, the acquiring entity may not apply for Federal disaster assistance in any future Presidentially declared disasters that impacts the same property. However, the acquiring entity may lease the land to other parties, but only for uses that are compatible with the allowable end uses listed above.

All other acquisitions must meet a national objective. The property's end use or planned end use determines whether it meets a national objective. Real property acquired with program funds cannot be used for ineligible activities, such as the general conduct of government. However, this rule is subject to the waivers and alternative requirements established by Public Law 115-56, 115-123, and 116-20, as set forth in 87 FR 36869, 36874.

9 Real Property Disposition

The disposition of real property acquired with CDBG-DR/MIT funds is eligible under 24 C.F.R. § 570.201(b). PRDOH may use CDBG-DR/MIT funds for disposition, through sale, lease, donation, or other means, of any real property acquired with CDBG funds or for its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements outlined in 24 C.F.R. § 570.504.

²⁵ PRDOH Program Income Policy is available in English and Spanish at <https://recuperacion.pr.gov/en/download-/program-income-policy/> and <https://recuperacion.pr.gov/download/politica-de-ingresos-del-programa/>.

9.1 Disposition Eligible Activities

PRDOH may use CDBG-DR/MIT funds to pay costs incidental to the disposition of CDBG-DR/MIT-assisted property. Eligible costs would include:

- Preparation of legal documents;
- Fees paid for surveys;
- Marketing expenses;
- Financial services;
- Transfer taxes;
- Other costs involved in the transfer of ownership of the CDBG-DR/MIT-assisted property;
- Reasonable costs for temporarily managing the CDBG-DR/MIT-assisted property until final disposition of the property occurs. Examples of such costs would be:
 - Routine maintenance, such as grass mowing and boarding of vacant buildings.

CDBG-DR/MIT funds cannot be used to maintain non-CDBG-DR/MIT-assisted properties, such as local tax-foreclosed properties. Because this activity only authorizes the costs of temporarily managing the CDBG-DR/MIT-assisted property pending its disposition, care should be taken to avoid spending CDBG-DR/MIT funds to manage properties for which there are no plans for disposition in the near future or where the market is such that it is not likely to be sold in the near future.²⁶

Examples of eligible disposition activities include, but are not limited to:

- The upkeep of CDBG-assisted property funded with CDBG-DR/MIT resources, followed by its sale for an eligible use (i.e., affordable housing).
- The sale of acquired property to a private entity, provided it supports an eligible activity (i.e., affordable housing).
- The acquisition and demolition of dangerous structures, followed by their sale or donation to non-profit developers of affordable housing.

9.2 Documenting National Objective for Disposition Activities

For disposition costs to be eligible, the use of the CDBG-acquired property after disposition must meet a CDBG-DR/MIT national objective. As a general rule, when a property is disposed of for the **same purpose** as that for which it was acquired, the

²⁶ HUD may have a legitimate basis to question national objective compliance if a national objective is not achieved after a reasonable period (such as 3-5 years).

disposition costs will meet the same national objective ascribed to the CDBG-DR/MIT funds spent on its acquisition.²⁷

If the property is being disposed of for **a purpose other than that for which it was acquired**, the new activity must be reviewed to determine whether the new use will meet a national objective. To do so, PRDOH and its Subrecipients will follow the change of use requirements at 24 C.F.R. § 570.489(j) outlined in the Change of Use section of these Guidelines.

If a national objective is not achieved after a reasonable period (such as 3-5 years), HUD may have a legitimate basis to question national objective compliance.

9.3 Disposition Methods

Disposition must result in eligible end uses, such as affordable housing or activities that benefit low- to moderate-income (**LMI**) areas. Some private end uses that would likely qualify are:

9.3.1 Title Retention

PRDOH may retain the CDBG-acquired property title after compensating HUD. The amount to be paid to HUD will be computed by applying HUD's percentage of participation in the cost of the original purchase (and costs of any improvements) to the FMV of the property.

However, in situations where PRDOH disposes of real property acquired or improved with a Federal award and acquires replacement real property under the same Federal award, the net proceeds from the disposition may be used to offset the cost of the replacement property.

9.3.2 Property Sale

PRDOH may sell the CDBG-acquired property and compensate HUD accordingly. The amount due to HUD will be calculated by applying HUD's percentage of participation in the cost of the original purchase (and the cost of any improvements) to the sale proceeds after the deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from the sale may be offset against the original cost of the property. When PRDOH is directed to sell property, sales procedures must be followed to provide for competition to the extent practicable and result in the highest possible return.

²⁷ Basically CDBG for States, Chapter 5, page 4.

9.3.3 Property Title Transfer

PRDOH may transfer the property title to HUD or a third party designated/approved by HUD. In such cases, PRDOH is entitled to be paid an amount calculated by applying its percentage of participation in the purchase of real property (and the cost of any improvements) to the current FMV of the property.

9.3.4 Donation

PRDOH and its CDBG-DR/MIT Programs may choose to donate the property. In such case, PRDOH or its Subrecipients must execute a donation agreement, and the deed or easement must be recorded in accordance with state regulations.

10 Financial Management and Reporting

10.1 Program Income

Gross proceeds from the disposition of real property acquired or improved with CDBG-DR/MIT funds—whether received by PRDOH or a Subrecipient—are considered program income.²⁸ Program income generated from the disposition of a CDBG-DR/MIT-assisted property must also be accurately documented in the Disaster Recovery Grant Reporting (**DRGR**) system. This includes receipting program income for the activity that generated the funds, using the DRGR system activity ID associated with the CDBG-DR/MIT-assisted property.

Complete instructions on reporting CDBG-DR/MIT program income in the DRGR system are available at: <https://www.hudexchange.info/programs/drgr/>. PRDOH will follow its Program Income Policy found at: <https://recuperacion.pr.gov/en/download/-/program-income-policy/> (English); <https://recuperacion.pr.gov/download/politica-de-ingresos-del-programa/> (Spanish).

10.2 DRGR Reporting

Compliance must be supported by accurate and complete reporting in the DRGR system. Therefore, PRDOH is required to enter the address of the activity's physical location in the designated activity address field, and it should not use post office boxes or the address of the organization administering the activity in the activity address field. Leaving the activity address field blank, with a post office box, subgrantee address, or grantee address instead of the assisted property's address, is considered inadequate documentation.

PRDOH needs to report the following information in the DRGR system:

²⁸ See 24 C.F.R. § 570.201(b) and § 570.500(a)(1).

- Address or description of the property acquired with CDBG-DR/MIT funds,
- Date PRDOH obtained title to the property,
- Purchase price paid for the property,
- Proceeds from the disposition of the property by sale, long-term lease, or other means, when purchased or improved, in whole or in part, with CDBG-DR/MIT funds; and,
- Documentation of the eligible end use, if applicable, including the specific CDBG-eligible activity for which the proceeds from disposition have been used.

10.3 Contractual Requirements

For all other acquisition projects that are not buyouts, PRDOH has flexibility in redeveloping the acquired land. However, unlike buyouts, PRDOH cannot use the pre-disaster FMV to determine the purchase price. For non-buyout acquisitions, the purchase price must be consistent with the cost principles outlined in 2 C.F.R. Part 200 and must be based on the property's post-disaster FMV.

11 Uniform Relocation Assistance and Real Property Acquisition Policies Act

When federal funds are planned, intended, or used for any activity or phase of a project and those phases are interdependent, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (**URA**), as amended, will apply to the land acquisition, even if the purchase is not funded with CDBG-DR/MIT funds. PRDOH ensures compliance with the URA statute and its implementing regulations at 49 C.F.R. Part 24 when conducting real property acquisitions, including buyouts, undertaken with CDBG-DR and CDBG-MIT funds.

For more information, refer to the URA and ADP Guide, available in English and Spanish at: <https://recuperacion.pr.gov/en/resources/ura/> and <https://recuperacion.pr.gov/-recursos/ura/>.

12 Environmental Review

Environmental review is the process of reviewing a project's intent and potential environmental impacts to determine whether it meets federal, state, and local environmental standards. Every project undertaken with federal funds, and all activities associated with such project, are subject to the provisions of the National Environmental Policy Act of 1969 (**NEPA**), 42 U.S.C. § 4321 *et seq.*, as well as the HUD

environmental review regulations at 24 C.F.R. § 58 on Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

An environmental review process is required for all awards to be issued under the program to ensure that the proposed activities do not negatively impact the surrounding environment and the property itself will not have an adverse environmental or health effect on end users.

Environmental reviews must be completed prior to undertaking acquisition activities. Therefore, executing a contract to purchase property for a CDBG-DR/MIT project before the environmental review is completed is considered a commitment of funds and a choice-limiting action.²⁹ Thus, such actions must be avoided until after the environmental review process is completed and PRDOH has issued a Release of Funds. Any executed instrument that conveys an interest in property, such as an easement document, whether the property is purchased, leased, or donated, is also considered an activity limiting the choice of reasonable alternatives.

Notwithstanding, an option contract may be entered into before the environmental Release of Funds, provided that it is contingent on completion of the environmental review process. This type of contract is a useful tool for PRDOH and its Subrecipients to obtain site control while allowing time to complete the environmental review.

To determine the appropriate level of environmental review for property acquisition or disposition, all proposed or anticipated activities must be grouped together in accordance with 24 C.F.R. § 58.32, and the environmental review must consider any subsequent use or changes to the site. For example, if a property to be acquired requires rehabilitation or reconstruction, the environmental review must consider the full range of activities needed in addition to the acquisition.³⁰

All CDBG-DR/MIT Programs must require documentation that certifies compliance with NEPA and all applicable federal, state, and local environmental laws and regulations. These laws and regulations include, but are not limited to, the following:

- Protection of Historic Properties (36 C.F.R. Part 800);
- Floodplain Management and Protection of Wetlands (24 C.F.R. Part 55, Executive Order 11988, and Executive Order 11990);

²⁹ 24 C.F.R. § 58.22(a).

³⁰ More information on environmental review requirements can be found on the HUD Exchange at <https://www.hud-exchange.info/programs/environmental-review>.

- Sections 307 (c) and (d) of the Coastal Zone Management Act of 1972 (**CZMA**), as amended, 16 U.S.C. § 1456, *et seq.*;
- Sole Source Aquifers (40 C.F.R. Part 149);
- Interagency Cooperation - Endangered Species Act of 1973, as amended (50 C.F.R. Part 402);
- Section 7 (b)(c) of the Wild and Scenic Rivers Act of 1968 (**WSRA**), as amended, 16 U.S.C. § 1278 *et seq.*;
- Air quality provisions as found in Sections 176 (c) and (d) of the Clean Air Act, as amended, 42 U.S.C. § 7506, *et seq.* and in Title 40 of the Code of Federal Regulations (40 C.F.R. Parts 6, 51, and 93);
- Farmland Protection Policy Act (**FPPA**) 7 U.S.C. § 4201 *et seq.*, implementing regulations 7 C.F.R. Part 658, of the Agriculture and Food Act of 1981, as amended;
- Environmental Criteria and Standards;
- Noise Abatement and Control (24 C.F.R. §§ 51.100 - 51.106);
- Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature (24 C.F.R. §§ 51.200 - 51.208);
- Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields (24 C.F.R. § 51, §§ 51.300 - 51.305);
- Toxic/Hazardous Materials (24 C.F.R. § 58.5(i)(2)(i)); and
- Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order 12898 signed on 1994).

All environmental review work related to real property acquisition or disposition activities shall be subject to one (1) of the following regulations categories:

- **Categorical Exclusion Subject to § 58.5 (CEST)** – 24 C.F.R. § 58.35(a)(5) states: “Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.” Essentially, the property or structure may be subject to a CEST if the property will be retained for the same use.
- **Environmental Assessment (EA)** – 24 C.F.R. § 58.36 states (in part): “If a project is not exempt or categorically excluded under §§ 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part.” This means that any activity resulting in a change in land use (e.g., from residential to commercial or industrial, or any combination thereof) would

require the preparation of an EA as the environmental review before executing the activity.

- **Environmental Review requirements and Eminent Domain** – Environmental review requirements apply to eminent domain, as it constitutes a form of acquisition. Municipalities must complete the environmental review before filing a case in court.

12.1 Tiered Environmental Review

To streamline the environmental review process and prevent duplication of efforts, PRDOH will use a tiered approach for environmental compliance, when applicable. This approach is appropriate when a specific type of activity that takes place in several locations serves the same function and has the same level of environmental impact regardless of its location. The tiered approach consists of two (2) parts:

- **Tier 1 (Broad Environmental Review):** Focuses on a targeted geographic area. This review will address and analyze the potential environmental impacts of the proposed action that might occur at a typical site within the geographic area.
- **Tier 2 (Site-Specific Review):** Conducted when the exact physical location of the project is not initially known. This review will include specific written strategies for addressing the environmental effects that can only be determined once specific sites are identified. These may include site acceptability criteria and standards, such as mitigation measures for historic preservation, archeological preservation, airport clear zones, explosive and flammable operations, toxic/hazardous/radioactive materials, contamination, chemicals, or gases.

Tiered reviews for PRDOH CDBG-DR/MIT Program will be valid for up to **five (5) years** unless conditions or circumstances change. To ensure that no changes have occurred, the Program will assess the tiered environmental review, at least once a year, to ensure the scope of the target area has not changed, the list of activities evaluated for environmental impacts remains the same, and the information contained in the tiered environmental review is still current and relevant to the environmental findings that were made.

13 CDBG-DR Programs with Acquisition and Projected End Uses

Under Section 105(a) of the Housing and Community Development Act (**HCDA**), a variety of acquisition and related redevelopment activities are eligible for funding, including the following:

- **Section 105(a)(1):** the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historical sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this chapter; or (E) to be used for other public purposes;
- **Section 105(a)(2):** the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;
- **Section 105(a)(4):** clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation of privately owned properties, and including the renovation of closed school buildings);
- **Section 105(a)(17):** provision of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods);
- **Section 105(a)(22):** provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by— (A) providing credit... for the establishment, stabilization, and expansion of microenterprises; (B) providing technical assistance, advice, and business support... to owners of microenterprises and persons developing microenterprises; and (C) providing general support... to owners of microenterprises and persons developing microenterprises.

The table below summarizes the activities outlined above, aligning each provision with the corresponding PRDOH CDBG-DR programs and their intended end uses.

Program	Acquisition Activities	Potential End Uses
Home Repair, Reconstruction or Relocation Program (R3 Program)	Section 105(a)(4)	<ul style="list-style-type: none"> • Open space; conservation of natural floodplain functions • Parks for outdoor recreational activities; • Wetlands management; • Nature reserves; • Cultivation; • Grazing; • Camping (except where adequate warning time is not available to allow evacuation); • Unimproved, unpaved parking lots; • Buffer zones.
Social Interest Housing Program (SIH Program)	Section 105(a)(2)	<p>Creation of additional housing opportunities either by new construction or rehab/repair of existing housing; accessibility of services and facilities for individuals with intellectual disabilities.</p> <ul style="list-style-type: none"> • Property types: <ul style="list-style-type: none"> ▪ Single Family housing ▪ Two-unit structures ▪ Multi-unit rental property ▪ Group homes ▪ Other properties or special needs housing as needed by population served
	Section 105(a)(4)	
City Revitalization Program (CRP Program)	Section 105(a)(1)	<p>Public purposes.</p> <ul style="list-style-type: none"> • Restore infrastructure in downtown areas, urban areas, and key corridors • Revitalize, modernize, and create green business districts in ways that can support and promote small business recovery and growth while restoring or encouraging tourism. • Create public enhancements and façade improvements that will encourage the return of small business and tourism
	Section 105(a)(2)	<p>Create Community Resilience Centers across the Island that provide year-round services to their surrounding communities before, during, and after disasters.</p>
	Section 105(a)(4)	<p>“Regreening initiatives” and the implementation of green infrastructure and other green activities.</p>
	Section 105(a)(1)	<p>Public purposes: restoration of public infrastructure and facilities.</p>

Program	Acquisition Activities	Potential End Uses
Non-Federal Match Program (NFM Program)	Section 105(a)(2)	Suppose the property is not a building for general government conduct. In that case, the use of the property may be changed with citizen approval if it meets one of the national objectives.
	Section 105(a)(4)	
Low Income Housing Tax Credits (LIHTC Program)	Section 105(a)(4) New housing construction is also eligible as established in Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, 5861 waiver and additional requirements.	Development of affordable rental housing stock by new construction or rehabilitations.
	Section 105(a)(4)	
Investment Portfolio for Growth (IPG Program)	Section 105(a)(1)	Foster both mixed-use, community-based development and major infrastructure improvements that will support economic revitalization in Puerto Rico. This may include, but is not limited to: <ul style="list-style-type: none"> • Shopping centers or stores, hotels, shipping distribution centers or office buildings, industrial/manufacturing complexes such as factories or industrial parks, and public commercial spaces such as convention centers or parking garages; • Transportation facilities (new roads, street rehabilitation, sidewalk improvements, streetlights, parking facilities, streetscape improvements, etc.) and water, sewer, and drainage improvements directly supporting an economic revitalization activity.
	Section 105(a)(2)	
	Section 105(a)(4)	
Small Business Incubators & Accelerators Program (SBIA Program)	Section 105(a)(17)	Preservation, renovation, or rehabilitation of existing buildings for use as small business incubators/accelerators.
	Section 105(a)(22)	

An initial determination of the acquisition re-use for compliance may be based on the planned use. A final determination, before file closeout, must be based on the actual

use of the property, excluding any short-term, temporary uses. If the acquisition program to purchase real property for a general purpose, such as housing or economic development, and the actual specific project is not yet identified, the grant recipient must document the general use it intends for the property and the national objective it expects to meet.

14 Scenarios Involving Acquisition and Disposition for CDBG-DR Programs³¹

Eligible Activity	End Use of Property	National Objective	Consequences
Acquisition Only	Property remains in public control. Example: Land acquired for a public facility.	National objective based on end use; LMA or LMC in this example.	Document national objective. See notes below.
	Never put to permanent use. Example: Acquired for housing, not developed.	Never achieved a national objective.	Ineligible activity. Reimburse the program for all CDBG-DR funds expended. ³²
Disposition	CDBG-DR-funded upkeep and subsequent sale of CDBG-DR-assisted property for eligible use. Example: Affordable housing.	LMH, slum & blight, or other, depending on end use. If no end use, ineligible. If not acquired with CDBG-DR funds, ineligible.	This scenario will generally involve CDBG-DR acquisition ³³ .
Acquisition and Demolition	Clearance is the end use; no further activity is planned.	Meets national objective for clearance, which also applies to the acquisition.	Any subsequent activity will trigger a change of use ³⁴ .
	If public property supports an eligible activity and meets a national objective. Example: Community garden in LMA; flood zone buyouts.	National objective for Demolition: slum & blight. National objective for Acquisition: Depends on the end use.	Document national objectives for both acquisition and demolition.

³¹ Adapted from: <https://www.hud.gov/sites/dfiles/OCHCO/documents/17-09cpdn.pdf>.

³² Sales proceeds are program income. Repayments are not considered program income. Repayments must be made to the line of credit from which they were drawn unless the funds were drawn from a grant that has since expired (over eight years old). Those repayments must be made to the grantee's local CDBG-DR program account.

³³ If no accomplishments have been demonstrated after a certain time (e.g., 3-5 years), HUD may have reason to question the national objective compliance.

³⁴ 24 C.F.R. § 570.489(j)

Eligible Activity	End Use of Property	National Objective	Consequences
		Slum & blight: allowable if the end use is clearing the blighted property in a flood zone. Urgent Need in limited situations. ³⁵	
	The property does not have an eligible end use. Demolition did not meet the national objective. Example: Demolition of property that was not blighted with no resale.	If property never met the national objective, it is ineligible.	Repayment of all CDBG-DR funds spent on the acquisition is required. ³⁶
Acquisition and Disposition (no demolition)	If the property is sold to a private entity and supports an eligible activity, it remains eligible. Example: Affordable housing	The national objective for acquisition/disposition. Depends on the end use of the property. LMA, LMH, LMC or LMJ	The disposition (end use) drives the national objective.
	If publicly- or privately-owned and does not meet a national objective. Example: Vacant land acquired and sold for church.	If no national objective is ever met for either acquisition or disposition, then it is ineligible.	Reimbursement of all costs required (not just current value).
Acquisition, Demolition, and Disposition	Dangerous structures were acquired and demolished, then sold or donated to the non-profit developer of affordable housing.	Slum & blight for demolition. The national objective for acquisition and disposition is based on end use. In this example: LMH	Document national objective.
	Demolition meets the national objective, but acquisition/disposition does not.	Acquisition for clearance can meet the slum & blight test. No disposition for an	Repay current market value if a Change of Use does not meet a national objective.

³⁵ In very limited situations, the urgent need national objective could be possible: e.g., demolition or acquisition-plus-demolition on buildings damaged by a tornado, massive fire, mudslide, etc. The grantee would have to demonstrate that its current conditions present a serious and immediate threat to public health and safety. If the property is sold or reused for another purpose, the reuse must meet a national objective or change of use applies (reimbursement of current FMV required).

³⁶ Acquiring and/or holding property "for future use" is not an eligible activity.

Eligible Activity	End Use of Property	National Objective	Consequences
	Example: Structure razed, but the land remains unused.	eligible use does not result in a change of use.	
	Property not blighted. Grantee sells cleared land for a parking lot in upper-income Census Block Group.	No slum & blight for demo. The parking lot meets no national objective.	Repayment of all CDBG-DR funds spent on the acquisition/disposition is required.

END OF GUIDELINES.