



DEPARTMENT OF
HOUSING



CDBG-DR PROGRAM GUIDELINES

CITY REVITALIZATION PROGRAM

AFFORDABLE HOUSING GUIDE

This page was intentionally left blank.

PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR PROGRAM GUIDELINES
City Revitalization Program
Affordable Housing Guide
VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	February 8, 2022	Original Version
2	March 09, 2023	Updated Eligibility Requirements Section to add exception to Municipalities. Included changes throughout the document for clarity purposes.

Table of Contents

1	Overview	5
1.1	Purpose and Scope	5
1.2	Applicability	6
2	National Objective	6
3	Eligibility Requirements	6
3.1	Application Requirements	6
4	Eligible Use of Funds	7
4.1	Eligible Activities	7
4.2	Eligible Costs	8
4.3	Ineligible Costs	9
4.4	Eligible Projects	9
4.5	Project Types	12
4.6	Target Population Set Asides	12
5	Procurement and Selection	13
5.1	Project Selection	13
6	Underwriting Analysis	14
7	Funding	15
7.1	Methods of Distribution Form of Assistance	15
7.2	Legal documents	15
7.3	Funding Amounts	15
8	Minimum Construction Standards	16
8.1	Required Standards	16
8.2	Preferred Standards	17
9	Federal Laws and Regulations, Requirements	17
9.1	Fair Housing and Equal Opportunity Requirements	17
9.2	Supplanting	20
9.3	Prohibition against Eminent Domain	20
9.4	Recapture or Resale Requirements	21
10	Program-Based Reconsideration and/or Administrative Review	21
10.1	Program-Based Reconsideration Request	21

10.2 Administrative Review Request 22

1 Overview

The Puerto Rico Department of Housing (**PRDOH**), as grantee, is committed to the responsible management of the Community Development Block Grant Disaster Recovery (**CDBG-DR**) funds. The U.S. Department of Housing and Urban Development (**HUD**) allocated these funds to address Puerto Rico's long-term recovery needs caused by Hurricanes Irma and María, in September of 2017. In doing so, PRDOH has developed a comprehensive Program Portfolio consisting of Housing, Economic Recovery, Infrastructure, Planning and Multisector Programs. This program portfolio is meant to help rebuild the lives of people most impacted by the hurricanes, generate a long-term investment in social capital, fortify the economy, and set the stage for stability and continuity in government efficiency. As part of its commitment to the citizens of Puerto Rico, PRDOH and its Subrecipients will promote the creation of affordable housing through the implementation of the above-mentioned programs, as eligible and allowed by CDBG-DR regulations.

This Affordable Housing Guide is a supplement to the City Revitalization Program (**CRP Program** or **the Program**) Guidelines, available in English and Spanish at: <https://cdbg-dr.pr.gov/en/download/city-revitalization/> and <https://cdbg-dr.pr.gov/download/revitalizacion-de-la-ciudad/>.

All the provisions set forth in this guide are applicable exclusively to housing activities that will be undertaken under the CRP Program.

1.1 Purpose and Scope

The creation of affordable housing under the CRP Program is intended to achieve successful holistic community development through strategic investment of CDBG-DR funds that will be committed to address unmet housing needs.¹ To achieve a more resilient community, housing insecurity must be mitigated, and affordable housing options must be made available to all eligible citizens. In accordance with the Action Plan and Program Guidelines, City Revitalization Housing projects will focus on urban, downtown, or key economic corridors that contain vacant lots suitable for new construction. Additionally, blighted, and underutilized structures in these areas can be redeveloped into safe, sanitary, and decent affordable housing opportunities.² Projects that will be considered include affordable, multifamily or scattered site³ single-family rental, and single-family homeownership, as stated in the Project Types Section of this Guide.

¹ See *City Revitalization Program Guidelines* for a complete information about Program objectives.

² *Id.*

³ Housing units, especially for low-income families, built throughout an urban area rather than being concentrated in a single neighborhood. https://www.huduser.gov/publications/pdf/scattered_site_housing.pdf.

It is likely ~~that~~ the development timeframe of the projects proposed by Subrecipients will be extended due to the completion of the affordable housing projects set forth in this guide. As such, entities should consider these extended timeframes in their scheduling.

1.2 Applicability

All CRP projects with a housing component must adhere to the CRP Program Guidelines and the requirements outlined below in this Affordable Housing Guide.

2 National Objective

In accordance with 24 C.F.R. §570.208, all CDBG-DR funded activities must satisfy a national objective. For affordable housing under the CRP Program, all projects must benefit low- and moderate-income persons (**LMI**), which requires that fifty one percent (51%) of housing units that are either constructed or administered with CDBG-DR funds are occupied by LMI households.

3 Eligibility Requirements

3.1 Application Requirements

To be eligible and engage in Affordable Housing projects and activities under the CRP Program, Units of General Local Government (**UGLG**),⁴ hereby referred to as Subrecipients or Municipalities, must follow one, or both of the following pathways:

1. Establish a partnership with an administrator of the local Public Housing Authority (**PHA**) or the Puerto Rico Public Housing Administration (**PRPHA**).
 - a. This partnership is subject to financial standing and capacity review and approval by PRDOH.
2. Select an eligible non-profit or for-profit real estate development entity, or individual property owner entity.

Funding will only be provided for municipalities to develop, own, manage, and administer any housing project in its entirety if the municipality meets one of the following exceptional requirements.

1. Demonstrate they have the capacity and experience in administering, maintaining, and performing any other necessary activities for the development and operation of affordable housing projects of similar nature and size. This exception may be applied for homeownership and rental housing projects.
2. Submit an operational and administrative plan for the affordable housing project.

⁴ According to 41 C.F.R. § 105-50.001-3, a unit of local governance is any city, county, town, parish, village, or other general purpose political subdivision of a State. However, for purposes of this Guide, a unit of local governance shall mean a municipality.

3. Submit evidence of previous affordable housing projects ~~demonstrating that evidence~~ the capacity and experience in administering, maintaining, and operating this type of project.
4. Submit documentation demonstrating it has the necessary funding available to begin the operation and the resources to ensure on-going maintenance and operation of the project.

Eligible entities include the following, however, PRDOH will consider alternative entities on a case-by-case basis:

- Non-profit real estate development entities
- For-profit real estate development entities
- Individual property owner entities

4 Eligible Use of Funds

4.1 Eligible Activities

All projects that receive CDBG-DR funding must be designated a HUD eligible activity as defined by Section 105(a) of the Housing and Community Development Act of 1974 (**HCD**A), as amended, or made eligible by a waiver or alternative requirement by an applicable Federal Register notice. All Projects in this Program must be in accordance with at least one (1) of the following eligible activities according to the HCDA, for any Affordable Housing activities that will be undertaken:

- **Section 105(a)(1)**- Acquisition of real property, (including air rights, water rights, and other interests therein):
 - (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 historic sites, the beautification of urban land, the conservation of open spaces, natural resources, scenic areas, the provision of recreational opportunities, or the guidance or urban development;
 - (D) To be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or
 - (E) To be used for other public purposes.
- **Section 105(a)(4)**- Provision of assistance for the 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, or privately-owned properties, and including the renovation of closed school buildings).

- **Section 105(a)(7)**- Provision of assistance for the disposition (through sale, lease, donation, or otherwise) of any real property acquired for public purposes;
- **Section 105(a)(11)**- Provision of relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;
- **Section 105(a)(16)**- Provision of assistance for activities necessary to the development of energy use strategies related to a recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as:
 - (A) An analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation functions; and
 - (B) A statement of the recipient's actions to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of LMI persons) to make energy-conserving improvements to residential structures, and any other proposed energy conservation activities.

In accordance with Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, 5851, grantees may also fund new construction or rehabilitate units, not damaged by the disaster, if the activity clearly addresses a disaster-related impact and is in a disaster affected area.

4.2 Eligible Costs

The following costs, related specifically to Affordable Housing projects, are eligible for funding under the Affordable Housing Guide supplement of the CRP Program:

- Site acquisition
- Site improvement costs
- Hard construction costs
- Soft costs, such as architectural, engineering, legal, permitting fees or construction related insurance.
- Any other eligible related costs, as determined and approved by PRDOH.

4.3 Ineligible Costs

The following costs, related specifically to Affordable Housing projects, are ineligible for funding under the Affordable Housing Guide supplement of the CRP Program:

- Pre-application costs and application development costs;
- Advances of any type, including construction;
- Operating or maintenance expenses.

4.4 Eligible Projects

The Eligible Use of Funds Section of the CRP Guidelines outlines examples of some of the eligible projects that a Subrecipient may undertake as part of the programs that will be implemented under the Program. All proposed affordable housing projects must meet the applicable requirements established in the CRP Guidelines, as well as those established in this guide. The following is a list of Affordable Housing related projects that are eligible under the CRP Program:

4.4.1 Project Types

1. Must be located within the municipal boundary in a designated downtown area or key growth area, as defined by the municipal government or other eligible entity. Projects located completely or in part within a Special Flood Hazard Area (**SFHA**), also known as the 100-year floodplain, must follow the "Eight (8)-Step Decision Making Process" in 24 C.F.R. Part 55 Subpart C⁵. Refer to the Project Criteria section in the CRP Economic Development Activities Supplemental guide for more information.
2. All proposed projects must be tied back to the storm-related disasters either by increasing the supply of affordable housing units or rehabilitating or reconstructing disaster-impacted units.
3. The proposed project must have a minimum of five (5) total units.
 - a. Scattered site projects are allowable under the following conditions:
 - i. The proposed sites are all located within the municipal boundary in a designated downtown or key growth area, and;
 - ii. The project application must be under one (1) development agreement or common ownership, and;
 - iii. If it is a rental project, the Developer must include details regarding their experience managing scattered site rental units and a reasonable plan to adequately manage and maintain the properties.
 - b. Structures with one (1) unit must be occupied by an LMI household. Two-unit structures must have at least one (1) unit occupied by an

⁵ Some exceptions can apply, see 24 C.F.R. § 55.12

LMI household. In structures with three (3) or more units, LMI households must occupy at least fifty-one percent (51%) of the units.

4. Municipalities that have Act 173 Projects⁶ or Act 173 Projects receiving CDBG-DR rental assistance, must demonstrate preservation efforts for said projects before proposing other housing projects.
5. The proponent must have site control of the property or properties where the proposed project will be developed. Site control can be demonstrated by the following, but not limited to:
 - a. Fee title ownership,
 - b. Purchase agreement,
 - c. Option agreement,
 - d. Disposition and development agreement.
6. Proponents are encouraged to seek alternative funding sources or to leverage additional funding sources to maximize the impact of CDBG-DR funds. If the project has additional sources of funding, all sources of funding required to complete the project must be identified, documented as committed and accessible prior to funding commitment, and Notice to Proceed. If the Proponent cannot secure alternative or leverage additional funding, they must document these efforts.
7. The proposed Project must be cost reasonable. Cost reasonableness may be documented by, but not limited to, comparing costs between vendors or to Projects of a similar nature.
8. The proposed Project must successfully meet environmental review clearance and receive an Authority to Use Grant Funds (**ATUGF**). [Tier I and Tier II]⁷.
 - a. Tier I review will address and analyze those environmental impacts related to the proposed action that might occur on a typical site within the geographic area (e.g. floodplain, coastal zone, wetlands, aboveground storage tanks, etc.).
 - b. Tier II review will identify those environmental impacts that will vary by site and may only be observed when specific project locations are known (e.g., historic preservation, hazardous materials, noise abatement, asbestos removal, etc.).

⁶ Act No. 173 of August 31, 1996, as amended, 17 L.P.R.A. § 1491, known as *State Housing Lease Matching Program and Leasing and Home Improvement Subsidy for Veteran's and Low-Income Seniors*.

⁷ See *CRP Guidelines, Environmental Review Section* for an in-depth review of Environmental Review requirements.

4.4.2 Rental Housing Projects

1. At least fifty-one percent (51%) of the project's units must be occupied by LMI households.
2. For units designated as affordable, the Project must meet the following affordable rent requirements and tenant income limits through the duration of the affordability period. At a minimum, the following thresholds must be adhered to in all Projects:
 - a. Tenant household income limits must not exceed eighty percent (80%) of Area Median Income (**AMI**), according to the CDBG-DR HUD Modified Income Limits for All Areas in Puerto Rico, and
 - b. Maximum Affordable Rents (inclusive of utility costs) shall not exceed the lesser of the HOME rent limits, as designated for the Project area⁸, or thirty percent (30%) of the annual LMI household income.
3. The Proponent must include a plan of how they will provide long-term operations and maintenance (**O&M**) for the Project. Proponents should also provide a preliminary financial projection and describe in detail how O&M will be provided.
4. Any project that involves the acquisition of real property, or the rehabilitation or reconstruction of damaged multifamily rental housing developments that are occupied, must comply with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended (**URA**).
 - a. To expedite project completion, projects that propose developing or preserving affordable housing on properties that are occupied by residents or businesses at the time of application will not be considered, **with an exception to Act 173 developments**.
 - b. If the project site is occupied by any residential or commercial tenants who will be displaced by the project activities, URA relocation requirements will apply, regardless of whether it is being acquired or is already owned by the Subrecipient. These requirements include relocation planning, written notifications, the provision of relocation advisory services, and timely payments to displaced occupants until they have been successfully relocated.⁹

⁸ <https://www.hudexchange.info/programs/home/home-rent-limits/>.

⁹ See *URA & ADP Guidelines* for all of the requirements that must be complied with regarding URA processes and notifications, found at: <https://cdbg-dr.pr.gov/en/download/ura-adp-guidelines/> (English) and <https://cdbg-dr.pr.gov/download/guias-ura-adp/> (Spanish).

4.4.2.1 Affordability Period

The minimum affordability period for Rental Housing Rehabilitation or Reconstruction Projects is fifteen (15) years, while for new construction projects it is twenty (20) years.¹⁰

4.4.3 Homeownership Projects

1. Homebuyer household income limits must not exceed eighty percent (80%) AMI, according to the CDBG-DR HUD Modified Income Limits for All Areas in Puerto Rico.
2. A homebuyer must occupy the property as a principal residence.
3. The initial or after-rehabilitation first mortgage amount will be based on the appraised value of the property. The CDBG-DR Program will fund, as a soft second mortgage, the difference between what the household can afford, which will be based off lenders' standard underwriting criteria, generally not to exceed thirty percent (30%) of annual household income, inclusive of principal, interest, and escrow (if required) and the appraised value of the home to be purchased.

4.4.3.1 Affordability Period

Homeownership projects, involving rehabilitation, reconstruction, or new construction, have a minimum affordability and occupancy period of five (5) years. If applicable, twenty percent (20%) per year of the soft-second forgivable loan will be forgiven. If the owner sells the property during the term of the loan, they will be required to repay the remaining portion of the loan.

4.5 Project Types

1. Residential, Mixed-Income and/or Mixed-use
 - a. Affordable, multifamily or scattered-site single-family rental
 - b. Affordable, multifamily, or scattered site single-family homeownership
 - i. Condominium and/or cooperative affordable housing units located in a multifamily building will be considered single-family housing units for affordability and occupancy period purposes.

4.6 Target Population Set Asides

¹⁰ HOME-assisted housing is subject to income and rent restrictions. HOME-assisted rental housing must remain affordable (with income and rent restrictions) throughout the affordability period. This period (from 5 to 20 years) is based on the activity (acquisition, rehabilitation, new construction, or refinancing) and amount of average HOME assistance per unit in the project. <https://www.hudexchange.info/resources/using-home-hf-funds-within-opportunity-zones/the-essentials-of-oz-home-hf-programs/the-home-program-101-basics/key-home-rental-housing-requirements/>.

The affordability periods will be monitored by the Subrecipients throughout the entire term through the review of rent rolls, rent rates, or any similar documentation to document compliance with said periods.

Subrecipients and Developers are encouraged to develop housing units or housing projects that will be targeted towards special populations,¹¹ including but not limited to:

1. Individuals Experiencing Homelessness: Individuals who lack a fixed, regular, and adequate nighttime residence; individuals who will imminently lose their primary nighttime residence; an unaccompanied youth under twenty-five (25) years of age without a fixed, regular, and adequate nighttime residence; or any individual fleeing, or attempting to flee, domestic violence that has no other residence. For a more in-depth definition, refer to 24 C.F.R. §578.3.
2. Disabled Individuals: refers to an individual with a physical or mental impairment that substantially limits one (1) or more of the major life activities of such individual; a record of such impairment; or being regarded as having such an impairment as described at 28 C.F.R. § 35.108(f). Housing developed for disabled individuals must comply with the requirements set forth in the Americans with Disabilities Act of 1990 as well as Section 504 of the Rehabilitation Act of 1973.¹²
3. Low Income Seniors: Individual at least sixty-two (62) years old with income at eighty percent (80%) AMI or less.
4. Extremely Low Income (ELI) Households: Household earning thirty percent (30%) AMI or less.

5 Procurement and Selection

5.1 Project Selection

1. Subrecipients must partner with an experienced administrator to develop, own, and manage housing projects, except for subrecipients who were granted an exception by PRDOH. Otherwise, subrecipients must select an eligible entity with experience in developing, owning, and managing housing projects. The selection of the experienced eligible entity must be through an open and competitive process.
 - a. Open & Competitive Selection: Subrecipients must develop a solicitation process to provide opportunity for potential Developers to submit projects and be selected through an open and competitive process. PRDOH will

¹¹ In doing so, Developers will have to follow an Affirmative Housing Marketing Plan. For more information about this and other requirements pertaining to Fair Housing, see the City Revitalization Program Guidelines available at: <https://cdbg-dr.pr.gov/en/city-revitalization/> (English) and <https://cdbg-dr.pr.gov/revitalizacion-de-la-ciudad/> (Spanish). See also the Fair Housing and Equal Opportunity Program Guidelines, available at: <https://cdbg-dr.pr.gov/en/download/fair-housing-and-equal-opportunity-fheo-policy-for-cdbg-dr-programs/> (English) and <https://cdbg-dr.pr.gov/download/politica-de-equidad-de-vivienda-e-igualdad-de-oportunidades-para-los-programas-cdbg-dr/> (Spanish).

¹² For detailed explanation of the requirements when constructing or operating a program that will serve disabled individuals, see Reasonable Accommodation Policy, found at: <https://cdbg-dr.pr.gov/en/download/reasonable-accommodation-policy/> (English) and <https://cdbg-dr.pr.gov/download/politica-de-acomodo-razonable/> (Spanish).

provide Notice of Available Funding (**NOFA**) or Request for Proposal (**RFP**) templates.

- b. Selection: Subrecipients must review and evaluate Projects submitted through the project solicitation process. The selection process will include the following reviews at a minimum: eligibility review, assessment of long-term viability, verification of financial feasibility and cost reasonableness, timeliness and schedule, and Developer capacity.

6 Underwriting Analysis

As part of the application review, PRDOH or its designee will perform an underwriting analysis to determine that the CDBG-DR investment does not exceed the amount required to provide safe, affordable, and quality housing that will be financially viable throughout the affordability period. The underwriting review and analysis must include:

1. Evaluation of qualifications and capacity of the Proponent to successfully execute the proposed project. Qualified Proponents must have successfully developed and managed at least one (1) multifamily or single-family (scattered site) rental or homeownership project.
2. Examination of sources and uses of funds for the project to determine cost reasonableness and project cash flow, if rental, throughout the affordability period. PRDOH will review project assumptions, such as vacancy rates and annual rent increases.
3. Review cost allocation to determine maximum permissible amount of CDBG-DR funds per unit is not exceeded.
4. Analyze project financial feasibility to meet the required affordability period.
5. Evaluate supplied market assessment to confirm there is a market demand for the proposed project in the municipality or neighborhood.

The purpose of the underwriting requirements is to ensure that:

- Project costs are reasonable;
- All sources of project financing are committed;
- To the extent practicable, CDBG-DR funds are not substituted for non-Federal financial support;
- The project is financially feasible;
- To the extent practicable, the return on the owner's equity investment will not be unreasonably high; and
- To the extent practicable, CDBG-DR funds are reimbursed on a needed pro-rata basis with other finances provided to the project.

7 Funding

7.1 Methods of Distribution

1. Unit of General Local Governance (Municipal Governments) will receive direct Subrecipient Funding.
2. All other Developers will receive grants or loans.

7.2 Legal documents

The following list is an example of some, but not all, required legal documents to be submitted as part of a housing project under the CRP Program. Municipalities should always ensure compliance with all applicable local and federal regulations.

1. Development Agreements
2. Deed of Trust
3. Regulatory Agreement
4. Development Agreement Rider
5. Declaration of Deed Restrictions or Restrictive Covenants

7.3 Funding Amounts

1. Minimum funding award is \$250,000.¹³
2. Maximum assistance per unit will be consistent with annual HOME limits established by HUD, without exceeding the regional per-unit limit increase for San Juan, Puerto Rico. Up to two-hundred and seventy percent (270%)¹⁴ of the HOME subsidy limit¹⁵ may be used, plus an additional percent increase based on the latest Consumer Price Index (CPI).¹⁶ The increase accounts for additional costs due to inflation.
 - a. Maximum funding award is the lesser of:
 - i. One hundred percent (100%) of Total Development Costs; or
 - ii. Total of the CDBG-DR funding limits per CDBG-DR per unit limit as outlined in the table below:¹⁷

Bedrooms	HOME Funding Limit/Unit National (1/2021)	HOME Funding Limit/Unit Puerto Rico (1/2021)	CDBG-DR Per Unit Limit
0	\$63,881	\$159,703	\$159,703
1	\$73,230	\$183,075	\$183,075

¹³ Minimum funding will be \$250,000 in order to prioritize transformative projects that will reach a larger sector of the population.

¹⁴ <https://www.hud.gov/sites/dfiles/OCHCO/documents/2022-05hsgml.pdf>.

¹⁵ <https://www.hudexchange.info/resource/2315/home-per-unit-subsidy/>.

¹⁶ U.S. Bureau of Labor Statistics. November 17, 2022. Available at: <https://www.bls.gov/opub/ted/2022/consumer-prices-up-7-7-percent-over-year-ended-october-2022.htm>

¹⁷ These per unit cap limits were adopted by PRDOH to ensure cost reasonableness.

2	\$89,049	\$222,623	\$222,623
3	\$115,201	\$288,003	\$288,003
4+	\$126,454	\$316,135	\$316,135

Bedrooms	HOME Funding Limit/Unit National (1/2021)	HOME Funding Limit/Unit Puerto Rico (1/2021)	Consumer Price Index Factor – 7.7% (10/2022)	CDBG-DR Per Unit Limit
0	\$66,564	\$179,723	\$13,839	\$193,561
1	\$76,305	\$206,024	\$15,864	\$221,887
2	\$92,789	\$250,530	\$19,291	\$269,821
3	\$120,039	\$324,105	\$24,956	\$349,061
4+	\$131,765	\$355,766	\$27,394	\$383,159

8 Minimum Construction Standards

8.1 Required Standards

The following is a list of construction standards that all affordable housing projects under the CRP Program must abide by.

1. Puerto Rico and Local Building Codes, if applicable
 - a. Projects that are eligible for reconstruction under the Program will be constructed to meet the International Building Code per Puerto Rico regulations. Repair works performed by the Program must also meet local codes, rehabilitation standards, and zoning ordinances. All permits and inspections required by the Permits Management Office (OGPe, for its Spanish acronym) or the autonomous municipality having jurisdiction must be completed.
2. Green Building and Energy Efficiency Standards¹⁸
3. Broadband Infrastructure, if applicable
4. Abatement of Lead Based Paint Hazards¹⁹
 - a. Any unit constructed prior to 1978 must be evaluated for the presence of lead-based paint.
5. Asbestos survey²⁰

¹⁸ See Section 10.1 of CRP Guidelines.

¹⁹ See Lead-Based Poisoning Prevention Act of 1973, 42 U.S.C. § 4821-4846 and the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4851 *et seq.*, also known as Title X.

²⁰ See National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations under the Clean Air Act of 1963, as amended, 42 U.S.C. § 7401 *et seq.*, specify work practices for asbestos to be followed during demolitions and renovations of all structures, installations, and buildings.

6. CDBG-DR Fair Housing and Equal Opportunity Policy²¹
7. ~~Uniform Federal Accessibility Standards (Section 504 of the Rehabilitation Act)~~²²
8. Fair Housing Act Design Manual²³

8.2 Preferred Standards

The following is a list of standards that affordable housing projects under the CRP Program should evaluate and consider using in order to promote better environmental practices.

1. Sustainability principles.²⁴
2. Resilient Home Construction Standards.²⁵

9 Federal Laws and Regulations, Requirements

Projects funded under the CRP Program must comply with all applicable federal and local requirements, including but not limited to the regulations listed in the table below,²⁶ the CRP Program Guidelines, and the Cross-Cutting Guidelines.²⁷

9.1 Fair Housing and Equal Opportunity Requirements

Executive Order, Law, or Statute	Description
<p>Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.</p>	<p>No person shall be excluded from participation, denied program benefits, or subjected to discrimination under any program receiving federal funding on the basis of:</p> <ol style="list-style-type: none"> 1. Race, 2. Color, or 3. National Origin. <p>Establishes that the Federal department or agency that extends federal financial assistance may terminate such funding to any recipient found in violation of this section.²⁸</p>
<p>Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701(u)</p>	<p>To the greatest extent feasible, employment and other economic opportunities, should be directed to:</p> <ol style="list-style-type: none"> 1. Low and very low-income persons, and

²¹ See *Fair Housing and Equal Opportunity Policy for CDBG-DR Programs*, found at: <https://cdbg-dr.pr.gov/en/download/fair-housing-and-equal-opportunity-ftheo-policy-for-cdbg-dr-programs/>.

²² 41 C.F.R. Appendix A to Subpart 101-19.6

²³ <https://www.huduser.gov/portal/publications/PDF/FAIRHOUSING/fairfull.pdf>.

²⁴ As required by Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, amended by Federal Register Vol. 84 No. 33 (February 19, 2019), 84 FR 4836. Also see, *Puerto Rico Recovery Disaster Action Plan*, p. 18.

²⁵ Id.

²⁶ This table is only meant as a summary of some of the applicable laws and regulations that Projects funded under the CRP must comply with. Subrecipients are responsible for familiarizing themselves with the in-depth requirements of all applicable laws and regulations.

²⁷ *Cross Cutting Guidelines* found at: <https://cdbg-dr.pr.gov/en/download/cross-cutting-guidelines/> (English) and <https://cdbg-dr.pr.gov/download/guias-intersectoriales/> (Spanish).

²⁸ 42 U.S.C. § 2000d-1.

	<p>2. Business concerns which provide economic opportunities to low and very low-income persons.</p>
<p>Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act), 42 U.S.C. § 3601 et seq.</p>	<p>Prohibits discrimination in the sale, rental, and financing of housing, and in other housing-related activities on the basis of:</p> <ol style="list-style-type: none"> 1. Race, 2. Color, 3. Religion, 4. Sex, 5. Familial Status,²⁹ 6. National Origin, or 7. Disability. <p>Requires HUD and its grantees to administer its programs in a manner that affirmatively furthers fair housing.</p>
<p>Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 et seq.</p>	<p>No otherwise qualified individual shall, solely, by reason of their disability, be:</p> <ol style="list-style-type: none"> 1. Excluded from participation in (including employment), 2. Denied program benefits of, or 3. Subjected to discrimination under any program receiving federal funding assistance. <p>Section 504 also contains accessibility requirements for housing and non-housing facilities, as well as for the provision of reasonable accommodations.</p>
<p>Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq.</p>	<p><u>Title I</u>: Prohibits private employers, state/local governments, employment agencies, and unions from discriminating against qualified individuals with disabilities; applies to employers with 15 or more employees.</p> <p><u>Title II</u>: Prohibits all public entities from, on the basis of disability, excluding participation in, or denying the benefits of its services, programs, and activities, or otherwise discriminating against persons with disabilities.</p> <p><u>Title III</u>: Prohibits discrimination on the basis of disability in places of public accommodation (publicly and privately owned); requires compliance with ADA Standards for new construction and alterations to places of public accommodation and commercial facilities.³⁰</p>

²⁹ Exceptions exist for housing covered under the Housing for Older Persons Act of 1995, 42 U.S.C. § 3607(b).

³⁰ Because PRDOH is a recipient of federal CDBG-DR funds, Section 504 accessibility requirements apply to its programs and activities involving construction, housing, and non-housing facilities. However, HUD's Deeming Notice (79 FR 29671) allows for the choice, with some exceptions, of using 2010 ADA Standards instead of the Uniform Federal Accessibility Standards (UFAS) to comply with Section 504.

<p>Section 109 of the Housing and Community Development Act of 1974 (HCDA), as amended, 42 U.S.C. § 5309</p>	<p>For any program or activity funded in whole or in part with funds made available under this Act, no person shall be excluded from participation in, be denied the benefits of, or subjected to discrimination based on:</p> <ol style="list-style-type: none"> 1. Race, 2. Color, 3. National Origin, 4. Religion, 5. Sex 6. Age³¹ 7. Disability³² <p>Charges HUD with enforcement related to discrimination covered by this Section.</p>
<p>Housing for Older Persons Act of 1995 (HOPA), Pub. L. 104-76</p>	<p>Provides an exemption from the Fair Housing Act, as amended, for three types of housing that primarily serve "older persons" as defined at 42 U.S.C. § 3607(b) and requires appropriate policies, procedures, and occupancy verification in order to comply with the Act.</p>
<p>Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq.</p>	<p>No person shall be excluded from participation, denied program benefits, or subjected to discrimination on the basis of age.</p>
<p>Architectural Barriers Act of 1968, 42 U.S.C. § 4151, et seq.</p>	<p>Requires that certain federally funded buildings be designed, constructed, or altered in accordance with Uniform Federal Accessibility Standards (UFAS). Standards that ensure accessibility for persons with physical disabilities.</p>
<p>Executive Order No. 11063 (1962), Federal Register, Vol. 27, No. 228, p.11527, 27 FR 11527 (November 24, 1962)</p>	<p>Prohibits discrimination based on race, color, religion, sex, or national origin in the sale, rental, leasing, or other disposition of residential property and related facilities owned, operated, or funded by HUD. Also applies to lending that relates to loans insured, guaranteed, or purchased by HUD.</p>
<p>Executive Order No. 11246 (1965), Federal Register, Vol. 30, No. 187, p. 12319, 30 FR 12319 (September 28, 1965) as amended by Executive Order No. 13672 (2014), Federal Register, Vol. 79, No. 141, p. 42971, 79 FR 42971 (July 23, 2014)</p>	<p>No person shall be discriminated against, on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin in any phase of employment during the performance of federal or federally assisted construction contracts for contractors and subcontractors who perform in excess of \$10,000 in federally funded contracts in a year. Also includes affirmative action requirements and prohibitions against certain adverse actions against applicants and employees by contractors.</p>

³¹ As provided by the Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq.

³² As provided in 29 U.S.C. 794.

<p>Executive Order No. 12892 (1994), Federal Register, Vol. 59, No. 13, p. 2939, 59 FR 2939 (January 20, 1994)</p>	<p>Requires federal agencies to affirmatively further fair housing in their programs and activities and establishes that the Secretary of HUD will be responsible for coordinating the effort.</p>
<p>Executive Order No. 13166 (2000), Federal Register, Vol. 65, No. 159, p. 50121, 65 FR 50121, (August 16, 2000)</p>	<p>Requires each federal agency to take steps to ensure that eligible persons with limited English proficiency are provided meaningful access to all federally assisted and federally conducted programs and activities.</p>
<p>Executive Order No. 12898 (1994), Federal Register Vol. 59, No. 32 (February 16, 1994), Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations</p>	<p>Executive Order 12898 requires that each federal agency conduct its program, policies, and activities that substantially affect human health or the environment in a manner that does not exclude persons based on race, color, or national origin.</p>
<p>Executive Order No. 13988 (2021), Federal Register Vol. 86, No. 14, p. 7023, 86 FR 7023 (January 20, 2021), Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation</p>	<p>Directs all agencies, including HUD, to administer and enforce the Fair Housing Act to prohibit discrimination on the basis of sexual orientation and gender identity. The order also directs any federal agency with protections against discrimination based on sex to interpret those statutes to also protect against discrimination based on sexual orientation, gender identity and gender expression.</p>
<p>General HUD Program Requirements: Equal Access to HUD-assisted or Insured Housing (24 C.F.R. § 5.106)</p>	<p>Prohibits discrimination against individuals based on gender identity by recipients and subrecipients of CDBG funds, as well as owners, operators, and managers of shelters and other buildings and facilities and providers of services funded in whole or in part by CDBG funds.</p>
<p>Equal Employment Opportunity Act of 1972, Pub. L. 92-261</p>	<p>This Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found “probable cause” of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.</p>

9.2 Supplanting

HUD does not allow CDBG-DR funds to be substituted for funds that were previously allocated and paid by a local or state entity for the same program.

9.3 Prohibition against Eminent Domain

Per federal law, no funds allocated to a Subrecipient may be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use. Housing assistance is not considered

or public use, and therefore, **acquisition by eminent domain is prohibited under the CRP Program Affordable Housing Supplement Guide.**

9.4 Recapture or Resale Requirements

A Subrecipient and/or Developer may be required to repay all, or a portion of CDBG-DR funds received if one of the following occurs:

1. A Subrecipient and/or Developer withdraws from the Program prior to completion of the Project and fails to meet a national objective;
2. A Developer does not meet the affordability requirements for the period specified in this guide.
3. A Subrecipient and/or Developer is found to have used program funds for an ineligible activity or cost;
4. A Developer does not report the receipt of additional insurance, Small Business Administration (**SBA**), Federal Emergency Management Agency (**FEMA**), non-profit assistance and/or other Duplication of Benefits received after the award, and/or;
5. If a Project assisted with CDBG-DR funds is sold during the applicable affordability and occupancy period, resale or recapture provisions apply to ensure the continued provision of affordable housing. The owner of the property will be required to repay the remaining portion of the forgivable loan.

10 Program-Based Reconsideration and/or Administrative Review

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

10.1 Program-Based Reconsideration Request

Applicants 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 Program determination notice was filed in the records of the agency differs from the postal or electronic mail date of said notice, the ~~aforementioned~~ **twenty (20) calendar day-term** shall be calculated from the postal or electronic mail date. Notices distributed via electronic communication shall be considered valid. In the event a notification is sent via postal and electronic mail, the notification date will be the one

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

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

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

Filing a Program-based Reconsideration Request does not substitute, negate, or preclude any legal right that an Applicant has to challenge a determination made by the Program. Therefore, Applicants who disagree with the initial determination of the Program, may submit, at their discretion, either a Program-based Reconsideration Request or a petition for review of the decision made by the Program by filing an Administrative Review Request at PRDOH in accordance with Regulation Number 4953, of August 19, 1993, which regulates the Formal Adjudication Process for PRDOH and its Adjunct Agencies (Regulation 4953).³³

10.2 Administrative Review Request

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

³³ 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>

Legal Division, 606 Barbosa Avenue, Juan C. Cordero Davila Building, Río Piedras, P.R., 00918.

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

END OF GUIDELINES.