



DEPARTMENT OF  
**HOUSING**



# CDBG-DR PROGRAM GUIDELINES

**SOCIAL INTEREST HOUSING PROGRAM**

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PUERTO RICO DEPARTMENT OF HOUSING  
 CDBG-DR PROGRAM GUIDELINES  
**SOCIAL INTEREST HOUSING PROGRAM**  
 VERSION CONTROL

<b>VERSION NUMBER</b>	<b>DATE REVISED</b>	<b>DESCRIPTION OF REVISIONS</b>
1	April 30, 2020	Original Version
2	June 7, 2021	<p>Edits and additions throughout the document, highlighted in gray. Edits and additions include, but is not limited to, the clarification of general language; inclusion of new definitions; clarification within eligible activities and eligible projects; the inclusion of minimum design standards requirements; the addition of federal requirements for civil rights and non-discrimination, among other edits.</p> <p>Edits to sections 1, 2, 3, 4, 5, 6, 7, 8 and 9; incorporation of section 10; re numeration of sections 11, 12, 13, 14, 15, 16, 17, and 18.</p>
3	May 04, 2022	<p>Edits and additions throughout the document, highlighted in gray. Edits and additions include, but is not limited to, clarifications to the Architectural and Engineering Services and Construction Services procurement processes; clarification to the affordability period start date; and clarification of ineligible costs.</p> <p>Edits to sections in Sections 5.1, 5.2, 5.3 and 8.</p>
4	May 15, 2023	<p>Edits and additions throughout the document are highlighted in gray. Edits and additions include but are not limited to: additional guidance related to Rental Housing Projects to be considered when establishing the affordable rent amount for projects; language related to the possibility of an increase to the budget cap due to unforeseen conditions and extenuating factors; and edits to sections 5.3 and 14.</p>
5	October 31, 2023	<p>Edits and additions throughout the document are highlighted in gray. Edits and additions include but are</p>

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**not limited to clarifications in language related to the possibility of increasing the maximum award cap due to unforeseen conditions and extenuating factors; eligibility of costs incurred for the purchase of movable equipment; Choice-Limiting Actions; and Recapture.**

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## 1 Program Overview

Overwhelmed by back-to-back hurricanes in 2017, Puerto Rico experienced a historical impact across the Island. Just two (2) weeks after surviving regional impacts from Hurricane Irma, Puerto Rico was hit by Hurricane María. The combined effects of these hurricanes compounded extensive destruction, leaving vulnerable housing structures extensively damaged throughout the Island.

The devastation to various communities interrupted the daily life of the residents of Puerto Rico. Amidst the efforts to restore these vital and essential services to the overall residents, highly vulnerable populations must be considered. These populations possess social and/or socio-economic characteristics that cause various difficulties in daily life and require additional or specialized services and accommodations.

The Community Development Block Grant-Disaster Recovery (**CDBG-DR**) Social Interest Housing Program (**SIH Program** or **Program**)<sup>1</sup>, creates housing for highly vulnerable populations such as, but not limited to: homeless persons, senior citizens, domestic violence victims, persons with intellectual disability, persons with developmental and/ or physical disability, persons living with **Acquired Immunodeficiency Syndrome (AIDS)**, individuals recovering from addiction and individuals with other functional or access needs. The goal for the Program is to address the unmet need by creating high-quality, modern, resilient housing solutions for these populations.

Formal written comments, submitted by stakeholders during the Action Plan public comment period, which also included various municipalities and nongovernmental organizations, provided a glimpse into the need for social interest housing. Proposals submitted by these organizations spoke directly to the need for housing special needs populations and informed the design of the Program.

The Program will be implemented by non-profit, non-governmental organizations (**NGO**), who are specialized service providers, experienced in working with vulnerable populations. Collaboration with NGOs will ensure accessibility of services and facilities to individuals with a wide range of disabilities including mobility, sensory, developmental, emotional, and other impairments.

The SIH Program is targeted to the construction or rehabilitation of housing solutions, as later defined in these Guidelines, with the expectation that eligible NGO applicants will provide the majority of support services as part of their separately funded service delivery.

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<sup>1</sup> As approved in the Puerto Rico Disaster Recovery Action Plan (**Action Plan**), as amended. The Puerto Rico Disaster Recovery Action Plan, as amended, can be accessed at: <https://www.cdbg-dr.pr.gov/en/action-plan/> (English) and <https://cdbg-dr.pr.gov/plan-de-accion/> (Spanish).

Some client services that are related to the initial use of funded housing, such as establishing initial occupants, may be considered activity delivery costs.<sup>2</sup>

## 2 Definitions

- **Accessible:** When used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed, or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase accessible to and usable by is synonymous with accessible.<sup>3</sup>
- **Americans with Disability Act of 1990 (ADA):** The ADA, 42 U.S.C. § 12101 *et seq.*, is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.
- **Area Median Family Income (AMFI):** The median household income adjusted by family size for a given area.
- **Award:** The CDBG-DR SIH allocation awarded to selected NGOs through the competitive Notice of Funding Availability (**NOFA**) process.
- **Beds Dedicated to Chronically Homeless Individuals and Families:** A permanent supportive housing bed that is dedicated specifically for use by chronically homeless individuals<sup>4</sup> and families within a geographic area.
- **Broadband infrastructure:** Cables, fiber optics, wiring, or other permanent (integral to the structure) infrastructure –including wireless infrastructure– as long as the installation results in broadband infrastructure in each dwelling unit meeting the Federal Communications Commission's (**FCC**) definition in effect at the time the pre-construction estimates are generated. The FCC defines broadband speeds as twenty-five (25) Megabits per second (Mbps) download, three (3) Mbps upload. Federal Register Vol. 81, No. 244 (December 20, 2016), 81 FR 92626.
- **Community Development Block Grant – Disaster Recovery (CDBG-DR):** A term for the HUD funding stream that is allocated to eligible disaster recovery entities via Congressional appropriations.

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<sup>2</sup> Activity Delivery Costs are those allowable costs, identified as part of the final cost objective, incurred for implementing and carrying out eligible CDBG activities. [Eligible Use of Funds Section](#).

<sup>3</sup> 24 C.F.R. § 8.3.

<sup>4</sup> 24 C.F.R. § 578.3



- **Continuum of Care (CoC):** HUD Program that is designed to promote communitywide commitment to the goal of ending homelessness; provide funding for efforts by nonprofit providers, and State and local governments to quickly rehouse homeless individuals and families while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness; promote access to and effect utilization of mainstream programs by homeless individuals and families; and optimize self-sufficiency among individuals and families experiencing homelessness.
- **Cost Reasonableness:** Construction costs that are deemed reasonable and consistent with market costs at the time and place of construction in compliance with Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314.<sup>5</sup>
- **Emergency Solutions Grants (ESG):** HUD formula grant program providing funding to eligible jurisdictions addressing the needs of homeless people to quickly regain stability in permanent housing after experiencing a housing crisis and/or homelessness.
- **Environmental Review Record (ERR):** A detailed record containing the existence of negative impacts on a site, the means to mitigate negative impacts, alternatives to the project (if needed), and the rejection of the proposed activities if all other options fail and it becomes the most prudent action to take.
- **Fair Housing Act of 1968 (FHA):** The FHA, 42 U.S.C. § 3601 *et seq.*, prohibits discrimination against protected classes of people in the sale or rental housing, in the provision of housing assistance, or other housing-related activities. The FHA requires HUD, grantees and their subrecipients to take reasonable steps to ensure meaningful access to their program and activities for protected classes. The FHA also requires HUD and its program participants to affirmatively further the purposes of the FHA.
- **Housing and Community Development Act of 1974 (HCDA):** The HCDA, 42 U.S.C. § 5301 *et seq.*, prohibits in its Section 109 the discrimination on the basis of race, color, national origin, disability, age, religion and sex within CDBG programs or activities.
- **Low to Moderate Income (LMI):** Populations with incomes not more than eighty percent (80%) of Area Median Family Income, as established by HUD. This income standard changes from year to year and varies based on household size and

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<sup>5</sup> See also 2 C.F.R. §200.404 Reasonable costs.

geography. HUD has calculated adjusted income limits for Puerto Rico upon which an LMI determination is based.<sup>6</sup>

- **New Construction:** Refers to site preparation for, and construction of, entirely new structures and/or significant extensions or the way that something is put together. Homes or structures considered as new construction usually are built within the past year and a half.
- **Notice of Funding Availability (NOFA):** The process used by PRDOH to solicit and select proposals for the SIH Program.
- **Permanent Housing:** A component of the HUD Continuum of Care (**CoC**) Program that is defined as community-based housing without a designated length of stay and includes both permanent supportive housing and rapid rehousing.<sup>7</sup>
- **Placed-in-Service:** The date when at least one (1) unit of the project is suitable for occupancy. In Puerto Rico, this is validated with the submittal of a Certification of Occupancy ("Permiso de Uso"), issued by the Municipal Permits Office, or the Puerto Rico Permits Management Office ("Oficina de Gerencia de Permisos" **OGPe**, by its Spanish acronym).
- **Puerto Rico Action Plan (Action Plan):** Defines how the CDBG-DR funding allocation by HUD will be utilized in order to meet the humanitarian needs of the Island's residents through the implementation of a transformative recovery program. The Action Plan provides an analysis of the first damage calculation and reports on the programs that will meet needs of housing, planning, economic recovery and infrastructure. See <http://www.cdbg-dr.pr.gov/en/action-plan/> (English) or <https://www.cdbg-dr.pr.gov/plan-de-accion/> (Spanish).
- **Puerto Rico Department of Housing (PRDOH):** The Department of Housing of Puerto Rico has been designated as the Grantee responsible for administering the CDBG-DR funds allocated to Puerto Rico for the recovery from disasters caused by Hurricanes Irma and María of 2017.
- **Rehabilitation:** Refers to returning a structure exterior or interior to a useful state by means of repairs, modification, or alteration and additions while preserving/retaining those portions or features which convey its historical, cultural, or architectural values.

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<sup>6</sup> Current income limits for Puerto Rico CDBG-DR purposes only, can be found on the HUD website: <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>.

<sup>7</sup> 24 C.F.R. § 578.37(a)(1).

- **Renovation:** Refers to the process of returning existing old structures, typically damaged, defective, or out of code compliance, up to a modern, improved state, meeting new code requirements regulated by federal or local law. Typically, major elements of the structure are added, relocated, or reconfigured for functional, efficiency or marketability reasons.
- **Responsible Entity (RE):** Defined as a Grantee that receives CDBG assistance. The RE must complete the environmental review process. The RE is responsible of ensuring compliance with the National Environmental Policy Act of 1969 (**NEPA**), 42 U.S.C. § 4321 *et seq.*, Federal laws and authorities, issuing the public notification, submitting the request for release of funds and certification (when required), and ensuring the Environmental Review Record is complete. The RE must designate a Certifying Officer (the “Responsible Federal Official”) to ensure compliance with NEPA and the Federal laws and authorities cited at 24 C.F.R. § 58.5. In addition, the funding recipient is responsible for designating an Environmental Officer.<sup>8</sup>
- **Subrecipients:** Are Non-Federal entities that receive a subaward from a pass-through entity to carry out part of a Federal program.<sup>9</sup>
- **Subrecipient Agreement (SRA):** For purposes of this Program, contract entered between PRDOH and awarded NGOs to administer and implement the SIH Program.
- **Substantial Damage:** Defined as damage of any origin sustained by a structure whereby the cost of restoring the structure to it is before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.<sup>10</sup>
- **Substantial Improvement:** Defined as any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (2) any alteration of a

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<sup>8</sup> 24 C.F.R. Part 58 Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

<sup>9</sup> 2 C.F.R. § 200.1.

<sup>10</sup> 44 C.F.R. § 59.1.

“historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.<sup>11</sup>

- **Substantial Rehabilitation:** Defined as, for the purposes of determining when installation of broadband infrastructure is required, part of substantial rehabilitation of eligible multifamily rental housing projects, as defined by the Program, means work that involves: (1) significant work on the electrical system of the multifamily rental housing. “Significant work” means complete replacement of the electrical system or other work for which the pre-construction cost estimate is equal to or greater than seventy-five percent (75%) of the cost of replacing the entire electrical system. In the case of multifamily rental housing with multiple buildings with more than four (4) units, “entire system” refers to the electrical system of the building undergoing rehabilitation; or (2) rehabilitation of the multifamily rental housing in which the pre-construction estimated cost of the rehabilitation is equal to or greater than seventy-five percent (75%) of the total estimated cost of replacing the multifamily rental housing after the rehabilitation is complete. In the case of multifamily rental housing with multiple buildings with more than four (4) units, the replacement cost must be the replacement cost of the building undergoing rehabilitation.<sup>12</sup>
- **Transitional Housing (TH):** Housing where all participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within **twenty-four (24) months** or such longer period as HUD determines necessary.
- **Uniform Federal Accessibility Standards (UFAS):** Prescribes uniform standards for the design, construction, and alteration of buildings that ensure individuals with disabilities have ready access to and use of them in accordance with the Architectural Barriers Act of 1968 (**ABA**).<sup>13</sup>
- **United States Department of Housing and Urban Development (HUD):** Is the principal federal agency responsible for programs concerned with serving unmet housing needs, enforcing fair housing, and promoting community development.

### 3 National Objective

The National Objective of this Program is to benefit low to moderate income (**LMI**) populations (below eighty percent (80%) **Area Median Family Income (AMFI)** according

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<sup>11</sup> 44 C.F.R. § 59.1.

<sup>12</sup> 24 C.F.R. § 5.100.

<sup>13</sup> 42 U.S.C. §§ 4151 – 4157.

to the HUD Modified Income Limits for CDBG-DR Puerto Rico<sup>14</sup>), through the Limited Clientele (**LC**) LMI sub-category.

To qualify under the LC subcategory, activities funded under this Program must meet one (1) or more of the follow criteria:<sup>15</sup>

1. Exclusively benefit a clientele who are generally presumed by HUD to be principally LMI persons. The following groups are currently presumed by HUD to be comprised principally of LMI persons:
  - Abused children;
  - Elderly persons;
  - Battered spouses;
  - Homeless persons;
  - Adults meeting Bureau of Census' definition of severely disabled adults;
  - Illiterate adults;
  - Persons living with AIDS; and
  - Migrant Farm workers.
2. Collect information on family size and income so it is evident that at least fifty-one percent (51%) of the clientele are persons whose family income does not exceed the LMI limit.
3. Be of such nature in such a location that it may be reasonably concluded that the activity's clientele will primarily be LMI persons.

In circumstances where LC cannot be documented, benefit to LMI housing may be allowed. To achieve the LMI National Objective using the LMI Housing subcategory, housing projects must be permanent, as defined by HUD<sup>16</sup> and those containing more than two (2) units must have at least fifty-one percent (51%) of the units occupied by LMI individuals or households.

## 4 Program Description

The SIH Program will be overseen by PRDOH and implemented by eligible ~~non-governmental organizations~~ (NGOs), as Subrecipients, who responded to the Notice of Funding Availability (**NOFA**), CDBG-DR-NOFA-2020-03, with a viable project proposal.

The objectives of the Program are the following:

- Grant funding to applicants who are committed to providing Social Interest Housing and working with diverse populations to ensure accessibility of individuals

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<sup>14</sup> Current Adjusted Income Limits for Puerto Rico for the purpose of CDBG-DR and can be accessed on HUD's website: <https://www.huduser.gov/portal/datasets/cdbg-income-limits.html>. These limits change annually.

<sup>15</sup> HUD, CDBG Guide for National Objectives and Eligible Activities for state CDBG programs; Chapter 3: Meeting a National Objective, <https://www.hudexchange.info/onecpd/assets/File/CDBG-State-National-Objectives-Eligible-Activities-Chapter-3.pdf>. Also, see 24 C.F.R. § 570.483.

<sup>16</sup> 24 C.F.R. § 578.3.

having wide-ranging of socioeconomic, physical, emotional, and other impairments.

- Grant funding to applicants to expand existing housing to increase the number of vulnerable persons served and/or bring existing housing to decent, safe, and sanitary conditions and in compliance with applicable State and local government construction codes and health and safety standards in disaster impacted areas.

The total allocation for the SIH Program and maximum award amounts are listed in the CDBG-DR Action Plan, as amended,<sup>17</sup> and are subject to change with amendments and funding availability. Organizations ~~may~~ were able to submit applications for multiple projects through unique submissions to the Notice of Funding Availability described in the Application Process section of these Guidelines. It is possible that not all NGOs will receive the maximum amount upon award.

Funding through the Program will be based on organizational qualifications and identification of the vulnerable populations to be served as submitted in proposals. Eligible NGOs must demonstrate financial capacity to fund operations during the Program and are expected to have a viable sustainability plan for operations after CDBG-DR funds are expended. Proposers are encouraged to consider complimentary funding streams in their proposal designs, as CDBG-DR funds can only be used on costs defined in these Guidelines and within the NOFA.

## 4.1 Roles

### Puerto Rico Department of Housing (PRDOH)

- PRDOH will be the administering entity for the SIH Program. In this role, PRDOH ~~will~~ administered NOFA processes to solicit and select proposals. PRDOH ~~will~~ executed Subrecipient Agreements (**SRA**) with selected entities and will monitor performance throughout the grant. Prior to executing an SRA, PRDOH ~~will~~ evaluated each selected NGO's capacity to effectively manage the funds through a capacity assessment. The SRA may include specific terms and conditions which reflect PRDOH's capacity assessment of the entity.

### Subrecipients

- Subrecipients are non-Federal entities that receive a subaward from a pass-through entity to carry out part of a Federal program. In the SIH Program, subrecipients are non-profit entities that work with vulnerable populations in Puerto Rico, responded to the NOFA with a viable proposal, are selected by the Program

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<sup>17</sup> The Puerto Rico Disaster Recovery Action Plan, as amended, can be accessed at: <https://www.cdbg-dr.pr.gov/en/action-plan/> (English) and <https://cdbg-dr.pr.gov/plan-de-accion/> (Spanish).

to receive an award, and execute an SRA with PRDOH. Subrecipients are responsible for program implementation under PRDOH's guidance and instruction. Also, they will be required to comply with all PRDOH and CDBG-DR regulations, policies and procedures including milestone reporting requirements to execute all program components effectively. ~~As each awarded entity and project is unique, each awarded subrecipient will be specifically bound to the responsibilities outlined in its Subrecipient Agreement with PRDOH.~~ Each SRA details the approved projects and responsibilities that the Subrecipient entity must fulfill.<sup>18</sup>

## 5 Eligible Use of Funds

SIH Program funding must be used as outlined in these Program Guidelines, the Action Plan, as amended, the NOFA, and executed SRA's. All program-funded projects must meet one of the HUD National Objectives listed in these Guidelines and meet the eligible activity requirements of this section. Eligible entities must also meet the requirements in the Program Eligibility section of these Guidelines.

### 5.1 Eligible Activities and Costs

The following activities and costs are eligible under the SIH Program:

- The acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements. (Section 105(a)(2)(b) of Housing and Community Development Act of 1974 (**HCDA**), as amended, 42 U.S.C. § 5301, *et seq.*);
- Clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately-owned properties, and including the renovation of closed school buildings). (Section 105(a)(4)(d) of HCDA);
- Removal of mobility barriers which restrict the mobility and accessibility of elderly and handicapped persons. (Section 105(a)(5) of HCDA);
- Assistance to nonprofits organized under state or local law to carry out community development activities which address the development needs of the community in question. (Section 105(a)(15) of HCDA);
- Supplementary public services, a component to place limited clientele in the funded projects (such as homeless persons, etc.) once completed, (Section 105(a)(8) of HCDA);

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<sup>18</sup> When multiple projects are approved within an SRA, and a recapture of funds is necessary, the recapture will be done specifically for the project that requires it, without affecting the funds of projects that are meeting their obligations.

- When applicable, client services related to the initial use of funded housing may be considered an activity delivery cost because those costs support the documentation of the national objective.
- Soft costs incurred in support of eligible construction activities which could include but are not limited to: site surveys, permit acquisition, as well as overhead and profit margins of construction cost will be considered eligible at the discretion of PRDOH if deemed necessary and appropriate to achieve the National Objective of the SIH Program;
- Clearance of environmental contamination from sites to be used for renovation and reconstruction projects;
- Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in the 2 C.F.R. § 200.449;
- Staff costs and related expenses required for management of contractors procured for project, outreach efforts for marketing the Program, screening potential applicant households and structures, and other eligible services related to completion of the Program;
- New Construction of housing as part of a commercial structure (mixed-use);
  - The costs clearly attributable to the commercial portion of the project are ineligible under this Program;
- Site improvements to public owned land to enable the property to be used for the new construction of housing, provided the improvements are undertaken while the property is still in public ownership;
- Costs of permanent fixtures and furnishings for the facility<sup>19</sup>.
- The purchase of moveable equipment which is not considered an integral structural fixture, only when such items constitute all or part of a public service pursuant to 24 C.F.R. § 570.201(e). According to regulations at 24 C.F.R. §570.201(e) "a public service must be either a new service or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the unit of general local government (through funds raised by the unit or received by the unit from the State in which it is located) in the 12 calendar months before the submission of the action plan." Eligibility of the costs as part of a public service will be subject to a regulatory compliance validation performed by the Program on a case-by-case basis to confirm the equipment, although not structurally affixed, is critical for the implementation of program activities, among other considerations.

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<sup>19</sup> Equipment, as defined in 2 C.F.R. §200.1, must be purchased, maintained, and disposed of according to provisions found at 2 C.F.R. § 200.313 and § 200.439, Equipment and Capital Expenditures. Purchases of this nature must also be supported to demonstrate that the costs of purchase are necessary and reasonable for the performance of the goals of the Social Interest Housing Program.



Facilities may be overseen by HUD CoC providers and may supplement ESG programs for a coordinated impact to: The oversight of the facilities could be carried out by providers of the HUD Continuum of Care (**CoC**) program and could be complemented with Emergency Solutions Grants (**ESG**) programs to achieve coordinated impact for:

- Provide essential services to shelter residents;
- Rapid re-housing of homeless individuals and families;
- Prevention of families and individuals from becoming homeless.

To outline the distinction between CoC activities and activities funded under this Program, a description of CoC eligible activities and Social Interest Housing eligible activities can be found in the Continuum of Care Program section of these Guidelines.

## 5.2 Ineligible Activities and Costs

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

- Operating and maintenance costs associated with day-to-day functions of the NGO not associated with the approved social interest housing project;<sup>20</sup>
- Support service only activities;
- Rental assistance;
- Site improvements to privately owned land (that are not the responsibility of the Subrecipient) to enable the property to be used for the CDBG-DR approved project, provided the improvements are undertaken while the property is still in private ownership.
- Financing costs (including interest) to fund operations and administration of the Subrecipient.
- Costs incurred under a rental agreement or lease contract made between a landlord and the Subrecipient. The Subrecipient may not lease the property during the intended use or affordability period unless the ultimate purpose of the project is to extend the impact of CDBG-DR funding with the aim of increasing the inventory of affordable housing.

## 5.3 Eligible Projects

Social Interest Housing Program applicants with projects approved by PRDOH will be responsible for execution of the project under the guidance of PRDOH. Eligible new construction and rehabilitation project sites must comply with the following requirements:

- Must be located in Puerto Rico;

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<sup>20</sup> 24 C.F.R 570.207(b)(2) limits the use of CDBG funds for expenses associated with repairing, operating, or maintaining public facilities, improvements, and services. Certain exceptions can be made and are made under the Eligible Activities and Costs section of these Guidelines.

- The Program has established a budget cap of two million five hundred thousand dollars (\$2,500,000.00) for each individual project. An organization can submit proposals for multiple projects, but each project will be evaluated separately. ~~NGOs assume responsibility regarding any cost over the intended budget cap.~~
  - ~~As an exception,~~ an increase to the budget cap might be considered only if unforeseen conditions or ~~additional~~ extenuating factors arise ~~to allow~~ ~~after~~ an eligible project ~~has to commenced~~ ~~start or continue its~~ construction ~~activities~~ under an executed SRA. The Program will evaluate on a case-by-case basis to address those conditions ~~to~~ ~~and~~ allow implementation to continue.
- Must comply with accessible design requirements of the Fair Housing Act, as well as ADA Standards for Accessible Design (**ADA Standards**), and Section 504 of the Rehabilitation Act of 1973 (**Section 504**), as applicable, and to the extent feasible for those sites considered non-substantial repair;<sup>21</sup>
- Must comply with standards<sup>22</sup> specific to Critical Action Facilities<sup>23</sup> if applicable.
- Should be accessible to public transportation, grocery shopping, recreation, ~~and~~ socialization, etc.;
- Should include on-site support services for the special needs population served or be located near a service facility.

Funded projects meeting the LMI National Objective using the LC subcategory, must comply with their intended use for a minimum of **ten (10) years**, ~~counted from the occupancy~~. Funded projects that meet the LMI National Objective under the LMI housing subcategory must maintain a minimum affordability period of **fifteen (15) years**, ~~counted from the occupancy~~, for rehabilitation or reconstruction of multi-family rental projects with eight (8) or more units, and **twenty (20) years** for new construction of multi-family rental projects with five (5) or more units,<sup>24</sup> beginning once fifty-one percent (51%) of the total number of units have been occupied<sup>25</sup> by LMI individuals or households. The Subrecipient entities must ensure the rental projects remain financially, physically, and managerially viable so they can continue to house low-income families for the duration of the affordability period. PRDOH will determine affordable rents for housing projects as the lesser of the calculated HUD High Rent Limit or thirty percent (30%) of the annual LMI household income. The High Rent Limits are published every year by HUD.<sup>26</sup>

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<sup>21</sup> See, [https://www.hud.gov/program\\_offices/fair\\_housing\\_equal\\_opp/disabilities/accessibilityR](https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/accessibilityR).

<sup>22</sup> 24 C.F.R. § 55.20 - Decision making process.

<sup>23</sup> 24 C.F.R. § 55.2 – Terminology (3)(i) Critical Action.

<sup>24</sup> Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314.

<sup>25</sup> Occupancy will be determined by the signing of the contract.

<sup>26</sup> See the 2022 Home Rent Limits for Puerto Rico at: [https://www.huduser.gov/portal/datasets/home-datasets/files/HOME\\_RentLimits\\_State\\_PR\\_2022.pdf](https://www.huduser.gov/portal/datasets/home-datasets/files/HOME_RentLimits_State_PR_2022.pdf).

The following criteria must be considered:

- At least fifty-one percent (51%) of the project's units must be occupied by LMI households.
- The project must meet affordable rent requirements and tenant income limits through the duration of the affordability period.<sup>27</sup> At a minimum, the following thresholds must be adhered to in all projects:
  - Tenant household income limits must not exceed eighty percent (80%) of the Area Median Income (**AMI**), according to the CDBG-DR HUD Modified Income Limits for All Areas in Puerto Rico, and
  - Maximum Affordable Rents (including utility costs) shall not exceed the lesser of the calculated HUD High Rent Limit or thirty percent (30%) of the annual LMI household income.<sup>28</sup>

Social Interest Housing proposals may include the new construction or rehabilitation for the following property types:

- Single Family housing
- Two-unit structures
- Multi-unit rental property
- Group homes
- Other properties or special needs housing, as needed by the population served.

Property site requirements may vary depending on the population that the property is designed to serve, including but not limited to:

- Projects for Survivors of Domestic Violence: Project that is dedicated to survivors of domestic violence, dating violence, sexual assault, or stalking.<sup>29</sup> ~~Puerto Rico standards for safety and security provided by the Puerto Rico Women's Advocate Office shall be adhered to for Projects for Survivors of Domestic Violence. The safety regulations established by the laws and protocols applicable to projects/shelters for domestic violence survivors must be followed.~~
- Beds Dedicated to Chronically Homeless Individuals and Families: A permanent supportive housing bed that is dedicated specifically for use by chronically homeless individuals and families within a geographic area. When a Program participant exits the project, the bed must be filled by another chronically homeless participant unless there are no chronically homeless persons located

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<sup>27</sup> 83 FR 40314.

<sup>28</sup> The affordability periods will be monitored by Subrecipients during the entire term, through the review of rent rolls, rent rates, or any similar documentation to evidence compliance with said periods.

<sup>29</sup> 24 C.F.R. §578.3.

within the geographic area. This concept only applies to permanent supportive housing projects.

- **Transitional Housing:** Housing where all Program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within **twenty-four (24) months**, from signing the contract, or such longer period as HUD determines necessary. The Program participant must have a lease or occupancy agreement for a term of at least one (1) month that ends in **twenty-four (24) months**, from signing the contract, and cannot be extended.
- **Permanent Housing:** Community-based housing without a designated length of stay and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the Program participant must be the tenant on a lease for a term of at least one (1) year, which is renewable for terms that are a minimum of one (1) month long and is terminable only for cause.

## 6 Program Eligibility

Applicants to the SIH Program must meet the entity and proposal eligibility requirements established within these Program Guidelines.

### 6.1 Eligible Entities

Eligible entities for the SIH Program are NGOs. This Program's aim is to fund entities working in Puerto Rico that may have been affected by the hurricanes or that were born from a need that was realized after the hurricanes. The SIH Program will support the Island's NGOs who currently work with vulnerable populations in Puerto Rico. Eligible Applicants will need to provide proof of non-profit status via merchant registration, certificate of incorporation or organization tax return.

### 6.2 Baseline Eligibility Requirements

All proposals submitted to PRDOH, via the established NOFA process, must **have** meet the following baseline requirements to receive CDBG-DR funding:

- Meet the required HUD National Objective of this Program;
- Seeks funding for CDBG-DR eligible activities;
- Applicant is authorized to work in Puerto Rico;
- Applicant currently works with vulnerable populations in Puerto Rico;
- Project is related to long-term disaster recovery, ~~that~~ **which** includes the rehabilitation or new construction of housing, from impacts of the covered disaster;
  - HUD requires that all CDBG-DR Programs have a tie to the Hurricanes. With every municipal government in Puerto Rico being determined by the HUD

Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, to be a “most impacted and distressed area,” funding is available to all communities across Puerto Rico. In accordance with 83 FR 5844, “All CDBG-DR funded activities must clearly address an impact of the disaster for which funding was allocated.”

- Applicant must demonstrate obtainment of the financial resources necessary to ensure on-going operation, maintenance, and fiscal sustainability for facilities and services therein;
- Applicant must demonstrate the ability, capacity, skill, and other necessary resources to perform the work or provide the services required.

## 7 Application Process

Eligible entities that wish to submit a proposal in response to the competitive NOFA process ~~will be needed~~ to follow the steps outlined below and submit all required documents.

1. The NOFA ~~will be~~ was posted for a minimum ~~period~~ of **sixty (60) days**, ~~it will be~~ named as the NOFA response period;
2. After ~~the~~ NOFA response period has closed, PRDOH ~~will~~ evaluated each Application received based on scoring criteria identified in the NOFA;
3. After the Applications ~~have been~~ were evaluated and selected, PRDOH informed all Applicants of their evaluation results and worked with the selected Applicants to begin the post-selection process outlined in NOFA;
4. PRDOH ~~will~~ executed an SRA with each selected Program Applicant. ~~Each SRA details the approved projects and responsibilities that the Subrecipient entity must fulfill.~~

PRDOH ~~will inform the public that a NOFA to participate in the SIH Program is open for applications.~~ Upon formally announcing the Program, PRDOH ~~will~~ posted the NOFA to the PRDOH website and other locations per the approved outreach plan.

Criteria for scoring the NOFA proposals ~~will~~ captured the following:

- Identification of needs for the currently serviced vulnerable population via data; this may include a waitlist for services.
- A proposed solution for identified needs that includes the need for renovation or new construction of housing. All proposals must include:
  - Location such as a specific neighborhood, site, or building;
  - Number of units required to achieve proposed solution; and
  - Number of beneficiaries to be served.
- Capacity of the NGO to carry out project proposal.

- Current financial structure of NGO including ability to pay for operating costs and other non-funded costs associated with the project.

Further guidance on specifics related to Application requirements will be provided within the published NOFA. PRDOH will, at its discretion, determine the final items to be provided in the NOFA which will include additional information, criteria, and considerations for proposal selection. When the NOFA is released, and published and it will be posted to the PRDOH website.

## 8 Construction Requirements and Minimum Design Standards

Contingent upon the project's needs, the Subrecipient will issue either a separate or combined procurement process to seek qualified Architectural & Engineering (A&E) Services and Construction Services. The Selected Proposer(s)/Bidder(s) entity(ies) will enter contract(s) with the Subrecipient. If the Subrecipient opts to procure Design-Build Services, Architectural, Engineering, and Construction firms providing combined services as a joint-venture, the process will result in a single contract with the Selected Proposer.

The Subrecipient will also be required to procure Inspection Services for practices that must be completed prior to the commencement of any of the project's Design-Build Services, A&E or Construction Services. These services may include, but are not limited to project supervision, project inspection, and client representation on behalf of the project owner's (NGO's) best interest. Additionally, Subrecipients may propose to hire staff either internally, or to procure service providers to assist in the undertaking and completion of project design services, construction documentation services, demolition, abatement, repair, and construction, construction oversight, and other related necessities for the completion of the SIH Program approved project. PRDOH reserves the right to contracting of these services, on behalf of the Subrecipient, in order to achieve an adequate procurement process.

### 8.1 Minimum Design Standards Intent

The intent of the SIH Program Minimum Design Standards is to:

- Enhance consistency within the design process;
- Promote NGO longevity by implementing the use of durable construction materials that reduce maintenance costs for the Applicants post project completion;
- Promote and enhance efficient energy and water design practices to reduce operating costs post project completion;
- Balance quality of materials with cost containment principles; and
- Finally, create a healthy living environment for the beneficiaries of the Program's eligible Applicants.

Unless otherwise stated, these standards include only the minimum requirements and may be outperformed. PRDOH reserves the right to waive minimum design standards herein stated on a case-by-case basis. Waivers will be made available by PRDOH, after careful analysis and consideration of request for a waiver.

## 8.2 Codes, Laws, and Regulations Compliance

Funded applicants must ensure that all repair, rehabilitation, and new construction work for the Program is in compliance with all federal, state, and local codes and regulations which includes but is not limited to the following:

- Project works can be performed only after the achievement of the initially required permits and endorsements, that will comply with other local requirements;
- New construction or alterations of existing housing units will abide by all local design and architectural standards;
- New construction or alterations of existing housing units and non-housing facilities must comply with the 2010 ADA Standards, as well as Section 504 requirements, and/or the Uniform Federal Accessibility Standards (**UFAS**);<sup>30</sup>
- New constructions of multifamily housing projects that contains four (4) or more dwelling units, as well as any multifamily housing development built for first occupancy after March 13, 1991, must comply with the design and/or construction requirements of the Fair Housing Act;
- HUD Minimum Property Standards;
- Policy-planning-management capacity activities (Section 105(a)(12) of Title I of the HCDA);
- Energy Development Goals (Section 105(a)(16) of the HCDA);
- Americans with Disabilities Act of 1990, (**ADA**) as amended (42 U.S.C. § 12101), when required;
- Most current approved zoning requirements for Puerto Rico;
- Environmental regulations, as applicable to specific projects; and
- HUD terms and conditions, as applicable to specific projects.<sup>31</sup>

The design and construction completed under the SIH Program, must comply with the latest applicable local building codes, as adopted on February 15, 2019.<sup>32</sup> The 2018 International Building Code® (**IBC**) recently incorporated establishes minimum requirements for building systems using prescriptive and performance-related provisions. This 2018 edition is fully compatible with all of the International Codes® (**I-Codes**) published by the International Code Council (**ICC**). This regulation arises from the

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<sup>30</sup> HUD issued Federal Register Notice Vol. 79, No. 100 (May 23, 2014) 79 FR 29671, which allows grantees of Federal funding to use the 2010 Standards to satisfy Section 504 accessibility requirements, with certain exceptions specified in the Notice where the Section 504 and UFAS requirements provide a higher accessibility standard and therefore prevail.

<sup>31</sup> <https://www.hudexchange.info/resources/documents/CDBG-DR-Resources-Summary.pdf>

<sup>32</sup> See Puerto Rico Building Code, as adopted by the Puerto Rico Planning Board, on February 15, 2019.



adoption of ten (10) of the ICC family with its amendments to conform to the requirements of Laws and Regulations of construction and occupancies in Puerto Rico. This edition of the Puerto Rico Codes, like the other Codes published by the ICC, is arranged and organized to follow sequential steps that generally occur during a plan review or inspection and must be used with the corresponding code of the I-Codes family as follows:

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

All work performed by awarded NGOs must also comply with most current federal, state and local, codes, laws, regulations and standards including, but not necessarily limited to:

- Joint Regulation for Project Evaluation and Permitting, regarding Land Development and Use, and Business Operations ("Reglamento Conjunto para la Evaluación y Expedición de Permisos Relacionados al Desarrollo, Uso de Terrenos y Operación de Negocios");<sup>33</sup>
- Local planning and zoning requirements;
- Planning and Capacity Building (Section 105(a)(12) of the HCDA);
- Energy Development Goals (Section 105(a)(16) of the HCDA);

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<sup>33</sup> Planning Board, Joint Regulation for Project Evaluation and Permitting, regarding Land Development and Use, and Business Operations, No. 9233 (December 2, 2020), <https://jp.pr.gov/wp-content/uploads/2021/07/Reglamento-Conjunto-2020-Vigencia-2-Enero-2021.pdf>, No. 9473 (June 16, 2023) <https://jp.pr.gov/reglamento-conjunto/> or the equivalent regulation in force at the time of installation.



- Puerto Rico Firefighters Code; most current approved version;
- Applicable Environmental Regulations;
- Applicable HUD Terms and Conditions;
- Fair Housing Act, as amendment;
- American with Disabilities Act (where required).

Puerto Rico is geographically located, in an area of high seismic and cyclonic activity. The updating of maps related to these activities, as well as the recent flood maps previously approved by the Puerto Rico Planning Board (**PRPB**), require that the design and construction requirements on the Island comply with their ruling; thus, guaranteeing greater security to life and property. On the other hand, this Regulation is designed specifically for the conditions found in Puerto Rico; the Codes establish construction and design parameters related to mitigating the impact of catastrophic events, fire prevention and energy conservation, among others. Historic preservation regulations or recommendations may be an exception to these requirements as per consultation with the State Historic Preservation Office (**SHPO**).

Other permit requirements include, but are not limited to:

- Construction and Demolition 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 Puerto Rico Electric Power Authority, 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.

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, an amended, known as the Law that created the College of Engineers and Surveyors of Puerto Rico, 20 LPRA § 741.
- Act No. 107-2020, as amended, 21 LPRA § 8049 *et seq.*, known as the Puerto Rico Municipal Code. ~~Act No. 83-1991 as amended, 21 L.P.R.A. § 5803 *et seq.*, known as the Municipal Property Tax Act of 1991.~~

Under no circumstances should financial commitments be made, or construction work be started prior to a project obtaining an environmental clearance, which is approved by the Program.

### 8.3 Quality Control and Assurance

The Awarded NGOs must comply with the highest quality parameters for the residential construction industry. The projects' specific quality control and quality assurances procedures, testing, and reporting will be developed by the Subrecipient's internal staff or procured service providers design team, as part of the technical specifications for each project and approved by the PRDOH or its representatives.

### 8.4 Inspection of Construction Projects

All projects undertaken for the SIH Program are required to be inspected by a licensed Professional Engineer (**PE**) or Registered Architect (**RA**) in compliance with Act No. 173 of August 12, 1988, as amended, 20 LPRA §711, *et seq.*, known as Board of Examiners of Engineers, Architects, Surveyor and Landscape Architects of Puerto Rico Act. It will be identified as the project Resident Inspector who will serve the purpose of, but not limited to: (i) evaluating the overall progress of construction works; (ii) confirming that local building codes and Program standards are being met; and (iii) confirming that all requirements of the contracts have been met by the contractors implementing the construction works.

The Subrecipient will be responsible to procure for contracting these Inspection Services for the construction of the project.

### 8.5 Implementation of Green Building Standards / Green Building Retrofit Checklist

As required by 83 FR 5844, and amended by the Federal Register Notice Vol. 84, No. 33 (February 19, 2019), 84 FR 4836, all new construction of residential buildings and all replacement of substantially damaged residential buildings must comply with a HUD-approved Green Building Standards. Therefore, social interest housing projects that meet the criteria for new construction or replacement of substantially damaged buildings are required to comply with an industry-recognized standard and achieve certification under at least one of the following programs:

- ENERGY STAR® (Certified Homes or Multifamily High-Rise or latest version);
- Enterprise Green Communities;
- Leadership in Energy and Environmental Design (**LEED**) (New Construction, Homes, Midrise, Existing Buildings Operations, and Maintenance, or Neighborhood Development);
- ICC-700 National Green Building Standard;

- Environmental Protection Agency (**EPA**) Indoor Air Plus (ENERGY STAR® a prerequisite); or
- Any other equivalent comprehensive green building program, acceptable to HUD.

For each project, the Subrecipient must identify which Green Building Standard will be used and submit alongside a checklist or other documentation demonstrating that the elements of the chosen standard have been followed and fulfilled. Additionally, the Subrecipient shall provide any supporting documentation as deemed necessary or requested by PRDOH during the process of the application evaluation and throughout the duration of the project.

#### 8.5.1 Green Building Retrofit Checklist for Rehabilitation of Non-substantially Damaged Residential Building

As required by 83 FR 5844, for the rehabilitation of non-substantially damaged residential building projects, Subrecipient shall adhere to the guidelines specified in the HUD Community Planning and Development (**CPD**) Green Building Retrofit Checklist<sup>34</sup>, as it applies to the rehabilitation work undertaken, including the use of mold-resistant products when replacing surfaces such as drywall. When rehabilitation work includes replacing older or obsolete products, the rehabilitation must use ENERGY STAR® -labeled, Water Sense-labeled, or Federal Energy Management Program (**FEMP**)-designated products and appliances.

The Subrecipient must submit, for each project file, the provided HUD CPD Green Building Retrofit Checklist and any supporting documentation deemed necessary or requested by PRDOH during the process of the application evaluation and throughout the duration of the project.

## 8.6 Broadband Infrastructure Requirements

Under 83 FR 5844, projects are required to include installation of broadband infrastructure at the time of new construction or substantial rehabilitation for multifamily rental housing that is funded or supported by HUD.

PRDOH aims to narrow the digital divide in low-income communities served by HUD. Installing unit-based broadband infrastructure in multifamily rental housing that is newly constructed or substantially rehabilitated with or supported by HUD funding will provide a platform for individuals and families residing in such housing to participate in the digital economy and increase their access to economic opportunities.

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<sup>34</sup> <https://www.hudexchange.info/resource/3684/guidance-on-the-cpd-green-building-checklist/>

**NOTE:** PRDOH requested waivers to this Checklist based on climate and type of construction. HUD approved this waiver request in a letter to PRDOH dated February 20, 2020. Please refer to checklist included on: <https://cdbq-dr.pr.gov/en/social-interest-housing-program/>.

Projects are excluded from this requirement only if one of the below exclusions can be documented and validated by PRDOH:

- The location of the new construction or substantial rehabilitation makes installation of broadband infeasible;
- The cost of installing broadband infrastructure would result in a fundamental alteration in nature of its program, or activity, or in an undue financial burden; or
- The structure of housing, to be substantially rehabilitated, makes installation of broadband infrastructure infeasible.

While Projects are only required to include one form of broadband infrastructure, it is recommended to install more than one form as this will promote competition among service providers on quality and price for residents.

The Subrecipient Inspector will verify that the project complies with the CDBG-DR project and applicable Broadband Infrastructure design requirements.

## **8.7 Cost Reasonableness**

Only construction costs that are deemed reasonable and consistent with market costs at the time and place of construction in compliance with Federal Register Volume 83, No. 157 (August 14, 2018), 83 FR 40314, 40318, are allowable under the SIH Program. All projects will be reviewed by an independent, qualified party to establish cost reasonableness of items proposed as part of project submissions. As outlined in 2 C.F.R § 200.404, a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

The value of purchased land and buildings must not exceed its fair market value at the time of donation to the non-Federal entity as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the non-Federal entity as required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. §§ 4601–4655) except as provided in the implementing regulations at 49 C.F.R. Part 24.

## **9 Environmental Requirements**

Environmental review is the process of reviewing a project 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**), as well as to the HUD environmental review regulations at 24 C.F.R. Part 58. 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. 24 C.F.R. § 58.22(a) 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 be in compliance, include:

- Historic Preservation (36 C.F.R. Part 800)
- Floodplain Management (24 C.F.R. Part 55, Executive Order 11988)
- Wetlands Protection (Executive Order 11990)
- Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*)
- Sole Source Aquifers (40 C.F.R. Part 149, Subpart A and Subpart B.)
- Endangered Species Act (50 C.F.R. Part 402)
- Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq.*)
- Air Quality (42 U.S.C. § 7506 (Clean Air Act, Sections 176 (c) and (d)), 40 C.F.R. Parts 6, 51, 93)
- Farmland Protection Policy Act (7 C.F.R. Part 658)
- Environmental Justice (Executive Order 12898)
- Noise Abatement and Control (24 C.F.R. Part 51, Subpart B)
- Toxic/Hazardous Materials (24 C.F.R. § 58.5(i)(2))
- HUD Environmental Standards (24 C.F.R. Parts 50 and 58)
- Airport Clear Zones and Accident Potential Zones (24 C.F.R. Part 51, Subpart D)

All Program awardees must document and be able to present said documentation, demonstrating compliance with NEPA and other environmental requirements, as applicable. 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.

No work may start on a proposed project<sup>35</sup> before the environmental review process is completed, even if that work is being done using non-HUD funds, such as signing a

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<sup>35</sup> Applicants can file various projects on the same proposal. Nevertheless, each project must comply individually with the Environmental Review.

construction contract. Environmental clearance must be obtained for each project prior to the firm commitment of federal or non-federal funds. (24 C.F.R. § 58.22). A violation of this requirement may jeopardize federal funding to a project and disallow all costs that were incurred before the completion of the Environmental Review.

## **9.1 Environmental Level of Review**

To conduct the appropriate level of environmental review, the Subrecipient will 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. PRDOH will approve the classification determination. The three (3) major environmental classifications for projects and their descriptions (which are in parentheses) are as follows.

1. Environmental Assessment (new construction);
2. Categorically Exclusion Subject to 24 C.F.R. § 58.5 (all renovations and refurbishing); and
3. Categorically Exclusion Not Subject to 24 C.F.R. § 58.5 (activities not associated with repair or construction).

## **9.2 Exempt Activities**

These are activities which, by their nature, are highly unlikely to have any direct impact on the environment. Accordingly, these 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 out 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.

### **9.2.1 Categorically Excluded Activities**

These are activities for which no Environmental Assessment and finding of no significant impact under NEPA is required. These activities are divided into those are and those that are not subject to related laws and authorities at 24 C.F.R. § 58.35.

Examples of categorically excluded activities not subject to related laws and authorities under 24 C.F.R. § 58.35 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. § 58.35, 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.

Examples of categorically excluded activities subject to related laws and authorities under 24 C.F.R. § 58.35 include acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities; special projects directed toward the removal of material and architectural barriers; and rehabilitation 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. § 58.35 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. The documentation must support its determinations related to compliance including correspondence with applicable agencies having jurisdiction. Upon completion there should be one of three 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 (24 C.F.R. § 58.70). After a seven-day (7) 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.

### **9.3 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.

If it is determined that the action does not significantly affect the quality of the environment, then the Program will need to post a public notice called a Combined/Concurrent Notice of Finding of No Significant Impact 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 and HUD will hold the Release of Funds for a **fifteen (15) day period** to allow for public comment (24 C.F.R. § 58.45). If no comments are received during this time, HUD will send a signed Release of Funds and the project may proceed.

#### **9.4 Lead-Based Poisoning Prevention Act**

To successfully fulfill the requirements in the Environmental Review, funded projects must be compliant with the Lead-Based Poisoning Prevention Act (42 U.S.C. §§ 4821-4846) and all regulations and procedures stipulated by the Government of Puerto Rico and any amendments thereof.

Whenever federal funds, such as CDBG-DR, 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.

A lead-based paint assessment will be conducted by a licensed lead-based paint assessor on those buildings that were built before 1978 but are eligible for rehabilitation. In addition, the Program requires that a visual assessment be performed for all developments post-1978.

#### **9.5 Asbestos Surveys**

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

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

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

The National Emission Standards for Hazardous Air Pollutants (**NESHAP**) regulations under the Clean Air Act, as amended, 42 U.S.C. §7401, specify work practices for asbestos to be followed during demolitions and renovations of all structures, installations, and buildings. The regulations require notification to the pertinent State agency before any demolition, or before any renovations of buildings that could contain a certain threshold amount of asbestos or asbestos-containing material. Therefore, the Program must perform an asbestos survey before conducting any reconstruction work.



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

During the survey process, every effort shall be made to collect **the** required samples in the least destructive manner possible. The nature of the asbestos survey will be to determine the location and extent of asbestos-containing materials that may be disturbed during repair or demolition activities. Samples of presumed asbestos-containing materials shall be processed or evaluated by accredited laboratories for testing of asbestos presence in materials. Asbestos content determination shall be performed, as necessary, by utilizing Polarized Light Microscopy, Point Counting, and Transmission Electron Microscopy.

## **9.6 Flood Insurance Program Requirements**

Projects located in a Special Flood Hazard Area (**SFHA**), also known as the 100-year floodplain, that receive assistance under CDBG-DR must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(1) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012(a) mandates the purchase of flood insurance protection for any HUD-assisted property within a Special Flood Hazard Area.

Section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. § 4001, as amended, on Prohibited flood disaster assistance, implies a responsibility for a grantee that receives CDBG-DR 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.

If an SIH Program project were to be located in an SFHA, the activity must be designed to minimize potential damage to or within the floodplain.<sup>36</sup> Primarily residential structures located in an SFHA that receive assistance for new construction must be elevated with the lowest floor, including the basement, at least two (2) feet above the base flood

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<sup>36</sup> Executive Order No. 11988, 44 C.F.R. Part 9 (1977).

elevation. Mixed-use structures without housing units and without residents below two feet above the base flood elevation must be elevated or flood-proofed, in accordance with FEMA flood-proofing standards, at least two feet above the base flood elevation.<sup>37</sup>

## 9.7 Choice Limiting Actions

Before taking any action that limits the ability to choose, an environmental study must be conducted. Applicants to the SIH Program are required to immediately cease any choice-limiting action regarding the projects.<sup>38</sup> Failure to stop activities such as acquisition, demolition, disposition, rehabilitation, repair, new construction, site preparation, and leasing or any other activities that commit to future actions for a proposed project prior to obtaining an environmental clearance will result in the project no longer being eligible for HUD assistance.

## 10 Civil Rights and Non-Discrimination

As a program receiving federal CDBG-DR funding, the SIH Program shall be implemented in a manner that does not deny any individuals the opportunity to participate in, access, or benefit from the Program, based upon any federally or locally designated protected classes. PRDOH has adopted several policies to which it, its subrecipients, and all contractors must adhere in the design and implementation of the SIH Program. All CDBG-DR Program policies are available in English and Spanish on PRDOH website at <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

### 10.1 Fair Housing and Equal Opportunity

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

NGOs, as the Subrecipients, will be responsible for the administration of the SIH Program, and take measures to affirmatively market and ensure accessibility to the SIH Program, as follows:

1. Awarded Subrecipients will identify the groups it seeks to serve within the Program, assess which groups and/or protected classes are historically underserved and are

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<sup>37</sup> 83 FR 5844, 5861

<sup>38</sup> 24 C.F.R. § 58.22

least likely to apply to the Program, and will employ affirmative marketing strategies to encourage Program participation from these groups.

2. Awarded Subrecipients will retain documentation of all marketing measures used, including copies of all advertisements and announcements that are made available for public viewing upon request.
3. Awarded Subrecipients will provide reasonable accommodations as needed to make the Program accessible to people with disabilities, will hold informational meetings and in-person application intake meetings in building or areas that are compliant with ADA, and provide appropriate assistance to those who are hearing or visually impaired when requested.
4. Awarded Subrecipients will use the Fair Housing logo in advertising, publicly post Fair Housing posters and advertisements, and provided related information, to generally inform the public of its rights and the obligations owned under Fair Housing regulations.
5. Awarded Subrecipients will monitor Program participation to assess how marketing strategies are working and ensure that protected classes of people are not being intentionally or unintentionally discriminated against.

The FHEO Policy and all CDBG-DR Program polices are available in English and Spanish on PRDOH website at <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

In addition to marketing through widely available media outlets, the awarded Subrecipient will take the additional following measures:

- NGO's will advertise with media outlets which provide unique access for persons who are considered members of the protected classes under the Fair Housing Act.
- Applications will be accepted digitally, to make the Program accessible.
- Language interpretation services will be provided upon request.

## 10.2 Reasonable Accommodations

The owners and managers of any project that receives and award under the SIH Program are required under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, as amended,<sup>39</sup> to make reasonable accommodations and modifications for individuals with disabilities. The purpose of Section 504 is to avoid discrimination and ensure these individuals have an equal opportunity to access and enjoy the benefits of the Program. Requests for reasonable accommodations (changes to a rule, policy, practice, or service) and reasonable modifications (structural changes to a building or dwelling) most

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<sup>39</sup> Implementing regulations found at 24 C.F.R. Part 8.

commonly arise in housing program. However, Section 504 applies to all federally funded programs and activities.

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

PRDOH and SIH Program Subrecipients will ensure that program beneficiaries are made aware of their right to request reasonable accommodations, and that every effort is made to meet the disability-related needs of requesting individuals to the maximum extent feasible, so far as providing the requested accommodations or modifications is considered reasonable.

Pursuant to the regulatory requirements of 24 C.F.R. § 8.53(a), all Subrecipients who employ fifteen (15) or more individuals shall designate a Section 504/ADA Coordinator. These coordinators are responsible for ensuring 504/ADA-related compliance, including providing prompt and equitable resolution of any disability-related grievances or complaints.

The Reasonable Accommodation Policy and all CDBG-DR Program policies are available in English and Spanish on PRDOH website at <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

### **10.3 Language Access**

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

The LAP and all CDBG-DR Program policies are available in English and Spanish on PRDOH website at <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

## 10.4 Section 3

Section 3 of the Housing and Urban Development Act of 1968 (**Section 3**), as amended, 12 U.S.C. §1701u, requires that Recipients, Subrecipients, Contractors, Subcontractors, and/or Developers funded in whole or in part by CDBG-DR funding, to the greatest extent feasible, provide job training and equal employment opportunities to low- and very-low income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

Eligible entities and contractors that receive more than two hundred thousand dollars (\$200,000) in CDBG-DR assistance, or instances of designated Lead Hazard projects of more than one hundred thousand dollars (\$100,000), are required to have an approved Section 3 Plan in place before the project is awarded and approved.

All documentation for Section 3 efforts should be provided to Subrecipients and contractors and should include metrics to indicate efforts for new hiring or subcontracting. Subrecipients and contractors must document and provide status of their compliance efforts through the PRDOH Quarterly Report. For housing and community development financial assistance projects you may review Section 3 definitions in Section 3 Policy or HUD direct guidance at 24 C.F.R. Part 75.

For reference on Section 3 requirements and provisions, please refer to [www.hug.gov/Section3](http://www.hug.gov/Section3) or Section 3 Policy available in English and Spanish on PRDOH website at <https://cdbg-dr.pr.gov/en/download/section-3-policy/> and <https://www.cdbg-dr.pr.gov/seccion-3/>.

## 11 Duplication of Benefits

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. § 5155 *et seq.*, prohibits any person, business concern, or other entity from receiving Federal funds for any part of such loss as to which 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. Any assistance determined to be duplicative must be deducted from the Program's calculation of the applicant's total need prior to awarding assistance. Duplication of Benefits (**DOB**) occurs when financial assistance is received from another source that is provided for the same purpose as the CDBG-DR funds. PRDOH will perform a DOB analysis for each funded project.

DOB guidance included in Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836, updates the duplication of benefits guidance issued in Federal Register Vol. 76, No. 221 (November 16, 2011), 76 FR 71060, for CDBG-DR grants received in response to disasters

declared between January 1, 2015, and December 31, 2021. As such, the duplication of benefits policy outlined in these Guidelines follows the guidance issued in 84 FR 28836.

To be eligible to receive CDBG-DR funds under the Program and as part of the application process, all applicants must confirm and provide assurance that efforts will be made to avoid a duplication of benefits. PRDOH understands and expects that for some projects funded through this Program that other Federal forms of funding may be possible and that for each project, PRDOH will need to work with funded entities to determine and address issues surrounding DOB. As part of the application process, applicants will be required to allow PRDOH to work with Central Office of Recovery, Reconstruction, and Resiliency (**COR3**), FEMA, the Small Business Administration (**SBA**), FEMA's National Flood Insurance Program (**NFIP**), the Corps of Engineers of the United States Army (**USACE**) and other entities to address DOB issues. Through the life of the grant, PRDOH will work with funded entities to address DOB.

Applicants will be required to provide support documentation, including award letters, declination letters and other documentation supporting the amount, sources and uses of funding received/declined to assist in the completion of the project that was provided in the recovery from the covered disaster. PRDOH may contact other funders and agencies directly to confirm the information submitted by an applicant. When possible, PRDOH will electronically verify disaster recovery assistance received through federally and locally maintained datasets, such as FEMA Individual Assistance (**FEMA IA**), NFIP, and SBA disaster loan datasets. Any assistance determined to be duplicative must be deducted from the Program's calculation of the applicant's total need, prior to awarding assistance.

The Duplication of Benefits Policy and all CDBG-DR Program policies are available in English and Spanish on PRDOH website at <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

### 11.1 HUD Continuum of Care Program

CDBG-DR funds must not duplicate or supplant funds provided by the HUD Continuum of Care (CoC) Program.<sup>40</sup> This section applies to those entities that currently receive CoC funding in Puerto Rico<sup>41</sup>, adhering to the program components and uses of assistance outlined in 24 C.F.R. § 578.37. The Program will provide funding for the construction or rehabilitation of the housing units as outlined within these Guidelines, and potentially some portion of supportive services, but not supportive services only. The funding of

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<sup>40</sup> See [HUD Continuum of Care Program](#).

<sup>41</sup> See [Fiscal Year 2019 CoC program funds in Puerto Rico](#).



supportive services is not required and should be funded by the CoC or other funding services to the extent feasible.

## 12 Uniform Relocation Act

As a HUD-assisted program, the SIH Program must be administered 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.*, the government wide implementing regulations found at 49 C.F.R. Part 24; and Section 104(d) of the HCDA, except where waivers or alternative requirements have been provided by HUD, 24 C.F.R. Part 42, Subpart C. The primary purpose of these laws and regulations is to provide uniform, fair, and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects.

All programs in the PRDOH CDBG-DR portfolio, including this Program, are subject to URA regulations. Uniform Relocation Assistance Guide & Residential Anti-Displacement and Relocation Assistance Plan (**URA & ADP Guide**) and all CDBG-DR Program policies are available in English and Spanish on PRDOH website at <https://cdbg-dr.pr.gov/en/resources/policies/general-policies/> and <https://cdbg-dr.pr.gov/recursos/politicas/politicas-generales/>.

If a project involves an existing transitional housing or permanent housing project that is assisted under Title IV of the McKinney-Vento Act,<sup>42</sup> then the requirements under 24 C.F.R. § 578.83 regarding displacement, relocation, and acquisition apply. Under this section, a “project” means any activity or series of activities assisted with CoC funds received or anticipated in any phase of an undertaking. No project may require any CoC program participant to relocate temporarily if they cannot be offered a decent, safe, and sanitary unit in the same building or complex upon project completion under reasonable terms and conditions. Other requirements and conditions may apply under 24 C.F.R. § 578.83, as well.

## 13 Procurement

The Uniform Guidance procurement requirements (2 C.F.R. § Part 200, Subpart D) went into effect on July 1, 2018. These requirements are applicable to CDBG-DR funded projects. These policies and procedures ensure that Federal dollars are spent fairly and encourage open competition at the best level of service and price. These requirements are to be adhered to by all parties participating in the procurement.

PRDOH, as grantee of the CDBG-DR funds, has determined that procurement processes and policies of the CDBG-DR programs will be governed by the provisions of federal statute 2 C.F.R. § 200.317. It allows PRDOH to follow its own procurement policies and

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<sup>42</sup> See [McKinney-Vento Homeless Assistance Act of 1987, as amended, 42 U.S.C. Ch. 119 § 11301 et seq.](#)

procedures as established in 2 C.F.R. § 200.317 and, in turn, allows subrecipients to be subject to the provisions of 2 C.F.R. § 200.318 to 2 C.F.R. §200.327. The Subrecipients are required to keep record of their acquisition processes to allow PRDOH to effectively carry out monitoring processes when required.

PRDOH and all subrecipients must follow these standards to ensure goods and services are procured efficiently, at a fair price, and in compliance with all applicable Federal and Commonwealth laws and executive orders.

Further guidance on specifics related to procurement will be included in the executed subrecipient agreements with program participants.

### **13.1 Procurement Requirements for Subrecipients – AO 21-27**

On April 28, 2021, PRDOH issued the Administrative Order 21-27, which excludes all Subrecipients from compliance with the **Procurement Manual for the CDBG-DR Program, No. 9205 (September 3, 2020) (Regulation No. 9205)** of PRDOH.<sup>43</sup> Consequently, their procurement processes are subject to the standards set forth in 2 C.F.R. § 200.318 through 2 C.F.R. § 200.327. ~~Lastly, the Administrative Order 21-27 provides that the procurement processes that were published before April 28, 2021, will continue to comply with Regulation No. 9205. Nonetheless, a~~ All Subrecipients are required to keep comprehensive records and documentation of their procurement processes to allow PRDOH to effectively carry out monitoring processes when required.

## **14 Change Orders to Contracts**

If a subrecipient lacks the resources needed to complete Program work, it may submit a request to acquire additional necessary resources within the Program maximum award. Change orders may include, but are not limited, to explanations of type of work and scope to be added or deleted from the contract, the additional time (if any) required for the work, a justification for why the work is necessary, and evidence of any conditions identified that resulted in the request. Change order requests with justification for the need of additional resources must be submitted by the NGO and may be approved by Program Staff, on a case-by-case basis. PRDOH will evaluate all change order requests to determine whether additional resources are necessary and reasonable, to facilitate the NGO's completion of the project. Without prior authorization, any activities performed outside of the approved scope of work by means of a change order, could not be reimbursable under CDBG-DR and is performed at risk. NGOs shall be responsible

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<sup>43</sup> On September 25, 2023, PRDOH approved the "Procurement Manual for the CDBG-DR, CDBG-MIT, and CDBG State Programs", Regulation No. 9506, effective on October 25, 2023. This Manual repeals the "Procurement Manual for CDBG-DR Program", Regulation No. 9205 of August 4, 2020, and any other previously issued regulation, manual, administrative order, or circular letter regarding this matter. Regulation No. 9506 is available, in English and Spanish, at <https://cdbg-dr.pr.gov/en/download/procurement-manual-for-the-cdbg-dr-program-september-25-2023-regulation-9506-effective-date-october-25-2023/> and <https://cdbg-dr.pr.gov/download/manual-de-adquisiciones-para-el-programa-cdbg-dr-25-de-septiembre-de-2023-reqlamento9506-fecha-de-efectividad-25-de-octubre-de-2023/>.



for all costs incurred due to activities performed beyond the approved scope of work or beyond the approved resource level, without prior authorization by PRDOH through a duly authorized change order.

#### **14.1 Change Orders Requests above the Program Award**

PRDOH may consider requests for change order requests above the Program award only if unforeseen conditions or extenuating factors arise. The NGO must demonstrate the costs are necessary and reasonable for the timely completion of the project or to protect the initial investment of CDBG-DR funds, and cannot be funded through the project's contingency budget or through other funding sources than CDBG-DR.

### **15 Program Closeout**

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

General requirements for closeout are as follows:

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

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

### **16 Recapture**

Situations may arise in which a Subrecipient may need to reimburse the Program in full or in part the funding provided. The Program is responsible for recovering funds considered duplicative, those granted to Subrecipients who do not meet Program requirements, and funds identified as potential overpayments. All Subrecipient records will be reviewed and reconciled to ensure compliance with Program requirements and federal guidelines.

Once it has been determined that a Subrecipient is required to reimburse funds, the Subrecipient must do so in a timely manner. It is expected that all reimbursements be made in full as a lump sum. All funds recovered through recapture will be tracked in the Yardi Voyager system (**Yardi**) and returned to the CDBG-DR account or U.S. Treasury if the CDBG-DR grant has been closed out.

When multiple projects are approved within an SRA, and a recapture of funds is necessary, the recapture will be done specifically for the project that requires it, without affecting the funds of projects that are meeting their obligations.

For more information about the PRDOH CDBG-DR/MIT Recapture Policy, see: <https://cdbg-dr.pr.gov/en/download/recapture-of-funds-policy/> (English) and <https://cdbg-dr.pr.gov/download/politica-de-recaptura-de-fondos/> (Spanish).

## **17 General Provisions**

### **17.1 Program Guidelines Scope**

This document sets forth the policy governing the Program. These Program Guidelines are intended to aid and provide program activity guidance in Program implementation and closeout and should not be construed as exhaustive instructions. All Program activities must comply with the policies hereby stated. In addition, all Program staff must adhere to established program procedures and all federal and state laws and regulations in effect, as applicable, in the execution of Program activities.

However, PRDOH reserves the faculty to authorize, in its sole discretion, the granting of Program benefits to any 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.

### **17.2 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.

### **17.3 Disaster Impacted Areas**

As described in the initial Action Plan, and its amendments, the Government of Puerto Rico will use CDBG-DR funds solely for necessary expenses related to disaster relief, long-

term recovery, restoration of housing, infrastructure, and economic revitalization in the impacted and distressed areas in Puerto Rico as identified in disaster declaration numbers DR-4336 and 4339. Through 83 FR 40314, HUD identified that, for Puerto Rico, all components of the Island are considered “most impacted and distressed” areas. Therefore, these Guidelines apply to all seventy-eight (78) municipalities of Puerto Rico.

#### **17.4 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 any applicable federal or state law or regulation.

#### **17.5 Established Periods of Time**

Unless otherwise specified, all established periods of time addressed in this, and all CDBG-DR 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.

#### **17.6 Written Notifications**

All determinations made by the Program will be notified in writing. 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.

#### **17.7 Conflict of Interest**

As stated in 83 FR 5844, Federal regulations require that State grantees, in the direct Grant administration and means of carrying out eligible activities, be responsible with program administrative requirements, including those established in 24 C.F.R. § 570.489(h) related to conflicts of interest.

Several federal and state conflict of interest laws can govern CDBG-DR assisted activities. Therefore, PRDOH has enacted the Conflict-of-Interest Policy 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 Office Organic Act, 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-DR funded projects, activities and/or operations. Said Policy is intended to serve as guidance for the identification of apparent, potential, or actual conflicts of interest in all CDBG-DR assisted activities and/or operations. In accordance with 24 C.F.R. § 570.489, the COI Policy also includes standards of conduct governing employees engaged in the award or administration of contracts.

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

Such conflicts of interests will not be tolerated by PRDOH. PRDOH, Program officials, their employees, agents and/or designees are subject to state ethic laws and regulations, including, but not limited to Act No. 1-2012, regarding their conduct in the administration, granting of awards and program activities.

According to Act No. 1-2012, no public servant shall intervene, either directly or indirectly, in any matter in which they have a conflict of interests that may result in their benefit. No public servant shall intervene, directly or indirectly, in any matter in which any member of their family unit, relative, partner or housemate has a conflict of interest that may result in benefit for any of the abovementioned. In the case that any of the abovementioned relationships has 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 this guideline.

PRDOH Program officials, their employees, agents and/or designees should disclose their relationship with PRDOH at the time of their application.

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

## 17.8 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-DR 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 8:00 a.m.-5:00 p.m.
- **Via email at:** [infoCDBG@vivienda.pr.gov](mailto:infoCDBG@vivienda.pr.gov)
- **Online at:** <https://www.cdbg-dr.pr.gov/en/contact/> (English)  
<https://www.cdbg-dr.pr.gov/contact/> (Spanish)
- **In writing at:** Puerto Rico CDBG-DR/MIT Program  
P.O. Box 21365  
San Juan, PR 00928-1365

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

## 17.9 Citizen Complaints

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

Citizens who wish to submit formal complaints related to CDBG-DR 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://cdbg-dr.pr.gov/en/complaints/> (English)

<https://cdbg-dr.pr.gov/quejas/> (Spanish)

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

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

- Via telephone: \* 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)
- In-person at: \* PRDOH Headquarters Office or Program-Specific Intake Centers

\*Attention hours: Monday – Friday from 8:00 a.m. to 5:00 p.m.<sup>44</sup>

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

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

PRDOH, as grantee, is committed to the responsible management of CDBG-DR 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-DR funds as well as encourages any individual who is aware or suspects any kind of conduct or activity that may be considered an act of fraud, waste, abuse, or mismanagement, regarding the CDBG-DR Program, to report such acts to the CDBG-DR Internal Audit Office, directly to the Office of Inspector General (**OIG**) at HUD, or any local or federal law enforcement agency.

The Anti-Fraud, Waste, Abuse, or Mismanagement Policy (**AFWAM Policy**) is established to prevent, detect, and report any acts, or suspected acts, of fraud, waste, abuse, or mismanagement of CDBG-DR funds. This Policy applies to any allegations or irregularities,

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<sup>44</sup>Hours may vary due to COVID-19. PRDOH recommends calling ahead prior to arrival to corroborate.

either known or suspected, that could be considered acts of fraud, waste, abuse, or mismanagement, involving any citizen, previous, current, or potential applicant, beneficiary, consultant, contractor, employee, partner, provider, subrecipient, supplier, and/or vendor under the CDBG-DR Program.

<b>REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT TO PRDOH CDBG-DR/MIT</b>	
CDBG-DR 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://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud?culture=es-ES">https://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud?culture=es-ES</a> or <a href="https://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud">https://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud</a> .
In person	Request a meeting with the Deputy Audit Director of the CDBG-DR/MIT Internal Audit Office located at PRDOH's Headquarters at 606 Barbosa Avenue, Building Juan C. Cordero Davila, Río Piedras, PR 00918.

<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>
Internet	<a href="https://www.hudoig.gov/hotline">https://www.hudoig.gov/hotline</a>

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

### **17.11 Related Laws and Regulations**

These Guidelines make reference 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.

### **17.12 Cross-Cutting Guidelines**

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

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

## **18 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.

## **19 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.**