



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

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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. The impact to an already declining economy caused small businesses, including microenterprises, to have even less access to critical capital necessary to support the recovery and growth of the small business sector in order to create and retain jobs. 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**). Puerto Rico's vision for success with the SBF, both during and after the service delivery, is to:

- Provide grants and loans 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.¹
- 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 graduate to more traditional banking relationships with financial institutions.
- Leverage CDBG-DR funds to attract private capital to serve financing needs of small business.

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, as amended; 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 fifty thousand dollars (\$50,000) to cover working capital and moveable equipment. Subject to availability of Program funds, the SBF Program may, at a later date, release funding for Recovery and Expansion Loans of up to one hundred thousand dollars (\$100,000) each to support the rehabilitation or new construction of small business facilities.

These Program Guidelines pertain to the initial funding of the Recovery Grants. Specific requirements for the Recovery and Expansion Loan service offerings of the Program, described below, will be released in an amendment to these Program Guidelines at a later date.

¹ These limits vary annually. See 2019 CDBG-DR income limits for Puerto Rico here: <https://www.hudexchange.info/resources/documents/2019-Puerto-Rico-Income-Limits.pdf>.

1.1 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 non-affixed equipment. The amount of the grant and the timing of the draws will be determined by the underwriting process. Some businesses may be required to draw on the grant up to three (3) increments, based on risk assessments and other underwriting determinations. The Program will initiate with the Recovery Grant as initial service offerings. Small businesses and microenterprises on the Island are eligible to apply for the Recovery Grants, provided they can show evidence of:

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

1.2 Recovery and Expansion Loans (future phase of the program)

The Recovery and Expansion Loans Program, if funded, will include Option A Working Capital Line of Credit and Option B Term Loans for Larger Projects.

OPTION A: WORKING CAPITAL REVOLVING LINE OF CREDIT

The Working Capital Revolving Line of Credit Program will provide up to one hundred thousand (\$100,000) to cover working capital and non-affixed equipment expenses for businesses that can provide evidence of capacity to support short term debt. The amount of the Line of Credit will be set based on the recovery plan, management capacity and contracts or related evidence of receivables of small business borrowers. The Line of Credit will be one-hundred percent (100%) funded by CDBG-DR and will have a one (1) year term with options to renew, based on performance.

OPTION B: TERM LOAN FOR LARGER PROJECTS

The Term Loan for Larger Projects will leverage CDBG-DR funds with private capital for larger loans that can fund working capital, equipment, assets that can be collateralized and acquisition and/or improvement to real estate and related business facilities.

CDBG-DR funds will provide a guarantee or a loan loss reserve of up to twenty-five percent (25%) of the loan amount. The loan amount and repayment term for each Term Loan will be set based on the useful life of the collateral, the financial feasibility of the project and the capacity of the business. The Economic Development Bank of Puerto Rico, as partner, will work to identify sources of capital to fund the Term Loans with the CDBG-DR credit enhancement.

The Term Loan program addresses an unmet need of access to capital for larger projects where private financing sources remain reluctant to lend based on perceived risks of the post-disaster Island economy. The Term Loan is a strategic financing option for businesses that have a clear growth plan and management capacity that will result in expanded employment for Puerto Rico residents.

1.3 Definitions

- **Business Applicant** – A business entity that has applied to the Program for assistance through one of the available grant or loan programs.
- **Microenterprise** - For purposes of the CDBG-DR program, a microenterprise is a business that has five (5) or fewer employees, one or more of whom owns the business. This includes a self-employed individual.²
- **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.³
- **Movable Equipment** – equipment not built-in, fixed, or attached to the building.
- **Working Capital** – funds used to finance typical operating expenses necessary to support the production of goods and services provided by the business.

1.4 Roles

The following roles will be involved in the delivery of the Recovery Grant offered by the SBF Program:

1.4.1 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. In this role, BDE will manage all major aspects of the Program including, but not limited to:

- Developing and implement program policies, procedures, and protocols;
- Conduct CDBG-DR compliance reviews;
- Conduct intake and eligibility reviews;
- Implement financial management and compliance reporting;
- Conduct underwriting review and award calculation;
- Conduct applicant and client issue resolution;
- Prepare grant agreements and related documents;
- Prepare and submit draw requests; and
- Maintain accurate records and documentation.

² 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.

³ 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>

1.4.2 DDEC's role as Marketing and Outreach Lead

The Department of Economic Development and Commerce (**DDEC**) will serve the Program in a program marketing and community outreach role. Marketing Initiatives under DDEC's purview will serve to ensure potential Business Applicants are aware of the program and know how to apply. In this role, DDEC is responsible for:

- Creating and implementing an outreach and marketing plan that outlines the intended audience of the SBF Program and the methodology for outreach;
- Delivering media plan strategies; and
- Conducting informational sessions with key stakeholders across the Island.

2 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 104(b)(3) of the Housing and Community Development Act of 1974 (**HCDA**), as amended, 42 U.S.C. § 5305. It is anticipated that projects funded through the SBF Program will meet one of the following national objectives:

- Benefit to low- and moderate-income persons (**LMI**)
- LMI Job Creation/Retention - 24 C.F.R. § 570.483 (b)(4);
- LMI Area Benefit - 24 C.F.R. § 570.483(b)(1);
- LMI Limited Clientele (microenterprises)- 24 C.F.R. § 570.483(b)(2);
- Urgent Need - 24 C.F.R. § 570.483(d)
- Prevention or Elimination of Slums or Blight (**SB**)

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.

3 Program Description

The total allocation 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 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 the grant and timing of draws will be based on the determination of unmet need and eligible expenses as assessed in a business's Application to the Program.

3.1 BDE's Role in the Application Process

When available, eligible applicants may apply for the Recovery Grant and/or the Recovery and Expansion Loan. This process will be conducted in coordination with BDE, who will help applicants identify the type and amount of assistance that best serves their unmet business recovery and growth needs. BDE will offer technical assistance and guidance during the intake and application process as well.

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: credit, capacity, collateral, capital and character; and
- CDBG-DR and Puerto Rico compliance requirements.

4 Use of Funds

All grant and loan projects must comply with the following eligible activities as permitted under the Housing and Community Development Act of 1974, as amended, (42 U.S.C. § 5301, *et seq.*):

- 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).

4.1 Eligible Use of Funds

Eligible uses of funds⁴ for the SBF Recover Grant⁵ awards:

- 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

⁴ 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).

⁵ Eligible use of funds for the Recovery and Expansion Loan service offering of the SBF Program will be added to these Program Guidelines in a later amendment.

- Equipment that is not affixed to real property (subject to Categorically Excluded activities not subject to § 58.5 (24 C.F.R. § 58.35(b)) and is necessary for the recovery of the business.

4.2 Ineligible Use of Funds

SBF Recovery Grant⁶ funds do not cover the following items:

- Reimbursement of expenses incurred in the business prior to the date of submission of the Application for CDBG-DR funds;
- Acquisition of real property;
- Construction or construction-related activities, including purchase of fixtures or equipment that require construction-related installation;
- 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;
- Investments in instruments or investments for the sole purpose of 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.

5 Eligibility

5.1 Business Eligibility

Business Applicants must provide evidence of unmet needs due to the impact of Hurricanes Irma and/or María. Re-starting for-profit businesses and non-profit organizations may apply.

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

- Must show evidence of status as an existing or re-starting business or sole proprietorship that is recovering from storm damage and/or business

⁶ Ineligible use of funds for the Recovery and Expansion Loan aspect of the SBF Program will be added to these Program Guidelines in a later amendment.

disruption and is registered as Puerto Rico based enterprise where principals are residents of Puerto Rico;

- Must be a Small Business as defined in these Program Guidelines;
- Must be a Microenterprise as defined in these Program Guidelines;
- Must provide evidence of skills, experience and management capacity and a track record of meeting financial obligations within the context of compensating factors;
- For-profit or non-profit organization 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; religious organizations will be evaluated based on the secular operations of the organization).
- Business must have been in operation at the time of the Hurricane(s) and must have been open on or before September 6, 2017 for Hurricane Irma and on or before September 20, 2017 for Hurricane María.
- Business must show evidence of direct impact by the Hurricane(s), as demonstrated by a documented financial or physical loss. The assessed physical damage and/or financial loss calculations are used to determine eligibility; the Program will not fund construction-related expenses or financial losses.
- 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 a financial loss, a business must demonstrate a fifteen percent (15 %)-annual gross revenue decline from 2016 to 2017. In order to qualify for financial loss assistance, the following conditions must exist for the business:

- It must be currently in business or able to use funding from CDBG-DR to re-open the business.
- Businesses that are not currently open must demonstrate how funding will be used towards re-opening the business and provide a business plan detailing a path towards sustainability.
- Businesses that are not currently open are not required to re-open in the same location in which they were operating before the hurricanes.
- It must have eligible unmet needs after accounting all Duplication of Benefits (DOB).
- No more than seventy-five (75) full-time equivalent employees.

5.2 Ineligible Businesses

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

- Facilities not open 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;
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);
 - Establishments whose sales of alcohol are fifty percent (50%) or more of total
sales;
 - Private utilities;
 - Entities engaged in lobbying or political activities;
 - Entities engaged or involved in religious activities, except where expenses are
clearly distinguishable between the organization's religious and secular
activities;
 - Entities that received federal assistance in the past and did not comply with
maintaining the required flood insurance;
 - Entities and/or business owners that are listed on the HUD Debarred List;⁷
 - Entities and/or owners currently in foreclosure or bankruptcy; or
 - Entities that are not current on any municipal, state, or federal obligation that
may be converted to a lien or a fine (property taxes, etc.).

6 Applying for Recovery Grants

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

6.1 Application Intake

Application intake will begin 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 will be provided by BDE and also posted to the PRDOH website.

⁷ See: <https://www.dol.gov/ofccp/regs/compliance/preaward/debarlst.htm>

6.2 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 Program funds are available.

7 Underwriting Policy

7.1 HUD CDBG-DR Underwriting Guidance

Underwriting for both the Recovery Grant and the Recovery and Expansion Loan applications will follow HUD guidelines at 24 C.F.R. § 570.209 as the financial underwriting framework for evaluating the feasibility of Applications. BDE will complete this underwriting review understanding that different levels of review are appropriate to take into account differences in the size and scope of each Application, and in the case of a microenterprise or other small business to take into account the differences in the capacity and level of sophistication among businesses of differing sizes.

The objectives of the underwriting guidelines are to ensure all awarded Business Applicants meet the CDBG Underwriting Criteria of 24 C.F.R. § 570.209 to evaluate:

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

8 Recovery Grant Award

8.1 Determining the Recovery Grant Award Amount

BDE will calculate the Recovery Grant award amount based on an evaluation of the individual business. This evaluation will take DOB into consideration.

8.1.1 Duplication of Benefits (DOB)

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

assistance determined to be duplicative must be deducted from the Program's calculation of the applicant's total need prior to awarding assistance.

For each Business Applicant for SBF Grant Award assistance, BDE will conduct eligibility review and duplication of and verification of benefits reviews for all business-related assistance. If a business owner received **assistance for their home, such assistance will not be included** in the DOB analysis. BDE will require Business Applicants to disclose Hurricane recovery related assistance and determine what business is related and what is residence related.

8.1.2 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 through the Program Application. (SBA, NFIP, other business interruption insurance, etc.)
5. Verify all duplicative assistance received or approved for the Business Applicant and determines amount considered to be duplicative with the grant award.
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 loan award amount. (Lesser of Step 7 or fifty thousand dollars (\$50,000)).

8.2 Working Capital

For businesses requesting working capital assistance through the Recovery Grant offered by the SBF Program, BDE could determine an estimated monthly working capital need by reviewing Business Applicant's tax returns to determine an average monthly working capital expense for the business. BDE could also require the provision of alternative or supporting documents for calculating the monthly working capital, as BDE determines fit. Using the average working capital expense calculated for the business, BDE will multiply that number times six (6) to determine the Business Applicant's maximum eligible working capital assistance.

8.3 Movable Equipment and Furniture

The Business Applicant may be eligible for assistance for eligible movable equipment, machinery and/or furniture expenses. The amount approved for working capital and movable equipment expenses may not exceed the maximum award.

Costs associated with movable equipment include the documented repair or replacement of, machinery or equipment not dependent on construction,

reconstruction, ground disturbance or structural modifications. Reimbursement for equipment replaced after the hurricanes may be considered with the appropriate support documentation. In order to determine the amount for which a business is eligible for movable equipment and furniture, the Business Applicant must provide documentation, invoices and/or receipts with adequate description to determine the nature of the equipment or furniture and the installation requirements associated with making the equipment or furniture usable.

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

BDE 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 grant agreements.

8.4 Final Award Determination

Once BDE has determined the total working capital and movable equipment expenses for which a Business Applicant may be eligible for the Recovery Grant offered by the SBF Program, BDE will conduct a DOB review and deduct the verified DOB amounts from the Business Applicant's final calculated award.

The DOB verification review will be carried out as described, but not limited to, the following:

- BDE will collect information on potentially duplicative funding sources from all Business Applicants during the Application phase.
- 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 BDE to contact all potentially duplicative funding sources on their behalf to verify all funding sources received and/or approved.
- Using information collected from the Business Applicant and the authorization provided to BDE by the Business Applicant, BDE 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 eligible award amounts for Business Applicants.

9 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**), as well as to the HUD environmental review regulations at 24 C.F.R. § 58. Therefore, an environmental review process is required for all awards to be issued under the Program to ensure that the proposed activities do not negatively impact the surrounding environment and that the property itself will not have an adverse environmental or health effect on end users. 24 C.F.R. § 58.22 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 Program and disallow all costs that were incurred before completion of the environmental review.

All Program awards must have documentation that they follow NEPA and other environmental requirements. Therefore, all projects shall have an Environmental Review Record (**ERR**), as required by NEPA and related laws. The ERR for the projects shall set forth: 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.

Environmental reviews will be conducted concurrently with DOB reviews, when feasible. Environmental reviews must be completed prior to determining Program assistance to be offered to an eligible applicant.

9.1 Environmental Level of Review

To conduct the appropriate level of environmental review, the Program will determine the environmental classification of the project. The term "project" may be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the Program in whole or in part to accomplish a specific objective. There are four 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 to the environment, but not to extent that an Environmental Assessment under NEPA or Environmental Impact Statement is required. There are two 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.

9.2 Categorically Excluded Activities

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

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

subsection of 24 C.F.R. § 58.35(a), and written documentation as to whether there were any circumstances which required compliance with 24 C.F.R. § 58.5 and 58.6.

The documentation must support its determinations related to compliance including correspondence with applicable agencies having jurisdiction. Upon completion, there should be one of three (3) environmental findings: (1) the project converts to Exempt (i.e. 24 C.F.R. § 58.34(a) (12)); (2) the project invokes compliance with one or more of the laws and/or authorities and, therefore, requires public notification and approval from HUD; or (3) the unusual circumstances of the project result in a significant environmental impact and, therefore, compliance with NEPA is required. If upon completion it is determined that compliance is required for one or more of the Federal laws and authorities listed in 24 C.F.R. § 58.5, then a public notification known as Notice of Intent to Request Release of Funds must be posted. After a **seven (7) day** comment period, a Request for Release of Funds and Environmental Certification must be prepared. The Environmental Certification certifies the compliance with all environmental review requirements.

9.3 Activities Requiring an Environmental Assessment

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

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

9.4 Certification of Exemption

The SBF Program activity encompassed in the fifty thousand-dollar (\$50,000) Recovery Grants and the Recovery and Expansion Loans pertaining the provision of working capital for technical assistance and the purchase of moveable equipment has been determined to have a level of environmental review of EXEMPT in accordance with 24

C.F.R. § 58.34 (a). Except for the applicable requirements of 24 C.F.R. § 58.6 (addressed below), the PRDOH does not have to undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities in 24 C.F.R. § 58.5 for the activities associated with the aforementioned SBF Program activities.

Technical assistance activities and the purchase of moveable equipment under the SBF Program have been approved by PRDOH's Certifying Officer as exempt activity per 24 C.F.R. § 58.34, as accredited in the Certificate of Exemption for HUD Funded Projects signed on April 25, 2019 and resides in the project file.

Should the Program change in a way that includes other activities different from those exempted, 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.

10 Section 3

The purpose of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) (**Section 3**), as amended, 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.

Recipients of covered funding are in compliance with Section 3 if they meet the minimum numerical goals set forth at 24 C.F.R. §135.30, as amended. Specifically: (i) thirty percent (30%) of the aggregate number of new hires shall be Section 3 residents; (ii) ten percent (10%) of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and; (iii) three percent (3%) of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

All BDE partners will participate in PRDOH training in how to integrate Section 3 compliance with their hiring and subcontracting plans.

11 Reporting

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

12 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 monitor and request utilizing sample populations served.

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

If issues of non-compliance are identified during monitoring, such issues shall be categorized as either material or administrative. 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 agreement. All Companies who were willfully fraudulent will be prosecuted.

According to 24 C.F.R. § 570.501 (b), PRDOH, as Grantee, is responsible for ensuring that CDBG-DR funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. Therefore, this Program will be subject to the PRDOH's standardized Monitoring Plan, Cross Cutting Guidelines and other Grantee adopted guidelines, policies and procedures, as outlined within the SRA between 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 approval.

13 Application Closeout for Recovery Grants

Upon completion of all exhaustion of Recovery Grant funds, the Program applications shall be closed. This process will begin by ensuring that all invoices presented have been accepted by BDE and that everything reflected in the growth and recovery plan has been performed in compliance with Program requirements. A member of the 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 are found to be in accordance with all requirements of this policy and is found to be sufficient to justify the Business Applicant's participation in the Program.
- All Program forms required throughout the entirety of the Application process have been duly completed and executed by the appropriate Program Staff and the Business Applicant.
- All funds used for the Program, whether CDBG-DR or received by means of a subrogation of funds, have been properly accounted for and reconciled.

- All permits required have been properly closed-out with the proper governmental entities.
- Environmental clearance, if required, has been obtained for the Business Applicant.
- Other requirements for closeout as established in the grant agreement contract have been completed.

Outreach will be made to the Business Applicant, or any other party involved in the event that 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.

14 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.

14.1 Program-Based Reconsideration Request

Applicants may file a Program-based Reconsideration Request when it is believed there is an error with Program eligibility determinations, Program award, and/or failure to meet construction standards, among other determinations.

An Applicant must submit a written Reconsideration Request directly with the Program, 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 of said notice, the aforementioned **twenty (20) calendar day-term** shall be calculated from the mailing date. Applicants who file a Program-based Reconsideration Request are encouraged to provide individual facts or circumstances, as well as supporting documents to justify their petition.

In the Reconsideration Request process, the Program will only review facts and information already included in an Applicant's file, unless the Applicant submits new documentation. The Program has the discretion to accept or reject new documentation based upon its relevance to the Program-based Reconsideration Request.

The Program will review and address the Reconsideration Request within **fifteen (15) days** of its receipt. Applicants will be notified of the reconsideration determination via a Reconsideration Request Approved or a Reconsideration Request Denied notification. Applications with an approved Reconsideration Request will return to active Program status and continue with the process as normal. Applications with a denied Reconsideration Request will remain ineligible for the Program.

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 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 the PRDOH in accordance with Regulation Number 4953, of August 19, 1993, which regulates the Formal Adjudication Process for the PRDOH and its Adjunct Agencies (Regulation 4953).

14.2 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. 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 of said notice, the aforementioned **twenty (20) calendar day-term** shall be calculated from the mailing date.

Applicants who submit an Administrative Review Request must follow the procedure established in Regulation 4953. After the Administrative Adjudicative Procedure concludes, applications with approved Administrative Review Requests will return to active Program status and continue within the process as normal. Applications with denied Administrative Review Requests will remain ineligible for the Program.

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) 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 LPRA § 24 et seq., and Section 4.2 of Act 38-2017, as amended, known as the Uniform Administrative Procedures Act of the Government of Puerto Rico, 3 LPRA §9672.

If the Applicant fails to file a Program-based Reconsideration Request, or to contest a determination under the Administrative Adjudicative Procedure with PRDOH within the time allotted, the inaction will be deemed as an acceptance of the determination.

15 General Provisions

15.1 Program Guidelines Scope

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

However, the 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.

15.2 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.

15.3 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.

15.4 Extension of Deadlines

The Program could extend deadlines on a case-by-case basis. The Program may decline to extend a deadline if such extension will jeopardize the Program's completion schedule or the schedule of an individual construction project. The aforementioned strictly applies

to program deadlines or established program terms. Under no circumstance(s) does the faculty to extend deadlines apply to the established terms of time in any applicable federal or state law or regulation, or to the terms of times established in these guidelines to request a Program-based Reconsideration, administrative review and/or judicial review.

15.5 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.

15.6 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.

15.7 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 Policy and Standards of Conduct in conformity with the following applicable federal and state regulations:

1. HUD conflict of interest regulations, 24 C.F.R. §570.611 and 24 C.F.R. §85.36;
2. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. §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;
4. The Anti-Corruption Code for the New Puerto Rico, Act 2-2018, as amended; and
5. The Puerto Rico Government Ethics Act of 2011, Act 1-2012, as amended.

The Conflict of Interest Policy and Standards of Conduct 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 CFR § 570.489, the Conflict of Interest Policy and

Standards of Conduct also includes standards of conduct governing employees engaged in the award or administration of contracts.

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

Such conflicts of interests will not be tolerated by PRDOH. PRDOH, Program officials, their employees, agents and/or designees are subject to state ethic laws and regulations, including, but not limited to the 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 a conflict of interests that may result in his/her benefit. No public servant shall intervene, directly or indirectly, in any matter in which any member of his/her family unit, relative, partner or housemate has a conflict of interest that may result in benefit for any of the abovementioned. In the case that any of the abovementioned relationships has ended during the two (2) years preceding the appointment of the public servant, they shall not intervene, either directly or indirectly, in any matter related to them until two (2) years have elapsed after his/her 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 this guideline. PRDOH Program officials, their employees, agents and/or designees should disclose their relationship with PRDOH at the time of their application.

The Conflict of Interest Policy is posted as a standalone document at www.cdbg-dr.pr.gov.

15.8 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. The Citizen Participation Plan is posted as a standalone document at www.cdbg-dr.pr.gov.

15.9 Citizen Complaints

Citizens who wish to voice a complaint related to PRDOH's published Action Plan, any substantial amendments to the Action Plan, performance reports, or other issues related to CDBG-DR funded activities may do so through any of the following methods:

- Via email at: infoCDBG@vivienda.pr.gov
- Online at: www.cdbg-dr.pr.gov, via the Contact Form available in the "Citizen Participation" – Contact Section of the website
- In writing at:
Puerto Rico CDBG-DR Program
P.O. Box 21365
San Juan, PR 00928-1365

15.10 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 CDGB-DR Program.

REPORT TO PRDOH CDBG-DR	
CDBG-DR Hotline	787-274-2135 (English/Spanish/TTY)
Postal Mail	Puerto Rico Department of Housing CDBG-DR Internal Audit Office P.O. BOX 21355 San Juan, PR 00928-1355
Email	hotlineCDBG@vivienda.pr.gov
Internet	www.cdbg-dr.pr.gov
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.

REPORT TO HUD OIG	
HUD OIG Hotline	1-800-347-3735 (Toll-Free) 787-766-5868 (Spanish)
Postal Mail	HUD Office of Inspector General (OIG) Hotline 451 7th Street SW Washington, D.C. 20410
Email	HOTLINE@hudoig.gov
Internet	https://www.hudoig.gov/hotline

The AFWAM Policy is posted as a standalone document at www.cdbg-dr.pr.gov.

15.11 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.

15.12 Cross-Cutting Guidelines

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

16 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.

17 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.