



DEPARTMENT OF
HOUSING



CDBG-DR

ELECTRICAL POWER SYSTEM ENHANCEMENTS & IMPROVEMENTS

PROGRAM GUIDELINES

Energy Grid Rehabilitation and Reconstruction Cost Share Program (ER1)

October 26, 2023
V.1

This page was intentionally left blank.

PUERTO RICO DEPARTMENT OF HOUSING
CDBG-DR ELECTRICAL POWER SYSTEM ENHANCEMENTS & IMPROVEMENTS
PROGRAM GUIDELINES
ENERGY GRID REHABILITATION AND RECONSTRUCTION COST SHARE PROGRAM
VERSION CONTROL

VERSION NUMBER	DATE REVISED	DESCRIPTION OF REVISIONS
1	October 26, 2023	Original Version

Table of Contents

1	Overview	7
2	Definitions	8
3	Program Description	9
4	Roles and Responsibilities	10
	4.1 Central Office for Recovery, Reconstruction, and Resiliency (COR3).....	10
	4.2 Puerto Rico Department of Housing	11
	4.3 Puerto Rico Electric Power Authority	11
	4.4 Puerto Rico Energy Bureau (PREB)	11
	4.5 Energy Technical Coordination Team (TCT).....	12
5	National Objective	12
6	Eligibility	13
	6.1 Eligible Use of Funds	13
	6.2 Eligible Activities	14
	6.3 Eligible Costs	14
	6.4 Ineligible Activities	15
	6.5 Eligible Entities.....	16
	6.6 Baseline Project Eligibility Requirements	16
	6.7 Threshold Subrecipient Eligibility Requirements.....	16
7	Project Evaluation and Selection	17
	7.1 Project Evaluation	17
	7.1.1 Threshold Evaluation Criteria.....	17
	7.1.2 Additional Evaluation Criteria	18
8	Final Project Selection and Award	21
9	Design and Construction Requirements	21
	9.1 Codes, Laws, and Regulations Compliance.....	21
10	Long-Term Operation and Maintenance (O&M) Plan	24
11	Duplication of Benefits (DOB)	24
12	Environmental Review	26
	12.1 Unified Federal Review (UFR) process	27
	12.2 Flood Insurance Program Requirements	28
	12.3 Floodplain Management and Elevation Standards.....	28
	12.3.1 FEMA-Assisted Activities Commenced Prior to August 5, 2022	29

12.3.2	Other Applicable Elevation and Floodplain Standards.....	29
12.4	Asbestos Surveys.....	30
13	Procurement.....	31
14	Change Orders to Contracts	32
15	Financial Management	32
15.1	Cost Reasonableness.....	32
16	Uniform Relocation Act.....	34
17	Property Management and Disposition	34
18	Labor Standards	35
19	Section 3	35
20	Civil Rights and Non-Discrimination	36
20.1	Fair Housing & Equal Opportunity Policy (FHEO Policy).....	36
20.2	Section 504, Americans with Disabilities Act, and Equal Employment Opportunity.....	36
20.3	Reasonable Accommodation Policy	36
20.4	Language Access Plan.....	37
21	Reporting	37
22	Monitoring.....	38
23	Closeout.....	39
23.1	Project Closeout	40
23.2	HUD Notification of Project Closeout.....	41
23.3	Program Closeout	41
24	Recapture	42
25	Fair Housing Act and Affirmatively Furthering Fair Housing	42
26	General Provisions	42
26.1	Program Guidelines Scope.....	42
26.2	Program Guidelines Amendments.....	43
26.3	Extension Deadlines	43
26.4	Established Periods of Time	43
26.5	Written Notifications	43
26.6	Conflict of Interest	44
26.7	Citizen Engagement and Participation.....	45
26.8	Citizen Complaints	46
26.9	Anti-Fraud, Waste, Abuse or Mismanagement.....	47
26.10	Related Laws & Regulations	48

26.11 Cross-Cutting Guidelines	48
27 Program Oversight	48
28 Severability Clause	49

1 Overview

Hurricanes Irma and María struck Puerto Rico¹ in September of 2017, and the effect on the electrical power system remains ever present in the daily lives of the Island residents. Power outages are common and unpredictable, electricity prices continue to rise, and rolling blackouts due to insufficient generation and faulty substations are common. The impact of the hurricanes on the power system was devastating and led to the longest sustained blackout in modern United States (**U.S.**) history. Energy remains the most critical factor for the Island's future.

To help address the electrical power system challenges, the U.S. Department of Housing and Urban Development (**HUD**) has allocated \$1.932 billion² to Puerto Rico for energy reliability and resilience activities under the Community Development Block Grant-Disaster Recovery Program (**CDBG-DR Energy**). The Energy Grid Rehabilitation and Reconstruction Cost Share Program (**ER1 Program** or **the Program**), as approved in the Puerto Rico Electrical Power Systems Enhancements and Improvements Action Plan (**Action Plan**),³ is designed to benefit Puerto Rican communities by funding projects that enhance electric system reliability, affordability, and resiliency. The Program's design will promote the development of a more reliable electrical grid for all Puerto Rico residents, as documented by the Federal Emergency Management Agency (**FEMA**) in its approval of significant recovery funds related to the comprehensive recovery of the Island's electrical system.

The purpose of the ER1 Program is to maximize the benefit of federal grant programs by positioning CDBG-DR as the ideal source for the required local match (or "state share") to other federal funding streams. In particular, the Program targets the state share required for FEMA's Public Assistance (**PA**) allocation for the Puerto Rico Electric Power Authority (**PREPA**) Island-wide FEMA Accelerated Awards Strategy (**FAAST**) Project Worksheet (**PW**). This approach will relieve the financial burden related to the recovery efforts of Puerto Rico's Electrical Grid and Puerto Rico's long-term infrastructure resilience needs. Through the matching of funding provided by FEMA, critical infrastructure needs will be addressed, making the Island more adaptable to changing conditions and able to withstand and recover rapidly from disruptions caused by future disasters.

¹ Puerto Rico is an archipelago that consists of one (1) main island, two (2) small, inhabited islands, and over 130 smaller islands and cays. Throughout this document, the term Island is used interchangeably with Puerto Rico, and is meant to encompass the entire archipelago of Puerto Rico.

² Federal Register Vol. 86, No. 117 (June 22, 2021), 86 FR 32681. <https://www.govinfo.gov/content/pkg/FR-2021-06-22/pdf/2021-12934.pdf>.

³ The Puerto Rico Electrical Power Systems Enhancements and Improvements Action Plan is available in English and Spanish at: <https://cdbg-dr.pr.gov/en/download/cdbg-dr-action-plan-for-the-electrical-systems-enhancements-effective-on-march-25-2022/> and <https://cdbg-dr.pr.gov/download/plan-de-accion-cdbg-dr-para-la-optimizacion-de-la-red-electrica-efectivo-el-25-de-marzo-de-2022/>.

2 Definitions

- **Critical Facilities** – Facilities and infrastructure critical to the population's health and welfare and of great importance following hazardous events. The term includes facilities and infrastructure tied to community lifelines such as health, energy, food and water, safety, and security, among others. Typical critical facilities include hospitals, fire stations, police stations, gas stations, emergency shelters, water storage and distribution facilities, among others.⁴
- **Electrical Power System** - An interconnected or autonomous set of transmission lines, distribution lines, substations, central power generation stations, other sources of power, distributed energy resources, or enabling technologies and services, such as industry standard billing, accounting information technology, cybersecurity enhancements, microgrids and fuel transfer delivery systems, that are necessary for the provision of reliable, resilient, stable, and cost effective electrical service.⁵
- **Electrical Power System Improvements** – The acquisition, construction, reconstruction, rehabilitation, or installation of facilities, improvements, or other components that are undertaken to extend, upgrade and otherwise enhance and improve the cost-effectiveness, reliability, efficiency, sustainability, or long-term financial viability of the grantee's electrical power system. These improvements include activities to increase the electrical power system's resilience to future disasters and address the impacts of climate change. This definition includes financing public or private acquisition for reconstruction or rehabilitation and of reconstruction or rehabilitation of a privately-owned property.⁶
- **Functional Groupings** – Functional groupings are defined by the Puerto Rico Department of Housing as: 1) transmission and distribution; 2) substations; 3) central power generation; 4) other sources of power, distributed energy, microgrids; and 5) enabling technology.⁷
- **FEMA Accelerated Awards Strategy (FAASt) Project** – Refers to the mechanism created by FEMA, through which it compiled a representative sample of structural damage and, after an analysis, estimated the costs based on the scope of work

⁴ U.S. Federal Emergency Management Agency (FEMA). Fema.gov. Retrieved August 17, 2023, from <https://www.fema.gov/glossary/critical-facility>.

⁵ 86 FR 32681, 32692.

⁶ 86 FR 32681, 32692.

⁷ Please note that each functional grouping within the grid system may be subject to unique treatment in the project selection process based on its specific function and its relationship to project impacts. This consideration is in addition to the evaluation of other criteria that align with broader HUD and PRDOH priorities. These priorities are designed to support projects that are most likely to be successfully completed and that will have the greatest impact, particularly among the most vulnerable populations on the island. The Central Power Generation Functional Grouping Projects are approved and reported by FEMA, and they are listed separately.

of eligible structures. The strategy allows critical infrastructure projects to be grouped to expedite recovery work in Puerto Rico.⁸

- **Government** – Refers to the Government of Puerto Rico, its agencies, public corporations, offices, and subdivisions, including municipalities.
- **Governor’s Authorized Representative (GAR)** - Designated by the Governor of Puerto Rico to represent the Government in activities related to the implementation of the Stafford Act and the ongoing disaster, emergency preparedness, response, recovery, and hazard mitigation activities of the Government of Puerto Rico.
- **Low to Moderate Income (LMI)** – Refers to the residents of Puerto Rico below eighty percent (80%) of the Area Median Family Income (**AMFI**) as established by HUD.⁹
- **Operation and Maintenance (O&M) Plan** – A set of specific system operating parameters, maintenance inspections and periodic testing reports, maintenance procedures and schedules, and documentation methods to ensure that an asset or asset protection measure performs as intended over the project's useful life.
- **State Hazard Mitigation Officer (SHMO)** - Designated by the GAR as the responsible individual on all matters related to the Hazard Mitigation Activities of the Government.
- **Subrecipient** - An entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award.¹⁰ The eligible Subrecipient for the ER1 Program is the Puerto Rico Electric Power Authority (**PREPA**).
- **Technical Coordination Team (TCT)** – An interagency group comprised of relevant Federal government agencies that provides technical, budgetary, operational, and environmental consultation for electrical power system improvement projects. The group is co-led by the U.S. Department of Energy (**DOE**) and FEMA, with the U.S. Department of the Treasury as financial lead. It also includes HUD, the U.S. Environmental Protection Agency (**EPA**), the U.S. Army Corps of Engineers (**USACE**), and other Federal partner agencies.

3 Program Description

The ER1 Program is designed to meet the non-federal cost share need of FEMA's unprecedented PA allocation for PREPA's Island-wide FAASt PW. Eligible projects under

⁸ FEMA Accelerated Awards Strategy (FAASt) Projects Execution. Retrieved August 17, 2023, from <https://recovery.pr.gov/en/road-to-recovery/pa-faast/map>.

⁹ Current income limits for Puerto Rico CDBG-DR purposes only, can be found on the HUD website: <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>.

¹⁰ 2 C.F.R. §200.1

the ER1 Program will be those determined to be eligible under FEMA or the federal agency acting as the primary source of funding to participate in the program. Subject to funding availability, the ER1 Program may also consider the viability of matching non-federal cost shares of other federal grant-in-aid programs related to electrical system improvements and FEMA 406 mitigation projects once architectural and engineering design is completed. The use of ER1 Program funds for this matching strategy maximizes the potential for serving vulnerable populations at a larger scale.

The ER1 Program will provide a portion of the required cost share, within the total Program budget of five hundred million dollars (\$500,000,000). The award of cost share funds will require alignment with FEMA and HUD's CDBG-DR framework to ensure compliance with federal spending regulations under both federal agencies. The Puerto Rico Department of Housing (**PRDOH**) will work closely with the Central Office for Recovery, Reconstruction, and Resiliency (**COR3**), as well as PREPA and/or their authorized representative, to determine project match eligibility and alignment with grant timelines, targeting projects that result in a timely expenditure of funds. PRDOH will also collaborate with COR3 to develop long-term natural hazards resilience strategies and in the determination on how infrastructure investments align with other planned local capital improvements.

PRDOH will implement a Flexible Match approach for the PREPA FAAS award to ease the administrative burden and expedite recovery. The Flexible Match approach seeks to streamline the cost share match process by selecting specific projects within an overall PW. PRDOH may choose to fund the 100% of costs for specifically selected projects with CDBG-DR match, up to the total corresponding cost share amount for the entirety of the PW, and/or up to the committed available cost share amount.

The necessity for redundant, alternative, and independent power systems remains an unmet need in Puerto Rico. To address it, PRDOH is focusing critical recovery funds to help improve the reliability, affordability, and resilience of Puerto Rico's electrical power system by tackling these needs at a system level, thus impacting large portions of the Island's vulnerable or disadvantaged populations.

4 Roles and Responsibilities

4.1 Central Office for Recovery, Reconstruction, and Resiliency (COR3)

In the aftermath of hurricanes Irma and María, on October 23, 2017, the Government of Puerto Rico established COR3, via Administrative Bulletin Number OE-2017-65, to:

- Identify and ensure that all state, federal, and/or private resources are available to all Government Entities of the Executive Branch (**the Government Entities**);
- Coordinate and channel the recovery and reconstruction efforts of the Government Entities;
- Finance, execute, and effect infrastructure projects related to recovery; and
- Advise the Governor and provide technical assistance to the Government Entities.

COR3 is responsible for developing and implementing robust ethics, compliance, and audit programs to ensure efficient and effective use of available resources and minimize duplication of recovery work. The COR3 Executive Director is also the Governor's Authorized Representative (**GAR**) under the FEMA-State agreements. The consolidation of responsibilities within an entity facilitates a more efficient management of Puerto Rico's recovery efforts, enabling centralized decision-making and streamlined processes.

4.2 Puerto Rico Department of Housing

PRDOH is designated as the recipient and administrator of all CDBG-DR and CDBG-MIT funds from HUD. PRDOH will work in partnership with COR3 to coordinate efforts to administer the implementation and programmatic oversight of the projects included under the Flexible Match approach.

As the grantee of HUD's funding, PRDOH has the ultimate responsibility to ensure any funding distributed to carry out activities complies with HUD-specific program requirements. PRDOH will perform a review of all potential Flexible Match approach projects referred by COR3 for compliance with PRDOH policies, procedures, and overall HUD eligibility requirements prior to the inclusion of each project under a Flexible Match approach.

4.3 Puerto Rico Electric Power Authority

PREPA is the eligible Subrecipient for the ER1 Program through the FEMA FAAS^t PW. PREPA owns all the assets for generation, transmission, and distribution, while their private partners operators manage the generation and distribution side of the electrical grid system.¹¹

4.4 Puerto Rico Energy Bureau (PREB)

PREB is the independent and specialized body created by Act 57-2014, as amended, known as the "Puerto Rico Energy Transformation and RELIEF Act", 22 LPRA § 1051 *et seq.*, responsible for regulating, monitoring, and enforcing the public energy policy of the Government of Puerto Rico as established by the Department of Economic Development and Commerce's (**DEDC**) Public Energy Policy Program (**PEPP**).

PREB serves as an oversight entity for PREPA. Projects obligated under the FEMA FAAS^t PW must receive PREB approval.

¹¹ At the time of publication of these Guidelines, PREPA is undergoing a restructuring plan. Therefore, PRDOH will continue to evaluate the Subrecipient for eligibility and capacity purposes in case any changes arise from this restructuring process.

4.5 Energy Technical Coordination Team (TCT)

The Energy TCT is a group of federal agencies that were instrumental in the development of the Action Plan.¹² Along with HUD, the TCT will be responsible for considering the eligibility of refinancing or paying down of PREPA's debt for the purposes of acquiring a facility, on a case-by-case basis. The TCT may also be consulted for environmental review compliance process under the National Environmental Policy Act (**NEPA**), as amended, 42 U.S.C. § 4321 *et seq.*, and regarding the capacity of any public utility that will receive a subaward or otherwise carry out a portion of the grant and the mitigation of risk associated with the public utility's use of CDBG-DR funds¹³.

5 National Objective

As detailed in Federal Register Vol. 86, No. 117 (June 22, 2021), 86 FR 32681, at least seventy percent (70%) of the aggregated CDBG-DR Energy funds allocated for electrical power system enhancements and improvements must benefit Low- and Moderate-Income (**LMI**) persons. All electrical power system improvement activities funded through the ER1 Program must meet either the LMI or the Urgent Need (**UN**) National Objective specified at 24 C.F.R. § 570.483 or otherwise provided for by waiver or alternative requirement as published in 86 FR 32681.

a. Benefit to LMI persons:¹⁴

- i. Eligible activities will be considered to meet the criteria for activities benefitting LMI persons—area benefit activities at 24 C.F.R. §570.483(b)(1) if, at grant closeout, at least seventy percent (70%) of the funds, not including planning and administrative costs, have been used to:¹⁵
 - Provide at least fifty-one percent (51%) of the grantee's LMI residents with either a subsidized rate for electricity below that charged to other residential ratepayers or a lower rate for electricity than was charged before complete implementation of the CDBG-DR funding electrical power system improvements; or
 - Measurably improve the reliability of the electrical power system in LMI areas that are primarily residential. Measurably improved

¹² Federal members of the TCT include DOE, the Economic Development Administration (EDA), EPA, the Federal Communications Commission (FCC), FEMA Interagency Recovery Coordination, FEMA PA, FEMA Community Planning and Capacity Building, FEMA United Federal Review, FEMA HMGP, the U.S. Government Accountability Office (GAO), HUD, USACE, the U.S. Department of Agriculture Rural Utilities Service (USDA-RUS), and the U.S. Department of the Treasury.

¹³ 86 FR 32681, 32688.

¹⁴ For purposes of this allocation, documentation of LMI is different. To document compliance with this national objective criterion, a grantee's policies and procedures shall provide for the measurement of improved reliability in LMI areas that are primarily residential, using relevant legal and regulatory standards, as amended from time to time, including those identified by Act 17-2019, as amended, known as the "Puerto Rico Energy Public Policy Act", 22 LPR § 1141 *et seq.*; FEMA Section 1235(b) of Disaster Recovery Reform Act of 2018 (**DRRA**) "Consensus-Based Codes and Standards"; RUS Bulletins for Electric Power; Institute of Electrical and Electronics Engineers (**IEEE**) standards and guidance; EPA environmental protections; and, as appropriate; and North American Electric Reliability Corporation (**NERC**) standards and guidance.

¹⁵ 86 FR 32681, 32693.

reliability shall mean a documented decrease in power supply interruptions, excluding planned interruptions and interruptions caused by major events.¹⁶

- ii. To meet the seventy percent (70%) overall LMI benefit requirement, grantees may also use the LMI benefit national objective criteria at 24 C.F.R. § 570.483(b) to the extent that an eligible activity authorized by 86 FR 32681 qualifies under the criteria for that national objective. Considering the nature of this Program, PRDOH anticipates the following national objectives criterion may apply:
 - LMI Area Benefit – the benefits of a project are available to all the residents in a particular area, where at least fifty-one percent (51%) of the residents are LMI persons.
- b. Meet an UN:
- i. PRDOH may also use CDBG–DR funds allocated to meet the Urgent Need national objective for addressing community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, that the unit of general local government is unable to finance the activity on its own, and other financial resources are not available to meet such needs, pursuant to the waiver and alternative requirement provided by HUD in 86 FR 32681.
 - The provisions of 24 C.F.R. § 570.483(d) are waived at 86 FR 32681, 32693, and replaced with the alternative requirement to document how the activity responds to and addresses a disaster-related impact as identified in the Action Plan Unmet Needs Assessment.

Even though projects may qualify under the UN national objective, the seventy percent (70%) LMI target for the allocation must still be met. Additionally, unless PRDOH has received prior approval from HUD, CDBG–DR funds for electrical power system improvements cannot meet the CDBG national objective for the elimination of slum and blight described at 24 C.F.R. § 570.208(b) and 24 C.F.R. § 570.483(c).

6 Eligibility

6.1 Eligible Use of Funds

The primary objectives of the CDBG-DR Energy allocation is to enhance reliability and rebuild a grid system that serves every user, without making it unaffordable for households or hindering future infrastructure repair and improvements. As detailed throughout the

¹⁶ Additional details on the applicable methods for measuring reliability improvements can be found in the *Additional Evaluation Criteria* section of these Guidelines.

Action Plan's Unmet Needs Assessment, and as documented by FEMA, Puerto Rico's electrical grid must be rebuilt from the ground up. Projects considered for ER1 Program funding must first be identified as FEMA-awarded and PREB-approved projects.

The ER1 Program Subrecipient will be screened to ensure compliance with eligibility requirements for both CDBG-DR and FEMA. The Subrecipient will be required to provide complete and accurate information regarding the proposed projects and the Program's eligibility criteria. Failure to disclose accurate and complete information may affect eligibility.

6.2 Eligible Activities

HUD has identified the aggregate of electrical power system improvements to be completed with CDBG-DR Energy funds subject to 86 FR 32681 as critical factors to the region's long-term recovery from Hurricanes Irma and María and its resilience to future weather events. As per 86 FR 32681, HUD recognizes the broad scope of these activities may limit the grantee's ability to categorize the CDBG-DR Energy funds into discrete categories of CDBG eligible activities and to appropriately assign a CDBG national objective to each component of the planned improvements. As such, HUD waived section 105(a) of the Housing and Community Development Act of 1974 (**HCDA**), as amended, 42 U.S.C. § 5305(a), and established an alternative requirement only to the extent necessary to create a new eligible activity, *electrical power system improvements*, which shall be applicable only for the grant funded pursuant to the Electrical Power Systems Enhancements and Improvements Action Plan.

Therefore, eligible activities for the ER1 Program include the acquisition, construction, reconstruction, rehabilitation, or installation of facilities, improvements, or other components undertaken to extend, upgrade and otherwise enhance and improve the cost-effectiveness, reliability, efficiency, sustainability, or long-term financial viability of the grantee's electrical power system including activities to increase the resilience of the electrical power system to future disasters and to address the impacts of climate change.¹⁷

6.3 Eligible Costs

All program's costs and project estimates must comply with HUD directives and adhere to cost principles at 2 C.F.R. Part 200, Subpart E. In general, eligible costs for this program include, but are not limited to:

- Staff costs and related expenses required for contract and project management, outreach efforts, and other eligible services related to completion of the Program.
- Cost of environmental review and/or related studies.
- Cost of required mitigation of hazardous materials.

¹⁷ 86 FR 32681.

- Inspection and monitoring costs related to the installed systems.
- Cost of design and engineering services, including costs for any required design or engineering studies or surveys.
- Cost of any required permits.
- Construction costs associated with the direct repair and/or improvements of power generation plants, substations, overhead and underground transmission lines, transmission line towers, above ground and underground distribution substations and lines, enabling technology, and other electrical grid structures.
- Cost of renewable generation equipment, including but not limited to cogeneration systems, photovoltaic panels, wind turbines, hydropower systems, or other renewable energy generation mechanisms, charge controllers, sensors, transfer switches, inverters, metering equipment, balance equipment, safety equipment, batteries, as well as mounting, cabling, and other electrical accessories or incidental expenses required to set up working systems.
- Cost of mounting and anchoring structures such as racking systems and other structures that provide primary support for the system equipment.
- Cost of installation and commissioning of new structures and systems.
- Design and installation costs of enabling technologies required to improve reliability and efficiency of the electrical grid.
- Any power grid interconnection costs related to the typical requirements of interconnecting an electrical power system improvement project to the grid.

6.4 Ineligible Activities

Ineligible activities include, but are not limited to:

- Activities performed in relation to the proposed project conducted prior to the execution of the Subrecipient Agreement.
- Operation and maintenance of the proposed system.
- Operation and maintenance costs of a public utility or the costs of fuel or energy purchase contracts.
- General government expenses required to carry out its regular responsibilities.
- Use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration.
- Income payments.
- Purchase of certain types of equipment – construction equipment, fire protection equipment, furnishings, and personal property, as provided at 24 C.F.R. § 570.207:
 - Construction equipment. The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing or depreciation pursuant to 2 C.F.R. Part 200, Subpart E, as applicable for an otherwise eligible activity is an eligible use of CDBG funds. However, the

purchase of construction equipment for use as part of a solid waste disposal facility is eligible under 24 C.F.R. § 570.201 (c).

- Fire protection equipment. Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under 24 C.F.R. § 570.201 (c).
- Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property that is not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation in accordance with 2 C.F.R. Part 200, Subpart E, for such items when necessary for use by a recipient or the Subrecipient in the administration of activities assisted with CDBG funds, or when eligible as firefighting equipment, or when such items constitute all or part of a public service pursuant to 24. C.F.R. § 570.201 (e).

6.5 Eligible Entities

The Subrecipient must have been accepted into a federal agency's disaster recovery program and have been determined by the lead federal agency to have eligible projects to participate in ER1 Program. The eligible Subrecipient for the ER1 Program is PREPA and/or its designated official representative.

6.6 Baseline Project Eligibility Requirements

To be awarded CDBG-DR Energy funding under the ER1 Program, all projects must meet the following baseline requirements:

- Must be determined eligible and in compliance with FEMA's eligibility criteria or of the federal agency acting as the primary source of funding.
- Must meet a HUD National Objective. See the *National Objective* section of these Guidelines.
- Must provide an "electrical power system improvement" CDBG-DR eligible activity. See the *Eligible Activities* section of these Guidelines.
- Must address an eligible unmet need after accounting for all duplication of benefits. See the *Duplication of Benefits* section of these Guidelines.
- Project must be feasible and sustainable, with all other funding sources firmly committed, if applicable.

6.7 Threshold Subrecipient Eligibility Requirements

Eligible entities must meet the following threshold requirements to receive CDBG-DR funding under the ER1 Program:

- Must demonstrate that it has the resources and strategies to ensure ongoing operations and maintenance (**O&M**) during the project's useful life. The Subrecipient must provide for the cost of year-round O&M expenses for projects

funded through this Program, including daily operations and funding strategies. CDBG-DR Energy funds cannot be used for O&M.

- Must utilize the services of a professional architect and/or engineer, licensed to practice in the Commonwealth of Puerto Rico, to design the facilities, if applicable. Improvements must be in accordance with PRDOH, HUD, and FEMA standards, electrical utility requirements, and relevant legal and regulatory standards, as amended from time to time, including those identified by Puerto Rico Act 17-2019, FEMA Section 1235(b) of DRRRA "Consensus-Based Codes and Standards", RUS Bulletins for Electric Power, Institute of Electrical and Electronics Engineers (**IEEE**) standards and guidance, EPA regulations and standards, and, as appropriate, North American Electric Reliability Corporation (**NERC**) standards and guidance.¹⁸

7 Project Evaluation and Selection

Projects for the ER1 Program will be selected using a Direct Selection Method. Projects selected for funding will be identified in a collaborative effort between COR3, PREPA, and PRDOH. Selected projects must have received FEMA project funding obligation approval prior to being undertaken by PRDOH.

During project evaluation and selection, PRDOH will consider, among other factors to be described in the following sections, the project's potential to have the most significant impact on the most vulnerable populations of the Island. Project evaluation and selection criteria shall include the aspects described next.

7.1 Project Evaluation

Match projects will be evaluated by PRDOH using the criteria included in the following sections. Threshold evaluation criteria are required as a baseline for projects to be considered eligible. Additional evaluation criteria listed below will be used to select or otherwise award a project as part of the ER1 Program.

7.1.1 Threshold Evaluation Criteria

All projects must meet the following threshold criteria to be considered eligible for funding through the ER1 Program.

1. **FEMA Eligibility and PREB Approval:** All projects funded under the ER1 Program must comply with FEMA PA requirements. The projects approved for ER1 funding will receive the required non-federal cost share of FEMA's PA allocation for the PREPA Island Wide FAASr Project. Thus, all ER1 project's approvals must meet both FEMA and HUD program requirements.

¹⁸ Please refer to: <https://bvirtualogp.pr.gov/ogp/Bvirtual/leyesreferencia/PDF/2-ingles/17-2019.pdf>; https://www.fema.gov/sites/default/files/2020-07/fema_DRRRA-1235b-public-assistance-codes-standards-interim-policy.pdf; <https://www.rd.usda.gov/resources/regulations/bulletins>; <https://standards.ieee.org/>; <https://www.epa.gov/laws-regulations>; and <https://www.nerc.com/pa/comp/guidance/Pages/default.aspx>.

- a. COR3 will review and refer for PRDOH's review and determination of HUD eligibility requirements for the PREPA projects that also appear to be viable candidates for the ER1 strategy. COR3's role in the ER1 strategy will be to monitor and reconcile funding needs required to meet the local cost share match through the ER1 Program.

The FEMA approved FAASt projects scopes will be reviewed and approved by PREB, before evaluation for ER1 Program funding. The project's scope will be reviewed to confirm that it meets the criteria stated in the Action Plan and these Guidelines for Eligible Activities.

2. **CDBG-DR Energy Eligibility:** PRDOH will review ER1 projects for completeness and compliance with the following programmatic requirements:
 - a. Project is a HUD eligible activity according to the requirements established for the ER1 Program.
 - b. Project meets a HUD National Objective.
 - c. Project serves an unmet need. Selected projects must have a logical nexus with the Action Plan's Unmet Needs Assessment and consist of eligible activities under the Action Plan and these Guidelines.

7.1.2 Additional Evaluation Criteria

Projects will be evaluated based on the direct benefit they may provide to LMI persons, vulnerable populations, and protected classes; their overall impact; their potential to increase reliability, affordability, quality, and durability of electrical infrastructure, or to lower electricity rates; the opportunity they provide to maximize the use of the budgeted allocation by functional grouping; and their complexity, feasibility, and readiness for construction.

1. **Project Benefits and Impacts across the Grid.** Recognizing the interdependence of assets and individuals within the grid, PRDOH acknowledges the necessity of identifying and focusing on residential and non-residential areas, for project improvements that will have cascading benefits most keenly experienced by the most vulnerable populations on the Island. Areas of benefit for the ER1 projects should be primarily residential unless the improvement is made to serve a critical facility or other component integral to the functioning of the electrical grid. This will be calculated using data on customer type, if made available by the electrical power grid operator, or by land use. In the latter case, the land use zoning must include residential uses. The Program will also use HUD-provided census data on number of persons and income within the specified service area to calculate the project's beneficiaries to be impacted by the proposed project. Improvements to substations, generation facilities, and transmission lines have

the potential to impact both LMI communities directly and the broader grid across the Island. Therefore, in identifying these populations and the project's effects, the following factors shall be considered:

- a. **LMI Area of Benefit**. As the Program has the goal to expend seventy percent (70%) of Program funds on LMI persons, PRDOH will first evaluate projects based on the direct impacts on LMI populations within the service area of the improved facility or infrastructure. At least fifty-one percent (51%) of the residents within the service area must be LMI. This area shall be determined based on the customer base within the transmission and/or distribution system that is expected to immediately lose power in the event of failure of the facility or infrastructure. Where this area is indeterminate due to the grid's interconnectivity, a representative sample of the service area shall be applied.
 - i. In the Action Plan, PRDOH describes a HUD compliant methodology for calculating LMI Area of Benefit which provides a deeper and more nuanced understanding of the community impacts of selected projects. It includes providing more detail about the impacts to vulnerable populations, specifically racially and ethnically concentrated areas of poverty (**R/ECAPs**) and protected classes identified following the methodology proposed for these additional impacts' analysis in the Action Plan Appendix H-1. Each PW to be reviewed for ER1 Program eligibility will have a supplementary package that will provide additional documentation in accordance with the impact analysis described in the Action Plan.
- b. **Urgent Need and Networked Cascading Impacts**. If a project does not meet the LMI National Objective as described above, or is not in a predominantly residential area, it may be determined to be eligible under the Urgent Need National Objective.

The Unmet Needs Assessment documents specific examples of needed projects such as interconnected communications and energy systems, energy generation and transmission, among others. Furthermore, the Assessment highlights the essential aspects of a complex and interconnected system that goes beyond just energy. It also shows how numerous projects will have effects that extend beyond specific project impact areas or service boundaries due to this interconnectedness. PRDOH reserves the right to prioritize projects in non-residential areas that improve reliability of the grid for critical infrastructure.

- i. An eligible project that qualifies under the Urgent Need National Objective should address that (1) existing conditions pose a serious and immediate threat to the health or welfare of the community; (2)

that the unit of general local government is unable to finance the activity on its own, and (3) other financial resources are not available to meet such needs, pursuant to the waiver and alternative requirement provided by HUD in 86 FR 32681; and are in accordance with the Action Plan.¹⁹

c. **Proximity to Critical Facilities.** The benefits and impacts on different elements of the grid, including affected circuits and critical nodes such as substations and main transmission lines, are not limited to residential areas. Accordingly, PRDOH may also consider the scale of networked impacts associated with loss of power from the asset to be improved. Projects with areas of impact determined to be less than fifty percent (50%) residential must be in close proximity to critical facilities and demonstrate how they represent a benefit to these facilities. The Unmet Needs Assessment and Action Plan describe various critical facilities which are vital to the health and security of all populations on the island, regardless of socioeconomic status. Such facilities include but are not limited to hospitals and critical care facilities, transportation and supply hubs, pharmacies, and/or grocery stores. Projects that qualify under the Urgent Need National Objective will still be evaluated for the remaining criteria detailed below.

2. **Improved Reliability.** PRDOH will evaluate how the proposed project measurably improves electrical service reliability in LMI areas that are primarily residential through one (1) of the following criteria:

- a. A reduction in the duration of power outages; and/or
- b. A reduction in the frequency of power interruptions.

These criteria may be measured using, among other reliable data, one of the following indexes:

- a. System Average Interruption Duration Index (**SAIDI**)
- b. System Average Interruption Frequency Index (**SAIFI**)
- c. Customer Average Interruption Duration Index (**CAIDI**)

3. **Functional Groupings and Budget Distribution.** In accordance with the Action Plan, the Program may consider distributing the different project types across the functional groupings, based on their role and potential impact within the grid system. These groupings are (1) transmission and distribution, (2) substations, (3) central power generation, and (4) enabling technologies.

¹⁹ Regulatory/Statutory Citations: Section 101(c), 104(b)(3), 105(c), 570.208(c).

- a. The fungible budget allocations per category are the following:
 - i. Transmission and Distribution – 70%
 - ii. Substations – 9.7%
 - iii. Central Power Generation – 11.3%
 - iv. Enabling Technology – 9%

Variations in the allocation percentages must not be more than ten percent (10%) of the budget for each component and will be calculated as projects are evaluated and finalized.²⁰

4. **Project Complexity, Readiness, and Feasibility.** PRDOH will consider project complexity, feasibility, and readiness for construction. PRDOH may first select projects that will be able to reach completion within the term of the grant agreement.
 - a. Proxies for determining project readiness for construction may include the following:
 - i. Number of project sites and complexity;
 - ii. Details of the implementation plan and schedule;
 - iii. Projects that do not necessitate the displacement of individuals or businesses through acquisition in order to be completed;
 - iv. Status of project design; and
 - v. Status of environmental review and level of environmental impact.

8 Final Project Selection and Award

Projects will be evaluated for selection according to the evaluation criteria described above. Preliminary project selections will be consulted with the TCT prior to PRDOH issuing an award. The final selection may be influenced by the distribution of funds across functional groupings. PRDOH reserves the right to adjust final project selection according to the Program's objective of not exceeding the ten percent (10%) maximum variation from the budget allocation as presented in the Action Plan.

9 Design and Construction Requirements

9.1 Codes, Laws, and Regulations Compliance

The Subrecipient must ensure that all design and construction work complies with the most recent and applicable federal, state, and local codes and regulations, which include but are not limited to the following:

²⁰ A variation of ten percent (10%), but less than twenty-five percent (25%), from the functional grouping budget allocation will require a non-substantial amendment to the Action Plan. A variation of more than twenty-five percent (25%) will require a substantial amendment to the Action Plan.

- National Electrical Codes (**NEC**) – the most complete set of electrical code requirements that lead electrical installation in the most safety way for property and individuals;
- Institute of Electrical and Electronics Engineers (**IEEE**) Code – commits to the highest standards of integrity, responsible behavior and ethical and professional conduct;
- National Association of Regulatory Utility Commissioners and National Electrical Codes 2020;
- New construction or alterations of existing structures must comply with the current ADA Standards for Accessible Design (**ADA Standards**), as well as Section 504 requirements, and/or the Uniform Federal Accessibility Standards (**UFAS**);²¹
- HUD Minimum Property Standards;
- Occupational Safety and Health Administration (**OSHA**), Puerto Rico Occupational Safety and Health Administration (**PROSHA**), and Puerto Rico Department of Labor and Human Resources (**PRDLHR**) safety provisions and mandates;
- Policy-planning-management capacity development activities (Section 105(a)(12) of the HCDA);
- Energy Development Goals (Section 105(a)(16) of the HCDA);
- Puerto Rico Building Code, most current approved version;
- Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, when required;
- Most current approved zoning requirements for Puerto Rico;
- Energy regulations, as applicable to specific projects, including but not limited to PREB's regulations on Interconnection, Microgrid Development, Electric Energy Wheeling, among others;²²
- Environmental regulations, as applicable to specific projects; and
- HUD terms and conditions, as applicable to specific projects.²³

Construction works will be performed only after obtaining the required permits and endorsements, in compliance with local, state or federal requirements. New construction or alterations of existing structures will abide by all local design and architectural standards.

The design and construction completed under the ER1 Program must comply with the latest applicable local building codes and regulations. The current International Building Code® (**IBC Codes**) establishes minimum requirements for building systems using

²¹ Federal Register Notice Vol. 79, No. 100 (May 23, 2014), 79 FR 29671, with certain exceptions, allows grantees of federal funding to use the 2010 Standards to satisfy Section 504 accessibility requirements. However, Section 504 and UFAS prevail when they require a higher accessibility standard.

²² <https://energia.pr.gov/en/regulations/>.

²³ <https://www.hudexchange.info/resources/documents/CDBG-DR-Resources-Summary.pdf>.

prescriptive and performance-related provisions. The IBC Codes are fully compatible with all the International Codes® (**I-Codes**) published by the International Code Council.

- Puerto Rico Building Code (**PRBC**), as amended from the IBC Codes;
- Puerto Rico Mechanical Code (**PRMC**), as amended from the International Mechanical Code® (**IMC**);
- Puerto Rico Plumbing Code (**PRPC**), as amended from the International Plumbing Code® (**IPC**);
- Puerto Rico Fire Code (**PRFC**), as amended from the International Fire Code® (**IFC**);
- Puerto Rico Fuel Gas Code (**PRFGC**), as amended from the International Fuel Gas Code® (**IFGC**);
- Puerto Rico Energy Conservation Code (**PRECC**), as amended from the International Energy Conservation Code® (**IECC**);
- Puerto Rico Existing Building Code (**PREBC**), as amended from the International Existing Building Code® (**IEBC**); and
- Puerto Rico Private Sewage Disposal Code (**PRPSDC**), as amended from the International Private Sewage Disposal Code® (**IPSDC**).

The Joint Regulation of 2023²⁴ is designed specifically for the conditions found in Puerto Rico. The Codes establish construction and design parameters related to mitigating the impact of catastrophic events, fire prevention, and energy conservation, among others. Historic preservation regulations or recommendations may be an exception to these requirements as per consultation with the State Historic Preservation Office (**SHPO**).

Other permit requirements include, but are not limited to:

- Demolition Permits issued by the Puerto Rico Permit Management Office (**OGPe**, for its Spanish acronym);
- Construction Permits issued by OGPe;
- General Consolidated Permits which include Erosion and Sedimentation Control; Permit for Activities Generating Non-Hazardous Solid Waste; Permit for Emission Sources; and Permit for the Removal and Disposition of Lead-Containing Materials, all issued by the Environmental Quality Board through OGPe;
- Local and federal environmental permits, as applicable to specific projects; and
- Regulatory agencies endorsements, including but not limited to, those from PREPA, the Puerto Rico Aqueducts and Sewers Authority (**PRASA**), the Puerto Rico Telecommunications Regulatory Board (**TRB**), SHPO, the “Instituto de Cultura Puertorriqueña”, and the Puerto Rico Department of Transportation and Public Works (**DTOP**).

Other local requirements for construction works include, but are not limited to:

²⁴ Or the regulation in force at the time of the construction.

- Construction Stamps as required by Section 11 of Act No. 319 of May 15, 1938, as amended, known as the “Law that created the College of Engineers and Surveyors of Puerto Rico”, 20 LPRA § 741 *et seq.*

Under no circumstances should financial commitments be made or construction work be started prior to a project obtaining an environmental clearance approved or adopted by PRDOH.

10 Long-Term Operation and Maintenance (O&M) Plan

All projects for which CDBG-DR funding is being sought must have a long-term O&M Plan that is determined by PRDOH to be viable as CDBG-DR funds cannot be used for O&M costs. The Subrecipient is responsible for the O&M costs for the electrical power system improvements funded with CDBG-DR Energy funds. If the Subrecipient is unable to demonstrate a viable long-term O&M Plan, the project concept will not be accepted.

Projects funded by CDBG-DR Energy must have an O&M Plan for the useful life of the project that meets the following requirements:

- Describe plans for ensuring the long-term O&M of the electrical power system improvements funded with CDBG-DR funds.
- Identify the source of funding to be used for the O&M of electrical power system improvements.
- Describe how it will use reserve funds, borrowing authority, or retargeting of existing financial resources to support the O&M Plan, and how it plans to ensure that public utility resources and other sources of funding, as applicable, are committed to the O&M of the project over the useful life of the improvements.
- Describe any proposed changes to existing taxation policies or collection practices, or changes to public utility revenue billing and collection and other financing policies to be used to support the O&M Plan. If O&M plans are reliant on any proposed changes to existing taxation policies, tax collection practices, or changes to public utility revenue billing and collection, those changes and relevant milestones should be expressly included in the project implementation plan.
- Describe any state, local, or other non-CDBG resources or funding (e.g., public utility financing) that have been identified to cover the O&M costs of electrical power system improvements assisted with CDBG-DR funds.
- Describe how it plans to ensure and monitor funding of long-term O&M for CDBG-DR electrical power system improvements.

11 Duplication of Benefits (DOB)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (**Stafford Act**), as amended, 42 U.S.C. § 5155 *et seq.*, prohibits any person, business concern, or other entity from receiving federal funds for any part of such loss as to which they have received

financial assistance under any other program, from private insurance, charitable assistance, or any other source. DOB verification and analysis ensure that program funds compensate subrecipient for damages and needs that have not been addressed by an alternate source, either through funding or assistance. As such, PRDOH must consider disaster recovery aid received by Program Subrecipient from any other federal, state, local, or other source and determine if any assistance is duplicative. Any assistance determined to be duplicative must be deducted from the Program's calculation of the Subrecipient's total need prior to awarding assistance. DOB occurs when financial assistance is received from another source that is provided for the same purpose as the CDBG-DR funds. PRDOH will perform a DOB analysis for each funded project.

The duplication of benefits guidance included in Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836, updates the duplication of benefits guidance issued in Federal Register Vol. 76, No. 221 (November 16, 2011), 76 FR 71060, for CDBG-DR and CDBG-MIT grants received in response to disasters declared between January 1, 2015, and December 31, 2021. As such, the duplication of benefits policy outlined in these guidelines follows the guidance issued in 84 FR 28836.

CDBG-DR funds for electrical power system improvements may be used to meet a matching requirement, share, or contribution for any other federal program when used to carry out an eligible CDBG-DR Energy activity permitted by 86 FR 32681. This includes PA and other grants administered by FEMA as well as grants provided by USACE (as codified in the HCDA as a note to 42 U.S.C. § 5305, the maximum amount of CDBG-DR funds that may be contributed to a project funded by USACE is \$250,000).

To be eligible to receive CDBG-DR funds under the Program, the Subrecipient must confirm and provide assurance that efforts will be made to avoid a DOB. PRDOH understands and expects that for some projects funded through this Program other federal forms of funding may be possible and that for each project, PRDOH will need to work with funded entities to determine and address issues surrounding DOB. As part of the project review process and through the life of the grant, the Subrecipient will be required to allow PRDOH to work with COR3, FEMA, the Small Business Administration (**SBA**), the National Flood Insurance Program (**NFIP**), USACE, and other applicable entities to address DOB issues.

The Subrecipient will be required to provide support documentation, including award letters, decline letters, and other documentation supporting the amount, sources, and uses of funding received/declined to assist in completing the project. PRDOH may contact other funders and agencies directly to confirm the information submitted by the Subrecipient. When possible, PRDOH will electronically verify disaster recovery assistance received through federally and locally maintained datasets, such as FEMA, NFIP, and SBA disaster loan datasets.

The basic framework for a DOB calculation is:

1. Identify Entity's Total Need;
2. Identify Total Assistance Available (insurance, FEMA, SBA, etc.);
3. Identify the "Amount of Exclude as Non-Duplicative" (Amounts used for a different purpose, or same purpose, but different allowable use);
4. Identify Total DOB Amount (Total Assistance Minus Non-Duplicative Exclusions);
5. Calculate Maximum Award (Total Need Minus Total DOB Amount); and
6. Determine the Final Award.

For more information about DOB, refer to the Duplication of Benefits Policy available in English and Spanish on the CDBG-DR/MIT website at: <https://cdbg-dr.pr.gov/en/download/duplication-of-benefits-policy/> and <https://cdbg-dr.pr.gov/download/politica-sobre-la-duplicacion-de-beneficios/>.

12 Environmental Review

Projects funded under the ER1 Program must conform to all applicable Environmental and Historic Preservation (**EHP**) requirements, laws, and regulations, as detailed in the Code of Federal Regulations, 44 C.F.R. Part 9. These include the NEPA; the National Historic Preservation Act (**NHPA**), as amended, 54 U.S.C. § 300101 *et seq.*; the Endangered Species Act (**ESA**), as amended, 16 U.S.C. § 1531 *et seq.* (50 C.F.R. Part 402); Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), and Executive Order 12898 (Environmental Justice). All projects funded must adhere to floodplain management and flood damage prevention requirements, and must be properly permitted and inspected by the authorities having jurisdiction.

24 C.F.R. § 58.22(a) prohibits the commitment or spending of federal or non-federal funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environmental review. Environmental clearance must be obtained for each project prior to the commitment of federal or non-federal funds. For the purposes of the environmental review process, "commitment of funds" includes:

- Execution of a legally binding agreement (such as a property purchase or construction contract);
- Expenditure of CDBG funds;
- Use of non-CDBG funds on actions that would have an adverse impact— e.g., demolition, dredging, filling, excavating; and
- Use of non-CDBG funds on actions that would be "choice limiting"— e.g., acquisition of real property, leasing property, rehabilitation, demolition, construction of buildings or structures, relocating buildings or structures, or conversion of land or buildings/structures.

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

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

The Program shall not cover any project scope changes beyond what was approved in the PW by FEMA. If additional work is anticipated, the Subrecipient should immediately seek guidance from PRDOH, FEMA, and COR3. The Subrecipient should not execute any change orders or additional contracts that include work not listed in the approved and obligated PW if the intent is to request CDBG-DR Energy funds as matching funds.

12.1 Unified Federal Review (UFR) process

Section 429 of the Stafford Act, 42 U.S.C. § 5189g, establishes the UFR process. This is an expedited and unified interagency review process to ensure compliance with EHP requirements applicable to disaster recovery projects are met. The process coordinates EHP reviews to expedite planning and decision-making for disaster recovery projects, thereby improving the assistance provided by the federal government during federally declared disasters.

Under the UFR, the Subrecipient's primary responsibility is to provide information and documentation to funding and permitting agencies about proposed projects and their potential impact to natural and cultural resources. Documentation includes any existing EHP-related documents relevant to each proposed project, which may include EHP-related documentation prepared for past or related projects. Additionally, the Subrecipient is required to adhere to and implement all applicable conditions and requirements related to funded projects.

As agreed between COR3 and the Program, COR3 will provide specific guidance to the Subrecipient and will assume the lead on EHP for projects for which FEMA will perform the EHP review. For projects that require a HUD EHP review, PRDOH may assume the lead on EHP procedures. For these projects, any activity related to the approved scope of work cannot begin until FEMA/HUD authorization is granted.

12.2 Flood Insurance Program Requirements

Projects located in a Special Flood Hazard Area (**SFHA**) (also known as the 100-year floodplain) on the Effective Flood Insurance Rate Map (**FIRM**) that receive assistance under CDBG-DR must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a, mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area.

Section 582 of the National Flood Insurance Reform Act of 1994, as amended, 42 U.S.C. § 5154a, establishes a CDBG-DR grantee's responsibility to inform property owners receiving disaster assistance that triggers the flood insurance purchase requirement that they have a statutory responsibility to notify any transferee of the requirement to obtain and maintain flood insurance, and that the transferring owner may be liable if he or she fails to do so. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

12.3 Floodplain Management and Elevation Standards

The ER1 Program will use the most current, approved version of FEMA's FIRM, Preliminary Flood Insurance Rate Map (**PFIRM**), or Advisory Base Flood Elevation Map (**ABFE**) to identify whether a property is located within or outside of the 100-year floodplain. The 100-year floodplain means the floodplain of concern for this part and is the area subject to inundation from a flood having a one percent (1%) or greater chance of being equaled or exceeded in any given year.

As required in 86 FR 32681, at 32698, non-residential structures must be elevated, or flood proofed in accordance with FEMA flood proofing standards at 44 C.F.R. § 60.3(c)(3)(ii) or successor standard, up to at least two (2) feet above the Base Flood Elevation (**BFE**) for the 100-year (1% annual chance) floodplain. All Critical Action projects, as defined at 24 C.F.R. § 55.2(b)(3), within the 500-year (0.2 % annual chance) floodplain must be elevated or floodproofed (in accordance with the FEMA standards) to the higher of the 500-year base flood elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain or elevation is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated or floodproofed at least three feet above the 100-year floodplain elevation. Some critical actions, in accordance with 24 C.F.R. § 55.11, are not allowed in certain areas of the SFHA.

To determine whether to elevate structures and their cost reasonableness relative to other alternatives, PRDOH will evaluate:

- Whether the cost of elevating an electrical power system component is at or below thirty percent (30%) of the cost for a newly constructed in place for an original electrical power system component that can be raised;

- Whether or not raising an electrical power system component to the BFE plus three feet is feasible when considering the potential for transferring flood risk to the surrounding area.

12.3.1 FEMA-Assisted Activities Commenced Prior to August 5, 2022

Projects to be funded by the ER1 Program may be subject to different federal requirements established by both FEMA and HUD with respect to the elevation of non-residential structures in a floodplain, with the latter having more stringent requirements than the former. Moreover, many FEMA-funded projects commence soon after a disaster and well in advance of the availability of CDBG-DR funding. As such, if CDBG-DR funds are intended to be used as match for a FEMA project that is already underway, the alignment of HUD's elevation standards with alternative standards allowed by FEMA²⁵ can prove difficult and may not be cost reasonable to implement mid-stream. To address this, HUD has provided an alternative requirement that allows grantees to apply FEMA-approved elevation and flood proofing standards based on a project meeting the following criteria:

- CDBG-DR funds are used as the non-federal match for FEMA assistance;
- the FEMA-assisted activity, for which CDBG-DR funds will be used as match, commenced prior to HUD's obligation of CDBG-DR funds to the grantee (in this case August 5, 2022);²⁶ and
- the grantee has determined and demonstrated with records in the activity file that implementation costs of the required CDBG-DR elevation or flood proofing up to two feet (or three feet for critical actions) is not reasonable as that term is defined in the applicable cost principles at 2 C.F.R. § 200.404.

12.3.2 Other Applicable Elevation and Floodplain Standards

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

Projects located within either the VE Zone or the Coastal A Zone are required to adhere to V Zone construction standards.²⁷ No projects located within the floodway, as defined by the ABFE maps, will be funded by the Program, excepting property

²⁵ FEMA regulations require that new construction and substantially improved buildings in the SFHA must be elevated or floodproofed to the base flood elevation as defined in 44 C.F.R. § 60.3 and 44 C.F.R. § 9.11(d). Those structures housing "critical actions" as defined in 44 C.F.R. § 9.4 must be elevated or floodproofed to the 500-year flood elevation.

²⁶ HUD considers the FEMA-assisted activity to have "commenced" on the date on which the HUD grantee has incurred a project cost that has been or will be charged to an approved FEMA PW. This may include pre-award costs if FEMA determines that the costs are eligible.

²⁷ FEMA. Guidance for Construction and Design in Coastal A Zones. Access at: https://www.fema.gov/pdf/rebuild/mat/coastal_a_zones.pdf.

acquisition/demolition/ or property acquisition/relocation projects or other activities that are identified as being functionally dependent upon being located in a floodway.

All projects funded within the SFHA will be required to obtain and maintain flood insurance coverage equal to the amount of federal funding received.

12.4 Asbestos Surveys

Because of its fiber strength and resistance to heat, asbestos has been used in a variety of building construction materials for insulation and as a fire retardant. Asbestos has also been used in a wide range of manufactured goods, mostly in building materials (roofing shingles, ceiling and floor tiles, paper products, and asbestos cement products), friction products (automobile clutch, brake, and transmission parts), heat-resistant fabrics, packaging, gaskets, and coatings.

Asbestos fibers may be released into the air by the disturbance of asbestos-containing materials during product use, demolition work, building or home maintenance, repair, and remodeling. Exposure may occur when asbestos-containing materials are disturbed or damaged in some way to release particles and fibers into the air. Exposure to asbestos increases risk of developing lung diseases.

In general, the greater the exposure to asbestos, the greater the chance of developing harmful health effects. Disease symptoms may take many years to develop following exposure.

The National Emission Standards for Hazardous Air Pollutants (**NESHAP**) regulations under the Clean Air Act, 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. The regulations require notification to the pertinent State agency before any demolition, or before any renovations of buildings that could contain a certain threshold amount of asbestos or asbestos-containing material. Therefore, the Program must perform an asbestos survey before conducting any reconstruction or demolition work.

An asbestos survey is used to locate and describe asbestos-containing materials in a structure. The Program will conduct comprehensive building asbestos surveys through inspection of the properties. All asbestos surveys for the Program will be performed by Asbestos Inspectors certified by EPA or the Puerto Rico Department of Natural and Environmental Resources (**PRDNER**, or **DRNA**, for its Spanish acronym). The asbestos surveys will visually review all suspect asbestos-containing materials associated with the buildings' interior and will collect samples for laboratory analysis.

During the survey process, every effort shall be made to collect the required samples in the least destructive manner possible. The nature of the asbestos survey will be to determine the location and extent of asbestos-containing materials that may be

disturbed during repair or demolition activities. Samples of presumed asbestos-containing materials shall be processed or evaluated by accredited laboratories for testing of asbestos presence in materials. Asbestos content determination shall be performed, as necessary, by utilizing Polarized Light Microscopy, Point Counting, and Transmission Electron Microscopy.

13 Procurement

All procurement transactions for work to be funded by CDBG-DR Energy must be conducted in a manner providing full and open competition and must comply with FEMA's procurement requirements. The ER1 Program Subrecipient must provide PRDOH with the necessary records to document they have met FEMA's Procurement requirements, which FEMA may establish and amend from time to time. FEMA procurement standards comply with 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327. In the event FEMA does not complete a cost and price analysis, the sections of the CDBG-DR Procurement Manual²⁸ pertinent to such analysis will apply to the Program.

Objective performances must be ensured, and unfair competitive advantages must be avoided (i.e., a contractor involved in the development of a procurement cannot compete for any such procurement).

The ER1 Program Subrecipient must follow the provisions of 2 C.F.R. § 200.318 to 2 C.F.R. § 200.327 and maintain comprehensive records of all acquisition processes. All related records shall be available to PRDOH or state or federal required agencies to effectively carry out monitoring processes of procurement documents when required.

The Subrecipient may be required to prepare and submit to PRDOH a certification of compliance with all applicable procurement regulations. Purchase orders, contracts, and similar documentation resulting from the procurement of goods or services shall be submitted to COR3 and PRDOH before requesting reimbursement or payments of costs incurred to implement Program activities. PRDOH will work directly with COR3 and other applicable agencies to identify the most efficient methodology for administering the Program. To minimize the need for entities to provide the same documentation multiple times, PRDOH, through its relationship with COR3, will access FEMA and Government of Puerto Rico information systems to obtain project documentation.

Further guidance on specifics related to procurement will be included in the executed Subrecipient Agreements.

²⁸ Procurement Manual for the CDBG-DR, CDBG-MIT, and CDBG State Programs, Regulation 9506 is available in English and Spanish at: <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

14 Change Orders to Contracts

If additional resources or funding are needed to complete Program work, a request for additional necessary resources and funding shall be submitted to COR3, FEMA, and PRDOH for analysis and approval. Change orders may include, but are not limited to, explanations of type of work and scope to be added or deleted from the contract, the additional time (if any) required for the work, a justification for why the work is necessary, and evidence of any conditions identified that resulted in the request. Change order requests with justification for the need for additional resources must be submitted for evaluation and approval to all agencies. Furthermore, if a project has any scope changes beyond what was approved in the PW, FEMA must approve the change and issue an updated version of the PW in question. HUD environmental compliance documentation may need to be completed and submitted to HUD for approval. If additional work is anticipated, the Subrecipient should seek guidance from PRDOH immediately.

PRDOH will evaluate all change order requests to determine whether additional resources are necessary and reasonable in order to complete the project. Without prior authorization, any work performed outside of the approved scope of work by means of a change order and incorporated in the approved PW cannot be reimbursable under CDBG-DR Energy and is performed at risk. PRDOH vendors shall be responsible for all costs incurred due to activities performed beyond the approved scope of work or beyond the approved resource level without prior authorization by PRDOH through a duly authorized change order.

15 Financial Management

All financial processes and procedures shall be made in accordance with the requirements set forth in the CDBG-DR Financial Policy, to ensure effective and fully compliant cost principles and use of funds, maximizing operational and financial performance, minimizing risk, and providing optimal service.²⁹

All Subrecipient invoicing and payments will be managed through PRDOH's Financial Management Systems. Refer to the CDBG-DR Financial Policy available in English and Spanish at <https://cdbg-dr.pr.gov/en/download/financial-policy/> and <https://cdbg-dr.pr.gov/download/politica-financiera/>.

15.1 Cost Reasonableness

Federal Register Notice 86 FR 32681, at 32687, requires PRDOH to ensure "that electrical power system improvement costs, including acquisition and construction costs, are reasonable and consistent with market costs at the time and place of the acquisition or construction." Cost reasonableness is described as the price that a prudent

²⁹ Regarding CDBG-DR rules on program income, it is anticipated that revenue generated by an entity operating as a public utility from the funds collected from electric energy consumers will not be considered to be program income.

businessperson would pay for an item or service under competitive market conditions, given a reasonable knowledge of the marketplace. The method and degree of analysis may vary depending upon the circumstances surrounding a particular project (e.g., project type, risk, costs). HUD may issue guidance to PRDOH and may require PRDOH to verify cost reasonableness from an independent and qualified third-party architect, civil engineer, or construction manager.

As eligible projects to be funded under the Program are those for which FEMA has already performed a review for cost reasonableness, the ER1 Program will adopt FEMA's approval of submitted costs included within each PW to be evaluated.

In some cases, PRDOH may wish to perform additional reviews of PW costs to establish the cost reasonableness of the goods and services under the Program by performing one (1) or more of the following analyses:

- *Comparison of Proposed Costs Received as Part of a Solicitation Process:* For the CDBG-DR Energy Program, PRDOH or its Subrecipients will acquire all goods and services through procurement processes such as micro-purchases, small purchases, sealed bidding, and competitive proposals, among others. Adequate price competition establishes cost reasonableness. This will be the most common technique used to establish cost reasonableness, as the procurement processes normally attract two (2) or more offers in an independent competition for an award, which establishes current market values.
- *Comparison of Proposed Prices with Prior Solicitation Processes:* During the life cycle of the CDBG-DR Energy grant, PRDOH or its Subrecipients may procure certain goods or services in multiple instances. Also, PRDOH or its Subrecipients may procure goods or services for which, under other projects not necessarily related to CDBG-DR, similarities exist. A comparison of the prices obtained through prior solicitation processes may be used to establish cost reasonableness. Depending on the timing of the prices being compared, adjustments for inflation may be required to compare data in a fair manner.
- *Comparison of Proposed Prices and Historical Contracts:* PRDOH has extensive historical contract data for previous projects performed. This data may be used by a Subrecipient or PRDOH when procuring goods or services that are similar in nature to those performed in the past to establish cost reasonableness. Depending on the timing of the prices being compared, adjustments for inflation may be required to compare data in a fair manner.
- *Comparison of Proposed Prices with Independent Cost Estimates:* For the CDBG-DR Energy Program, PRDOH or its Subrecipients will acquire all goods and services through procurement processes such as micro-purchases, small purchases, sealed bidding, and competitive proposals, among others. For all of these, the procedures established by PRDOH require the User Area requesting the services to

provide an independent cost estimate of the goods or services to be procured. Comparison of these independent cost estimates with proposed prices may be used to establish cost reasonableness.

- *Comparison of Proposed Prices with Prices Obtained through Market Research:* When a good or service has an established market price, whether locally or in another jurisdiction, the verification of an equal or lower price may be used to establish cost reasonableness. Also, when the market value of a specific good or service is not found, a comparison with a substantially similar good or service may also be performed to establish cost reasonableness.

16 Uniform Relocation Act

Activities and projects undertaken with CDBG-DR Energy funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (**URA**), as amended, 42 U.S.C. § 4601 *et seq.*, and Section 104(d) of the HCDA, 42 U.S.C. 5304(d).

Projects funded under the Program, which include acquisition activities that result in displacement, must comply with all applicable URA regulations for notifying property owners, businesses, and tenants who may be subject to displacement. Persons and entities qualifying as “displaced persons” may be eligible for relocation assistance benefits, which must be accounted for in project budgets.

As a condition of receiving CDBG-DR Energy assistance, entities agree to fully comply with all applicable provisions of the URA and waivers granted by HUD for CDBG-DR Energy activities found at Federal Register Notice 86 FR 32681. For more information on how URA regulations apply, please refer to the PRDOH Uniform Relocation Assistance Guide and Residential Anti-Displacement and Relocation Assistance Plan available in English and Spanish at <https://cdbg-dr.pr.gov/en/download/ura-adp-guidelines/> or <https://cdbg-dr.pr.gov/download/guias-ura-adp/>.

17 Property Management and Disposition

PRDOH will comply with regulations governing property management and disposition of real property, equipment, financial obligations, and return of un-obligated cash post program closeout. Applicable regulations can be found in 24 C.F.R. § 570.502, 24 C.F.R. § 570.505, 2 C.F.R. § 200.310, 2 C.F.R. § 200.343, 2 C.F.R. § 200.344(b), 2 C.F.R. § 200.344(d)(4), and 24 C.F.R. § 570.489(j).

For any real property acquired in whole or in part with CDBG funds in excess of \$25,000.00, the recipient must control the use of the property in accordance with its intended purpose and take good care of it and may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property is not a building for general government conduct, the use of the property may be changed with citizen approval if it meets one of the HUD national objectives. If the recipient changes the use of the property, the recipient may either

retain or dispose of the property and reimburse PRDOH the amount of the current fair market value of the property.

Further details on property management and disposition can be found in the Cross Cutting Guidelines as a Property Management and Disposition Policy available in English and Spanish at: <https://cdbg-dr.pr.gov/en/download/cross-cutting-guidelines/> and <https://cdbg-dr.pr.gov/download/guias-intersectoriales/>.

18 Labor Standards

Projects receiving CDBG-DR Energy funding are required to comply with federal labor standards laws, including Davis-Bacon Act of 1931 and Related Acts (**DBRA**), as amended, 40 U.S.C. § 3141 *et seq.*; Fair Labor Standards Act of 1938 (**FLSA**), as amended, 29 U.S.C. § 201 *et seq.*; Contract Work Hours and Safety Standards Act (**CWHSSA**), as amended, 40 U.S.C. § 3701 *et seq.*; and Copeland Anti-Kickback Act, as amended, 40 U.S.C. § 3145 *et seq.* Together, these laws ensure that workers are paid the appropriate prevailing wage rate and are treated fairly by employers receiving CDBG-DR Energy funding to execute program activities. Each of these laws requires important recordkeeping practices to ensure compliance and allow for accurate and efficient reporting as required by PRDOH.

PRDOH has adopted policies for the CDBG-DR/MIT Programs, which it, its subrecipient and contractors are required to follow and comply with in the implementation of CDBG-DR Energy funded activities. These policies are available in English and Spanish at <https://cdbg-dr.pr.gov/en/download/davis-bacon-and-related-acts-policy/> and <https://cdbg-dr.pr.gov/download/politica-sobre-la-ley-davis-bacon-y-las-leyes-relacionadas/>.

19 Section 3

All entities who receive CDBG-DR Energy funding are required to comply with HUD regulation at 24 C.F.R. Part 75, commonly referred to as the Section 3 Final Rule. Section 3 ensures that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible and consistent with existing federal, Government of Puerto Rico, and local laws and regulations, be directed to low- and very low-income persons, so that they can take part in recovery activities in proximity to work location. Through the program notification process and through technical assistance workshops, and monitoring protocols, PRDOH will communicate and work with entities to ensure that each project adheres to the Section 3 regulations and HUD's established benchmarks for the percentage of total work hours to be completed by Section 3 Workers and Targeted Section 3 Workers.

For more information about Section 3 refer to the CDBG-DR Section 3 Policy available in English and Spanish at <https://cdbg-dr.pr.gov/en/download/section-3-policy/> and <https://cdbg-dr.pr.gov/download/politica-sobre-seccion-3/>.

20 Civil Rights and Non-Discrimination

The CDBG-DR Energy Program shall be implemented in a manner that does not deny any individual the opportunity to participate in, access, or benefit from the Program on a discriminatory basis of any federally or locally designated protected classes. Funded activities shall be designed and implemented in a manner that avoids disproportionate negative impacts on protected classes of people and vulnerable communities, as well as create opportunities to address economic inequities facing communities. PRDOH has adopted several policies to which its subrecipients and all contractors must adhere in the design and implementation of the Program and funded projects.

20.1 Fair Housing & Equal Opportunity Policy (FHEO Policy)

The FHEO Policy establishes requirements and provides guidance for ensuring that CDBG-DR programs do not discriminate against protected classes of people. Included in this policy is a summary of all civil rights-related and anti-discrimination laws, which must be complied with, strategies and requirements for the affirmative marketing of programs to potential participants, the handling of discrimination complaints, equal opportunity employment requirements, communication requirements, recordkeeping requirements, and other information critical for ensuring compliant design and implementation of the CDBG-DR Program.

The FHEO Policy is available in English and Spanish at: <https://cdbg-dr.pr.gov/en/download/fair-housing-and-equal-opportunity-fheo-policy-for-cdbg-dr-programs/> and <https://cdbg-dr.pr.gov/download/politica-de-equidad-de-vivienda-e-igualdad-de-oportunidades-para-los-programas-cdbg-dr/>.

20.2 Section 504, Americans with Disabilities Act, and Equal Employment Opportunity

All entities receiving an award from the Program are required to comply with Section 504 of the Rehabilitation Act of 1973 (**Section 504**), as amended, 29 U.S.C. § 794; Title II of the Americans with Disabilities Act (**ADA**), as amended, 42 U.S.C.A. § 12132, and Equal Employment Opportunity (**EEO**) requirements in the execution of both infrastructure and job creation or retention activities. Based on the Subrecipient entity type and the project activities, infrastructure, and facilities, as well as employment practices, will need to comply with Section 504 and ADA to be physically accessible to persons with disabilities, and employers must comply with employment requirements under these statutes and EEO.

20.3 Reasonable Accommodation Policy

Federally funded programs are required under Section 504 to make reasonable accommodations and modifications for individuals with disabilities. The purpose of Section 504 is to avoid discrimination and ensure these individuals have an equal opportunity to access and enjoy the benefits of the Program. Requests for

accommodations (changes to a rule, policy, practice, or service) and reasonable modifications (structural changes to a building or dwelling) most commonly arise in housing programs; however, Section 504 applies to all federally funded programs and activities.

Any person with disability-related needs may submit a request for accommodation or modification to PRDOH, its subrecipients, or contractors involved in the implementation of CDBG-DR programs. PRDOH has established the Reasonable Accommodation Policy to guide individuals on how to submit a non-employment related request, and instruct PRDOH employees, subrecipients, and contractors on how to receive and evaluate reasonable accommodation and modification requests. Any employment-related reasonable accommodation request should be directed to the individual's employer.

PRDOH will ensure that every effort is made to meet the disability-related needs of requesting individuals to the maximum extent feasible, so far as providing the requested accommodations or modifications is considered reasonable.

The Reasonable Accommodation Policy are available in English and Spanish at: <https://cdbg-dr.pr.gov/en/fair-housing/policy-documents/> and <https://cdbg-dr.pr.gov/fair-housing/politicas-documentos/>.

20.4 Language Access Plan

PRDOH, its subrecipients, and contractors are responsible for complying with the PRDOH Language Access Plan (**LAP**). The purpose of the LAP is to ensure meaningful access to federally assisted programs and activities for persons, who because of national origin are limited in their Spanish or English proficiency. The LAP provides concrete action steps that shall be followed by PRDOH, subrecipients, awardees, and contractors to ensure that appropriate language services and translated vital documents are made available to potential and actual Program participants, as well as in outreach activities.

The CDBG-DR LAP is available in English and Spanish at: <https://cdbg-dr.pr.gov/en/download/plan-de-acceso-al-idioma/> and <https://cdbg-dr.pr.gov/download/plan-de-acceso-al-idioma/>.

21 Reporting

All entities receiving federal award funds must complete a quarterly report in which they provide an overview on the project's progress to date, compliance with job creation/retention (if applicable) and include a summary of the progress expected for the next quarter. Additional compliance reporting, including but not limited to that for Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701u, and Davis Bacon and Related Acts, as amended, 40 U.S.C. § 3141 *et seq.*, will be maintained in accordance with the reporting requirements under the CDBG-DR regulations, applicable PRDOH CDBG-DR policies, and executed agreements.

Additional reporting requirements will be detailed in the executed Agreement and must be submitted on the agreed-upon schedule. Specific measures related to electrical system improvement activities that may be required for reporting to PRDOH and HUD include, but are not necessarily limited to, the following:³⁰

- Percent reduction in loss of service.
- Number of green infrastructure projects constructed.
- Number of fewer outages of critical facilities and utilities.
- Percent decrease in disruption hours to residents and businesses from impacts of storm events.
- Percent reduction in energy costs.
- Number of Electrical Inspections.
- Percent of area electrical demand generated from facility.
- Percent reduction in number of kWh of electricity consumed on-site.
- Number of Microgrids constructed to sustain critical services during a power outage.
- Percent decrease in number of inaccessible days.
- Percent reduction in kWh used.
- Percent reduction in utility costs.

22 Monitoring

PRDOH is required by regulations and Grant Agreement conditions to monitor each program/function or activity funded by CDBG-DR awards to ensure compliance with applicable federal requirements and to determine if performance expectations are being achieved. This includes monitoring of CDBG-DR funded activities carried out by Awardees, contractors, Subrecipients, and PRDOH.

PRDOH must ensure compliance with HUD regulations, which include but are not limited to recordkeeping, administrative and financial management, environmental compliance, citizen participation, conflict of interest, procurement, labor standards, Section 3, Fair Housing, Title VI, Section 504, duplication of benefits, property management and property acquisition and relocation. PRDOH is required to monitor all programs and projects for conformance with the goals, objectives, and policy set forth in the Action Plan and its Amendments.

Program monitoring serves to identify risks, deficiencies, and remedies related to programs, projects, and Subrecipients. The objectives of the program monitoring include:

- Determine if activities are being carried out as described in the Action Plan, as amended, for the CDBG-DR Energy program and assistance;

³⁰ This is not an exhaustive list of the measures that may be applicable to the various project types anticipated to be funded by the ER1 Program and that may require reporting to PRDOH and HUD. Additional applicable/allowable measures/metrics may be identified and reported on throughout the implementation of the program.

- Determine if activities are being carried out in a timely manner;
- Determine if costs charged to the Program and projects are eligible under applicable laws and CDBG regulations and if are reasonable in light of the services or products delivered;
- Determine if activities are being conducted with adequate control over the program and financial performance, and in a way that minimizes opportunities for waste, mismanagement, fraud, and abuse;
- If Subrecipients are utilized, determine if the activities are being carried out in conformance with the subrecipient agreement;
- Assist in resolving compliance problems through discussion, negotiation, technical assistance, and training;
- Provide adequate follow-up measures to ensure that performance and compliance deficiencies are corrected and not repeated;
- Comply with the monitoring requirements of 24 C.F.R. § 570.501(b) and 2 C.F.R. § 200.328, if applicable;
- Determine if any conflict of interest exist in the operation of the CDBG-DR Program per 24 C.F.R. § 570.611; and
- Ensure that required records are maintained to demonstrate compliance with applicable regulations.

The Monitoring Manual for the CDBG-DR/MIT Programs is available in English and Spanish at: <https://cdbg-dr.pr.gov/en/download/monitoring-manual/> and <https://cdbg-dr.pr.gov/download/manual-de-monitoreo/>.

23 Closeout

The closeout process is designed to ensure that all CDBG-DR Energy funded activities are completed, and funds are spent in accordance with the agreement, program guidelines, and state and federal requirements. Closeout is the process by which it is determined that all CDBG-DR Energy program costs have been fully expended and were reasonable and necessary, the work has been completed in accordance with all applicable laws and regulations, and all responsibilities of PRDOH and the Subrecipient have been completed in accordance with the terms and conditions of the Agreement. This process certifies that the CDBG-DR Energy funded activities described in the CDBG-DR Energy Action Plan and the Program Guidelines have benefited the persons affected by the hurricanes and/or for disaster recovery activities.

The CDBG-DR Closeout Policy is available in English and Spanish: <https://cdbg-dr.pr.gov/en/download/closeout-policy/> and <https://cdbg-dr.pr.gov/download/politica-de-cierre/>.

23.1 Project Closeout

Project closeout is the process by which PRDOH and COR3 determine that the total project costs incurred are eligible, the approved SOW has been completed, and all subrecipient responsibilities have been completed in accordance with the terms and conditions of the executed agreement and applicable laws and regulations. In addition, during project closeout the five percent (5%) management cost evaluation is made to determine the eligible total amount. A project cannot be closed out until all incurred costs have been presented with all necessary documentation for justification, all activities approved with the SOW have been completed, and the National Objective has been met.

Given that the Program provides the match for FEMA PA projects, project closeout will occur in coordination with COR3 and FEMA. PRDOH will work with COR3 to develop processes that show which funded projects have no future work and that no audit or open issues remain. PRDOH will solely determine if all the requirements for a specific project have been completed and if project closeout should occur.

For instances where one (1) subrecipient agreement includes multiple projects, each individual project will be closed out upon its individual completion. The agreement cannot be closed out until all projects contained therein are closed. Ultimately, the ER1 Program as a whole will be closed out only after all subrecipient agreements are closed.

Project closeout will begin when:

- PRDOH and COR3 have certified that all approved project SOW included in the specific PW selected has been completed and no future work will take place;
- All project expenses related to the CDBG-DR Energy match payment, except closeout costs, if any, have been paid on the project by PRDOH/COR3;
- COR3 has certified that the federal share for the project has been paid and that no more FEMA federal share funds for the project will be provided;
- Any responsibilities detailed in an Interagency or Subrecipient Agreement or other binding agreements with PRDOH/COR3, including agreements the subrecipient has with FEMA, have been fulfilled;
- All monitoring or audit findings have been cleared, whether with HUD or FEMA;
- A final inspection has occurred;
- Meeting of all necessary EHP, studies, permits, endorsements, and consultations have been accomplished/completed; and
- A CDBG-DR National Objective has been documented.

Project closeout consists of:

- A closeout request, with applicable project documents attached, submitted to PRDOH/COR3 for review;

- PRDOH/COR3 review of closeout documents and resolution of any outstanding issues;
- A project closeout letter/memo is placed in the projects file with the Federal Financial Report and final progress report;
- A final HUD quarterly narrative report submitted to reflect the project's status;
- An updated project in HUD's Disaster Recovery Grant Reporting (**DRGR**) system;
- Reconciliation and, when necessary, return of any unused funds to the program via budget amendment;
- PRDOH coordinates the closeout process with COR3;
- When all requirements for a project closeout have been completed, COR3 submits project closeout information to FEMA for approval; and
- COR3/FEMA confirms the five percent (5%) Management Cost Closeout.

23.2 HUD Notification of Project Closeout

In addition to the steps listed above, the project's status must be updated in HUD's DRGR system, and a final HUD quarterly narrative report must be submitted to reflect the project's status.

23.3 Program Closeout

Program closeout is the process by which PRDOH determines that all activities within the Program has been successfully completed. A program is deemed complete upon final review and/or inspection by PRDOH and, when applicable, the submission of proof that all agreed upon performance indicators have been reported as well as performance milestones met.

General requirements for Program Closeout are as follows:

- All milestones have been met and deliverables submitted, each in accordance with all requirements of this Program;
- All Program forms and reports required throughout the entirety of program processes have been duly completed and executed by the appropriate parties;
- All CDBG-DR funds used have been properly accounted for and reconciled with payments made to the PRDOH's Contractors and Awardees;
- All payments have been issued to PRDOH's Contractors and Awardees;
- All permits required for construction work have been properly closed-out with the pertinent governmental entities;
- Other requirements for closeout as established in the Subrecipient Agreement and other contracts have been met.

Outreach will be made to the project entities if any additional information is necessary to close out the program. Once all levels of quality control review are passed, the entities will receive a CDBG-DR Energy Final Notice, and their individual contracts will be placed in a closeout complete status.

24 Recapture

Instances may arise where a Subrecipient must return all or part of the awarded funding to the Program. The Program is responsible for recapturing duplicative funds, funds awarded to Subrecipients who become non-compliant, as well as funds from Subrecipients that have been identified as potential overpayments. All Subrecipient files will be reviewed and reconciled for accuracy to ensure Subrecipients are compliant with Program requirements and federal guidelines.

Once it has been determined that a Subrecipient must return funds to the CDBG-DR grant fund, the Subrecipient must repay the funds in a timely manner. All repayments shall be expected to be repaid in full as one lump sum amount. All funds recovered through recapture will be tracked in the Yardi Voyager system and returned to the CDBG-DR account or U.S. Treasury, if the CDBG-DR Energy grant has been closed out.

More information about the PRDOH CDBG-DR/MIT Recapture of Funds Policy is available in English and Spanish at: <https://cdbg-dr.pr.gov/en/download/recapture-of-funds-policy/> and <https://cdbg-dr.pr.gov/download/politica-de-recaptura-de-fondos/>.

25 Fair Housing Act and Affirmatively Furthering Fair Housing

The Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, prohibits discrimination in the sale, rental, and financing of housing, and in other housing-related activities based on: race, color, religion, sex, familial status, national origin or disabilities. The Act requires HUD and its grantees to administer its programs in a manner that affirmatively furthers fair housing.

In compliance with the aforementioned Act, as well as other applicable laws, the ER1 Program implementation will be conducted avoiding discrimination and/or discriminatory practices to the extent that no person be excluded from participation in; denied program benefits of; or be subjected to discrimination under any program or activity receiving CDBG-DR and CDBG-MIT funds on the basis of race, color, national origin, religion, sex, age, disability, familial status, sexual orientation (in employment and in HUD-funded or insured housing programs) or marital status (in HUD-funded or insured housing programs). Additionally, the ER1 Program will ensure that all activities are conducted in a manner that will affirmatively further fair housing, when applicable.

For more information, refer to the Fair Housing and Equal Opportunity for CDBG-DR Programs, published along with all other CDBG-DR Program policies, in English and Spanish at: <https://www.cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

26 General Provisions

26.1 Program Guidelines Scope

This document sets forth the policy governing the Program. These Program Guidelines are intended to aid and provide program activity guidance in Program implementation and

closeout and should not be construed as exhaustive instructions. All Program activities must comply with the policies hereby stated. In addition, all program staff must adhere to established program procedures and all federal and state laws and regulations in effect, as applicable, in the execution of program activities.

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

26.2 Program Guidelines Amendments

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

26.3 Extension Deadlines

The Program could extend deadlines on a case-by-case basis. The Program may decline to extend a deadline if such extension will jeopardize the Program's completion schedule or the schedule of an individual project. The previous statement strictly applies to program deadlines or established program terms. Under no circumstances does the faculty to extend deadlines apply to the established terms of time in these Guidelines or any applicable federal or state law or regulation.

26.4 Established Periods of Time

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

26.5 Written Notifications

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

26.6 Conflict of Interest

As stated in the Federal Register Notice, 86 FR 32681, at 32691, federal regulations require that State grantees, in the direct Grant administration and means of carrying out eligible activities, be responsible with program administrative requirements, including those established in 24 C.F.R. § 570.489(h) related to conflicts of interest.

Several federal and state conflict of interest laws can govern CDBG-DR/MIT assisted activities. Therefore, PRDOH has enacted the Conflict of Interest and Standards of Conduct Policy (**COI Policy**) in conformity with the following applicable federal and state regulations:

- HUD conflict of interest regulations, 24 C.F.R. § 570.611;
- The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 at § 200.112 and § 200.318 (c)(1);
- Puerto Rico Department of Housing Organic Act, Act 97 of June 10, 1972, as amended, 3 LPRA § 441 *et seq.*;
- The Anti-Corruption Code for the New Puerto Rico, Act No. 2-2018, as amended, 3 LPRA § 1881 *et seq.*; and
- The Puerto Rico Government Ethics Act of 2011, Act 1-2012, as amended, 3 LPRA § 1854 *et seq.*

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

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

Such conflicts of interests will not be tolerated by PRDOH. Program officials, their employees, agents and/or designees are subject to state ethics laws and regulations, including, but not limited to Act 1-2012 regarding their conduct in the administration, granting of awards and program activities.

According to Act 1-2012, no public servant shall intervene, either directly or indirectly, in any matter in which they have a conflict of interests that may result in their benefit. No public servant shall intervene, directly or indirectly, in any matter in which any member of their family unit, relative, partner or housemate has a conflict of interest that may result in benefit for any of the abovementioned. In the case that any of the abovementioned relationships have ended during the **two (2) years** preceding the appointment of the public servant, they shall not intervene, either directly or indirectly, in any matter related to them until **two (2) years** have elapsed after their appointment. This prohibition shall remain in effect insofar as the beneficial ties with the public servant exist. Once the beneficial ties end, the public servant shall not intervene, either directly or indirectly, in such matter until **two (2) years** have elapsed.

The above conflict of interest statement does not necessarily preclude PRDOH Program officials, their employees, agents, and/or designees from receiving assistance from the Program. On a case-by-case basis, PRDOH Program officials, their employees, agents and/or designees may still be eligible to apply and to receive assistance from the Program if the Subrecipient meets all Program eligibility criteria as stated in these Guidelines. PRDOH Program officials, their employees, agents, and/or designees should disclose their relationship with PRDOH at the time of their application.

The COI Policy and all CDBG-DR and CDBG-MIT Program policies are available in English and Spanish at: <https://cdbg-dr.pr.gov/en/download/conflict-of-interest-and-standards-of-conduct-policy/> and <https://cdbg-dr.pr.gov/download/politica-de-conflictos-de-interes-y-estandares-de-conducta/>.

26.7 Citizen Engagement and Participation

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

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

Via phone: 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)
Attention hours Monday through Friday from 8:00am-5:00pm

Via email at: infoCDBG@vivienda.pr.gov

Online at: <https://www.cdbg-dr.pr.gov/en/contact/> (English)
<https://www.cdbg-dr.pr.gov/contact/> (Spanish)

In writing at: Puerto Rico CDBG-DR Program
P.O. Box 21365

San Juan, PR 00928-1365

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

26.8 Citizen Complaints

As part of addressing Puerto Rico's long-term recovery needs, citizen complaints on any issues related to the general administration of CDBG-DR/MIT funds are welcome throughout the duration of the grant. It is PRDOH's responsibility, as grantee, to ensure that all complaints are dealt with promptly and consistently and at a minimum, to provide a timely, substantive written response to every **written** complaint within **fifteen (15) calendar days**, where practicable, as a CDBG grant recipient. See 24 C.F.R. § 91.115(h) and 24 C.F.R. § 570.486(a)(7).

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

Via e-mail at: LegalCDBG@vivienda.pr.gov

Online at: <https://cdbg-dr.pr.gov/en/complaints/> (English)
<https://cdbg-dr.pr.gov/quejas/> (Spanish)

In writing at: Puerto Rico CDBG-DR Program
Attn: CDBG-DR/MIT Legal Division-Complaints
P.O. Box 21365
San Juan, PR 00928-1365

Although formal complaints are required to be submitted in writing, complaints may also be received verbally and by other means necessary, as applicable, when PRDOH determines that the citizen's particular circumstances do not allow the complainant to submit a written complaint. However, in these instances, PRDOH shall convert these complaints into written form. These alternate methods include, but are not limited to:

Via telephone: * 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)

In-person at: * PRDOH Headquarters Office or Program-Specific Intake Centers

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

The Citizen Complaints Policy and all CDBG-DR/MIT Program policies are available in English and Spanish at: <https://www.cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

26.9 Anti-Fraud, Waste, Abuse or Mismanagement

PRDOH, as grantee, is committed to the responsible management of CDBG-DR/MIT funds by being a good advocate of the resources while maintaining a comprehensive policy for preventing, detecting, reporting, and rectifying fraud, waste, abuse, or mismanagement.

Pursuant to 86 FR 32681, PRDOH implements adequate measures to detect and prevent fraud, waste, abuse, or mismanagement in all programs administered with CDBG-DR/MIT funds as well as encourages any individual who is aware or suspects any kind of conduct or activity that may be considered an act of fraud, waste, abuse, or mismanagement, regarding the CDBG-DR Program, to report such acts to the CDBG-DR/MIT Internal Audit Office, directly to the Office of Inspector General (**OIG**) at HUD, or any local or federal law enforcement agency.

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

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

REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT DIRECTLY TO HUD OIG	
HUD OIG Hotline	1-800-347-3735 (Toll-Free) 787-766-5868 (Spanish)

Postal Mail	HUD Office of Inspector General (OIG) Hotline 451 7th Street SW Washington, D.C. 20410
Email	HOTLINE@hudoig.gov
Online	https://www.hudoig.gov/hotline

The AFWAM Policy and all CDBG-DR/MIT Program policies are available in English and Spanish at: <https://www.cdbg-dr.pr.gov/en/resources/policies/> and <https://www.cdbg-dr.pr.gov/recursos/politicas/>.

26.10 Related Laws & Regulations

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

26.11 Cross-Cutting Guidelines

Some federal and local requirements apply to all programs funded by CDBG-DR/MIT. These Cross-Cutting Guidelines cover topics such as: financial management; environmental review; labor standards; acquisition; relocation; civil rights; fair housing; drug free workplace; timely distribution of funds; personally identifiable information; record retention; among others. The requirements described in the above referenced Cross-Cutting Guidelines apply to all programs described in PRDOH's CDBG-DR Initial Action Plan and its amendments and CDBG-MIT Action Plans and any subsequent amendments.

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

27 Program Oversight

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

28 Severability Clause

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

END OF PROGRAM GUIDELINES