



DEPARTMENT OF
HOUSING



CDBG-DR

RECAPTURE OF FUNDS POLICY

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PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR/MIT PROGRAMS
RECAPTURE OF FUNDS POLICY
VERSION CONTROL

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1 Overview

The Puerto Rico Department of Housing (**PRDOH**), as grantee, is committed to the responsible management of Community Development Block Grant-Disaster Recovery (**CDBG-DR**) and Community Development Block Grant – Mitigation (**CDBG-MIT**) funds allocated by the U.S. Department of Housing and Urban Development (**HUD**) to address Puerto Rico's long-term recovery needs caused by Hurricanes Irma and María, both in September of 2017 and mitigation of identified future risks. In doing so, PRDOH has developed a comprehensive program portfolio consisting of Housing, Economic Recovery, Infrastructure, Planning, and Multisector Programs. It is vital for PRDOH to help rebuild families and communities, and generate a long-term investment in social capital, fortify the economy, and set the stage for stability and continuity in government modernization and efficiency. In the process of fulfilling those commitments with the citizens of Puerto Rico through the implementation of the established programs, PRDOH and its Subrecipients must ensure that CDBG-DR and CDBG-MIT funds are: disbursed only to meet an unmet recovery need, not duplicative of benefits provided by other federal, state, local, and private sources, and not to exceed the necessary amount to complete a project or eligible activity.

The Recapture of Funds Policy (**Recapture Policy or Policy**) is established by PRDOH to provide uniform guidance and consistency to all CDBG-DR/MIT Program staff, Subrecipients, contractors, and Applicants or Beneficiaries on the process of recapturing funds.

2 Recapture of Funds Policy Statement

The Policy will apply to all CDBG-DR/MIT funded programs administered by PRDOH or its Subrecipients. Instances that may result in a revision of an award, which in turn may require repayment from Beneficiaries, Subrecipients, or any other participating entities, including occurrences of Duplication of Benefits (**DOB**); Scope of Work (**SOW**) changes; ineligibility determination; substantial program non-compliance; multiple awards are received from numerous programs; a voluntary withdrawal; error in payment; or overpayment. CDBG-DR/MIT funds must be utilized in accordance with rules and regulations as specified in applicable federal registers, federal and local regulations, applicable Program Guidelines, Action Plans, Grant Agreements or Subrecipient Agreements. All use of financial assistance provided by the Programs must be used and expended in compliance with the policy and regulation framework created by the CDBG-DR/MIT Program. Otherwise, repayment of funds may be required. Additionally, as an advocate of CDBG-DR/MIT resources, and in line with the PRDOH Anti-fraud, Waste, Abuse or Mismanagement Policy (**AFWAM Policy**), any violation of the AFWAM Policy will

also result in a repayment of CDBG-DR/MIT funds.¹ Furthermore, during the implementation phase in a CDBG-DR/MIT funded program, instances of repayment of funds may arise where a Subrecipient, contracting entity or Applicant must return all, or part of the funding awarded by a CDBG-DR/MIT program. All project files must be regularly reviewed and reconciled by PRDOH or its Subrecipients to ensure all programs, projects, and activities comply with recordkeeping requirements of the CDBG-DR/MIT Program and federal and local requirements and guidelines. Compliance with recordkeeping requirements is mandatory to ensure federal funds are expended: (1) appropriately on eligible activities and projects; (2) and in compliance with a National Objective.

3 Definitions

- **Applicant:** An individual or entity that applies to any of the CDBG-DR/ and CDBG-MIT Programs administered by PRDOH.
- **Beneficiary:** an eligible Applicant that benefits from CDBG-DR/MIT assisted activities, CDBG-DR/MIT projects or CDBG-DR/MIT assisted programs.
- **Duplication of Benefit (DOB):** when a beneficiary receives assistance from multiple sources for a cumulative amount that exceeds the total need for a particular recovery purpose. The amount of the duplication is the amount of assistance provided in excess of need.
- **Federal Emergency Management Agency (FEMA):** An agency of the United States Department of Homeland Security. The agency's primary purpose is to coordinate the response to a disaster that has occurred in the United States and that overwhelms the resources of local and State authorities.
- **Low-to-Moderate-Income (LMI):** Low to moderate income people are those having incomes not more than the "moderate-income" level (80% Area Median Family Income) set by the federal government for HUD assisted Housing Programs. This income standard changes from year to year and varies by household size, county, and the metropolitan statistical area.
- **Overpayment:** when an Applicant or entity receives more financial assistance for a project or activity than what they are eligible for.

4 Regulatory Framework

The Office of Management and Budget (**OMB**) cost principles requires any payment related to CDBG-DR/MIT funds to Beneficiaries be **necessary and reasonable**;² and prohibits Beneficiaries from retaining excess funds not used for eligible, allowable, and approved costs. Additionally, providing a Beneficiary or entity with CDBG-DR/MIT funds

¹ The PRDOH CDBG-DR and CDBG-MIT AFWAM Policy is available in English and Spanish in the CDBG-DR/MIT website at <https://cdbg-dr.pr.gov/en/download/afwam-policy/> and <https://cdbg-dr.pr.gov/download/politica-afwam/>

² 2 C.F.R. 200.403 (a).

in excess of the immediate cash requirements needed to carry out the purpose of the approved eligible activities, program or projects is also prohibited and can lead to the recapture of excess funds.³

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. § 5121 – 5207), as amended, (**Stafford Act**), and Federal Register Notices, Vol. 84, No. 119 (June 20, 2019), 84 FR 28836, and Vol. 76, No. 221 (Wednesday, November 16, 2011) 76 FR 71060, establish that CDBG-DR/MIT assistance may only be provided to the extent that it does not duplicate funding provided to a Beneficiary for the same recovery or mitigation purpose by other funding sources. When multiple sources of disaster assistance are used towards the same purpose or eligible activity, the CDBG-DR/MIT funds that were already disbursed for that same purpose must be recaptured to avoid a DOB occurrence. Please refer to the Duplication of Benefits Policy, found at <https://cdbg-dr.pr.gov/en/download/duplication-of-benefits-policy/ for English> and <https://cdbg-dr.pr.gov/download/politica-sobre-la-duplicacion-de-beneficios/ for Spanish>, for further guidance related to Duplication of Benefits. In addition, further information regarding the Recapture of Funds process may be found in Program Guidelines or executed Subrecipient Agreements.

5 Repayment Circumstances

The following are the most common circumstances that may result in a revision to an award, which may call for repayment from a Beneficiary or a Subrecipient:

- DOB
- Reduction of the original amount of the grant award or financial assistance
- Substantial Program Non-Compliance
- Voluntary Withdrawal from a program by a Beneficiary, after funds have been disbursed
 - Subrecipients may terminate their Subrecipient Agreement (**SRA**) as per the Suspension or Termination clauses included in their contract. Upon termination of an SRA, PRDOH retains the right to recover any improper expenditures. The Subrecipient must return any improper expenditures to PRDOH no later than **thirty (30) calendar days** after the date of termination of the SRA.
- Fraud
- Erroneously awarded funds
- Overpayment

³ 2 C.F.R. 200.305 (b)(1)

6 Requirements for Recapturing Funds

PRDOH will seek repayment of ineligible or unauthorized federal assistance received by a Subrecipient, entity, or Applicant, plus the cost of collection, to the fullest extent of the law. Efforts to collect ineligible or unauthorized federal assistance may include offsets, the use of private or public collection agencies, and any other legal remedies available to PRDOH. Findings related to ineligible or unauthorized CDBG-DR/MIT assistance determinations will be referred to credit reporting bureaus and other federal, state, or local agencies with jurisdictions related to ineligible or unauthorized assistance findings for suspension, debarment, or civil or criminal action to the fullest extent permitted by law.

6.1 Recapture of Erroneously Awarded Funds or because of Non-Compliance with Program Rules

The following is a list of requirements and steps that must be taken to initiate and properly conduct the recapture of funds once it has been determined the provided assistance was ineligible or unauthorized. The latter refers to any loan, interest subsidy, grant, or portion thereof received by a recipient for which there was no regulatory authorization or for which the recipient was not eligible.⁴

Once PRDOH and/or a Subrecipient makes a determination the assistance received by a Beneficiary was ineligible or unauthorized, PRDOH or its Subrecipients must promptly send a Repayment Notice letter to the Beneficiary. In the Notice, PRDOH and Subrecipients, must state ineligible assistance was received, and inform the debtor of the consequences of failing to cooperate to resolve the debt. Repayment Notice letters must specify the following:

- The basis for the indebtedness: detail the reason(s) that the assistance was determined to be ineligible or unauthorized;
- PRDOH's willingness to discuss alternative methods of payment;
- The alternative methods of payments available to the debtor, if any;
- The date by which payment should be made to avoid late charges (i.e. interest, penalties, and administrative costs) and enforced collection;
- Offer a reconciliatory meeting with the Beneficiary to discuss the basis for the claim and give the opportunity for the Beneficiary to provide figures, written records, or any other information that might alter the determination that the assistance was ineligible or unauthorized;
- PRDOH's policies with respect to the use of credit bureaus, debt collection centers, and collection agencies;

⁴ See, 2 C.F.R. § 200.346; 2 C.F.R. § 200.339; and 2 C.F.R. § 200.208.

- PRDOH's remedies to enforce payment of the debt, including assessment of interest, administrative costs and penalties, administrative garnishment, the use of collection agencies, and litigation;
- The name, address, and phone number of a contact person or office within PRDOH that the Beneficiary may contact to resolve or discuss the issue;
- Any administrative procedures available to the debtor that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation;
- Information about the reconsideration and administrative review process available to the debtor.⁵

6.2 Recapture of Ineligible Assistance Obtained by Fraud

If PRDOH provides funds that exceeded the eligible assistance because of discrepancies in information furnished by the Beneficiary, either intentionally or unintentionally, PRDOH may initiate a recapture of funds process and obtain repayment.⁶ For more information regarding fraudulent information or fraudulent use or waste of funds, please refer to the Anti-Fraud, Waste, Abuse, or Mismanagement Policy (**AFWAM Policy**) available in the CDBG-DR and CDBG-MIT website at: <https://cdbg-dr.pr.gov/en/download/afwam-policy/> (English) and <https://cdbg-dr.pr.gov/download/politica-afwam/> (Spanish).

7 Uncollectible Debt, Choice not to Recapture or Compromise for Less than the Full Amount

Federal regulations allow for the recapture of the full amount of ineligible assistance or improper payments;⁷ but under certain circumstances, PRDOH may deem a debt uncollectible and settle for less than the full amount that is owed, or it may choose not to recapture funds.⁸ These determinations will always be made on a case-by-case basis and in compliance with applicable law and regulation. The following may be considered Uncollectible Debt at PRDOH's discretion:

- **Vulnerable Beneficiaries:** PRDOH may deem households at risk of recapture, where a Beneficiary and/or any of the co-beneficiaries is at least sixty-five (65) years old. A vulnerable population determination will be made by the specific CDBG-DR/MIT Program on a case-by-case basis. These vulnerable populations

⁵ See, 2 C.F.R. § 200.346; 31 C.F.R. § 901.2.

⁶ 24 C.F.R. 28.10(d) states that no proof of specific intent to defraud is required to establish liability.

⁷ Section 312, Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5155 (c), as well as Section 2, Payment Integrity Information Act of 2019, 31 U.S.C. § 3352(d)(5)(i)(ii).

⁸ 31 U.S.C. § 3711(a)(2) which states that the head of an executive, judicial, or legislative agency—may compromise a claim of the Government of not more than \$100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe that has not been referred to another executive or legislative agency for further collection action, except that only the Comptroller General may compromise a claim arising out of an exception the Comptroller General makes in the account of an accountable official. See, 31 C.F.R. § 902.1.

may include Beneficiaries who have become homeless, Beneficiaries whose only income is federal or state assistance, and Beneficiaries with disabilities.⁹

- **Inability to pay:** the ability to pay may be determined based on an assessment of resources currently and prospectively available to the Beneficiary.¹⁰

A compromise effected under these guidelines should be for an amount that bears a reasonable relation to the amount that can be recovered by enforced collection procedures, with regard to the exemptions available to the debtor and the time that collection will take.¹¹ To assess the merits of a compromise offer based in whole or in part on the debtor's inability to pay the full amount of a debt within a reasonable amount of time, PRDOH or its Subrecipients should obtain, when feasible and appropriate, a current financial statement from the debtor, executed under penalty of perjury, showing the debtor's assets, liabilities, income and expenses.¹² PRDOH or the Subrecipient may also obtain credit reports or other financial information to assess compromise offers.¹³ Note that, PRDOH or its Subrecipients may obtain a consumer report as that term is defined in section 603 of the Fair Credit Reporting Act, 15 U.S.C. § 1681a, or comparable credit information on any person who is liable for the debt claim.¹⁴

Likewise, if there is significant doubt concerning PRDOH's ability to prove its case in court for the full amount claimed, either because of the legal issues involved or because of a bona fide dispute as to the facts. Then the amount accepted in compromise of such cases should fairly reflect the probabilities of successful prosecution to judgment. With due regard given to the availability of witnesses and other evidentiary support for PRDOH's claim.¹⁵

PRDOH or its Subrecipients may also compromise a debt if the cost of collecting the debt does not justify the enforced collection of the full amount. The amount accepted in compromise in such cases may reflect an appropriate discount for the administrative and litigation costs of collection. With consideration given to the time it will take to effect

⁹ 32 C.F.R. § 902.2 (a) and (b) establish that: "(a) Agencies may compromise a debt if the Government cannot collect the full amount because: (1) The debtor is unable to pay the full amount in a reasonable time, as verified through credit reports or other financial information; (2) The Government is unable to collect the debt in full within a reasonable time by enforced collection proceedings; (3) The cost of collecting the debt does not justify the enforced collection of the full amount; or (4) There is significant doubt concerning the Government's ability to prove its case in court. (b) In determining the debtor's inability to pay, agencies should consider relevant factors such as the following: (1) Age and health of the debtor; (2) Present and potential income; (3) Inheritance prospects; (4) The possibility that assets have been concealed or improperly transferred by the debtor; and (5) The availability of assets or income that may be realized by enforced collection proceedings".

¹⁰ 32 C.F.R. § 902.2 (c).

¹¹ 31 C.F.R. § 902.2 (c) (d).

¹² 31 C.F.R. § 902.2 (g).

¹³ Id.

¹⁴ 31 U.S.C. § 3711(h)(1).

¹⁵ 31 C.F.R. § 902.2 (e).

collection. Collection costs may be a substantial factor in the settlement of small debts. In determining whether the cost of collecting justifies enforced collection of the full amount, PRDOH or its Subrecipients should consider whether continued collection of the debt, regardless of cost, is necessary to further an enforcement principle.¹⁶

PRDOH or its Subrecipients generally should not accept compromises payable in installments.¹⁷ This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, a legally enforceable written agreement should be obtained from the debtor. Providing that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, is reinstated.¹⁸

In all appropriate instances, a compromise which is accepted by PRDOH, or any of its Subrecipients, should be implemented by means of a mutual release included in the written agreement. In which the debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromise amount. PRDOH and its officials, past and present, should also be released and discharged from all claims, and causes of action arising from the same transaction the debtor may have. In the event a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is deemed to have waived all claims and causes of action against PRDOH and its officials related to the transaction giving rise to the compromised debt. All written agreements should reflect this provision.¹⁹

PRDOH may compromise statutory penalties, forfeitures, or claims established as an aid to enforcement and to compel compliance, if the PRDOH's enforcement policy in terms of deterrence and securing compliance, present and future, will be adequately served by the PRDOH's acceptance of the sum to be agreed upon.²⁰

When two or more debtors are jointly and severally liable, PRDOH and its Subrecipients should pursue collection activity against all debtors, as appropriate.²¹ PRDOH or its Subrecipients should not attempt to allocate the burden of payment between the debtors but should proceed to liquidate the indebtedness as quickly as possible.²² PRDOH should ensure that a compromise written agreement with one debtor does not release PRDOH's claim against the remaining debtors.²³ The amount of a compromise with one

¹⁶ See, 31 C.F.R. § 902.2 (e).

¹⁷ 31 C.F.R. § 902.2 (f).

¹⁸ Id.

¹⁹ 31 C.F.R. § 902.7.

²⁰ 31 C.F.R. § 902.3.

²¹ 31 C.F.R. § 902.4 (a).

²² Id.

²³ 31 C.F.R. § 902.4 (b).

debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim. The written compromise agreement should reflect this norm.²⁴

If a CDBG-DR/MIT Program or Subrecipient is uncertain whether to accept a firm, written, substantive compromise offer on a debt that is within the PRDOH's delegated compromise authority, it must refer the offer to CDBG-DR/MIT Legal Division accompanied by supporting data and particulars concerning the debt. The CDBG-DR/MIT Legal Division may act upon such an offer, or return it to the CDBG-DR/MIT Program or Subrecipient with instructions and/or advice.²⁵

In all cases, PRDOH or its Subrecipient may not compromise a debt, or suspend or end a collection action on a claim or debt that appears to be fraudulent, false, or misrepresented by a party with an interest in the claim, or that is based on conduct in violation of the antitrust laws.²⁶ A compromise under these Guidelines is final and conclusive unless gotten by fraud, misrepresentation, presenting a false claim, or mutual mistake of fact.²⁷

PRDOH will provide Subrecipients with, and use uniform procedures for periodic comparison of costs incurred and amounts collected that must be used to make a determination on whether to compromise, or continue with recapture procedures for assistance deemed ineligible or unauthorized. In these standard procedures, data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques. Establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries. Assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken.²⁸

7.1 Conditions which may allow PRDOH to forgo collection of ineligible or unauthorized assistance

Each of the following conditions must be met for PRDOH to forgo collection of any ineligible or unauthorized assistance that was received by a Beneficiary:

- A demand for recapture or repayment of the ineligible or unauthorized assistance was made;
- The ineligible or unauthorized assistance did not result from inaccurate or false information knowingly or fraudulently provided by the Beneficiary;

²⁴ Id.

²⁵ See, 31 C.F.R. § 902.5

²⁶ 31 U.S.C. § 3711(b)(1).

²⁷ 31 U.S.C. § 3711(c).

²⁸ 31 C.F.R. § 902.2 (a); 31 C.F.R. § 901.10.

- PRDOH has determined that the Beneficiary is unable to comply with the Demand for Payment,²⁹ but is otherwise willing and able to meet other requirements established by PRDOH;
- PRDOH has determined that it is in the best interest of HUD and PRDOH alike to forgo collection of the ineligible assistance because it would be too costly to pursue when compared to the amount of funds that could be reasonably recaptured by the effort.³⁰

Likewise, PRDOH or its Subrecipients may terminate collection activity when:

1. They are unable to collect any substantial amount through its own efforts or through the efforts of others;
2. They are unable to locate the debtor;
3. Costs of collection are anticipated to exceed the amount recoverable;
4. The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;
5. The debt cannot be substantiated;
6. The debt against the debtor has been discharged in bankruptcy.³¹

Before terminating collection activity, PRDOH or its Subrecipients should have considered and/or pursued all appropriate means of collection and determined, based upon the results of an analysis of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude PRDOH or its Subrecipients from retaining a record of the account for purposes of:

1. Selling the debt;
2. Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;
3. Offsetting against future income or assets not available at the time of termination of collection activity;
4. Screening future applicants for prior indebtedness.³²

In general, PRDOH or its Subrecipients shall terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. PRDOH or its Subrecipients may continue collection activity, however, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization. Offset and

²⁹ 31 C.F.R. § 901.2.

³⁰ 31 U.S.C. § 3711(a)(3) which states the following: (a) The head of an executive, judicial, or legislative agency— may suspend or end collection action on a claim referred to in clause (2) of this subsection when it appears that no person liable on the claim has the present or prospective ability to pay a significant amount of the claim or the cost of collecting the claim is likely to be more than the amount recovered....

³¹ 31 C.F.R. § 903.3.

³² Id.

recoupment rights may survive the discharge of the debtor in bankruptcy and, under some circumstances, claims also may survive the discharge. For example, the claims of an agency which it is a known creditor of a debtor may survive a discharge if the agency did not receive formal notice of the proceedings. PRDOH or its Subrecipients should seek legal advice from CDBG-DR/MIT Program's Legal Division if they believe they have claims or offsets that may survive the discharge of a debtor.³³ Consequently, when PRDOH or its Subrecipients learn a bankruptcy petition has been filed with respect to a Beneficiary, in most cases the collection activity on a debt must be suspended, pursuant to the provisions of the U.S. Bankruptcy Code at 11 U.S.C. §§ 362, 1201, and 1301. Unless PRDOH or its Subrecipients can clearly establish the automatic stay has been lifted or is no longer in effect. In such cases, PRDOH or its Subrecipients should seek legal advice immediately from the CDBG-DR/MIT Program's Legal Division. Also, if legally permitted, take the necessary legal steps to ensure that no funds or money are paid by PRDOH or its Subrecipients to the debtor until relief from the automatic stay is obtained.³⁴

Discharge of indebtedness is distinct from termination or suspension of collection activity under *Standards for Suspending or Terminating Collection Activity* at 31 C.F.R. Part 903 and is governed by the U.S. Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent and further collection action may be pursued at a later date in accordance with the standards set forth in 31 C.F.R. Part 903. When PRDOH or its Subrecipients discharges a debt in full or in part, further collection action is prohibited. Therefore, PRDOH or its Subrecipients should make the determination that collection action is no longer warranted before discharging a debt.³⁵ Before discharging a delinquent debt (also referred to as a close out of the debt), PRDOH or its Subrecipients shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g). Including, as applicable, administrative offset, tax refund offset, Federal salary offset, referral to U.S Department of the Treasury, U.S Department of the Treasury-designated debt collection centers or private collection contractors, credit bureau reporting, wage garnishment, litigation, and foreclosure.³⁶

PRDOH, or its Subrecipients, shall promptly refer to the U.S. Department of Justice for litigation, debts on which aggressive collection activity has been taken in accordance with *Standards for the Administrative Collection of Claims* found at 31 C.F.R. Part 901 and that cannot be compromised. Also, on which collection activity cannot be suspended or terminated, in accordance with parts 902 and 903 of Chapter 31 of the Code of Federal Regulations.³⁷ Debts should be referred as early as possible consistent with the observance of the standards contained in parts 900–904 of Chapter 31 of the Code of Federal Regulations, and, in any event, well within the period for initiating timely lawsuits against the debtors. PRDOH or its Subrecipients shall make every effort to refer delinquent

³³ 31 C.F.R. § 903.3 (c).

³⁴ 31 C.F.R. § 903.2.

³⁵ 31 C.F.R. § 903.5 (a).

³⁶ *Id.*

³⁷ 31 C.F.R. § 904.1 (a).

debts to the U.S. Department of Justice for litigation within one year of the date such debts last became delinquent.³⁸

7.2 Settlement

PRDOH may elect to accept a compromise settlement. Once a compromise amount is negotiated the Beneficiary will pay in one installment. When necessary, on a case by case basis, a Beneficiary can be placed on an installment plan. The contract must include a clause stating the instance if the Beneficiary defaults, they will owe the entire amount of the ineligible assistance and not just the negotiated amount.

PRDOH, or its Subrecipients, generally should not accept compromises payable in installments.³⁹ This is not an advantageous form of compromise in terms of time and administrative expense. If, however, payment of a compromise in installments is necessary, a legally enforceable written agreement should be obtained from the debtor. The written agreement should provide that, in the event of default, the full original principal balance of the debt prior to compromise, less sums paid thereon, will be reinstated.⁴⁰

8 Repayment Phase

Once the Beneficiary has received a Repayment Notice letter and the reconsideration and administrative review period established in the Program-Based Reconsideration and/or Administrative Review sections of this Policy has passed, the Repayment Phase can begin. During this phase, the designated PRDOH representative of the CDBR-DR/MIT Program will assist the Beneficiary on completing the necessary steps to pay their debt in full and in a timely manner. It is PRDOH's policy that all debt should be satisfied in its entirety as one lump sum amount. Nevertheless, under certain circumstances (See, Section 7: Uncollectible Debt, Choice not to Recapture or Settle for Less than Full Amount) the debt can be paid in installments following a debt payment plan agreement between the Beneficiary and the CDBR-DR/MIT Program. PRDOH will monitor debt payments plans and/or compromise written agreements to ensure that Beneficiaries are complying with the terms of the debt payment plan, and other provisions of the compromise written agreement. Additionally, PRDOH will monitor Beneficiaries' compliance with the debt payment plan and take all necessary, cost reasonable measures to collect in full the total amount of the debt or compromised debt.

If PRDOH disburses funds and subsequently determines that the disbursement was an error, the Beneficiary must be contacted by an authorized PRDOH or CDBR-DR/MIT Program representative to avoid further payments for the same activity. If the award is

³⁸ Id.

³⁹ 31 C.F.R. § 902.2 (f).

⁴⁰ Id.

still open and subsequent funds will be drawn from it, the amount disbursed in error will be deducted from the next amount drawn. If the award is closed or no subsequent funds will be drawn, PRDOH will send a Repayment Notice letter to the beneficiary.

9 Recaptured Funds

All funds recovered according to this Policy will be tracked in the financial system used by PRDOH to manage the CDBG-DR/MIT grants. This platform, Yardi Voyager (**Yardi**), is a web-based, fully integrated end-to-end platform used to manage operations, accounting, and reports. These funds will be returned to the CDBG-DR/MIT account or U.S. Treasury if the CDBG-DR/MIT grant has been closed out.

10 Program-Based Reconsideration and/or Administrative Review

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

10.1 Program-Based Reconsideration Request

Beneficiaries who wish to contest a Program determination may file a Program-based Reconsideration Request directly with the Program by submitting a written request via electronic or postal mail within **twenty (20) calendar days** from the date a copy of the 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.

Beneficiaries 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 a Beneficiary's file, unless the Beneficiary submits new documentation. The Program has the discretion to accept or reject new documentation based upon its relevance to the Program-based Reconsideration Request.

The Program will review and address the Reconsideration Request within **fifteen (15) calendar days** of its receipt. Beneficiaries will be notified of the reconsideration

determination via a Reconsideration Request Approved or a Reconsideration Request Denied notification.

Filing a Program-based Reconsideration Request does not substitute, negate, or preclude any legal right that a Beneficiary has to challenge a determination made by the Program. Therefore, Beneficiaries 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).⁴¹

10.2 Administrative Review Request

If a Beneficiary disagrees with a Program determination, or with the Reconsideration Request Denial determination, said party may file directly to PRDOH, as grantee, an Administrative Review Request in accordance with the aforementioned Regulation 4953. The Beneficiary must submit such request, in writing, within **twenty (20) calendar days** from the date a copy of the Program determination or a Reconsideration Request Denial determination notice was filed in the record of the agency. Provided, that if the date on which the copy of the notice is filed in the records of the agency differs from the mailing date (postal or electronic), the **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; 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 Legal Division, 606 Barbosa Avenue, Juan C. Cordero Dávila Building, Río Piedras, PR 00918.

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

⁴¹ 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>

END OF POLICY.