



DEPARTMENT OF  
**HOUSING**



# CDBG-MIT PROGRAM GUIDELINES

**SINGLE-FAMILY HOUSING MITIGATION PROGRAM  
(SFM Program)**

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PUERTO RICO DEPARTMENT OF HOUSING  
CDBG-MIT PROGRAM GUIDELINES  
**SINGLE-FAMILY HOUSING MITIGATION PROGRAM**  
VERSION CONTROL

<b>VERSION NUMBER</b>	<b>DATE REVISED</b>	<b>DESCRIPTION OF REVISIONS</b>
1	January 27, 2023	Original Version
2	June 20, 2023	This version incorporates sections related to the Blue Roof Survey and to Structures in floodways and higher-risk floodplains. Other minor revisions are highlighted in gray.
3	April 16, 2024	This version incorporates sections and language related to the assessment of wood structures and inherent risk from hurricane force winds, minimum standards for replacement properties, PRDOH-owned properties and residential developments, and other general revisions. All edits made throughout the document are highlighted in gray.

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## 1 Overview

The Single-Family Housing Mitigation Program (**SFM Program** or **Program**) will provide mitigation assistance to households facing an immediate threat.<sup>1</sup> The Federal Emergency Management Agency (**FEMA**) defines threat as a threat of additional damage or destruction from an event that can reasonably be expected to occur within five (5) years. Many households in Puerto Rico face the risk of immediate threat, mostly due to the effects of the different natural disasters that have occurred over the years. As a first step before initiating mitigation activities, the SFM Program will conduct a Property Risk Assessment to determine the severity of the immediate threat as unmet mitigation needs<sup>2</sup> for Program applicants. The U.S. Department of Housing and Urban Development (**HUD**) defines mitigation as:

*"...activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, suffering and hardship, by lessening the impact of future disasters."*

The Puerto Rico Department of Housing (**PRDOH**) realizes that the challenges Puerto Rico faces to recover from disastrous events are countless opportunities to institute true mitigation measures to protect applicants from future risks and benefit our most vulnerable communities.

## 2 National Objective

All projects in the SFM Program must meet one (1) of the HUD, CDBG-MIT national objectives at 24 C.F.R. § 570.483 or otherwise provided for by waiver or alternative requirement as published in Federal Register Vol. 84, No. 169 (August 20, 2019), 84 FR 45838, 45839. The selected national objective must correspond to a HUD eligible activity, as defined by the Housing and Community Development Act of 1974 (**HCDA**), as amended, 42 U.S.C. § 5305. These can be found in the **Eligible Activities** section of these Program Guidelines.

Program activity will be evaluated according to one (1) of the following national objectives:

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<sup>1</sup> FEMA definition of immediate threat as per 44 C.F.R. § 206.221 (c): <https://www.ecfr.gov/current/title-44/chapter-1/subchapter-D/part-206/subpart-H/section-206.221>

<sup>2</sup> The CDBG-DR Home Repair, Reconstruction, or Relocation Program (R3 Program) concentrated in addressing unmet needs connected to hurricanes Irma and María. The SFM Program expands the opportunity to address multiple risks, based on previous natural disasters, not just hurricanes. An eligible applicant identified to have a need to mitigate or reduce loss of life or property, may receive assistance from the SFM Program. However, for SFM purposes, the term "unmet mitigation needs" should not be confused with the Urgent Need Mitigation national objective.

- (1) LMI Housing (LMH)**, which benefits low- and moderate-income (LMI)<sup>3</sup> persons; that is income below the 80% Area Median Family Income (AMFI). This is validated through the collection of information on household composition and income. (24 C.F.R. § 570.483 (b)(3)).
- For CDBG-MIT, HUD established an alternative requirement to include the two new LMI national objective criteria for buyouts (LMB) and housing incentives (LMHI) that benefit LMI households. For a buyout award or housing incentive to meet the new LMB and LMHI national objectives, grantees must demonstrate the following:
    - (a)** The CDBG-MIT funds have been provided for an eligible activity that benefits LMI households supporting their move from high-risk areas. The following activities shall qualify under these criteria, and must also meet the eligibility criteria of the notices governing the use of the CDBG-MIT funds:
      - LMI buyout (LMB). When CDBG-MIT funds are used for a buyout award to acquire housing owned by a qualifying LMI household, where the award amount (including optional relocation assistance) is greater than the post-disaster (current) fair market value of that property.
      - LMI housing incentive (LMHI). When CDBG-MIT funds are used for a housing incentive award, tied to the voluntary buyout or other voluntary acquisition of housing owned by a qualifying LMI household, for which the housing incentive is for the purpose of moving outside of the affected floodplain or to a lower-risk area; or when the housing incentive is for the purpose of providing or improving residential structures that, upon completion, will be occupied by an LMI household.
    - (b)** Activities that meet the above criteria will be considered to benefit LMI persons unless there is substantial evidence to the contrary. Any activities that meet the newly established national objective criteria will count towards the calculation of a CDBG-MIT grantee's overall LMI benefit.<sup>4</sup>
- (2) Urgent Need Mitigation (UNM)** - benefit households with an AMFI above eighty percent (80%). Additionally, since the provisions of 24 C.F.R. § 570.483(d) and § 570.208(c) are waived at 84 FR 45838, 45857, V.A.13.C. and replaced with an alternative requirement, the activity must address (i) the current and future risks as

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<sup>3</sup> Low-to moderate-income people are those having incomes not more than the "moderate-income" level (80% Area Median Family Income, adjusted for family size) set by the federal government for the HUD-assisted Housing Programs. Federal Register Vol. 86, No. 3, (January 6, 2021), 86 FR 569, Section V.B which states, "In order to ensure consistency with the use of CDBG-DR funds that are governed by alternative income limits authorized by the Department, the Department is extending the income limit adjustments of the August 14, 2018 notice to all CDBG-DR funds allocated under Public Laws 115-56, 115-123, and 116-20 and to CDBG-MIT funds allocated to Puerto Rico for mitigation activities under Public Law 115-123. Under this extension, Puerto Rico may use these alternative income limits when determining that activities undertaken with CDBG-DR or CDBG-MIT funds meet the low- and moderate-income benefit CDBG national objective criteria." The applicable income tables change annually and are posted on the Department of Housing and Urban Development webpage at <https://www.huduser.gov/portal/datasets/cdbg-income-limits.html#2022>

<sup>4</sup> 84 FR 45838.

identified in the Action Plan Mitigation Needs Assessment of MID areas;<sup>5</sup> and (ii) result in a measurable and verifiable reduction in the risk of loss of life and property.

## 2.1 Additional National Objective Criteria Applicable to MIT Funding

The provisions of 24 C.F.R. § 570.483(e) and § 570.208(d) are modified by an alternative requirement to add conditions as specified at 84 FR 45838, 45856, section V.A.13.a. *Additional criteria applicable to all mitigation activities funded with CDBG-MIT funds.* To meet a national objective, all CDBG-MIT activities must meet additional alternative requirements detailed in 84 FR 45838, 45857.

## 3 Program Description

The HUD national objectives and requirements stated above help the Program form its most critical pursuits for successful implementation. Primarily, the program aims to ensure the unmet mitigation needs of very low, low, and moderate-income households within Puerto Rico's most impacted and distressed<sup>6</sup> communities are addressed. In doing so, the Program will lessen the impact of future disasters and increase Puerto Rico's resiliency<sup>7</sup> by resolving unmet mitigation needs throughout the island.

By establishing these priorities, PRDOH designed the SFM Program to minimize the risk of displacement. Eligible applicants vulnerable to even one top risk<sup>8</sup> may qualify for Program assistance to meet their unmet mitigation needs, which are further qualified by the Property Risk Assessment. Part of the Program's mitigation activities include installation of solar and water resilience systems.

Through the Property Risk Assessment, applicant properties will qualify to be either: under immediate threat, uninhabitable, or located in a high-risk area to establish the Initial Project Intent of either: repair/retrofit, reconstruction, or relocation.

## 4 Eligible Use of Funds

### 4.1 Eligible Activities

The section sets forth the eligible uses of CDBG-MIT funds for the Program.

- Section 105(a)(1) of the Housing Community Development Act of 1974, as amended, 42 U.S.C. § 5305, authorizes eligible activities that include the acquisition of real property that will be used for public purposes.
- Section 105(a)(2) authorizes the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such

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<sup>5</sup> This must be tied to the PRDOH CDBG-MIT Action Plan in the Risk-Based Mitigation Needs Assessment.

<sup>6</sup> HUD identified all municipal jurisdictions in Puerto Rico as Most Impacted and Distressed Areas (MID) through Federal Register Vol. 85, No. 17 (January 27,2020), 85 FR 4676.

<sup>7</sup> Resiliency may be defined under this context as the capacity or ability to recover quickly from difficulties of future natural risks and disasters.

<sup>8</sup> PRDOH CDBG-MIT Action Plan: Single-Family Housing Mitigation Program, Risk-Based Needs.

construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements.

- Section 105(a)(4) establishes as an eligible use for the funds the “clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation of privately owned properties, including the renovation of closed school buildings)”.
- Section 105(a)(7) establishes as an eligible activity “disposition (through sale, lease donation, or otherwise) of any real property acquired pursuant to this title or its retention for public purposes”.
- Section 105(a)(8) enables the provision of public services, including but not limited to those concerned with employment, crime prevention, child-care, health, drug abuse, education, energy conservation, welfare, or recreation needs, if such services have not been provided by the unit of general local government.
- Section 105(a)(11) allows relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate.
- Section 105(a)(15) establishes as an eligible activity the assistance to eligible entities to carry out projects for neighborhood revitalization, community economic development and energy conservation.
- Section 105(a)(20) enables Housing Counseling Services, in connection with tenant-based rental assistance and affordable housing projects assisted under Title II of the Cranston-Gonzalez National Affordable Housing Act (HOME Investment Partnership Act), energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities assisted under Title II of the Cranston-Gonzalez National Affordable Housing Act.
- Section 105(a)(24) allows Homeownership Assistance to facilitate and expand homeownership among LMI persons (except that such assistance shall not be considered a public service for purposes of Section 105(a)(8) by using such assistance to:
  - Subsidize interest rates and mortgage principal amounts for LMI homebuyers;
  - Finance the acquisition by LMI homebuyers of housing that is occupied by the homebuyers;

- Acquire guarantees for mortgage financing obtained by LMI homebuyers from private lenders (except those amounts received under this title may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees);
- Provide up to fifty percent (50%) of any down payment required from LMI homebuyers; or
- Pay reasonable closing costs (normally associated with the purchase of a home) incurred by LMI homebuyers.

## 4.2 Eligible Use of Funds

Based on the above, the following are **eligible uses of funds** for repair/retrofit, reconstruction, or relocation activities performed by the Program. These activities shall not be interpreted as all-encompassing eligible activities and the list may be subject to further changes.

- Evaluations of costs for, remediation and/or abatement of known or suspected environmental & health contaminants such as:
  - Asbestos-Containing Material (**ACM**).
  - Lead-Based Paint (**LBP**).
  - Lead-Based Materials (**LBM**).
  - Hazardous Material and/or clearance of toxic contaminants.
- Site surveys, as-built plans, geotechnical reports, hydrologic and hydraulic (**HH**) studies, site elevation surveys, construction drawings, technical specifications, and any other studies, reports, design and permitting agency requirements to evaluate and/or perform eligible activities.
- Demolition, reuse, recycling and disposition of structures, site improvement and other features.
- Site work such as excavation, cut-fill, grading, erosion control blankets/mesh, permaculture, retaining walls, retention, detention walls, swales, among others.
- Cost of labor, materials, replacement, and installation of site improvements when incidental to other construction activities (including but not limited to replacement of landscape, sidewalks, driveways, curbs, swales, slab-on grade, among others).
- Cost of labor, materials, fixtures, supplies, finishes and other expenses required for a residential construction activity. This includes but is not limited to structural retrofit, flood proofing, wind proofing, structural and soil stabilization measures, among others.
- Installation of storm resistant, impact resistant, energy conservation windows, doors, and other building envelope components.
- Installation of carbon monoxide, smoke alarms, dead-bolt locks and other health, safety, welfare, life, and property protecting features.

- Purchase of essential equipment and installation that includes but is not limited to solar/gas/energy efficient electrical water heaters, gas or electric stoves, refrigerators, ceiling fans, light fixtures to promote energy efficiency.
- Products and improvements required to increase resiliency and efficient use of energy, water, and wastewater. This includes but is not limited to photovoltaic (**PV**) systems with battery backup for critical loads and water storage system (**WSS**), and others.
- Installation of mold resistant materials and/or components.
- Costs associated with Attached Housing Units (**AHUS**) and shared structural critical components (**SSCCs**)<sup>9</sup>.
- Costs of connecting residential structures to existing electrical, water and sanitary distribution systems.
- Cost to install water wells, septic leach field systems, septic holding systems, aerobic treatment units, and other alternate septic systems that could reduce applicant expenses and maintenance.
- Repair/retrofit of a structure in similar manner as the existing condition, (deviations could be allowed for code compliance, green building requirements, safety, reasonable accommodations and/or modifications, and others).
- Reconstruction of unit used in accordance with the household composition (a reconstructed unit need not contain the same number of rooms as the existing unit).
- Construction of parks for outdoor recreational activities; unimproved, unpaved parking lots; buffer zones; and other uses.
- Acquisition of properties to be dedicated and maintained as open space for the conservation of natural floodplain functions, other ecosystem restoration and wetlands management.
- Cost to remove architectural barriers that restrict the mobility and accessibility to provide with reasonable accommodations and/or modifications.
- Costs associated with providing eligible applicants with move-out, storage and/or Optional Relocation Assistance (**ORA**).
- Costs associated to provide eligible applicants with funds to meet Uniform Relocation Assistance and Real Property Acquisition Act (**URA**).
- Activities needed to meet the requirements of residential properties in historic districts, zones and/or with historical value or significance.
- Activities needed to meet the requirements in archeological sensitive areas and/or archaeological value.

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<sup>9</sup> To assist a housing unit within an AHUS, the Program may be required to perform improvements to SSCCs, which do not solely reside or reside at all within the applicant's primary residence. There might be situations the Program needs to impact other housing units within an AHUS.

- Staff costs and related expenses required for outreach efforts, screening intake and eligibility activities, studies and assessments that include but is not limited to property risk assessments, environmental review records, electrical, energy, water consumption, sanitary system evaluations, technical evaluations/reports, scopes of work, determine an Initial Project Intent, Program notifications, preparing and evaluating construction documents, product submittals, progress inspections, replacement property pre-purchase inspections, housing counseling, title investigations, notarial deeds, property registry, and other services to assist eligible applicants, tenants, and entities according to Program eligible activities.

### 4.3 Ineligible Use of Funds

The following are **ineligible use of funds** or activities for the Program. These activities shall not be interpreted as all-encompassing ineligible activities and the list may be subject to further changes:

- Disbursement of Program funds that incur in the associated costs for labor, materials, fixtures, supplies, finishes and other expenses to conduct a construction activity on an ineligible applicant and/or property.
- Any work on a secondary home.
- Any work on a luxury home<sup>10</sup>.
- Repair/retrofit, reconstruction, or elevation activities in the floodway.
- Creation of an additional housing unit to an eligible applicant's primary unit.
- Expansion to an existing structure, unless necessary to meet building codes or reasonable accommodation and/or modifications needs.
- Any work on a secondary or complementary structure, such as storages, sheds, detached garages, etc., unless strictly necessary to conduct Program eligible activities.
- Costs of equipment, furniture, or other personal property that are not an integral part of a structure. This includes but is not limited to, dish washers, clothes washer, and dryers, among others.
- Purchase of tools, equipment, furnishing, clothes, other similar items or personal belongings.
- Purchase or installation of luxury items, such as swimming pools, Jacuzzis, barbecue pits, landscaping, decks, and terraces<sup>11</sup>, marble floors, granite, quartz and/or porcelain countertops, and others.

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<sup>10</sup> CDBG-MIT funds are not intended to support luxury homes. Projects must be modest in design and provide decent, safe, and sanitary housing for LMI households or those with UNM. Luxury homes are typically properties with unique features, luxe amenities (e.g., Jacuzzis and saunas), premium material such as high-end interior finish (e.g., marble countertops), and "non-standard grade" or luxury items.

<sup>11</sup> In some instances, garages, decks, and terraces may require to be impacted and/or improvement solely necessary preserve the property from soil erosion or structural deterioration.

- The value of the homeowner's sweat equity to repair/retrofit their own property.

## 5 Applicant – Customer Service & Satisfaction

Program Managers, Construction Managers (including Subcontractors), Case Managers, Housing Counseling Services and any Program staff or representatives are an integral part of the Program's success and will be required to work in harmony to provide SFM Program applicants the highest customer service standards. They are expected to communicate in a professional, orderly, and respectful manner which may include but is not limited to in-person, telephone, and various digital communications, amongst other methods. Applicant-Customer satisfaction is a high priority for PRDOH and its representatives; misconduct may call upon further action.

As fundamental to the Program's success, Program representatives are responsible for fulfilling their due diligence and ensuring accuracy, timeliness, quality, and completion of all tasks to avoid unnecessary delays in Program applications.

## 6 Targeted Outreach

The Program will perform targeted outreach efforts to contact potential eligible applicants using the information gathered from the PRDOH CDBG-DR Blue Roof Survey and other CDBG-DR Programs.<sup>12</sup> Additionally, outreach efforts will be performed for potential applicants identified by the Program as located in high-risk zones. As part of these efforts, the Program will communicate with these potential applicants via certified mail, email, telephone, site visits, or governmental agency platforms. When the prior mentioned communication initiatives are not feasible, the Program will make any other reasonable efforts. Additionally, the Program will inform potential applicants about the Program overview, objective, description, participatory, and eligibility requirements. The Program's Case Managers will assist the applicant in completing the intake process in English or Spanish through the PRDOH Grant Management System of Record.

### 6.1 Blue Roof Survey

In 2021, PRDOH performed a geospatial analysis utilizing aerial imagery to locate homes affected by Hurricanes Irma and María that still had a blue tarp. Through a subsequent field survey and outreach efforts, PRDOH visited these structures and conducted a visual inspection when able. From the site visits, PRDOH recorded each structure's observed

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<sup>12</sup> Thousands of homes received FEMA blue-roofs immediately after hurricanes Irma and Maria. Even though some active blue roof cases have applied to the CDBG-DR R3 Program, a supplemental geo-spatial survey conducted in 2021 indicates the potential for 18,000 or more remaining blue roof homes. Based on this information, PRDOH has designed the targeted outreach to implement single-family housing solutions and assist this population of potential applicants.

level of damage (high damage, medium damage–at risk, medium damage–stable, and low damage) and classified them into the following categories:

- **Blue Roof:** Structures with a confirmed blue tarp
- **Severe Damage:** Homes with severe property damage from recent disasters, including destroyed and uninhabitable homes.
- **Immediate Threat:** Homes with significant damage from a recent disaster that face the threat of additional damage or destruction from a future disaster expected to occur within five (5) years.
- **Minor Roof Damage:** Properties with low or no remaining damage and ineligible structures.

The R3 Program will contact and offer assistance to households living in a structure with a confirmed blue roof, as identified by the PRDOH survey. The SFM Program will also contact and offer assistance to households living in a structure deemed to have **severe damage** or an **immediate threat**.

## 6.2 Structures in floodways, higher-risk floodplains,<sup>13</sup> or vulnerable to hurricane force winds

As available funding allows, PRDOH will further target the following households for assistance:

- Households in a designated floodway according to the latest available Flood Insurance Rate Map (**FIRM**) or Preliminary Flood Insurance Rate Map (**PFIRM**)
- Households in a higher-risk floodplain where flood levels can be expected to reach eight (8) feet.
- Households occupying wood or mixed material structures throughout Puerto Rico.
  - To identify these structures, PRDOH will work with and receive support from local elected officials and use CRIM data.
  - The Program will aim to assist households with the highest need by identifying wood and mixed structures in irreparable conditions or at risk for hurricane-force winds. Additionally, the Program will aim to assist structures likely to be reconstructed in place.

PRDOH will develop targeted outreach strategies to reach these applicants and offer relocation assistance out of these high-risk areas. The Program anticipates that, in some instances, repair and reasonable elevated reconstruction assistance will be prohibited by federal regulation or deemed unfeasible due to physical elevation requirements.

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<sup>13</sup> PRDOH considers floodplain areas to be higher risk as those areas where the difference between the ground datum level and the base flood elevation is greater than eight (8) vertical feet and where in the event of a major flooding event, the structure can be expected to be a total loss and occupants may be unreachable until water levels recede.

Additionally, PRDOH will also prioritize relocation communities or areas not located in these targeted zones if a local official or municipal board has declared, via a formal resolution, that an imminent safety risk exists to occupants of residential structures located within the zone. After these households are relocated, it is expected that municipalities will agree to acquire the property from the owner (or PRDOH) and dedicate the area to permanent green space by prohibiting future redevelopment.

The intake process for the Program will begin with outreach efforts that result in an applicant's expressed participatory interest.

Specific information regarding Program main offices, additional intake centers, methods that can be used to apply, including phone numbers, web address, and additional information, will be available in English and Spanish at <https://recuperacion.pr.gov/welcome/en/home/> and <https://recuperacion.pr.gov/welcome/home/>.

## 7 Intake

Applicants will be required to complete a Program intake process and provide supporting documents for identity validation, property ownership evaluation, income verification, duplication of benefits review, and others to perform an eligibility review process. All documentation submitted by the applicant must be valid at the time of submission.

Case Managers will be available at Program main offices, additional intake centers, in-person, by phone, and email to assist the applicant through the intake process and to answer questions as needed. Occasionally, Program Manager representatives may be required to complete outbound visits on applicant properties to acquire necessary documentation and their corresponding authorizations. However, most communications with applicants will be standardized to ensure that they receive timely and accurate updates regarding their applications. Communication methods within the Program include but are not limited to the CDBG-MIT website, telephone, email, and mail correspondence. The Program will document communications and interactions in the PRDOH Grant Management System of Record.

### 7.1 Applicant Identification

**As part of the Program intake process, all applicants and household members will be required to submit documentation to prove their identity.** This documentation may include, but is not limited to, the following:

- Government Issued Photo Identification (Federal or State issued);
- Driver's License;
- Passport;

- Military ID Card;
- Birth Certificate; or
- Certificate of Naturalization or Permanent Resident Card.

Birth certificates may only be used as proof of identification for applicant household members under the age of eighteen (18). Adult applicants or household members must submit a photo ID.

## 7.2 Applicant Citizenship

Only U.S. citizens, non-citizen nationals, or qualified aliens, as defined in the following chart, are eligible to receive assistance.

Status	Definition
U.S. Citizen	A person born in one of the 50 States, the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands; a person born outside of the U.S. to at least one U.S. parent; or a naturalized citizen.
Non-Citizen National	<p>A person born in an outlying possession of the U.S. (e.g., American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. 8 U.S.C.A. § 1408.</p> <p>All U.S. citizens are U.S. nationals; however, not every U.S. national is a U.S. citizen.</p>
Qualified Alien	<ul style="list-style-type: none"> <li>- Legal permanent resident ("green card" holder) under the Immigration and Nationality Act (<b>INA</b>), 8 U.S.C.A. Chapter 12;</li> <li>- An asylee, refugee, or an alien whose deportation is being withheld, under de INA;</li> <li>- Alien paroled into the U.S. for at least one (1) year;</li> <li>- Alien granted conditional entry, pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;</li> <li>- Cuban/Haitian entrant, as described in section 501(c) and (f) of the Refugee Education Assistance Act of 1980, 8 U.S.C.A. § 1522;</li> <li>- Alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the U.S. and otherwise satisfies the requirements of 8 U.S.C.A. § 1641(c).</li> </ul>

If an applicant does not meet any of the above criteria, the household may still apply for and be considered for assistance if:

- Another household member meets the citizenship criteria described in the table above; or
- The parent or guardian of a minor child who is a U.S. citizen, non-citizen national, or a qualified alien applies for assistance on behalf of the child, if they live in the same household. The parent or legal guardian must register as the co-applicant.

As part of the Program intake process, all applicants must submit documentation to prove their citizenship. This documentation may include, but is not limited to, the following:

- Passport;
- Birth Certificate;
- Certificate of Naturalization;
- Certificate of Citizenship; or
- Permanent Resident Card ("green card").

If the applicant is unable to provide any of the documents listed the Program will accept, on a case by case basis –as proof of citizenship or legal presence- documentation listed in the Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (**PRWORA**), 42 U.S.C. § 1305, published by the United States Department of Justice, Federal Register Vol. 62, No. 221 (November 17, 1997), 62 FR 61344.

Temporary tourist visa holders, foreign students, temporary work visa holders, and habitual residents, such as citizens of the Federated States of Micronesia and the Republic of the Marshall Islands, are ineligible for the Program.

## 8 Program Eligibility

Applicants will be required to provide complete and accurate information regarding their household composition, household income, and other eligibility criteria. Failure to disclose accurate and complete information may affect eligibility and all such instances will be referred to the Program for corresponding action. Applicants may be required to repay administrative fees and other costs to PRDOH if they are found to have submitted inaccurate or incomplete information to appear to meet eligibility requirements. This includes the forfeiture of a deferred forgivable lien. Applicants to the Program will be screened for eligibility to ensure compliance with Program requirements. Allegation of fraud will be taken seriously, and the corresponding actions shall be triggered. Fraud is defined as the wrongful or criminal deception intended to result in financial or personal gain. Fraud includes a false representation of fact, making false statements, or concealing information. Refer to the Anti-fraud, Waste, Abuse or Mismanagement Policy, available in English and Spanish at

<https://recuperacion.pr.gov/en/resources/policies/general-policies/> and  
<https://recuperacion.pr.gov/recursos/politicas/politicas-generales/> .

Each application will be reviewed for the following eligibility and benefit determination criteria:

- The property must be the applicant's primary residence.
- The property must be an eligible single-family structure.
- The applicant must have a clear title and ownership of the property or in absence of the clear title, the applicant must have a proprietary interest in the occupied structure (including alternative methods of verification of informal ownership).<sup>14</sup>
- The applicant must qualify as an LMI (80% Area Median Family Income, AMFI).
- Duplication of Benefits (Refer to the PRDOH Duplication of Benefits Policy<sup>15</sup> and the corresponding section of these Guidelines);
- Non-compliant FEMA National Flood Insurance Reform Act of 1994 (**NFIRA**) applicants are ineligible for Program assistance.

## 8.1 Property Type

Only single-family owner-occupied residential units, located in Puerto Rico, will be eligible for the Program. Single-family homes, as defined by HUD, may include one- to four- unit dwellings.<sup>16</sup> Single family units may include, but are not limited to:

- Duplexes;
- Manufactured Housing Units (**MHU**);
- Detached, stand-alone, concrete, mixed material, wood residential structures;
- Attached housing units<sup>17</sup>.

Other structure types may be considered if the following can be demonstrated by the applicant:

- The applicant owned the land on which the structure was located at the time of a recently declared disaster occurring from 2017 to 2020 (including hurricanes, earthquakes, or recent floods).

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<sup>14</sup> PRDOH will exempt the ownership requirement for potential applicants (occupants, possessors, or users) whose property is located in both a floodway and on public land.

<sup>15</sup> For more information, refer to the Duplication of Benefits Policy available in English and Spanish at <https://recuperacion.pr.gov/en/download/duplication-of-benefits-policy/> and <https://recuperacion.pr.gov/download/politica-sobre-la-duplicacion-de-beneficios/>.

<sup>16</sup> 4000.1: FHA Single Family Housing Policy Handbook: <https://www.hud.gov/sites/documents/40001GAHSGH.PDF>

<sup>17</sup> The Program will assess all eligibility criteria based on a one-to-one relationship between an application and a housing unit, as defined by the US Census Bureau at <https://www.census.gov/housing/hvs/definitions.pdf>. This also includes the income calculation which shall be based on the occupants of the housing unit for which an application has been received. Because eligibility criteria are assessed for both the applicant and the property, eligible units in AHUS are those units which are owned and occupied as a primary residence by an eligible Program applicant. Individual housing units in an AHUS which do not meet all eligibility criteria are not eligible for assistance under the Program, even if the unit is owned by an eligible Program applicant.

- Structure has been connected to utilities since the time of a recently declared disaster occurring from 2017 to 2020 (including hurricanes, earthquake, recent floods, and others). Utilities must be in the applicant's name.
- Structure is fixed to a permanent location.

Ineligible property types include, but are not limited to travel trailers, campers, houseboats, group homes, elderly homes, nursing homes and luxury homes.

Property type may be verified using tax records, federally maintained databases, such as FEMA Individual Assistance (**FEMA IA**) and Small Business Administration (**SBA**) disaster home loan datasets, or through a Program-conducted property inspection.

## 8.2 Program Eligible Property Condition and Classification

All program sponsored activities will be performed on properties determined as having **unmet mitigation needs**. The results of the Property Risk Assessment will qualify a property's needs as either: **uninhabitable**; **under immediate threat**; or **located in a high-risk area**.

## 8.3 Ownership

In accordance with Regulation No. 9233 of December 2, 2020, known in Spanish as "*Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios*" of the Puerto Rico Planning Board, or as per current version, any request related to the development and use of land in Puerto Rico, including construction work completed by the Program, must be promoted by the owner(s) of the property to obtain a construction permit.

Therefore, pursuant to Section 2.1.9.5 of Regulation No. 9233 on Standing, proof of ownership documentation includes:

- House Deed ("Escritura Pública");
- Certification of the Puerto Rico Property Registry ("Certificación Registral"); or
- Declaration of Heirship ("Declaratoria de Herederos")
  - May include Instance of inscription of heirs ("Instancia")
- Property Registry Certification; and
- Title Certification ("Certificación de Título del Departamento de la Vivienda")
- Court Judgement ("Sentencia o Resolución de un tribunal").
  - Must specify that the Court awards dominion over the property to the Applicant and orders the inscription of the Property to the Puerto Rico Property Registry.

The Program may review other documentation, as accepted by the Permit Management Office (**OGPe**, for its Spanish acronym). These will be considered on a case-by-case basis.

After conducting a due-diligence process, which may include efforts to clarify title, the Program may also allow alternative methods for documenting ownership, including an ownership certification process. As needed, the Program will refer applicants to the Title Clearance Program for support in obtaining a clear title.

### 8.3.1 Alternate Methods for Documenting Ownership

To reasonably accommodate households that lack the ownership documentation outlined above and to evidence a proprietary interest over the property, applicants must provide alternative documentation and complete an Ownership Certification that includes the length of time the applicant has lived at the location, an explanation of the circumstances that prevent standard verification, and certifies that one of the following circumstances applies:

- There are no other parties who have the right to claim ownership;
- Any additional parties who have a right to claim ownership have also agreed to participate jointly as a co-applicant in the Program; or
- Any additional parties who have a right to claim ownership cannot be located (after reasonable contact attempts).

Ownership Certifications must be accompanied by alternative forms of ownership documentation that evidence the proprietary interest. Documents that will be considered as evidence of proprietary interest include, but are not limited to:

- Probated Will or Will accompanied with a Certificate of Validity;
- Proof of inheritance;
- Declaratory resolution of heirs;
- Court Order or Judgment granting an ownership interest in the property;
- Divorce Judgment granting an ownership interest in the property;
- Private Contract for Sale: If the applicant purchased the property in a private owner sale the contract must be confirmed as satisfied with additional supporting documentation;
- Evidence of a perpetuity usufruct, widow's estate, or usufruct arising from special laws;
- Evidence of 99-year lease;
- Proof that the applicant occupies the land with "right of use or enjoyment" and/or "right of construction" in accordance with applicable laws and regulations;
- Death certificate of the homeowner and birth certificate (to prove that applicant is an heir of a deceased homeowner);
- Marriage certificate;

- If the owner of the structure died after the intake process, the owner's heir(s) may meet ownership requirements if they can provide proof of heirship or a declaratory resolution of heirs and a death certificate for the deceased owner.<sup>18</sup>
- Mortgage payment book or other mortgage documents;
- Real property/Home insurance policy indicating property address;
- Property tax statements, receipts, or tax bill issued by the Municipal Revenue Collection Center (**CRIM**, for its Spanish acronym); and/or
- Other documents will be considered on a case-by-case basis.

**Applicants who complete an Ownership Certification to satisfy the ownership requirement will be referred to the Title Clearance Program as further described in these Guidelines.**

#### **8.4 Primary Residence**

At the time of the intake process the structure must be the applicant's primary residence. Primary residence is defined as the property that is occupied by the applicant for most of the calendar year. Second homes, vacation residences, and seasonal, long-term, short-term rental properties are not eligible for assistance.

**All applicants to the Program bear the burden of proof for providing consistent evidence to prove primary residency.** To the extent possible, PRDOH will validate primary residency through electronic verification utilizing locally or federally maintained registries, such as FEMA IA or SBA disaster home loan databases, and others.

Documentation used to verify primary residence includes, but is not limited to:

- Federal income tax return listing the property address;
- Puerto Rico income tax return listing the property address;
- FEMA IA award letter to verify property physical address;
- SBA Disaster Home Loan award letter to verify property address;
- Driver's license or state-issued ID card showing the property address, issued prior to the date of the intake process;
- Utility bills addressed to applicant at property address showing that services were provided before and/or during the intake process;
- Utility certification addressed to applicant at property address showing services were active during the intake process;
- Credit card bill or bank statement sent to the applicant at the property address during the intake process;

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<sup>18</sup> As mentioned, these are ways to meet ownership requirements. However, the heir/s must meet all eligibility criteria to qualify.

- Insurance documentation indicating primary residence, such as a homeowner's endorsement;
- Employer's statements, including pay stubs and similar employment documents (must be dated during the intake process time period);
- Homestead exemption verified through property tax records (if applicable)<sup>19</sup>; and
- Other documentation will be reviewed and considered on a case-by-case basis.

Documents provided to demonstrate primary residency should include the applicant or co-applicant's name, appropriate date demonstrating residence at the time of intake process, and property address. None of the forms of documentation listed above, by itself, necessarily proves primary residence. The Program will review and assess all available documentation together and determine primary residence based on the applicant's demonstration of consistency across the variety of documentation provided.

Special Circumstances related to Primary Residence and Ownership:

- Properties held in trust for the benefit of natural persons can be eligible for assistance if at least one of the occupants at the time of the intake process was a current beneficiary of the trust. If the property was not the primary residence for the current beneficiaries or trustee(s), the applicant(s) is(are) not eligible for assistance. The trustee's powers must include the ability to affect the property. If the trustee's powers do not include the ability to affect the property, all beneficiaries with an interest in the property must sign the closing documents along with the trustee.
- Applicants/homeowners who were in the United States military and deployed outside of Puerto Rico in the intake process may qualify for the Program.
- Applicants/homeowners who were temporarily in a nursing home, assisted living, or other medical facility in the intake process may qualify for the Program.
- Applicants/homeowners who were incarcerated and/or residing at a law enforcement facility in the intake process may qualify for the Program.
- In cases where the applicant passes away prior to signature of the grant agreement or notice to proceed, the applicant's heir/s may qualify for the Program if they were designated as co-applicant/s in the Program Application or as household member/s, and confirm the damaged property was and will continue to serve as their primary residence. On a case-by-case basis, the Program may conduct an eligibility review to corroborate that the applicant's heir/s meet the eligibility requirements, including but not limited to demonstrating proprietary interest in the property and confirming that no income verification is required to reflect the changes in household size and income.

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<sup>19</sup> See Act No. 195-2011, as amended, known as the Puerto Rico Homestead Exemption Act, 31 LPRÁ § 1858 *et seq.*

- In cases where the applicant passes away after the signature of the grant agreement, the applicant's heir/s may qualify for assistance if the above conditions are met; however, the signing of a new grant agreement will be required if the heirs are found eligible. Only heirs who originally appeared on the application may be substituted in lieu of the deceased applicant. Income calculation will be revised to reflect the change in household size and income (if applicable). Referral to the Title Clearance Program may be required to clear ownership issues related to heirship.

## 8.5 Income Verification and Household Size

All applicants must initially meet low- or moderate-income limits, which are adjusted for family size but may be served under the Urgent Need Mitigation (**UNM**) National Objective if their income status changes before the Program can provide the assistance, and the UNM criteria is satisfied. Total annual household gross income, for all household members, must not exceed 80% income limits, as defined by adjusted income limits for Puerto Rico. See HUD Modified Income Limits. These income limits apply to all municipalities in Puerto Rico and are amended annually.

### 8.5.1 Household Size

A household is defined as all persons occupying the same unit, regardless of familial status or relationship to one another. Household members include all persons, including minor children and adults, whose current primary residence is the property as per the previous section requirements.

### 8.5.2 Calculating Household Income

Household income shall be calculated based on the adjusted gross income as defined for purposes of reporting under Internal Revenue Service (**IRS**) Form 1040 series for individual Federal annual income tax purposes.<sup>20</sup> When determining the number of household members and annual household income,<sup>21</sup> the following should be taken into consideration:

- Minor children (or unborn children) are considered household members. Earned income of minor children is not considered as part of total annual household income.
- Minor children who are subject to shared custody agreements may be counted as household members if the minor child lives in the residence at least 50% of the time.

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<sup>20</sup> See <https://www.irs.gov/e-file-providers/definition-of-adjusted-gross-income>.

<sup>21</sup> Income determination and documentation required for CDBG programs, shall be based upon the provisions contained in [24 C.F.R. § 5.609](#).

- Temporarily absent family members are considered household members and their income is considered in calculation of household income, regardless of how much the temporarily absent family member contributes to the household.
- Paid, non-related, live-in aides, whether paid by the family or through a social service program, are not considered household members. Income of live-in aides is not considered in the calculation of household income. Related persons do not qualify as live-in aides.
- Permanently absent family members, such as a spouse who resides permanently in a nursing home, may be considered a household member, at the discretion of the head of household/program applicant. If the head of household opts to include a permanently absent family member in the household, the income of the permanently absent household member will be counted in the calculation of annual household income. If the head of household chooses not to include the permanently absent family member as part of the household, the income of the permanently absent family member will not be considered in the calculation of annual household income.

### 8.5.3 Income Verification Required Documentation

Applicants must provide income documentation for all household members aged eighteen (18) and older at the time of the Program intake process. Income types and associated documentation required for income verification may include, but are not limited to:

- Wages: Three (3) recent paystubs within the past **three (3) months**, W-2 Forms;
- Retirement/Social Security:
  - Three (3) Monthly Bank Statements (Social Security Benefits & Pension only),
  - Current Social Security Benefits letter (including benefits paid to minors),
  - Current Pension/Retirement Benefit letter (if applicable), or prior year 1099 form, and
  - Current Annuity Payment letter (if applicable), or prior year 1099 form;
- Self-Employment Income:
  - Most recent tax return (1040 or 1040A), W-2 Forms, and/or
  - Current year profit and loss statement;
- Rental Income: Current lease agreements;
- Unemployment Benefits: Current benefit letter with gross benefit amount;
- Court Ordered Alimony/Spousal Maintenance: Copy of court order documentation;
- Taxable Interest and Dividends (including amounts received by, or on behalf of minors);

- No Income: Adult household members who receive no income will be required to submit a Certification of No Income. These household members typically include those that are unemployed.

Documentation for other less common types of income will be assessed by the Program based on type of income reported.

#### 8.5.4 Preliminary Eligibility Determination

All applications will be thoroughly reviewed during the intake and eligibility process to ensure applicants qualify for the Program prior to receiving assistance. Eligibility determinations will be made based on documentation submitted by the applicant and will be verified by third-party sources, including federal databases. These decisions will be made based on applicable statutes, codes of federal regulation, state and local codes and ordinances, local guidelines, and Program Guidelines.

Applicants who are deemed eligible will be sent a Preliminary Eligibility Determination Notification. The correspondence will include a notice informing the applicant they qualify and a description of required next steps.

If at any point during the eligibility determination process or throughout any other phase of the Program process, it is found that the applicant is ineligible for the Program, the applicant will be notified via an Ineligibility Determination Notification. The ineligibility notice will notify the applicant of the reason for ineligibility and outline the process to challenge the decision by either a Program-based Reconsideration Request; an Administrative Review Request, and/or Judicial Revision. See the Program-based Reconsideration and/or Administrative Review section of these Guidelines.

### 8.6 Insurance Coverage

The Program will be supporting the repair/retrofit and reconstruction of homes outside of the 100-year floodplain. However, in accordance with Federal Register Vol. 84, No. 169 (August 30, 2019), 84 FR 45838, the Program may provide assistance for the repair/retrofit and/or reconstruction of a house located in a floodplain if: (a) The homeowner had flood insurance at the time of the disaster and has mitigation needs; or (b) the household earns less than the greater of 120% Area Median Income (**AMI**) or the national median and has mitigation needs. When any home being rehabilitated or reconstructed with federal disaster assistance is in a Special Flood Hazard Area (**SFHA**), also known as the 100-year floodplain, then flood insurance is required. See Flood Insurance section of these Guidelines and Flood Insurance Requirements of the Cross-Cutting Guidelines available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/cross-cutting-guidelines/> and <https://recuperacion.pr.gov/download/guias-intersectoriales/>.

### 8.6.1 National Flood Insurance Reform Act (NFIRA) Non-Compliance

Applicants found to be non-compliant with the requirements of the National Flood Insurance Reform Act are not eligible for Program assistance. An applicant is FEMA non-compliant if they failed to obtain and maintain flood insurance after receiving federal funding for a previously declared disaster. Eligibility is verified by reviewing FEMA (IA) eligibility codes in the federal dataset. Any records with ineligible code "NCOMP - non-compliant with Flood Insurance Requirement" or "NPND - NFIRA - Noncompliance", are FEMA non-compliant applicants and therefore ineligible for Program assistance. The entire FEMA IA dataset for 2017-2020 declared disasters will be reviewed for the applicable eligibility code to identify non-compliant households to ensure that no ineligible applicants are served.

## 9 Duplication of Benefits (DOB)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (**Stafford Act**), as amended, 42 U.S.C. §5121 *et seq.*, prohibits any person, business concern, or other entity from receiving Federal funds for any part of such loss as to which he/she has received financial assistance under any other program, from private insurance, charitable assistance, or any other source. As such, PRDOH must consider disaster recovery aid received by Program applicants from any other federal, state, local, or other source and determine if any assistance is duplicative.

The Program will review any duplication of benefits according to the CDBG-DR/MIT Duplication of Benefits Policy, which can be found in English and in Spanish at <https://recuperacion.pr.gov/en/download/duplication-of-benefits-policy/> and <https://recuperacion.pr.gov/download/politica-sobre-la-duplicacion-de-beneficios/>.

### 9.1 Excess Duplication of Benefits (DOB) Funding

Any assistance determined to be duplicative must be deducted from the Program's calculation of the applicant's total award prior to awarding assistance. The Program may reduce applicant awards through a reduced scope of work (award) for non-essential items, such as appliances that the applicant is able to fund on their own.

In some instances, there may be duplication of benefit more than the amount which may be reasonably deducted from the applicant's award via reduced scope of work. In these instances, the applicant is considered to have excess duplication of benefits. Applicants with excess DOB will be notified via a **Duplication of Benefits Analysis Results Notice**. Applicants must resolve the excess DOB within **thirty (30) days** after the document is sent by providing the Program with a cashier's check for the full amount of the excess DOB. Applicants who cannot resolve the excess DOB within those **thirty (30) days** will not be eligible for assistance under the Program.

As an exception, the SFM Program may allow applicants to self-certify past disaster-related expenses incurred after major declared disasters up to an amount of \$500 with the understanding receipts are often unavailable or misplaced after multiple disasters. These expenses are typically related to minor and immediate temporary improvements of the structure for its continued occupancy that are replaced at a later date as well as the purchasing of cleaning and sanitation supplies.

Applicants deemed ineligible for failure in resolving excess DOB will be notified by certified mail an Ineligibility Determination. The Ineligibility Determination notifies the applicant of the reason for ineligibility and outlines the process to challenge the decision. See the Program-based Reconsideration and/or Administrative Review section of the Guidelines.

## 10 Appraisals

An appraisal will be conducted, as needed, to determine the current market value of the property, and in some instances, may be used to determine the type of assistance. Appraisers must be duly licensed and qualified to conduct real estate property appraisals in Puerto Rico. See the **Program Award Types** section of these Guidelines.

## 11 Property Risk Assessments

Applicants whose structures have been deemed eligible for participation in the Program will undergo a Property Risk Assessment (**PRA**). The PRA will be performed by a Program Risk Assessors (**RA**) and Environmental Specialist (**ES**) with subject matter experience. Property Risk Assessment reports must be certified by a licensed engineer or architect in Puerto Rico.<sup>22</sup> The PRA consists of a site visit, an environmental desktop review, and results in a technical evaluation. The Report will conclude with a determination that identifies any potential hazards, risks, and other items of mitigation needs. Together, the activities establish an application's risk-based eligibility and the property's unmet mitigation needs to determine the Initial Project Intent.

### 11.1 Property Risk Assessment Site Visit

Program representatives will coordinate with the applicant the date and time for the Risk Assessor and Environmental Specialist to conduct the assessment of the property. During the property assessment, the applicant, co-applicant, or authorized representative, shall be present while the property is assessed.

The PRA Field Observation Report (**FOR**) will document the existing condition and identify risks of the property to further evidence the level of mitigation needed. The FOR will

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<sup>22</sup> Certifications shall comply with Act No. 173 of August 12, 1988, as amended, 20 LPRA § 711 *et seq.*, known as the "Board of Examiners of Engineers, Architects, Surveyors and Landscape Architects of Puerto Rico Act."

include an assessment of the infrastructure, site conditions, exterior and interior structural conditions, entailing items such as the ones listed below:

#### 11.1.1 Infrastructure and Site Conditions Assessment

The assessment of infrastructure and site conditions shall clearly identify any existing or potential risk conditions and safety hazards.

#### 11.1.2 Exterior Structural Conditions Assessment

The assessment of exterior structural conditions to be assessed shall clearly identify any existing or potential risk conditions and safety hazards.

#### 11.1.3 Interior Structural Conditions and Systems Assessment

The assessment of interior structural conditions shall clearly identify existing and any potential risk conditions and safety hazards.

### 11.2 Environmental Conditions Assessment

Consists of the assessment of environmental conditions and limiting factors. This includes but is not limited to:

- Proximity to bodies of water, irrigation channels, water intrusion, storm surge;
- Evidence and records of soil hazards, soil erosion and landslides;
- Potential for asbestos, lead-based, or other hazardous materials.

### 11.3 Compliance Information and Validation

During the PRA site visit, the Program requires the necessary personnel acquire, compile, and validate all information that may influence the scope of work or an Initial Project Intent, which may include:

- Completion of the Tier II Environmental Questionnaire while on-site with the applicant.
- Establishing the value of any work in place (**WIP**) performed by the applicant at their home after any qualifying disaster which may result in a reduction to the applicant's duplication of benefits determination.
- Providing and informing the applicant of the Program Reasonable Accommodation and Modification Request Form (**RA/RM**) according to Program policy;
- Capturing household information and data in accordance with the Uniform Relocation Assistance (**URA**) Guide & Residential Anti Displacement and Relocation Assistance Plan, *(if tenants reside in the property or if the property is not vacant)*.
- Capturing household information and data regarding potential AHUS or multiple Program applicants residing within a property. Applicants with such associations

should be identified as such in the PRDOH Grant Management System of Record and processed together for evaluation.

- Completion of any other surveys requested by the PRDOH while on-site with the applicant.
- Other relevant information that may affect the application.

#### **11.4 Environmental Desktop Review**

The environmental desktop review shall be conducted by a Program Environmental Specialist to identify limiting factors, risk(s) and mitigation needs. Based upon the GPS coordinates gathered in the PRA, the Program shall identify environmental considerations that may affect the Initial Project Intent determination that includes but is not limited to:

- Floodplain zone determination (FIRM, PFIRM, ABFE panels);
- Wetland determination;
- Coastal Zone determination;
- Toxic chemicals, gases, hazardous materials, contamination, and radioactive zone determination;
- Slope, erosion, and landslide risk determination;
- Year structure was built;
- Historic preservation determination including but not limited to historical zones/districts, historical properties or with potential of being a historical property;
- Preliminary elevation survey (if applicable).

#### **11.5 Property Risk Assessment Report & Initial Project Intent Determination**

Upon completion of the PRA site visit, field observation report, and the environmental desktop review a comprehensive technical evaluation report shall be completed. The PRA Report will conclude with a determination that identifies any potential risks mitigation needs and shall include quantifiable and verifiable information which at a minimum includes but is not limited to:

- Photographic evidence of the home's access, infrastructure, site conditions, and exterior and interior conditions. This includes but is not limited to photographs of the structure's front, back, sides and roof (when accessible). Additional photographs required to document the overall conditions as described above may be included;
- Documentation of any condition(s) identified during the PRA (engineering or otherwise) that may not allow the Program to effectively repair/retrofit the property, consequently triggering reconstruction or relocation;
- Documentation of any condition(s) identified during the PRA (engineering or otherwise) that may not allow the Program to effectively conduct a reconstruction and therefore may trigger a relocation;

- Estimated cost breakdown for repair/retrofit works which shall include all listed line items as well as total costs required for the structure. It shall remain consistent with Program eligible activities, applicable codes, specifications, requirements, and standards.
  - A detailed item-by-item cost estimate will include the damages identified. These estimates will be developed with standardized Program Unit Pricelist;
  - If applicable Identify and list any costs of work the applicant performed on their home after the disaster(s). The list should be itemized and should include any other sources of funds such as FEMA IA assistance, and insurance proceeds, to quantify the WIP for duplication of benefits;
  - The PRA Report and other documents will be certified by a Licensed Professional Engineer or Licensed Architect in Puerto Rico; and
  - Any other pertinent information documented or observed during the site assessment.

The risk assessment data will become part of the information used and analyzed to provide an Initial Project Intent (either repair/retrofit, reconstruction or relocation), as described in the corresponding sections of these Guidelines.

The cost estimate to conduct Program sponsored activities will be developed using an economy-grade standard of materials, noted as "Standard Grade". Therefore, it is possible that the Program's assessment of the value of repairs or reconstruction will differ from other assessments/estimate cost of work that an applicant may have, whether from SBA, NFIP, a private homebuilding contractor, or another third-party entity. The Program will rely solely on its cost estimate conducted by authorized Program representatives. The Program's pricelist is composed of Xactimate® pricing and additional line items of work that may be updated by the PRDOH from time to time.

The Program encourages a common understanding of how mitigation investments reduce risks to people, homes, neighborhoods, cultural and historic resources, ecosystems to better understand potential disaster risks. The disaster-inducing risk factors will vary upon likelihood of occurrence and degree of threat, depending on geography, population density, and the presence of socially vulnerable communities.

#### 11.5.1 Work in Place (WIP)

At the time of the PRA, it is sometimes discovered that homeowners have begun to repair or reconstruct their homes. If so, during the risk assessment, a work in place cost estimate is developed and documented by the Risk Assessor for use in the DOB analysis that compares all assistance (federal and non-federal) received for the same purpose as CDBG-MIT funds vs. WIP value and ensures accurate calculation of substantial

improvement percentage.<sup>23</sup> At this point in time the Program must formally advise to the applicant that these activities shall cease to a stop so as not to interfere with the Program evaluation and determination process.

The amount of WIP encountered may vary widely from minor home repairs (i.e., doors and windows replacements) to instances where applicants might have demolished large enough parts of the disaster-impacted home commencing Applicant Initiated Reconstruction (**AIR**) of a new home. Minor WIP that does not meet program standards may be replaced by the Program. Additionally, WIP will not be used to project value or capture the value of remaining work needed to complete the construction project. AIR is a subset of all work in place and is discussed in detail in the following sections.

#### 11.5.2 Applicant-Initiated Reconstruction

In some instances, it may be discovered that applicants might have demolished their damaged structure and started a reconstruction of their property prior to program intervention. Generally, AIR has been completed using one of the following two venues: informal construction or formal construction.

#### 11.5.3 Formal Construction

Formal construction is construction which meets the required permitting and inspection process per the governing construction agency. It can be clearly evidenced that the work performed meets federal, state, and local construction codes and requirements. Proper documentation may include but is not limited to a set of approved plans by the local permitting office, as well as a construction permit with all approved progress inspections for work performed.

The Program may complete construction of unfinished AIR that was performed using formal construction methods. Formally constructed AIR, with an estimated cost of completion less than \$60,000 may be completed in place. Formally constructed AIR homes with an estimated cost of completion greater than \$60,000 will be evaluated on a case-by-case basis for cost reasonableness, cost effectiveness, and construction feasibility. The Program may fund the completion of construction up to the reconstruction award cap (based on household composition), if the evaluation shows that completion of the AIR is cost-reasonable, cost-effective, and construction feasible. The Program may complete non-structural works and shall evaluate the existing construction permits, construction documents and designated inspector reports, and any other relevant information shall be evaluated, and which shall be included in the PRDOH Grant Management System of Record. A Program Architect of Record (**AOR**) shall design and specify the remaining AIR work (according to Program approved standards and

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<sup>23</sup> As outlined under the Duplication of Benefits section of these Guidelines, SBA loans (cancelled or undisbursed) personal Assets or Lines of Credit are not considered duplication of benefits.

materials), work shall be performed by a Program Construction Manager and inspected by a Program Designated Inspector (**DI**). The Program approved scope of work and construction documents shall be filed in the corresponding permitting agency(ies) and ensure that an Occupancy Permit will be obtained. If the AIR cannot be completed, the Program will follow its policies regarding reconstruction and relocation assistance.

#### 11.5.4 Informal Construction

Typically, informally constructed homes lack engineered construction plans approved by a local jurisdiction, applicable permits, or progress inspections and can be less secure than those built following established construction codes, and land use and zoning regulations.

AIR that was performed using informal construction methods will not be completed by the Program. Because informal construction of unpermitted homes lacks the documentation to ensure the work has been performed following the applicable federal, state, and local construction codes, the Program is unable to ensure a partially informally constructed home will comply with the requirements of CDBG-MIT funding under the Program or that the home will ultimately be safe to occupy. Additionally, the Program may be unable to obtain an Occupancy Permit, register the property and/or record restrictive conditions, if necessary.

For eligible applicants with informal AIR, the Program will follow its policies on reconstruction and relocation assistance.

## 12 Change in Circumstance and Exacerbated Damages

Long term recovery from disaster is a process and calculation of applicant damages are time contingent. As a result, a subsequent change in an applicant's circumstances can affect an applicant's needs. In some circumstances, damages resulting from recent disaster events may be exacerbated by circumstances beyond the applicant's control before Program assistance is completed. As per Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836, the Program may fund the exacerbated damaged property.<sup>24</sup> Examples of circumstances beyond the applicant's control include, but are not limited to subsequent disaster, vandalism, or fire.<sup>25</sup>

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<sup>24</sup> See 84 FR 28836 at <https://www.govinfo.gov/content/pkg/FR-2019-06-20/pdf/2019-13147.pdf>

<sup>25</sup> See section IV.E. *Reassess Unmet Need When Necessary* of the 84 FR 28836 [...].

A subsequent change in an applicant's circumstances can affect that applicant's remaining unmet need, meaning the need that was not met by CDBG-DR and other sources of assistance. Oftentimes, unmet need does not become apparent until after CDBG-DR assistance has been provided. Examples may include: A subsequent disaster that causes further damage to a partially rehabilitated home or business; an increase in the cost of construction materials; vandalism; contractor fraud; or theft of materials. Unmet need may also change if other

Prior to addressing exacerbated damage activities, the Program will analyze other assistance available to the applicant to ensure prevention of duplication of benefits, as described in the DOB section of these Guidelines.

### 13 Environmental Review

Environmental review is the process of reviewing a project's intent and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. Every project undertaken with Federal funds, and all activities associated with such project, are subject to the provisions of the National Environmental Policy Act of 1969 (**NEPA**), 43 U.S.C. § 1638, as well as the HUD environmental review regulations at 24 C.F.R. Part 58 on Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. Therefore, an environmental review process is required for all awards to be issued under the Program to ensure that the proposed activities do not negatively impact the surrounding environment and that the property itself will not have an adverse environmental or health effect on end users.

Specifically, 24 C.F.R. § 58.22, on limitations on activities pending clearance, prohibits the commitment or spending 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. A violation of this requirement may jeopardize Federal funding for the Program and disallow all costs that were incurred before completion of the environmental review.

Laws and regulations which contain environmental provisions with which the Program must comply with, include but are not limited to:

- Protection of Historic Properties (36 C.F.R. Part 800);
- Floodplain Management and Protection of Wetlands (24 C.F.R. Part 55, Executive Order 11988 and Executive Order 11990);
- Sections 307 (c) and (d) of the Coastal Zone Management Act of 1972 (**CZMA**), as amended, (16 U.S.C. § 1456);
- Sole Source Aquifers (40 C.F.R. Part 149);
- Interagency Cooperation - Endangered Species Act of 1973, as amended (50 C.F.R. Part 402);

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resources become available to pay for costs of the activity (such as FEMA or Army Corps), and reduce the need for CDBG-DR.

To the extent that an original disaster recovery need was not fully met or was exacerbated by factors beyond the control of the applicant, the grantee may provide additional CDBG-DR funds to meet the increased unmet need. Grantees must be able to identify and document additional unmet need, for example, by completing a professional inspection to verify the revised estimate of costs to rehabilitate or reconstruct damaged property.

[...].

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

All Program awards must have documentation that certifies they comply with NEPA and other environmental requirements. Therefore, all projects shall have an Environmental Review Record (**ERR**) as required by NEPA and related laws. The ERR for the projects shall set forth (a) the existence of negative impacts on a site, (b) the means to mitigate negative impacts, (c) alternatives to the project (if needed), and (d) the rejection of the proposed activities if all other options fail and it becomes the most prudent action to take. For more information on Environmental Review, please refer to the Cross-Cutting Guidelines available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/cross-cutting-guidelines/and> <https://recuperacion.pr.gov/download/guias-intersectoriales/> .

Environmental reviews for this Program will be conducted after an Initial Project Intent, and applicant acceptance of a Pre-Award Notice. Environmental reviews must be completed prior to determining Program assistance to be offered to an eligible applicant. On a case-by-case basis, additional costs may be included in the scope of work associated with repair/retrofit, reconstruction, or relocation award (e.g., costs associated with abatement of environmental hazards, special considerations for historic preservation, or other environmental considerations).

### 13.1 Level of Environmental Review

To conduct the appropriate level of environmental review the Program will need to determine the environmental classification of the project. The term “project” may be defined as an activity or group of activities geographically, functionally, or integrally

related, regardless of funding source, to be undertaken by the Program in whole or in part to accomplish a specific objective. The three (3) major environmental classifications for projects and their descriptions are as follows.

#### 13.1.1 Exempt Activities

These are activities which, by their nature, are highly unlikely to have any direct impact on the environment. Accordingly, the activities are not subject to most of the procedural requirements of environmental review. If a project is determined to be exempt, the Program must document in writing that the project is exempt and meets the conditions for exemption spelled in 24 C.F.R. § 58.34. In addition to making the written determination of exemption, the Program must also determine whether any of the requirements of 24 C.F.R. § 58.6 are applicable and address as appropriate.

#### 13.1.2 Categorically Excluded Activities

These are activities for which no Environmental Impact Statement or Environmental Assessment and finding of no significant impact under NEPA is required. These activities are divided into those that are and those that are not subject to related laws and authorities at 24 C.F.R. § 58.5.

Examples of categorically excluded activities not subject to related laws and authorities under 24 C.F.R. § 58.5 include: tenant based rental assistance; supportive services; operating costs; economic development activities; activities to assist homebuyers to purchase existing dwelling units or units under construction; and affordable housing predevelopment costs with no physical impact. To complete environmental requirements for categorically excluded activities not subject to 24 C.F.R. § 58.5, the Program must make a finding of categorical exclusion and include such finding in the Environmental Review Record. When these kinds of activities are undertaken, it is not required to issue a public notice or to submit a request for release of funds. In any case, environmental compliance is required for the items listed in 24 C.F.R. § 58.6.

Examples of categorically excluded activities subject to related laws and authorities under 24 C.F.R. § 58.5 include: acquisition, repair, improvement, reconstruction, or repair of public facilities; special projects directed toward the removal of material and architectural barriers; and repair of buildings and improvements for residential units and non-residential buildings. The Environmental Review Record for these activities must contain a written determination of the finding of a categorical excluded activity subject to 24 C.F.R. § 58.5 including a description of the project, a citation of the application subsection of 24 C.F.R. § 58.35(a), and written documentation as to whether there were any circumstances which required compliance with 24 C.F.R. § 58.5 and § 58.6.

The documentation must support its determinations related to compliance including correspondence with applicable agencies having jurisdiction. Upon completion there should be one of three (3) environmental findings: (1) the project converts to Exempt (i.e.

24 C.F.R. § 58.34(a)(12)); (2) the project invokes compliance with one or more of the laws and/or authorities and, therefore, requires public notification and approval from HUD; or (3) the unusual circumstances of the project result in a significant environmental impact and, therefore, compliance with NEPA is required. If upon completion it is determined that compliance is required for one or more of the Federal laws and authorities listed in 24 C.F.R. § 58.5, then a public notification known as Notice of Intent to Request Release of Funds must be posted. After a **seven (7) day** comment period, a Request for Release of Funds and Environmental Certification must be prepared. The Environmental Certification certifies the compliance with all environmental review requirements.

### 13.2 Activities Requiring an Environmental Assessment

These are activities which are neither exempt nor categorically excluded and, therefore, will require an Environmental Assessment documenting compliance with NEPA, HUD, and with the environmental requirements of other applicable federal laws. Once the Environmental Review has been completed and any comments addressed appropriately, the project may be found to not constitute an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an Environmental Impact Statement; or the project constitutes an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an Environmental Impact Statement. For this Program, any action that would require an Environmental Impact Statement is highly unlikely.

If it is determined that the action does not significantly affect the quality of the environment, then the Program will post a public notice called a Combined/Concurrent Notice of Finding of No Significant Impact (**FONSI**) and Notice of Intent to Request Release of Funds (**NOI/RROF**). The NOI/RROF Environmental Certification must be submitted to HUD no sooner than **fifteen (15) days** after publishing the combined/concurrent notice NOI/RROF and FONSI and HUD will hold the Release of Funds for a **fifteen (15) day** period to allow for public comment on the RROF. If no comments are received during this time, HUD will send a signed Authorization to Use Grant Funds (**AUGF**) and the project may proceed.

### 13.3 Floodplain Management

The Program will use the most current, approved version of FEMA's Flood Insurance Rate Map (**FIRM**) or Preliminary Flood Insurance Rate Map (**PFIRM**) to identify whether a property is located within or outside of the 100-year floodplain, which as defined by FEMA includes areas that have a 1% annual chance of flooding any given year. Following large storm events such as Hurricanes Irma and María FEMA reassesses FIRM/PFIRM maps by implementing local topographical data that likely altered as a result of the large storm event. These alterations are referred to as advisories and their implementation ensures that the latest flood hazards are correctly depicted within the region. Shortly after Hurricane Maria, the FIRM/PFIRM updated the Advisory Base Flood Elevations (**ABFE**)

which was then adopted by Oficina de Gerencia de Permisos, (**OGPe**) and the Puerto Rico Planning Board. While FEMA ABFE maps have more stringent parameters for floodplain determination, they are not used for flood insurance rates, as NFIP still determines those. When FEMA provides ABFE maps or PFIRMs and studies, HUD or the responsible entity must use the latest of these sources unless the ABFE or PFIRM allow a lower Base Flood Elevation (**BFE**) than the current FIRM and FIS.

Applicants whose homes are located in or outside of a floodplain may qualify for repair/retrofit, reconstruction or relocation. However, in accordance with 84 FR 45838, 45867, the Program may only provide assistance for the repair or reconstruction of a house located in a floodplain if: (a) The homeowner had flood insurance at the time of the disaster and has mitigation needs; or (b) the household earns less than the greater of 120% AMI or the national median and has mitigation needs. Floodplain designation will be determined by the site-specific environmental review.

Homes located in a floodplain which qualify for repair/retrofit that is considered a substantial improvement, as defined in 24 C.F.R. § 55.2, will not be rehabilitated in place. Rather, eligible applicants with homes in a floodplain that require substantial improvement repair/retrofit will be offered Program assistance to relocate to a property outside the floodplain or an elevated reconstruction.<sup>26</sup>

Substantial improvement is defined as either:

- a) Any repair, reconstruction, modernization or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either: 1) Before the improvement or repair is started; or 2) If the structure has been damaged, and is being restored, before the damage occurred<sup>27</sup>; or
- b) Any repair, reconstruction, modernization, or improvement of a structure that results in an increase of more than 20% in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.
  - i. Substantial improvement may not be defined to include either:
    - a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions, or

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<sup>26</sup> Elevated Reconstruction: for determining the feasibility of elevated reconstruction, refer to Section of Elevated Reconstruction Award Option.

<sup>27</sup> Current assessed value is used due to the limited availability of island-wide data for pre-disaster values.

- b. Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.

Structural repairs, reconstruction, or improvements not meeting the definition of substantial improvement are considered “minor improvements”.

### **13.4 Tiered Environmental Review**

To streamline the environmental review process and prevent duplication of efforts, the Program will use a tiered approach for environmental compliance. A tiered approach is appropriate when a specific type of activity that will take place in several locations will serve the same function and have the same level of environmental impact regardless of the location where it is to be implemented. The tiered approach has two (2) parts: the broad environmental review that focuses on a targeted geographic area (Tier 1), and the unspecified site review (the exact physical location of the project not presently known) (Tier 2).

The Tier 1 review will address and analyze the environmental impacts related to the proposed action that might occur on a typical site within the geographic area (e.g., floodplain, coastal zone, wetlands, aboveground storage tanks, etc.). The Tier 2 review will identify those environmental impacts that will vary by site and may only be observed when specific project locations are known (e.g., historic preservation, hazardous materials, noise abatement, asbestos removal, etc.).

The components of the Tier 1 review will include all the following:

- A clear statement of all the related activities and funding sources;
- Identification of the targeted geographic area;
- Identification and evaluation of the environmental factors and effects that can be decided upon immediately;
- Publishing and dissemination notice for entire action;
- Submission of a Request for Release of Funds and Certification for the entire action;
- HUD approval of the Tier 1 Review; and
- Documentation of compliance with “Other Requirements” set forth at 24 C.F.R. § 58.6.

The Tier 2 review will include specific written strategies for addressing the environmental effects that can only be determined when specific sites become known (i.e., site acceptability criteria and standards-including mitigation measures, historic preservation, archeological preservation, airport clear zones, explosive and flammable operations, toxic/hazardous/radioactive materials, contamination, chemicals, or gases).

Tier 2 reviews will not require notices or approval from HUD, unless it is determined that there are unanticipated impacts or impacts not adequately addressed in the prior tiered

review. There must be written documentation of compliance before funds are committed to specific sites. If any project deviates from the tiered review -and the approved site-specific compliance strategies- then separate environmental reviews must be prepared for those projects.

Tiered reviews for the Program will be valid for up to **five (5) years** unless conditions or circumstances change. To be certain that conditions or circumstances have not changed, the Program will assess the tiered Environmental Review, at least once a year, to ensure the scope of the target area has not changed, the list of activities evaluated for environmental impacts has not changed, and the information contained in the tiered environmental review is still current and relevant to the environmental findings that were made.

#### 13.4.1 Lead Hazard Assessments

Lead is a highly toxic metal that may cause a range of health problems, especially in young children. When lead is absorbed into the body, it can cause damage to the brain and other vital organs, such as the kidneys, nerves, and blood. Both inside and outside the home, deteriorated lead-paint mixes with household dust and soil and becomes introduced to the home. Children may become lead poisoned by touching or putting lead-contaminated objects in their mouths, eating paint chips found in homes with peeling or flaking lead-based paint, or playing in lead-contaminated soil.

Most of the lead found in homes comes from lead-based paint, which was used in homes built before 1978. When old paint cracks and chips, it creates lead dust. Often, the dust is so small that it cannot even be seen. Lead poisoning is most often caused by swallowing or breathing in lead dust by accident. Lead can also be found in other places within a home. Sometimes lead can be found in water that travels through lead pipes or in soil.

Whenever federal funds, such as CDBG-MIT funds, are used to assist housing built before 1978, steps must be taken to address lead hazards. A lead-based paint hazard is any condition that causes exposure to lead from dust-related hazards, soil-lead hazards, or lead-based paint that is deteriorated, or present in chewable surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects. The Program will comply with provisions for lead reduction found at 24 C.F.R. Part 35- Lead-Based Paint Poisoning Prevention in Certain Residential Structures.

Lead hazard assessments are on-site investigations to determine the existence, nature, severity, and location of lead-based paint hazards accompanied by a report explaining the results and options for reducing lead-based paint hazards, see 40 C.F.R. § 745.227(d)(11) for report guidelines. All lead hazard assessments for the Program will be performed by Risk Assessors or Lead-Based Paint Inspectors certified by the U.S.

Environmental Protection Agency (**EPA**) or the Department of Natural and Environmental Resources (**DRNA**, for its Spanish acronym).

Lead hazard assessments for the Program will cover:

- Identification of the existence, nature, severity, and location of lead-based paint hazards, including soil and dust hazards as well as paint (or documentation that no such hazards have been identified); and
- Description of the options for controlling lead hazards in the event that hazards are found, including interim controls and abatement measures.

The lead hazard assessment process for the Program will begin with the collection of information about the property from the owner using HUD-approved forms. The Risk Assessor or Lead-Based Paint Inspector will use this information to make decisions about the location of the environmental testing within the dwelling of the property.

The lead hazard assessment will entail:

- A visual assessment of the selected dwelling units and common areas; and
- Environmental testing, which includes testing of deteriorated paint and (if needed) other painted surfaces and collection of dust and soil samples.

The Program will pursue the testing of paint with X-ray fluorescence (**XRF**) analyzers but sometimes the collection of paint chip samples may be required. Environmental samples will be sent to a certified laboratory for analysis of lead in paint, dust, or soil, as applicable.

When the lab results or XRF measurements are received, the Risk Assessor or Lead-Based Paint Inspector will review and analyze the data, including visual assessment results, environmental sampling results, among others. The Risk Assessor will then draft the report identifying lead-based paint hazards and acceptable lead hazard reduction options. Lead hazard reduction options must include abatement of all identified lead hazards.

#### 13.4.2 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. In general, 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 risks 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 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 repair/retrofit or reconstruction 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 the EPA or the DRNA. 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 should be made to collect 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/retrofit 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.

## 14 Program Award Types

Eligible applicants' properties will undergo the Program's PRA to determine the most appropriate award type. This determination is based on the following factors:

- Location of property and level of geographical risk;
- Current property conditions;
- Required mitigation measures for the structure; and
- Current value of the damaged structure (if applicable).

Floodplain determinations will be made based on the flood zone designation of the project site. For floodplain determination purposes, the structure or construction area shall be used for this evaluation. Typically, the construction area refers to the structure or structural footprint (if the structure was destroyed) located at the property.

## 14.1 Repair and Retrofit

To promote resilient housing, the Program will provide assistance for structural repairs and retrofitting, or “hardening” to withstand future disasters. Repair alone is not eligible under the SFM Program. The scope of work shall depict the necessary repair/retrofit measures which may include but are not limited to the following activities:

1. **Floodproofing:** this can include property elevation where feasible, the use of concrete in place of wood or other flood-vulnerable structural materials, and mold resistant materials.
2. **Wind Proofing:** this can include the use of materials and structural design elements for wind-resistance as per current and applicable codes.
3. **Earthquake Retrofit:** this can include reinforced foundations, floors, walls, and roof systems structurally designed and built to withstand lateral and vertical forces present in an earthquake event as per current and applicable codes.
4. **Landslide Control:** this can include reinforced foundations and site level geotechnical engineering.

Retrofit or “hardening” activities will be performed to strengthen or improve the existing condition of an eligible property. The activities include but are not limited to the structure and/or its structural components which may require engineering analysis, design, and work to increase the resistance to live, dead, and lateral loads. Lateral load refers to a horizontal force acting on a structure, such as wind acting against the front of a house or a building. Live loads refer to movable loads. Live loads are produced by the use and occupancy of the structure (e.g., furniture). Finally, dead loads are permanent or stationary loads. A dead load consists of the sum of the weight of construction materials incorporated into the structure.<sup>28</sup>

The main objective is to reduce or eliminate the loss of life, injury, future damage, and loss of property according to the governing codes.<sup>29</sup> Technical unfeasible situations may arise where not all repair/retrofit activities may be carried out, depending on the severity of the conditions of the property. The Program will evaluate the existing level of deterioration of the property to determine if the repair/retrofit activities comply with construction codes and design requirements.

Homes not located in the floodplain with an estimated cost of repair of less than \$60,000, will be repaired/retrofitted in place. Homes located in the floodplain with an estimated cost of repair less than \$60,000 or 50% of the current assessed value of the home,

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<sup>28</sup> American Society of Civil Engineers. *Minimum Design Loads for Buildings and Other Structures*. [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/california\\_waterfix/exhibits/docs/dd\\_jar\\_dins/DDJ-148%20ASCE%207-10.pdf](https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/exhibits/docs/dd_jar_dins/DDJ-148%20ASCE%207-10.pdf)

<sup>29</sup> The International Code Council (ICC), current International Existing Building Code (IEBC) and other ICC codes may apply for the repair, rehabilitation, retrofit or alteration of buildings and structures. Refer to the IEBC published in the ICC website <https://codes.iccsafe.org/content/IEBC2021P1>

whichever is less, will also qualify to be repaired/retrofitted in place. Estimated cost of repair will be determined through a Property Risk Assessment.

Any obsolete products replaced as part of the repairs must be replaced with ENERGY STAR®, Water Sense, or other Federal Energy Management Program (**FEMP**)-designated products or appliances, as per 84 FR 45838. Homes that cannot be repaired/retrofitted under existing Program caps, due to legal, engineering, or environmental constraints (permitting, extraordinary site conditions, etc.) will be considered not feasible. Eligible applicants with homes deemed not feasible for repair/retrofit will be offered reconstruction or relocation assistance.

## 14.2 Reconstruction Award

Homes not located in high-risk areas may be eligible for a reconstruction award if the estimated cost of repair is greater than or equal to \$60,000, as confirmed through either the PRA or a technical evaluation. Additionally, the Program may provide applicants who qualify for a reconstruction award the option to forgo the reconstruction and receive instead a relocation award.

Homes that may not be reconstructed in place due to legal, environmental, engineering, or other constraints (permitting, extraordinary site conditions, site slope, soil instability, soil erosion, restrictive flood zone, inaccessible sites, limited size of lot area, limitation of service infrastructure, potential adverse effects, historic preservation requirements, etc.) will not be reconstructed and the homeowner will be provided with a relocation option.

Reconstruction will meet standards set forth by the International Building Code adopted by Puerto Rico and will incorporate Green Building Standard features and resilience measures to the extent possible. Homes reconstructed by the Program will comply with requirements of an industry recognized Green Building Standard<sup>30</sup> or the Green Permit (known locally as “Permiso Verde”)<sup>31</sup> issued by OGPe, as approved by HUD. See Green Building Standards section of these Guidelines.

## 14.3 Elevated Reconstruction Award Option

If a preliminary evaluation deems it reasonable to provide an elevated reconstruction within a floodplain<sup>32</sup>, the applicant may be granted either a relocation or elevated reconstruction pre-award.

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<sup>30</sup> 83 FR 5861 defines Green Building Standard as construction which meets an industry-recognized standard that has achieved certification under one of the following programs: (i) ENERGY STAR®, (ii) Enterprise Green Communities, (iii) LEED, (iv) ICC-700 National Green Building Standard, (v) EPA Indoor AirPlus, or (vi) any other equivalent comprehensive green building program acceptable by HUD.

<sup>31</sup> HUD accepted “Permiso Verde” as an equivalent comprehensive green building program on January 31, 2019.

<sup>32</sup> As required in 84 FR 45838, 45864, PRDOH will apply elevation standards for single family housing structures located in the Advisory 100-year (or one percent (1%) annual chance) floodplain to require that homes elevated, or reconstructed and elevated, raise the lowest floor (including the basement) to at least two (2) feet above the BFE.

Homes located in the 100-year floodplain may be eligible for elevated reconstruction when: 1) the estimated cost of repair is more than \$60,000 or 50% of the current assessed value of the home, whichever is less, 2) a relocation award has been declined by the applicant, and 3) the model home will require less than five (5) feet of elevation construction measures, in which case elevated reconstruction is deemed reasonable.<sup>33</sup>

If after meeting the above criteria, the applicant wishes to pursue elevated reconstruction, they must be aware that the pre-award will be subject to further feasibility analysis, which at a minimum may consider the following:

- Whether the elevated design in the event of a disaster, leaves the homeowner vulnerable due to inadequate space to design sufficient evacuation routes, thereby not removing a homeowner from harm's way;
- Whether the property has adequate space for a stair and/or ramp access;
- Whether the cost of elevating the home is equal to or below \$75,000;
- Whether or not raising the home transfers flood risk to neighboring households or holds negative environmental impacts for the surrounding area, (this may include site analysis such as a Hydrologic and Hydraulic Study).

If elevation is determined to be infeasible, the property owner will be provided the alternative option of relocation. **Homes located in the floodway will not be eligible for elevation.**

#### 14.4 Relocation Award

Homes located in the 100-year floodplain, floodway, or high-risk areas (as identified during the PRA) with an estimated cost of repair greater than \$60,000 or 50% of the current assessed value of the home, whichever is less, will qualify for relocation.

In these instances, as a condition of remaining in the Program, eligible homeowners will be offered relocation to a suitable home outside the floodplain or high-risk area using Program assistance. In addition, the Program may offer applicants, whose properties estimated cost of repair is more than \$60,000, the option of accepting a relocation voucher instead of a reconstruction pre-award.

If the property does not have any mortgage liens, the Program will acquire the original property and provide the applicant a credit equal to the appraised value.<sup>34</sup> In that scenario, the principal balance of the grant agreement will be reduced by an amount equal to the credit given for acquisition of the property.

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<sup>33</sup> These 5 feet includes the 2 feet elevation requirement as depicted in 84 FR 45838, 45864 Section V.B.1.d. The total elevation requirement is indicative of a reasonable elevation.

<sup>34</sup> Current assessed value is used due to the limited availability of island-wide data for pre-disaster values.

If the property has any mortgage liens whose amount **do not exceed** its post-disaster appraised value, the Program may resolve the outstanding mortgage without affecting the funds that will be available through the relocation voucher. The amount paid for such outstanding mortgage liens will not be credited to the principal balance of the grant agreement.

In the case that an applicant has a mortgage lien on the property with an outstanding balance **in excess** of the property's appraised value, the Program may authorize the payment of said excess amount with the funds awarded for the relocation voucher. To offset these costs, PRDOH will make a reduction to the relocation voucher equivalent to the amount paid for the mortgage lien **in excess** of the property's appraised value. No amount will be credited to the principal balance of the grant agreement. PRDOH may also choose to allow applicants to contribute with other funding sources to offset the reduction in the relocation voucher's value.

**The options for applicants with properties with outstanding mortgage liens will only be available for those applicants who are eligible for relocation because their properties are located in the 100-year floodplain or high-risk areas (as identified during the PRA and/or Environmental Review).**

The Program will hold real estate closings with the applicant that may consist of: 1) title transfer of the damaged property to PRDOH; and 2) purchase of the replacement property that the applicant will be relocated in. The real estate closings may occur at different times. The Program will provide the seller of the new property with the full sale price and the buyer/applicant will sign a deferred forgivable lien with PRDOH equal to the sale price plus any funds provided for purposes of resolving an outstanding mortgage debt, minus the property's appraised value after the disasters (s), if applicable. To appropriately address Puerto Rico's lack of available housing, the maximum funding amount for the replacement property provided by the Program will be \$200,000. The Program will not limit purchase prices for replacement properties. Any additional funds required for the property's acquisition could be secured by the applicant from other eligible funding sources, including a mortgage.

The Program will only provide assistance for the acquisition of vacant or owner-occupied units. Any replacement property selected must be occupied only by the owner or members of the owner's household at the time the property owner or their agent is first contacted by the applicant or their agent. The property cannot be occupied by any persons other than the owner or the owner's household members. Properties which do not meet this requirement are not eligible to be acquired with Program assistance.

The deferred forgivable lien will require the applicant to own the replacement home and use the home as their primary residence for an affordability period of **five (5) years**. Applicants may be required to certify their compliance with this requirement on an

annual basis during the **five (5) years** of their compliance period. If a homeowner moves or sells the home within the **five (5) years** of the compliance period, the amount of benefit that must be repaid will be determined by the straight-line, linear amortization schedule. See Ownership and Occupancy Period Requirements section of these Guidelines.

The nature of the acquisition activity (acquisition or buyout) will depend on the end use and shall comply with HUD Federal Register Notice(s) and applicable waiver(s).

A future relocation option may be implemented to construct new housing developments by the PRDOH. The directive may engage private sector market research and investment to create viable housing options that serve the Program applicants' unmet needs. In some instances, a group of SFM Program applications may be directed to the CDBG-MIT Multi-Sector Community Mitigation Program. See the PRDOH-Owned Properties and Residential Developments section of these Guidelines.

#### **14.5 Minimum Standards for Replacement Properties**

One of the Program's purposes is to provide safe, decent, and sanitary dwellings. All relocation replacement properties must comply with these standards. Safe, decent, and sanitary dwellings include but are not limited to those that, in accordance with 25 C.F.R. § 700.55, are:

- Structurally sound, clean, weathertight, in good repair, and have adequate living space and number of rooms;
- Have a habitable sleeping area that is adequately ventilated and sufficient to accommodate the occupants; and
- Have a separate well-lighted and ventilated bathroom, affording privacy to the user, that contains a sink and bathtub or shower stall, adequately connected to hot and cold water, and a flush toilet, all in good working order and properly connected to a sewage drainage system.

The Program has the right to determine whether the property is ineligible on a case-by-case basis if it does not meet these minimum standards, as demonstrated through the property inspection, appraisal report, or initial review. The ineligible replacement property may not be acquired through the Program even if the Applicant is willing or has signed a waiver regarding the safe, decent, and sanitary minimum standards.

### **15 Attached Housing Unit Structures**

An attached housing unit is defined as a house, an apartment, a group of rooms, or a single room which includes a kitchen and bathroom area and is occupied or intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants do not live and eat with other persons in the structure, and which have direct

access from the outside of the building or through a common hall.<sup>35</sup> A single unit, detached structure is a residential building consisting of one (1) housing unit.

Eligible applicants may live in structures considered single unit, detached structures, or may occupy an individual housing unit within an AHUS. An AHUS is a residential building containing two (2) or more housing units. In those cases where more than one (1) applicant or neighbors in an AHUS are identified, shall be recorded in the PRDOH Grant Management System of Record and the Program shall evaluate AHUS concurrently, as they may have an impact and/or affect the other.

The Program will rely upon its risk assessors, appraisers, designers, architects, engineers, and special inspectors to apply their professional judgment in determining the total number of units located on a property.

Assistance may be provided to the housing unit occupied as primary residence by the eligible applicant. Because the Program only provides assistance for primary residences, the Program will not conduct work or otherwise assist a housing unit within an AHUS that was not occupied as a primary residence by the Program applicant. As an exception, work may be conducted in the components that are critical to the function, integrity, and safety of the applicants' primary residence.

In those cases where more than one applicant in an AHUS is identified, they shall be recorded in the PRDOH Grant Management System of Record and the Program shall evaluate these concurrently, as these may have an impact and/or affect the other.

### **15.1 Award Considerations for Attached Housing Unit Structures**

Award type for a housing unit in an AHUS is determined based on whether the housing unit is located within a designated floodplain or high-risk area, as well as its level of damage, and whether all housing units in the AHUS are owned by a single or multiple ownership entity.

Certain components of an AHUS are critical to the function, integrity, and safety of more than one unit in the property (e.g., columns, beams, load bearing walls, roofs, floors, stairs, etc.). To assist a housing unit within an AHUS, the Program may be required to perform improvements to the shared structural and/or critical components (**SSCCs**), which do not reside solely or at all within the applicant's primary residence. There might be situations when, to provide a safe, sanitary, and secure dwelling, the Program needs to impact other housing units within an AHUS. Since these SSCCs are critical to the function, integrity, and safety of the applicant-owned primary residence, there might be no other way of ensuring overall function, integrity, and safety if the conditions of the SSCCs are not considered and addressed appropriately.

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<sup>35</sup> Based on a "housing unit" as defined by the US Census Bureau: <https://www.census.gov/housing/hvs/definitions.pdf>

For purposes of determining the award, SSCCs are considered an extraordinary site condition and an exception to the construction/hard costs of the applicable Program Caps. For SSCCs to be eligible for repair/retrofit by the Program, the SSCC must be critical to the function, integrity, and safety of the applicant’s primary residence. SSCCs may include, but are not limited to:

- + Structural components (roof, floor slab, columns, beams, party walls, etc.)
- + Electrical wiring
- + Plumbing (i.e., potable, or sanitary systems)
- + Access to entrance of unit (stairs and/or access ramp)

As a site condition, the maximum award to address SSCCs is determined on a case-by-case basis to account for the diverse scenarios the Program is expected to encounter.

Scenarios for award of eligible applicants with a housing unit in an AHUS are shown in **Table 1: AHUS Award Scenarios**

Scenario	Repair/Retrofit Award	Reconstruction Award	Relocation Award
<b>Single Ownership entity of the AHUS; located <u>Outside</u> the Floodplain (SO/OF)</b>	<ul style="list-style-type: none"> <li>▪ \$60k repair/retrofit cap + SSCCs cost on a case-by-case basis.</li> <li>▪ Tenants will be offered relocation assistance under URA, as applicable.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Reconstructed unit size based on applicant’s household size.</li> <li>▪ Tenants will be offered relocation assistance under URA, as applicable.</li> </ul>	<ul style="list-style-type: none"> <li>▪ May be allowed for unfeasible site conditions on a case-by-case basis.</li> </ul>
<b>Single Ownership entity of the AHUS; located <u>Within</u> the Floodplain (SO/WF)</b>	<ul style="list-style-type: none"> <li>▪ \$60k repair/retrofit cap + SSCCs cost on a case- by-case basis when *Substantial Improvement (SI) calculation is below 50%.</li> <li>▪ Tenants will be offered relocation assistance under URA, as applicable.</li> </ul>	<ul style="list-style-type: none"> <li>▪ When deemed reasonable, elevated reconstructed unit size based on applicant’s household size.</li> <li>▪ Tenants will be offered relocation assistance under URA, as applicable.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Entire structure will be demolished.</li> <li>▪ Tenants will be offered relocation assistance under URA, as applicable.</li> </ul>

<p><b>Multiple Ownership entity; located <u>Outside the Floodplain</u> (MO/OF)</b></p>	<ul style="list-style-type: none"> <li>▪ \$60k repair/retrofit cap + SSCCs cost on a case-by-case basis.</li> <li>▪ All owners must authorize work and access to properties, as required.</li> <li>▪ Tenants will be offered relocation assistance under URA, as applicable.</li> </ul>	<ul style="list-style-type: none"> <li>▪ When all owners applied and are eligible on the Program (MO/OF).</li> <li>▪ When reconstruction within the same property is feasible.</li> </ul>	<ul style="list-style-type: none"> <li>▪ May be allowed for unfeasible site conditions on a case-by-case basis.</li> </ul>
<p><b>Multiple Ownership entity; located <u>Within the Floodplain</u> (MO/WF)</b></p>	<ul style="list-style-type: none"> <li>▪ \$60k repair/retrofit cap + SSCCs cost on a case-by-case basis when *Substantial Improvement (SI) calculation is below 50% for MO/WF.</li> <li>▪ All owners must authorize work and access to properties, as required.</li> <li>▪ Tenants will be offered relocation assistance under URA, as applicable.</li> </ul>	<ul style="list-style-type: none"> <li>▪ When all owners applied and are eligible on the Program (MO/OF).</li> <li>▪ When elevated reconstruction within the same property is reasonable.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Evaluated on a case-by-case basis.</li> </ul>

URA provisions apply to all assisted AHUS. Any tenants of a housing unit within an AHUS owned by an eligible Program applicant may qualify for relocation assistance under the provisions of URA, as applicable.<sup>36</sup>

For specific information related to the unique award types described in the following section, please review the Awards and Requirements Section contained herein.

### **15.2 AHUS Single Owner & Outside the Floodplain with (SO/OF)**

Housing units in an AHUS owned by a single ownership located outside the 100-year floodplain may qualify for a repair/retrofit or reconstruction award. **Only the housing unit occupied by the eligible applicant as a primary residence may be assisted.** Relocation

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<sup>36</sup> Refer to the URA and ADP Guide available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/download/guias-ura-adp/> and <https://recuperacion.pr.gov/download/guias-ura-adp/>.

awards may be considered on a case-by-case basis. Any tenants residing in the AHUS may be eligible for URA assistance, as applicable<sup>3738</sup>.

#### 15.2.1 Repair/Retrofit Award

A housing unit within an AHUS with an estimated cost of repair less than \$60,000 may be repaired/retrofitted in place. Estimated cost of repair will be determined through a PRA. The applicant must be the owner of the eligible housing unit within the AHUS and may need to obtain authorization from any other occupants in the AHUS for access to accommodate construction activities that might be required for SSCCs.

#### 15.2.2 Reconstruction Award

A housing unit within an AHUS with an estimated cost of repair greater than \$60,000, may qualify for a reconstruction award. The current AHUS will be demolished in its entirety, and a new replacement home will be constructed in place using the sizes described in the Reconstruction and Relocation Unit Size and Exceptions section contained herein to determine the size of the reconstructed home. The applicant-occupied housing unit's household will be used to determine the unit size to be built in its place.

#### 15.2.3 Relocation Award

Relocation awards may be considered for eligible applicants with a housing unit in an AHUS outside the floodplain if site conditions or other extenuating circumstances make repair/retrofit or reconstruction in place unfeasible. The Program will review these cases on a case-by-case basis.

### 15.3 AHUS Single Owner & Within the Floodplain (SO/WF)

An AHUS owned by a single ownership located within the 100-year floodplain may qualify for a repair/retrofit, relocation, or elevated construction award. Eligible applicants residing in an eligible housing unit in an AHUS within the 100-year floodplain or other high-risk areas, that are substantially damaged; require substantial improvement; or the site conditions may pose a risk to the safety of the household, may be offered the option of a relocation or elevated reconstruction award (as per the corresponding section of this Program Guidelines).

#### 15.3.1 Repair/Retrofit Award

A housing unit within an AHUS within the 100-year floodplain with an estimated cost of repair less than \$60,000 or 50% of the current assessed value of the housing unit, whichever is less, will be repaired/retrofitted in place. Estimated cost of repair/retrofit will

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<sup>37</sup> Circumstances where a household size or composition are expected to change during the time of program-sponsored construction may be considered for unit-size based on anticipated circumstances at the time of construction completion. Circumstance changes may include but are not limited to: minor children reaching adult age, birth, adoption, or other gained custody of a child, impending divorce or separation. For example, if a household expects birth or adoption of a child, the child may be considered as part of the household, even if he/she is not born at the time of the pre-award determination.

be determined through a PRA or technical evaluation. Applicant must be the owner of the eligible housing unit within the AHUS and may need to obtain authorization from any other occupants in the AHUS for access and construction activities that might be required for SSCCs.

### 15.3.2 Relocation Award

A housing unit within an AHUS within the 100-year floodplain with an estimated cost of repair greater than \$60,000 or 50% of the current assessed value of the unit, whichever is less, will be offered a relocation award with the option for elevated reconstruction when deemed reasonable. The applicant-occupied housing unit's household will be used to determine the minimum unit size required place using the Reconstruction and Relocation Unit Size and Exceptions section contained herein. The existing AHUS will be demolished in its entirety and the property will be acquired and maintained as described in the Acquisition of Property section, contained herein.

In addition, the Program allows applicants with a traditional title, without mortgage liens, and whose property estimated cost of repair is more than \$60,000, the option of accepting a relocation voucher instead of a reconstruction pre-award.

### 15.3.3 Elevated Reconstruction Award

A housing unit within an AHUS owned by a single ownership entity with an estimated cost of repair greater than \$60,000 and located within the 100-year floodplain, may qualify for an elevated reconstruction award, when feasible. The current AHUS will be demolished in its entirety, and a new replacement home will be constructed in place using the Reconstruction and Relocation Unit Size and Exceptions section contained herein to determine the size of the reconstructed home. The applicant-occupied housing unit's household will be used to determine the unit size to be built in its place.

## 15.4 AHUS Multiple Owners Within or Outside the Floodplain (MO/OF, MO/WF)

A housing unit located outside the floodplain in an AHUS owned by multiple owners may be eligible for a repair/retrofit, reconstruction, or relocation award. A housing unit located within the floodplain in an AHUS owned by multiple owners may be eligible for a repair/retrofit, or relocation or an elevated reconstruction award.

**Due to the varied circumstances demolition or reconstruction work can entail, and the unique conditions present in the AHUS, reconstruction and relocation awards will be determined on a case-by-case basis.**

### 15.4.1 Repair/Retrofit Award

A housing unit located outside the floodplain in an AHUS with an estimated cost of repair less than \$60,000 may be repaired/retrofitted in place. A housing unit located inside the floodplain in an AHUS with an estimated cost of repair less than \$60,000 or 50% of the current assessed value of the unit, whichever is less, will be repaired/retrofitted in place.

Estimated cost of repair will be determined through a PRA. Applicant must be the owner of the eligible housing unit within the AHUS and may need to obtain authorization from any other occupants for access and construction activities that might be required for SSCCs.

#### 15.4.2 Reconstruction Award

Reconstruction of housing unit(s) in an AHUS owned by multiple owners may be considered if the AHUS is located outside or within the floodplain. These cases will be evaluated on a case-by-case basis and will consider factors such as: land use, zoning requirements, construction feasibility, lot size and site conditions; configuration of existing AHUS (units' side-by-side, vertically connected, etc.); design feasibility and cost reasonableness. Any tenants residing in the AHUS may be eligible for URA assistance, as applicable.

#### 15.4.3 Relocation Award

A housing unit located in an AHUS within the floodplain or in a high-risk area, with an estimated cost of repair greater than \$60,000 or 50% of the current assessed value of the housing unit, whichever is less, or with site conditions that pose a risk to the safety of the household, may be offered a relocation award. Due to the unique circumstances related to demolishing a single housing unit in an AHUS, relocation awards will be considered on a case-by-case basis. Demolition of a single unit in an AHUS may not always be possible.

For an applicant to receive a relocation award, the applicant must agree to transfer ownership of the property to PRDOH. The applicant's existing structure may be demolished in its entirety and property may be acquired and maintained as described in the Acquisition of Applicant Property section, contained herein. However, demolition of a single unit in an AHUS may not always be possible.

In cases where the unit cannot be demolished due to its condition of being part of an AHUS, the Program may consider other feasible alternatives to transfer ownership of the damaged housing unit from the Program applicant to another party. The Program will make a relocation determination on a case-by-case basis as it may not be feasible for the Program to acquire the property in some scenarios. The Program, at its sole discretion, may choose to sell the property at market rate with restrictive covenants; donate the property to a non-profit; have the Program applicant relinquish the property's ownership to a current property co-owner; or select other eligible end uses for the property. Any tenants residing in the AHUS may be eligible for URA assistance, as applicable.

Because of the large number of configurations AHUS may have, the Program may elect to consider alternative methods to assist. Repair/retrofit, demolition, or reconstruction in an AHUS may not be practical or might pose a risk to the structural integrity of an adjacent structure. As a result, some applications might not be served.

## 16 Reconstruction and Relocation Unit Size and Exceptions

Applicants eligible for reconstruction or relocation assistance will be awarded a reconstructed home or a voucher for a replacement home (relocation). The awards will be amounted on a unit size according to the household composition (the number of bedrooms needed to accommodate the inhabitants)<sup>39</sup>. The following factors will be considered when determining the unit size an applicant qualifies for:

- No more than two (2) persons are required to occupy a bedroom;
- Persons of different generation (i.e., grandparent, parents, and children), adult persons of the opposite sex (other than spouses/couples) and unrelated adults are not required to share a bedroom;
- Adults living as a couple (whether or not legally married) will be required to share a bedroom for size issuance purposes;
- Children of the same sex will be required to share a bedroom for size issuance purposes;
- **Duplication of Benefits - Unit size and/or the total number of bedrooms may be reduced to resolve a duplication of benefits.**

Sample unit size scenarios for two- through four-bedroom units are outlined below. PRDOH will consider exceptions to unit size determinations on a case-by-case basis and may allow assistance for reconstruction of homes with more than four (4) bedrooms if the household size exceeds eight (8) persons and it is cost-effective to do so.

Unit Size	Household Composition
Two (2) bedrooms	<ul style="list-style-type: none"> <li>• One (1) adult or one couple</li> <li>• Adult/couple plus one (1) child</li> <li>• Adult/couple plus two (2) children of the same sex</li> </ul>
Three (3) bedrooms	<ul style="list-style-type: none"> <li>• One (1) adult or one couple plus two (2) children of opposite sex</li> <li>• Adult/couple plus three (3) children</li> <li>• Adult/couple plus four (4) children (two (2) boys and two (2) girls)</li> </ul>
Four (4) bedrooms	<ul style="list-style-type: none"> <li>• 1 adult or one couple plus four or five children</li> </ul>

<sup>39</sup> Circumstances where a household size or composition is expected to change during program-sponsored construction may be considered for unit size based on anticipated circumstances at construction completion. Circumstance changes are limited to minor children reaching adulthood, birth, adoption, or other gained custody of a child, impending divorce, or separation. For example, suppose a household expects the birth or adoption of a child. In that case, the child may be considered part of the household, even if they are not born at the time of pre-award determination.

Unit Size	Household Composition
	<ul style="list-style-type: none"> <li>4 or more adults or adult/couples</li> </ul>

If the property’s land conditions are appropriate and permit it, the Program may approve exceptions to a household’s unit size to provide assistance to applicants.

To reduce the reconstruction time from award to completion, the Program will provide plans and specifications for “model homes” available to applicants. The Program should have available two (2)-, three (3)-, and four (4)-bedroom “model homes.” Types of designs for these “model homes” should include:

- Single-Story or two-story Detached Homes:** Homes for construction in urban or suburban lots with front, rear, and lateral yard space in accordance with zoning regulations. These types of homes must not share walls with adjacent homes (no row house nor twin house configuration). These types of homes shall have two (2)-bedroom, three (3)-bedroom, and four (4)-bedroom options available. Two-story options will be provided only in instances when lot dimensions, restrictions or zoning regulations require two-story homes.

All designs of “model homes” will have at least three (3) front façade design alternatives. Any component that will not have an impact on cost, such as exterior paint, door and window selection, cabinet and floor finishes etc. should have options for applicant selection.

The applicant will be presented with “model home” plans and renderings. Additionally, the applicant should be offered three (3) front façade design alternatives, exterior paint, door, and window selection, cabinet, and floor finishes etc., and options for components that will not have an impact on costs. The items may vary depending on the contract of the Construction Managers. If the home is built on a historic district, the façade may be submitted for further permit requirements. Applicants’ selections shall be recorded in PRDOH Grant Management System of Record.

Minimum area of the model homes will be as follows:

Space	2-Bedrooms	3-Bedrooms	4-Bedrooms
<b>Total Min. Area</b>	<b>800.0 sq. ft.</b>	<b>1,000.0 sq. ft.</b>	<b>1,200.0 sq. ft.</b>

If the property’s land conditions are appropriate and permit it, the Program may approve exceptions to a household’s unit size to provide assistance to applicants.

Due to site conditions such as restricted lot areas, narrow lots, lots with irregular geometries and others, the Program may approve exceptions to the minimum lot areas to provide assistance to applicants.

In the cases where one (1) level or two (2) level model homes are not feasible to be built, a "Compact Lot" or "Narrow Lot" version may be provided. In general terms, the overall design solutions of the model homes will differ in proportion and will provide the Program(s) with additional options for properties with limited area, atypical proportions, site restrictions and other irregularities. The solutions shall be generated by the Construction Managers AOR and design team upon request of the Program(s). The designs must be comparable with previously approved model homes, including finishes, materials, equipment, and any other work item of the model home's construction. The following table depicts the minimum space and total area of "Compact Lot" and "Narrow Lot" homes:

**Table - 2 Compact Lot & Narrow Lot - Minimum Area Requirements**

<b>Space</b>	<b>2-Bedrooms</b>
<b>Total Min. Area</b>	<b>675.00 sq. ft.</b>

Minimum requirements for "model homes", in addition to compliance with all applicable codes and regulations, are as follows:

- For design development before a site is selected, the design requirements of the "model home" are assumed as:
  - The current approved requirements for zoning district classification R-I or its equivalent;
  - The lots in which a "model home" will be built are flat and that the ground has adequate bearing capacity for the proposed structure;
- All rooms of "model home" must have access to natural light and ventilation. Bathrooms may be the only exception to this requirement, although it is desirable to comply whenever possible;
- Bathrooms should have showers (no bathtubs);
- All doors must have a minimum 32-inch clear door opening width;
- Kitchens must be open to the dining area;
- All homes shall incorporate resilient measures, which, at a minimum, must include:
  - Photovoltaic (PV) Systems with backup battery storage (when feasible);
  - The program will offer the following standard package for PV Systems and battery storage. Battery loads shall consider one (1) medical life support device and the PV System shall provide for the installation of an automatic transfer switch to allow for system operation in standalone mode.

- Water Storage Systems shall be located on the rooftop of the home, when feasible. If the structural integrity of the house does not support the load of any of the applicable water tank size options, installation in a reinforced concrete pad may be provided at ground level. The water storage tank shall be constructed of ultraviolet (**UV**) and corrosion resistant material, approved for potable water and food-grade applications, and have the Food and Drug Administration (**FDA**) and the National Safety Foundation (**NSF**) approval. Manufacturer documentation shall be provided and installed as per the instructions and/or recommendations.
- All “model home” components must resist hurricane force winds, as per applicable codes, and materials must be waterproof as much as possible;
- Rough-in for gas stove where gas tanks are placed outside the home, as well as electrical outlet (120-240 volts) for electrical stoves;
- Primary material of construction for the structure and site will be concrete with local manufactured cement;
- Manufactured and modular homes may be used.
- When needed, due to applicant reasonable accommodation requirements, a pre-designed model home with “ADA<sup>40</sup>” features, details, and specifications may be provided.

All “model home” designs should be submitted to the OGP<sub>e</sub> and obtain preliminary construction permits for designs when no site has been selected. When a secure construction plan is approved, OGP<sub>e</sub> issues a document called “Aprobación de Plano Seguro” (the title in Spanish for document safe plan approval).<sup>41</sup>

## 17 Green Building Standards

Comprehensive green building standards improve the lives of residents, support community revitalization, and protect the environment. There are significant social, environmental, financial and health benefits to incorporating a comprehensive set of green building standards. While some housing Programs may start off with a partial approach to “going green”, the greatest benefits accrue from adopting a holistic green

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<sup>40</sup> Refer to the Department of Justice published revised regulations for Titles II and III of the Americans with Disabilities Act of 1990 “ADA” in the Federal Register Vol. 75, No. 178 (September 15, 2010), 75 FR 56236. These regulations adopted revised, enforceable accessibility standards called the 2010 ADA Standards for Accessible Design “2010 Standards” or “Standards”. While CDBG-MIT funded activities are subject to the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, Federal Register Vol. 79, No. 100 (May 23, 2014), 79 FR 29671 allows for the 2010 Standards to be used in place of Section 504 Uniform Federal Accessibility Standards (UFAS) with certain exceptions. Even though these standards do not typically apply to a private single-family residence, PRDOH required that Construction Managers provide with these features, details, and specifications for Reconstruction Model Homes, when needed.

<sup>41</sup> See Section 2.1.8.7 of Regulation No. 9233 of December 2, 2020, known in Spanish as “Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios” of the Puerto Rico Planning Board.

building standard that results in resource conservation, healthier living environments, and restored neighborhoods.

The Green Building Standard requirements are followed as stated in section V.B.1.a. of 84 FR 45838, 45863<sup>42</sup>, requiring all new construction and replacement of substantially damaged residential buildings to meet the Green Building Standard, by meeting an industry recognized standard that has achieved certification under at least one of the following Programs:

- ENERGY STAR® (Certified Homes or Multifamily High-Rise);
- Enterprise Green Communities;
- LEED (New Construction, Homes, Midrise, Existing Buildings Operations and Maintenance, or Neighborhood Development);
- ICC–700 National Green Building Standard;
- EPA Indoor Air Plus (ENERGY STAR® a prerequisite); or
- Any other equivalent comprehensive green building Program acceptable to HUD.

For the repairing of non-substantially damaged residential structures, PRDOH will follow - to the extent they are applicable to the construction methods utilized on the Island- the guidelines specified in the HUD CPD Green Building Retrofit Checklist.<sup>43</sup> When older or obsolete products are replaced as part of repair work, PRDOH will use products and appliances with ENERGY STAR® labels, Water Sense labels, or FEMP equivalent designations. For specific required equipment or materials for which an ENERGY STAR®- or Water Sense- labeled or FEMP-designated product does not exist, the requirement to use such products does not apply.

## 18 Reasonable Accommodations for Accessibility

Additional modifications to increase accessibility for applicants and/or household members who have access and functional needs, is an allowable part of the repair/retrofit, reconstruction, or relocation assistance provided by the Program. Eligible applicants who have a household member with a disability may submit a Reasonable Accommodation and Modification Request Form (**RA/RM**) to their case manager to indicate any accessibility accommodations needed to meet their disability-related needs.<sup>44</sup>

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<sup>42</sup> See 84 FR 45838, 45863.

<sup>43</sup> See <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/>.

<sup>44</sup> A Program-specific RAR Form can be provided by Program staff to the applicant. A general RAR Form, and other methods can also be used and are found on the CDBG-MIT website: <https://recuperacion.pr.gov/en/fair-housing/reasonable-accommodations/> (English) and <https://recuperacion.pr.gov/fair-housing/someter-solicitud-de-acomodo-o-modificacion-razonable/> (Spanish).

Each RA/RM will be handled and evaluated in accordance with the PRDOH Reasonable Accommodation Policy. If the RA/RM is approved, the applicant will be provided with accessibility options. The costs associated with reasonable accommodations may be considered in addition to the Program caps and evaluated for cost reasonableness.

The Reasonable Accommodation Policy can be found in English and Spanish at <https://recuperacion.pr.gov/en/fair-housing/policy-documents/> and <https://recuperacion.pr.gov/fair-housing/politicas-documentos/>.

## 19 Historic Properties

The CDBG-MIT Programs were designed to deliver resilient construction works and systems to the most distressed communities of Puerto Rico to strengthen the island against future disastrous occurrences. The Program recognizes the significant role and value historic properties held in Puerto Rico's cultural heritage and are considered as part of the plan of building a resilient Puerto Rico.

If a property is deemed to hold historic value according to its Tier 2 Review and/or Puerto Rico's State Historic Preservation Office (**SHPO**) and granted an award, its mitigation assistance and construction measures should abide to the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. As a result, the Program will analyze historic projects on a case-by-case basis to determine the allowable hard cost to fund the project. The project hard cost may be compared to other Program's sponsored repair/retrofit or reconstruction work to determine an allowable hard cost. Due to the level of craftsmanship, selection of materials required for a specific project, if additional funding is required, it will be evaluated by the Program Manager in a technical feasibility evaluation and, in some cases, it may require PRDOH's evaluation.

## 20 Award Caps

Based on cost feasibility analysis, the minimum repair/retrofit award amount an applicant may receive is \$15,000. However, the maximum award amount for housing repair/retrofit in place is \$60,000.00<sup>45</sup> in construction and/or hard costs per unit. The maximum amount for a reconstruction award is \$215,000 in construction and/or hard costs. To properly address Puerto Rico's lack of available housing, the maximum award for relocation is \$200,000.00. The maximum award for reconstruction will be based on unit size determination, up to \$215,000.00 for four (4) bedroom units. Award caps by bedroom size are as follows:

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<sup>45</sup> Homes not located in the floodplain with an estimated cost of repair less than \$60,000, will be rehabilitated in place. Homes located in the floodplain with an estimated cost of repair less than \$60,000 or 50% of the current assessed value of the home, whichever is less, will also qualify to be rehabilitated in place.

Unit Size	Award Cap Reconstruction	Award Cap Relocation
Compact and Narrow Lot Versions (Two-Bedrooms)	\$145,000.00	N/A
Two-Bedrooms	\$165,000.00	\$160,000.00
Three-Bedrooms	\$195,000.00	\$185,000.00
Four-Bedrooms	\$215,000.00	\$200,000.00

Costs above the Program caps may be permissible and will be evaluated on a case-by-case basis. The evaluation for items such as: reasonable elevation, environmental abatement, or unique site-specific costs, when necessary, which may also include utility connection costs. Exceptions to caps may also consider necessary household composition requirements, accessibility features, historic preservation, or current market conditions.

Additional award caps and costs associated with PV battery storage and water storage systems are as follows:

- The maximum award cost of such systems is \$30,000.00.

Additional award caps and costs associated only with an elevated reconstruction are as follows:

- The cost of elevating a home is ~~at~~ equal to or below \$75,000.

Additional award caps and costs associated only with permanent relocation are as follows:

- Cost for site environmental abatement and remediation ~~of site~~ required prior and after demolition;
- Demolition of the property or as established in the latest Action Plan.

Applicants who will receive assistance through a relocation voucher may opt to purchase a property for fewer bedrooms than their awarded voucher amount requires. However, the Program will only cover the cost of the maximum amount of assistance allowed for that number of bedrooms. For example, even if an applicant was awarded a relocation voucher of \$200,000 for acquiring a four-bedroom property, the applicant can purchase a three-bedroom property, for which the Program will cover up to \$185,000

of the purchase price, which is the maximum assistance allowed for a three-bedroom property.

## 21 Awards and Requirements

The Program will send a Pre-Award Notice to eligible applicants outlining the type and amount of assistance being offered and detailing the next steps. The Pre-Award Notice will include a Next Steps document, a Response to Pre-Award Notice (for applicants to inform if they accept or decline the pre-award offered), and a Duplication of Benefits Analysis Results and Acceptance Form. Applicants who disagree with the type or amount of assistance being offered in the Pre-award Notice may challenge the determination. See the Program-based Reconsideration and/or Administrative Review section of the Guidelines.

### 21.1 Ownership and Occupancy Period Requirements

Applicants who are assisted by the Program must agree to own and occupy the assisted home as primary residence for a predetermined amount of time.

To secure occupancy period requirements for reconstruction activities, at Program's discretion, applicants may be required to sign an Entry of Judgement by Confession as allowed by Rule 35.4 of the Rules of Civil Procedures of Puerto Rico, 32 LPRA Ap. V, R. 35.4. The statement, which authorizes a judgement to be rendered without a trial being held or without a lawsuit having been initiated, will have full effect if applicant fails to comply with required ownership and occupancy period. The Entry must be signed by the applicant, under oath, and notarized by a notary licensed in Puerto Rico. Said Entry of Judgement by Confession will expire at the end of the compliance period.

- **Repair/Retrofit:** For repair/retrofit activities, the homeowner must agree to own and use the home as their primary residence for **three (3) years** calculated from the Final Completion date, according to the terms and conditions as established in Applicant's Grant Agreement. If a homeowner moves or sells the home within **three (3) years**, the entire amount of the benefit received must be repaid in full to PRDOH. There will be no amortization schedule associated with repair/retrofit.
- **Reconstruction:** For reconstruction activities, the homeowner must agree to own the home and use the home as their primary residence for a period of **five (5) years** after reconstruction, calculated from the Final Completion date, according to the terms and conditions as established in the Applicant's Grant Agreement. The Grant Agreement will be secured through an Entry of Judgement by Confession. Applicants will be required to certify their compliance with this requirement on an annual basis for the **five (5) years** of their compliance period. If a homeowner moves or sells the home within the **five (5) years**, the amount of

benefit that must be repaid will be determined by the straight-line, linear amortization schedule for the remaining years.

- **Relocation:** For relocation activities, the homeowner must agree to own the home and use the home as their primary residence for a period of **five (5) years** after relocation as a condition of the Applicant's Grant Agreement and as secured through a deferred forgivable lien on the replacement property. The Grant Agreement will be secured through an Entry of Judgement by Confession. Applicants will be required to certify their compliance with this requirement on an annual basis for the **(5) five years** of their compliance period. If a homeowner moves or sells the home within the **(5) five years**, the amount of benefit that must be repaid will be determined by the straight-line, linear amortization schedule for the remaining years.

The Program may consider forgiving the applicant's obligations during the occupancy period and/or releasing the lien of a sold home only in extenuating circumstances and on a case-by-case basis. Examples of extenuating circumstances considered by the Program include, but not limited to, life changing events that may cause an applicant to need a larger, smaller, or different home, such as marriage, divorce, birth, and death, and military deployments or reassignments.

## 21.2 Pre-Award Conference

Applicants who qualify for assistance will take part in a pre-award conference with the Case Manager. The purpose of the pre-award conference is to ensure parties agree on the expectations and responsibilities of everyone involved. During the pre-award conference, the following topics will be discussed:

- Expectations;
- Relocation voucher with the preliminary award amount;
- Homeowners move-out date;
- Accessibility options, if applicable;
- Schedule;
- Scope modifications, if applicable;
- Applicant stylistic choices, as available;
- Floorplan selection, as available;
- Site design (depicting the model home location and orientation within the property);
- Grant Agreement and related conditions; and
- Additional required topics, as required.

The Program will make reasonable attempts to accommodate non-traditional meeting venues when required by an applicant's individual circumstances, including applicants

who are hospitalized or incarcerated. Non-traditional meeting venues may include home-visits, off-site meetings, virtual meetings, or other arrangements. The applicant must accept the scope of work and sign all required Program documents prior to Program authorizing the repair/retrofit, reconstruction work to begin or prior to the start of relocation activities.

### **21.3 Repair/Retrofit or Reconstruction Award Requirements**

Qualifying homes for reconstruction, under the Program, will be built meeting the applicable International Building Codes per Puerto Rico's regulations. Repair/retrofit works performed by the Program must also meet local codes, repair standards, and zoning ordinances. All permits and inspections required by OGPe or the Autonomous Municipality with jurisdiction must be completed.

Homes qualifying for repair/retrofit assistance constructed prior to 1978 must be evaluated for presence of lead-based paint. The Program may allow costs of lead-based paint abatement above established award caps on a case-by-case basis.

#### **21.3.1 Construction Permit Issues**

In accordance with Regulation No. 9233, known in Spanish as "Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios" of the Puerto Rico Planning Board, or as per current version, any request related to development and use of land in Puerto Rico, including construction work completed by the Program, must be promoted by the owner(s) of the property to obtain a construction permit. See applicable rules about application filing in Filing an Application Section and in Standing section.

Applicants who lack required documents or authorizations for the Program to obtain a construction permit to complete repair/retrofit or reconstruction work may participate in repair/retrofit or reconstruction, but construction permitting issues must be addressed prior to the coordination meeting. Those who qualify for a repair/retrofit or reconstruction award can proceed to construct by completing an Ownership Certification. **See Alternate Methods for Documenting Ownership** in the Guidelines.

The Ownership Certification will satisfy the Standing requirements of applicable rules or sections of OGPe's Regulation and any Municipality Permit Office, as long as permit transactions are related to a repair/retrofit or reconstruction award under the Program.<sup>46</sup> However, the Ownership Certification, by itself, does not grant ownership nor provides a clear title to applicants. The actual purpose of the Ownership Certification is to satisfy the referred Standing requirement, during permit transactions, for construction permits to

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<sup>46</sup> See Article 3 of Act No. 118-2022, "Special law to accelerate the processes to grant property titles under the Department of Housing's Title Clearance Program". [https://sutra.oslpr.org/osl/sutra/anejos/139991/ley%20118-2022\\_.pdf](https://sutra.oslpr.org/osl/sutra/anejos/139991/ley%20118-2022_.pdf).

move forward without the express consent of the property's co-owners, at that stage of the process.

The Title Clearance Program will provide services to applicants, including legal services, as needed and free of charge to assist them in resolving any title issues. Accordingly, those applicants that proceed to permitting by signing an Ownership Certification must continue the process to clear their title through the Title Clearance Program. The applicant must make all reasonable efforts to cooperate in the process of obtaining a clear title.

However, if at the end of the construction process, the applicant is unable to obtain a clear title over the property due to causes entirely attributable to the applicant, PRDOH may recapture the awarded funds. Those cases of applicants who signed an Ownership Certification and demonstrated proprietary interest during permit transactions and still cannot obtain a clear title for reasons not attributable to the applicant, will be considered by PRDOH on a case-by-case basis.

#### 21.3.2 Relocation Award Requirements

The following are requirements for all relocation awards issued under the Program. Applicants who accept a relocation award under the Program are not considered displaced persons (see 49 C.F.R § 24.2(a)(9)(ii)(E) or (H)) and, as such, are not entitled to relocation assistance benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (**URA**), 42 U.S.C. § 4601 *et seq.* However, tenants on such properties may be eligible for URA relocation assistance benefits. See URA section of this document for further information, as well as PRDOH's Uniform Relocation Assistance Guide & Residential Anti-Displacement and Relocation Assistance Plan (**URA and ADP Guide**) published in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/resources/policies/> and <https://recuperacion.pr.gov/recursos/politicas/>.

#### 21.3.3 Liens

In any case that the property has a mortgage lien whose amount does not exceed its appraised value, the Program may resolve the outstanding mortgage without affecting the funds available to the applicant through the relocation voucher. No amount will be credited to the principal balance of the Applicant's Grant Agreement.

In the case an applicant has a mortgage lien on the property with an outstanding balance **in excess** of its appraised value, the Program may authorize the payment of said excess amount with the funds awarded for the relocation voucher. To offset these costs, PRDOH will make a deduction from the amount of the relocation voucher equivalent to the amount paid for the mortgage lien **in excess** of the property's appraised value. This means the overpayment will be deducted from the total amount of funds available to the applicant for the purchase of the replacement property. PRDOH

may also choose to allow applicants to contribute with other funding sources to offset the reduction in the value of the relocation voucher.

Applicants who have an unsatisfiable lien on the property, including mortgage liens, may be awarded a relocation voucher. The Program may allow applicants in the Relocation pathway, who have liens in the property, to proceed with the acquisition of the replacement property. For PRDOH to be able to acquire or dispose of the applicant's property, the Title Clearance Program may continue procedures for resolving or satisfying liens after the replacement property is acquired.

#### 21.3.4 Title Issues

Applicant cases may be referred to the Title Clearance Program for assistance in resolving any title issues. However, applicants with title issues may be awarded a relocation voucher. The Program may allow applicants in the Relocation pathway, who have title issues in respect to the property, to proceed with the acquisition of the replacement property. To proceed with the acquisition of the replacement property before PRDOH has acquired the property, the applicant must sign an agreement with the Program through which they commit to ceding title ownership of the property to PRDOH whenever the title is resolved and cleared, in compliance with applicable local laws. The applicant must also commit to providing all necessary documents requested as evidence of proprietary interest and assure full cooperation with PRDOH, the Title Clearance Program, and any processes regarding title issues or liens. In this scenario, a restrictive covenant unauthorizing access and redevelopment of the property will be imposed while title ownership is achieved by PRDOH. For PRDOH to be able to acquire or dispose of the applicant's property, the Title Clearance Program may continue procedures for resolving title issues after the replacement property is acquired.

If an applicant cannot prove ownership of the property, they may be eligible for homeownership assistance to be provided with a replacement property.

For more information, see the Title Clearance Program Guidelines published in English and Spanish at <https://recuperacion.pr.gov/en/download/title-clearance-program-2/> and <https://recuperacion.pr.gov/download/programa-de-autorizacion-de-titulos-2/>.

### 21.4 Acquisition of Applicant Property

Applicants who qualify for a relocation award will receive an Acquisition Offer from the Program. Among other things, the offer informs the applicant of their property's fair market value determination and voluntary acquisition.

Acquisitions completed under the Program meet the conditions established at 49 C.F.R. § 24.101(b)(1) which exempt projects from the requirements of 49 C.F.R. Part 24, Subpart B. The following conditions, in accordance with 49 C.F.R. § 24.101(b)(1), apply to all

acquisitions completed in conjunction with the provision of replacement housing under the Program:

- No specific site or property needs to be acquired;
- Property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits;
- PRDOH will not acquire property if the negotiations fail to reach an amicable agreement, and the owner of such property is so informed in writing; and
- PRDOH will inform the owner in writing of what it believes to be the property's fair market value.

All acquisitions completed under the Program are entirely voluntary and conditional upon the successful provision of replacement housing as outlined in the Relocation section of this document. No property will be acquired through involuntary purchase or condemnation if negotiations for acquisition fail to result in an agreement. Furthermore, PRDOH will not acquire the applicant's property if the attempts to secure replacement housing through the Program are unsuccessful. Acquisition of the applicant's property is contingent upon a successful real estate closing event for a replacement property purchased through the Program. Owners of properties acquired by PRDOH are not considered displaced person, (see 49 C.F.R § 24.2(a)(9)(ii)(E) or (H)) and, as such, are not entitled to relocation assistance benefits under URA. However, tenants on such properties may be eligible for relocation assistance benefits. See Uniform Relocation Act (URA) section of this document for further information, as well as PRDOH's URA and ADP Guide published in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/ura-adp-guidelines/> and <https://recuperacion.pr.gov/download/guias-ura-adp/>.<sup>47</sup>

#### 21.4.1 Appraisal of the Risk Assessed Property

Fair market value for applicant properties which may be acquired by PRDOH through acquisition as part of a relocation award, shall be determined via a Program appraisal.

#### 21.4.2 Demolition and Maintenance of Acquired Property

As part of the relocation assistance and to prevent the property's unauthorized occupation, the damaged property may be demolished after the applicant moves into the replacement home. At the time of acquisition, PRDOH will make an initial determination about projected end use for each property acquired. As permitted by 42

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<sup>47</sup> In cases where the ownership of the applicant property cannot be transferred to PRDOH as stated in these Guidelines, the Program may consider other alternatives to satisfy the eligible activity. The Program will make a relocation determination on a case-by-case basis as it may not be feasible for the Program to acquire the property from the Program applicant in some scenarios. The Program, at its discretion, may choose to select other eligible end uses for the applicant's property.

U.S.C. § 5305(a)(1), and in accordance with 84 FR 45838, such uses may include: parks for outdoor recreational activities; wetlands management; nature reserves; cultivation; grazing; camping (except where adequate warning time is not available to allow evacuation); unimproved, unpaved parking lots; buffer zones; and other uses consistent with FEMA guidance for open space acquisition, Hazard Mitigation Assistance, Requirements for Property Acquisition and Relocation for Open Space. For properties located outside the floodway or floodplain, PRDOH may designate a different end use according to the acquisition strategy applied and its applicable regulations.

To the extent allowed by HUD and where the final use of the property is known and consistent with the PRDOH approved Action Plan, PRDOH may transfer title or sell properties acquired under the Program to eligible entities, so long as conveyance of the property references and incorporates original deed restrictions. This is to ensure vacant lots located in high hazardous areas are not redeveloped with CDBG-MIT Program funds and then later considered for buyout activities through other initiatives. To the extent a property may be used to realize program objectives of other recovery programs, PRDOH will ensure the end use meets both eligibility and national objective requirements as part of its disposition.

#### 21.4.3 Housing Counseling – Homeowner Education

Applicants with a relocation voucher may request guidance and will be offered support from Housing Counseling agencies for the selection of a new home. Housing Counseling uses methods such as financial literacy education, credit repair counseling, property search support during selection and acquisition, and real estate support information.

#### 21.4.4 Relocation Options

Applicants who qualify for relocation assistance will be issued relocation vouchers which allow them to select an existing or under construction home outside of a high-risk area. Existing Replacement homes and/or under construction homes must be located in Puerto Rico and must pass applicable environmental clearance and a Program replacement property pre-purchase inspection.

The Program will pay 100% of the purchase price of an approved replacement home, up to the amount of the awarded relocation voucher. No cash refund will be issued to an applicant in the event the purchase price of a replacement home is less than the amount of the approved voucher. Replacement homes will only be allowable if the home does not require home elevation. Assisted applicants may not be relocated to floodplains or hazard prone areas.

To appropriately address Puerto Rico's limited, available housing stock the Program will provide the maximum funding amount of \$200,000 for the replacement property. The applicant's property value shall not increase this provided maximum funding amount. The Program will not limit purchase prices for replacement properties and the applicant

can secure any additional funds required for the acquisition of the property from other funding sources, including a mortgage. The Program will allow applicants to use additional funding to purchase a replacement property that exceeds the funds awarded through the relocation voucher.

The value of the relocation voucher will reflect household composition. Applicants will be given a voucher equal to the **home's** reconstruction value in conjunction with the number of bedrooms needed to accommodate the household. See Reconstruction and Relocation Unit Size and Exceptions section of these Guidelines. Applicants will have **one hundred and eighty (180) days** from the date the voucher was issued to identify a replacement home and be under contract. The Housing Counseling agencies may provide applicants with support throughout the relocation process by assisting in identifying a suitable replacement home, providing homeowner education, and connecting applicants with social services providers in the considered purchase home area. Housing Counseling agencies are provided at no cost to the applicant.

The Program will only acquire vacant or owner-occupied units. The replacement property selected must either be vacant, or not be occupied by any persons other than the owner or members of the owner's household, at the time the property owner or their agent is first contacted by the applicant or their agent. Properties which do not meet this requirement are not eligible to be acquired with Program assistance. Compliance with this requirement shall be indicated in the Relocation Property Submission Form submitted by the applicant to the Program.

#### 21.4.4.1 Timeline

Applicants who are unable to identify a suitable replacement home **after one hundred and eighty (180) days** from the time the relocation voucher was issued may request a **ninety (90) day** extension to the timeline.

Extension requests will be reviewed by the Program on a case-by-case basis. Applicants who are unable to identify a replacement home within the allowed timeframe -and are not granted an extension- will have their application closed. Applicants who move to closeout because of failure to identify a replacement property will be notified and allowed to challenge the decision if they disagree with the decision. See the Program-based Reconsideration and/or Administrative Review section of these Guidelines.

#### 21.4.5 PRDOH-Owned Properties and Residential Developments

To increase the housing stock of replacement properties available to relocation applicants, PRDOH may make available vacant rehabilitated units from its property portfolio or properties recently acquired and determined to meet safe, decent, and sanitary standards.

Another option may include new housing developments selected by PRDOH in low-risk areas. These developments will leverage private sector market research and investment

to create viable housing options that revitalize the Island while serving the needs of the Program relocation applicants.

New housing development options may include vouchers for beneficiaries to occupy newly developed housing, purchasing homes rehabilitated or developed by PRDOH, purchasing new homes developed by partners, or any combination of the above. Exceptions to the maximum award amount may apply for relocation applicants who select PRDOH-owned properties or new residential developments.

#### 21.4.6 Relocation Support

When the applicant selects a replacement property, the Program Manager will assist the applicant in drafting a purchase offer or sales agreement for the seller of the replacement property.

Agreements to purchase a replacement property must be approved by the Program prior to execution. All agreements must include clauses which excuse the applicant from purchasing the property in the event: (1) the seller is unwilling to perform any needed repairs as identified by a Program inspection; (2) if property is determined to be in a Special Flood Hazard Area or Coastal Barrier Resources Area, as determined by a Categorically Excluded (Not Subject to 24 C.F.R. § 58.5) (CENST) Environmental Review; (3) the purchase price is above the fair market sale price of the home, as determined by an appraisal or through an analysis of comparable sales. The Program may not purchase replacement property if the contract to purchase the property was executed without proper Program approval.

Before the sales agreement is signed by the applicant and the seller, the applicant must receive approval from the Program. The Program does not provide earnest money or other nonrefundable fees as part of the purchase offer.

#### 21.4.7 Real Estate Closing

Applicants assisted under relocation must complete a real estate closing event. The property closing will be coordinated by the Program and may facilitate the following transactions:

- Transfer of title of the applicant's property to PRDOH; and/or
- Transfer of replacement home from seller to the applicant.

The transactions may occur at different times. If acquisition of the applicant's property is not possible at the moment, the Program will provide the applicant with a relocation voucher, but the applicant must sign an agreement with the Program through which they commit to cede title ownership of the applicant's property to PRDOH whenever the title is resolved and cleared. They must also commit to full cooperation with PRDOH, the Title Clearance Program and any other processes regarding title issues or liens. The

agreement may also include a restrictive covenant unauthorizing the applicant from access to the property, after a replacement property has been provided.

Acquisition of real property by PRDOH, including acquisition of property under the Program, is subject to the real property acquisition requirements established in Puerto Rico Executive Order No. 4 of January 20, 2004 (OE-2004-04). Prior to completing the acquisition of real property, PRDOH must obtain the following documents:

- Survey Plans and/or project plans, such as construction or demolition plans, schematic drawings, blueprints, measures, engineering drawings, among others;
- Property registry certification or title study of the property to be acquired, issued no more than **six (6) months** prior to the acquisition;
- A debt certification issued by the Puerto Rico Department of Treasury, and/or certification of payment agreement, if the person is in debt with the Puerto Rico Department of Treasury;
- Certification of Tax Return filing;
- CRIM Debt Certification for All Concepts, CRIM Values Certification or evidence and certification of debt settlement agreement;
- Name, physical and postal address of all the people with interests in the property;
- Plot Plan
- Purchase and Sale Deed of replacement property;
- Environmental Certification;
- Administrative Order signed by PRDOH's Secretary, authorizing the Program representatives that will appear in the closing event; and
- An appraisal report containing a determination of value of the property to be acquired, a description of the property (including area and liens, if any), any structures located on the property, the date of the report, a description of the comparable sales, the appraiser's signature, and any other relevant information for the report to be reliable.<sup>48</sup>

Any debt arising against the applicant's property owed to the Puerto Rico Treasury Department, CRIM, or any other public agency or entity, will not make the applicant ineligible.

The Grant Agreement execution will also take place during the closing event. A Program representative will attend the closing event to ensure the applicant understands the process. The Program representative will also ensure that all Program required documents associated with the closing are executed and retained for the applicant's Program file.

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<sup>48</sup> As established in OE-2004-04.

## 21.5 Subrogation of Funds

Applicant awardees must subrogate any additional funds received for the same purpose as funds provided by the Program. CDBG-MIT funding must be funding of last resort. If additional funds are paid to applicant awardees for repair/retrofit work, elevation, reconstruction, or replacement of the damaged structure after the Program has completed the granted activity, those funds constitute a duplication of benefit and therefore must be returned to PRDOH. Applicant awardees will be required to sign a Subrogation Agreement as part of their grant agreement with the Program.

### 21.5.1 Repayment/Recapture

Instances may arise where an applicant may need to return all or part of the awarded funding to the Program. The Program is responsible for recovering funds considered duplicative, those granted to Applicants who do not meet Program requirements, and funds identified as potential overpayments. All Applicants records will be reviewed and reconciled to ensure compliance with Program requirements and federal guidelines. If an applicant has been identified as receiving a potential overpayment, the Program will document the amount and basis for the repayment in writing via a Repayment Notification.

Once it has been determined the applicant must return funds to the CDBG-MIT grant fund, the applicant must repay their funds in a timely manner. All repayments shall be made in full as one lump sum amount. All funds recovered under this policy will be tracked in the Yardi Voyager system (**Yardi**) and returned to the CDBG-MIT account or U.S. Treasury if the CDBG-MIT grant has been closed out.

More detailed information regarding the repayment/recapture process can be found in the CDBG-DR/MIT Recapture of Funds Policy available in English and Spanish at: <https://recuperacion.pr.gov/en/download/recapture-of-funds-policy/> and <https://recuperacion.pr.gov/download/politica-de-recaptura-de-fondos/>.

## 21.6 Optional Relocation Assistance

PRDOH has chosen to implement an optional relocation assistance policy for the Program under which homeowners may qualify for Optional Relocation Assistance (**ORA**) during program-sponsored activities. Should an eligible applicant be required to temporarily vacate the property to allow program-sponsored activities to take place, and the applicant is unable to secure temporary housing, they may qualify for rental, moving, or storage assistance to facilitate their temporary relocation until program-sponsored activities are complete. In limited circumstances, applicants who choose to relocate to a replacement property through a relocation award may also be eligible for optional relocation assistance, as per Program policy.

For more information on this assistance, please review the PRDOH Optional Relocation Assistance Policy, which can be found on the CDBG-MIT website at

<https://recuperacion.pr.gov/en/download/optional-relocation-assistance-policy/> and <https://recuperacion.pr.gov/download/politica-de-asistencia-para-reubicacion-opcional/>.

## 22 Program Construction Works

Construction works for the Program will be implemented using a design-build methodology as the project delivery system. This method delivers projects in which the design and construction services are contracted to a single entity (the, “Construction Manager”). In contrast to normal proceedings for construction (design-bid-build), the design-build methodology relies on a single point of contact to minimize risks related to the project owner and reduce the delivery schedule by overlapping the design phase and construction phase of a project.

As related to the SFM Program, the Program Manager is the entity responsible for the daily operations of the Program and case management. The Construction Managers’ tasks performed under the Program will be administered, controlled, monitored, and overseen by the Program Managers, who shall ensure the correctness and completeness of Scopes of Work, Task Orders, construction documents, product submittals, permitting documents, adherence to construction documents (as per permitting agency requirements) and Selected Green Building Standards. Program Managers will also ensure that the **number** of Scope Changes and time extensions are kept to a minimum, provide the SFM Program applicants with the highest residential construction industry quality and guarantee applicant service standards are met.

### 22.1 Construction Managers

The Program will procure qualified Construction Managers (**CM’s**) through RFP processes for implementing feasible and cost reasonable design solutions, construction documents, permitting, abatement, demolition, and construction activities. The CM’s will control program sponsored construction activities and must have the ability and capacity to meet Program’s production goals, standards, and federal requirements.

#### 22.1.1 Construction Managers Assignments

The following steps should guide Construction Managers assignments to projects:

- The Program shall manage a qualified pool of Construction Managers by monitoring financial capacity (based on bonding and financial limitations) and technical capacity. The pool will be reviewed from time to time to, if necessary, adjust the approved capacity of specific Construction Managers. Construction Managers will be responsible for completing Program sponsored activities as described in the previous section.
- The Program will allocate project assignments based on rank, location, and capacity of the Construction Managers.

- The Program will actively manage the activities of the Construction Managers and will regularly review their responsiveness and performance. Repeated failures from the Construction Managers will result in limited future assignments or a probation period without receiving additional assignments. Breach of contract clause, which will include penalties, will be included in each Construction Manager contract signed with PRDOH.
- The Program will also monitor Construction Managers for:
  - **Workmanship:** To be quantified by examining the ratio of total failed Milestone Inspections. The Construction Managers with the lowest ratio will be assigned a higher weighted factor. The PRDOH's representatives will monitor all "rolling" failed inspections. Performance may trend upward or downward over a given period;
  - **Average Design & Permitting Time:** Calculated as a measure of the total number of days it takes from a Task Order being issued, to the Contractor having filed a request for Construction Permits with OGPe;
  - **Average Build Time:** Calculated as a measure of the total number of days it takes from a notice to proceed, to the date that a Substantial/Finishes Milestone Inspection with a pass result was requested by the Construction Manager. The Construction Manager with the lowest average build time is assigned a higher weighted factor;
  - **Work in Progress:** A measure of the amount of work the Construction Manager currently has under contract for which a notice to proceed has been issued, but a Final Inspection has not been completed. This value will be compared against initial baseline capacity that is established for the Construction Manager. Less work in progress means a higher capacity to be assigned more projects. The baseline may be adjusted over the life of the project based on actual performance of each Construction Manager;
  - **Client and Homeowner Satisfaction:** This evaluation will be performed using customers surveys to the homeowner, owners, and its representatives. A self-evaluation survey will be given to the Selected Proposers to be used in an improvement tool for the Program. The survey results will be tabulated and valued to establish a composite score of the customers' satisfaction. These results will be shared and discussed with the corresponding Construction Manager.

PRDOH, at its sole discretion, may determine, remove, implement, and monitor additional performance indicators for Construction Managers throughout the life of the Program.

## 22.2 Compliance with Codes, Regulations, and Permits

All program sponsored construction works and activities for the Program are required to follow federal, state, and local codes and regulations. Works must also be performed

after the acquisition of required permits and in compliance with other local requirements. Program Managers and Construction Managers shall ensure compliance with all codes, regulations, permitting, and other requirements for construction works and activities to be undertaken by the Program.

Codes and regulations required to follow include, but are not limited to:

- Planning and Capacity Building (Section 105(a)(12) of Title I of the Housing and Community Development Act of 1974 (**HCDA**), as amended) (42 U.S.C. § 5305));
- Energy Development Goals (Section 105(a)(16) of the HCDA, *supra*);
- Puerto Rico Building Code, most current version approved;
- International Building Code (**IBC**) and its applicable volumes, most current approved version;
- International Fire Code (**IFC**), most current approved version;
- Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101), when required;
- National Fire Protection Association's 101 Life Safety Code, most current approved version;
- National Electrical Code (**NEC**), NFPA 70, most current approved version;
- Most current approved zoning requirements for Puerto Rico;
- Environmental regulations, as applicable to specific projects;
- HUD terms and conditions, as applicable to specific projects<sup>49</sup>;

Permit requirements include, but are not limited to:

- Demolition Permits issued by OGPe;
- Non-Hazardous Materials Reuse, Reduce and Recycle Plan for Construction Projects, by DRNA
- 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 the Electric Power Authority/LUMA, the Puerto Rico Aqueduct and Sewer Authority, the Puerto Rico Telecommunications Regulatory Board, the State Historic Preservation Office, the *Instituto de Cultura Puertorriqueña*, and the Puerto Rico Department of Transportation and Public Works;

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<sup>49</sup> <https://www.hudexchange.info/resources/documents/CDBG-DR-Resources-Summary.pdf>

- Elevation Certificate FF-086-033 issued by FEMA.

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

- Construction Stamps as required in 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 (10 LPRA § 741).
- Act No. 83 of August 30, 1991, as amended, known as the Municipal Property Tax Act of 1991 (21 LPRA § 5803).

### **22.3 Cost Reasonableness**

For contracted work, PRDOH will acquire Cost Estimating Services via an RFP process to obtain independent cost estimating services from qualified professionals to establish cost reasonableness of a variety of services to be procured for the implementation of the CDBG-MIT funded programs that will be managed by the PRDOH. The estimators will generate independent cost estimates for the broad range of CDBG-MIT Programs. The estimates will serve as a basis to the PRDOH of the costs they will incur in the acquisition of professional services, goods, information technology systems, among others. For information on cost principles, please refer to the Cross-Cutting Guidelines. The Cross-Cutting Guidelines, and all CDBG-MIT Program policies, are available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/cross-cutting-guidelines/> and <https://recuperacion.pr.gov/en/download/cross-cutting-guidelines/>.

### **22.4 Cost Effectiveness and Feasibility**

In the development of the Program and other programs outlined in the CDBG-MIT Action Plan, PRDOH analyzed the cost-effectiveness of each proposed project undertaken to assist a household under any residential repair/retrofit or reconstruction program. As such, the Program offers applicants assistance, depending on the specific circumstances of the eligible property.

Throughout the Program's existence, cost-effectiveness, and feasibility continues to be addressed through feasibility analyses which evaluate the reasonableness of construction works under extraordinary site conditions. The feasibility analysis considers potential site and structural factors which may impact the project viability and cost reasonableness, including but not limited to site access, infrastructure (electrical, water and sanitary), terrain slope, soil erosion & stabilization requirements, site limiting factors, structural condition, electrical, potable, and sanitary water distribution system (within property), land use and zoning requirements, environmental, hazards, risk, safety concerns, among others.

With the collaboration of the Program Manager during the **PRA** and Construction Managers during the scoping phase, under the SFM Program, all cases will undergo a

feasibility analysis to finalize the design feasibility and cost reasonableness of the Initial Project Intent and award type determination. Further, homes within and outside of the 100-year floodplain that are deemed to qualify for a reconstruction award due to extenuating factors such as, a low appraisal value, are assessed for feasibility and cost reasonableness prior to making a final award type determination.

This feasibility analysis process is used to ensure that the granted award type is indeed the most feasible, cost-effective course of assistance.

## **22.5 Homeowners Remaining on Property during Construction**

An applicant may require temporary housing to vacate the property during demolition and reconstruction activities. However, homeowners may be unable to secure suitable temporary housing while their new homes undergo repair/retrofit construction activities.

If the applicant cannot secure housing after exploring all possible sources of temporary housing with family, friends, or community services agencies, homeowners may be allowed to remain on the property during the repair/retrofit activities phase, with approval from the assigned Construction Manager and the PRDOH. Homeowners must execute documents demonstrating their agreement for waiver of liability, payment of additional utility connection fees.

To initiate the request to remain on the property (which must be in writing), the homeowner will have to attest to their inability to obtain temporary housing, by establishing a dire need. The definition of a dire need includes:

- The absence of any family or friends in the area who can house the homeowner during construction;
- The inability for the homeowner to obtain temporary housing assistance from a community services organization, faith-based organization, church, etc.; and
- In the case of a handicapped or special needs individuals, the absence of a temporary alternative providing the required accommodations.<sup>50</sup>

The decision to allow a homeowner to remain on the property during repair/retrofit activities is vested solely in the Construction Manager or their designee and subject to PRDOH approval. Granting the homeowner's request to remain on the property during repair/retrofit activities will be contingent on the following:

- There exists no municipal zoning or other prohibition to the homeowner remaining on the property during repair/retrofit activities.

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<sup>50</sup> This request is then referred to their assigned Construction Manager to obtain written agreement to remain on property. The homeowner agrees in writing to the demolition of the damaged property, when applicable, and executes Waiver of Liability and Hold Harmless Agreements, and the request is forwarded to the Construction Manager for final review and determination.

- The Construction Manager agrees to allow the homeowner to remain on the property during repair/retrofit activities.
- In cases of reconstruction, the homeowner will be unable to remain in the demolished structure and will need to vacate the premises. As the Program will need to reconstruct the home on its property, it will be necessary for the original home to be demolished and cleared, making it uninhabitable. If the parcel of land has other existing dwellings not in the Program, the applicant can agree in writing to stay on the property within one of these dwellings and well away from the construction site.
- In the opinion of the Construction Manager, the lot is of sufficient size to allow the construction of the new home at a safe distance from the original home, or, as applicable, the living area of the home is located at a safe distance from the repair/retrofit work, such that the repairs can proceed in a safe and expeditious manner.
- The homeowner signs a Hold Harmless Agreement indemnifying the Construction Manager and the Program grantee from any loss or injury sustained while inhabiting the property during repair/retrofit activities.

## **22.6 Repair and Retrofit Work Implementation Requirements**

The following are general frameworks for implementation of repair/retrofit works under the Program.

### **22.6.1 Scoping**

The Program will secure pricing for each project by providing the assigned Construction Manager the detailed and itemized Property Risk Assessment for eligible applications. The Construction Manager will need to review the Scope of Work as detailed in the itemized risk assessment and confirm on-site the design feasibility, cost effectiveness, cost reasonableness and completeness.

The assigned Construction Manager and Program Manager representatives will perform a scope site walk of the property. The scope site walk will serve to ensure that all parties physically inspect the property access, infrastructure, site features, exterior and interior of the structure to confirm the feasibility, cost effectiveness, cost reasonableness, limiting factors, potential risks, mitigation measures needed and validate the correctness of the Initial Project Intent as repair/retrofit.

The Construction Manager must evaluate the **PRA** which includes the **FOR**, **ERR** requirements and take into consideration any potential abatement work required to be included in the Scope of Work. Once the scoping site walk is completed the scope of work will be evaluated by both parties, revised (if needed) and validated prior to Task Orders being issued to the Construction Manager.

## 22.7 Reconstruction Work Implementation Requirements

The following are general frameworks for implementation of reconstruction in-place work under the Program.

### 22.7.1 Scoping

The Program will secure pricing for each reconstruction by providing the assigned Construction Manager's hard cost for the corresponding model home and include additional work (if required). Those cases that require abatement, demolition, additional utilities, driveway, walkway, site work (such as retaining walls, shear walls, etc.) and other design features will be incorporated into the scope of work using engineering best practices, feasible and cost reasonable design solutions.

The assigned Construction Manager and Program Manager representatives will perform a scope site walk of the property. The scope site walk will serve to ensure that all parties physically inspect the property access, infrastructure, site features, exterior and interior of the structure to confirm the feasibility, cost effectiveness, cost reasonableness, limiting factors, potential risks, mitigation measures needed and validate the correctness of the Initial Project Intent.

The scoping site walk shall take into consideration the lot area, dimensions and validate if the model home (1 level as first option, or 2 level as second option) may be built in the lot. In those cases that the Puerto Rico Aqueduct and Sewer Authority (**PRASA**) septic infrastructure is not available to serve the property or community and a septic system is required. Program representatives must take into consideration lot area, dimensions, restrictions (if applicable) and the potential septic system dimensions. In those cases that a property lot is clearly delineated, the Construction Manager shall take general photographs, notes, dimensions, or other relevant information that could affect a feasible design solution.

The Construction Manager must evaluate the risk assessment Field Observation Report, Property Risk Assessment Report, Environmental requirements and take into consideration any potential abatement work required in the Scope of Work. Once the scoping site walk is completed the scope of work will be evaluated by both parties, revised, and validated prior to Task Orders being issued to the Construction Manager.

The Program will provide the total cost of abatement work (if applicable), demolition and extraordinary site condition work (if required) based on the Program's unit prices included in each Construction Manager contract signed with PRDOH.

The applicant will be presented with the "model home" plans and renderings. Additionally, the applicant should be offered three (3) front façade design alternatives, exterior paint, door and window selection, cabinet, and floor finishes etc. and options for any components that will not have an impact on cost. These items may vary per

Construction Managers contract and the applicant selections shall be recorded in the PRDOH Grant Management System of Record.

#### 22.7.2 Task Order and Requirements

Construction Managers are required to conduct the work in compliance with OSHA requirements, codes, regulations, and permit requirements at the federal, state, and local levels. Work must also be conducted in a workmanship manner always ensuring adherence to the highest residential industry quality construction standards and applicant service. During implementation of all stages of reconstruction the Construction Manager shall request inspections at pre-determined milestones of work completed. Refer to Milestone Inspections section of these Guidelines for further details regarding the inspection requirements.

### 22.8 Relocation – Purchase of Existing Home Implementation Requirements

The following are general frameworks for implementation of relocation assistance consisting of the purchase of an existing home with Program funds.

#### 22.8.1 Scoping

The assigned Construction Manager and Program Manager representatives shall perform a demolition scope walk of the applicant's structure. The purpose of the scope walk is to ensure that all parties agree with the scope of work for demolition. The Program will provide the total cost of demolition and any abatement work based on the Program's unit prices included in each Construction Manager contract signed with PRDOH.

#### 22.8.2 Task Order and Requirements

Construction Managers are required to conduct the work in compliance with OSHA requirements, codes, regulations, and permit requirements at the federal, state, and local levels. During implementation of all stages of construction including abatement and demolition, the Construction Manager shall request inspections at pre-determined milestones of work completed. Refer to Milestone Inspections section of these Guidelines for further details regarding the inspection requirements.

#### 22.8.3 Scope Changes

No additional work to those approved under issued Task Orders to Construction Managers should be performed for the Program until a duly approved Scope Change is approved and issued by the Program Manager, regardless of the activity or cost involved. Valid Scope Changes must be requested and prepared by the Construction Manager and, if warranted, approved by Program Manager representatives. Any additional work performed by Construction Managers without the proper Program approval shall be performed at risk by the Construction Manager. **The Program will not issue any payment for unauthorized work which does not have an approved Scope Change.**

Scope Changes submitted by Construction Managers for approval shall set forth the type of work and scope to be added or removed from the Task Order. If additional time to perform the Task Order is required, a valid justification and supporting document is necessary, and will be evaluated by the Program Manager and either approved or rejected as needed.

Applicants may not request Scope Changes unless an unforeseen change in household composition or change in circumstances requires modifications for reasonable accommodations, modifications, and accessibility. **Scope Changes requested by applicants for anything other than accessibility modifications will not be considered.** Applicant-requested changes for accessibility will be evaluated on a case-by-case basis and must be substantiated by evidence of the need.

## 22.9 Milestone Inspections

Milestone Inspections of the abatement, demolition, repair/retrofit, reconstruction activities work performed, will be conducted by the Program Manager's Designated Inspector. Milestone Inspections serve the purpose of: (1) Certifying progress inspections of work as required by regulatory agencies; (2) adherence to Program approved Task Order, construction documents, green building standards, and minimum architectural and design standards; (3) assess materials and/or equipment incorporated to the project and ensure that such are consistent with Program approved submittals; (4) oversight, monitoring and evaluating Construction Managers progress of work paying special attention to items that will be later covered by other items of work (e.g. steel rebar, electrical, mechanical works, and others); (5) confirming that local building codes and Program standards have been satisfactorily met; (6) confirming that all requirements of the contracts and Task Orders have been met to all parties' satisfaction; and (7) evaluating and documenting statutory compliance.

Milestone Inspections shall be conducted by the Construction Managers at important project milestones. Milestone Inspections also serve the purpose of supporting progress payments to the Construction Managers. No progress payment shall be issued to Construction Managers without the Program approval of a Milestone Inspection.

All Milestone Inspections of demolition, abatement, repair/retrofit, reconstruction shall be performed by licensed professional engineers or architects in Puerto Rico.

## 22.10 Disbursements

Funds are distributed to Construction Managers when the work has been completed as per the corresponding Program approved Milestone Inspection and as a result, submitted an invoice for a passed Milestone Inspection of each project or encompassing multiple projects. Allowed disbursement periods for each award type shall coincide with

passed Milestone Inspections. Final payments to Construction Managers will require Program Manager acceptance of work performed.

### **22.11 Warranties and Complaints**

The final acceptance of the Task Order's scope of work will be completed as approved by the Program Managers. However, as part of the Program's final inspection, applicants will be asked to accept the completed scope of work.

In cases where an applicant does not accept the completed scope of work, the Program Manager may declare a project's construction work as complete, delivered and in compliance with Program requirements to allow the case to move to closeout. If a valid situation, or the applicant, prevents the Program from conducting an inspection of the completed work, the Program Manager will be allowed to evaluate the requirements and any completions of the scope of work and applicable Scope Changes. Upon evaluation and acceptance, this might be deemed as valid to close out the Task Order. This evaluation includes completion of scope of work items, safety, quality, workmanship, adherence to Program standards, and any other Program or contractual requirements.

All work performed by the Construction Managers will be guaranteed as follows:

- Roof waterproofing works will be guaranteed for a minimum of ten (10) years;
- Solar Water Heaters will be guaranteed for a minimum of five (5) years;
- Equipment and Appliances installed will be guaranteed for a minimum of one (1) year or as provided for by the manufacturer (whichever is greater);
- Solar PV System Panels installed will be guaranteed for a minimum of ten (10) years;
- Solar PV modules will be guaranteed for a minimum of twenty-five (25) years of linear performance;
- Solar PV Battery Bank and Inverter will be guaranteed for a minimum of ten (10) years;
- Water Storage Systems (**WSS**) will be guaranteed for a minimum of five (5) years. and;
- All other work will be guaranteed for a period of one (1) year.

For the warranty periods established above, the assisted applicant may require the Construction Manager to correct defects or problems arising from the Construction Manager's work under the contract. All applicants will be provided documentation pertaining to warranties in a Program approved Warranty Binder. Documents provided to the applicant will include information regarding what is covered, length of coverage, and how to submit a warranty claim.

The Program Managers call center will receive, process, and follow up on applicants' warranty claims and construction complaints until duly resolved and documented. All warranty claims and construction complaint issues must be made in writing and the

communications and actions will be logged into the PRDOH Grant Management System of Record. A reasonable amount of time will be given to correct the valid claim; however, in no case will such time exceed **two (2) weeks** to respond. Should the Construction Manager fail to correct the issue, the assisted applicant may contact the Program to take any necessary legal actions, as prescribed in the Construction Manager's contract.

## 23 Special Flood Hazard Areas (SFHA)

Floodplain management of Special Flood Hazard Areas (**SFHA**) for the Program have been designed and will be accomplished in accordance with 24 C.F.R. Part 55 and 24 C.F.R. § 58.6 (a) and (b).

Floodplain data (most recent maps available) are reviewed to identify whether a project is located within a 100-year floodplain, 500-year floodplain or a Regulatory Floodway. The environmental reviewer must document the flood zone; Flood Insurance Rate Map (**FIRM**) panel number, the Preliminary Flood Insurance Rate Map (**PFIRM**) panel number, and the Advisory Base Flood Elevation (**ABFE**) floodplain designation (A/AE/AO), if applicable; as well as the Panel effective dates.

In accordance with 24 C.F.R. § 55.20, PRDOH has completed an eight (8) step analysis of the long- and short-term impacts associated with the continued occupancy of the floodplain and considered whether there were any practicable alternatives to providing CDBG-MIT assistance in the floodplain. As the Program project activities are not considered "critical actions," all actions for the Program will be allowable within a 500-year floodplain. The award paths chosen were to grant a repair/retrofit award if the property qualified for minor repair work. If substantial improvement was required, the applicant would be offered the option of either a relocation award or remain in the floodplain with the option of elevated reconstruction, if deemed feasible by a Program conducted elevation survey, design feasibility and cost reasonable threshold. Non-substantial damage is defined as damage valued at less 50% of the current market value of the structure, whichever is lower.

PRDOH will not provide funding for repair/retrofit, reconstruction, located in a regulated floodway. Demolition of structures in a regulated floodway will be allowable if the applicant agrees to relocate outside of the floodway/floodplain. In the case of "Coastal High Hazard" areas ("V" or "VE" Zones on the most recent FEMA-issued maps), the property must have adhered to construction standards, methods, and techniques active at the time of original construction to be eligible for funding. Minor improvements are eligible for funding if the structure meets the above requirements. Any construction aside from minor improvements is not allowed for any structure in a Coastal High Hazard zone. Plans must demonstrate the design meets the applicable standards for V zones in FEMA regulations as required by HUD.

## 24 Flood Insurance

Section 582 of the National Flood Insurance Reform Act of 1994, as amended, *supra*, prohibits flood disaster assistance in certain circumstances. In general, it provides that no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person, at any time: (1) has received Federal flood disaster assistance that was conditional on the person first having obtained flood insurance; (2) subsequently failed to obtain and maintain flood insurance, as required under applicable Federal law, on such property; and (3) whose combined household income is greater than one hundred and 120% AMI or the national median. This means that a grantee may not provide assistance to a person who has failed to meet these requirements.

Section 582 also implies a responsibility for a grantee that receives CDBG-MIT funds or that designates annually appropriated CDBG-DR funds for disaster recovery. That responsibility is 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. See Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4012a.

## 25 Voluntary Withdrawal

An applicant may request to withdraw from the Program at any time before signing the grant agreement. Any voluntary withdrawal request filed after **seventy-two (72) hours** of the signature of the Grant Agreement will be evaluated on a case-by-case basis and must be approved by PRDOH. The voluntary withdrawal process will be followed in the event an applicant requests to withdraw from the Program.

To withdraw, the applicant will notify the Case Manager in writing of their desire to withdraw from the Program. Upon receipt of the withdrawal request, the Case Manager will provide a Voluntary Withdrawal Notice to the applicant. The Program status will be officially updated, and the application will be withdrawn after **fifteen (15) days** from the date of the Voluntary Withdrawal Notice. Upon completion of the withdrawal request and receipt of applicant signature on any required forms, a Withdrawal Confirmation Notification will be sent to the applicant notifying that the application status has been updated to "Withdrawn" and the case has been **closed**, so the applicant will no longer be able to participate in the Program. If the applicant's withdrawal request is submitted after the signature of the grant agreement, it will be evaluated by the Program.

Afterwards, the applicant will be notified that his/her withdrawal request is approved or denied via the Withdrawal Approval/Denial Notification.

## 26 Non-Responsive Applicants

The Program will make reasonable attempts to contact applicants to schedule meetings, collect documentation, or obtain other information necessary. If the Program has made **three (3) consecutive unsuccessful attempts** to contact an applicant with no follow up contact from the applicant, the applicant will be sent a Non-Responsive Notice. Contact attempts should be made using different methods of communication and at different times of the day/week. The Non-Responsive Notification provides contact information for the Program, advises the applicant of the next steps in the process, and notifies the applicant that they must contact the Program or complete an action within **fourteen (14) days** of the date of the letter. If the applicant fails to contact the Program or complete the action within the **fourteen (14) days** allowed, the application will be closed, and they will receive a Non-Responsive Confirmation notice. **This also applies to non-responsive applicants who are required to move out temporarily or permanently from the property for the Program to start abatement, demolition work, repairs/retrofit, or reconstruction, and fail to do so in the time required.**

Likewise, after the Program makes **three (3) unsuccessful attempts** to collect missing documentation, applicants will be sent a Missing Documents Notification. This notice informs applicants which documents are outstanding and advises the applicant to provide the Program the missing documents within **fourteen (14) days**. Failure to provide the missing documents within the **fourteen (14) day** period may result in closure of the application due to the non-responsiveness of the applicant.

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

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

### 27.1 Program-Based Reconsideration Request

Applicants who wish to contest a Program determination may file a Program-based Reconsideration Request directly with the Program by submitting a written request via electronic or postal mail within **twenty (20) calendar days** from the date a copy of the Program determination notice was filed in the record of the agency. Provided that, if the date on which the copy of the Program determination notice is filed in the records of the agency differs from the postal or electronic mail date of said notice, the **twenty (20)**

**calendar day-term** shall be calculated from the postal or electronic mail date. Notices distributed via electronic communication shall be considered valid. In the event a notification is sent via postal and electronic mail, the notification date will be the one sent beforehand. Program notices will include the electronic and postal information where these will be received, as these may vary.

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

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

Filing a Program-based Reconsideration Request does not substitute, negate, or preclude any legal right that an applicant has to challenge a determination made by the Program. Therefore, applicants who disagree with the initial determination of the Program may submit, at their discretion, either a Program-based Reconsideration Request or a petition for review of the decision made by the Program by filing an Administrative Review Request at PRDOH in accordance with Regulation Number 4953, of August 19, 1993, which regulates the Formal Adjudication Process for PRDOH and its Adjunct Agencies (Regulation 4953).<sup>51</sup>

## **27.2 Administrative Review Request**

If an applicant disagrees with a Program determination, or with the Reconsideration Request Denial determination, said party may file directly to PRDOH, an Administrative Review Request in accordance with the aforementioned Regulation 4953. The applicant must submit such request, in writing, within **twenty (20) calendar days** from the date a copy of the Program determination or a Reconsideration Request Denial determination notice was filed in the record of the agency. Provided, that if the date on which the copy of the notice is filed in the records of the agency differs from the postal or electronic mail date, the **twenty (20) calendar day-term** shall be calculated from the postal or electronic mail date. Notices distributed via electronic communication shall be considered valid. In the event a notification is sent via postal and electronic mail, the notification date will be the one sent beforehand. The request may be submitted via email to:

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<sup>51</sup> For more details, you can access Regulation 4953 (in Spanish) at: <https://www.vivienda.pr.gov/wp-content/uploads/2015/09/4953-Reglamenta-los-procedimientos-de-adiudicacion-formal.pdf>

[LegalCDBG@vivienda.pr.gov](mailto:LegalCDBG@vivienda.pr.gov); via postal mail to: CDBG-DR/MIT Legal Division, P.O. Box 21365, San Juan, PR 00928-1365; or in person at PRDOH's Main Offices at: CDBG-DR/MIT Legal Division, 606 Barbosa Avenue, Juan C. Cordero Davila Building, Río Piedras, P.R. 00918.

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

## 28 Application Closeout

Upon completion of all mitigation, demolition, repair/retrofit, reconstruction, the Program applications shall be closed. This process will begin by ensuring that all work performed has been accepted by the applicant or Program Manager and/or PRDOH and that work has been performed in compliance with Program requirements. Acceptance of the work by the applicant or PRDOH should be established during the final inspection of work performed. Program staff will perform a complete review of the application file to ensure all necessary documentation is present and to ensure that the case is ready for closeout.

General requirements for closeout are as follows:

- All eligibility, damage, and duplication of benefits documentation is found to be in accordance with all requirements of this policy and is found to be sufficient to justify the applicant's participation in the Program.
- All Program forms required throughout the entirety of the application process have been duly completed and executed by the appropriate parties, which may include Program Manager, the Construction Manager, and the applicant.
- All funds used for the Program, whether CDBG-MIT or received by means of a subrogation of funds, have been properly accounted for and reconciled with payments made to the Construction Managers and any others.
- All payments have been issued to the Construction Managers, including applicable retainages.
- All permits required for demolition and construction work have been properly closed-out with the proper governmental entities.
- Environmental clearance, if required, has been obtained for all demolition, repair/retrofit, reconstruction work performed for the applicant.

- Warranties binder for all components incorporated to the home during the process have been properly delivered to the applicant and evidence of such delivery is part of the file.
- Other requirements for closeout as established in Construction Manager's contract.

The Program Manager will contact the applicant, the Construction Manager, or any other party involved, if any additional information is necessary to close-out the case. Once all quality control review levels have been approved, the applicant will receive a Final Notice from the Program and their individual case will be fully closed.

## **29 Uniform Relocation Act (URA)**

As a HUD-assisted program, and in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (**URA**), 42 U.S.C. § 4601 et seq., and the government wide implementing regulations found at 49 C.F.R. part 24, all programs in the PRDOH CDBG-MIT portfolio, including the SFM Program, are subject to URA regulations.

Applicants who must relocate from their property temporarily for construction activities associated with acceptance of a Program award, and applicants who choose to relocate through a relocation award are not considered displaced persons, (see 49 C.F.R § 24.2(a)(9)(ii)(E) or (H)) and as such, are not entitled to relocation assistance benefits under URA. However, tenants on such properties are covered by URA regulations and may be eligible for URA relocation assistance benefits. Applicants may qualify for Optional Relocation Assistance (**ORA**), which is covered further in the Optional Relocation Assistance section of these Guidelines.

As a condition of receiving agency assistance, applicants agree to comply with PRDOH and URA requirements. Applicants:

- Must disclose to PRDOH all occupants of the assisted property, including both household members and tenants who are not a member of the household.
- May not evict or otherwise force any tenants occupying the property to vacate without first notifying their case manager so that required written notifications can be provided to the tenant.
- Are discouraged from allowing new occupants to the property after Program eligibility has been established and should first notify their case manager prior to allowing any new occupants.
- Must coordinate construction or relocation plans with PRDOH and cooperate with Program staff to establish communication with tenants if necessary, and to ensure all tenants receive required URA written notifications, relocation services, and assistance payments.

For more information on how URA regulations apply to the Program, please refer to the URA and ADP Guide published in English and Spanish on PRDOH website at <https://recuperacion.pr.gov/en/download/ura-adp-guidelines/> and <https://recuperacion.pr.gov/download/guias-ura-adp/>.

### **30 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<sup>52</sup>, 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<sup>53</sup>, the 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-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 Program will ensure that all activities are conducted in a manner that will affirmatively further fair housing.

For more information, refer to the Fair Housing and Equal Opportunity for CDBG-MIT Programs, published along with all other CDBG-MIT Program policies, in English and Spanish at <https://recuperacion.pr.gov/en/fair-housing/policy-documents/> and <https://recuperacion.pr.gov/fair-housing/politicas-documentos/>.

## **31 General Provisions**

### **31.1 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

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<sup>52</sup> Exceptions exist for housing covered under the Housing for Older Persons Act of 1995, 42 U.S.C. § 3607(b).

<sup>53</sup> Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000(d) *et seq.*; Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act), 42 U.S.C. § 3601 *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.*; Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq.*; Section 109 of the Housing and Community Development Act of 1974 (HCDA), as amended, 42 U.S.C. § 5309; Housing for Older Persons Act of 1995 (HOPA), Pub. L. 104-76; Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq.*; Executive Order No. 11063 (1962), Federal Register, Vol. 27, No. 228, (November 24, 1962), 27 FR 11527; General HUD Program Requirements: Equal Access to HUD-assisted or Insured Housing (24 C.F.R. § 5.106); Act No. 131 of May 13, 1943, 1 LPR § 13, known as the "Puerto Rico Civil Rights Act" – Discrimination in Public Places, Businesses, Transportation, and Housing; Act No. 238-2004, as amended, 1 LPR § 512(a), known as the "Bill of Rights of Persons with Disabilities"; Constitution of the Commonwealth of Puerto Rico-1952, 1 LPR Constitution of the Commonwealth of Puerto Rico; Act. No. 44 of July 2, 1985, as amended, 1 LPR § 501 *et seq.*, known as the "Act to Prohibit Discrimination Against People with Physical, Mental, or Sensory Impairments"; and Act No. 22-2013, Law to Prohibit Discrimination for Sexual Orientation and Gender Identity.

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 applicant, 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.

### **31.2 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.

### **31.3 Disaster Impacted Areas**

As described in the initial Action Plan, and its amendments, the Government of Puerto Rico will use CDBG-MIT funds solely for necessary expenses related to provide resiliency and mitigation measures to reduce the loss of life and property, restoration of housing, infrastructure and economically impacted and distressed areas in Puerto Rico, as identified in disaster declaration numbers DR-4336 and 4339. Through 85 FR 4676, HUD identified that, for Puerto Rico, all components of the Island are considered "most impacted and distressed" areas. Therefore, these guidelines apply to all 78 municipalities of Puerto Rico.

### **31.4 Extension of 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 construction project. The aforementioned strictly applies to Program deadlines or established Program terms. Under no circumstance(s) 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, or to the terms of times established in these guidelines to request a Program-based Reconsideration, administrative review and/or judicial review.

### 31.5 Established Periods of Time

**Unless otherwise specified, all established periods of time addressed in this 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 LPRA Ap. V, R. 68.1.

### 31.6 Written Notifications

All determinations made by the Program will be notified in writing by certified mail and email (if available). If an applicant believes that any determination was made without being written, the applicant may request that such decision be made in writing and duly substantiated.

### 31.7 Conflict of Interest

As stated in 84 FR 45838, 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-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:

1. HUD conflict of interest regulations, 24 C.F.R. § 570.611;
2. 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);
3. Puerto Rico Department of Housing Organic Act, Act No. 97 of June 10, 1972, as amended, 3 LPRA § 441 *et seq.*;
4. The Anti-Corruption Code for the New Puerto Rico, Act No. 2-2018, as amended, 3 LPRA § 1881 *et seq.*; and
5. The Puerto Rico Government Ethics Act of 2011, Act No.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-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-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-MIT 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 ethic laws and regulations, including, but not limited to Puerto Rico Government Ethics Act of 2011, Act No. 1-2012, as amended, regarding their conduct in the administration, granting of awards, and Program activities.

According to the aforementioned Act, 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 applicant 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 the intake process.

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

### **31.8 Citizen 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-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](mailto:infoCDBG@vivienda.pr.gov)
- **Online at:** <https://recuperacion.pr.gov/en/contact-us/contact/> (English)  
<https://recuperacion.pr.gov/contactanos/contacto/> (Spanish)
- **In writing at:** Puerto Rico CDBG-DR/MIT 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 on the PRDOH website at <https://recuperacion.pr.gov/en/citizen-participation/> and <https://recuperacion.pr.gov/en/citizen-participation/>. For more information on how to contact PRDOH, please refer to <https://recuperacion.pr.gov/welcome/index.html>.

### 31.9 Citizen Complaints

As part of addressing Puerto Rico's risk based and mitigation unmet 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 a CDBG 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. 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-MIT funded activities may do so through any of the following means:

- **Via email at:** [LegalCDBG@vivienda.pr.gov](mailto:LegalCDBG@vivienda.pr.gov)
- **Online at:** <https://recuperacion.pr.gov/en/contact-us/complaints/>  
(English)  
<https://recuperacion.pr.gov/contactanos/quejas/> (Spanish)
- **In writing at:** Puerto Rico CDBG-DR/MIT 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 Main Offices 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-MIT Program policies are available in English and Spanish on the PRDOH website <https://recuperacion.pr.gov/en/download/citizen-complaints-policy/> and <https://recuperacion.pr.gov/download/politica-sobre-presentacion-de-quejas/>.

### **31.10 Anti-Fraud, Waste, Abuse or Mismanagement**

PRDOH, as grantee, is committed to the responsible management of CDBG-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 83 FR 40314, PRDOH implements adequate measures to detect and prevent fraud, waste, abuse, or mismanagement in all programs administered with CDBG-MIT funds. Additionally, PRDOH 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-MIT Program, to report such acts to the CDBG-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-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-MIT Program.

**REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT TO PRDOH CDBG-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	<a href="mailto:hotlineCDBG@vivienda.pr.gov">hotlineCDBG@vivienda.pr.gov</a>
Online	Filling out the <b>AFWAM Submission Form</b> available in English and Spanish at <a href="https://recuperacion.pr.gov/app/cdbgdrpublic/Fraud">https://recuperacion.pr.gov/app/cdbgdrpublic/Fraud</a> and <a href="https://recuperacion.pr.gov/app/cdbgdrpublic/Fraud?culture=es-ES">https://recuperacion.pr.gov/app/cdbgdrpublic/Fraud?culture=es-ES</a>
In person	Request a meeting with the Deputy Audit Director of the CDBG-MIT Internal Audit Office located at PRDOH's Main Offices at 606 Barbosa Avenue, Building Juan C. Cordero Davila, Río Piedras, PR 00918.

<b>REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT DIRECTLY TO HUD OIG</b>	
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	<a href="mailto:HOTLINE@hudoig.gov">HOTLINE@hudoig.gov</a>
Online	<a href="https://www.hudoig.gov/hotline">https://www.hudoig.gov/hotline</a>

The AFWAM Policy and all CDBG-MIT Program policies are available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/afwam-policy/> and <https://recuperacion.pr.gov/download/politica-afwam/>.

### **31.11 Related Laws and 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 an applicant 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 these Guidelines are amended, the new provisions will apply to the Program without the need to amend these Guidelines.

### **31.12 Cross-Cutting Guidelines**

Some federal and local requirements apply to all programs funded by CDBG-MIT. These Cross-Cutting Guidelines cover topics such as: financial management; environmental review; labor standards; acquisition; relocation; civil rights; fair housing; among others. The requirements described in the above referenced Cross-Cutting Guidelines, apply to all programs described in PRDOH's CDBG-MIT Action Plan and its amendments.

The Cross-Cutting Guidelines and all CDBG-MIT Program policies are available in English and Spanish on the PRDOH website at <https://recuperacion.pr.gov/en/download/cross-cutting-guidelines/> and <https://recuperacion.pr.gov/download/guias-intersectoriales/>.

### **32 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.

### **33 Severability Clause**

If any provision of these Guidelines, or the application thereof to any person, partnership, or 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 GUIDELINES**



## **PROGRAM-BASED RECONSIDERATION REQUEST FORM SINGLE-FAMILY HOUSING - MITIGATION PROGRAM**

Applicants of the Single-Family Housing Mitigation Program (**SFM Program or Program**) may submit a Program-based Reconsideration Request when they disagree with any determination based on Program policy. However, federal statutory requirements may not be challenged. The procedure that must be followed to submit a Program-based Reconsideration Request is detailed below.

You must submit your Program-based Reconsideration Request, in writing, via electronic or postal mail within **twenty (20) calendar days** from the date a copy of the Program determination notice was filed in the record of the agency. Provided, that if the date on which the copy of the notice is filed in the records of the agency differs from the postal or electronic mail date of said notice, the **twenty (20) calendar day-term** shall be calculated from the postal or electronic mail date. Notices distributed via electronic communication shall be considered valid. In the event a notification is sent via postal and electronic mail, the notification date will be the one sent beforehand.

If you do not submit a Program-Based Reconsideration within the allotted time period, such inaction will be deemed as an acceptance of the Program's determination.

Reconsiderations may be denied or approved in whole or in part by the SFM Program after a thorough review of the circumstances and information already included in an Applicant's file unless the Applicant submits new documentation. **Applicants who file a Program-based Reconsideration Request are encouraged to provide individual facts or circumstances, as well as supporting documents to justify their petition.** The SFM Program has the discretion to accept or reject new documentation based upon its relevance to the reconsideration request.

You may file a Program-based Reconsideration Request directly with the Program with your Case Manager, by postal mail or by email.

The SFM Program will review and address the Program-based Reconsideration Request within **fifteen (15) days** of its receipt. Applicants will be notified of the Program's determination via a Reconsideration Approved or a Reconsideration Denied Notification.

If you disagree with the Program's original determination or with the Reconsideration Denied Notification, you may file an Administrative Review Request at PRDOH, following the procedure set forth in Regulation Number 4953, of August 19, 1993, which regulates the Formal Adjudication Process for PRDOH and its Adjunct Agencies (Regulation 4953). You must file such request, in writing, within **twenty (20) calendar days** from the date a copy of the Program determination or a Reconsideration Request Denial determination notice was sent. Provided, that if the date of the notice differs from the postal or

electronic mail date, the **twenty (20) calendar day-term** shall be calculated from the postal or electronic mail date. Notices distributed via electronic communication shall be considered valid. In the event that a notification is sent via postal and electronic mail, the notification date will be the one sent beforehand.

The request may be submitted via email to: LegalCDBG@vivienda.pr.gov; via postal mail to: CDBG-DR/MIT Legal Division, P.O. Box 21365, San Juan, PR 00928-1365; or in person at PRDOH's Headquarters at: CDBG-DR/MIT Legal Division, 606 Barbosa Avenue, Juan C. Cordero Davila Building, Río Piedras, P.R. 00918. PRDOH will issue a Final Order or Resolution in accordance with Section 3.14 of the Uniform Administrative Procedures Act of the Government of Puerto Rico, as amended, 3 LPRA § 9654 and you will be advised of your right to request a reconsideration before the agency or to file for judicial review, as a matter of law, in the Court of Appeals.

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



## PROGRAM-BASED RECONSIDERATION REQUEST FORM SINGLE-FAMILY HOUSING - MITIGATION PROGRAM

**Application No.:**

**Name of Applicant:**

**Name of Co-Applicant:**

**Property Address:**

- Check this box if your mailing address is different from the address of the property. If so, please provide the postal address.

Select one of the following options for which you are requesting a reconsideration:

- Ineligibility Determination
- Pre-Award Determination
- Voluntary Acquisition Offer
- Change in Pre-Award Type
- Denial of Voluntary Withdrawal
- Expiration of Term to identify a Replacement Property
- Relocation Voucher
- Final Property Inspection
- Determination of Duplication of Benefits

Application Closeout

Other, explain: \_\_\_\_\_

Provide a brief explanation of the basis for the reconsideration request:

If necessary, you may use a blank sheet of paper to further explain your request. You may also include any documents that substantiate or support your request for reconsideration as attachment to this form. Then, send this form and its attachments, if any, to the email or mailing address provided in the notification from which you are requesting a reconsideration.

\_\_\_\_\_  
Applicant's name

\_\_\_\_\_  
Applicant' s Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Co-Applicant's Name

\_\_\_\_\_  
Co-Applicant's Signature

\_\_\_\_\_  
Date