



GOVERNMENT OF PUERTO RICO
Department of Housing

PUERTO RICO DEPARTMENT OF HOUSING CDBG-DR PROGRAM GUIDELINES

CROSS CUTTING PROGRAM GUIDELINES

Applicable to all PRDOH CDBG-DR Programs

February 14, 2019

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1 Overview

On February 9, 2018, an allocation of Community Development Block Grant-Disaster Recovery (**CDBG-DR**) funds was approved by the United States Department of Housing and Urban Development (**HUD**) under Federal Register Volume 83, Issue 28, 83 FR 5844, to aid the Commonwealth of Puerto Rico in addressing unmet need in the wake of Hurricanes Irma and María. On August 14, 2018, an additional allocation of \$8.22 billion for recovery was allocated to Puerto Rico under Federal Register Volume 83, Issue 157, 83 FR 40314. With these allocations of funding, the Puerto Rico Department of Housing (**PRDOH**) aims to lead a transparent, comprehensive recovery to benefit the residents of Puerto Rico. PRDOH holds accountability and is committed to the responsible, efficient, and transparent administration of CDBG-DR grant funding. The requirements described in this cross-cutting guidebook apply to all programs described in PRDOH's initial Action Plan for \$1.5 billion, which was approved by HUD on July 29, 2018, and all approved amendments to the Action Plan. Program specific requirements are outlined in the program guidelines for each program.

2 Financial Management

Pursuant to the Disaster Relief Appropriations Act, 2013, Public Law 113-2, the Commonwealth of Puerto Rico maintains and has in place proficient financial controls. As the grantee, the Commonwealth of Puerto Rico ensures that PRDOH, as well as those administering CDBG-DR disaster recovery resources, continuously demonstrate conformity to financial management requirements as required by the Department at 83 FR 5844. These requirements include, but are not limited to, areas covering: Financial Management; Advances; Internal Controls; Accuracy of Report Information; Program Income; Salaries and Wages; Indirect Costs; and Lump Sum Drawdowns.

PRDOH's financial management system will be consistent with and in compliance with 24 C.F.R. § Parts 200 and 570, as applicable, which ensures that PRDOH funds are managed with high levels of accountability and transparency.

PRDOH's Financial Management practices must adhere to the following:

1. Internal controls are in place and adequate;
2. Documentation is available to support accounting record entries;
3. Financial reports and statements are complete, current and reviewed periodically; and
4. Audits are conducted in a timely manner and in accordance with applicable standards as outlined in 2 C.F.R. § 200, Subpart F, on audit requirements.

3 Federal Funding Accountability and Transparency Act (FFATA)

The Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended, was signed with the intent of reducing wasteful government spending and providing citizens with the ability to hold the government accountable for spending decisions.

2 C.F.R. § Part 170 outlines the requirements of recipients' in reporting information on subawards and executive total compensation under FFATA legislation. Any non-Federal entity that receives or administers Federal financial assistance in the form of: grants, loans, loan guarantees, subsidies, insurance, food commodities, direct appropriations, assessed and voluntary contributions; and/or other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal fund, is subject to these requirements.

A subaward is granted whenever a prime award recipient awards an eligible subrecipient a portion of the award to provide support for the performance of any portion of the project or program for which the award was received. Subawards are granted via a legal instrument or agreement considered to be a contract between the two entities. A subrecipient is any entity receiving a subaward from the prime recipient and is accountable to the recipient for the use of Federal funds provided by the subaward.

Prime contract awardees and prime grant awardees are required to report against subcontracts and subgrants awarded in the FFATA Subaward Reporting System (**FSRS**), the reporting tool for Federal prime awardees. This information reported will then be displayed on a public and searchable website: www.USASpending.gov.

4 Minority and Women Owned Business Enterprises (M/WBE) and Section 3 Requirements

24 C.F.R. § 85.36(e) requires that a grantee and subgrantee of Federal funds take all necessary affirmative steps to assure that minority firms and women's business enterprises and labor surplus area firms are used when possible; and establishes the minimum HUD standards regarding each participating jurisdiction's outreach effort to minority business enterprises (**MBE**) and women-owned business enterprises (**WBE**); (together **M/WBE**).

2 C.F.R. § 200.321 requires the non-Federal entity to take necessary steps to ensure that all recipients, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance ensure that, when

possible, contracts and other economic opportunities are directed to small and minority firms, women-owned business enterprises, and labor surplus area firms.

Compliance is ensured by requiring, as applicable, subrecipients, program partners and contractors to make best efforts to achieve an overall M/WBE participation goal of twenty percent (20%) of the entire contract value consisting of ten percent (10%) percent for MBE and ten percent (10%) for WBE.

If, after making good faith efforts, a subrecipient is unable to meet M/WBE goals, subrecipients may submit a request for a M/WBE Waiver for their overall goal. The request must set forth the reasons for the inability to meet any or all of the participation requirements together with an explanation of the good faith efforts undertaken.

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, extend hiring opportunities and contracts to Section 3 eligible residents and businesses. Section 3 eligible residents are low- and very low-income persons, particularly those who live or reside in public or government assisted housing or who meet the income limits identified by HUD.¹ For each project, there is a goal for thirty percent (30%) of new hires to be individuals who qualify as a Section 3 individual.

Businesses can qualify as Section 3 in any one of three (3) ways: (a) If your business is owned in equal to or in excess of fifty-one percent (51%) by someone who is a Section 3 Individual; or (b) if thirty percent (30%) of your staff meets the definition of a Section 3 individual; or (c) if your business has a firm commitment to provide twenty-five percent (25%) of the total dollar amount of subcontracts to a Section 3 business.

For those entities that receive more than \$200,000.00 in CDBG-DR assistance, and contractors that are awarded covered contracts that exceed \$100,000.00, it is required that an approved Section 3 plan be in place before the project is awarded and approved. For professional services contracts, there is a three percent (3%) goal while for construction contracts there is a ten percent (10%) goal. The plan for compliance with Section 3 must be submitted for approval prior to the start of construction or professional services on any contract activity. See 24 C.F.R. § Part 135.

¹ <https://www.huduser.gov/portal/datasets/il.html#null>

HUD has developed a business registry for businesses who have identified themselves as a Section 3 business in order to facilitate the process of engaging in best efforts.²

All documentation for Section 3 efforts should be provided to PRDOH and should include metrics to indicate efforts for new hiring or subcontracting.

PRDOH is required to report on Section 3 annually in HUD's Section 3 Performance Evaluation and Reporting System (**SPEARS**).

5 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.

Standards for procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services are outlined in the Procurement Manual and Contractual Requirements for CDBG-DR, available at www.cdbg-dr.pr.gov. PRDOH follows 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.

6 Change Orders to Contracts

Change orders are issued when the initial agreed upon pricing or work to be completed requires modification. First, the contractor must complete a Change Order Request Form. This form and supporting documentation must be delivered to the Project Manager for review. Each change order must have a cost analysis. Once the Project Manager approves the change order, it is returned to the contractor for execution. Change orders are only invoiced on the final draw and categorized as "change order." The amount listed on the invoice must match the previously approved amount and must be cost reasonable. The Project Manager is responsible for verifying cost reasonableness. Verification documentation for cost reasonableness becomes an attachment to the change order.

For programs in which homeowner-initiated scope change is allowable, it will be defined as a specific addition or deletion to the original contract scope of work

² <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>

requested by the homeowner. All homeowner-initiated change orders dealing with residential construction projects will require final approval of the homeowner before construction proceeds. Homeowner scope changes do not include changes that are the result of unforeseen conditions or discrepancies in the contract documents (specifications or drawings). Homeowner scope changes are **not** allowable, unless related to an accessibility issue that has developed since the negotiations of the contract.

7 Cost Principles

As found in 2 C.F.R. § Parts 200.400, 200.401, & 200.404, cost reasonableness and cost principles guidelines have been established for recipients of Federal awards. These principles must be followed when a non-Federal entity is responsible for the administration of a Federal award and assumes responsibility for administering Federal funds. As such, it is especially important that adherence to these principles be followed when a non-Federal entity is predominately federally funded.

A cost is considered reasonable if 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. When assessing cost reasonableness, it is important to consider:

- Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.
- The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.
- Market prices for comparable goods or services for the geographic area.
- Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable, its students or membership, the public at large, and the Federal Government.
- Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

8 Labor Standards

The Davis-Bacon Act of 1931 and Related Acts (**DBRA**), as amended, applies to contractors and subcontractors carrying out federally funded or assisted contracts in excess of \$2,000.00 for the appropriate wage determination including

fringe benefits for corresponding work on similar projects in the area. The higher prevailing wage rate between Federal Government and State must be adhered to and made applicable. See 40 U.S.C. §3141-3148. For prime contracts in excess of \$100,000.00, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular pay for all hours worked over forty (40) in a work week. Information on obtaining the appropriate wage determination can be found at: <https://www.wdol.gov/>.

Additionally, the reporting requirements per HUD and the U.S. Department of Labor regulations must be followed. This requirement also extends to subrecipients and contractors. Applicable programs and services must comply with DBRA through the submission of certified payroll records and interviews of prime and subcontractor laborers.

Programs must include all applicable labor standards language and the appropriate wage decision in the construction bid and contract documents. During construction, the program is responsible for enforcing any applicable requirements outlined above. Once construction is underway, the General Contractor should complete weekly payroll for its employees and sign the Statement of Compliance. The contractor is responsible for housing the records. Compliance is monitored and ensured by the program continuously throughout the construction process, prior to any progress or final payments being made.

The Fair Labor Standards Act of 1938 (**FLSA**), as amended, establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of forty (40) per week. These labor standards are applicable to the entire construction contract, regardless if CDBG-DR funds finance only a portion of the project. Excluding the exceptions listed below, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under CDBG-DR program must be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. See 41 C.F.R. § Part 60- OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS.

Exceptions to FLSA include:

- Construction contracts of \$2,000.00 or less;
- Real property acquisition;
- Architectural and engineering fees;

- Other services (such as legal, accounting, construction management);
- Other non-construction items (such as furniture, business licenses, real estate taxes);
- Rehabilitation of residential property designed for fewer than eight (8) families; and
- Debris removal, demolition, and/or clearance activities, unless related to construction (demolition and clearance as independent functions are not considered construction).

Executive Order No. 11246, signed in 1965, as amended, established requirements for non-discriminatory practices in hiring and employment on the part of U.S. government contractors. It prohibits Federal contractors and federally-assisted construction contractors and subcontractors, who do over \$10,000.00 in government business in one year from discriminating in employment decisions based on race, color, religion, sex, sexual orientation, gender identity, or national origin. This Executive Order also requires government contractors to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This regulation is adhered to within all programs.

9 Environmental Review

Every project undertaken with Federal funds, and all activities related to that project, is 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- ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES. The primary purpose of this Act is to protect and enhance the quality of our natural environment. The HUD environmental review process must be completed before any Federal funds can be accessed for program-eligible activities.

The primary objectives of the HUD environmental review are to identify specific environmental factors that may be encountered at potential project sites, and to develop procedures to ensure compliance with regulations pertaining to these factors. The HUD environmental review is designed to produce program-specific environmental review procedures in a program that can vary greatly in terms of scope of work.

Laws and regulations which contain environmental provisions with which must be complied with include:

- Protection of Historic Properties (36 C.F.R. §800);
- Floodplain Management and Protection of Wetlands (24 C.F.R. § 55, Executive Order No. 11988 and Executive Order No. 11990;

- Sections 307 (c) and (d) of the Coastal Zone Management Act of 1972 (**CZMA**), as amended, (16 U.S.C. §1456);
- Sole Source Aquifers (40 C.F.R. § 149);
- Endangered Species Act of 1973, as amended (50 C.F.R. § 402);
- Section 7 (b)(c) of the Wild and Scenic Rivers Act of 1968 (**WSRA**), as amended, (16 U.S.C. §1278 - RESTRICTIONS ON WATER RESOURCES PROJECTS);
- Air quality provisions as found in Sections 176 (c) and (d) of the Clean Air Act, as amended, (42 U.S.C. §7506) and in Title 40 of the Code of Federal Regulations (40 C.F.R. § Parts 6, 51, and 93);
- Farmland Protection Policy Act (**FPPA**) (7 U.S.C. §4201 *et seq*, implementing regulations 7 C.F.R. § Part 658, of the Agriculture and Food Act of 1981, as amended);
- ENVIRONMENTAL CRITERIA AND STANDARDS (24 C.F.R. § Part 51 §§51.1 - 51.305)
 - 24 C.F.R. § 51, Subpart B- Noise Abatement and Control (24 C.F.R. § Part 51 §§ 51.100 - 51.106);
 - 24 C.F.R. § 51, Subpart C- Siting of HUD-Assisted Projects Near Hazardous Operations Handling Conventional Fuels or Chemicals of an Explosive or Flammable Nature (24 C.F.R. § Part 51 §§ 51.200 - 51.208);
 - 24 C.F.R. § 51, Subpart D - Siting of HUD Assisted Projects in Runway Clear Zones at Civil Airports and Clear Zones and Accident Potential Zones at Military Airfields (24 C.F.R. § Part 51 §§ 51.300 - 51.305) ;
- Toxic/Hazardous Materials (24 C.F.R. § 58.5(h)(2)(i)); and
- Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Executive Order No. 12898, signed on 1994).

All federally funded projects and activities must have documentation that they comply with NEPA and all other environmental requirements. The purpose of this Section is to provide guidance necessary to prepare the Environmental Review Record (**ERR**) as required by NEPA and related laws. The ERR serves as a tool to measure the environmental consequences of all federally funded CDBG-DR eligible-program activities. See 24 C.F.R. § 58.38 - ENVIRONMENTAL REVIEW RECORD.

The value of the environmental review is to identify:

- The existence of negative impacts on a site;
- Means to mitigate negative impacts; and
- Alternatives to the project, if needed.

The environmental review informs the proponent of a federally assisted action of the existence of negative impacts on a site, of means to mitigate negative impacts, alternatives to the project -if needed. When all other options fail, it informs that the rejection of the proposed action may be the most prudent one. The environmental review is a means of providing decision makers with sufficient information on which to base wise choices.

The purpose of these environmental procedures is to ensure that all projects funded with CDBG-DR funds follow all applicable Federal laws and authorities identified in 24 C.F.R. § Part 58-ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES. Also, these procedures are intended to ensure a suitable living environment, or more specifically, to determine if any significant environmental impact may occur because of a proposed recovery project; to release funds to support eligible projects that neither harm nor are harmed by the environment; to safeguard, enhance, and restore the environment; and to foster public participation in the development decision-making process.

There are four objectives of the ERR process:

- To comply with all legal requirements;
- To assist in project planning;
- To determine if the proposed activity will have an impact on the environment; and
- To determine whether the environment will have an impact on the proposed Program activity.

The ERR process identifies areas where project design and planning can be improved to mitigate such things as high noise levels, inadequate public safety, flooding problems, or the time constraints of archaeological findings.

In addition, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a CDBG-DR program before the environmental review process is completed. Environmental clearance must be obtained for each project prior to the firm commitment of Federal or non-Federal funds. See 24 C.F.R. § 58.22- LIMITATIONS ON ACTIVITIES PENDING CLEARANCE. A violation of this requirement may jeopardize Federal funding to this project and disallow all costs that were incurred before the completion of the environmental review.

9.1 Lead Based Paint

All housing units assisted using CDBG-DR funds must comply with the regulations regarding lead-based paint found at 24 C.F.R. § Part 35- LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES.

The requirements established by this regulation are as follows:

- Notification
 - Lead Hazard Information Pamphlet - All program applicants must receive a Lead Hazard Information Pamphlet at the time of application as well as sign an acknowledgement form, a copy of which will be placed into the applicant's file.
 - Notice of Lead Hazard Evaluation – Owners and tenants of program assisted properties must receive results of any lead hazard evaluation work within **fifteen (15) days** of the evaluation. A copy of this notice will be kept within the applicant's file.
 - Notice of Lead Hazard Reduction Activity – Owners and tenants of program assisted properties must be notified of the results of any lead hazard reduction activity within **fifteen (15) days** of clearance. A copy of this notice will be kept within the applicant's file.
- Lead Hazard Assessment/Evaluation – Including visual assessments, paint testing, and risk assessments. Each method has specific requirements defined in Subpart R of the regulation and must be done by qualified professionals,
- Lead Hazard Reduction – Including paint stabilization, interim controls, standard treatments, or abatement. Each method has specific requirements defined in Subpart R: METHODS AND STANDARDS FOR LEAD-PAINT HAZARD EVALUATION AND HAZARD REDUCTION ACTIVITIES of the regulation and must be done by qualified professionals. (24 C.F.R. § Part 35 §§ 35.1300 - 35.1355).

Homebuilders will retain demolition contractors to properly mitigate, demolish and properly dispose of construction debris for houses built before 1978 -when EPA banned lead-based paint- that are to be demolished to clear a lot for new house construction.

A lead based paint assessment will be conducted by a licensed lead based paint assessor on those houses that were built before 1978 but are eligible for rehabilitation.

9.2 Environmental Review Record

The Environmental Officer is responsible for maintaining a written record of the environmental review process. The ERR for all programs contains all the governmental review documents, public notices and written determinations or environmental findings required by 24 C.F.R. § Part 58- ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES as evidence of review, decision making and actions pertaining to a project of a recipient.

As appropriate, the ERR:

- Describes the project and activities that PRDOH has determined to be part of a project;
- Evaluates the effects of the project or the activities on the human environment;
- Documents compliance with applicable statutes and authorities, in particular those cited in Section 58.5 and 58.6 of 24 C.F.R. § Part 58; and
- Records the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, and findings of no significant impact).

The ERR contains, as appropriate, verifiable source documents and relevant base data used or cited in environmental assessments, or other project review documents. Upon request, these support documents may be available for review by interested parties.

10 Flood Insurance Requirements

Grantees and subrecipients of Federal funding must ensure that procedures and mechanisms are put into place to monitor compliance with all flood insurance requirements as found in the Flood Disaster Protection Act of 1973, 24 C.F.R. § 570.605- NATIONAL FLOOD INSURANCE PROGRAM and 24 C.F.R. § 570.202- ELIGIBLE REHABILITATION AND PRESERVATION ACTIVITIES.

These regulations, along with alternative requirements provided in 83 FR 5844, are as follows:

- HUD assisted homeowners located in a Special Flood Hazard Area must purchase and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program.
- Homeowners who have previously received Federal flood disaster assistance and were subsequently required to purchase and maintain

flood insurance but failed to do so, will not be eligible to receive any additional Federal disaster relief funding.

- All structures funded by the CDBG-DR Program, if in, or partially in, the 100-year floodplain as shown on the Flood Insurance Rate Maps (FIRM) that are official (not Preliminary or Advisory) at the time of the issuance of the grant to the applicant, will be required to have flood insurance.
- The statutory period for flood insurance coverage may extend beyond project completion.
- All grantees receiving CDBG-DR funding have a responsibility to inform future purchasers of the property of the requirement to obtain and maintain flood insurance in writing.
- In accordance with 83 FR 5844, PRDOH is prohibited from providing CDBG-DR assistance for rehabilitation/reconstruction of a house if the combined household income is greater than one hundred and twenty percent (120%), the property was located in a floodplain at the time of the disaster, and the property owner did not maintain flood insurance, even if not required to do so. This is to ensure that higher income homeowners are not assisted at the expense of lower income households.
- PRDOH may only provide assistance for rehabilitation/reconstruction of a damaged property –that is located within a floodplain- if the household income is less than the greatest of one hundred and twenty percent (120%) Area Median Income (**AMI**) or the national median or if the homeowner had flood insurance at the time of the qualifying disaster and still has unmet recovery needs, regardless of AMI calculation.
- If said damaged property -located within a floodplain- is located in the 100-year floodplain, PRDOH may only repair “non-substantially damaged structures”. Non-substantially damaged structures are those that suffered damages less than the fifty percent (50%) of the cost of repair as compared to the current market value of the structure.

11 Duplication of Benefits

CDBG-DR funding intends to address the unmet needs of a community. The funds are supplemental to primary forms of assistance, including private insurance and FEMA funds. To avoid duplicative assistance and potential de-obligation of funding, PRDOH must utilize all possible funding sources before applying CDBG-DR dollars to a project. CDBG-DR programs are typically implemented *after* temporary disaster assistance programs, such as FEMA Individual Assistance which are not intended to make someone whole.

The Stafford Disaster Relief and Emergency Assistance Act (**Stafford Act**), as amended, 42 U.S.C. §5121 *et seq.*, established the requirements for Duplication of Benefits (**DOB**) analysis. More recently, the Clarification of Duplication of Benefits

Requirements Under the Stafford Act for CDBG-DR grantees provided additional guidance on how grantees should determine duplication of benefits. The Stafford Act prohibits entities, including households, from receiving disaster recovery funding for a loss for which it has previously received financial assistance from any source. DOB verification and analysis ensure that program funds compensate applicants for damages and needs that have not been addressed by an alternate source, either through funding or assistance.

The Program will ensure that a DOB analysis is performed for each applicant to consider all possible disaster recovery funding sources when processing applications for assistance. Common disaster assistance sources include, but are not limited to:

- Federal Emergency Management Agency (FEMA);
- Small Business Administration (SBA);
- National Flood Insurance Program (NFIP);
- Increased Cost of Compliance (ICC);
- Private Insurance;
- Private and nonprofit disaster assistance.

Once sources are identified, the applicable program will determine an applicant's unmet need. Specifically, the program will compare the total assistance previously received to the total estimated need for each applicant. Per the Stafford Act, the program will confirm that the applicant spent all previously received funds for their intended purpose.

Funds of similar intent are considered duplicative unless the applicant still has an unmet need. The program will verify eligible use of funds by collecting pertinent source documentation from third parties such as invoices from a contractor, receipts from a building supply store, or utilizing an inspection to determine repair expenses incurred by an applicant. If the documentation or inspection verifies that the applicant spent all previously received funds in accordance with the funding intent, then no duplication exists, and the applicant may be eligible to receive assistance for any remaining unmet need under CDBG-DR.

Additional guidelines on procedures for preventing Duplication of Benefits can be found in the program specific guidelines, which can be found at www.cdbg-dr.pr.gov.

12 Anti-Fraud, Waste and Abuse Checks

The Anti-Fraud, Waste and Abuse (**AFWA**) check is designed to identify discrepancies and risk-relevant issues in Applicant-provided information that may be indicative of fraud, waste, and/or abuse.

This check is run for all program applicants and may consist of up to six (6) components:

1. Social Security Number check (for relevant applicant types);
2. Business status check (for relevant application types);
3. Confirmation of association with damaged property address;
4. Check of relevant watch lists and debarment lists;
5. Searches for tax liens and warrants; and
6. Searches for child support warrants

12.1 Review of AFWA Check Findings

After AFWA checks are completed, findings are delivered to the program team who receives reports notifying them of any flags that were identified. In their review of AFWA check findings, program representatives examine application information and Applicant-provided documentation to determine if this information is consistent with flags identified through AFWA checks and to identify potential typographical/data input errors.

12.2 Adjudication and Escalation of AFWA Findings

Using relevant policy and procedure guidelines, the program team determines:

- If flagged issues affect the Applicant's eligibility; and
- If further action is necessary in order to adjudicate the application.

Examples of options that may be available to the program team could include, but are not limited to, the following:

- If the flagged issue does not affect the Applicant's eligibility per State policy, the Customer Representative Team can recommend that the application be permitted to progress through the application process.
- If the flagged issue is a result of a typographical error (e.g., transposition of last and first names, hyphenation, misspelling, missed letter, missed numerical digit, incorrect ZIP codes), the Customer Representative Team can query the underlying documentation submitted by the Applicant for an extra layer of verification and recommend that the application be

permitted to progress through the application process, pursuant to satisfactory confirmation of underlying documentation.

- If there is insufficient information to adjudicate the flagged issue and research of publicly available information is not able to provide the information necessary to make a determination, the Customer Representative Team can recommend that follow up be conducted with the Applicant or that the application be escalated for further examination.

13 Affirmatively Furthering Fair Housing

The Fair Housing Act of 1968, as amended, 42 U.S.C. §3601, *et seq.*, dictates that grantees are required to administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Per the regulations of 24 C.F.R. § 570.601 and in accordance with Section 104(b)(2) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. §5301 *et seq.*, for each community receiving a grant under Subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to take meaningful actions to further the goals identified in the grantee's Assessment of Fair Housing (**AFH**) plan, conducted in accordance with the requirements of 24 C.F.R. § §§5.150-5.180 (Affirmatively Furthering Fair Housing) and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

The Fair Housing Act is enforced by ensuring that all grantees, subrecipients, and/or developers meet the applicable Fair Housing and Affirmative Marketing requirements, provide a marketing plan, and report on compliance in accordance with the Fair Housing Act and the associated forms. The Affirmative Fair Housing Marketing Plan (**AFHM**) must comply with applicable Fair Housing Laws and demonstrate how the applicant will affirmatively further fair housing throughout applicable disaster recovery programs.

14 Civil Rights and Non-Discrimination

Section 109 of the Housing and Community Development Act of 1974, as amended, *supra*, requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The

policies and procedures necessary to ensure enforcement of Section 109 are codified in 24 C.F.R. § Part 6. See 24 C.F.R. § 570.602.

15 Debarment and Suspension

The regulations implementing Executive Orders No.12549 and 12689 in 2 C.F.R. § Part 180- OMB GUIDELINES TO AGENCIES ON GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

A contract award must not be made to parties listed on the governmentwide exclusions in the System for Award Management (**SAM**). SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No.12549.

16 Drug Free Workplace

The Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §81, as implemented by 24 C.F.R. § Part 24 Subpart F, §§983.251-983.262, requires that any grantee other than an individual must certify that it will provide a drug-free workplace. Any grantee found in violation of the requirements of this act may be subject to suspension of payments under the grant, suspension or termination of the grant or suspension or debarment of the grantee. PRDOH guarantees compliance with this Act.

17 Timely Distribution of Funds

The Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56), approved September 8, 2017 (Appropriations Act), as amended, requires that funds provided under the Act be expended within two (2) years of the date that HUD obligates funds to a grantee unless otherwise authorized via waiver of this requirement by the Office of Management and Budget (**OMB**). The OMB waived the two (2) year expenditure requirement under 83 FR 40314; however, the provision to expend one hundred percent (100%) of the total allocation of CDBG-DR funds on eligible activities within six (6) years of HUD's initial obligation of funds remains in effect. The six (6) year expenditure period commences with the initial obligation of funds provided under 83 FR 5844. Additionally, per 83 FR 5844, the provisions at 24 C.F.R. § 570.494 and 24 C.F.R. § 570.902, regarding timely distribution and expenditure of funds, are waived and an alternative requirement was established.

Furthermore, consistent with 31 U.S.C §1555 and OMB Circular No. A-11 (2017), if the Secretary of HUD or the President of the United States determines that the purposes for which the appropriation was made have been carried out and no disbursement has been made against the appropriation for two (2) consecutive fiscal years, any remaining unobligated balance shall be canceled and will be made unavailable for obligation or expenditure for any purpose.

18 Property Management and Distribution

Regulations governing property management and distribution of real property, equipment, financial obligations and return of un-obligated cash post program closeout can be found in 24 C.F.R. § 570.506, 2 C.F.R. § 200.310, 2 C.F.R. § 200.343 and 2 C.F.R. § 200.344(b).

18.1 Use of Real Property

The standards of 24 C.F.R. § 570.506 apply to any real property under a CDBG award recipient's control acquired in whole or in part with CDBG funds in excess of \$25,000.00. The recipient may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property is not a building for general government conduct, the use of the property may be changed with citizen approval if it either meets one of the national objectives as defined in 24 C.F.R. § 570.208 or if not, the recipient may either retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following such reimbursement, the property will no longer be subject to any CDBG requirements.

18.2 Insurance Coverage.

In accordance with 2 C.F.R. § 200.310, a recipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

18.3 Closeout and Post-Closeout Adjustments

Pursuant to 2 C.F.R. § 200.343, during the period of Federal award closeout, non-Federal entities must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with the regulations cited above. After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the

non-Federal entity, provided the responsibilities of the non-Federal entity are met, including those for property management as applicable. See 2 C.F.R. § 200.344(b).

19 Limited English Proficiency

Executive Order No. 13166, signed on August 11, 2000, requires programs, subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (**LEP**) and/or deaf/hard of hearing. Fair access is ensured through the implementation of a Language Assistance Plan (**LAP**), which includes non-English-based outreach, translation services of vital documents, free language assistance services, and staff training. Vital documents are defined as depending on the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

PRDOH is fully committed to aid those who don't fully understand the English language. Hence, all vital documents, as defined above, will be translated to the Spanish language. Nevertheless, in the event of a discrepancy among any translation, the English version will prevail.

20 Personally Identifiable Information

In accordance with 2 C.F.R. § 200.303, regarding internal controls of a non-Federal entity, the PRDOH guarantees the protection of all Personally Identifiable Information (**PII**) obtained. The program will enact necessary measures to ensure PII of all applicants is safeguarded as to avoid release of private information. If a contractor or employee should experience any loss or potential loss of PII, the program shall be notified immediately of the breach or potential breach. Potential losses of PII may occur in forms such as:

- Loss of a computer or electronic device containing PII;
- Loss or compromise of paper containing PII; or
- Loss of electronic communication containing PII.

Once the Program is notified of a loss or potential loss of PII, efforts will be undertaken on a case-by-case basis to ensure the recovery of said information. Additionally, applicants to PRDOH Programs will be granted reasonable access to program records in accordance with 24 C.F.R. § 570.508 concerning public access to program records.

21 Conflict of Interest

A conflict of interest, as defined by 24 C.F.R. § 570.611, exists when any person who is an employee, agent, consultant, decision maker, officer or elected/appointed official of any recipient receiving funds under the program may obtain a financial interest or benefit from a CDBG-DR assisted activity, has financial interest in any contract, subcontract or agreement with respect to a CDBG-DR assisted activity or with respect to the proceedings of such an activity, either for themselves or with those whom they have business or immediate family ties during their tenure or for one (1) year after.

Such conflicts of interests will not be tolerated by PRDOH. To establish internal controls for identifying potential conflicts of interest, all team members, employees, and other parties participating in the determination of eligibility and/or the distribution of funds, are expected to practice good judgment when presented with a situation which may involve a potential or actual conflict.

All CDBG-DR program staff are required to make a full disclosure of any interests, relationships, and/or holdings, which could potentially result in a conflict of interest. Potential conflicts of interest may include relationships with neighbors, acquaintances, friends, family members, and other members of the community.

As soon as a project team member is aware, they have a current or prior relationship or familiarity with a potential applicant they are required to immediately notify program management, who will ensure project team members do not process or interact with applications with potential conflicts of interest.

22 Uniform Relocation Act

CDBG-DR funds, administered by PRDOH and disbursed to subrecipients and direct contractors and/or beneficiaries, are subject to:

- Real Estate Acquisition and Relocation Policy and Guidance Handbook (HUD Handbook 1378)
- Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA or Uniform Act), as amended. 49 C.F.R. § Part 24
- Section 104(d) of the Housing and Community Development Act of 1974, *supra*. Also, see 24 C.F.R. § Part 42, Subpart C, §§42.301 - 42.390.
 - Requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling and requires one-for-one replacement of lower-income units demolished or converted to other uses.

- Subrecipients or contractors must provide the following benefits to households that they displace:
 - Relocation advisory services;
 - A minimum of **ninety (90) day** notice to vacate;
 - Reimbursement for moving expenses; and
 - Payments for added cost of renting or purchasing comparable replacement housing.

PRDOH programs subject to the Uniform Act and Section 104(d) of the Housing and Community Development Act include the CDBG-DR programs. PRDOH rules, Notices of Funding Availability (**NOFA**), applicant certifications and/or written agreements for funds subject to the Uniform Act and Section 104(d) of the Housing and Community Development Act shall refer to Federal and State rules, as appropriate.

Additional Uniform Act requirements can be found in the housing programs guidelines.

23 Record Retention

As per 2 C.F.R. § 200.333 on Retention Requirements for Records and 24 C.F.R. § 570.490(d) on Recordkeeping Requirements, all official records on programs and individual activities shall be retained for the greater of three (3) years, starting from the closeout of the grant or beyond the end of the affordability period for each housing activity, whichever is longer. If any other laws and regulations as described in 24 C.F.R. § 570.490 applies to a project, the record retention period may be extended.

All records involved in litigation, claims, audits, negotiations, or other actions, which have started before the expiration date of their retention, will be kept until completion of the action and resolution of all issues or the end of the regular three (3) year period, whichever is longer.

24 Reporting

Compliance will be maintained in accordance with the reporting requirements under the CDBG-DR regulations. This includes all information and reports as required under any executed contracts and demographic data and other information on applicants and awardees processed by contractual agreement.

Reporting is mandatory of all parties expending funds and will be provided to the grantee. PRDOH is required to use the Disaster Recovery Grant Reporting system (**DRGR**) for all CDBG-DR reporting.

24.1 Quarterly Performance Reports (QPR)

Subrecipients or program partners receiving Federal award funds must complete a quarterly report which provides an overview of the progress of the project to date and includes a summary of the expected progress in the next quarter. All QPR's will be publicly available at www.cdbg-dr.pr.gov.

24.2 Compliance Reporting

Reports required for PRDOH include, but are not limited to, those required by HUD such as Section 3; Equal Employment Opportunity (**EEO**); and Fair Housing and Equal Opportunity (**FHEO**) reports.

25 Complaints and Appeals

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 are welcomed throughout the duration of the grant. The Citizen Participation Plan is posted as a stand-alone document at www.cdbg-dr.pr.gov.

Complaints regarding fraud, waste, or abuse of government funds shall be addressed to the HUD Office of Inspector General Fraud Hotline by phone: 1-800-347-3735 or email: hotline@hudoig.gov.

PRDOH aims to provide an opportunity to address all complaints received, either formally or informally.

25.1 Informal Complaints

Informal complaints may come from any party involved in the execution of a project, including Grant recipients, subrecipients, program partners or any other party. While a written procedure for handling these complaints is not required, PRDOH has posted on www.cdbg-dr.pr.gov the methods of communication for providing feedback, comments, or complaints.

Pertinent applicant details such as: name, address, contact number and application ID should be provided with a complaint. The details of the question or complaint should include the names of program personnel previously contacted or the Program Manager contacted and provided details of the query. Copies of any documents or correspondence received, including how any questions were answered, what information was provided and what action is required of the Program Manager should also be included.

25.2 Formal Complaints

Formal complaints may come from any party involved in the execution of a project, including Grant recipients, subrecipients, program partners or any other party. These complaints must be written statements of grievance and may be provided to the Program Manager or PRDOH in the form of a fax, email or letter.

All complaints received will be documented, processed, and filed. The file will document each step of the complaint process and will include the following:

- The name of the person who filed the complaint;
- The date the complaint was received;
- A description of the complaint;
- The name of each person contacted in relation to the complaint;
- A summary of the results of the review or investigation of the complaint; and
- An explanation of the reason the file was closed, if the file was closed.

In order for a formal complaint to be processed, it must be received in writing (includes fax and email) and must include the name of the complainant and their contact information, including telephone and address and application ID. Also, it should include the names of program personnel previously contacted or the Program Manager contacted and provided details of the query. Copies of any documents or correspondence received, including how any questions were answered, what information was provided and what action is required of the Program Manager should also be included.

Complaints with insufficient data or submitted by a third party with no standing in the matter being submitted need not be accepted or reviewed.

Complaints shall be voiced through any of the following methods:

- Via email at: infoCDBG@vivienda.pr.gov
- Online at: <http://www.cdbg-dr.pr.gov/contact/>
- In writing at: Puerto Rico CDBG-DR Program
P.O. Box 21365
San Juan, PR 00928-1365

PRDOH will provide a timely, written response to all written citizen complaints within **fifteen (15) days** of receipt of the complaint.

25.3 Appeals

If the complainant disagrees with any preliminary written response notified by PRDOH, said party may request, in writing and within **twenty (20) days** of being

notified, that the response be reconsidered. PRDOH will review and address the reconsideration request within **fifteen (15) days** of its receipt.

If the complainant disagrees with any final written response notified by PRDOH, said party may request, in writing and within **twenty (20) days** of being notified, that the response be reconsidered or, alternatively, file a petition for review before the Court of Appeals of Puerto Rico with the timeframe established by law. See Sections 3.15 and 4.2 of the Uniform Administrative Procedures Act of the Government of Puerto Rico, Law No. 38-2017, as amended, 3 LPRC §§ 9655 and 9672.

Each program specific guideline will provide details on the appeal procedure pertaining to said program. All program guidelines will be published at www.cdbg-dr.pr.gov.

26 Monitoring

As per CDBG regulation, 24 C.F.R. § 570.501 (b), grantees of CDBG-DR funds are responsible for carrying out their programs to meet compliance with CDBG Program, statutory and regulatory requirements, including monitoring their project administrators, contractors and subcontractors.

As such, throughout the application, planning, design, and implementation phase of the program, PRDOH will conduct internal monitoring of processes, procedures, policy, applications, planning, design, construction, and other applicable phases. PRDOH will work to ensure that program funds are operating efficiently and effectively and that CDBG-DR funds are being used appropriately. The implementation of effective internal monitoring of the program's compliance against the program guidelines, requirements and procedures identify areas of strong performance and areas that need improvement and/or a corrective action.

The monitoring process has three (3) primary objectives:

1. Gauge the overall program progress and effectiveness of the contractors, local and state recipients, and/or subrecipients, as applicable, in meeting the program objectives, goals and requirements set forth under any binding agreement;
2. Serve as a management tool to identify issues that may compromise program integrity, funding, and service delivery for corrective action and resolution; and
3. Serve as a technical assistance tool to identify areas in which to strengthen program capacity and quality of service delivery.

Through a Monitoring Plan, PRDOH will detail monitoring procedures and standards to provide HUD-funded activity compliance and performance reviews for all funding recipients, including internal PRDOH program operations. This plan provides a specific approach to documentation requirements, and corrective actions necessary to resolve issues or concerns discovered through a review.³

PRDOH will perform monitoring and compliance reviews based on risk assessments under a predetermined schedule. Monitoring frequency may be increased if a matter is uncovered by an external audit or necessitated by the possibility of fraud, waste or mismanagement. The monitoring process review consists of entrance meetings, analysis of documentation, interviews, exit meetings, development and issuance of compliance review reports, corrective action plans, and if necessary, follow up reviews and letters.

All applications are thoroughly reviewed by CDBG-DR program staff during the intake and verification of benefit processing levels to ensure consistency with program documentation and data requirements. Additional monitoring is then completed at regular scheduled intervals using sample populations. The monitoring strategy includes the use of desk reviews and onsite monitoring. Identification of the entities to be monitored are done quarterly, based on the results of the risk assessments and the threshold established (i.e., percentage of funds expended, total allocation, number of projects). The monitoring reviews are prioritized so that high-risk entities are monitored first.

26.1 Audit Findings

All audit findings shall be recorded in detail by the PRDOH and shall detail both compliance of application and use of funds. Issues of non-compliance shall be categorized as either material or administrative. Grant recipients, subrecipients, program partners or any party found to be in material non-compliance, or which received funds in error, may be required to repay grant or loan funds to PRDOH, as per the Terms and Conditions of their agreement. Grant recipients, subrecipients, program partners or any party found to be willfully fraudulent will be prosecuted.

27 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 CDBG-DR grantee, will follow Rule 68.1 of the Rules of Civil Procedure of Puerto Rico, 32 LPR App. V, R. 68.1.

³ Monitoring Plan available upon request.