UNITED STATES VIRGIN ISLANDS
HOUSING FINANCE AUTHORITY

PUBLIC AND AFFORDABLE HOUSING DEVELOPMENT PROGRAM POLICIES AND PROCEDURES

VERSION: 1.0
June 6, 2019

Prepared by:

Virgin Islands Housing Finance Authority - CDBG-DR Program Division

The policies stated in this manual are current as of June 6, 2019. This Manual represents the current version of the Virgin Islands Housing Finance Authority's (VIHFA) policies which shall provide general guidance for the operation of the New Construction for Homeownership and First-Time Home Buyer Assistance Program. All manuals will be reviewed periodically and will be updated. Therefore, you are strongly urged to visit our website www.vihfa.gov/disaster-recovery to ensure that you have the latest version.

SUBJECT: Public and Affordable Housing Development Program	
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Table 1: Public and Affordable Housing Development Program

VERSION NUMBER	DATE REVISED	DESCRIPTION
VERSION 1 (DRAFT)	2/26/19	Public and Affordable Housing Development Program Policies and Procedures Draft Updated to reflect VIHFA as developer in Option 1
	3/21/19	Updated to remove Option 2 and Option 3. These options will be included if and when additional funding is made available.
	4/14/19	Incorporated comments from HUD TA and Housing Authority. Addressed outstanding issues.
VERSION 1	6/3/19	Version 1 Final Draft

TABLE OF CONTENTS

1.0 INTRODUCTION 1

1.1 Summary 1

2.0 POLICIES 1

2.1 Version Policy 1

2.2 Policy Change Control Board 2

2.3 Definitions 3

3.0 PROGRAM OVERVIEW 11

3.1 Public and Affordable Housing Development 11

3.2 Total Allocation 12

3.3 Tie to the Storm 12

3.4 National Objective 12

3.5 Eligible Activities 12

3.6 Ineligible Activities 14

3.7 Estimated Start and End Dates 14

3.8 Geographic Area(s) Served 14

3.9 Maximum Award 14

3.10 Federal Labor Standards 16

4.0 UNDERWRITING CRITERIA 17

4.1 Timing of Underwriting Reviews 17

4.2 Evaluation of Project Financing 18

4.3 Evaluation of Project Development Costs 19

4.4 Acquisition 20

4.5 Construction Hard Costs 21

4.5.1 Construction Hard Cost Contingency 22

4.6 Professional Fees 22
4.7 Builder's Fees 23
4.8 Engineering Fees 23
4.9 Architects' Fees 24
4.10 Developer Fee 24
4.10.1 Deferred Developer Fees 24
4.11 Consulting Fees 25
4.12 Soft Cost Contingency 25
4.13 Syndication Costs 25
4.14 Assessment of Long-Term Feasibility/Viability 26
4.15 Maximum Rents 26
4.16 Vacancy Rate 27
4.17 Operating Expenses 27
4.18 Reserves 27
4.18.1 Rent-up Reserves 27
4.18.2 Replacement Reserves 28
4.18.3 Operating Reserves 28
4.19 Debt Service Coverage Ratio 29
4.20 Investor Services Fees 29

5.0 PROGRAM ADMINISTRATION 30
5.1 Eligible Implementation Entities 30
5.2 Virgin Islands Housing Finance Authority (VIHFA) Role as Grantee 30
5.3 Program Marketing 31
5.4 Eligibility Criteria 31
5.5 Affordability Period 31
5.6 Relocation 32
5.7 Project Selection 32

5.8 Prioritization of Projects 32
5.9 Project Selection 32
5.10 Technical Assistance and Review of Project Scope and Budget 33
5.11 Pre-Award Verifications 33
5.12 Award Calculation for Project Scope and Budget Proposals 33
5.13 Evaluation of Projects 34
5.14 Duplication of Benefits (DOB) 34
5.15 Project Funding and Disbursement 35
5.16 Subrecipient Agreements 36
5.17 Construction Monitoring 38
5.18 Conversion to Permanent Financing 38
5.19 Lease-Up Compliance and Monitoring 39
5.19.1 Monitoring Plan 40
5.20 Cross-Cutting Federal Requirements 41
5.20.1 Tenant Protection Under Uniform Relocation Act (URA) 41
5.20.2 Fair Housing 42
5.20.3 Section 504 42
5.20.4 Davis-Bacon and Related Acts / Labor Standards 42
5.20.5 Minority-and Women-Owned Businesses (WMBEs) 43
5.20.6 Section 3 43
5.20.7 Environmental Review 44
5.20.8 Green Building Standards 44
5.20.9 Floodplain, Floodway and Costal High Hazard Area Policy 44
5.20.10 Flood Insurance Policy 44
5.20.11 Validation of Development Costs and Inspections 44
5.20.12 Lead-Based Paint Risk Assessment 45
5.20.13 Mold Assessment and Remediation 45
5.20.14 Asbestos Survey Requirement 46

5.20.15 Environmental Inspection Request and Clearance 46

6.0 RECORD KEEPING AND REPORTING 46

APPENDICES 48

1.0 INTRODUCTION

1.1 Summary

As result of the damages sustained in the 2017 Hurricanes Irma and Maria, the U.S. Virgin Islands (Territory) received an allocation of Community Development Block Grant Disaster Recovery (CDBG-DR) funds which will be administered by the Virgin Islands Housing Finance Authority (VIHFA). The Territory has allocated $72,000,000 from tranches 1 and 2 to the Public and Affordable Housing Development Program. This program seeks to redevelop and create new affordable rental housing stock including subsidized and mixed-income rental units. Eligible development activities include development of low-income and mixed-income housing units through infill construction of new housing units, and substantial rehabilitation of multi-family residential or commercial properties that include vacant or uninhabitable dwellings. These activities will result in more rental housing, including mixed-use properties, being available to low- and moderate-income households.

The program will incentivize the replacement of affordable housing units damaged in the storms and development of new low-income and mixed-income multi-family rental housing stock, including project-based subsidized housing and other public housing units. While low-income housing stock remains an urgent priority, mixed-income housing is also needed throughout the Territory, given the unmet need for rental units across the full spectrum of citizens, from households typically supported by Low-Income Housing Tax Credit housing (e.g. those with incomes at or below 60% of the area's median incomes, or AMI), households with incomes that make them ineligible for LIHTC tax credit units (e.g. households with incomes between 60% - 80 % of AMI) and tenants that can afford market rate units. VIHFA defines affordable rent as rental costs (including utilities) that do not exceed 30% of a renter's income. VIHFA uses the HUD-defined fair market rents as a basis to determine affordable rent caps.

This policy document explains the structure of the Public and Affordable Housing Development Program, outlines project funding eligibility criteria, and the describes compliance criteria through the affordability period.

2.0 POLICIES

2.1 Version Policy

Version history is tracked in the table on the title page, with notes regarding version changes. The dates of each publication are also tracked in this table. The first version of this document is 1.0.

Substantive changes within this document that reflect a policy change will result in the issuance of a new version 2.0, an increase in the primary version number. Future policy changes will result in additional revision and the issuance of a new primary version number.

Non-substantive changes such as minor wording and editing, or clarification of existing policy that do not affect the interpretation or applicability of the policy will be included in minor version updates denoted by a sequential number increase behind the primary version number. Such changes would result in a version number such as 2.1, 2.2, etc.

2.2 Policy Change Control Board

Policy review and changes for the USVI Public and Affordable Housing Development Program (Program) are considered through a change control process. When policy clarifications, additions, or deletions are needed to more precisely define the rules by which the Program will operate, Program staff will submit a Policy Change Request Form or a Request for Decision Form for internal review by the Policy Change Control Board (PCCB). Within the PCCB, two members will separately perform a review to verify that all relevant information and any supporting documentation are included in the request. Upon PCCB concurrence by these two members that the request raises a policy issue, rather than a process issue, the Policy Change Request Form or Request for Decision is forwarded to the Policy Change Control Board for consideration. The requests are compiled and brought before the entire PCCB for a final policy change determination.

The PCCB is composed of the Special Council for Disaster Recovery, the Senior Policy Manager, Senior Housing Manager, Public and Affordable Housing Program Manager and at least one Subject Matter Expert, and other program staff members representing Program leadership as needed.

The PCCB meets bi-weekly, as needed, to consider all pending requests but may meet as frequently as necessary to consider critical policy decisions. The schedule for PCCB meetings is expected to move to a lower frequency as the Program matures.

2.3 Acronyms

ACOP	Admissions and Continued Occupancy Policy
AMI	Area Median Income
CDBG	Community Development Block Grant
CDBG-DR	Community Development Block Grant Disaster Recovery
CFR	Code of Federal Regulations
CPD	Community Planning and Development
DBRA	Davis-Bacon and the Related Acts
DOB	Duplication of Benefits
DOL	Department of Labor
ECR	Estimated Cost or Repair
FEMA	Federal Emergency Management Agency
HCDA	Housing and Community Development Act
HCV	Housing Choice Vouchers
HQS	Housing Quality Standards
HUD	Housing and Urban Development
IMM	Individual Mitigation Measures
LLC	Limited Liability Corporation
LIHTC	Low Income Housing Tax Credits
LMA	Low- and Moderate-Income Area
LMH	Low- and Moderate-Income Housing
LMI	Low- and Moderate Income
LMJ	Low- and Moderate Income Jobs
MBE	Minority-owned Business Enterprise

MWBE	Minority- and Women-owned Business Enterprises
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
OMB	Office of Management and Budget
PCCB	Policy Change Control Board
PII	Personally Identifiable Information
RFI	Request for Information
RFP	Request for Proposals
RFQ	Request for Qualifications
SFHA	Special Flood Hazard Area
UN	Urgent Need
URA	Uniform Relocation Act
USC	United States Code
USVI	United States Virgin Islands
WBE	Women-owned Business Enterprise
VIHA	Virgin Islands Housing Authority
VIHFA	Virgin Islands Housing Finance Authority

2.4 Definitions

Affordable rent: Rental housing costs, including utilities, that is no more than 30 percent of a low- to moderate income household's gross (pre-tax) income.

Affordable unit: A housing unit in which the total rental expenses (including utilities) does not exceed 30 percent of a low- to moderate- income household's (pre-tax) income.

Affordability Period: The minimum period of time the units will be required to remain "affordable" for low- and moderate-income households, based on the amount of CDBG-DR

assistance, the activity (new construction or rehabilitation), and the number of housing units in the project. The Affordability Period restrictions will be enforced through recorded deed restrictions, covenants, or other similar mechanisms.

Area Median Income (AMI): Calculated annual income limits based on HUD-estimated median family income with adjustments based on family size used for demonstrating LMI beneficiaries in the program. This calculation may also be referred to as Area Median Family Income (AMFI) in other program documents.

Beneficiary: The recipient deriving advantage from CDBG-DR funding. This includes household members of units created or rehabilitated with CDBG-DR funding, or developers of housing projects that include CDBG-DR funding, since developers are considered "end users" of the funding.

Builder/Contractor: (Used interchangeably) A person who contracts to construct or repair houses and or supervises building operations associated with projects involving the development or rehabilitation of residential housing units, including mixed-use projects.

Choice Limiting Action: The commitment of CDBG-DR funds through Acquisition (which includes executing a Purchase Agreement or Sales Contract), **and/or** <u>any</u> physical actions a developer, contractor or any other entity (including the seller) takes on a property prior to the issuance of an Authority to Use Grant Funds by HUD or the VIHFA Certifying Officer.

Common Area Under Roof: The total area under the common roof that is primarily interior, conditioned space, and for single-story homes is equal to the footprint of the house. The term is also synonymous with the eligible area. Exterior spaces, such as detached porches and garages, are not considered eligible areas.

Cost Reasonableness Requirements: The Cost Principles established in 2 CFR Part 200, Subpart E, to determine costs are necessary, reasonable, allowable and allocable to the project.

Damage Assessment: A report resulting from an inspection of the housing unit to document damage from the event. The assessment, conducted by a certified or licensed inspector, is required to specifically and clearly document storm-related property damage via photographic evidence and detailed narratives. Damage assessments must include final cost of repair estimates according to local code, an assessment of cost-effectiveness of each recommended activity (reconstruction or rehabilitation), mold remediation and assistance needed to bring the home up to code at completion.

Davis-Bacon Act of 1931 (40 USC Part 3141 et seq.) and Related Acts: A group of approximately 60 federal statutes that requires that each contract over $2,000 for the construction or repair of federally funded projects to contain a clause setting forth the minimum wages to be paid to various classes of laborers and mechanics employed under the contract. Under the provisions of the Act, Contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character. The Davis-Bacon Act directs the Secretary of Labor to determine

such local prevailing wage rates. If a construction project is funded or assisted under more than one federal statute, the Davis-Bacon prevailing wage provision may apply to the whole project if any of the applicable statutes requires payment of Davis-Bacon wage rates. This applies to the rehabilitation and reconstruction of residential property if not less than 8 units.[1]

Demolition: The clearance and proper disposal of dilapidated building and improvements debris.

Developers: Private individuals and entities, including profit making and nonprofit organizations, which acquire properties to construct or rehabilitation, for the creation of residential units, through either rental or resale purposes.

Development Partners: Any entity involved in the reconstruction or rehabilitation of affordable housing units, including subrecipient departments or agencies, for-profit or non-profit organizations, construction contractors or other entities or individuals hired to carry-out any actions on a CDBG-DR funded housing project.

Duplication of Benefits: The Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act) prohibits any person, business concern, or other entity from receiving financial assistance from CDBG-DR funding with respect to any part of a loss resulting from a major disaster as to which he/she has already received financial assistance under any other program or from insurance or any other source. A Duplication of Benefit is an amount determined by the Program that may result in the reduction of an award value.

Environmental Review: The process of reviewing a project and its potential environmental impacts to determine whether it meets federal and territorial environmental standards. The environmental review process is required for all HUD-assisted projects to ensure that the proposed project does not negatively impact the surrounding environment and that the property site itself will not have an adverse environmental or health effect on end users. Every project's impact must be examined (the extent of the examination varies due to the actions that will be undertaken); every project must be in compliance with the National Environmental Policy Act (NEPA) and other applicable Territorial and federal environmental laws.

FEMA: The Federal Emergency Management Agency, located within the U. S. Department of Homeland Security, is responsible for coordinating the federal government's response to natural and manmade disasters.

FEMA-Designated High-Risk Area: Areas designated by FEMA as vulnerable to significant wind and/or storm surge damage and areas located in the 100-year flood zones. These areas will be identified during the environmental review process for each participating jurisdiction.

Flood Hazard Area: Areas designated by FEMA as having risk of flooding.

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[1] https://www.hudexchange.infor/resources/documents/Housing-and-Community-Development-Act-1974.pdf

Flood Insurance: The Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) requires that projects receiving federal assistance and located in an area identified by FEMA as being within a Special Flood Hazard Areas (SFHA) be covered by flood insurance under the National Flood Insurance Program (NFIP). In order to be able to purchase flood insurance, the community must be participating in the NFIP. If the community is not participating in the NFIP, federal assistance cannot be used in those areas.

Floodplain: FEMA designates floodplains as geographic zones subject to varying levels of flood risk. Each zone reflects the severity or type of potential flooding in the area.

- "100-year floodplain" – the geographical area defined by FEMA as having one percent chance of being inundated by a flooding event in any given year.
- "500-year floodplain" – the geographical area defined by FEMA as having a 0.2 percent change of being inundated by a flooding event in any given year.

Household: A household is defined as all persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of an individual, a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements. For housing activities, the test of meeting the LMI National Objective is based on the LMI of the household.

Housing Choice Voucher (HCV): The housing choice voucher program is the federal government's major program for assisting very low-income families, the elderly, and the disabled to afford decent, safe, and sanitary housing in the private market. In HCV programs, a housing subsidy is paid to the landlord directly by the Public Housing Authorities on behalf of the participating family.

Housing Quality Standards (HQS): Defines "standard housing" and establishes the minimum quality criteria necessary for the health and safety of households occupying the program rental housing units.

Individual Mitigation Measures (IMM): Activities designed to mitigate and/or reduce risk beyond the pre-disaster condition of a housing unit when the activities are above and beyond federal, Territory, or local units, and the payment of flood insurance are not IMM activities. Examples of IMM activities include elevation above the base flood elevation level, or the addition of storm shutters, disaster proof windows, roof straps, etc., and as long as those improvements are not required to comply with local code and did not exist on the housing unit prior to the disaster damage.

Low- and Moderate-Income (LMI) National Objective: Activities which benefit households whose total annual gross income does not exceed 80% of Area Median Income (AMI), adjusted for family size.

Low- and Moderate-Income Housing (LMH): A sub-set of the LMI National Objective identified as having a low- to moderate-income "housing" benefit, which is used when the eligible activity involves the creation or rehabilitation of residential housing units.

Major/Severe Damages: $8,000 or more of FEMA inspected real property damage or 1 foot or more of flood water on the first floor.

Mitigation: Improvements made to reduce the possibility of property damage, personal and commercial hardship, as well as long lasting monetary burdens. For example, creating a flood mitigation program such as an acquisition of at-risk flood-prone property/housing, and elevation of housing in high-risk floodplains are two visible and effective mitigation projects that can be taken to make residents and communities safe in the face of natural disasters.

Not Suitable for Rehabilitation: The VIHFA defines properties as "not suitable for rehabilitation" for the Public and Affordable Housing Development Program when:

- Structures are considered "beyond rehabilitation," do not meet the Program's rehabilitation standards, and/or federal or Territory code requirements, and shall be deemed not suitable for rehabilitation, as determined by the Program and consistent with Program guidelines.
- Residential properties have experienced repetitive losses under FEMA's National Flood Insurance Program (NIFP).
- Residential properties that are in FEMA-designated flood hazard areas, and the owner previously received Federal Assistance (personal, commercial, or residential) for the subject property and failed to obtain and maintain flood insurance for the property.

Personally Identifiable Information (PII): Defined in OMB M-07-16 as "...information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc."

Project Based Subsidy: CDBG-DR assistance to a public housing complex, in which low- to moderate-income households may receive assistance only if they agree to live at the particular public housing project.

Rehabilitation: Repair or reconstruction necessary for the restoration of storm-damaged housing units in the impacted areas to applicable construction codes and standards.

Section 3: Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. CDBG-DR recipients must, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods.

Special Needs and Vulnerable Populations: Special needs individuals are any persons with specific needs, including persons with disabilities; vulnerable populations are seniors, special needs individuals, including those with disabilities, and the homeless.

Subrogation Agreement: An agreement executed by the Program beneficiary agreeing to repay any duplicative assistance if the beneficiary later receives other assistance for the same purpose as disaster recovery funds already received.

Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would be equal to or exceed 50 percent of the market value of the structure before the damage occurred (44 CFR 59.1)

Surplus Cash: For the fiscal year period ending prior to the annual installment date, the sum of gross rent revenues (less rental taxes and tenant security deposits) and other income received from the operations of the project including amounts withheld from security deposits returned to tenants, less (a) annual accrued debt service for approved permanent senior loan(s); (b) actual operating expenses (including but not limited to utilities, supplies, repair and maintenance costs, property taxes, property management fees, insurance escrows and reserves and amounts deposited in any replacement reserve account) and excluding allowed or allowable depreciation and amortization, and (c) payments of an asset management fee pursuant to an Asset Management Services Agreement as required in a Low Income Housing Tax Credit (LIHTC) project. Specifically excluded expenses include any payments or disbursement to the project owner and/or borrower of funds, tax credit adjustors, depreciation, amortization, payments pursuant to developer guarantees or any payments on deferred developer fees. Surplus cash will be calculated based on an audited annual cash flow analysis report for th fiscal year period ending prior to the annual installment date.

Uniform Relocation Assistance: The Uniform Relocation Assistance and Real Property Acquisitions Polices Act of 1970, as amended (Title 49 CFR Part 24) (42 U.S.C. 4601 et seq.) (URA): Applies to all acquisitions of real property or displacements of persons resulting from federal or federally assisted program projects. URA's objective is to provide uniform, fair, and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects. For the purposes of these guidelines, URA mostly applies to residential displacements in involuntary (49 CFR Subpart B) and acquisition or multifamily damaged/occupied activities that require the relocation of tenants.

Urgent Need (UN) National Objective: An urgent need that exists because conditions pose serious and immediate threat to the health or welfare of the community; the existing conditions are recent or recently became urgent; and the subrecipient cannot finance the activities on its own because other funding sources are not available. Subrecipients or the Territory must document how each program and/or activity funded der this category responds to a disaster-related impact. See 24 CFR 570.208(c).

Virgin Islands Housing Authority (VIHA): The VIHA is a Public Housing Authority (PHA) responsible for planning, financing, constructing and maintaining Public Housing developments

in the Territory. VIHA will be a subsubrecipient for the Public and Affordable Housing Development Program.

Virgin Islands Housing Finance Authority (VIHFA): VIHFA is the Grantee for HUD's Community Development Block Grant-Disaster Recovery (CDBG-DR) funding. VIHFA will retain day to day administrative management and oversight of CDBG-DR activities and will be responsible for establishing and maintaining financial accountability for CDBG-DR funds, compliance with CDBG-DR requirements and establishing and maintaining project files and records. VIHFA will also be a subrecipient within this program.

3.0 PROGRAM OVERVIEW

The Program seeks to redevelop and create new affordable rental housing stock including subsidized and mixed-income rental units. Eligible development activities include development of low-income and mixed-income housing units, infill construction of new housing units, and substantial rehabilitation of vacant or uninhabitable housing units within commercial mixed-use projects. These efforts will increase the supply of affordable housing available to low- and moderate-income households.

This program intends to enable the development of rental housing which prevents concentrations of poverty. VIHFA defines affordable rent as rental costs that do not exceed 30% of a renter's income. VIHFA uses the HUD defined fair market rents as a basis to determine affordable rent caps.

This program proposes to address this through the rehabilitation and development of affordable and mixed-use rental housing, including acquisition, demolition, rehabilitation and new construction, as it pertains to the development of project-based subsided and affordable units for LMI individuals.

This policy manual focuses on the Public and Affordable Housing Development program. The Action Plan considered two alternative solutions for creating and maintaining affordable rental housing in the Territory – an Owner-Occupied Rental Infill program and a Redevelopment of Vacant Properties into Mixed-Use Developments program. The Owner-Occupied Rental Infill solution would offer homeowners (those with the necessary existing infrastructure in place) the opportunity to build rental units as infill development. The Rehabilitation of Vacant Properties into Mixed-use Developments solution would support neighborhood revitalization by partially subsidizing the cost of rehabilitating vacant properties into mixed-use residential and commercial developments (of up to 4 rental units). Further information about the Owner-Occupied Rental Infill and/or Rehabilitation of Vacant Properties into Mixed-use Developments programs may be found in the Virgin Islands Disaster Recovery Action Plan (https://www.vihfa.gov/disaster-recovery/action-plan), and program policies and procedures will be released if additional funding becomes available.

3.1 Public and Affordable Housing Development

The Public and Affordable and Housing Development Program provides financing assistance for costs associated with the acquisition and new construction or substantial rehabilitation of larger affordable rental housing projects. The Program seeks to leverage other public and private affordable housing financing sources, including tax-exempt bonds, conventional private debt, federal and Territory Low-Income Housing Tax Credits, Historic Tax Credits, Territory housing capital funds, and other sources.

The Program supports the preservation of governmentally-assisted affordable housing developments, as well as the development of new affordable housing, to address the rental housing shortage and help revitalize hard hit communities.

Projects selected for assistance will primarily serve LMI residents, including special needs and other vulnerable populations. The Program may also assist mixed-income projects where the majority of units are reserved for occupancy by persons of LMI and for which developers are able to leverage other funding to support non-LMI units.

VIHA and VIHFA may, for their respective portfolios and at their sole discretion, change the properties to be redeveloped or add additional development sites to be developed by the Development Partner(s).

This Program will allow the acquisition, demolition, rehabilitation, and new construction as it pertains to the development of affordable units for LMI individuals.

Assistance is provided for rehabilitation, reconstruction, and new construction of housing after accounting for all federal, local and/or private sources of disaster-related assistance, including but not limited to, property owners and/or flood insurance proceeds.

3.2 Total Allocation

Total Allocation: $72,000,000 ($32,000,000 in the initial allocation; $40,000,000 in the second).

3.3 Tie to the Storm

All projects must include a tie-back to the storms, and documentation supporting this tie-back must be maintained in the project files.

3.4 National Objective

All projects must result in affordable housing units primarily occupied by LMI persons; therefore, the CDBG-DR funding provided to the project will qualify under the Low- to Moderate-Income Housing, or LMH, National Objective.

The Program will obtain written commitments and source documentation from the Subrecipient to document that a minimum of 51% or more of the housing units will be rented to LMH tenants. The number of LMH tenants will be calculated as proportional to the CDBG-DR investment into the project. Tenant Income is verified at initial lease, and annually thereafter for all tenants of the LMH units, through the Affordability Period.

3.5 Eligible Activities

Eligible activities include the rehabilitation and new construction of affordable housing, and are described listed below:

- Acquisition of Real Property (HCDA Section 105(a)(1));
- Public Facilities and Improvements (HCDA Section 105(a)(2));
- Clearance, Rehabilitation, Reconstruction and Construction of Buildings (including Housing) (HCDA Section 105(a)(4));
- Public Services (HCDA Section 105(a)(8)).

Developers must meet program minimum property standards; and may exceed the minimum property standards, as long as project costs funded by the Program meet cost reasonableness requirements. Upgrades above minimum property standards must be paid for with private funds.

Program funds may be used for:

- Acquisition, site preparation, construction and related soft costs (including environmental health hazard mitigation costs) required for the new construction or rehabilitation of affordable housing developments. (Acquisition is not eligible as a stand-alone activity.) Site work may be an allowable construction cost to the extent it is necessary to render the residential units decent, safe, and sanitary. Site work includes grading and excavation, as well as installation of the septic and infiltration systems, utilities, and other ancillary residential structures and improvements.
- In projects combining residential and non-residential uses, Program funds may only be used for eligible costs attributable to the residential component of the project.
- Reimbursement of eligible repair/replacement costs, acquisition, capital costs and related soft costs (including environmental health hazard mitigation costs), associated with the new construction or rehabilitation of affordable housing developments related to the repair of disaster-impacted property.
- When practical and warranted, reimbursement for cost of mitigating future damage (including elevation when practicable and cost effective) for properties located within a 100-year floodplain.
- "Gap financing" for Low Income Housing Tax Credit projects to reduce debt service and increase long term viability.
- Assistance for cost-effective mitigation activities including but not limited to:
  - The replacement of disaster-impacted non-luxury residential appliances
  - Elevation of substantially damaged properties located within the 100-year floodplain.
    - If elevating, the structure must be elevated to at least 2 feet above the Base Flood Elevation or to a level dictated by the local building authority.
  - Elevation of electrical systems and components
  - Securing of fuel tanks

- *Use of flood resistant building materials below base flood elevation*
- Installation of flood vents
- Installation of backflow valves (only if structure is elevated)
- Installation of roof strapping (only if structure is elevated

3.6 Ineligible Activities

Activities are ineligible for CDBG funding if the activity:

- Does not respond to an identified Hurricane Irma or Maria disaster-related impact.
- Is restricted in the Public Laws appropriating the CDBG-DR funds (Public Laws 115-56 and 115-123) or in the Housing and Urban Development Block Grant Disaster Recovery Federal Register Notices (Docket numbers FR-6066-N-01, FR-6109-N-01 and FR-6136-N-01).
- Is a prohibited activity in the CDBG-DR authorizing Public Laws or Federal Register notice(s) for the CDBG-DR funding.
- Is ineligible according to CDBG Program requirements (and a waiver has not been granted).
- Fails to meet an appropriate national objective.

3.7 Estimated Start and End Dates

Reconstruction and/or rehabilitation will occur between 2019 through 2023, and/or as detailed in the CDBG-DR Action Plan and Amendments.

3.8 Geographic Area(s) Served

The geographic areas served will be within the Territory of the U.S. Virgin Islands.

3.9 Maximum Award

The maximum CDBG-DR award amount for a housing project is $10,000,000, and a per unit cap of up to $250,000 has been set. Circumstances where additional costs may be incurred will be reviewed against cost reasonableness requirements approved on a case-by-case basis. Awards will be in the form of either a loan or a grant; however, in some instances a loan will be the required structure for financing rental development. If this is the case, the terms of the loan may be forgivable.

To direct sufficient levels of assistance to those most in need, especially low- to moderate-income and minority households, a higher overall dollar cap amount may be applied to those properties that provide a significant number of units designated for Very Low Income (VLI) households (whose incomes do not exceed 30% AMI), special needs, and other vulnerable populations, or include Low Income Housing Tax Credits which do not allow households above 60% AMI.

Projects that combine other sources of financing (local, federal, private, etc.) will be evaluated to ensure that no more CDBG-DR funding than is necessary to ensure successful development of the affordable housing units. Documentation demonstrating that other available financing sources have been maximized, resulting in the lowest amount of CDBG-DR funding necessary to assure project feasibility.

To incentivize the development of this stock, the Territory will provide financing appropriate to the project. Multi-family rental development of 8 units or more will be required to adhere to Davis Bacon requirements. Assistance will be provided as one of the following structures:

Amortized Loans

- Requires repayment (annually).
- Interest rate will range from zero percent (0%) to rates that will typically be lower than market lending rates (interest rates will be determined by cash flow projections and will be negotiated with the implementing agency, either VIHFA or VIHA), plus allowable fees.
- A Deed of Trust will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

Deferred Payment Loans

- Loan terms can be from 10 – 20 years, or at the sale or transfer of the property.
- Interest rate will range from zero percent (0%) to rates that will typically be lower than market lending rates (interest rates will be determined by cash flow projections and will be negotiated with the implementing agency, either VIHFA or VIHA), plus allowable fees.
- A Deed of Trust will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

Forgivable Loans

- Loan forgiveness may occur at one point in time (at the end of the affordability) or forgiven incrementally over time.
- A Deed of Trust will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

Non-Interest-Bearing Loans

- Loan terms vary and will be negotiated with implementing agency (VIHFA or VIHA).
- Interest rate is zero percent (0%).
- The principal is paid back on a regular basis (annually), but no interest is charged.
- A Deed of Trust will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

Surplus Cash Loans – If full amortization is not feasible due to limited cash flow, funds shall be repaid from an agreed upon percentage split of surplus cash on an annual or bi-annual basis. Borrowers must provide an Annual Cash Flow Analysis Report that demonstrates the calculation and accrual of applicable surplus cash funds.

Grants

- Provided with no requirement or expectation for repayment.
- Most commonly used for projects with special needs populations.
- A Deed of Trust will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

3.10 Federal Labor Standards

Every CDBG-DR project with a construction contract, regardless if it is for construction or rehabilitation of **8 or more** CDBG-DR-assisted units is required to comply with all of the following federal labor standards: the Davis Bacon and Related Acts (DBRA), the Copeland "Anti-Kickback" Act (the Anti-Kickback Act), the Contract Work Hours and Safety Standards Act, as amended (CWHSSA), and the Fair Labor Standards Act of 1938, as amended (FLSA). The term "CDBG-DR Assisted Unit" means the housing units developed with the assistance of CDBG-DR funds, including non-construction related assistance such as land acquisition or down payment assistance.

The Davis-Bacon and Related Acts, published in Chapter 3, section 276(a) 7 et seq. of U.S.C. Title 40 ensures that mechanics and labors employed in construction work under federally-assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed. According to the Department of Labor (DOL) regulations, the term mechanics and laborers "includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial…" The term does not apply to workers whose duties are primarily administrative, executive or clerical, rather than manual.

Federal prevailing wages must be paid on CDBG-DR projects involving site development, construction, and rehabilitation where there are 8 or more CDGR-DR assisted units.

4.0 UNDERWRITING CRITERIA

Underwriting is the performance of due diligence evaluating the critical elements of a development or rehabilitation proposal and assesses any risk factors. The evaluation entails a multi-level review of key aspects of the decision-making process to determine the eligibility and viability of the proposed project to ensure that:

1. The submitted project is consistent with the CDBG-DR Action Plan goals.
2. The funding request is feasible.
3. There is a tie back to Hurricane Irma or Maria.
4. The developer has the experience and capacity to complete the proposed development.
5. The costs associated with the development portion of the proposal are necessary, reasonable, and financially feasible.
6. The projected operational costs are necessary and reasonable, and that the proposed development is sustainable for the duration of the Affordability Period.
7. The sources and uses of funds statement and lender commitments reflecting sufficient resources to complete the proposed development.
8. The total amount of government assistance is not more than is necessary to produce the project.

The underwriting review documentation will be maintained in the project files Project Scope and Budget, review memoranda, project review checklists and templates, and determination summaries.

4.1 Timing of Underwriting Reviews

VIHF or VIHFA, whichever is the implementing agency, will review a project's feasibility over the 15- or 20-year compliance period, based on the required Affordability Period (the Affordability Period for rehabilitation projects is a minimum of 15 years; new construction projects require a minimum of 20 years Affordability). These reviews will occur at different stages.

Non-LIHTC projects will be underwritten prior to commitment of CDBG-DR funds, and again at the time of permanent loan closing occurs.

For projects that include LIHTC commitments, VIHFA will conduct three reviews, as required by Section 42 of the Internal Revenue Code: 1) prior to making an award of credit, 2) at 10%

Certification, and 3) at Placed in Service. The following is a breakdown of how this provision will apply to each of the underwriting stages in the allocation process and what this provision will mean in practice:

- Initial Application/Prior to LIHTC Award – In order to receive an initial award of credit, the project must be financially feasible for the 15-year compliance period utilizing the underwriting standards as applied to the pro forma.
- 10% Certification – VIHFA will review the sources and uses of funds and the total financing planned for the project to ensure that the amount of credit being allocated to the project does not exceed the amount necessary for the project to be financially feasible during the entire initial 15-year compliance period. VIHFA will continue to monitor a project's income and expenses during this phase of the allocation process, but will not hold up the issuance of Carryover documentation because of this portion of the review.
- Placed in Service/Issuance of IRS Form 8609 (Low-Income Housing Credit Allocation form) – VIHFA will review the sources and uses of funds and the total financing planned for the project to ensure that the amount of credit being allocated to the project does not exceed the amount necessary for the project to be financially feasible for the 15-year compliance period. VIHFA will continue to monitor a project's income and expenses during this phase of the allocation process, but will not hold up the issuance of 8609s to a project because of this portion of the review.

Projects without project-based Section 8 assistance that are subject to federal subsidy layering requirements under §911 of the Housing and Community Development Act of 1992 will be reviewed by both by VIHFA and HUD. Additionally, projects with project-based housing choice vouchers must comply with the standards in the HUD Administrative Guidelines: Subsidy Layering Review for Proposed Section 8 Project-Based Voucher Housing Assistance Payments Contracts, as published in the Federal Register, July 9, 2010.

For projects relying upon project-based rental assistance for financial feasibility: if the project-based rental assistance ends due to events outside the owner's control, any rent and income restrictions on the property that the owner agreed to for points as part of a competitive funding round will revert to the 50% or 60% AMI level as selected by the owner.

4.2 Evaluation of Project Financing

For projects proposing private permanent debt financing, a letter of intent is required from each lender. The letter shall be on the official letterhead of the lender and shall be signed and dated by a duly authorized representative of the lender. The letter must clearly state the term of the permanent loan (must be at least fifteen (15) years), the manner in which the interest rate will be indexed and the current rate at the time of

the letter, the amortization period, any loan conversion, modification or late fees, and any prepayment penalties, anticipated security interest in the property and lien position. The interest rate must be fixed and no balloon payments may be due for the first fifteen years.

For projects proposing public permanent financing, binding commitments are required to be submitted by the application deadline. A binding commitment is defined as a letter, resolution or binding contract from a governmental entity – e.g., HUD, USDA, etc. The letter must clearly state the term of the permanent loan (must be at least fifteen (15) years), the manner in which the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property and lien position. The interest rate must be fixed and no balloon payments may be due for the first fifteen years after project completion. Where funds are being provided by a local governmental entity, the letter must specifically identify the source of the proposed funding (e.g. HOME, housing trust fund).

The applicant shall also provide a letter from a construction lender documenting the proposed loan amount, interest rate, term, and any applicable fees (e.g., origination, construction inspection, etc.)

Applications may only include one set of proposed funding sources; the Agency will not consider multiple financing scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The VIHFA may waive this limitation if the project otherwise demonstrates financial feasibility. Project cash flow may not be used as a source of funds.

Consistent with industry best practices, and for §42(m)(2) of the LIHTC Code, CDBG-DR awarded funding will be limited to providing for the financing gap necessary to make the transaction viable.

4.3 Evaluation of Project Development Costs

VIHFA has established minimum underwriting standards for evaluation of project development costs. Where required, VIHFA will also consider more stringent underwriting requirements imposed by other lenders, equity providers, or the credit enhancer. Requests for use of alternative standards other than those established by VIHFA must be supported by written explanation and appropriate documentation. The use of the VIHFA maximum cost limits or any alternate standards for determining reasonableness of the development costs of the proposed project is at the sole discretion of VIHFA.

The minimum project cost underwriting requirements apply to all projects; therefore, all applications should meet the underwriting standards listed below when submitted.

If VIHFA determines that the cost of the project as presented is not reasonable using VIHFA's cost standards or the alternative standards at the time of initial application review, the project will not be recommended for an allocation of LIHTC.

The following standards will be applied to specific cost items. Even if the specific line item is not being paid with LIHTC equity or VIHFA CDBG DR funds, any excessive cost, regardless of the source of financing, increases the gap and affects the public subsidy needed by a transaction. As a result, VIHFA reserves the right to require any applicant to provide a justification of any development cost line item.

4.4 Acquisition

In all cases and regardless of which proposed funding source will pay for the acquisition price, an appraisal will be used to assess the reasonableness of the acquisition price in the project budget. In most cases, independent professional appraisers under contract with VIHFA will perform the appraisal and the applicant will pay the costs of any required appraisals. However, VIHFA, in its sole discretion, may accept an appraisal that is required by another lender and prepared by an independent professional appraiser for that lender. For transactions involving acquisition costs, VIHFA may, as a condition of a reservation, and at its discretion, request an opinion from an independent CPA or tax attorney confirming that the planned acquisition conforms with §42(d)(2)(B) of the LIHTC Code (i.e. the Ten-Year Rule). The acquisition price is defined as the consideration offered for the transfer of title and legal ownership.

For purposes of this section, the acquisition price does not include: Reasonable and necessary soft costs related to the acquisition, such as legal expenses associated with zoning, title expenses, relocation costs, and engineering fees; or off-site improvements, such as extensions of infrastructure necessary to prepare the site for its intended use, provided that the absence of such improvements is clearly noted and accounted for within the appraisal's estimate of "as is" value.

For purposes of this section, an Arms-Length Transaction is one between parties made freely and independently of each other, and without a special relationship such as family relationship, other business relationship, or the existence of a controlling interest between the parties. In contrast, a Related Party Transaction includes one between parties where familial, business, controlling interests, or other close ties exist prior to the transaction.

In general, the acquisition price must meet the following requirements:

- In the case of an Arms-Length Transaction, the acquisition price must be less than or equal to the "as is" appraised value of the property.

- In the case of a transaction involving a change of use, the acquisition price must not exceed the lesser of the "as is" appraised value or the "as completed" appraised value based on the project's projected end use. In the case of a Related Party Transaction where the property was acquired less than two years before the application date, the acquisition price must not exceed the lesser of the "as is" appraised value or the applicant's original acquisition price plus carrying costs acceptable to VIHFA.

- In the case of a Related Party Transaction where the property was acquired two or more years before the application date, the acquisition price does not exceed the "as is" appraised value of the property.

- Any portion of the acquisition price in excess of the "as is" value may not be financed or reimbursed by CDBG DR or other project sources, may not be used in calculating the developer fee, and may not be reimbursed from cost savings at final closing. The excess must be paid with non-project sources such as proceeds of the developer fee.

Exceptions to the acquisition price standards may be submitted to VIHFA on a case by case basis. Waivers to the acquisition price limitations will be in VIHFA's sole discretion, and VIHFA expects the approval of such excess acquisition prices to be extremely limited.

With prior approval, VIHFA will allow real estate taxes and other carrying costs associated with owning the site during the period after acquisition and application to be counted towards the acquisition of the property for the purpose of meeting the 10% expenditure tests associated with awards of LIHTC.

4.5 Construction Hard Costs

VIHFA must be given the opportunity to review the development plans and to comment on the project design.

Construction hard costs are the actual cost of constructing or rehabilitating housing. These costs include the following:

(1) For new construction projects, costs to meet the new construction standards set forth by VIHFA;

(2) For rehabilitation, costs to meet the property standards for rehabilitation standards set forth by VIHFA;

(3) For both new construction and rehabilitation projects, costs:

(i) To demolish existing structures;

(ii) To make utility connections including off-site connections from the property line to the adjacent street; and

(iii) To make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.

(4) For both new construction and rehabilitation of multifamily rental housing projects, costs to construct or rehabilitate laundry and community facilities that are located within the same building as the housing and which are for the use of the project residents and their guests.

(5) Costs to make utility connections or to make improvements to the project site may be eligible in connection with acquisition of standard housing.

4.5.1 Construction Hard Cost Contingency

Construction hard cost contingencies will be limited to the following:

- All new construction projects shall have a construction hard cost contingency line item of **no more than five percent (5%)** of total construction hard costs, including general requirements, builder profit and overhead.

- Rehabilitation and adaptive reuse projects may include a hard cost contingency line item **not to exceed ten percent (10%)** of total hard costs with the proper justification.

  Rehabilitation and adaptive reuse project applicants with a proposed contingency **in excess of eight (8%) must request for a waiver**; the waiver request shall include a detailed explanation of the reasons for the increased contingency. VIHFA will evaluate waiver requests for reasonableness on a case-by-case basis to determine compliance with the threshold requirements. Waiver requests must include documentation supporting cost reasonableness of items leading to the increased contingency needs.

4.6 Professional Fees

Subject to the further definitions and restrictions below, the following limits on professional fees will apply to all projects:

Summary of Professional Fee Limitations		
	Large Projects (> 40 units)	Small Projects (< 40 units)
Builder's Fees—Aggregate limit % of net construction costs	New construction: 16% Rehabilitation: 17%	19%
Builder's Profit	6-8%	
Builder's Overhead	2-3%	
General Requirements	6-8%	
Civil Engineering % of net construction costs	5%	7%
Architect—Design % of construction contract	3%-6%	3%-7%
Architect—Administration % of construction contract	2%-4%	2%-5%

Developer Fee % of aggregate basis	10-15% as further defined below; Absolute maximum of $2.0M

4.7 Builder's Fees

Builder's fees, including profit, overhead, and general conditions, are subject to both aggregate and individual limits. In all cases, these limitations are described as a percentage of Net Construction Costs. Net Construction Costs are equal to the construction contract amount less any allowances for Builder's Profit and Overhead.

Individual Limitations – Builder's Profit may not be less than 6% or more than 8% of Net Construction Costs; Builder's Overhead may not be less than 2% or more than 3% of Net Construction Costs; and General Requirements may not be less than 6% or more than 8% of Net Construction Costs.

Aggregate Limitations – For new construction projects of more than forty (40) units, the combined total of Builders Profit, Overhead, and General Requirements cannot exceed 14%; for rehabilitation projects (including adaptive reuse of existing structures being converted to residential use) of more than forty (40) units, the combined total of Builders Profit, Overhead, and General Requirements cannot exceed 15%; and for new construction or rehabilitation projects of forty (40) units or less, the combined total of Builders Profit, Overhead, and General Requirements cannot exceed 19%.

Builder's profit and overhead shall be limited to ten percent (10%) (= 8% profit, 2% overhead) of total hard costs, including general requirements.

Where an identity of interest exists between the owner and builder, builder's general requirements shall be limited to six percent (6%) of hard costs. Builder's profit and overhead shall be limited to eight percent (8%) (= 6% profit and 2% overhead).

4.8 Engineering Fees

The allowable civil engineer's fee for projects of more than forty (40) units may not exceed 5% of Net Construction Costs. For projects of forty (40) units or less, the civil engineering fee may not exceed 7% of Net Construction Costs.

4.9 Architects' Fees

For projects of more than forty (40) units, the allowable architect's fee for project design may range from 3% to 6% of the construction contract amount; for architectural administration, the allowable fee may range from 2% to 4%. For projects of forty (40) units or less, the architect's fee may not exceed 7% for design and 5% for administration. Notwithstanding the amount calculated above, in no case shall the architects' fees, including design and inspection fees, exceed four percent (4%) of the total hard costs plus general requirements, overhead, profit and construction contingency. This amount does not include engineering costs.

4.10 Developer Fee

The Developer's Fee is inclusive of all fees paid to the Developer, processing agents, and development consultants, and includes deferred fee. The range of allowable developer's fees is from 5% to 10% of total development costs as approved by VIHFA based on the table below. For purposes of this calculation, total development costs include the following: expenses related to the actual construction or rehabilitation of the project; fees related to the construction or rehabilitation such as architecture, engineering and legal expenses; financing fees and charges such as construction interest, taxes, insurance and lender fees; and acquisition related costs which may include master planning costs. Total development costs do not include the following: hard or soft cost contingencies; syndication related costs; funded guarantee and reserve accounts that are required by lenders or investors; and the Developer's Fee.

The Developer's Fee is further limited on a percentage basis as follows:

Developer's Fee Limits		
	Fee on Development Costs	Fee on Acquisition Costs
First $13 million	10%	5%
Amount in excess of $13 million	7.5%	5%

(b) Notwithstanding the amount calculated above, the developer fee for any project shall be a maximum of $2,000,000 (the maximum for projects with tax-exempt bonds is $2,500,000).

4.10.1 <u>Deferred Developer Fees</u>

Developer fees can be deferred to cover a gap in funding sources as long as:

(a) the entire amount will be paid within fifteen years and meets the standards required by the IRS to stay in basis,

(b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and

(c) payment projections do not negatively impact the operation of the project.

VIHFA will determine whether each of these criteria has been met.

Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long-term applicable federal fund rate used by the Internal Revenue Service as a point of comparison versus the interest on loans between parties.

4.11 Consulting Fees

The total amount of any consulting fees and developer fees shall be no more than the maximum developer fee allowed to the project as outlined above.

Applicants may request waivers to the professional fee limitations described below for small projects (those with up to forty (40) units) and/or projects that require specialized consultants or services. Waivers must be requested in writing and will be granted at the sole discretion of VIHFA and upon a determination that the increased costs are necessary and reasonable given unique features of the proposed project.

4.12 Soft Cost Contingency

The application may include up to the greater of $500 per unit or $50,000 in additional contingency to cover overruns in any project development cost, if applicant provides documentation supporting cost reasonableness requirements.

4.13 Syndication Costs

For projects seeking LIHTC awards, the projected net equity from syndication should be based on current market conditions. Equity should be calculated net of any account syndication and partnership fees included in the project budget. Bridge loan interest typically incurred by the syndicator to enable an up-front payment of equity may not be charged to the project directly; it may be reflected in the net payment of equity. Equity is based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

"Net Project Equity" shall mean the total sale or refinancing proceeds resulting from a transfer event (transfer of ownership; sale or assignment of interest in ownership; refinancing; or transfer of any partners) less the payment of all obligations and liabilities of the owner, including any secured and unsecured related and third-party debt thereof (including, without limitation, repayment of deferred developer fees and repayment of any advances made by a partner to fund operating and/or development deficits).

VIHFA reserves the right to require an applicant to submit documentation from equity providers substantiating the reasonableness of the applicant's equity pricing assumptions. VIHFA also reserves the right to conduct a survey of tax credit equity investors to verify the appropriateness of the applicant's pricing assumptions and, after analyzing the LIHTC market, to adjust the equity rate for purposes of determining the appropriate award of credits.

The tax credit rates used for underwriting will be those in effect for the month of the application deadline.

4.14 Assessment of Long-Term Feasibility/Viability

VIHFA has established minimum underwriting standards for operating expenses, vacancy rates, increases in operating costs and expenses, project income, the debt service coverage ratio, operating reserves, and replacement reserves to be used when determining the feasibility of a project over the compliance period. Requests for use of alternative standards other than those established by VIHFA must be supported by written explanation and appropriate documentation. The use of the VIHFA minimum standards or any alternative standards for determining financial feasibility of a project is at the sole discretion of VIHFA. If VIHFA determines that the project is not financially feasible using VIHFA's minimum standards or the alternative standards at the time of initial application review, the project will not be eligible for an allocation of CDBG DR.

Where required, VIHFA will also consider more stringent underwriting requirements imposed by other lenders, equity providers, or the credit enhancer.

4.15 Maximum Rents

Rents for units designated as affordable may not exceed the limits of the most restrictive funding source. Applications that anticipate the use of project-based rental assistance must show a breakdown of the actual rent to be paid by tenants and the estimated rental subsidy that will be received by the project owner. In all cases, the appraisal must demonstrate the proposed rents are achievable. Rents must allow for a reasonable affordability window so that tenants below the maximum income for targeted units are not paying a disproportionate percentage of their income for rent (i.e. in excess of 30% for general occupancy projects or 35% for elderly projects).For purposes of the CDBG DR, maximum unit rents (inclusive of tenant paid utilities) may not exceed 30% of the imputed gross income limit applicable to each unit based on an assumption of 1.5 persons per bedroom for units with one or more bedrooms and 1.0 persons per bedroom for efficiency or Single Room Occupancy (SRO) units. For example, the maximum rent calculation for a two-bedroom unit targeted to households at 40% the area median income would be calculated by dividing 40% of the area median income for a three (3) person household by twelve (12) and multiplying by 30%. For units restricted to elderly households, the imputed household size may not exceed three persons regardless of the number of bedrooms. For example, in a non-age restricted unit, the rent for a three-bedroom unit would be based on a 4.5 person household, but if designated as an elderly unit the maximum

rent must be calculated based on a household of three people. Area Median Income charts, including adjustments for household size, are published annually by HUD and posted by VIHFA. The current charts can be accessed on VIHFA's website at: http://www.vihfa.gov.

In evaluating the long-term viability of the project, VIHFA requires that rents and other revenue from the project be projected to increase by no more than 2% annually.

4.16 Vacancy Rate

All projects will be underwritten with a minimum vacancy rate of 5%. VIHFA reserves the right to reject as infeasible any project that requires a vacancy rate of 10% or more.

4.17 Operating Expenses

Annual operating expenses, including all real estate taxes but excluding replacement reserve deposits and debt service, should be no less than $4,000 per unit per year and no more than $6,500 per unit per year. Waivers may be requested for small projects of up to forty (40) units and for projects with master-metered (i.e. project paid) utilities.

For projects with RD loans, the operating expenses will be based upon the current RD approved operating budget.

In evaluating the long term viability of the project, VIHFA requires that operating expenses (including property taxes) must be projected to increase by not less than 3% annually.

The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.

4.18 Reserves

4.18.1 Rent-up Reserves

All project budgets must include provision for deposit of a reasonable amount per unit for rent-up reserve. The amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than $300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the PDC description. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency ninety (90) days prior to the expected placed in-service date. All funds remaining

in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

Tax-exempt bond projects may apply for a waiver from this requirement. For those projects receiving loan funds from the U.S. Department of Agriculture (USDA) Rural Development (RD), the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

4.18.2 Replacement Reserves

All project budgets must include provision for deposit of a certain minimum amount per unit per year in reserves for replacement (RFR) deposits. All new construction projects must budget replacement reserves of a minimum of $350 per unit per year. Rehabilitation and adaptive reuse projects must budget replacement reserves of $450 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment. For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD.

VIHFA reserves the right, in its sole discretion, to require a capital needs assessment (CNA) prepared by a qualified third party. Replacement reserve deposits must be adequate to support the project as determined by the CNA. Additionally, VIHFA reserves the right, in its sole discretion, to require a new CNA every five to ten years and adjust RFR deposits based upon such new assessment, if necessary.

4.18.3 Operating Reserves

As part of the development budget, each project (except those receiving loan funds from RD) must establish an operating reserve equal to the greater of a) $1,500 per unit or six months of underwritten operating expenses, debt service payments, and required deposits to reserves. At a minimum, capitalized operating reserves must remain in place at this level until the project has achieved a minimum 1.15 debt service coverage ratio, economic break-even operations for one complete fiscal year as confirmed by the project's annual audit, and reached and sustained 90% occupancy for twelve (12) consecutive months. In the discretion of VIHFA, the operating reserve may be reduced over the next three (3) years to not less than three months of underwritten operating expenses, debt service payments, and required deposits to reserves provided the project continues to achieve economic break-even operations and sustains 90% occupancy. Upon release, operating reserves generally may be used to pay any outstanding deferred developer's fee, reduce any State loan, fund other reserves, fund project betterments, or otherwise be applied as approved by VIHFA. The operating reserve must be maintained for the duration of the extended use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made.

4.19 Debt Service Coverage Ratio

All projects must be underwritten to a minimum debt service coverage ratio (DSCR) of 1.15 – 1.20 in the first year of stabilized operations. The DSCR will be calculated including all non-discretionary debt service payments. Project must reflect a 1.10 Debt Coverage Ratio (DCR) for the period of debt service or affordability period (rehabilitation requires 15 years; reconstruction requires 20 years), whichever is longer.

4.20 Investor Services Fees

Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.

5.0 PROGRAM ADMINISTRATION

VIHFA will administer and oversee all activities and expenditures in connection with the CDBG-DR funds. VIHFA employees, along with contractors procured to aid VIHFA staff, will ensure that the activities undertaken meet all program requirements, including: the disaster threshold, eligibility, national objective, compliance, fair housing, labor standards, nondiscrimination, environmental regulations, and procurement regulations.

VIHFA will monitor the activities in accordance with HUD, CDBG-DR and VIHFA monitoring and compliance requirements so that each activity funded will meet the disaster threshold and one of HUD's national objectives, with emphasis on eligible activities achieving the rehabilitation or reconstruction of affordable housing units primarily benefiting low- and moderate-income persons.

5.1 Eligible Implementation Entities

VIHFA, as the HUD CDBG-DR grantee, is responsible to administer, monitor and perform compliance oversight of the overall CDBG-DR program. Per the waiver provided in Federal Register Docket No. FR-6066-N-01, VIHFA may also carry out eligible activities, and will undertake the development of affordable housing units, both projects within the VIHFA portfolio and projects being developed by private or non-profit developers. VIHA, as a subrecipient partner, will also undertake the development of affordable housing units within VIHA's portfolio or projects through private and non-profit developers.

VIHFA, VIHA and/or other future potential subrecipients, will manage the preparation and publication of notices of funding availability and of award projects pursuant to appropriate selection or procurement process. VIHFA, when carrying out development activities, and VIHA as a Subrecipient, will be involved in all aspects of each specific project, including preparation of documents, discussion of potential and selected investors, meetings with contractors, consultants and stakeholders and selection of key team members. VIHFA will have approval rights and program compliance oversight responsibilities for all CDB-DR projects.

Additionally, VIHA and/or future subrecipients are required to maintain appropriate and adequate documentation for all CDBG-DR expenditures and projects.

5.2 Virgin Islands Housing Finance Authority (VIHFA) Role as Grantee

VIHFA, as the HUD CDBG-DR grantee, will retain administrative management and compliance oversight responsibilities of all CDBG-DR activities and will establish and maintain financial accountability for CDBG-DR funds, compliance with CDBG-DR requirements and establish and maintain project files and records. VIHFA will also provide technical assistance to developers when applicable, conduct eligibility and feasibility reviews, and conduct project underwriting.

VIHFA is responsible for ensuring compliance with CDBG-DR statutory, regulatory, and programmatic requirements including but not limited to the following:

- Compliance with National Objectives and eligible activates
- Duplication of Benefits (DOB) review
- Davis-Bacon compliance and monitoring
- National Environmental Protection Act (NEPA) compliance
- HUD Section 3 compliance
- Uniform Relocation Act Compliance
- Federal Fair Housing / EEO
- Americans with Disabilities (ADA) compliance, as applicable and Section 504 compliance

5.3 Program Marketing

VIHFA CDBG-DR Division will fund VIFHA and VIFA's projects after reviewing for eligibility and feasibility. If additional funding becomes available, a Notice of Funding Availability would be published in local printed media, VIHA and VIHFA's websites and other online publication sites.

5.4 Eligibility Criteria

For the existing allocation, VIHFA and VIHA will be considered qualified developers. If funding becomes available as noted in the Action Plan or Amendments, other qualified developers may be for-profit or not-for-profit housing developers applying to rehabilitate, reconstruct or develop new rental housing. The application, review, award, implementation and compliance processes will be released upon notification of funding availability. Developers listed on Territory or federal debarment lists are ineligible for assistance. Developers must demonstrate capacity to undertake the project as verified through underwriting. Projects must demonstrate viability for the entire duration of the Affordability Period.

To be eligible for assistance, projects must:

- Be located in the USVI.
- Demonstrate a tangible connection to addressing a recovery need arising from the disaster. Evidence such as FEMA report on damage to housing stock in the project's market area, indications that the storm exacerbated a shortage of housing in the area served by the project, local government statements that the project meets a housing or economic recovery need arising from the storm and similar documentation demonstrate tie-back to the storm(s).
- Provide housing primarily for Low- and Moderate-Income persons.

5.5 Affordability Period

Per Federal Register 6109-N-01, multi-family rental projects with eight or more units that receive funds for rehabilitation or reconstruction will be required to adhere to an affordability period of 15 years, while new construction of multi-family rental projects with five or more units will be required to adhere to an affordability period of 20 years.

Affordability Period restrictions will be enforced through recorded deed restrictions, covenants, or other similar mechanisms. Other financing sources may impose long-term affordability restrictions, enforceable by Regulatory Agreement or similar binding agreement. The CDBG-DR Affordability Period may run concurrent to other funding source affordability periods. The Program retains responsibility for monitoring compliance with occupancy requirement throughout the regulatory period.

5.6 Relocation

A CDBG-DR assisted project that includes acquisition of real property must include the costs of relocation in the project scope and budget. See the requirements in section 3.18.4 Cross-Cutting Federal Requirements Tenant Protection Under Uniform Relocation Act (URA) below.

5.7 Project Selection

Both VIHFA and VIHA will act as developers. VIHFA CDBG-DR Division will work with both VIHA and VIHFA to develop Project Scope and Budget Proposals for each of entities' projects. VIHFA will review the projects according to Program priorities and criteria for funding. Eligible and feasible projects submitted through this process are reviewed by VIHFA CDBG-DR Division for available funding.

5.8 Prioritization of Projects

Increasing housing opportunities for the most vulnerable populations (seniors, special needs individuals, and homeless persons) through the development of new subsidized housing and the redevelopment of Housing Authority properties damaged by the hurricanes is the priority of the Program.

Due to limited funding, VIHFA CDBG-DR Division will prioritize VIHFA and VIHA's projects, including rehabilitation and new construction, which will be reviewed based on the Initial Scope and Capacity Assessment submissions.

5.9 Project Selection

Both VIHFA and VIHA will act as developers. VIHFA CDBG-DR Division staff will work with VIHA to develop Project Scope and Budget Proposals for each project VIHA is developing; VIHFA staff will develop Project Scope and Budget Proposals for the projects VIHFA is developing. VIHFA will review the projects according to Program priorities and criteria for funding. Eligible and feasible projects submitted through this process are reviewed by VIHFA CDBG-DR Division staff for available funding. Should there be additional funding for additional phases, as described in the Action Plan or Amendments, the priorities may be expanded.

Projects will be selected from the VIHFA and VIHA project lists and no competitive criteria is required. Should there be additional funding available, competitive criteria for future phases will be developed based on the Territory's needs at the time.

5.10 Technical Assistance and Review of Project Scope and Budget

VIHA and all development partners will be provided Technical Assistance throughout the implementation process, including through project initial rent-up. Technical Assistance sessions may include:

- Review of the project description, recovery rationale, budget including source and use of funds and operating budget for review.
- Discussion of VIHFA staff review project readiness and alignment with program policies and priorities.
- CDBG-DR program eligibility requirements, including "tie-back" to the storm and green building requirements
- Cross-cutting federal requirements for compliance with Davis-Bacon, Uniform Relocation Act (URA), Section 3, Fair Housing. These requirements are described in further detail later in this policy manual.

5.11 Pre-Award Verifications

Applicants are responsible for providing truthful, accurate and complete applications to the Program. However, prior to making an award, the Program is responsible for reviewing each project file to verify all information is complete, applicant eligibility is verified, and all benefit calculations are completed correctly.

5.12 Award Calculation for Project Scope and Budget Proposals

CDBG-DR is the funding of last resort and cannot be used to displace other available funding. As such, CDBG-DR is considered as "gap-filler" financing and awards will be the minimum amount of financing necessary to reduce the project's debt service and to ensure long term project viability.

This process assures that CDBG-DR funds are only used to fund the projects' unmet need after all other sources of financing are committed. Each project Scope and Budget Proposal will be reviewed, along with source documentation, evidencing total project financing. This strategy leverages a significant number of other sources of capital subsidy to support and promote high quality, construction-ready projects that may advance one of the specific housing priorities of the Territory.

VIHFA will provide funding up to the unmet need amount for the selected projects, subject to a maximum award of $10,000,000, and $250,000 per unit. Circumstances where additional costs may be required will be reviewed on a case-by-case basis, utilizing cost-reasonableness requirements. The unmet need is the financing gap identified in the project underwriting, less any assistance classified as duplicative in the Duplication of Benefits review.

Project Scope and Budget Proposals must demonstrate that the rent proceeds or other funding sources will allow for adequate resources to meet capital needs for the length of the affordability period.

5.13 Evaluation of Projects

VIHFA will review the projects for:

- Tie to the storm
- CDBG-DR eligibility
- Meet LMI National Objective
- Duplication of Benefits
- Cost Reasonableness

5.14 Duplication of Benefits (DOB)

Section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. §5155) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster for which he has received financial assistance under any other program or from insurance or any other source. In accordance with the Stafford Act, Disaster Recovery funds issued through the Department of Housing and Urban Development's CDBG-DR program may not be used for any costs for which other disaster recovery assistance was previously provided for the same purpose.

As mandated by law, all projects receiving CDBG-DR funding must undergo an analysis of duplication of benefits to ensure no funds have been or will be received for the same purpose as the intended CDBG-DR grant. This Program provides "gap financing" to qualified affordable housing Development Partners to finance construction of new affordable housing in storm-impacted communities or rehabilitate existing properties. All projects will be underwritten to these Program standards. Developers must disclose all sources of funding for project finance in accordance with the following list of potential sources of funding that may result in a duplication of benefits.

Generally, financial assistance received from any other source that is provided **for the same purpose** as the CBDG-DR funds is considered a Duplication of Benefit (DOB). The Territory's

policy is in accordance with HUD's guidance on duplication of benefits; details for preventing Duplication of Benefits can be found in the VIHFA General Administrative Policy.

The Program must consider the total assistance available to the Developer for the project. This includes all benefits, including cash, insurance proceeds, grants from FEMA, SBA loans, as well as any other assistance received by the applicant from other local, Territory or federal programs, or private or nonprofit charities. Developers should pay special attention to the following potential sources of benefits:

- **National Flood Insurance Program (NFIP):** Insurance proceeds received must be disclosed by the project owner and/or Subrecipient.
- **Private Insurance:** All insurance proceeds received must be disclosed by the Developer. Where necessary, the Program will look for "undeclared" insurance benefits as well as confirming those disclosed by the project owner and/or Subrecipient.
- **FEMA:** FEMA proceeds received must be disclosed by the project owner and/or Subrecipient.
- **Other:** Funds received from other sources must be disclosed by the project owner and/or Subrecipient and verified by the Program. Examples include nonprofits, other governmental agencies, and social groups.

CDBG-DR funds cannot supplant other funding; project budget, sources and uses documents will be reviewed to ensure an appropriate amount of CDBG-DR assistance. Project Developers are required to report all assistance reasonably anticipated. Reasonably anticipated funds include assistance that has been awarded, but has not yet been received, as well as funding the Developer anticipates will be making an application. If excessive funds are reported or identified, the CDG-DR funds will be the funding source reduced.

5.15 Project Funding and Disbursement

CDBG-DR funds may be available at a Construction Loan closing, in which not only CDBG-DR, but all funds needed to complete the project will be confirmed as available. Closing may not take place until title clearance has been obtained. Any required flood and other applicable insurance will be confirmed at the closing.

Each development project will be registered as a separate activity in DRGR and CDBG-DR funds will be drawn down accordingly. The development partner shall provide all documents of the expenses for which reimbursement is sought, as required by VIHFA's financial management policies. Acceptable documentation may include invoices, receipts, evidence of

payment (if appropriate), engineer/architect cost certification, as well as other items, such as inspection reports, based on the expense.

5.16 Subrecipient Agreements

VIHFA will enter a Subrecipient Agreement with VIHA which will include the following federal requirements including, but not limited to those listed below:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold);
- Termination for cause and for convenience by the grantee or subrecipient including the manner by which it will be affected and the basis for settlement. (All contracts that exceed $10,000);
- Compliance with Executive Order 11246 of September 24, 1965, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts that exceed $10,000 by grantees and their contractors or subrecipients);
- Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair);
- Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts exceeding $2,000 awarded by subrecipients, grantees and subrecipients when required by Federal grant program legislation);
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subrecipients exceeding of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers);
- Compliance with Sections 503 and 504 of The Rehabilitation Act of 1973 (29 U.S.C 794) as supplemented by Department of Labor regulations (41 CFR Part 60-741 and 24 CFR 8);
- Compliance with Uniform Relocation Act;
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Access by the grantee, the subrecipient, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;

- Retention of all required records for three years after grantees or subrecipinets make final payments and all other pending matters are closed;
- Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33) U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000);
- Mandatory standards and policies relating to energy efficiency which are contained in the territorial energy conservation plan issued in compliance with the Energy Policy and Conservation Act (U.S.C. 6201).
- Subrogation agreement, subrogation is the process by which duplicative assistance received by the Development Partner after receiving CDBG-DR funding is remitted to the Program to avoid a duplication of benefit.

The agreements and legal documents with the developer or contractor, both VIHA and VIHFA will include all the performance and compliance requirements for each project, including but not limited to:

- Project budget
- Development and 15 or 20 year operating pro forma depending on affordability requirements
- Project description, number of units, unit type, design, construction standards
- Unit breakdown
- Rent schedule
- Affordability requirements
- Lease requirements
- Tenant selection criteria
- Compliance with Territory and local tenant-landlord laws
- Conditions for faith-based organizations
- Lead-Based Paint requirements
- Fair housing and equal opportunity provisions
- Fund disbursement
- Record keeping and reporting provisions
- Enforcement provisions
- Procedures for securing rent increases
- Compliance requirements, including the monitoring checklist that will be used
- Builder procured

5.17 Construction Monitoring

VIHA will select construction contractors and/or developers and manage construction for VIHA developed projects, including the inspection process, which is defined in the subrecipient agreement and construction contracts. VIHA is responsible to ensure financial and construction compliance through source documentation review, progress inspections and periodic quality reviews. VIHA is responsible to ensure project occupancy meets all required household mix, based on financing requirements.

For VIHFA developed projects, VIHFA will select construction contractors and/or developers and monitor project construction and occupancy.

VIHFA will oversee and monitor both VIHA and VIHA developments. Specifically, VIHFA will provide oversight to the construction through progress inspections for payments as well as periodic quality reviews. VIHFA will monitor both VIHFA and VIHA for compliance, with includes:

- Overall management systems
- Financial management
- Eligible costs
- Cost allowability
- Cost allocation
- Construction management
- Bond requirements
- Written agreements deadlines, milestones or other requirements
- Property standards
- Relocation
- Labor standards
- Production outcomes
- Construction contracts
- Reporting
- Initial and ongoing occupancy
- Requirements for properties located in a special flood hazard area
- Requirements as outlined in Subrecipient Agreement.

5.18 Conversion to Permanent Financing

VIHFA will require submission of all required documents prior to approving the project's conversion to permanent financing.

Required Documents:

- All required Program Eligibility Documents
- Certificate of Occupancy – or other acceptable document from the local building authority.
- Certificate of Completion

- Elevation Certificate (if elevated)
    - Proof that project was completed according to the applicable Green Building Standard selected in the application and/or commitment letter; which may consist of documentation from construction monitor or project architect
- Current title
- Satisfactory indication that all compliance obligations including Fair Housing, Davis Bacon, Section 3, Section 504 and M/WBE are up to date
- Copies of all Program approved change orders
- Permits as required and applicable

5.19 Lease-Up Compliance and Monitoring

Determining Tenant Eligibility

The executed subrecipient and/or grant agreement defines the number of affordable housing units that must be included in the project. The Developer and any subsequent project owners must that all tenants of the affordable housing units, both at initial lease up and throughout the project's Affordability Period, meet income and other eligibility requirements.

Tenant eligibility for projects developed by VIHFA will be determined and verified in accordance with 24 CFR Part 5 requirements using procedures as stated in the Technical Guide for Determining Income and Allowances, 3rd Edition (HUD-1780-CPD). Tenant eligibility for VIHA projects will be based on income and rent determinations as defined in Chapter 6 of its Admissions and Continued Occupancy Policy (ACOP) depending on the project.

Property owners or management firms will report project compliance at initial lease up and on an annual basis for a minimum term of the Affordability Period. Reporting will be submitted to the agency that executed the agreement (whether to VIHA or VIHFA). VIHA will report project compliance to VIHFA for any Public and Affordable Housing projects where they implemented the CDBG-DR activity. VIHFA Housing and Compliance and Monitoring managers will confirm that each project has leased the number of affordable housing units required in the executed grant agreement to LMI households throughout the Affordability Period.

Project owners of projects where VIHFA implemented the CDBG-DR activity will be required to report project compliance at initial lease up and on an annual basis for a minimum term of the Affordability Period.

Compliance monitoring of initial project rent-up monitoring will include but is not limited to the review of tenant eligibility and income documentation, rent rolls, project budgets and financial records.

5.19.1 Monitoring Plan

VIHFA is responsible for all oversight and compliance for all activities funded with CDBG-DR, regardless of the entity undertaking the implementation of the activity. This includes housing units developed as VIHFA and those developed by VIHA.

Although the CDBG-DR funding has a six-year expenditure deadline of six years (from signing of the initial grant agreement, or September 24, 2018), VIHFA has compliance responsibilities throughout the term of the HUD grant through closeout, and for long-term compliance of the VIHA and VIHFA projects throughout each project's Affordability Period.

VIHFA must ensure compliance with applicable regulations, which include but are not limited to: record keeping, overall administration, financial management, environmental compliance, citizen participation, conflict of interest, procurement, Davis-Bacon Labor Standards, housing qualify standards, affordability period compliance, production outcomes, written agreement milestones and requirements, cost allocability, cost allowability, duplication of benefit, civil rights regulations (Minority and Women's Business Enterprise, Section 3, Fair Housing, Limited English Proficiency, and American with Disabilities Act), property acquisition and management, displacement, relocation, requirements for properties located in a special flood hazard area, and unit replacement.

The CDBG-DR Program has established a Monitoring Plan to ensure that all programs and projects comply with applicable federal, Territory, and local regulations and effectively fulfills the goals set forth in the Action Plan and the Action Plan Amendments.

The Monitoring Plan serves to identify risks, deficiencies, and remedies relating to VIHFA directly administered programs, administrative and financial management, and programs administered via VIHFA subrecipients. The Monitoring Plan seeks to accomplish the following objectives:

- Determine if a subrecipient is carrying out its obligations, and its activities as described in the Action Plan for CDBG-DR assistance and its related grant or subrecipient agreement.
- Determine if a subrecipient is carrying out its activities in a timely manner, in accordance with the schedule included in the subrecipient agreement.
- Determine if a subrecipient is charging costs to the project that are eligible under applicable laws and CDBG-DR requirements, and reasonable in light of the services or products delivered.
- Determine if a subrecipient is conducting its activities with adequate control over program and financial performance, and in a way that minimizes opportunities for waste, mismanagement, fraud, and abuse.
- Assess if the subrecipient has a continuing capacity to carry out the approved project, as

well as future grants for which it may apply.

- Identify potential problem areas and to assist the subrecipients in complying with applicable laws and regulations.
- Assist subrecipients in resolving compliance problems through discussion, negotiation, and technical assistance (TA) and training.
- Provide adequate follow-up measures to ensure that performance and compliance deficiencies are corrected by grantee/subrecipients, and not repeated.
- Comply with the federal monitoring requirements of 24 CFR 570.501(b) and with 2 CFR 200, as applicable.
- Determine if any conflicts of interest exist in the operation of the CDBG-DR program per 24 CFR 570.611.

Long term compliance review will be conducted by both VIHA and VIHFA on their units with reports submitted to VIHFA. These reviews will include, but not be limited to documentation covering:

- Evidence that required records are maintained to demonstrate compliance with applicable regulations.
- Annual rent rolls and income certifications for all tenants in affordable units.
- Annual inspection reports for HQS requirements of all units.

5.20 Cross-Cutting Federal Requirements

Implementation Partners are subject to the Cross-Cutting Federal Requirements described herein. These include compliance with the Uniform Relocation Act, Davis-Bacon and Related Acts, Minority- and Women-Owned Business Enterprises contracting provisions, Section 3, Fair Housing, Equal Employment Opportunity, and environmental requirements of the National Environmental Protection Act.

5.20.1 Tenant Protection Under Uniform Relocation Act (URA)

Subrecipients must assure that the Uniform Relocation Act requirements have been followed and that both displaced occupants and any current occupants of the project are identified. These occupants are entitled to advisory services, in the form of notices and counseling, moving and/or storage expenses, and coverage of all displacement costs for temporary or permanent relocation pursuant to formula and applicable Federal Register notices. The program will monitor displaced and current tenants and maintain records from the inception of the project. Failure to do so can lead to unexpected and substantial costs and work later. Full details for CDBG-DR URA Policy are located in the VIHFA General Administration Policy.

5.20.2 Fair Housing

Development Partners are subject to VIHFA's Affirmative Fair Marketing requirements and will be required to provide a marketing plan and report on compliance in accordance with the VIHFA's policy. The Affirmative Marketing Plan must be in compliance with applicable Fair Housing laws and demonstrate how the applicant will affirmatively further fair housing.

5.20.3 Section 504

Section 504 of the **Rehabilitation Act of 1973**, Pub. L. No. 93-112, 87 Stat. 394 (Sept. 26, 1973), codified at 29 U.S.C. § 701 et seq. prohibits discrimination. The Act requires that any alterations of multifamily (5+ units) rental projects, a minimum of 5 percent of the dwelling units in the project (but not less than one unit) must be accessible to individuals with mobility impairments. An additional 2 percent of the dwelling units (but at a minimum, not less than one unit) must be accessible to individuals with sensory impairments (i.e., hearing or vision impairments).

In buildings with 5 or more dwelling units and at least one elevator, all dwelling units and all public/common use areas are subject to Section 504 requirements. In buildings with 5 or more dwelling units and no elevator, all ground floor units and public and common use areas are subject to Section 504 requirements.

For new construction, Section 504 applies only to Projects that include 5 or more units. Projects with 5+ units must be designed and constructed to be readily "accessible" to and usable by persons with disabilities (including the common areas). "Accessible," when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and when designed, constructed, altered, or adapted can be approached, entered, and used by individuals with physical handicaps.

A 15+ unit Project, with rehabilitation costs that are 75% or more of the replacement cost of the completed facility, is considered substantial rehabilitation. In this case, a minimum of 5 percent of the dwelling units in the Project (but not less than one unit) must be accessible to individuals with mobility impairments, and an additional 2 percent, at a minimum (but not less than one unit), must be accessible to individuals with sensory impairments.

5.20.4 Davis-Bacon and Related Acts / Labor Standards

Prevailing wage rates and compliance requirements will apply to all developments with 8 or more units where more than $2,000 CDBG-DR funds are expended on construction. DBRA requires the payment of locally prevailing wages and fringe benefits to laborers and mechanics for on-site construction, alteration, or repair (including painting and decorating) of public buildings or public works on federally funded or assisted contracts in excess of $2,000. See Federal Requirements, which includes Federal Labor Standards Provisions. All Development Partners must account for prevailing wage in their Project Proposal. Locally prevailing wages

are determined for specific employee classifications by the US Department of Labor (DOL) and made available to the public as "wage decisions".

5.20.5 Minority-and Women-Owned Businesses (WMBEs)

All Development Partners are required to comply with Article 15-A of the Executive Law, which promotes the participation of minority- and women-owned businesses (MWBEs) in contracting opportunities. All projects financed under the Program must comply with VIHA's MWBE participation requirements applicable at the time of application submitted to the RFQ.

5.20.6 Section 3

Awardee shall comply with 12 U.S.C. 1701u and its regulations ("Section 3"). In compliance with Section 3, the CDBG-DR Program will require Subrecipients to establish training, employment, contracting and other economic opportunities arising from HUD funding. The requirements of Section 3 apply to recipients of HUD funding for Section 3 covered project(s) in which the amount of the assistance is in excess of $200,000. Contractors and Subcontractors are also subject to Section 3's requirements when performing *any* type of activity on Section 3 covered projects for which the amount of funding is in excess of $200,000 and the contract or subcontract exceeds $100,000.

If these thresholds are met, the Section 3 requirements apply to the entire project or activity that is funded with Section 3 covered assistance, regardless of whether the Section 3 activity is fully or partially funded with Section 3 covered funds.

If a Subrecipient receives Section 3 covered housing construction or infrastructure or economic revitalization assistance in excess of $200,000, but no individual contract exceeds $100,000, Section 3 requirements will only apply to the recipient (e.g. hiring and training goals).

When Section 3 is triggered by the thresholds mentioned above, all parties must attempt, to the "greatest extent feasible," to meet the minimum numerical goals as follows:

- At least 30% of all new hires must be Section 3 Residents; and
- At least 10% of the total dollar amount of all Section 3 covered contracts for housing rehabilitation, construction, and other public construction should be awarded to eligible Section 3 Business Concerns; and,
- At least 3% of the total dollar amount of all Section 3 covered non-construction (*e.g.*, professional services) contracts should be awarded to eligible Section 3 Business Concerns.

5.20.7 Environmental Review

CDBG-DR funding from HUD is contingent on compliance with the National Environmental Policy Act (NEPA) and related environmental and historic preservation legislation and executive orders. All projects are also subject to historical review by the Office of Historic Preservation.

All projects using CDBG-DR funding must undergo some level of environmental review, depending on activity and project scope. All awards will be considered conditional and no choice limiting actions can be taken until the environmental review is complete.

5.20.8 Green Building Standards

All reconstruction and new construction of residential buildings and substantially damaged homes must adhere to Green Building Checklist or another Green Building standard approved by HUD. Repair of buildings must follow guidelines in the HUD CPD Green Building Retrofit Checklist or another Green Building standard approved by HUD.

5.20.9 Floodplain, Floodway and Costal High Hazard Area Policy

Executive Order 11988 – Floodplain Management requires Federal activities to avoid impacts to floodplains and to avoid direct and indirect support of floodplain development to the extent practicable. All Project Subrecipients must comply with these federal regulations. For more information refer to HUD Guidance.

5.20.10 Flood Insurance Policy

Development Partners that receive any assistance from the Program and the property is located within the "100-year" floodplain then the owner is required by federal regulation to maintain flood insurance in perpetuity and, in the event of a transfer of property, the owner is required, on or before the date of transfer, to notify the transferee in writing in the documents evidencing the transfer of ownership of the property, of the requirements to obtain and maintain flood insurance in perpetuity. If a transferor fails to provide notice as described above, the transferor shall be held liable. The requirement to obtain and maintain flood insurance is included the Loan Agreement and Mortgage documents executed at closing.

As per Federal regulations, if an owner previously received Federal Assistance for the subject property – personal, commercial, or residential – and failed to obtain and maintain flood insurance then the owner is ineligible to receive assistance from CDBG-DR. For more information, refer to Section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C.5154a).

5.20.11 Validation of Development Costs and Inspections

Once a project is determined to be eligible and is selected for participation in the Program the VIHFA Construction Contractor will assign a building contractor from the Program pool of pre-

approved building contractors who will work with existing plans or the A/E firm to determine/verify the cost to construct the rental unit(s).

5.20.12 Lead-Based Paint Risk Assessment

Based on the determination that the home was constructed prior to 1978 and in accordance with 24 CFR 35.930(a), paint on all surfaces will be presumed to be regulated. In accordance with 24 CFR 35.930(d) for residential properties receiving more than $25,000 per unit in Rehabilitation Assistance per the HUD definition, the program will abate all lead-based paint hazards (soil-lead and dust-lead) and deteriorated paint identified during the Lead (Pb) Risk Assessment. A Lead (Pb) Risk Assessment is required to identify hazards in all target housing properties that are determined feasible for rehabilitation, including the interior/exterior surfaces of the damaged unit and in common areas that service the unit. Projects receiving reconstruction are not required to be tested for lead hazards. Lead (Pb) Risk Assessments must be done by a permitted risk assessor. Homes determined to contain lead-based paint will be subject to the clearance testing requirements of the HUD Regulations.

5.20.13 Mold Assessment and Remediation

Mold assessment consists of visual assessment only, performed by the Construction Manager or Inspector. Mold assessment and./or testing of the existing structure are not performed on reconstruction projects. If a visual inspection reveals the presence of mold, additional testing via collection of bulk, swab and air samples is not necessary, unless recommended by the assessor or requested by the homeowner and agreed to by the Construction Manager. Testing for mold should always be performed by a qualified person. The qualified person shall be trained industrial hygienist or an indoor air quality/environmental professional. Testing services will only be provided to homeowners who have signed their grant award and are in the Rehabilitation Program Managed Option.

Visual inspection is the most important initial step in identifying a possible mold problem and in determining remedial strategies. The extent of any water damage and mold growth should be visually assessed and the affected building materials identified. Visual inspection should also include observations of hidden areas where damages may be present, such as crawl spaces, attics, and behind wallboard to the extent feasible without destructive testing or removal of apparently undamaged building materials.

Remediation: Currently there are no governmental standards pertaining to acceptable levels of indoor airborne mold spores and structures. Mold is present everywhere in the environment.

For all projects, identified moisture sources should be eliminated prior to further remediation. Post remediation dehumidification may be necessary to dry the remaining structural framing materials prior to any rehabilitation. In cases where this occurs the Construction managers will incorporate the cost into the ECR. Areas where mold was or is identified as part of the ISI, the Walk Through or construction will be required to be remediated by the builders. Materials harboring mold will be cleaned or replace.

5.20.14 Asbestos Survey Requirement

In accordance with Federal and Territory laws and regulations, a qualified asbestos inspector must perform a comprehensive building asbestos survey that is based on a thorough inspection to identify the location and condition of asbestos containing materials (ACMS) throughout any structures. When present, small amounts of drywall, mud, floor time, mastic, etc. will be collected for sampling. Every effort will be made to collect the required samples in the lest destructive manner possible. Presumed asbestos containing materials (PACM) will be documented and recorded.

Proper removal and disposal of ACMs will be included in the ECR. ACMs which are friable, or which will be disturbed or removed by renovation or demolition must be removed and disposed in accordance with Federal and Territory regulations by firms and individuals properly licensed for the work. If asbestos should become apparent once construction begins, procedures align with Territory and local abatement procedures as well as HUD and the Environmental Protection Agency (EPA) will be followed. The builder will be responsible to retain a qualified asbestos inspector to assess suspected ACMs to be disturbed and identified subsequent to execution of the contract. Costs for additional assessment and/or removal will be handled as a change order to the builder. All asbestos abatement shall be done in accordance with EPA requirements for air pollution prevention and OSHA requirements for worker protection. The builder shall provide the Construction Manager with a copy of the *Asbestos Waste Disposal Manifest* for all ACMs removed from the site, as a condition precedent to final payment.

5.20.15 Environmental Inspection Request and Clearance

Projects that involve any Choice Limiting Actions will not eligible for CDBG-DR funding. See Environmental Policy and Procedures for details on the environmental review process, including timing for actions.

6.0 RECORD KEEPING AND REPORTING

VIHFA and VIHA, including contractors, will comply with 24 C.F.R. Part 5.2, Compliance with the Privacy Act, which requires the safeguarding of personally identifiable information (PII) by:

- Minimizing the use of PII on program documents and records.
- Providing access to PII only to those who require it for official business.
- Securing PII appropriately for paper or electronic forms.
- Training for data security and compliance with the Privacy Act will be provided to all employees and contractors as part of their onboarding process.

In accordance with HUD regulations, as a grantee and recipient of CDBG-DR funds, VIHFA follows the records retention as cited in 2 CFR Part 200.333-337, which includes financial records, supporting documents, statistical records and all other pertinent records are maintained for five years after closeout of the grant between HUD and VIHFA. VIHFA established requirements in

its sub-recipient and contractor agreements for compliance with all HUD cross cutting requirements outlined in 2 CFR 200: Appendix II, including record keeping requirements. Records such as grant agreements, subrecipient agreements and other legal documents enforcing provisions of long-term affordability shall be maintained for five (5) years after the termination of the compliance period.

Additional information regarding Records retention, how the program will manage Personally Identifiable Information (PII), and file security, please refer to VIHFA Recordkeeping and Reporting Policy.

APPENDICES