



**CONSTRUIMOS** 

# CDBG-DR PROGRAM GUIDELINES

CDBG-DR GAP TO LOW-INCOME HOUSING TAX  
CREDITS PROGRAM

(LIHTC PROGRAM)

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PUERTO RICO DEPARTMENT OF HOUSING  
CDBG-DR PROGRAM GUIDELINES  
**CDBG-DR GAP TO LOW-INCOME HOUSING TAX CREDITS (LIHTC)**  
VERSION CONTROL

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1.0	February 21, 2019	Original Guidelines
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## **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.

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## 1 Program Overview

Puerto Rico faces an increased need for rental housing stock in the aftermath of hurricanes Irma and María. The substantial reduction in available housing units caused by the storms' destruction, combined with a surge of displaced residents (both on and off the Island) in need of housing, represents a major hindrance to long-term recovery. Incentives are required to spur development and replenish the current inventory of new, resilient, and affordable rental housing. Effective utilization of the Low-Income Housing Tax Credit (**LIHTC**) leverages such an incentive.

The CDBG-DR Gap to Low-income Housing Tax Credits Program, hereinafter referred to as the '**Program**,' as approved on the Action Plan, will provide the incentive required to spur development and replenish the current inventory of new, resilient, and affordable rental housing.

The Program objective is to leverage LIHTC to extend the impact of CDBG-DR funding with the aim of increasing the inventory stock of affordable multifamily rental units. To accomplish this, PRDOH intends to optimize the use of CDBG-DR funds by providing gap funding and if needed, interim and permanent loans, to leverage available LIHTCs to create/rehabilitate affordable rental housing. All developments funded through this Program will benefit low- and moderate-income populations.

## 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. See 24 C.F.R. § 8.3 and § 8.4.
- **Puerto Rico Action Plan:** defines how the CDBG-DR funding allocation by the Department of Housing and Urban Development (HUD) will be utilized in order to meet the urgent 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 urgent needs of housing, planning, economic recovery and infrastructure. The Action Plan was Substantially Amended and approved by HUD on February 28, 2019. The Action Plan is the basis of this Program. See <http://www.cdbg-dr.pr.gov/en/action-plan/>.

- **Americans with Disability Act (ADA):** the ADA 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. This number varies by municipality and/or Metropolitan Statistical Area (MSA), depending on the actual median income of a municipality or MSA.
- **Award:** means the date of execution of the *Binding Commitment for a Certificate of Reservation for a Low-Income Housing Tax Credit Allocation and/or Carryover Allocation Agreements*.
- **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 25 Megabits per second (Mbps) download, 3 Mbps upload (83 FR 51867).
- **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 Volume 83, No. 157 (August 14, 2018), 83 FR 40318.
- **CDBG-DR Agreement:** the contractual agreement for the use of CDBG-DR funds as gap financing to low income housing tax credits between PRHFA and the Developer. Funds cannot be released without a signed agreement in place.
- **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.
- **Developer:** any individual, association, corporation, joint venture or partnership undertaking a LIHTC development under this Program. When referring to the operational aspect of a project the applicable entity may actually be the Owner.
- **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 (FHA):** the Fair Housing Act requires all grantees, sub-recipients, and/or Developers funded in whole or in part with HUD financial assistance to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability or marital status.
- **Housing and Community Development Act of 1974 (HCDA),** Section 109: prohibits discrimination on the basis of race, color, national origin, disability, age, religion, and sex within Community Development Block Grant (CDBG) programs or activities.
- **Internal Revenue Code (IRC):** is the body of law that codifies all federal tax laws and are implemented by the Internal Revenue Service (IRS) through its Treasury Regulations and Revenue Rulings.
- **Low Income Housing Tax Credits (LIHTC):** included in the Tax Reform Act of 1986 approved by Congress, which introduced the Internal Revenue Code Section 42. There are two type of credits: nice percent (9%) available for new construction or rehabilitations that are not financed with tax-exempt bonds and four percent (4) available for existing housing (acquisition) or for new construction or rehabilitations financed with tax-exempt bonds.
- **Low- to Moderate-Income (LMI):** low to moderate income people are those having incomes not more than the “moderate-income’ level eighty percent (80% Area Median Family Income) set by the federal government for the HUD assisted Housing Programs. This income standard changes from year to year and varies by household size, county, and the metropolitan statistical area.
- **Management Agent:** an entity that has day-to-day frontline responsibilities for a HUD-insured and/or assisted multifamily housing property. The Developer is responsible for seeking out and selecting a management agent that meets the standards outlined in the Management Agent Handbook (**Handbook 4381.5**), Chapter 2. The HUD-Developer management agent relationship is defined and subject to the requirements and procedures set forth in Handbook 4381.5.
- **Place in Service:** the date when at least one (1) unit of the project is suitable for occupancy, and this is validated with the submittal of a Use Permit (Permiso de Uso) issued the Municipality or OGPe (*Oficina de Gerencia de Permisos*, the office of permits management of Puerto Rico).
- **Puerto Rico Department of Housing (PRDOH):** The Department of Housing of Puerto Rico has been designated as the entity responsible for administering the CDBG-

DR funds allocated for the recovery from disasters caused by hurricanes Irma and María of 2017. For the LIHTC Program, PRDOH will provide oversight of this program.

- **Puerto Rico Housing Finance Authority (PRHFA):** PRHFA (AFV, for its Spanish acronym) is a subsidiary of the Government Development Bank and an independent governmental instrument of Puerto Rico. It is the partner agency of PRDOH tasked with administering the CDBG-DR funding to finance the gap of the LIHTC program.
- **Responsible Entity (RE):** under 24 C.F.R. Part 58, is a grantee that receives CDBG assistance. The responsible entity must complete the environmental review process. The RE is responsible for ensuring compliance with the National Environmental Policy Act (**NEPA**) and the Federal laws and authorities has been achieved, for issuing the public notification, for submitting the request for release of funds and certification, when required, and for ensuring the Environmental Review Record (**ERR**) is complete. The responsible entity 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 has been achieved. In addition, the funding recipient is responsible for designating an Environmental Officer.
- **Subrecipient Agreement:** contract entered between PRDOH and PRHFA to administer and implement this Program.
- **Substantial rehabilitation:** for the purposes of determining when installation of broadband infrastructure is required as part of substantial rehabilitation of multifamily rental housing, unless otherwise defined by a 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%) 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. 83 FR 5844

- **Uniform Federal Accessibility Standards (UFAS):** proscribes 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, 42 U.S.C. § 4151-4157.
- **United States Department of Housing and Urban Development (HUD):** is the principal federal agency responsible for programs concerned with housing needs, fair housing opportunities, and improving and developing U.S. communities.
- **Voluntary Compliance Agreement (VCA):** voluntary and full settlement of a disputed complaint, under the Fair Housing Act, between HUD and a public agency, PRHFA, PRDOH [Conciliation Agreement and Voluntary Compliance Agreement between HUD and Alicea Cruz, Wanda I. (Complainant) and Égida Vistas del Rio-Yaritzá Mateo Alvarado, Admn., María Collazo, Social Worker, PRDOH and PRHFA (Respondents) of July 21, 2016]; and PRPHA [Voluntary Compliance Agreement Between HUD and Puerto Rico Public Housing Administration of September 29, 2016]. The document shall be in writing and signed by the parties; address each cited violation; specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance; provide assurance that discrimination will not recur; and provide for enforcement by the Attorney General.

### 3 Program Description

The Program responds to the need for safe, quality, and affordable rental housing in Puerto Rico. Hurricanes Irma and María devastated the already lean affordable rental housing stock. A recorded 345,333 rental households applied for the Federal Emergency Management Agency Individual Assistance (**FEMA IA**) as a result of hurricanes Irma and María.<sup>1</sup> The number of units with confirmed damage may increase as assessment of damage and inspections for code compliance post-storm continues. In the rental market recovery, there is a strong need to formalize the Island-wide rental market reporting and housing standard compliance. Aging buildings impacted by the storms will need to be addressed with a focus on resilience. More than seventy-six percent (76%) of the Island's rental stock was constructed before 1990. Before the hurricanes, there were 25,000 persons on the public housing waiting list and 7,955 (as of June 2014) on the Section 8 waiting list. There are more than 14,500 tenant households and more than 13,300 owned homes that are overcrowded by one (1) or more persons.<sup>2</sup>

The Puerto Rico Department of Housing (**PRDOH**) entered into a Subrecipient Agreement with the Puerto Rico Housing Finance Authority (**PRHFA**), to utilize Community

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<sup>1</sup> FEMA IA data – FIDA 31621 as of April 2, 2018.

<sup>2</sup> Puerto Rico Builder's Association Housing Study, February 2018.

Development Block Grant-Disaster Recovery (**CDBG-DR**) to provide gap funding to augment other public and private financing for the construction of affordable rental housing units under the LIHTC program administered by PRHFA. Under a typical LIHTC program, a Developer secures a construction and/or permanent loan from a private lender or public agency, gap financing from a public or private source, and equity from private investors in exchange for LIHTCs. This CDBG-DR funding will meet any capital shortfalls (gaps) and expedite the pace of qualified, new construction and/or rehabilitation projects which are shovel-ready.

The LIHTC program, described by HUD as “the most important resource for creating affordable housing in the United States today,”<sup>3</sup> allows individuals and legal entities to claim federal income tax credits in exchange for delivering affordable rental housing. LIHTC offers two forms of tax credits, namely, nine percent (9%) for new construction/rehabilitation, and four percent (4%) for new construction/rehabilitation projects that are partially financed with tax-exempt obligations. According to the Internal Revenue Code (**IRC**), over a ten-year period, the respective applicable tax credit percentages are those that yield credits with a present value equal to seventy percent (70%) and thirty percent (30%) of the qualified basis of a project. See 26 U.S.C. §42(b)(1)(B).

These guidelines outline the policies that the Program uses to provide services and fund LIHTC projects that qualify for nine percent (9%) LIHTCs only. Policies related to funding capital gaps for projects supplemented by four percent (4%) LIHTCs are not included in these guidelines. The Guidelines for the 4% Phase of this Program will be developed, incorporated, and published when funding is made available.

## 4 National Objective

The national objective of this Program is to benefit low- and moderate-income (**LMI**) persons (below eighty percent (80%) Area Median Family Income (**AMFI**) according to the HUD Modified Income Limits for CDBG-DR Puerto Rico). See 24 C.F.R. §570.483(b)(3). The objective will be realized when each Project is occupied by fifty-one percent (51%) of LMI households defined by the adjusted income limits for Puerto Rico.

## 5 Program Criteria

Under the Qualified Allocation Plan 2016 (**QAP 2016**) funding cycle, there are several existing shovel-ready projects in the nine percent (9%) LIHTC pipeline which are expected to be completed within **twenty-four (24) months** of the signed CDBG-DR Agreement. CDBG-DR funds with nine percent (9%) LIHTC will be leveraged to stretch both funding sources.

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<sup>3</sup> See <https://www.huduser.gov/portal/datasets/lihtc.html>.

In addition to creating affordable rental housing stock, this Program will include eligible activities, such as, housing construction, acquisition, implementation of the Green Building Standards, and other activities to supplement the existing LIHTC program.

Projects funded through this Program must maintain affordable housing in accordance with the affordability period required by the Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314, or the affordability period required by LIHTC, whichever is longer. Affordability periods outlined in 83 FR 40314 are as follows:

- Rehabilitation or reconstruction of multi-family rental projects with eight (8) or more units must remain affordable for a period of no fewer than **fifteen (15) years**.
- New construction of multi-family rental projects with five (5) or more units must remain affordable for a period of no fewer than **twenty (20) years**.

LIHTC compliance periods are specified in the property's *Carryover Allocation Agreement* with PRHFA and are specific to each property.

All approved projects under these Guidelines are governed by Section 42 of the Internal Revenue Code, 24 C.F.R. § 570, 83 Federal Register, No.157 (August 14, 2018), Vol. 84 No. 33 (February 19, 2019), *et seq.*, and any other applicable federal statutes or regulations governing the CDBG-DR Program by Congress, HUD, PRDOH, and PRHFA. Modification of any relevant statute or regulation may become effective immediately and apply to the Projects funded under this Program.

## 6 Eligible Projects

Eligible projects include rental housing developments that have been awarded/reserved in 2018, 2019, 2020, and 2021 LIHTCs from the QAP 2016 cycle, Notice of Funds Availability 2016 (**NOFA-2016**).<sup>4</sup> The selection criteria and other weighting can be found in QAP 2016. PRDOH will allocate CDBG-DR grants and/or loans to fill any existing financial gaps. Should any CDBG-DR funds remain after those projects' financial needs are satisfied, they may be allocated once applications of four percent (4%) LIHTCs can be received and reviewed for CDBG-DR funding needs. See 26 U.S.C. § 142.

The QAP 2016 (and attached annexes) published at <https://www.afv.pr.gov/nofa> should be used in conjunction with these program guidelines as reference for detailed responsibilities and compliance requirements, as well as, the Cross-cutting Guidelines which apply to all of Puerto Rico's CDBG-DR Programs published at [www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov) CDBG-DR – Implementation Plan

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<sup>4</sup> For CDBG-DR purposes, the term "award," with regards to the LIHTC program, means the date of execution of the *Binding Commitment for a Certificate of Reservation for a Low-Income Housing Tax Credit Allocation and/or Carryover Allocation Agreements*.

## 6.1 Construction Requirements

The CDBG-DR Agreement, as previously defined, cannot be executed until compliance with the following requirements is certified. The implementation of the requirements included in this section, with the exception of the Environmental Review, will be evaluated and certified by the PRHFA-Inspector as part of their technical review before the execution of the CDBG-DR Agreement, and, thereafter, during monthly inspections.

Projects under construction and *shovel ready* (those able to begin construction once the CDBG-DR Agreement is signed) will have priority. Readiness to proceed will be validated by the PRHFA-Inspector's review of the technical evaluation of plans, studies, permits and governmental endorsements, among other documents, that Developers will provide.

## 6.2 Implementation of Green Building Standards

As required by 83 FR 5844, and amended by 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, LIHTC projects that meet criteria for new construction or replacement of substantially damaged buildings are required to obtain a minimum of one of the listed certifications:

- ENERGY STAR® (Certified Homes or Multifamily High-Rise),
- 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 AirPlus (ENERGY STAR® a prerequisite), or
- Any other equivalent comprehensive green building program acceptable to HUD, such as the *Permiso Verde* issued by the applicable Puerto Rico permits office.

As part of the CDBG-DR project submission, the Developer shall identify at least one Green Building Standard and include a checklist, or other suitable documentation, which demonstrates adherence to the selected standard(s).

For rehabilitation of non-substantially damaged structures, Developers shall adhere to the guidelines specified in the HUD Community Planning and Development Green Building Retrofit Checklist<sup>5</sup>, to the extent applicable, of 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 Developer must use ENERGY STAR® -labeled, Water Sense-labeled, or Federal Energy Management Program (FEMP)-designated products and appliances.

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<sup>5</sup> <https://files.hudexchange.info/resources/documents/CPD-Green-Building-Retrofit-Checklist.xls>

The PRHFA Inspector will verify the CDBG-DR project applications for compliance as part of the technical review required as a prerequisite before the CDBG-DR Agreement can be signed.

### 6.3 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.

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 PRHFA Inspector will verify the CDBG-DR project application for compliance as part of the technical review, which is required as a prerequisite before the CDBG-DR Agreement can be signed.

### 6.4 Accessibility Requirements

Pursuant to the *Conciliation Agreement* and *Voluntary Compliance Agreement* filed on July 21, 2016, all LIHTC developments must comply with the following accessibility requirements:

- Twelve percent (12%) of the total ground floor and/or elevator-serviced unit inventory must be made fully mobility-accessible under the 2010 ADA Standards and, wherever applicable, the Uniform Federal Accessibility Standards (UFAS).

- Three percent (3%) of the total unit inventory must be made sensory-accessible under the 2010 ADA Standards and, wherever applicable, the Uniform Federal Accessibility Standards (UFAS).<sup>6</sup>

Prior to commencing construction, the Developer shall provide the following obligations:

- Preliminary drawings of the proposed new construction and/or rehabilitation including a site plan, building elevations, and unit floor plans must be provided. The project architect shall certify that the development will comply with the accessibility requirements of the FHA and, wherever applicable the 2010 ADA standards and UFAS.
- Proof of professional liability insurance covering the project's architect for an amount not less than ten percent (10%) of the estimated construction cost, in case of, negligence.
- Proof of performance or surety bond for no less than fifty percent (50%) of the construction contract.
- A signed certification from a qualified architect and/or engineer retained for the accessibility inspection of the new construction and/or project rehabilitation must be provided as verification that covered units and project common areas comply with the structural accessibility mandates of the FHA and, wherever applicable, the 2010 ADA standards and UFAS.

Pursuant to the regulatory requirements of 24 C.F.R. § 8.53(a) and 28 C.F.R. § 35.107(a), all Management Agents who employ fifteen (15) or more individuals shall designate a Section 504/ADA Coordinator. These coordinators are responsible for the performance of 504/ADA-related responsibilities, including providing prompt and equitable resolution of disability discrimination complaints and handling VCA-related obligations. This requirement shall be realized by including a clause in all contracts with contractors and/or subcontractors requiring them to, as minimum meet the ADA Coordinator in the following two instances: prior to executing contracted activities and when contracted activities are nearing ninety percent (90%) completion.<sup>7</sup>

The PRHFA Inspector will verify the CDBG-DR project application for compliance as part of the technical review, which is required as a prerequisite before the CDBG-DR Agreement can be signed.

## **7 Environmental Requirements**

### **7.1 Environmental Review**

The purpose of the Environmental Review is to ensure that all projects subsidized 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

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<sup>6</sup> Conciliation Agreement and Voluntary Compliance Agreement between HUD and Alicea Cruz, Wanda L. and Egida Vistas del Rio, et. al. Section 18(a) (2016).

Responsibilities. The Environmental Review is required to determine the environmental eligibility of a proposed project(s) or activity(s) to allow any environmental mitigation requirements to be performed prior to or during construction work.

No work may start on a proposed project before the environmental review process is completed, even if that work is being done using non-HUD funds, such as signing a construction contract, etc., specifically, environmental clearance must be obtained for each project prior to the firm commitment of federal or non-federal funds. (24 CFR § 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.**

PRDOH is the Responsible Entity for environmental matters. PRDOH will maintain a written Environmental Review Record (ERR) of the environmental review process meeting the legal requirements and documenting PRDOH review and compliance with the related federal authorities listed in 24 C.F.R. part 58 which includes, as appropriate, the following:

- 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 24 CFR § 58.5 and § 58.6; 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).

## 7.2 Lead-Based Poisoning Prevention Act

In order to successfully fulfill the requirements in the Environmental Review, Developers 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.

### 7.2.1 Lead-Based Paint Poisoning Prevention in Certain Residential Structures

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 on 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 – Developers 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 – Developers 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 on Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities 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.

### 7.3 Residential Lead-Based Paint Hazard Reduction Act

Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X, to protect families from exposure to lead from paint, dust, and soil. Section 1018 of this law directed HUD and EPA to require the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978. (42 U.S.C. Ch. 63A)

#### 7.3.1 Sale or Lease

Before ratification of a contract for housing sale or lease, sellers and landlords must:

- Give an EPA-approved information pamphlet on identifying and controlling lead-based paint hazards ("Protect Your Family from Lead in Your Home" pamphlet, currently available in English, Spanish, Vietnamese, Russian, Arabic, Somali).
- Disclose any known information concerning lead-based paint or lead-based paint hazards. The seller or landlord must also disclose information such as the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.
- Provide any records and reports on lead-based paint and/or lead-based paint hazards which are available to the seller or landlord (for multi-unit buildings, this requirement includes records and reports concerning common areas and other units, when such information was obtained as a result of a building-wide evaluation).

- Include an attachment to the contract or lease (or language inserted in the lease itself) which includes a Lead Warning Statement and confirms that the seller or landlord has complied with all notification requirements. This attachment is to be provided in the same language used in the rest of the contract. Sellers or landlords, and agents, as well as homebuyers or tenants, must sign and date the attachment.
- Sellers must provide homebuyers a 10-day period to conduct a paint inspection or risk assessment for lead-based paint or lead-based paint hazards. Parties may mutually agree, in writing, to lengthen or shorten the time period for inspection. Homebuyers may waive this inspection opportunity.

#### 7.4 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.

FEMA recommends, although not required, to purchase flood insurance for those properties outside the SFHA that are prone to flooding in order to better protect the Developer from the economic risks of future floods and reduce dependence on Federal disaster assistance in the future.

## 8 Compliance Monitoring

The QAP 2016 includes a Compliance Monitoring Plan, pursuant to the requirements stated in 26 U.S.C. § 42, the PRHFA will follow in notifying the Internal Revenue Service (**IRS**) of noncompliance with the LIHTC program.

In accordance with the QAP's Compliance Monitoring Plan, pursuant to 26 U.S.C. § 42, Developers or Management Agents are required to provide annual certifications of qualified low-income tenants, including tenant income and rents charged, the number of qualifying low-income units, as well as any other information pertinent to determine compliance. See the specific compliance requirements outlined in QAP 2016, Annex O.<sup>8</sup>

Developers are advised that PRHFA is required to perform compliance monitoring. To facilitate monitoring, PRHFA and its designees will have access to all project information, including but not limited to, physical access to the project, financial records, and tenant information for the purpose of monitoring compliance with 26 U.S.C. § 42 and with CDBG-DR requirements.

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<sup>8</sup> See <https://www.afv.pr.gov/wp-content/uploads/2016/07/Annex-O-Compliance-Monitoring-Plan-REV-JULY-2016.pdf>

In the case of a noncompliance incident, PRHFA will advise the Developer, as well as, notify the IRS or any other federal agency, as deemed necessary. Further note that regardless of the status of the noncompliance incident (resolved or not) all incidents related to the LIHTC laws and regulations will be reported to the IRS.

## 8.1 Occupancy Requirements

To be considered an eligible housing activity under CDBG-DR funding, rental housing must be occupied by LMI households. The rents must be considered “affordable” to meet this criterion. LIHTC rents are set at 30 percent (30%) of the income of the AMI tied to the unit. This is calculated with an assumed family size of 1.5 persons per bedroom. For guidance on determining maximum rents and income limits Puerto Rico LIHTC projects, PRHFA publishes an annual circular for Developers and Management Agents.<sup>9</sup>

Household income at move-in must not exceed the applicable income limit designated for the household's family size in accordance with the affordability requirements defined by HUD. These are published annually at [www.hudexchange.info](http://www.hudexchange.info).<sup>10</sup> Prior to moving in or taking possession of a unit, the Developer or Management Agent is required to certify that the household meets the income requirements. Certification of residents after move-in may impact the Developer's ability to claim tax credits for the unit. For compliance guidance, refer to the QAP 2016, Annex O – Compliance Monitoring Plan.<sup>11</sup>

If a family's income increases after they move in, the family is not disqualified from staying in the unit-even if the increase is about the unit's income requirements. In buildings that have a mix of tax credits units and other types of units (such as units that are market rate), the Developer must follow the “next available unit rule”. This means that if a tenant in a LIHTC unit's income increases to more than one hundred forty percent (140%) of the AMI, the next available unit must be rented to someone within the appropriate income level for admission. However, the tenant with the increased income is still eligible to remain in his/her unit.

All Developers under contract to PRHFA must comply with federal, state and local laws that prohibit discrimination on the basis of disability, including but not limited to the Federal Civil Rights Act (Title VI), the Federal Fair Housing Act (Title VIII), Section 504 of the Rehabilitation Act of 1973 (504) and the Americans with Disabilities Act (ADA). In addition, Developers cannot discriminate against voucher families and must accept Section 8 voucher tenants.

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<sup>9</sup> As of date, the most recent publication is: PRHFA Circular 18-01 “Developers and Management Agents of Properties participating in the Low-Income Housing Tax Credit (LIHTC) Program” dated 04 April 2018. ([http://www.cdbg-dr.pr.gov/wp-content/uploads/downloads/action-plan-11-16-18/F\\_LIHTC%20Rent%20Rates.pdf](http://www.cdbg-dr.pr.gov/wp-content/uploads/downloads/action-plan-11-16-18/F_LIHTC%20Rent%20Rates.pdf))

<sup>10</sup> <https://files.hudexchange.info/resources/documents/2019-Puerto-Rico-Income-Limits.pdf>

<sup>11</sup> <https://www.afv.pr.gov/wp-content/uploads/2016/07/Annex-O-Compliance-Monitoring-Plan-REV-JULY-2016.pdf>

All new and existing LIHTC projects with fully accessible units for occupancy by individuals with mobility and/or sensory impairments shall provide a preference for those accessible units as follows:

- Preference will be given to the occupant of another unit within the same project having disabilities requiring accessibility features of the vacant unit and who is occupying a unit lacking such features.
  - If no such occupant exists, then preference will be given to an eligible qualified applicant on the waiting list having disabilities requiring the accessibility features of the vacant unit.
- In the case that the unit is offered to an applicant without disabling conditions needing of the unit's accessibility features, then the Developer and/or manager shall require the applicant to agree (and shall incorporate this VCA to the lease) to move to a non-accessible unit whenever it becomes available and within the delivery of a written notification.

Developers and Management Agents shall adopt suitable means to ensure the information regarding the availability of accessible units reaches eligible individuals with disabilities and shall undertake reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals.

## 9 Financing Requirements

### 9.1 Subsidy Layering Review and Underwriting

The Subsidy Layering Review (**SLR**) will certify that there is no overlap of government subsidies when combining housing assistance programs with other forms of federal funds administered by Federal, Puerto Rico, or local agencies.

To perform this review, PRHFA will evaluate each project for determining a reasonable level of profit or return on a Developer's or Developer's investment. Based on this determination, PRHFA will determine whether and how much the Developer must invest, and/or which other funding sources and types can be applied to the project. The review will ensure that costs are eligible under each project, and all income and expenses are reasonable and within the prescribed standards.

Pro-forma statements will be prepared by PRHFA based on the analysis described above, which will include recommended sources and uses of funds, as well as projected operating income for the term of affordability. These will include the amount of LIHTC that a project would be eligible to receive, as well as the amount of permanent financing based on the established parameters, governmental subsidies, capital contributions, CDBG-DR funds, and funds from PRHFA or other state or private programs.

PRHFA's underwriting requirements are outlined in QAP 2016, section 5.3- *Underwriting and Financial Feasibility Analysis*. The purpose of the underwriting requirements is to ensure that:

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

PRHFA will underwrite the rents according to LIHTC limits except for projects that intend to use project-based rental assistance (e.g., Section 8, Project Based Vouchers, PHA, or similar legislation), which will be underwritten as per applicable regulations, provided written evidence is submitted (e.g., award letter indicating gross rents approved for the project or executed rental subsidy agreement). Also, when combining LIHTC properties with a project-based rental assistance program, the Developers shall ensure that they meet both sets of program rules regarding income limits application. For more information, see the QAP 2016 on its section 5.2- *Development and Pro Forma Assumptions Review*; and section 5.3- *Underwriting and Financial Feasibility Analysis*.

## 9.2 CDBG-DR Funding Considerations

Further, CDBG-DR funds may not be used in conjunction with PRHFA's HOME Program. Projects may receive HOME funds from other Participating Jurisdictions. CDBG-DR awards must meet LIHTC's rent and income limits, use, and compliance monitoring limitations, as well as any other existing or future regulatory requirements.

CDBG-DR allocations will be based on equity gaps determined for each submitted application, once the project is evaluated as per the QAP 2016 requirements and applicable underwriting guidelines, along with any specific CDBG-DR requirements, with updated sources and uses budget and any additional financial information PRHFA may require. CDBG-DR funds will be awarded first to projects that received a LIHTC award during or prior to NOFA-2016.

Funds will be disbursed monthly on a draw basis. No disbursements are allowed unless the CDBG-DR Agreement is signed and dated by both parties (PRHFA and Developer). Refer to the Section on *Responsibilities of the Developer*, for a detailed description of the Developer's duties before the execution of the CDBG-DR Agreement, during construction and after completion of construction.

## 9.3 Allowable Expenditures

Only costs identified in the CDBG-DR Agreement will be considered eligible for payment by this Program. All construction costs shall be considered to be cost reasonable in accordance with 83 FR 40318. Extended overhead costs required to complete the CDBG-DR proposal submission are not allowable costs.

The development budget will identify the payment source of each line item. Developers must ensure that only CDBG-DR eligible costs are included in invoices submitted to the program. The PRHFA-Financing Officer in charge of each project will also verify this task. CDBG-DR funds may be used for capital investment in eligible LIHTC projects. Capital investment means costs that are included in the eligible basis of a project under the IRC. See 26 U.S.C. § 42 on Low-income housing credit.

Accounting of disbursements and projects' expenditures will be ongoing to ascertain that funds are expended according to the terms of the CDBG-DR Agreements. This process will help identify those projects that do not comply with deadlines. Quarterly, PRHFA will track and report to PRDOH fund commitments and expenditures, and beneficiary information when available. This task will be a combined effort between the PRHFA Financing and Tax Credit Department and their Accounting/Pre-Audit Department.

Developers shall commit to the development funding plan (schedule of performance and development budget)<sup>12</sup> outlined in their respective CDBG-DR Agreements and must be acceptable to PRHFA, confirming that:

- Development of the qualified rental property will be constructed and placed in service by the date stipulated in the LIHTC Carryover Allocation Agreement.
- Developers shall file a monthly report providing confirmation of progress toward meeting the established expenditure deadlines. The assigned PRHFA Financing Officer will review the plan and enforce compliance.
- A Project that is not completed in accordance with the terms and conditions of the CDBG-DR Agreement shall be considered terminated prior to completion, and all CDBG-DR funds will be recaptured.

The Developer will be subject to liquidated damages as related to their timeframes of performance under the Program. Timeframes of performance will be established in the CDBG-DR Agreement. Developers shall pay to PRHFA, as liquidated damages, the amounts set forth on the CDBG-DR Agreement for each calendar day that the completion of works is late until deemed in compliance.

The CDBG-DR Agreement will set forth all CDBG-DR program and crosscutting federal grant requirements. These will be enforceable through the recordation of a restriction binding on all Developers and successors. In Puerto Rico, it is achieved with a public deed recorded at the appropriate Property Registry.

PRHFA reserves the right to exercise its prudent discretion when the circumstances so warrant it. PRHFA and PRDOH will recapture funds not expended within the terms

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<sup>12</sup> The development funding plan refers to the development budget and schedule of performance for each project. It is incorporated as part of the CDBG-DR Agreement.

stipulated in the CDBG-DR written agreements. Recaptured funds will be returned to the program for future use.

#### 9.4 Change Order Requests

Depending on each project's percentage of completion and an assessment of whether any project delays will affect meeting CDBG-DR deadlines, Developers may be responsible for any equity gap they may face. Changes in plans or specification after the CDBG-DR Agreement has been executed including any increase or decrease to the quantity of work to be performed or materials, equipment, or supplies to be furnished shall not be allowed without the express written permission of PRHFA.

Requests for change orders shall only be considered if the Developer demonstrates the change is necessary, reasonable, and cannot be funded through the Project's contingency budget or through funding sources other than CDBG-DR. Request for change order should not result in an increase of more than five percent (5%) of the approved budget in the executed CDBG-DR Agreement.

PRHFA will evaluate all requests for a change order to determine whether costs are necessary and reasonable for the timely completion of the Project or to protect the initial investment of CDBG-DR funds. Approval of change orders is subject to the discretion of the PRHFA, and availability of CDBG-DR funds. Change order requests for an increase in the value of the CDBG-DR Agreement in excess of five percent (5%) will only be considered if the Developers can demonstrate that the change order is required due to a substantial or unexpected change in Project circumstances beyond the control of the Developer. Requests for change orders in excess of five percent (5%) will be considered on a case-by-case basis.

Any work performed outside of the approved scope of work without prior authorization by means of a Change Order is not reimbursable under the CDBG-DR Agreement. Developers shall be responsible for all costs incurred due to activities performed beyond the approved scope of work without prior authorization by a duly authorized change order.

#### 9.5 Program income

Any and all collection of payments for CDBG-DR funds disbursed as interim loans shall be considered Program Income and maintained by PRHFA under the direction of PRDOH. These are to include loan payments – inclusive of principal and interest – from the Developer, as well as any loan or grant repayments as a result of program non-compliance.

To the maximum extent feasible, program income shall be used or distributed before additional withdrawals from the U.S. Treasury are made, in accordance with 83 FR 5844. PRHFA will establish an independent, no-interest bearing account for program income received from the Program. Program income activity shall be reported to PRDOH.

Program income does not include any operating income generated by the project after any loans funded through CDBG-DR funds are repaid, and the Project is occupied.

## 10 Responsibilities of the Developer

### 10.1 Before Execution of the CDBG-DR Agreement

This section sets forth the responsibilities and obligations that the Developer must meet in order to enter into a binding CDBG-DR Agreement with PRHFA.

All existing LIHTC projects under this Program will be required to submit a new proposal as part of the CDBG-DR Agreement. This proposal shall include, but is not limited to, a revised development funding plan accounting for the costs and timeline of implementing the CDBG-DR requirements, an updated design and plan specifications, updated threshold review documentation (i.e. Designer's Preliminary Opinion Letter, Valid Construction Permit, etc.) and other documentation as requested by PRHFA.

At the discretion of PRHFA, CDBG-DR funding will be made available to pay for the eligible costs related to the update of the design to meet the CDBG-DR design requirements. The cost must be evaluated as cost reasonable as part of the independent cost analysis of the project.

In addition, the following certificates must be submitted for the CDBG-DR Agreement to be considered complete:

- Certificate of Filing of the Developer's Income Tax Returns for the past **five (5) years** (Form SC 6088);
- Certificate of Filing of the Debt stating its tax status with the Puerto Rico Treasury Department (Form SC 6096);
- Copy of Merchant (Wholesaler) Registry Certificate issued by the Puerto Rico Treasury Department (Form SC 2981);
- Certificate of Filing of Personal Property Tax Returns of the Municipal Revenue Collection Center (CRIM for its Spanish acronym);
- CRIM Debt Certificate for All Concepts;
- Certificate of Labor Department Registry as Employer and Debt for Unemployment and Disability Insurances;
- Certificate of Labor Department Registry as Employer and Debt for Public Transporters Social Security Insurance;
- Department of State Good Standing Certificate;
- Department of State Certificate of Existence or Authorization to Do Business in Puerto Rico; and
- Certificate of Compliance for Employers issued by the Child Support Administration (ASUME for its Spanish Acronym).

If any of the above certifications are incorrect for any cause attributable to the Developer, PRHFA shall have just cause for terminating the CDBG-DR Agreement immediately.

The following documentation must be received and accepted by PRHFA prior to the execution of the CDBG-DR Agreement:

- A written report by the PRHFA Inspector that:
  - the Plans have been received and have been approved by all pertinent Governmental Authorities;
  - the Improvements as shown by the Plans will comply with all applicable zoning and construction laws, ordinances, and regulations;
  - the Construction Contract satisfactorily provides for the construction of the Improvements;
  - all roads and utilities necessary for the full utilization of the Improvements for their intended purposes have been completed or are contemplated within the Improvements or the presently installed and proposed roads and utilities are sufficient for the full utilization of the Improvements for their intended purpose; and
  - the construction of the Improvements theretofore performed, if any, was performed in accordance with the Plans and will be finished along with all necessary roads and utilities on or before the Construction Completion Date.
- Current Financial Statements of the Authorized Representative of the Developer, and/or Owner, and any other financial documents and/or data deemed reasonably required by PRHFA;
- Evidence of payment and performance bonds and labor and materials payment bonds, each for penal sums equal to the amount of the Construction Contract, and a Wage Payment Bond for twenty percent (20%) of such amount, or as otherwise provided by law, each naming PRHFA and PRDOH as co-obliges, with a company having a rating of A or better and a financial size of V or better with Best Rating Service and acceptable to PRHFA, the Workman's Compensation Fund and other insurance policies (together with evidence of the payment of premiums) required hereunder and/or under any other Loan Document, and all documents related to construction, including without limitation, the Construction Contract, and agreements with and from the Contractor and Developer's Architect.
- Copy of the Construction Contract and a copy of the Developer's agreement with the Developer's Architect certified by the Developer;<sup>13</sup>
- The Project Cost Statement;

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<sup>13</sup> The terms and conditions of such agreements must be acceptable to PRHFA.

- A copy of the public instrument (deed, lease agreement, sales contract, option agreement, among others) relating to the Developer's acquisition of the Developer's Interest in the Premises and all documents related therewith;
- The Developer must provide evidence that it has met all conditions defined in its LIHTC-Operating Agreement as of the date of the Initial Advance with respect to ensuring that the Capital Contributions have been compiled with to the extent possible;
- Environmental Review see section "Environmental Review" of the Program Guidelines. This includes the Approved Request for Release of Funds (**RROF**) and Finding of No Significant Impact (**FONSI**), if applicable.
- Copies of any inspection and/or test records and reports made by or for the Developer's Architects;
- A construction schedule for the Improvements;
- A progress schedule showing the interval of time over which each item of Direct Cost and Indirect Cost is projected to be incurred and paid, as well as, a breakdown of all Direct Costs to be incurred for the construction of the Improvements; and
- Evidence of compliance with CDBG-DR funding requirements, including but not limited to, adherence to, at least, one Green Building Standard, compliance with VCA standards, and the inclusion of Broadband Infrastructure requirements.

The following items must be received and reviewed by PRHFA's Legal Counsel prior to the execution of the CDBG-DR Agreement:

- The Loan Documents and any other document reasonably required by PRHFA;
- Evidence of paid Title Insurance policy;<sup>14</sup>
- Evidence that all taxes and other levies imposed upon the Premises or on the Developer's Interest in the Premises and/or improvements are fully paid and current;
- Copies of all applicable authorizations as determined by PRHFA or PRHFA's Counsel (on behalf of PRHFA):
  - Plot plan and subdivision approvals;
  - Zoning variances;
  - Sewer, building, flood, and all permits required for construction, use, occupancy, and operation of Premises;
- Agreements from Developer's Architects and the Contractors, including but not limited to, design agreement(s), construction contract agreement(s);
- A survey of the Premises certified by a civil engineer or surveyor acceptable to PRHFA and the Title Insurer showing:

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<sup>14</sup> The paid title insurance policy must be equal to the Mortgage and issued by the Title Insurer. The Title Insurer shall insure the Mortgage to be valid first lien on the Mortgaged Property free and clear of all defects, liens, claims and encumbrances and shall contain reference to a survey.

- The location of the perimeter of the Premises by courses and distances;
- All easements, rights-of-way, and utility lines referred to in the title policy required by the agreement or which actually service or cross the Premises;
- The lines of the streets abutting the Premises and the width thereof, and any established building lines;
- Encroachments and the extent thereof upon the Premises;
- The Improvements to the extent constructed, and the relationship of the Improvements by distances to the perimeter of the Premises, established building lines and street lines; and
- If the Premises are described as being on a filed map, a legend relating the survey to said map;
- Copy of the operating agreement of the Developer, as amended, and a copy of the organization documents of the Managing Member of the Developer, and the appropriate legal authorizations of Developer issued by agencies of the Commonwealth of Puerto Rico and/or the state of incorporation (to the extent required); and
- An opinion of Developer's counsel covering, among other matters, the organization and existence of the Developer, the power of the Developer to enter into the Loan Documents and to perform all transactions contemplated by the agreements referred to therein, and the due execution, validity and enforceability of the Loan Documents, Note(s), Security Agreement and all other documents and instruments pertaining to the Loan.

It is the responsibility of the Developer to ensure that the applicable Building Codes are applied, and permits obtained. See [www.jp.pr.gov](http://www.jp.pr.gov) for more information.

For a complete list of required documents, please refer to the Closing Checklist.

### 10.2 Prerequisites for Initial Disbursement

Upon signature of the CDBG-DR Agreement, the Developer shall provide proof of payment and performance bonds, labor bonds, and materials payment bonds before the initial disbursement.

### 10.3 During Construction

The Developer must begin construction no later than **forty-five (45) days** from signing the CDBG-DR Agreement with PRHFA. In the case of delays caused by events beyond the Developer's control, construction can begin within **sixty (60) days**. Further delays beyond the aforementioned time requirements will be handled on a case-by-case basis.

### 10.4 Monitor Construction Progress

Throughout the duration of the construction, the Developer shall comply with all restrictions, covenants, and easements affecting the Premises, Developer's Interest in the Premises, or the Improvements and cause the satisfaction of all material conditions of the agreement.

In order to monitor construction progress, PRHFA and its representatives, shall be granted access during normal business hours, to enter the construction site to perform the following activities, as deemed necessary:

- Inspect improvements and all materials to be used in the construction;
- Examine all available detailed Plans;
- Compliance with all applicable cross-cutting regulations and program guidelines; and
- Any other activities PRHFA deems necessary to the success of the Project.

Until the Date of Conversion to permanent financing, the Developer shall submit monthly reports to PRHFA indicating the state of completion of the Improvements compared to estimates, and such other information as PRHFA may reasonably request. The reports shall be delivered in an acceptable form and substance to PRHFA.

### 10.5 Contractor Management

The Developer should include the following provisions as part of the Construction Contract with the Contractor:

- the Contractor will deliver to PRHFA copies of all major subcontracts, Change Orders, and any other contract, purchase order, or subcontract covering labor, materials, equipment, or furnishings to or for the Improvements;
- the names of all persons with whom the Contractor contracts for the construction of the Improvements or the furnishings of labor or materials.

Further, the Developer shall acknowledge that ten percent (10%) from each construction payment will be withheld and that said retainage will be paid subject to the terms of the CDBG-DR Agreement, the Bonds, and the Construction Contract. All such subcontractors to be utilized by the Contractor in the development and construction of the Improvements shall be reasonably acceptable to PRHFA.

### 10.6 Regulatory Compliance

Upon demand of PRHFA or its representatives, the Developer shall be required to correct any defects (including structural) in the Improvements or any departures from the Plans not approved by PRHFA.

If the Developer fails to comply with federal statutes, regulations or the terms and conditions of the CDBG-DR Agreement, PRHFA may take one or more of the following actions:

- Take other remedies such as temporarily withholding cash payments pending correction of the deficiency by the Developer;
- Disallow all or part of the cost of the activity or action not in compliance;

- Initiate suspension or debarment proceedings as authorized under 2 C.F.R. § 180 (OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-Procurement)); or
- Withhold further Federal awards for the project or program;
- Entitled to take any remedies deemed necessary and that may be legally available.

The Contractor shall cooperate and deliver data or documents in connection with the Improvements to PRHFA as requested. PRHFA reserves the right to request copies of all contracts, bills of sale, statements, receipted vouchers, or agreements in the following cases:

- Developer claims title to any materials, fixtures or articles incorporated in the Improvements; or
- Subject to the lien of the Mortgage; or
- Incurred costs which are entitled to CDBG-DR funds.

#### 10.7 Financial Management

The Developer is responsible for paying all Direct Costs, Indirect Costs, and expenses for completion of the Improvements and satisfying all of the conditions outlined in the CDBG-DR Agreement, including without limitation:

- All document and stamp taxes, recording and filing expenses and fees, in connection with the transactions contemplated hereby,
- All taxes, insurance premiums, liens, security interests or other claims or charges against the Premises, Developer's Interest in the Premises, or Improvements; and
- All costs of completion of the work to be performed by Developer in space to be occupied in the Improvements (including public space outside the property boundaries) to permit the lawful occupancy thereof for the purposes contemplated by the operating agreement.

The Developer shall maintain a standard and modern system of accounting of its dealings and business affairs in accordance with generally accepted accounting principles, and permit PRHFA or any of its agents or representatives to have access to and to examine all of its books and records at any time or times hereafter during business hours and copy from any and all of said books and records; cause its books to be audited annually by a reputable accounting firm licensed in Puerto Rico.

The Developer shall pay and discharge all taxes, assessments and governmental charges and levies imposed upon it or upon its income or profits, or upon any property belonging to it, on or prior to the date in which penalties attached thereto, provided that Developer shall not be required to pay any such tax, assessment, charge, levy or claim, the payment of which is being contested in good faith, by the proper proceeding and such non-

payment will not create a lien on the Premises, on Developer's Interest in the Premises, or the Improvements.

The Developer shall be required to provide PRHFA within **one hundred twenty (120) days** after the end of its fiscal year with an audited Financial Statements of the Developer without any qualification or exception reasonably deemed material by PRHFA. In addition, the Developer may be requested to provide an unaudited Financial Statement signed by its Managing Member (no more than once monthly).

Pursuant to the above section, the Developer shall maintain the Premises, Developer's Interest in the Premises, and the Improvements free and clear of any and all liens, charges, claims, defects and encumbrances except the Mortgage, PRHFA's restrictive covenants, and such others as shall have been previously approved in writing by PRHFA.

Upon request of PRHFA, the Developer may need to execute, deliver, obtain, and furnish, at their own expense, such documents as may be necessary:

- to perfect and maintain the Mortgage and the pledge and security interest hereunder and the other Loan Documents; and to
- fully consummate the transactions contemplated under the CDGB-DR Agreement and maintain the principal amount of the Mortgage and the additional credits thereunder in amounts -which in the sole, but reasonable, discretion of PRHFA- will fully secure the payment and performance of all indebtedness, liabilities, and obligations under the Agreement and other Loan Document.

### 10.8 Legal Considerations

The Developer shall promptly notify PRHFA of any claim, suit, proceeding, or matter brought against, or to the knowledge of Developer, which if adversely determined or otherwise would have a material adverse effect upon the Premises, Developer's Interest in the Premises, the Improvements, or financial condition or business affairs of Developer.

The Developer shall indemnify, defend and hold PRHFA and PRDOH officials harmless from all losses, liabilities, costs, expenses (including reasonable attorneys' fees) that PRHFA and PRDOH may suffer as a result of any claims or suits brought by any broker, finder, agent or similar entity claiming through or as a result of dealings with Developer relative to the acquisition of Developer's Interest in the Premises or in connection with the execution hereof or the consummation of the transactions contemplated hereby and Developer's obligations herein shall survive the expiration or termination of the Agreement and the payment of the Loan.

### 10.9 Substantial Completion

The Developer shall pay the amounts retained or held back from the Contractor in accordance with the terms of the Construction Agreement and the Bonds. In order to release the funds, the following is required:

- Receipt of the Use Permit ("Permiso de Uso") for the Improvements and the release from the bonding company that issued the Bonds.
- Written recommendation by the PRHFA's Inspector confirming that:
  - construction of the Improvements has been completed;
  - all necessary utilities and roads have been finished and made available for use;
  - receipt of satisfactory evidence of the approval and issuance of permits by all Governmental Authorities of the Improvements in their entirety for permanent occupancy; and of the contemplated uses thereof, to the extent any such approval is a condition of the lawful use and occupancy thereof;
- If requested by PRHFA, a current final "as built" or "completion" survey of the Premises, certified to PRHFA and the Title Insurer, showing the completed Improvements;
- Architect's certificate, confirming that the Improvements have been completed substantially in accordance with the Plans and acknowledging payment in full for the Architect's services;
- Developer's certificate, accepting as completed the Improvements;
- Final releases of payment from all persons who supplied material services, labor or materials for the Improvements and certificates from the Contractor and the sub-contractors acknowledging such payments, including an affidavit; and
- Such other evidence or documents as PRHFA may deem reasonably necessary.

#### 10.10 Rent Up Phase

Each project is required to achieve its Placed-in-Service by the 31<sup>st</sup> of December of the second year after signing the LIHTC Carryover Allocation Agreement; if not the Developer may lose the LIHTCs.

After Placed in Service is reached, the Developer has one year to certify full occupancy of the project, if not the LIHTC will be prorated by the number of occupied units and the portion of vacant units may result in lost LIHTCs.

Once approval has been given that the project is ready for occupancy, the Rent Up/Lease Up phase of the project is initiated. In this phase, the Management Agent is responsible for facilitating the leasing process and ensuring that households in LIHTC units meet the income eligibility requirements. In order to ensure eligibility, the Management Agent shall verify all income, household characteristics, and any circumstances that may affect income eligibility and compliance with LIHTC requirements prior to signing a lease agreement.

In order to facilitate this process, other activities included may include advertising, maintaining a model unit, providing on-site office space for the Management Agent and staff, and any other activities to rent the property. Projects are considered complete only

after all units are 100% construction complete and certificates of occupancy have been issued.

The Compliance Monitoring Manual (Annex O, QAP 2016) outlines the process, requirements, responsibilities, income validation, forms, etc.

## 11 Accountability and Transparency Requirements

PRHFA will report to PRDOH as stipulated in each CDBG-DR agreement. All Information reported will be available, as part of PRDOH's Quarterly Performance Reports (**QPRs**), at [www.cdbg-dr.pr.gov/en/reporting/](http://www.cdbg-dr.pr.gov/en/reporting/). Reported data will be, but is not limited, to the following:

- Total amount of CDBG-DR funds received;
- Amount of CDBG-DR funds expended or obligated to projects or activities, and unobligated balance;
- List of projects or activities that expended or obligated CDBG-DR funds:
  - Name of the project;
  - Description of the project;
  - Evaluation of completion status of the project;
  - Information on beneficiaries served, when available.

For more information on these requirements, refer to the QAP 2016.

## 12 Cross Cutting Requirements

Some federal and local requirements apply to all programs funded by CDBG-DR, such as financial management; environmental review; labor standards; acquisition; relocation; fair housing; among others. These requirements are outlined in the Cross-Cutting Guidelines, which apply to all programs described in PRDOH's CDBG-DR Initial Action Plan and its amendments. For more information, please refer to the Cross-Cutting Guidelines found at [www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov).

### 12.1 Uniform Relocation Act

As a HUD-assisted program, and in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (**URA**), 42 U.S.C. § 4601 *et seq.*, the government wide implementing regulations found at 49 C.F.R. part 24; and Section 104(d) of the Housing and Community Development Act of 1974 (**HCDA**), except where waivers or alternative requirements have been provided by HUD, 24 C.F.R. § 42 (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, is subject to URA regulations. For more information on how URA regulations apply, please refer to the URA Guidelines found at [www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov).

## 12.2 Section 3 Requirements

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, (Section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low- income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

Section 3 regulations at 24 C.F.R. part 135, and the Federal Register Vol. 83, No. 28 (February 9, 2018) require that recipients, sub-recipients, 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. The implementation of this provision is intended to ensure employment and other economic opportunities generated by CDBG-DR funding. For each project, there is a goal for thirty percent (30%) of new hires to be individuals who qualify as a Section 3 resident.

Section 3 residents are:

- Public housing residents;
- A low-or very low-income person who lives in the metropolitan are or non-metropolitan county where covered HUD funding is expended;<sup>15</sup> or
- The individual's annual wages or salary are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.

Businesses qualify as a Section 3 Business Concern by meeting one of the following criteria:

- Fifty-one percent (51%) or more owned by Section 3 residents; or
- Employs Section 3 residents for at least thirty percent (30%) of its full-time, permanent staff; or were Section 3 residents within **three (3) years** of first hire date; or
- Provides evidence, as required, of a commitment to subcontract more than twenty-five percent (25%) of the dollar award of all subcontracts to businesses that meet the qualifications of the above mention criteria.

For recipients which 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

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<sup>15</sup> <https://www.huduser.gov/portal/datasets/il.html#null>

to have an approved Section 3 plan 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.

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

For reference on Section 3 requirements and provisions, please refer to [www.hug.gov/Section3](http://www.hug.gov/Section3).

### 12.3 Title VI of the Civil Rights Act of 1964

Title VI was enacted as part of the landmark Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq. It prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance. See the definition of federal financial assistance in HUD's Section 504 regulations at 24 C.F.R. § 8.3 and note that federal financial assistance does not include assistance made available through direct Federal procurement contracts or payments made under these contracts or any other contract of insurance or guaranty.

### 12.4 Architectural Barriers Act of 1968

The Architectural Barriers Act of 1968 (**ABA**) 42 U.S.C. § 4151 et seq., applies to certain buildings financed with Federal funds to ensure that they are designed, constructed, or altered so as to be accessible to persons with disabilities. The Act applies to buildings, other than a privately owned residential structure, which are (1) constructed or altered by or on behalf of the United States; (2) leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans and specifications of the United States; or (3) financed in whole or in part by a grant or loan made by United States after August 12, 1968, if the structure is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan.

For example, the ABA applies to housing provided by public housing agencies and through HUD's Community Development Block Grant Program. For more information on the ABA, see HUD's ABA regulations at 24 C.F.R. Parts 40 and 41.

### 12.5 Age Discrimination Act of 1975

The Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621-634, prohibits discrimination on the basis of age in federally assisted and funded programs or activities, except in limited circumstances.

## 12.6 Executive Orders

### [Executive order 11063, issued November 20, 1962](#)

Executive Order 11063, as amended, 27 FR 11527, prohibits discrimination in the sale, leasing, rental, or other disposition of properties and facilities owned or operated by the federal government or provided with federal funds.

### [Executive Order 12892, issued January 17, 1994](#)

Executive Order 12892, as amended, 59 FR 2939, requires that federal agencies affirmatively further fair housing in their programs and activities and that the Secretary of HUD be responsible for coordinating the effort.

### [Executive Order 12898, issued February 11, 1994](#)

Executive Order 12898, 59 FR 7629, requires that each federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that does not exclude persons based on race, color, or national origin.

### [Executive order 13166- issued August 11, 2000](#)

Executive Order 13166, 3 C.F.R. §13166, eliminates, to the extent possible, limited English proficiency (LEP) as a barrier to full and meaningful participation by beneficiaries in all federally-assisted and federally-conducted programs and activities. Costs for LEP-related activities are considered front-line management activities and may be charged to the project operating account, provided that the costs are reasonable for the population that will be served. Entities should refer to HUD's "Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited-English Proficient Persons" published in the Federal Register on January 22, 2007 (72 FR 2732).

### [12.13 Equal access regardless of sexual orientation or gender identity](#)

As the Nation's housing agency, HUD policy is to ensure that its programs do not involve arbitrary discrimination against any individual or family otherwise eligible for HUD-assisted or insured housing and that its policies and programs serve as models for equal housing opportunity. Toward this goal, HUD revised its program regulations on February 3, 2012 (Federal Register Vol. 77, No. 5662) to ensure that its core programs are open to all eligible individuals and families without regard to actual or perceived sexual orientation, gender identity or marital status in housing assisted with HUD funds or subject to FHA insurance, and to prohibit inquiries on actual or perceived sexual orientation or gender identity for the purpose of determining eligibility for the housing or otherwise making such housing available.

### [12.14 Anti-lobbying Restrictions](#)

The Program is subject to 31 U.S.C. § 1352 (Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions and 24 C.F.R. Part 87 (New Restriction on Lobbying).

### 12.15 Drug-Free Workplace Act of 1988

The Program is subject to the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §81, and 24 C.F.R. Part 21. Under this requirement, all contactors shall provide a drug-free workplace.

### 12.16 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. The Citizen Participation Plan is posted as a stand-alone document at [www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov). For more information on how to contact PRDOH, please refer to [www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov).

### 12.17 Related Laws and Regulations

This Program Guideline makes reference as to how the provisions of certain laws apply to the LIHTC 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 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.

## 13 Reasonable Accommodation Policy

A reasonable accommodation is a change, modification, alteration or adaptation in policy, procedure, practice, program, or facility that provides a qualified individual with a disability the opportunity to participate in, or benefit from, a program (housing or non-housing) or activity.

PRHFA and Management Agents must evaluate requests for reasonable accommodations to determine if and how requests can be accommodated. PRHFA and its agents can deny the request if the request constitutes a fundamental alteration in the nature of the program or constitutes an undue financial and administrative burden. The determination not to grant a reasonable accommodation shall not be made without the concurrence of PRHFA's 504 Administrator. The 504 Administrator is the person the PRHFA designates as responsible for ensuring that the PRHFA complies with federal, state, and local laws that protect the rights of people with disabilities.

PRDOH and PRHFA will officially adopt and disseminate the Reasonable Accommodation, and Modification Policy is publicly available at [www.avp.pr.gov](http://www.avp.pr.gov).<sup>16</sup> This will also be available for reference on-site at all regional and main offices where information for federally and/or state funded housing programs is made available to the general public.

PRDOH and PRHFA, including its Developers, will create and maintain a reasonable accommodations and modifications log which shall track the following information: (1) date and time of the accommodation/modification inquiry or request, (2) nature of the inquiry or request, (3) action taken, (4) whether the request was rejected or a change was made to the originally requested accommodation(s), and (5) documentation reflecting the final disposition of each request.

## 14 Developer Project Closeout

Projects will be closed out through standard procedures. Although HUD record retention requirements generally apply to a period beginning **three (3) years** after closeout, PRHFA's compliance monitoring plan requires retention of records for at least **six (6) years** after the due date for filing the federal income tax return for that closeout year. Additionally, records for the first year of the credit provided must be kept for at least **six (6) years** beyond the due date in order to file the federal income tax return for the last year of the compliance period of the building.

As required by 83 FR 5844, records will also be safeguarded to demonstrate that the rents charged on the set-aside units are restricted and income-eligible households occupy the units for at least:

1. **Fifteen (15) years** for rehabilitation or reconstruction of multi-family rental projects with eight (8) or more units, or a Section 42 of the IRC, use period; or
2. **Twenty (20) years** for new construction of multi-family rental projects with five (5) or more units, or a Section 42 of the IRC extended use period. See 26 U.S.C. § 42 on Low-income housing credit.

Authorized representatives of PRHFA will monitor projects assisted with CDBG-DR funding. As deemed necessary, PRDOH will provide oversight.

## 15 Additional Documents

Throughout the Program PRHFA may request from Developers additional documents in order to evaluate project applications or generally in order to comply with applicable State and Federal laws and regulations, as the case may be.

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<sup>16</sup> <https://www.avp.pr.gov/documentos/seccion504/Puerto-Rico-Public-Housing-Administration-Fair-Housing-Policies.pdf>

## **16 Program Oversight**

Nothing contained herein is intended to limit the role of PRDOH, HUD and corresponding authorities from exercising oversight and monitoring activities of the Program.

## **17 Severability Clause**

If any provision of this Program Guideline, or the application thereof to any person, partnership, or corporation, or circumstance, is held invalid by a competent court, the remainder of this Program Guideline and the application of such provisions to any other person, partnership, corporation, or circumstance, shall not be affected thereby.

**END OF GUIDELINES.**