



DEPARTMENT OF  
**HOUSING**



# CDBG-DR

## PROGRAM GUIDELINES

### SMALL BUSINESS FINANCING PROGRAM

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PUERTO RICO DEPARTMENT OF HOUSING  
 CDBG-DR PROGRAM GUIDELINES  
**SMALL BUSINESS FINANCING PROGRAM**  
 VERSION CONTROL

| VERSION NUMBER | DATE REVISED      | DESCRIPTION OF REVISIONS  |
|----------------|-------------------|---|
| 1              | March 12, 2020    | Original version  |
| 2              | May 15, 2020      | Edits were made throughout the document. For convenience and ease of reference, all edits are marked in gray. <sup>1</sup>                                      |
| 3              | January 20, 2021  | Edits were made throughout the document, which include editing the order of some sections. For convenience and ease of reference, all edits are marked in gray. |
| 4              | April 23, 2021    | Edits were made throughout the document. For convenience and ease of reference, all edits are marked in gray.   |
| 5              | December 23, 2021 | Edits to reflect changes included in the Action Plan Substantial Amendment 7.   |

<sup>1</sup> Removed: mention of loans throughout the Guideline, as a portion of this Program has been removed in Action Plan Amendment 4 published for public comment on March 31, 2020; and description of DDEC's role in the Program, as DDEC has been removed as a partner agency for this program in Action Plan Amendment 4 published for public comment on March 31, 2020.

Clarified: eligibility criteria to include businesses started after Hurricanes Irma or María; so long as business has a demonstrated tie-back to the disaster; award calculation to outline considerations for businesses with unmet need in excess of program award cap; working capital award calculation to include consideration for businesses started after the storm(s).

Added content on: web application; duplication of benefits considerations for cancelled and declined SBA loans; requirements and applicant responsibilities associated with acceptance of a recovery grant award under SBF; exacerbated business impacts; policy for handling non-responsive applicants; and policy for voluntary withdrawal from SBF Program.

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## 1 Program Overview

Damage from Hurricanes Irma and María (hereinafter collectively referred to as the **Hurricanes**) impacted and disrupted small businesses across the Island. This impact curtailed severely access to critical capital, essential for the recovery and growth of small businesses, including microenterprise, in an already declining economy. Recovery and growth of the small business sector is primordial in the ongoing recovery effort as it promotes job retention and creation in the most impacted communities in the Island. As the administering entity of the Community Development Block Grant - Disaster Recovery (**CDBG-DR**) funding through the United States Department of Housing and Urban Development (**HUD**), the Puerto Rico Department of Housing (**PRDOH**) will provide funding to these businesses through the Small Business Financing Program (**SBF Program** or **Program**). PRDOH's vision for success with the SBF Program, both during and after the service delivery period, is to:

- Provide grants that implement economic recovery;
- Help retain and expand employment of low- and moderate-income (**LMI**) persons which is defined as persons who are eighty percent (80%) of Area Median Family Income (**AMFI**) or below according to HUD Modified Income Limits for CDBG-DR Puerto Rico);<sup>2</sup>
- Promote job -creation and retention- through the recovery, and growth of businesses damaged and/or disrupted by the hurricanes; and the growth of start-up businesses established after the hurricanes;
- Provide technical assistance to help small business establish more traditional banking relationships with financial institutions; and
- Leverage CDBG-DR funds to attract private capital to serve the financing needs of small businesses.

This Program has been allocated a total of two hundred twenty-five million dollars (\$225,000,000) in the [Puerto Rico CDBG-DR Action Plan](#) amount that is subject to change with subsequent amendments. Program funding will support small business and microenterprise recovery through the initial funding of a Recovery Grant up to a maximum of one hundred fifty thousand dollars (\$150,000) to cover working capital and equipment.

## 2 Recovery Grants

The Recovery Grant offered by the SBF Program is intended to help microenterprises and/or small businesses re-start operations and/or invest in growth opportunities in the wake of the hurricanes by providing grants for working capital, and equipment. The

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<sup>2</sup> These limits vary annually. See CDBG-DR income limits for Puerto Rico here: <https://www.hudexchange.info/resource/5334/cdbg-income-limits/>.

amount of the grant and the timing of the draws will be determined by the underwriting process. Some businesses may be required to draw funds made available by the grant on a maximum of three (3) increments based on risk assessments, other underwriting criteria and determinations by the SBF Program. The Program will initiate with a Recovery Grant as an initial service offering. Small businesses and microenterprises on the Island are eligible to apply for the Recovery Grants, provided evidence of:

- Hurricane-related damage and/or disruption; and
- An unmet need for recovery and growth.

### 3 Definitions

- **Business Applicant** – A business entity that has applied for assistance through one of the grants made available by the SBF Program.
- **Equipment** – Equipment requiring only improvements to the existing structure and not expanding it.
- **Microenterprise** – For purposes of the CDBG-DR Program, a microenterprise is a business that consists of five (5) or fewer employees, one or more of whom owns the business. This includes a self-employed individual.<sup>3</sup>
- **Small Business** – For the purpose of this Program, a business is considered a small business when it is composed of seventy-five (75) employees or less.<sup>4</sup>
- **Working Capital** – funds used to finance typical operating expenses necessary to support the production of goods and services provided by the business.

### 4 Roles

The following roles are part of the delivery process of the Recovery Grants offered by the SBF Program:

#### 4.1 BDE's role as Program Manager

The Economic Development Bank of Puerto Rico (**BDE**, for its Spanish acronym) will provide production and compliance management, and serve as the Recovery Grant underwriter, administrator and servicer through a Subrecipient Agreement (**SRA**) with PRDOH. As Program Manager, BDE will supervise all major aspects of the SBF Program including, but not limited to:

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<sup>3</sup> Per 24 C.F.R. § 570.3, the definition of microenterprise for CDBG-DR funds adheres to the meaning provided in section 102(a)(22) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301, *et seq.*

<sup>4</sup> Based on the results of an economic sector trend analysis conducted by the Federal Reserve Bank of New York after Hurricanes Irma and María, PRDOH understands that the effect of the Hurricanes was more significant for smaller businesses with fewer employees. For further information, refer to <https://www.newyorkfed.org/medialibrary/media/outreach-and-education/puerto-rico/2018/PRSBS-2018-SectorTrends.pdf>

- Developing and implementing program policies, procedures, and protocols;
- Conducting CDBG-DR compliance reviews;
- Conducting intake and eligibility reviews;
- Implementing financial management and compliance reporting;
- Conducting underwriting review and award calculation;
- Conducting applicant and client issue resolution;
- Preparing grant agreements and related documents;
- Preparing and submitting draw requests; and
- Maintaining accurate records and documentation.

## 5 National Objective

All CDBG-DR-funded activities must meet at least one (1) of the three (3) HUD national objectives defined in the authorizing statute of the CDBG Program at Section 104(b)(3) of the Housing and Community Development Act of 1974 (HCDA), 42 U.S.C. § 5304(b)(3). It is anticipated that projects funded through the SBF Program will meet one of the following national objectives:

- Benefit low- and moderate-income persons (LMI);
  - LMI Job Creation/Retention - 24 C.F.R. § 570.483 (b)(4);<sup>5</sup>
  - LMI Limited Clientele (microenterprises)- 24 C.F.R. § 570.483(b)(2);<sup>6</sup>
  - LMI Area Benefit - 24 C.F.R. § 570.483(b)(1); and
- Urgent Need - 24 C.F.R. § 570.483(d).

PRDOH has set a minimum goal to expend thirty percent (30%) of SBF Program funds on projects that result in a benefit to LMI individuals or that demonstrably serve LMI areas.

The SBF Program may request additional documentation to validate the National Objective, which could include payroll information and/or the owner's personal tax returns. However, these are not and will not be evaluated as eligibility requirements.

## 6 Program Description

The total allocation of funds for the SBF Program is two hundred twenty-five million dollars (\$225,000,000) but is subject to change with additional CDBG-DR Action Plan

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<sup>5</sup> Applicants may be requested to complete an "LMI Jobs Form" to report potential job creation. Applicants may be requested to provide "business employee payroll" information to validate the LMI Jobs Form information. The "business employee payroll" and "LMI Jobs Form" will not influence or impact the eligibility evaluation, since it is not an eligibility criterion; it is only used for HUD National Objective reporting purposes.

<sup>6</sup> Applicants will be requested to complete an "LMI Household Form" for all business owners that have any type of ownership over the business. Applicants will be requested to provide "Personal Income Tax Return" for all business owners to validate the LMI Household Form information. The "Personal Income Tax Return" and "LMI Household Form" will not influence or impact the eligibility evaluation, since it is not an eligibility criterion; it is only used for HUD National Objective reporting purposes.

Amendments. These Program Guidelines address only the requirements for the Recovery Grant offered by the SBF Program.

The SBF Recovery Grants will assist eligible Puerto Rico owned and operated microenterprises and small businesses to help restart operations. The amount of funds made available through a grant; and the timing of draws of funds from the grant will be based on the determination of unmet needs and eligible expenses; as assessed by the SBF Program from the information and supporting documentation provided by the Business Applicant in their application to the Program.

### **6.1 BDE's Role in the Application Process**

Eligible Business Applicants may apply for a Recovery Grant subject to funding availability. The BDE, as Program Manager and Subrecipient to PRDOH will conduct the application intake and evaluation process and assist all Business Applicants identify the type of assistance that best serves their unmet business recovery and growth needs. BDE will also offer technical assistance and guidance to Business Applicants during the intake and application process.

As underwriter, administrator and servicer, BDE will underwrite applications for the SBF Program based on:

- CDBG-DR Economic Development underwriting criteria as specified in the CDBG-DR Notice with a focus on unmet needs; and
- CDBG-DR and Puerto Rico compliance requirements.

## **7 Use of Funds**

All grant projects must comply with the following eligible activities as permitted by Section 105 of the HCDA, 42 U.S.C. § 5305:

- Section 105(a)(14) assistance to public or private nonprofit entities (42 U.S.C. § 5305(a)(14));
- Section 105(a)(15) assistance to neighborhood-based nonprofit organizations, local development corporations, and nonprofit organization (42 U.S.C. § 5305(a)(15));
- Section 105(a)(17), economic development assistance that creates or retains jobs (42 U.S.C. § 5305(a)(17)); and/or
- Section 105(a)(22) assistance to microenterprises (42 U.S.C. § 5305(a)(22)).

### **7.1 Eligible Use of Funds**

Eligible use of funds<sup>7</sup> for Recovery Grants include:

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<sup>7</sup> Categorically Excluded from NEPA and not subject to the related authorities listed in 24 C.F.R. § 50.4 and 58.5, unless Extraordinary Circumstances apply pursuant to 24 C.F.R. § 50.19(a) or 58.35(c).

- Up to six (6) months of documented working capital expenses, including inventory;
- Monthly office and/or business facility mortgage or rent;
- Monthly non-owner wages and related benefits;
- Monthly utilities (water, electricity, gas, cable, phone, internet); and
- Equipment that does not require construction or construction-related activities (subject to Categorically Excluded activities not subject to 24 C.F.R. § 58.5 (24 C.F.R. § 58.35(b)), requiring only improvements to the existing structure and not expanding it; and is necessary for the recovery of the business.

## 7.2 Ineligible Use of Funds

SBF Recovery Grant funds do not cover the following items:

- Reimbursement of business expenses incurred prior to the date of submission of the Application;
- Acquisition of real property;
- Construction or construction-related activities;
- Expansions to current structures or modifications that result in changes to the property's zoning classification;
- Refinance of existing debt and/or principal and interest payments on any other debt;
- Political or religious activities;
- Replacement of lost business revenue;
- Buying out a stockholder or equity holder in a business;
- Buying out or reimbursing a family member in a business;
- Investments in instruments or investments for the sole purpose of a return on investments;
- Payment of tax arrearages, governmental fines or penalties;
- Expenses for which private philanthropy, The National Flood Insurance Program (NFIP) or small businesses with private flood insurance, other insurance, state or federal benefits have been or will be paid or financial assistance that has been approved or provided by federal, state, or other sources considered to be duplicative of CDBG-DR funds; and
- Replacement of non-commercial vehicles.

## 8 Eligibility

### 8.1 Business Eligibility

Business Applicants—for profit and non-profit—must provide evidence of unmet needs due to the impact of Hurricanes Irma and/or María.

For existing, and re-opening businesses, eligibility requirements include, but are not limited to, the following:

- Must be a Small Business with no more than seventy-five (75) full-time equivalent employees or a Microenterprise with no more than five (5) full-time equivalent employees;<sup>8</sup>
- Business facilities must be located in Puerto Rico and registered to do business in Puerto Rico (non-profits will be evaluated for eligibility based on the earned-income portion of operations);
- Business must have been in operation at the time of the Hurricane(s). Thus, it must have been open on, or before September 6, 2017 for Hurricane Irma and for Hurricane María on, or before September 20, 2017. Additionally, Small Business and Microenterprises at the time of the Application date are:
  - Still open and operating; or
  - Planning to re-open and operate the same business which means they will resume the same operations; or
  - Opened as a different business after September 20, 2017. Meaning a newly registered business under the same ownership because of the impact of Hurricanes Irma and/or María, but opened the new business before the launch date of the SBF Program on March 25, 2020.
- Business must show evidence of direct impact by the Hurricane(s), as demonstrated by a documented financial **or** physical loss. It is not required that businesses demonstrate financial **and** physical loss. The assessed physical damage, financial loss calculations, and/or proof of the permanent closure of a prior business are used to determine eligibility;<sup>9</sup>
  - In order to qualify under physical loss, a business must demonstrate it had a minimum of five thousand dollars (\$5,000) in third-party verified physical damages or losses.
  - In order to qualify under financial loss, a business must demonstrate at least one of the following:
    - A financial loss documented on a 2017 or 2018 Puerto Rico State Business Tax Returns while still reflecting an amount greater than \$0 for gross revenue;<sup>10</sup> or
    - A fifteen percent (15%) annual gross revenue decline from 2016 to 2017 or from 2017 to 2018 while still reflecting an amount greater than \$0 for gross revenue; or

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<sup>8</sup> Businesses need not be corporations to participate in SBF. Business types may include, but are not limited to, non-profits, limited liability corporations (LLC); limited liability partnerships (LLP); sole proprietorships; "doing business as" (DBA); partnership; corporation; S-Corporation.

<sup>9</sup> Demonstrated loss is used to document storm impact; however, the Program will not fund construction-related expenses or financial losses directly.

<sup>10</sup> Economic Loss or Financial Loss must be calculated based on business revenues. This means gross revenues, before any cost of goods sold, expenses, taxes, etc. have been subtracted irrespective of the naming or labeling of certain fields on tax returns.

- Proof of closing of a prior business of the same ownership.<sup>11</sup>
- Businesses that are not currently open must demonstrate how funding will be used towards re-opening the business.
- Businesses that are not currently open are not required to re-open in the same location in which they were operating before the hurricanes.
- Business must have eligible unmet needs after accounting all Duplication of Benefits (**DOB**).
- Businesses applying for grant awards greater than fifty thousand dollars (\$50,000) must submit a *Promise of Job Creation Form* certifying the creation of at least one (1) job as a direct result of the grant award. Job creation will be validated during the Program Closeout process by requesting payroll report for period of six (6) months after financial assistance is received by the business.

## 8.2 Ineligible Businesses

The following businesses are ineligible to receive an SBF Program Recovery Grant:

- Facilities not opened to the general public that serve a predominantly higher income clientele; Professional sports teams; Yacht Clubs; Non-public recreation facilities; Private or commercial golf courses or country clubs; Casinos or other gambling establishments;
- Speculative investment companies; Real estate investment companies or Real Estate Investment Trusts; Owners of property that is rented out for residential purposes;
- Lending institutions; Homeowners Associations;
- Entities engaged in operating or managing adult entertainment businesses or massage parlors;
- Retailers whose income from tobacco sales is thirty-five percent (35%) or more of gross, in-store, non-fuel sales (electronic cigarettes are not considered in this calculation);<sup>12</sup>
- Establishments whose sales of alcohol are fifty percent (50%) or more of total sales;
- Private utilities;
- Entities engaged in lobbying or political activities; Municipality Corporations;
- Entities engaged or involved in religious activities, except where expenses are clearly distinguishable between the organization's religious and secular activities;

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<sup>11</sup> While a minimum of fifteen percent (15%) financial loss is required to demonstrate unmet need, many businesses may be able to demonstrate losses in excess of fifteen percent (15%). For example, if a business closed as a result of the storm(s); financial loss will be 100%, as the business has closed. Loss for businesses that closed after the storm(s) where the business owner started a new business after the storm but before March 25, 2020 will be assessed based on loss experienced by the **pre-storm** business.

<sup>12</sup> Entities that promote or develop products with no currently accepted medical use under the Controlled Substances Act, such as cannabis products, are considered ineligible.

- Entities that received federal assistance in the past and did not comply with maintaining the required flood insurance;
- Entities and/or business owners (with at least twenty five percent (25%) ownership) that are listed on the HUD Debarred List;<sup>13</sup>
- Entities and/or owners (with at least twenty five percent (25%) ownership) currently in foreclosure or bankruptcy; or
- Entities that are not current on any municipal and/or state taxes (income taxes, property taxes, Sales and Use Tax (IVU, for its Spanish acronym)).

## 9 Applying for Recovery Grants

BDE, as Program Manager and Subrecipient to PRDOH, will implement the SBF Program under PRDOH's oversight.

### 9.1 Application Intake

Application intake began on March 25, 2020, with a publicly advertised Application process. BDE will review all applications for eligibility with threshold requirements and then complete an underwriting review before making a final eligibility determination. BDE will inform and work with the selected entities through the Application process to complete all eligibility review steps required to successfully receive an award.

Eligible entities that wish to submit an Application will need to follow this process and submit all required documents associated by the deadlines provided. Instructions for completing the Application are available on the SBF Program website at <https://www.cdbg-dr.pr.gov/en/small-business-financing/>.

### 9.2 Prioritization

Requests for assistance will be evaluated on a first come, first served basis for Applications that meet all applicable requirements for assistance, so long as SBF Program funds are available. Business applications will be reviewed in the order complete applications are received. Applications are considered complete when the Business Applicant submits all the information and all the documents required for the eligibility review. It is important to note that after all applicants have been contacted, assistance will be provided based on their availability and disposition to provide all the required documentation.

### 9.3 Awards above \$50,000

Any businesses with an unmet need greater than fifty thousand dollars (\$50,000) may apply for a grant up to one hundred fifty thousand dollars (\$150,000) limited by the amount of their unmet need. In these cases, the applying business must submit a *Promise of Job Creation Form* certifying the creation of at least one (1) job as a direct result of the grant award. The signature of the *Promise of Job Creation Form* is a necessary agreement

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<sup>13</sup> See: <https://www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm>

for any Business Applicant to be eligible for an award over fifty thousand dollars (\$50,000) and up to one hundred fifty thousand dollars (\$150,000). The SBF Program will incorporate the *Promise of Job Creation Form* to the Recovery Grant agreement signed by the eligible Business Applicant. The job creation pledge will be validated during the *Close Out* process. The SBF Program will request a payroll report from eligible Awarded Businesses for at least a six (6) month period after the business received funds from the SBF Program.

The financial stability of applicants who request grants over fifty thousand dollars (\$50,000) will be analyzed during the Underwriting process. The Subrecipient will utilize the break-even point formula to carry out the financial stability analysis. As a general rule, applicant businesses must meet the break-even point (which is generally the point at which all revenues are equal to all expenses). Otherwise, when a Business Applicant does not meet the break-even point, the Subrecipient should consider all other pertinent factors in the Underwriting process to evaluate the business's feasibility of receiving an award above fifty thousand dollars (\$50,000).<sup>14</sup>

## 10 Underwriting Policy

### 10.1 HUD CDBG-DR Underwriting Guidance

The SBF Program will follow HUD guidelines at 24 C.F.R. § 570.209 as the financial underwriting framework for evaluating the feasibility of all business applications to a Recovery Grant. The SBF Program will complete the underwriting review understanding that different levels of review are appropriate for business applications of diverse size and scope. The SBF Program will also take into account the differences in capacity and level of sophistication among microenterprises and other small businesses.

The objectives of the underwriting guidelines are to ensure all eligible Business Applicants meet the CDBG Underwriting Criteria at 24 C.F.R. § 570.209 before receiving and award from the SBF Program. Thus, to accomplish the underwriting objectives of the SBF Program, the BDE will evaluate, among other factors, that:

- That project costs are reasonable;
- That all sources of project financing are committed;
- That to the extent practicable, CDBG-DR funds are not substituted for non-Federal financial support;
- That the project is financially feasible;
- That to the extent practicable, the return on the owner's equity investment will not be unreasonably high; and

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<sup>14</sup> Applicant may provide evidence of additional sources of financing and/or business's projections that may off-set the negative cash flow, as well as a detailed business plan to ensure business's feasibility. For more information about the content of a traditional business plan, visit: <https://www.sba.gov/business-guide/plan-your-business/write-your-business-plan>.

- That to the extent practicable, CDBG-DR funds are disbursed on a pro rata basis if other sources of funds are provided to the project.

## 11 Duplication of Benefits (DOB)

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (**Stafford Act**), as amended, 42 U.S.C. § 5121 *et seq.*, prohibits any person, business concern, or other entity from receiving Federal funds for any part of such loss as to which it has received financial assistance under any other program, from private insurance, charitable assistance, or any other source.<sup>15</sup> As such, PRDOH must consider disaster recovery aid received by or available to SBF Program Business Applicants and determine if any assistance is duplicative.<sup>16</sup> Any assistance determined to be duplicative must be deducted from the SBF Program's calculation of the Business Applicant's total unmet need prior to providing financial assistance.

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

To avoid DOB and potential repayment of received funding, PRDOH and its subrecipients must make appropriate efforts to evaluate all possible funding sources, including coordinating with other federal agencies that provide disaster assistance, before releasing CDBG-DR funds to a project.

For each Business Applicant for a Recovery Grant under the SBF Program, BDE will conduct an eligibility review and a DOB analysis for all business-related assistance. If a business owner received assistance for home repair, relocation, reconstruction or other personal property, such financial assistance will not be included in the final award calculation. For more information on DOB and other sources of funds, exceptions, and final award calculation, refer to the PRDOH CDBG-DR Duplication of Benefits Policy available in English and Spanish at <https://cdbg-dr.pr.gov/en/download/duplication-of-benefits-policy/> and <https://cdbg-dr.pr.gov/download/politica-sobre-la-duplicacion-de-beneficios/>.

### 11.1 Declined SBA Loans

Declined loans are loan amounts offered by a lender, but turned down by the Business Applicant, meaning the Business Applicant never signed the loan documents to receive

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<sup>15</sup> 42 U.S.C.A. § 5155.

<sup>16</sup> This may include any other disaster assistance that the SBF Program may need to consider in the future as part of the DOB assessment required by the Stafford Act, including COVID-19 Economic Relief.

a loan disbursement. The Bipartisan Budget Act of 2018 (Pub. L. 115–123, approved February 9, 2018) provides that grantees “shall not take into consideration or reduce the amount provided to any applicant for assistance from the grantee where such applicant applied for and was approved, but declined assistance related to such major declared disasters that occurred in 2014, 2015, 2016, and 2017 from the Small Business Administration (SBA)”. Therefore, declined subsidized loans, including SBA loans are not to be included in the calculation of DOB.

The SBF Program will attempt to verify declined loan amounts using third-party data from SBA. If it cannot be ascertained from the SBA data whether or not the applicant declined the loan, the loan may still be excluded from DOB calculation if the Business Applicant provides a written certification stating that the applicant did not accept the subsidized loan.

## **11.2 Cancelled SBA Loans**

Cancelled loans are loan amounts offered by a lender, accepted by the Business Applicant, but for a variety of reasons, all or a portion of the loan amount was not disbursed and is no longer available to the applicant. Undisbursed portions of cancelled SBA loans may be excluded from the calculation of DOB, if it can be documented that the undisbursed portion of an accepted loan is cancelled and no longer available to the Business Applicant. To document that an SBA loan is cancelled, the Business Applicant must provide either: a written communication from the lender confirming the loan is cancelled and no longer available to the applicant; or a legally binding agreement between PRDOH and the applicant that indicates the period of availability of the loan has passed and the applicant agrees not to take actions to reinstate the loan or draw any additional undisbursed loan amounts. In addition, PRDOH must notify SBA that the Business Applicant has agreed not to take any actions to reinstate the loan or draw additional amounts.

## **12 Determining the Recovery Grant Award Amount**

BDE will calculate the Recovery Grant award amount for an eligible Business Applicant based on an evaluation of the individual business application to the SBF Program. The SBF Program will consider the unmet need assessment, and the DOB analysis as part of the evaluation of the final award.

### **12.1 Final Award Calculation**

The final award calculation will be conducted in accordance with, but not limited to, the following steps:

1. Calculate eligible amount of working capital.
2. Calculate eligible amount of equipment and furniture.
3. Calculate Business Applicant's total eligible uses of funds. (Sum of Step 1 and 2)

4. Identify all potentially duplicative assistance. (SBA, NFIP, other business interruption insurance, etc.)
5. Verify all duplicative assistance received or approved for the Business Applicant and determine amount considered to be duplicative.
6. Deduct assistance determined to be duplicative from the Business Applicant's eligible uses of funds.
7. Calculate final unmet need. (Step 3 minus Step 6)
8. Determine maximum grant award amount. (Lesser of Step 7 or one hundred fifty thousand dollars (\$150,000)).<sup>17</sup>

The SBF Program provides funding up to the established award cap of one hundred fifty thousand dollars (\$150,000). Businesses with unmet needs greater than one hundred fifty thousand dollars (\$150,000) may apply for the Program, but the SBF Program may only fund up to one hundred fifty thousand dollars (\$150,000) of the unmet need. The SBF Program will calculate the maximum unmet need and award amount for each Business Applicant. Business Applicants will then select which items to accept funding for, up to one hundred fifty thousand dollars (\$150,000); using the *Intended Use of Funds Form*. The *Intended Use of Funds Form* outlines the agreed upon uses for the Recovery Grant and will be used to ensure that businesses expend financial assistance on eligible uses as outlined in the form.

Businesses that request moveable equipment or furniture with individual items with costs in excess of one hundred fifty thousand dollars (\$150,000) must provide evidence that they have other sources of funding to cover the total cost of the equipment in excess of the final award amount. Eligible Business Applicants must present the required evidence prior to a release of funds from the SBF Program for any Recovery Grant<sup>18</sup>.

## 12.2 Working Capital

For businesses, requesting working capital assistance through a Recovery Grant offered by the SBF Program, BDE will estimate a monthly working capital need by reviewing the Business Applicant's Puerto Rico State Business Tax Returns. Using the average working capital expense estimated for the business, BDE will multiply that number times six (6) to determine the Business Applicant's maximum eligible working capital assistance.

For businesses that started prior to the Hurricanes and are still open or are planning to re-open, as the same business, the working capital need, will be calculated based on pre-storm Puerto Rico State Corporate Tax Returns and/or after storm Puerto Rico State

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<sup>17</sup> Businesses with need greater than \$150,000 may be assisted via other programs in the CDBG-DR economic recovery portfolio of programs. Please see the Action Plan at <https://www.cdbg-dr.pr.gov/en/action-plan/> for more information on other economic development opportunities. Participation in the SBF Program does not preclude applicants from applying for assistance under other programs.

<sup>18</sup> As mandated by underwriting criteria outlined at 24 C.F.R. § 570.209, the SBF Program must ensure that all sources of funding are committed prior to funding a grant award.

Corporate Tax Returns. Depending on the time the business started, the working capital need, will be prorated accordingly in order to justly calculate the disaster recovery grant and unmet need. For businesses that started after the Hurricanes, but before March 25, 2020 (launch date of the SBF Program), the most current year tax return will be used to calculate the working capital need.

### 12.3 Equipment and Furniture

Business Applicants may be eligible for assistance for expenses related to business equipment, machinery and/or furniture. The amount approved for working capital and equipment expenses may not exceed the maximum award of one hundred fifty thousand dollars (\$150,000).

Costs associated with equipment include the documented repair or replacement of machinery or equipment not dependent on construction, reconstruction or structural expansion. In order to determine the amount for which a business is eligible for equipment and furniture expenses, the Business Applicant must provide three (3) quotes for each piece of equipment, machinery or furniture requested in the application. Additionally, the Business Applicant must include an adequate description of each item to determine the relevant nature of each requested item to the type of business owned and operated by the applicant.

Please note that if a business can demonstrate a special circumstance, meaning the requested equipment, machinery or furniture is highly specialized and/or it would be impossible to obtain three (3) quotes for it, then the applicant may provide proof of the special circumstance and provide only two (2) quotes for each piece of specialized equipment, machinery or furniture requested instead of (3) three.

Procurement of each category of equipment, machinery or furniture (the acquisition of goods or services) that in the aggregate dollar amount does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act), may be awarded without soliciting competitive quotations if the BDE considers the price to be reasonable. In such cases, the business may provide one (1) quote.

If the replacement of equipment, machinery or furniture damaged or destroyed by the Hurricane(s) is requested, then the Business Applicant must provide verification of loss or damage (which may include pictures). If the requested equipment, machinery or furniture is necessary for the business to reopen and/or remain viable in the post-hurricane economy, the Business Applicant must also provide a business-related justification for the new piece of equipment or furniture.

The SBF Program will ensure all program costs are necessary and reasonable. All eligible uses of funds will be reviewed for DOB before final award determination and execution of any Recovery Grant Agreements.

## 12.4 Final Award Determination

Once BDE has determined the total working capital and equipment expenses for which a Business Applicant may be eligible under a Recovery Grant, BDE will conduct a DOB analysis and deduct all verified DOB amounts from the Business Applicant's final award.

The DOB analysis consists, but is not limited to the following steps:

- BDE will collect information on potentially duplicative funding sources from all Business Applicants during the application intake and eligibility review phases;
- Business Applicants will be required to provide insurance provider contact information, policy coverage information and ID, claims information and amounts received and approved for all potentially duplicative sources;
- Business Applicants will be required to authorize the SBF Program to contact all potentially duplicative financial assistance sources on their behalf to verify all funding available, received and/or approved; and
- Using information collected from the Business Applicant and the authorization provided by the Business Applicant, the SBF Program will perform a verification of benefits received and/or approved on all Business Applicants. BDE may work directly with Business Applicants to expedite this process.
- BDE will calculate final award for eligible Business Applicants.

## 12.5 Awards and Requirements

The SBF Program reserves the right to cancel any award if funds are used for any other purpose other than the stated purposes outlined in the Recovery Grant Agreement signed between the Business Applicant and BDE. Any funding expended contrary to the uses specified in the grant agreement, must be returned to the SBF Program in full. Grantees/Awarded Businesses must submit proof of expenditure of the funds granted under the Recovery Grant Agreement and document compliance with at least one (1) of the three (3) HUD national objectives defined in the authorizing statute of the CDBG Program at 104(b)(3) of the Housing and Community Development Act of 1974 (HCDA) (42 U.S.C. § 5304), within **seven (7) months** of disbursement of a grant award for working capital or **ninety (90) days** of disbursement of a grant award for equipment to ensure verification of proper use of the Grant Award, and will need to continue providing proof of expenditures until all funds are committed and verified by the SBF Program. The SBF Program will set the deadlines by which the Awarded Businesses must present all subsequent working capital proof of expenditure reports and/or equipment, machinery or furniture proof of expenditure reports, until the Closeout process begins.

Once all expenditures are verified as valid and in compliance with the grant agreement, a Closeout Confirmation Letter (Final Closeout) will be sent to Awarded Business after all

other closeout requirements have also been met.<sup>19</sup> Prior to the Closeout Confirmation Letter notification, the SBF Program may request additional proof of expenditures to validate use of funds and close the file.

Instances may arise where an Awarded Business must return all or part of the awarded financial assistance to the SBF Program. The SBF Program is responsible for recapturing duplicative funds from Awarded Businesses or from Awarded Businesses who become non-compliant. All Awarded Businesses files will be reviewed and reconciled for accuracy to ensure DOB did not occur and that applicants are in compliance with SBF Program requirements and federal guidelines for DOB. If an Awarded Business has been identified as receiving a potential overpayment, the SBF Program will document the amount and the basis for the repayment in writing via a Repayment Notification to be sent to the Awarded Business.

Once the SBF Program has determined that the Awarded Business must return funds to the CDBG-DR Program grant fund, the applicant must repay in a timely manner. All repayments shall be expected to be repaid in full as one lump sum amount. The SBF Program will review any Awarded Business' claims of financial hardship and may make limited accommodations, on a case-by-case basis. All funds recovered by the SBF Program will be tracked in the Disaster Recovery Grant Reporting system (**DRGR**) and returned to the CDBG-DR account or U.S. Treasury if the CDBG-DR grant has been closed out.

Awarded Businesses will be required to repay financial assistance received under the SBF Program in the event of: (a) the application including any information provided therewith or thereafter by the applicant, contains any type of material misrepresentations; or (b) the award was made in error and the Business Applicant is not entitled to assistance under the SBF Program Guidelines.

### 13 Exacerbated Impacts

To the extent that the impacts to the business resulting from the Hurricanes are exacerbated by circumstances beyond the Business Applicant's control before the business is fully recovered, as per Federal Register Vol. 84, No. 119 (June 20, 2019), 84 FR 28836, the SBF Program may still award a Recovery Grant to said business.<sup>20</sup>

For example, if a business was impacted by the Hurricanes and a subsequent earthquake, pandemic, or any other natural disaster exacerbated the original impact of the Hurricanes, before the business is fully recovered. In such cases, the SBF Program may

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<sup>19</sup> As mandated by underwriting criteria outlined at 24 C.F.R. § 570.209, the SBF Program must ensure that all sources of funding are committed prior to providing financial assistance to an eligible Business Applicant.

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

provide financial assistance to cover the unmet need, as it currently exists at the time of the intake and application process.

However, the SBF Program may not provide assistance for activities that: (1) address a need arising solely from any subsequent disaster other than Hurricanes Irma and/or María; or (2) address a need that has been met in full.<sup>21</sup>

As stated in the SBF Program eligibility criteria, all Business Applicants must have been impacted by Hurricanes Irma and/or María to receive financial assistance. Prior to providing recovery aid for unmet needs, the SBF Program must analyze other financial assistance made available to the Business Applicant to prevent any duplication of benefits, as described in the Duplication of Benefits (DOB) section in these guidelines.

Additional damages to the business caused by other natural disasters after the Hurricane(s), such as damage from the COVID19 Pandemic or earthquakes, do not preclude a business owner from applying to the SBF Program for their unmet need so long as it can tie back the damages to the Hurricane(s).

## 14 Environmental Review

An environmental review is the process of reviewing a project and its potential environmental impacts to determine whether it meets federal, state, and local environmental standards. Every project undertaken with federal funds, and all activities associated with such project, are subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.*, as well as HUD's environmental review regulations at 24 C.F.R. Part 58 on Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities. Therefore, an environmental review process is required for all awards to be issued under the SBF Program to ensure that the proposed activities do not negatively impact the surrounding environment and that the property itself will not have an adverse environmental or health effect on end users. The Code of Federal Regulations at 24 C.F.R. § 58.22 prohibits the commitment or spending of federal or non-federal funds on any activity that could have an adverse environmental impact or limit the choice of reasonable alternatives prior to completion of an environmental review. Environmental clearance must be obtained for each project prior to the commitment of federal or non-federal funds. A violation of this requirement may jeopardize federal funding for the SBF Program and disallow all costs that were incurred before completion of the environmental review.

All SBF Program awards records must have documented compliance with NEPA and other environmental requirements. Therefore, all projects shall have an Environmental

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<sup>21</sup> See Community Development Block Grant Disaster Recovery (CDBG-DR) Policy Guidance for Grantees 2019 at <https://files.hudexchange.info/resources/documents/CDBG-DR-Policy-Guide.pdf>

Review Record (**ERR**), as required by NEPA and related laws. The ERR for all projects shall set forth: the existence of negative impacts on a site; the means to mitigate negative impacts; alternatives to the project (if needed); and the rejection of any proposed activities, if all other options fail and it becomes the most prudent action.

Environmental reviews will be conducted concurrently with DOB analyses, when feasible. Environmental reviews must be completed prior offering SBF Program financial assistance to an eligible Business Applicant.

#### 14.1 Environmental Level of Review

To conduct the appropriate level of environmental review, the SBF Program will determine the environmental classification of the project. The term “project” may be defined as an activity or group of activities that are geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the SBF Program, in whole or in part, to accomplish a specific program objective. There are four (4) major classifications of environmental review for projects:

- **Exempt Activities:** Those activities which are highly unlikely to have any direct impact on the environment.
- **Categorically Excluded Activities:** Those activities that may have an impact on the environment, but not to the extent that an Environmental Assessment under NEPA or Environmental Impact Statement is required. There are two (2) types of Categorically Excluded Activities, as follows:
  - **Categorically Excluded Not Subject to 24 C.F.R. § 58.5:** Includes those activities included under 24 C.F.R. § 58.35 (b) and require environmental checks for the items listed at 24 C.F.R. § 58.6. For activities under this classification, no public notice or request for release of funds is required to use grant funds.
  - **Categorically Excluded Subject to 24 C.F.R. § 58.5:** Refers to those activities included under 24 C.F.R. § 58.35 (a) and require environmental checks for the items listed at 24 C.F.R. § 58.5 and 24 C.F.R. § 58.6. If any environmental items are identified as potentially impacting (such as floodplains), a Request for Release of Funds (including publication of Notice of Intent) is required.
- **Environmental Assessment:** Includes those activities that could potentially have a significant impact on the environment. In addition to compliance with the laws and authorities at 24 C.F.R. § 58.5 and 24 C.F.R. § 58.6, environmental assessments must consider an array of additional potential impacts of the project, including a National Environmental Policy Act analysis. This environmental assessment requires publishing a Notice of Intent to Request Release of Funds as well as a Finding of No Significant Impact (assuming such is found).

- **Environmental Impact Statement:** Those activities that require a detailed written statement required by Section 102(2)(C) of NEPA for a proposed major Federal Action significantly affecting the quality of the human environment. These statements are normally used for major housing (2,500 units or more) or infrastructure projects.

## 14.2 Exempt and Categorically Excluded Not Subject to § 58.5

Based upon these guidelines, the only types of environmental reviews required for the SBF Program are (1) Exempt for administration and management activities and (2) Categorically Excluded Not Subject to 24 C.F.R. § 58.5 (**CENST**). Examples of categorically excluded activities not subject to related laws and authorities under 24 C.F.R. § 58.5 include: tenant based rental assistance; supportive services; operating costs; economic development activities; activities to assist homebuyers to purchase existing dwelling units or units under construction; and affordable housing predevelopment costs with no physical impact. To complete environmental requirements for categorically excluded activities not subject to 24 C.F.R. § 58.5, the SBF Program must make a finding of categorical exclusion and include such finding in the Environmental Review Record. When these kinds of activities are undertaken it is not required to issue a public notice or to submit a request for release of funds. In any case, environmental compliance is required for the items listed in 24 C.F.R. § 58.6.

## 14.3 Activities Requiring a CEST or Environmental Assessment

The Program will conduct the appropriate level of environmental review required by the funded activity. A CEST (Categorically Excluded, Subject to 24 C.F.R. § 58.5) review will be performed on any activities that require rehabilitation not to exceed an increase of twenty percent (20%) of the current building size. Additionally, any activities that require permanent changes to install equipment (such as installing new gas lines, electrical, vent lines) or other activities that would essentially add value to the property would require a CEST. The Categorical Exclusions at 24 C.F.R. § 58.35(a) identify the classifications of all activities that would require a CEST review.

## 14.4 Certification of Exemption and CEST Reviews

The SBF Program activity encompassed in the one hundred fifty thousand-dollar (\$150,000) Recovery Grants pertaining the provision of working capital and the purchase of equipment has been determined to have a level of environmental review of CEST in accordance with 24 C.F.R. § 58.35 (b). Except for the applicable requirements of 24 C.F.R. § 58.6 (addressed below), PRDOH must provide an Environmental Review Record that identifies the citations at 24 C.F.R. § 58.6. Any properties within a Special Flood Hazard Area (aka 100-year floodplain) must purchase flood insurance for all equipment more than \$5,000 in aggregate. Additionally, activities within a Coastal Barrier Resource System

(CBRS) unit are not allowed, unless the activity is specifically identified to provide services to the CBRS unit.

The administration and management of the SBF Program has been approved by PRDOH's Certifying Officer as an exempt activity per 24 C.F.R. § 58.34, as accredited in the Certificate of Exemption for HUD Funded Projects signed on August 9, 2019 and resides in the project file.

Should the SBF Program change in a way that includes other activities different from those already identified, a new determination of the level of environmental review should be performed and documented in the project files. If a modification changes the level of environmental review, future reviews should be in accordance with the new level of environmental review.

## 15 Non-Responsive Applicants

The SBF Program will make reasonable attempts to contact all Business Applicants to schedule meetings, collect documentation, or obtain other necessary information. If the Program has made **five (5)** consecutive unsuccessful attempts to contact a Business Applicant, with no follow up contact from the Business Applicant, the applicant will be sent a Non-Responsive Notice. Contact attempts should be made using different methods of communication at different times of the day/week. The Non-Responsive Notification provide contact information for the SBF Program, advises the applicant of the next steps in the application process and notifies the applicant that they must contact the SBF Program within **fourteen (14) calendar days** of the date of the letter. If the Business Applicant fails to contact the SBF Program within the allotted **fourteen (14) calendar days** allowed, the application will be closed.

Likewise, the SBF Program will make reasonable attempts to collect all required documentation and/or information to complete the application intake and evaluation process. The SBF Program will send a written notification to the Business Applicant, detailing the required documents and information needed to complete the application intake and evaluation process. The written notification will explain to applicants that the requested information or documentation must be sent or presented to the SBF Program within **thirty (30) calendar days** from the date of the written notification. Please note that, failure to fulfill a program request for information within the **thirty (30) calendar day** period may result in closure of the application due to the non-responsiveness of the Business Applicant.

## 16 Voluntary Withdrawal

A Business Applicant may request to withdraw from the SBF Program at any time before disbursement of funds begins. The voluntary withdrawal process will be followed in the

event an Applicant requests to withdraw from the Program. To withdraw, the Business Applicant will notify BDE of its desire to withdraw from the Program, who will then provide a *Voluntary Withdrawal Notice* to the Applicant. The Applicant or Applicants may withdraw from the Program using an electronic method. Upon completion of the withdrawal request, a *Withdrawal Confirmation Notification* will be sent to the Applicant and the application status will be updated to "Withdrawn".

If the Applicant has received a disbursement of funds, they will not be able to withdraw from the Program and they will be notified through a *Voluntary Withdrawal Denial Notification*. Applicants who receive a *Voluntary Withdrawal Denial Notification* are required to comply with Program requirements until Expenditure Review and all the Closeout steps have been completed. Failure to comply with Program requirements will result in the Applicant being referred to a recapture process as established in Recapture Section of these Guidelines.

### 17 Section 3

The purpose of Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u (hereinafter "**Section 3**"), is to ensure that employment and other economic and business opportunities generated by HUD financial assistance be directed, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, 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.

PRDOH, its contractors, subcontractors as well as Subrecipients to PRDOH and their respective contractors and subcontractors must demonstrate compliance, to the greatest extent feasible, with Section 3 by implementing the employment, training, and contracting requirements at 24 C.F.R. § 75.19, and meeting or exceeding the HUD established labor hour safe harbor benchmarks for Section 3 Workers and Targeted Section 3 Workers.

The SBF Program, their contractors and subcontractors, will comply with the Section 3 responsibilities as outlined at 24 C.F.R. Part 75, Subpart C. To this end, SBF Program staff, contractors and subcontractors will participate in PRDOH trainings on how to integrate Section 3 compliance within their respective hiring and subcontracting plans.

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

## 18 Reporting

The SBF Program will comply 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 Business Applicants and awardees processed by contractual agreement.

## 19 Monitoring

This Program will be subject to the general Monitoring Plan, Cross Cutting Guidelines and other Grantee adopted guidelines or policies and procedures as outlined within the SRA between BDE and PRDOH. PRDOH will request sample data of populations served to monitor compliance with program objectives and with federal and local laws and regulations.

BDE will monitor subrecipients it engages to assist with program management using the PRDOH Monitoring Plan.

If issues of non-compliance are identified during a monitoring event, the SBF Program will categorize such issues as either material or administrative. Awarded Businesses found to be in material non-compliance, or which received funds in error, may be required to repay grant funds to the State, as per the Terms and Conditions of the Recovery Grant Agreement. All Companies who were willfully fraudulent will be prosecuted.

According to 24 C.F.R. § 570.501(b), PRDOH, as grant administrator, is responsible for ensuring that CDBG-DR funds are used in accordance with programmatic requirements. The use of CDBG-DR funds by designated public agencies, subrecipients, or contractors does not relieve PRDOH of this responsibility. Therefore, the SBF Program will comply with PRDOH's standardized Monitoring Plan, Cross Cutting Guidelines and other Grantee adopted guidelines, policies and procedures, as outlined within the SRA between the subrecipients and PRDOH. BDE will perform monitoring of the SBF Programs using a Monitoring Plan created in accordance with the requirements of PRDOH's standardized Monitoring Plan and under PRDOH's supervision.

## 20 Application Closeout for Recovery Grants

Upon exhaustion of all available funds, the SBF Program applications shall be closed. This process will begin by ensuring that all invoices presented and that everything reflected in the *Intended Use of Funds Form* and that the Recovery Grant Agreement has been performed in compliance with all SBF Program requirements. A member of the SBF Program's Quality Control Team will perform a complete review of the application file to ensure all necessary documentation is present and to ensure that the case is ready for closeout.

General requirements for Closeout are as follows:

- All eligibility and DOB documentation comply with all requirements of the SBF Program and is sufficient to justify the Awarded Business' participation in the SBF Program;
- All SBF Program forms required throughout the entirety of the application intake and evaluation process have been duly completed and executed by the appropriate SBF Program Staff and Awarded Business or Business Applicant;
- All forms required by the SBF Program throughout the entirety of the program life cycle have been duly completed and executed by the appropriate parties;
- The CDBG-DR National Objective(s) have been properly documented by SBF Program Staff;
- All funds used by the SBF Program, whether CDBG-DR funds in origin or received by means of subrogation, have been properly accounted for and reconciled;
- Environmental clearance, if required, has been obtained for the Awarded Business and resides in the corresponding case record; and
- Other requirements for Closeout as established in the Recovery Grant Agreement have been met by the Awarded Business and/or SBF Program Staff.

Outreach will be made to the Business Applicant, or any other party involved if any additional information is necessary to close out the case. Once all levels of quality control review are passed, the Business Applicant will receive a Program Final Notice and their individual case will be placed in a closeout complete status.

## 20.1 Recapture

Instances may arise where an applicant must return all or part of the awarded funding to the Program. The Program is responsible for recapturing duplicative funds; funds awarded to applicants who become non-compliant, as well as funds from applicants that have been identified as receiving a potential overpayment. All applicant files will be reviewed and reconciled for accuracy to ensure DOB did not occur and that applicants are in compliance with Program requirements and federal guidelines. If an applicant has been identified as receiving a potential overpayment, the Program will document the amount and basis for the repayment in writing via a Repayment Notification.

Applicants who disagree with a repayment amount determined by the Program may challenge the determination. See the Program-based Reconsideration and/or Administrative Review section of these Guidelines. If the applicant's request is denied or there is failure on the part of the applicant to contest within the allotted timeframe, the Program will proceed with collecting the repayment amount. If the applicant's request results in a revision of the award amount or eligibility, the applicant will sign a revised Grant Agreement which will outline the requirements related to such changes and the requirements for repaying the remaining overdue amount, if any.

Once it has been determined that the applicant must return funds to the CDBG-DR grant fund, the applicant must repay their funds in a timely manner. All repayments shall be expected to be repaid in full as one lump sum amount. All funds recovered because of this policy will be tracked in the Disaster Recovery Grant Reporting system (**DRGR**) and returned to the CDBG-DR account or U.S. Treasury if the CDBG-DR grant has been closed out.

## **21 Program-Based Reconsideration and/or Administrative Review**

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

### **21.1 Program-Based Reconsideration Request**

Applicants who wish to contest a Program determination may file a Program-based Reconsideration Request directly with the Program by submitting a written request via electronic or postal mail within **twenty (20) calendar days** from the date a copy of the notice was filed in the record of the agency. Provided that, if the date on which the copy of the notice is filed in the records of the agency differs from the mailing date (postal or electronic) of said notice, the aforementioned **twenty (20) calendar day-term** shall be calculated from the mailing date (postal or electronic). Notices distributed via electronic communication shall be considered valid. In the event a notification is sent via postal and electronic mail, the notification date will be the one sent beforehand. All SBF Program notices will include the electronic and postal information where these will be received. (Email: RECONSIDERATION.SBF.CDBGDR@bde.pr.gov and Attn: SBF Program Reconsideration P.O. Box 2134 San Juan, PR 00922-2134, respectively).

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

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

Filing a Program-based Reconsideration Request does not substitute, negate, or preclude any legal right that an Applicant has to challenge a determination made by the Program. Therefore, Applicants who believe the initial determination of the Program to be erroneous, may submit, at their discretion, either a Program-based Reconsideration Request or a petition for review of the decision made by the Program by filing an Administrative Review Request at PRDOH in accordance with Regulation Number 4953, of August 19, 1993, which regulates the Formal Adjudication Process for PRDOH and its Adjunct Agencies (Regulation 4953)<sup>22</sup>.

## 21.2 Administrative Review Request

If an Applicant disagrees with a Program determination, or with the Reconsideration Request Denial determination, said party may file directly to PRDOH, as grantee, an Administrative Review Request in accordance with the aforementioned Regulation 4953. The Applicant must submit such request, in writing, within **twenty (20) calendar days** from the date a copy of the Program determination or a Reconsideration Request Denial determination notice was filed in the record of the agency. Provided, that if the date on which the copy of the notice is filed in the records of the agency differs from the mailing date (postal or electronic), the aforementioned **twenty (20) calendar day-term** shall be calculated from the mailing date (postal or electronic). Notices distributed via electronic communication shall be considered valid. In the event a notification is sent via postal and electronic mail, the notification date will be the one sent beforehand. Submit the request via email to: [LegalCDBG@vivienda.pr.gov](mailto:LegalCDBG@vivienda.pr.gov); via postal mail to: CDBG-DR Legal Division, P.O. Box 21365, San Juan, PR 00928-1365; or in person at PRDOH's Headquarters at: CDBG-DR Legal Division, 606 Barbosa Avenue, Juan C. Cordero Davila Building, Río Piedras, P.R. 00918.

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

## 22 General Provisions

### 22.1 Program Guidelines Scope

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

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<sup>22</sup> For more details, you can access Regulation 4953 (in Spanish) at: <https://www.vivienda.pr.gov/wp-content/uploads/2015/09/4953-Reglamenta-los-procedimientos-de-adjudicacion-formal..pdf>

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

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

## **22.2 Program Guidelines Amendments**

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

## **22.3 Disaster Impacted Areas**

As described in the initial Action Plan, and its amendments, the Government of Puerto Rico will use CDBG-DR funds solely for necessary expenses related to disaster relief, long-term recovery, restoration of housing, infrastructure, and economic revitalization in the impacted and distressed areas in Puerto Rico as identified in disaster declaration numbers DR-4336 and 4339. Through the Federal Register Vol. 83, No. 157 (August 14, 2018), 83 FR 40314, HUD identified that, for Puerto Rico, all components of the Island are considered "most impacted and distressed" areas. Therefore, these guidelines apply to all 78 municipalities of Puerto Rico.

## **22.4 Extension of Deadlines**

The Program could extend deadlines on a case-by-case basis. The Program may decline to extend a deadline if such extension will jeopardize the Program's completion schedule or the schedule of an individual construction project. The aforementioned strictly applies to program deadlines or established program terms. Under no circumstance(s) does the faculty to extend deadlines apply to the established terms of time in these guidelines or any applicable federal or state law or regulation, or to the terms of times established in these guidelines to request a Program-based Reconsideration, administrative review and/or judicial review.

## 22.5 Established Periods of Time

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

## 22.6 Written Notifications

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

## 22.7 Conflict of Interest

As stated in the Federal Register Vol. 83, No. 28 (February 9, 2018), 83 FR 5844, Federal regulations require that State grantees, in the direct Grant administration and means of carrying out eligible activities, be responsible with program administrative requirements, including those established in 24 C.F.R. §570.489(h) related to conflicts of interest.

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

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

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

As defined in the COI Policy, a conflict of interest is a situation in which any person who is a public servant, employee, agent, consultant, officer, or elected official or appointed official of the PRDOH, or of any designated public agencies, or of subrecipients that are receiving funds under the CDBG-DR Program may obtain a financial or personal interest

or benefit that is or could be reasonably incompatible with the public interest, either for themselves, or with those whom they have business, or an organization which employs or is about to employ any of the parties indicated herein, or a member of their family unit during their tenure or for **two (2) years** after.

Such conflicts of interests will not be tolerated by PRDOH. Program officials, their employees, agents and/or designees are subject to state ethic laws and regulations, including, but not limited to Puerto Rico Government Ethics Act of 2011, Act 1-2012, as amended, in regard to their conduct in the administration, granting of awards and program activities.

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

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

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

## **22.8 Citizen Participation**

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

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

- **Via phone:** 1-833-234-CDBG or 1-833-234-2324 (TTY: 787-522-5950)  
Attention hours Monday through Friday from 8:00am-5:00pm
- **Via email at:** [infoCDBG@vivienda.pr.gov](mailto:infoCDBG@vivienda.pr.gov)
- **Online at:** <https://www.cdbg-dr.pr.gov/en/contact/> (English)  
<https://www.cdbg-dr.pr.gov/contact/> (Spanish)
- **In writing at:** Puerto Rico CDBG-DR Program  
P.O. Box 21365  
San Juan, PR 00928-1365

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

## 22.9 Citizen Complaints

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

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

- **Via email at:** [LegalCDBG@vivienda.pr.gov](mailto:LegalCDBG@vivienda.pr.gov)
- **Online at:** <https://cdbg-dr.pr.gov/en/complaints/> (English)  
<https://cdbg-dr.pr.gov/quejas/> (Spanish)
- **In writing at:** Puerto Rico CDBG-DR Program  
Attn: CDBG-DR Legal Division-Complaints  
P.O. Box 21365  
San Juan, PR 00928-1365

Although formal complaints are required to be submitted in writing, complaints may also be received verbally and by other means necessary, as applicable, when PRDOH

determines that the citizen's particular circumstances do not allow the complainant to submit a written complaint. However, in these instances, PRDOH shall convert these complaints into written form. These alternate methods include, but are not limited to:

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

\*Attention hours: Monday – Friday from 8:00 a.m. to 5:00 p.m.<sup>23</sup>

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

### 22.10 Anti-Fraud, Waste, Abuse or Mismanagement

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

Pursuant to 83 FR 40314, PRDOH implements adequate measures to detect and prevent fraud, waste, abuse, or mismanagement in all programs administered with CDBG-DR funds as well as encourages any individual who is aware or suspects any kind of conduct or activity that may be considered an act of fraud, waste, abuse, or mismanagement, regarding the CDBG-DR Program, to report such acts to the CDBG-DR Internal Audit Office, directly to the Office of Inspector General (**OIG**) at HUD, or any local or federal law enforcement agency.

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

| <b>REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT TO PRDOH CDBG-DR</b> |  |
|--|--|
| CDBG-DR Hotline  | 787-274-2135 (English/Spanish/TTY)                                 |
| Postal Mail  | Puerto Rico Department of Housing<br>CDBG-DR Internal Audit Office |

<sup>23</sup> Hours may vary due to COVID-19. PRDOH recommends calling ahead prior to arrival to corroborate.

|           |  |
|-----------|--|
|           | P.O. BOX 21355<br>San Juan, PR 00928-1355  |
| Email     | <a href="mailto:hotlineCDBG@vivienda.pr.gov">hotlineCDBG@vivienda.pr.gov</a>   |
| Online    | Filling out the <b>AFWAM Submission Form</b> available in English and Spanish at <a href="http://www.cdbg-dr.pr.gov">www.cdbg-dr.pr.gov</a> or <a href="https://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud">https://cdbg-dr.pr.gov/app/cdbgdrpublic/Fraud</a> |
| In person | Request a meeting with the Deputy Audit Director of the CDBG-DR Internal Audit Office located at PRDOH's Headquarters at 606 Barbosa Avenue, Building Juan C. Cordero Davila, Río Piedras, PR 00918.   |

| <b>REPORT FRAUD, WASTE, ABUSE, OR MISMANAGEMENT DIRECTLY TO HUD OIG</b> |  |
|---|--|
| HUD OIG Hotline   | 1-800-347-3735 (Toll-Free)<br>787-766-5868 (Spanish)   |
| Postal Mail   | HUD Office of Inspector General (OIG) Hotline<br>451 7th Street SW<br>Washington, D.C. 20410 |
| Email   | <a href="mailto:HOTLINE@hudoig.gov">HOTLINE@hudoig.gov</a>                                   |
| Online  | <a href="https://www.hudoig.gov/hotline">https://www.hudoig.gov/hotline</a>                  |

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

### **22.11 Related Laws and Regulations**

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

### **22.12 Cross-Cutting Guidelines**

Some federal and local requirements apply to all programs funded by CDBG-DR. These Cross-Cutting Guidelines cover topics such as: financial management; environmental review; labor standards; acquisition; relocation; civil rights; fair housing; among others.

The requirements described in the above referenced Cross-Cutting Guidelines, apply to all programs described in PRDOH's CDBG-DR Initial Action Plan and its amendments.

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

## **23 Program Oversight**

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

## **24 Severability Clause**

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

**END OF GUIDELINES.**