COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



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COMMONWEALTH REGISTER

VOLUME 43
NUMBER 06
JUNE 28, 2021

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Commonwealth Healthcare Corporation
Commonwealth of the Northern Mariana Islands
1 Lower Navy Hill Road Navy Hill, Saipan, MP 96950

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF The Commonwealth Healthcare Corporation

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER AS PROPOSED REGULATIONS
Volume 43, Number 03, pp 045582-045590, of March 28, 2021

CHCC Chargemaster for COVID-19 Vaccinations, COVID-19 Testing, Lab, and Surgical Fees

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth Healthcare Corporation ("CHCC"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act,1 CMC § 9104(a). The CHCC announced that it intended to adopt them as permanent, and now does so. (Id.) A true copy is attached. I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations,

and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulations as final at its meeting of March 9, 2021.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: NONE

AUTHORITY: The Corporation is empowered by the Legislature to adopt these rules and regulations pursuant to 3 CMC Section 2826(c).

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions

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respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL for non-modified regulations or regulations with NON-material modification: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 11th day of June, 2021, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

Esther L Muna — 06/14/21

ESTHER L. MUNA
Chief Executive Officer

Date

Filed and
Recorded by:

Esther Nesbitt — 06.25.2021

ESTHER SN. NESBITT
Commonwealth Registrar

Date

0 Form Notice of Final Adoption of Regs.wpd

P.O. Box 500409 CK, Saipan, MP 96950
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Fee Edits - MARCH 2021

CPT	MOD	Description	New Price
81270		JAK2 GENE	$ 366.64
49205	26	EXC/DESTRUCTION OPEN ABDOMINAL TUMORS >10.0 CM	$ 5,417.13
36901	26	INTRO CATH DIALYSIS CIRCUIT	$ 2,523.69
36902	26	INTRO CATH DIALYSIS CIRCUIT W/TRLUML BALO ANGIOP	$ 4,561.92
36903	26	INTRO CATH DIALYSIS CIRCUIT W/TCAT PLMT IV STENT	$ 17,530.11
36904	26	PERQ THRMBC/NFS DIALYSIS CIRCUIT IMG DX ANGRPH	$ 6,695.01
36905	26	PERQ THRMBC/NFS DIAL CIRCUIT TRLUML BALO ANGIOP	$ 8,573.73
36906	26	PF PERQ THRMBC/NFS DIAL CIRCUIT TCAT PLMT IV STENT	$ 21,922.02
36907	26	PF PTA DIAL CENTRAL SEG THRU CIRCUIT ALL INCL	$ 2,302.62
36908	26	PF STENT PLMT CTR DIALYSIS SEG	$ 6,417.15
36909	26	PF DIALYSIS CIRCUIT EMBOLJ	$ 7,302.45
91302		SARSCOV2 VAC 5X10^10VP/.5MLIM	$ -
0021A		IMM ADMN SARSCOV2 5X10^10VP/.5ML 1	$ 50.82
0022A		IMM ADMN SARSCOV2 5X10^10VP/.5ML 2	$ 85.17
91303		SARSCOV2 VAC AD26 .5ML IM	$ -
0031A		IMM ADMN SARSCOV2 VAC AD26 .5ML	$ 85.17
Q0243		INJECTION, CASIRIVIMAB AND IMDEVIMAB, 2400 MG	$ -
M0243		INTRAVENOUS INFUSION, CASIRIVI AND IMDEVI	$ 928.80
Q0245		INJECTION, BAMLANIVIMAB AND ETESEVIMAB, 2100 MG	$ -
M0245		INTRAVENOUS INFUSION, BAMLAN AND ETESEV	$ 928.80
0202U		NFCT DS BCT/VIR RESPIR DNA/RNA 22 TRGT SARSCOV2	$ 1,250.34

NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514, Saipan, MP 96950-0514
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234-6866
234-7670
Fax: (670) 234-9021

AMENDED
PUBLIC NOTICE OF CERTIFICATION AND ADOPTION
OF REGULATIONS OF
The Northern Marianas Housing Corporation

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 43, Number 02, pp. 045071-045407 of February 28, 2021

ACTION TO ADOPT PROPOSED REGULATIONS: The Northern Marianas Housing Corporation (NMHC) HEREBY ADOPTS AS PERMANENT the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC § 9104(a). The NMHC announced that they intended to adopt these regulations as permanent, and now do so. I also certify by signature below that: as published, Adopted Regulations are a true, complete, and correct copy of the referenced Proposed, and they are being adopted with modifications.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:

1. The New Construction for Homeownership Opportunity and First-Time Homebuyer Assistance Program Policies and Procedures is being adopted with modifications. Modifications are outlined in Exhibit A attached (with correct page number reference).
2. The Homeowner Rehabilitation and Reconstruction Program is being adopted with modifications. Modifications are outlined in Exhibit B attached (with correct page number reference).
3. The Homebuyer Activities Program is being adopted with modifications. Modifications are outlined in Exhibit C attached (with correct page number reference).
4. The Affordable Rental Housing Development Program is being adopted with modifications. Modifications are outlined in Exhibit D attached (with correct page number reference).
5. The Infrastructure Program Policies and Procedures is being adopted with modifications. Modifications are outlined in Exhibit F attached (with correct page number reference).
6. The Tourism Policies and Procedures is being adopted with modifications. Modifications are outlined in Exhibit G attached.

I further request and direct that this Notice be published in the Commonwealth Register.

AUTHORITY: The Northern Marianas Housing Corporation is empowered by the Legislature with the authority to adopt and modify rules and regulations for the administration and enforcement of its housing programs. 2 CMC § 4433(i).

THE TERMS AND SUBSTANCE: The Adopted Regulations represent a substantial revision to the housing, infrastructure, and economic development regulations and are in conformity with NMHC's obligation to operate the CDBG-DR program consistent with the CNMI Action Plan and Federal Register, Vol. 85, No. 17 issued January 27, 2020, as amended and effective February 3, 2020.

DIRECTIONS FOR FILING AND PUBLICATION: These Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations, 1 CMC § 9102(a)(1), and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. 1 CMC § 9104(a)(1).

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these Adopted Regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC § 9104(a)(2), the agency shall consider all written submissions respecting the Proposed Regulations. No written comments were submitted to NMHC on the Proposed Regulations.

ATTORNEY GENERAL APPROVAL: The Adopted Regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (to review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

The Adopted Regulations were approved by the Northern Marianas Housing Corporation through the approval of the Board of Directors during its meeting on May 24, 2021 and the Board of Directors was authorized to promulgate these regulations on behalf of the Northern Marianas Housing Corporation.

I DECLARE under the penalty of perjury that the foregoing is true and correct and that this declaration was executed on 24th day of June, 2021, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

MERCED "MARCIE" M. TOMOKANE
Chairperson
Board of Directors

06/24/2021
Date

Filed and
Recorded by: _____ 06.28.2021

ESTHER SN. NESBITT
Commonwealth Registrar

Date

Pursuant to 1 CMC § 2153(e) (Attorney General approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain Attorney General approval), the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, pursuant to 1 CCM § 2153(f) (publication of rules and regulations).

Dated this 28 of June, 2021.

_____

EDWARD MANIBUSAN
Attorney General

NEW CONSTRUCTION FOR HOMEOWNERSHIP OPPORTUNITY AND FIRST-TIME HOMEBUYER ASSISTANCE PROGRAM POLICIES AND PROCEDURES
TRACKED POLICY AND PROCEDURAL CHANGES

NEW	PAGE NO. AND AMENDED SECTION/SUBSECTION	RATIONALE/REASON(S) FOR CHANGES
Amended Cover Page to update version number: From Version 1.0 to Version 1.1. Add version number under Table of Contents	Cover Page, Page 045080	The policy published on the Commonwealth Register was revised with the below changes.
Replaced "Eligible first-time homebuyer" with "CNMI/Northern Marianas Housing Corporation"	1.0 Policies, Section 1.3 Definitions, "Grantee", Page 045084	HUD/ICF comments and recommendations
Amended Section 2.1 to update allocation amount: **$44,407,033** and/or as detailed in the CDBG-DR Action Plan and Amendments from $41,120,667	2.0 Program Overview, Section 2.1 Total Allocation, Page 045087	HUD supplemental funding for CDBG-DR Housing programs
Added additional ineligible activity: Is located in a floodplain.	2.0 Program Overview, Section 2.5 Ineligible Activities, Page 045088	HUD/ICF comments
Replaced "at the time of the event" with "at the time of application or have been a resident of the CNMI at the time of the qualifying event"	2.0 Program Overview, Section 2.13 Program Solutions, Paragraph 5, Page 045091	HUD/FHEO COMMENTS
Added CDBG-DR before home	2.0 Program Overview, Section 2.13 Program Solutions, 2.13.2 Option 2 Have a Lot, Build a Home (New construction on homebuyer's land): Prioritization Criteria, page 045092	HUD/ICF comments
Deleted "(per project site). Two project sites are proposed." under Option 1: Turnkey Solution $20,000,000.	2.0 Program Overview, Section 2.14 Level and Terms of Assistance, Page 045092	HUD/ICF comments
Amended Subsection 2.14 to update allocation amount: Option 2: Have a Lot, Build a Home Solution **$24,407,033** from $21,120,667.	2.0 Program Overview, Section 2.14 Level and Terms of Assistance, Page 045092	HUD/ICF comments
Amended Must be a resident of the CNMI at the time of application or have been a resident of the CNMI at the time of the qualifying event. Priority given to those who have been displaced by the typhoon.	2.0 Program Overview, Section 2.16 First-Time Homebuyer Applicant Eligibility Criteria and Prioritization, Page 045093	HUD/FHEO COMMENTS
Removed the words "Monitoring and" on the second paragraph of this section to reflect just "the Compliance division."	Appendix A.1: Crosscutting Requirements, Section 1.5 Limited English Proficiency, Paragraph 2, Page 045107	HUD/ICF comments
Replaced the word "CNMI" with "territory"	Appendix A.1: Crosscutting Requirements, Section 1.7 Section 3 Economic Opportunities, Paragraph 6, Page 045109	HUD/ICF comments
Replaced the word "CNMI" with "territory"	Appendix A.1: Crosscutting Requirements, Section 1.7 Section 3 Economic Opportunities, Paragraph 2, Page 045109	HUD/ICF comments

Added new section: "Demonstrable Hardship"	Appendix A.1: Crosscutting Requirements, Demonstrable Hardship, Page 045110	HUD/ICF comments
Added new section: "Not Suitable for Rehabilitation"	Appendix A.1: Crosscutting Requirements, Not Suitable for Rehabilitation, Page 045110	HUD/ICF comments

NORTHERN MARIANAS HOUSING CORPORATION

NEW CONSTRUCTION FOR HOMEOWNERSHIP OPPORTUNITY AND FIRST-TIME HOMEBUYER ASSISTANCE PROGRAM POLICIES AND PROCEDURES

VERSION: 1.1

Prepared by:

Northern Marianas Housing Corporation - CDBG-DR Division

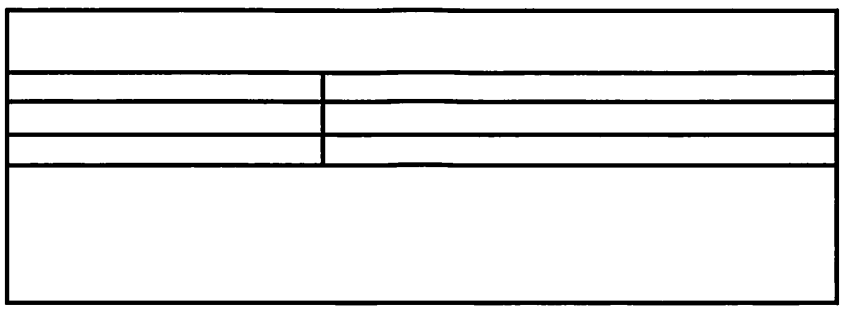


Table 1: New Construction for Homeownership and First-Time Homebuyer Assistance Program Version Control

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VERSION NUMBER	DATE REVISED	DESCRIPTION
Version 1.0	11/09/2021	Version 1.0
Version 2.0	05/10/2021	Version 1.1

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1.0 POLICIES

1.1 Version Policy

Version history is tracked in the table 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.

1.2 Policy Change Control Board

Policy review and changes for the CNMI's New Construction for Homeownership Opportunity and First-Time Homebuyer Assistance Program (Program) policies 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 work with the Corporate Director to prepare a request to amend the policy. The NMHC Board of Directors will be responsible in the review and approval of the request to amend the policy.

1.3 Definitions

Adjusted Gross Income (AGI): AGI is an individual's total gross income less specific deductions. NMHC's AGI methodology may be found in the NMHC's Homebuyer Policies and Procedures. Applicant: A person or persons who have applied at NMHC for approval of a CDBG-DR home purchase and Homeowner Financial Assistance.

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

Builder/Contractor: (Used interchangeably) A person or company that enters a contract to construct or repair houses and or supervised building operations. Builder/Contractor must meet all CNMI and HUD requirements.

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

Community Development Block Grant - Disaster Recovery (CDBG-DR): The Department of Housing and Urban Development (HUD)'s Community Development Block Grant Disaster

program established by the applicable appropriations statute to assist communities impacted by disasters to recover.

CDBG-DR Development Agreement: An agreement entered into by Grantee and Developer for the purpose of funding and carrying out CDBG-DR-eligible activities on one or more CDBG-DR-eligible properties.

CDBG-DR Buyer: Applicant eligible to purchase a CDBG-DR constructed home.

CDBG-DR Property: A property that is rehabilitated, newly constructed, or reconstructed pursuant to Developer's agreement with Grantee, utilizing CDBG-DR funds.

CDBG-DR Home: An CDBG-DR property that is being sold to an owner-occupant.

CDBG-DR Program Budget: The budget attached to a CDBG-DR Development Agreement showing projected development costs and funding for Developer's entire CDBG-DR program in the aggregate.

Construction Cap: For the New Construction for Homeownership and First-Time Homebuyer Assistance program the Grant cap is $250,000 for development of properties owned by NMHC; and also $250,000 when building on land owned by a prospective homebuyer.

Damage Assessment: An inspection of the housing unit to document damage from the event. An assessment 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 most current 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: All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality of determined by Secretary of Labor in accordance with the Davis-Bacon Act, as amended. This applies to the rehabilitation and reconstruction of residential property with 8 or more units.

Demolition: The clearance and proper disposal of dilapidated buildings and improvements.

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 funds with respect to any part of a loss resulting from a major disaster which he/she has already received financial assistance under any other program, from insurance, or any other source. It is an amount determined by the Program that may result in the reduction of an award value.

Environmental Review: All qualified projects must undergo an environmental review process. This process ensures that all activities comply with National Environmental Policy Act (NEPA) and other applicable state, territorial and federal laws.

Environmental Review Record (ERR): the document resulting from required environmental review which includes a description of activities, evaluation of environmental impact, documentation of compliance with applicable environmental regulations, and an environmental determination.

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

First-Time Homebuyer: A **first-time homebuyer** is an individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property. This includes a spouse (if either meets the above test, they are considered **first-time homebuyers**).

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

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 a Special Flood Hazard Area (SFHA) be covered by flood insurance under the National Flood Insurance Program (NFIP). To purchase flood insurance, a community must participate in the NFIP. If a community does not participate 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 a one percent chance of being inundated by a flood event in any given year.

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

Grantee: CNMI/Northern Marianas Housing Corporation

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 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.

HOME Program: The HOME Investment Partnerships Program (HOME) provides formula grants to States and localities that communities use to fund a wide range of activities including building, buying, and/or rehabilitating affordable housing for rent or homeownership or providing direct rental assistance to low-income people. HOME is the largest Federal block grant to state and local governments designed exclusively to create affordable housing for low-income households.

Individual Mitigation Measures (IMM): Activities designed to mitigate or reduce the risk of damage beyond the pre-disaster condition of a housing unit when the activities are above and beyond federal, state, or local requirements and the payment of flood insurance are not IMM

activities. Examples of IMM activities include elevating a structure above the base flood elevation level, the addition of storm shutters, disaster proof windows, roof straps, etc. as long as those improvements are not required to comply with local code requirements and did not exist on the housing unit prior to the disaster damage.

Low- and Moderate-Income (LMI): A household is considered to be of low- and moderate-income if the household income (including income derived from assets) is at or below 80 percent of an area's median income. All income is based on the Area Median Income limits set annually by HUD for each county or metropolitan statistical area.

Low to 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. Income eligibility 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). The most current income limits, published annually by HUD, shall be used to verify the income eligibility of each household applying for assistance at the time assistance is provided.

Mitigation: Improvements made to reduce the possibility of loss of life, property damage, personal and commercial hardship, as well as long lasting monetary burdens. For example, implementing a flood mitigation program such as the acquisition of flood-prone property/housing, or the elevation of housing in floodplains are effective mitigation projects that can make residents and communities safer in the face of natural disasters.

Mixed-income Housing: Mixed income housing development can include diverse types of housing units, such as apartments, town homes, and/or single-family homes for a people with a range of income levels.

New Construction: The construction of a new home in a new location.

Project Funding: Any and all governmental and private funds, including a Developer's cash, used to pay for the costs to redevelop a single CDBG-DR-assisted property.

Project Budget: A budget for all acquisition, rehab/construction and soft costs for a potential CDBG-DR project. The Developer must submit the budget to the Grantee and the property must pass Environmental Review and receive Authorization to Use Grant Funds prior to committing to the purchase of any property for use in the CDBG-DR program.

Sales Price: Price established though determination of Fair Market Value (FMV) of the property.

Section 3: A provision of the Housing and Urban Development (HUD) Act of 1968 that requires recipients of certain HUD financial assistance, 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.

Section 504: A provision of the Rehabilitation Act of 1973 which provides that no qualified individual with a disability should, only by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or

activity receiving Federal financial assistance.

Single-Family Home: A single-unit family residence detached or attached to other housing structures.

Urgent Need 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 must be recent or have recently become urgent and the subrecipient cannot finance the activities on its own because other funding sources are not available. Subrecipients or the state must document how each program and/or activity funded under this category responds to a disaster-related impact. See 24 CFR 570.208(c).

Northern Marianas Housing Corporation (NMHC): NMHC is the Grantee for HUD's Community Development Block Grant-Disaster Recovery (CDBG-DR) funding. NMHC 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. NMHC will be implementing this program directly and also acting as the developer within this program.

2.0 PROGRAM OVERVIEW

Under this program, NMHC will utilize CDBG-DR funds to install infrastructure and construct homes on public lands or private lands if available. The development of land will include activities such as infrastructure (roads, lighting, etc.), grading, installation of utilities, and land preparation.

The New Construction for First-Time Homebuyers Program has two options for eligible first-time homebuyers, briefly described below:

- Option 1: Turnkey Home Development: The first method will enable the creation of new turnkey homes for first-time homebuyers. Option 1 will provide for the development of new homes on land owned by NMHC or public lands. Potential homebuyers must be mortgage-ready and have incomes at or below 120% AMI. Note: Homes will be made available for purchase at no less than 80% of the total homes available in the turnkey development to families at or below 80% AMI.

- Option 2: Have a Lot, Build a Home: The second option allows new construction to occur on land that already belongs to the household. This option enables the creation of new, custom stock housing on private land for first-time homebuyers who are mortgage ready and have incomes at or below 120% AMI. Note: No less than 80% of the funding will be provided to families at or below 80% AMI.

NMHC does not anticipate providing down payment assistance, however if the assistance is provided for future projects, down payment assistance would be capped at $40,000 and must be classified as a public service activity (against the 15% cap).

This policy document explains the structure of the program, the requirements for developers, including NMHC acting as the developer, requirements for contractors, eligibility criteria for first-time homebuyers, and supporting documentation for program eligibility determination.

2.1 Total Allocation

$44,407,033 and/or as detailed in the CDBG-DR Action Plan and Amendments

2.2 Tie to the Disaster

Typhoon Mangkhut and Super Typhoon Yutu caused significant damage to both the owner-occupied and rental housing stock, depleting an already limited housing stock and driving housing prices above affordable levels. This is especially true for single family homes for sale and for new construction.

2.3 National Objective

The CNMI's New Construction for Homeownership Opportunity and First-Time Homebuyer Assistance Program will serve the Low- to Moderate-Income Housing (LMI) and Urgent Need National Objectives.

2.4 Eligible Activities

HUD makes the determination if an activity is eligible or ineligible. The following activities under the Housing and Community Development Act of 1974 (HCDA) are eligible for CBDG-DR grant funds: Clearance, Rehabilitation, Reconstruction and Construction of Buildings (including Housing) (HCDA Section 105(a)(4)); Public Facilities (HCDA Section 105(a)(2); Public Services (HCDA Section 105(a)(8)).

2.5 Ineligible Activities

Activities are not eligible for CDBG-DR funds if the activity:

- Does not correspond to an identified disaster-related impact.
- Is restricted by the appropriation legislation.
- Is ineligible according to CDBG-DR requirements and a waiver has not been granted.
- Is located in a floodplain.
- Fails to meet a national objective.

2.6 Geographic Area(s) Served

The Program will serve primarily the islands of Saipan, Tinian, and Rota. It is anticipated that in the first phase of the program, under Option 1, the new, turnkey development will primarily be, but not limited to, located in neighborhoods where public lands are available such as in the southern area of Saipan, nearby existing villages, or other proposed areas for homestead development or suitable private land with nearby access to infrastructure. Under Option 2, homes may be built on land owned by the homebuyer.

2.7 Estimated Start and End Dates

- January 2021 through December 2026.

2.8 Program Administration

NMHC staff along with additional personnel and contractors hired to support NMHC with the administration and implementation of the recovery program will oversee all activities and expenditures in connection with the CDBG-DR funds. NMHC will ensure the program meets all requirements, including: the disaster threshold, eligibility, national objective, compliance, fair housing, labor standards, nondiscrimination, environmental regulations, and procurement regulations.

NMHC will monitor eligible activities in accordance with CDBG-DR requirements so each funded activity will meet the disaster threshold and one of HUD's three national objectives, with emphasis on achieving the primary national objective of benefiting low- and moderate-income persons.

NMHC will monitor the program through procedures outlined in the CDBG-DR Homebuyer Policies and Procedures.

2.9 Affordability Period

Properties will remain affordable for a period of up to 30 years following NMHC's current affordability period schedule.

2.10 Recapture Provisions

Recapture Provisions

Recapture provisions will apply when CDBG-DR funds are used to provide direct financial assistance to a homebuyer to build or acquire a unit.

Applicability

The recapture provisions herein shall apply where CDBG-DR funds are employed to assist home ownership housing to qualify as affordable housing either by providing financial assistance such as down payment or closing cost assistance, interest subsidies, or mortgage buydowns that enable homebuyers to make the purchase or by providing monies as a development subsidy which then enables the unit to be sold at a price below fair market value. Note: Recapture provisions shall not apply when CDBG-DR funds are used only to subsidize the development cost of the assisted unit and the unit is sold at fair market value; in that case, resale provisions will be used.

Restrictions on Transfer

Under the recapture option, there is no requirement that the CDBG-DR-assisted property is sold/transferred to another low-income homebuyer upon either voluntary or involuntary transfer during the affordability period. Instead, the original CDBG-DR-assisted homebuyer will be free to sell the property to any willing buyer at whatever price the market will bear. Upon either voluntary or involuntary transfer during the affordability period, the participating jurisdiction shall recapture from available net proceeds an amount defined below.

Enforcement

The CDBG-DR funds will be secured by the incorporation of the applicable language in the Deed of Conveyance. NMHC will also require the homebuyer execute a Promissory Note and a Mortgage which shall be recorded against the property.

Calculation of Recapture

a) **Recapture**. NMHC will ensure that it recoups all or a portion of the CDBG-DR loan assistance provided to the homebuyer(s), if the housing unit ceases to be the principal residence of the homebuyer(s) for the duration of the period of affordability. All subsidy amounts (in the form of loans) that directly benefited the property owner (i.e., through down payment and/or closing cost assistance, deferred payment loans, interest rate buy-downs, property discount, etc.) are also subject to recapture. Recapture is capped at what is available out of net proceeds for agreements after November 2004. Net proceeds are defined as the sales price less superior non CDBG-DR debt (if any) less closing costs. NMHC will utilize the following recapture options:

1. **Recapture entire amount**. NMHC may recapture the entire amount of the loan and/or subsidy from the homebuyer(s) if the sale of the property occurs within halfway into the

given affordability period. For example, a homebuyer was approved for a $50,000 CDBG-DR loan to construct a home. The affordability period is therefore, fifteen years. On the seventh year, the borrower sells the house for $60,000. Since the borrower failed to comply with the minimum seven and one half (7½) years of the fifteen-year affordability period, the recaptured amount is $50,000.

2. **Forgiveness**. NMHC may reduce the loan amount and/or subsidy to be recaptured on a pro rata basis for the period the homebuyer(s) has/have owned and occupied the housing unit measured against the required affordability period; however, homebuyer(s) must occupy the housing unit at a minimum of ten years or at least halfway into the affordability period, whichever is greater, in order to qualify for this recapture option. For example, if the CDBG-DR subsidy is $60,000 with 15-year affordability and the owner sells the property in the 12th year of ownership the recapture amount will equal $12,000 ($60,000/15 years affordability period x 3 years remaining = $12,000 recapture).

3. **Buyer's recovery of initial investment**. The homebuyer(s) investment (down payment and capital improvements made by the owner since purchase) may be repaid in full before any CDBG-DR funds are recaptured, provided that the homebuyer(s) occupied the housing unit at a minimum of ten years before the sale of the property and the homebuyer's household income level is at or below 50% of the area median income in order to qualify for this recapture option.

4. **Shared appreciation**. In the case where net proceeds exceed the amount necessary to repay both the homebuyer(s)' investment and the CDBG-DR assistance, the excess proceeds may be shared proportionately (i.e., percentage of investment provided) by both parties.

b) *Note*: The HOME Interim Rule on November 22, 2004 clarifies that when the recapture requirement is triggered due to a voluntary or involuntary sale during the period of affordability and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, NMHC may recapture an amount less than or equal to the net proceeds available.

c) **Circumstances Under Which Recapture Will Apply**. Recapture restrictions must be used in cases where interest bearing loans or advances, non-interest bearing loans or advances, deferred loans (repayable), interest subsidies, or loan guarantees were provided to the homebuyer(s) in order to subsidize the purchase of the property to cover the down payment or closing costs.

d) **Legal Instrument to Enforce Recapture**. NMHC must use deed restrictions, land covenants, or other similar legal documents to enforce these recapture restrictions.

Upon resale of the property, the homebuyer shall recover from the net proceeds their entire investment (which is defined as the homeowner's contribution to down payment and the cost of capital improvements made by the owner since purchase) before the participating jurisdiction recaptures the direct CDBG-DR subsidy. The homeowner's investment shall be repaid in full before the participating jurisdiction recaptures any funds. If the net proceeds are insufficient to repay the homeowner's investment, the homeowner shall receive the available net proceeds and the participating jurisdiction shall not be responsible for any balance remaining. The NMHC recognizes that, if net proceeds are not sufficient to repay the homeowner's investment and the direct CDBG-

DR subsidy, the participating jurisdiction may not be able to recapture the full amount of the direct CDBG-DR investment.

2.11 Duplication of Benefits

Duplication of Benefits Assistance under this program will be reviewed as required under the Robert T. Stafford Act (Stafford Act), as amended, which prohibits any person, business concern, or other entity from receiving federal funds for any part of such loss for which they have already received financial assistance under any other program, private insurance, charitable assistance, or any other source.

2.12 Program Income

The program will generate program income both with the sales of the homes and in the event of recapture. NMHC will utilize the Program Income to continue to fund the solutions within this program. As stated in the NMHC Action Plan, NMHC will comply with all HUD requirements found at 24 CFR 570.489. In the event program activities generate program income, those funds will be allocated to projects with further recovery activities and, to the maximum extent possible, will be distributed before the program makes additional withdrawals from the Treasury. Program Income proceeds will continue to be considered CDBG-DR funds and will be subject to all regulations and DR waivers. Expenditures of Program Income must meet all CDBG-DR rules such as eligibility, linked to a storm, national objective, LMI targeted requirements and other federal requirements such as environmental review, Davis Bacon, Fair Housing, etc.

2.13 Program Solutions

2.13.1 Option I: Turnkey Development

Under the first option, NMHC will utilize CDBG-DR funding to install infrastructure and build homes on land currently owned or purchased by NMHC or available public lands that may be under the homestead program. In the first phase of this program, NMHC will act as developer and solicit contractors to install the infrastructure and construct homes.

Option I will be open to eligible residents including those that have been pre-qualified for NMHC's (on behalf of the CNMI) HOME homebuyer program. In addition, applicants on the homestead waiting list may be pre-qualified following the same homebuyer policies and procedures.

Due to the high cost of construction in the CNMI, the sales price for homes constructed under this program may still not be within reach of what a borrower can qualify for with a typical mortgage. In such situations, NMHC may offer homeownership assistance in the form of deep subsidies, a second mortgage, down payment assistance and/or closing costs.

In keeping with guidelines of the Federal Register Notices FR-6182-N-01, homeownership assistance can be provided to households earning up to 120% of the area median income. The guidelines also allow grantees to provide down payment assistance up to 100%.

Eligible Applicants: Potential homebuyers must have been a resident of the CNMI at the time of application or have been a resident of the CNMI at the time of the qualifying event, been displaced by

one or both typhoons, and those who demonstrate they are mortgage-ready with income <120% of AMI will be prioritized. No less than 80% of the funding will be reserved for those applicants at or below 80 AMI.

Maximum Award: Awards may be up to $250,000 per home, including the infrastructure and construction of homes for first-time homebuyers. Circumstances where additional costs may be incurred will be reviewed against cost reasonableness guidelines. However, the sales price must not exceed HUD's new homes HOME purchase price limits. NMHC does not anticipate providing down payment assistance, however if assistance is provided for future projects, down payment assistance would be capped at $40,000 and must be classified as a public service activity (against the 15% cap).

2.13.2 Option 2 Have a Lot, Build a Home (New construction on homebuyer's land)

As in the turnkey option, the second option will also follow the HOME policies and procedures for the creation of new or custom stock housing for first-time homebuyers on land already owned by the household. For those applicants who do not have lots to build on, Option 2 will include purchase of the lots. This component will support the development costs of the land (including but not limited to infrastructure, grading, and land preparation). For house and lot purchases, the sales price must not exceed HUD's existing homes HOME purchase price limits.

Eligible Applicants: Potential homebuyers displaced by the storms and can show they are mortgage ready with incomes of up to 80% of AMI will be prioritized. No less than 80% of the funding will be reserved for those applicants at or below 80% AMI.

Prioritization Criteria: The elderly and the disabled as described in the CDBG-DR home policies and procedures are prioritized over non-elderly and non-disabled applicants. However, eligible applicants that are mortgage ready will also be prioritized on a first come, first serve basis over the elderly or disabled applicants who are not mortgage ready.

Maximum Award: Awards may be up to $250,000 per home including the infrastructure and construction of homes for first-time home buyers.

Circumstances where additional costs may be incurred will be reviewed against cost reasonableness guidelines.

2.14 Level and Terms of Assistance

Option I: Turn Key Solution **$20,000,000.**

- The per household cap to construct homes and underlying infrastructure is $250,000.
- The sales price of the home will be established based on the most current 95% of the area median purchase price for single family housing (existing or new homes), as determined by HUD.

Option 2: Have a Lot, Build a Home Solution **$24,407,033.**

- The per house cap to construct homes and underlying infrastructure is $250,000.

2.15 Eligible Properties

Under the initial phase of Option I, Turn Key Development, development will occur on undeveloped land owned or to be acquired by NMHC, public lands, or designated homestead lots.

Under Option I, properties eligible for acquisition must meet the following criteria:

- Must be located on Saipan, Tinian, or Rota.
- Must have no substantial adverse environmental factors as determined by an environmental review (e.g., not in a floodplain, wetland, nesting area of endangered species, etc.).
- Must be suitable locations for marketing and resale of homes to income-qualified homebuyers. Positive factors to be considered but not limited are low crime rates, close to neighborhood schools, grocery shops, and a substantial percentage of homeowners in the immediate vicinity and recent sales to owner-occupants.
- Must be acquired with a valid deed free and clear of all encumbrances.
- Preferably be close to infrastructure to maximize funding on the actual building of the homes.

For Option 2 Have a Lot, Build a Home, properties owned by the homebuyer and proposed for the program must meet the following eligibility criteria:

- Must be owned by the program applicant, with clear title verified by title search.
- Must have no substantial adverse environmental factors as determined by an environmental review.
- Preferably be suitable locations for marketing and resale of homes to income-qualified homebuyers. Positive factors to be considered but not limited are low crime rates, close to neighborhood schools, grocery shops, and a substantial percentage of homeowners in the immediate vicinity and recent sales to owner-occupants.

2.16 First-Time Homebuyer Applicant Eligibility Criteria and Prioritization

Homebuyer applicants for both Options must meet the following eligibility criteria:

- Must be a first-time homebuyer.
- Must meet established income requirements.
- Must be a resident of the CNMI at the time of application or have been a resident of the CNMI at the time of the qualifying event Priority given to those who have been displaced by the typhoon.
- Must be pre-qualified for a mortgage loan based on nationally accepted underwriting standards of conventional mortgages.
- Must attend NMHC's Homebuyer's Education Program and earn a Certificate of Completion.
- Must occupy the property as their primary residence.

Prioritization Criteria

The program will prioritize eligible elderly and/or disabled applicants. The Program will prioritize pre-

qualified applicants with incomes at or below 80% AMI for new housing construction and then those who are at or below 120% AMI if the elderly and/or disabled applicants are not mortgage ready. Not less than 80% of the funding allocation is for at or below 80% AMI applicants and not more than 20% of the funding is for 80.1% - 120% AMI applicants.

Applicants for Option 2 will be prioritized based on a review of each individual project for project viability.

2.17 Application Period

The Program will have an open application period lasting 90 days (including extensions) per applicant. Outreach activities will be conducted by NMHC to ensure that the public is aware of the Program. Special outreach efforts will be made to residents that are currently in the NMHC's existing HOME program waiting list provided they meet the eligibility and prioritization criteria mentioned above and all HOME funds have been exhausted.

3.0 PROCEDURES

3.1 Development Process

Development in both Options will be overseen by the CDBG-DR Program Manager with the assistance from the CDBG-DR Project Manager, NMHC's MCD Manager, NMHC's AMD Manager and/or hired CM. Recommendations for approval or denial of the homebuyer applicants will be forwarded to the Corporate Director or in his absence, the Deputy Corporate Director, for action.

3.1.1 Site Selection

For Option I, under the initial phase of the program, NMHC will build on sites already in the Corporation's inventory, public lands, or NMHC may acquire land as needed to meet this objective.

For Option 2, applications will be reviewed for homeowners proposing to build on land they currently own. Ownership will be verified prior to acceptance of the applicant into the program. Applicants may also use the funds to acquire property.

3.1.2 Environmental Review

NMHC is responsible for completing the environmental assessment of its development sites and sites for Option 2 owned by the applicant.

3.1.3 Contractor Selection

For Option I, some of the proposed sites may already have some level of infrastructure in place or in proximity to infrastructure; others are raw land without any existing improvements. For sites with some infrastructure, NMHC will release an Invitation for Bid (IFB) to contractors for construction of the subdivision using NMHC's prepared plans. For raw land, NMHC will solicit contractors through an RFP for engineering & land planning/design services to create plans for a subdivision for permitting and construction. NMHC may also use existing land plans and designs from the Department of Public Lands.

For Option 2, contractors will be selected by the Program from a pool of building contractors that have been properly vetted and qualified as through a recent bid process or request for qualifications review. The construction oversight (in phases) for the project will be provided by the CDBG-DR Project Manager, CDBG-DR Compliance Manager, in-house architect or engineer, hired A&E firms and if needed, the NMHC AMD Manager.

3.1.4 Contractor Requirements

For both procurement options, contractors must produce evidence they are licensed to provide services in the CNMI, bondable, and demonstrate that the company is in "good standing" with all appropriate regulatory agencies in the CNMI as well as the U.S. Department of Labor.

Contractors must also provide the following:

- Corporate Documents (Articles of Incorporation and By-laws)
- Limited Liability Company (Copy of Articles of Organization and Operating Agreement)
- Copy of Letter of "Good Standing" from the Registrar of Corporation or if LLC, a copy of the "Certificate of Existence"
- Copy of valid license to do business in the CNMI
- Copy of EIN number-approval letter if Corporation or LLC
- Insurance Binder with type of Insurance/Builder's Risk Insurance
- Clearance from the CNMI Department of Labor
- Not on the debarment list
- Completed project listing

This information is required to become an NMHC contractor or vendor with NMHC. The following forms, to be made available on NMHC's website, are used by the Agency to solicit Contractor/Vendors:

- Contract Document Checklist
- Contract Information Form
- Contractor Qualification Statement and
- Contractor Qualification Statement - Professional Service
- DUNS number

3.1.5 Construction Contract and Administration

NMHC will enter into a construction contract with contractors based on existing construction contract templates. All contracts will include construction drawings, project budget as well as the definitions of contractor and NMHC roles. The contract will also define terms for progress inspections and payments, define the change orders process and the process for corrective actions. For Option 2, the construction contract terms and other agreements will be defined by NMHC.

3.1.6 Construction Process

Contractors, as part of their bid, will provide a project delivery plan to be reviewed and approved by NMHC. The plan will outline the project scope, budget, basic systems to be utilized, labor, and methods and procedures to be followed. This will be the plan against which the contractor's performance is evaluated. The project delivery plan will include:

- Project description
- Master schedule
- Milestone schedule
- Project staffing plan
- Site mobilization and utilization plan
- Quality assurance program and how it will be implemented
- Listing of meetings with NMHC (and property owner in Option 2) including frequency and types
- Project budget

Contractors will contact the CDBG-DR's Project or Compliance Manager to request progress inspections. The CDBG-DR Project Manager will be responsible for monitoring all construction projects, conducting inspections, approving change orders and with the assistance of the CDBG-DR Compliance Manager ensuring all projects are compliant with HUD CDBG-DR, local and state construction requirements.

3.1.7 Construction Standards, including Green Building

For new construction projects, NMHC has adopted the 2018 International Building Code that DPW's Building Safety Code Office uses for construction projects in the CNMI; BECQ regulations; and Zoning Office. Contractors must follow and use green building designs and materials approved by HUD but at the same time, the structure to be constructed must first and foremost be typhoon-proof.

3.1.8 Construction Closeout Process

Prior to executing contracts and closing on mortgages with buyers purchasing units in NMHC subdivisions, contractors will adhere to the following process:

1. Contractor should submit the Certificate of Occupancy to NMHC after it is issued by DPW.

2. An inspection is then performed with the Project Manager, Compliance Manager and the Contractor, and a punch list may be generated if there are any issues to rectify.

3. NMHC issues a substantial completion certificate to the Contractor and provides a copy to the CDBG-DR Division; (45-day time limit begins)

4. The unit is then ready for the homebuyer to view.

5. The homebuyer executes a sales contract with NMHC and the mortgage process begins.

6. CDBG-DR Project and Loan Section staff will schedule initial walk-thru with client.
    a. Name
    b. Unit number
    c. Contact number

7. CDBG-DR Project Section staff will be the point of contact to provide keys and access to the unit. Access is needed by the:
    a. Appraiser
    b. Termite Inspector
    c. Maintenance staff
    d. Any other access that may be required

8. Builder' s warrantyand walk-through

3.2 New Construction, first-time homebuyer assistance application and intake

3.2.1 Application Intake Process

The Program will have an initial open application period of 90 days (per applicant including extensions). NMHC staff will conduct initial interviews based on applications received. The Program may work with the existing HOME Program to transfer records for applicants who previously pre-qualified as mortgage ready through the existing HOME program, thus expediting their application process. Program staff may also work with homestead applicants on the Department of Public Lands' waiting list for eligibility. Program staff will determine if applicable records are current or need to be refreshed.

During the appointment, the applicant completes and signs various forms and supplies information required to ascertain eligibility as follows:

Please see attached Homebuyer Application Checklist.

Applicant's for Option 2 will also be asked to provide information related to the property they are proposing to build on, including but not limited to location and ownership documentation.

3.2.2 Qualifying Applicant Income and Mortgage Readiness

NMHC will verify applicant income and confirm their ability to qualify for a mortgage.

3.2.3 Income Verification

NMHC will review applicant' s income to determine that applicant ' s income is at or less than 120% of the AMI. These limits are based on HU D's estimates of median family income, with adjustments based on family size. The HUD income limits are found at https://www.huduser.gov/portal/datasets/il.html.

3.2.4 Eligibility Determination

Program staff will request all necessary third-party verification of income, assets, and other application requirements. Staff will also verify land ownership for Option 2 applicants.

3.3 Loan Closing

Homebuyers are able to take a final walk through of the home five (5) days prior to closing. This allows the buyer to review the property and ensure that any contingencies listed on the punch list have been addressed and the house is in "move-in" condition.

Loans are closed with NMHC's loan processing staff and legal division (Office of the Attorney General). NMHC's loan processing staff prepares the deed and closing documents in preparation of closing.

4.0 RECORDKEEPING AND REPORTING

NMHC's Project and Loan Section staff (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, NMHC follows the records retention requirements cited at 2 CFR Part 200.333-337, which includes financial records, supporting documents, statistical records and all other pertinent records be maintained for five (5) years after closeout of the grant between HUD and NMHC. NMHC established requirements in its sub-recipient and contractor agreements for compliance with all HUD cross cutting requirements outlined at 2 CFR 200: Appendix II, including record keeping requirements. Records such as mortgages and other legal documents enforcing provisions of long-term affordability shall be maintained for five (5) years after the termination of the compliance period.

Homebuyers will be advised to maintain all records, receipts, invoices, and other documentation related to the purchase of their homes for three (3) years from the date NMHC closes the CDBG-DR program with HUD.

For additional information regarding records retention, how the program will manage PII, and file security, please refer to homebuyer policies and procedures.

APPENDICES

Cross-Cutting Requirements

Homebuyer Application Checklist

APPENDIX A.1: Crosscutting Requirements

1.1 Crosscutting Requirements

1.2 Fair Housing

The Fair Housing Act requires all grantees, subrecipients, and/or developers funded in whole or in part with HUD financial assistance to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability or marital status. The Program complies with and enforces the Civil Rights requirements of Title I of the Housing and Community Development Act (HCDA) and the Fair Housing Law.

Projects must also assess how planning decisions may affect members of protected classes, racially and ethnically concentrated areas, as well as concentrated areas of poverty; will promote the availability of affordable housing in low-poverty, non-minority areas where appropriate; and will respond to natural hazard-related impacts. Program staff will use demographic, geographic, and social vulnerability analyses to determine any positive or negative impacts to protected classes. Should a project present negative impacts, project scope or design will be re-assessed to mitigate such impacts.

1.3 Environmental Review

Early environmental coordination must be completed to ensure effective implementation of all CDBG-DR Programs. CDBG-DR funding is contingent upon compliance with both local and federal environmental regulations. This includes compliance with NEPA and related environmental and historic preservation legislation and executive orders. In general, NMHC serves as the lead agency for purposes of NEPA.

HUD's Environmental Review process allows grantees to serve as the "Responsible Entity" to assume environmental review responsibilities under NEPA. As the grantee, NMHC serves as the Responsible Entity (through authorization from the Governor) as it relates to environmental review responsibilities under NEPA. Within NMHC, Environmental Review Staff will be responsible for performing environmental reviews and compiling the Environmental Review Records (ERR). Reviews are conducted either directly or using qualified environmental service contractors. NMHC's Corporate Director, as the Certifying Officer, is ultimately responsible with certifying that NMHC's environmental reviews follow NEPA and HUD environmental regulations.

Federal Register Notice FR-6182-N-01 authorizes recipients of CDBG-DR funds under the Appropriations Act to adopt any environmental review, approval, or permit performed by a Federal agency for the same project to satisfy responsibilities with respect to environmental review, approval, or permit. NMHC will notify HUD in writing of its decision to adopt another agency's environmental review. NMHC will also retain a copy of the review in its environmental records. Further information concerning the environmental review process is set forth in the Environmental Policies and Procedures.

1.4 Labor Standards

The Davis-Bacon and Related Acts (DBRA) applies to all federally-funded or assisted construction

contracts in excess of $2,000. This may apply to projects that are fully or partially funded with CDBG-DR, including FEMA or FHWA match programs. In matched projects, only the scope of the CDBG-DR portion of the project are subject to crosscutting requirements. DBRA requires all workers employed by contractors or subcontractors on CDBG-DR programs, be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with DBRA, as amended. DBRA also requires that workers on federally-assisted projects are paid not less than weekly.

Wage information for labor under CDBG-DR programs will be tracked in detail by both NMHC and relevant Implementing Partners and subrecipients throughout the life of the Program. Compliance for this requirement may be tracked in the following ways:

1. Additional NMHC Program staff hired to track wages and verify contractor and agency compliance
2. External contractor hired by NMHC to track DBRA compliance
3. Enhanced TA provided to Implementing Partners to track DBRA compliance

Procedures for this process are currently under development and will be incorporated in a future update to this document.

For prime contracts in excess of $100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular pay for all hours worked over 40 in a work week. Additionally, NMHC must follow the reporting requirements per HUD and U.S. Department of Labor (DOL) regulations. This requirement also extends to NMHC subrecipients, Implementing Partners, and contractors.

The Fair Labor Standards Act of 1938 (FLSA), as amended, establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week. These labor standards are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project.

1.5 Limited English Proficiency

Federal Executive Order 13166 requires NMHC and all satellite offices, programs, subrecipients, contractors, subcontractors, and/or developers funded whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP) and/or deaf/hard of hearing.

Compliance with this requirement is detailed in NMHC's Language Action Plan (LAP) and will be coordinated and tracked by the Compliance section. Depending on the program, NMHC, Implementing Partners, sub-recipients, and subcontractors will share the following expectations to comply with this Executive Order:

1. Document Translation: All documents defined as "vital documents" will be translated into Chamorro or Carolinian by NMHC, Implementing Partners, and sub-recipients. A "vital document" is defined as a document that includes information regarding eligibility requirements, applications and instructions, program eligibility determinations, and appeals

procedures. NMHC may aid to ensure this requirement is met.
2. Where required, seek feedback from the community the project serves (advocacy groups serve vital role).

Language maps provided in the Language Action Plan will be used to determine the project's location and subsequent language context and if proactive LEP outreach will be required. These maps will be included as part of the Project Assessment Form used by NMHC to review the eligibility, priority level, and impacts of a potential project.

1.6 Minority and/or Women-Owned Business Enterprises

The Federal Executive Order 12432 guidelines require selected federal agencies to promote and increase the utilization of Minority-Owned and Women-Owned Business Enterprises (M/WBEs). Following procurement guidelines under 2 CFR 200.321, NMHC must make efforts to ensure that all subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with HUD CDBG-DR financial assistance encourage participation in contracts and other economic opportunities by small and minority firms, women-owned business enterprises (WBEs), and labor surplus area firms whenever possible. NMHC will accept a M/WBE certification from another state, local or regional, DPW, SBA HUB Zone, SBA 8-A certification (economically disadvantaged and 51% locally-owned), and other eligible certification processes. Documentation and goals regarding M/WBE percentages and reporting will be determined in the contracting agreements.

1.7 Section 3 Economic Opportunities

Section 3 is triggered when the award of CDBG-DR funds for new construction and rehabilitation projects creates the need for new employment, contracting, or training opportunities.

Section 3 of the Housing and Urban Development Act of 1968 is to "ensure that employment and other economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed to low and very low income individuals, especially recipients of government assistance for housing and to businesses which provide economic opportunities to low and very low income individuals."

The Section 3 program requires that recipients of HUD CDBG-DR funds, to the greatest extent feasible, provide (a) employment and training, and (b) contracting opportunities for low- or very- low income residents in connection with construction projects in their neighborhoods.

It also specifically encourages economic opportunities for households who are recipients of government assistance for housing. NMHC and all administering entities will follow and require relevant contractors to follow Section 3 requirements in contracting.

Section 3 applies to the CNMI, as recipient of HUD funding, as well as to subrecipients or Implementing Partners/Sub-recipients receiving HUD funding exceeding $200,000. Whenever any portion of HUD funding is invested into projects involving housing construction, demolition or rehabilitation, commercial/private improvements for economic development, or other public construction (e.g., roads, sewers, community centers, and public facilities), the requirements of Section 3 apply.

In conjunction with construction activity, Section 3 applies to projects that are fully or partially funded with CDBG-DR assistance, including projects that are financed in conjunction with territory, local, or private matching or leveraged funds, provided that the Section 3 monetary threshold requirements are met. In particular:

- In conjunction with construction activities, Section 3 applies to contractors or subcontractors that receive contracts more than $100,000 for Section 3-covered projects/activities. Once it is determined that Section 3 applies to a project, the requirements apply to all contracts for construction work arising in connection with that project exceeding $100,000, including those not funded with CDBG-DR assistance. Contractors or subcontractors are required to comply with the Section 3 regulations in the same manner as the Territory; and

- "Section 3-covered contract" includes professional service contracts, provided that the work to be performed is generated by the expenditure of funds in furtherance of Section 3 covered work (e.g., housing construction, housing rehabilitation, and other public construction), arising relating to construction projects. Professional service contracts that may constitute Section 3-covered contracts include construction contract oversight, engineering, architectural, environmental and property evaluation, construction progress and draw inspections, and prevailing wage labor compliance.

The regulations pertain to new hires required to complete Section 3-covered projects and activities. If the expenditure of funding for an otherwise covered project and activity does not result in new employment, contracting, or training opportunities, Section 3 reporting will still be required.

When NMHC awards CDBG-DR funds to other governmental departments, nonprofit organizations, subrecipients or other funded entities, NMHC will require they document how reasonable attempts were made to reach numerical goals set forth at 24 CFR Part 135.30. NMHC will inform its Implementing Partners and other funded entities of the requirements of Section 3, including the language required to be inserted into all construction-related contracts, assist them and their contractors with achieving compliance, and monitor their performance with respect to the Section 3 objectives and requirements.

Implementing Partners/Sub-recipients will receive training on this requirement and methods of compliance, technical assistance from Program staff, and continual monitoring from NMHC. Currently, a Section 3 Plan is under development, the details of which will be included in an update to this manual.

1.8 System for Award Management (SAMs)

SAM is the federal System for Award Management and is a requirement for doing business with the U.S. government. All vendors are required to register in SAM in order to be awarded contracts under the CDBG-DR program. Vendors are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions. Vendors must update or renew their registration annually to maintain an active status.

1.9 Uniform Relocation and Real Property Acquisition Act (49 CFR 24)

The Uniform Relocation Assistance and Real Property Acquisition Act (URA), is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The URA's

protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects. The phrase "program or project" is defined in 49 CFR Part 24 as, "any activity or series of activities undertaken by a federal agency or with federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines."

The objectives of the URA are:

- To provide uniform, fair and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects;
- To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement;
- To ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means;
- To help improve the housing conditions of displaced persons living in substandard housing; and,
- To encourage and expedite acquisition by agreement and without coercion.

49 CFR 24.101(c)(1) provides that the subpart B requirements also apply to the acquisition of permanent and/or temporary easements necessary for the project. However, 49 CFR 24.101(c)(2) provides an exception for the acquisition of temporary easements which exclusively benefit the property owner.

Demonstrable Hardship - A demonstrable hardship is a substantial change in an applicant's financial situation that will prohibit or severely affect their ability to provide a minimal standard of living or the basic necessities of life including food, housing, clothing and transportation without causing economic distress well beyond mere inconvenience as shown by objective evidence. A demonstrable hardship must be occurring after the named storms. The demonstrable hardship must be of a severe, involuntary and unexpected nature. It must not be one that is generally shared by other applicants affected by the named storms. Examples of demonstrable hardships may include job loss, failure of a business, divorce, severe medical illness, injury, death of a family member or spouse, unexpected and extraordinary medical bills, disability, substantial income reduction, unusual and excessive amount of debt due to a natural disaster, etc. None of the listed examples above, individually or taken together, automatically establish a demonstrable hardship nor is the listing above exhaustive as there may be other factors relevant to the issue of demonstrable hardship in a particular case. If an applicant believes that they are in the state of demonstrable hardship and that the demonstrable hardship causes them to not comply with any of the program policies, they may present their existence of a demonstrable hardship to their case worker (housing or loan specialist) and the Program will evaluate on a case-by-case basis after review of all of the circumstances. Applicants claiming a Demonstrable Hardship shall be required to provide evidence of such claimed Demonstrable Hardship to the case worker.

Not Suitable for Rehabilitation – properties where the cost of rehabilitation exceeds the after rehab appraisal and there is not a compelling historical or community justification to save the property.

APPEXDIX A.2: Homebuyer Application Checklist



NORTHERN MARIANAS HOUSING CORPORATION
P.O. BOX 500514, Saipan, MP 96950-0514

Start Time:	
End Time:	
Total Session Time:	

Homebuyer Application Checklist

Tel. (670) 234-6866
234-9447
234-7689
234-7670
Fax: (670) 234-9021

Client (s) Name _____ & _____ Date _____

In order to complete your application for assistance, we need the following items as checked below:

- ☐ Eligibility Release Form (each adult member of the household must sign, date & initial)
- ☐ Use of Funds Certification (both Applicant and Co-Applicant must sign)
- ☐ Disability Eligibility Verification (Doctor/Physician must complete this Form)
- ☐ Verification of Employment (employee's employer must complete this Form)
- ☐ Statement of Unemployment (each adult member of the household who's unemployed must complete this Form)
- ☐ Social Security - Consent to Release Information (Must be completed for each household member)
- ☐ Check Stubs (six most current)
- ☐ 1040 Tax Form previous two years (2018 & 2019)
- ☐ Tax & Revenue - Certification of Compliance (for both Applicant and Co-Applicant)
- ☐ Loan Payment Record(s), If any
- ☐ Verification of Deposit(s), If any
- ☐ Checking account statement (six most current statements)
- ☐ Savings account statement (most current statement)
- ☐ Assets - Retirement 401 (a)(k), Supplemental Life etc. (most recent statement with cash value)
- ☐ Divorce Decree, Judgment(s) etc., If applicable
- ☐ Certification of Title, Deed, or Residential Homestead Permit, etc.
- ☐ Property Map
- ☐ Photo I.D.- Driver's Licenses, MOS, Passport (for applicant only) and Birth Certificate (for each member of the household)
- ☐ Documentation for any federal assistance such as WIC, MEDICAID, MEDICARE, LIHEAP, NAP, CHILDCARE ASSISTANCE, etc.
- ☐ Utility bill (most current)
- ☐ If a bankruptcy has been filed, a copy of your discharge letter (we cannot proceed without the letter)
- ☐ Affidavit of Construction
- ☐ Uniform Residential Loan Application

Due to the fact that many families are in the same position as you, and the high demand for our services we ask that you notify us <u>One (1) day prior</u> to your appointment if you are unable to attend. If you are unable to bring <u>ALL</u> the necessary photocopied <u>documents</u> to your appointment, your eligibility assistance may be delayed.

Please read carefully:
As head of household I declare that members of my household have no ownership, in full or part, of any assets other than those identified above; the value of which have been disclosed. Please sign below.

_____ BORROWER

_____ CO-BORROWER

_____ LOAN SPECIALIST

"NMHC is a fair housing agency and an equal opportunity, lender and employer"

Rota Field Office: Tel: (670) 532-9410
Fax: (670) 532-9441

Tinian Field Office: Tel: (670) 433-9213
Fax: (670) 433-3690

HOMEOWNER REHABILITATION AND RECONSTRUCTION POLICIES AND PROCEDURES
TRACKED POLICY AND PROCEDURAL CHANGES

NEW	PAGE NO. AND AMENDED SECTION/SUBSECTION	RATIONALE/REASON(S) FOR CHANGES
Amended to update allocation amount: $39,407,033 and/or as detailed in the CDBG-DR Action Plan and Amendments	Part 001- General Provisions, § 100-100.4-001 Introduction, Paragraph 1, Page 045152	HUD supplemental funding for CDBG-DR Housing Programs
Replaced "Office of Housing" to "Housing Division"	Part 001- General Provisions, § 100-100.4-001 Introduction, Paragraph 4, Page 045152	HUD/ICF comments
Replaced "Office of Housing staff, contractors, and homeowners" to "Housing Division staff and contractors"	Part 100- Purpose and Requirements, § 100-100.4-101 Purpose of the Program, Paragraph 2, Page 045154	HUD/ICF comments
Added "Eligible households over 80% AMI will meet the national objective of urgent need;"	Part 100- Purpose and Requirements, § 100-100.4-103 General Requirements, item (a), Page 045155	HUD/ICF comments
Added "In compliance with the Stafford Act, NMHC must determine that any assistance deemed to be duplicative must be deducted from the calculation of the applicant's total need prior to awarding the funds."	Part 200- Loan Specifications, § 100-100.4-201 Loan Amount, item (a), Page 045156	HUD/ICF comments
Split section into two separate sections: 30.01% to 50% and 80.01% to 120%.	Part 200- Loan Specifications, § 100-100.4-205 Target Group, item (b) and item (d), Page 045158	HUD/ICF comments
Added new section: "(c) 50.01% to 80%: Very low- to low-income families with limited financial resources; a 50% non-interest bearing loan and 50% forgivable loan shall apply throughout the term of the loan with an affordability period of 20 years on a 30-year term. If there are no missed payments during the affordability period, any remaining principal balance may be forgiven."	Part 200- Loan Specifications, § 100-100.4-205 Target Group, item (c), Page 045158	HUD/ICF comments
Amended 120% of Median Income Limits.	Part 200- Loan Specifications, § 100-100.4-220 Interest Rate and Type of Assistance, Table 3, Page 045161	To reflect most updated 120% of Median Income Limits

NORTHERN MARIANA ISLANDS HOME INCOME LIMITS 2020								
Person Household	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
120% of Median Income	$40,400	$46,200	$51,950	$57,700	$62,350	$66,950	$71,550	$76,200

PREVIOUS:

NORTHERN MARIANA ISLANDS HOME INCOME LIMITS 2020								
Person Household	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
120% of Median Income	$40,440	$46,200	$51,960	$57,720	$62,400	$66,960	$71,640	$76,200

Added "or https://www.hudexchange.info/incomecalculator/"	Part 200- Loan Specifications, § 100-100.4-220 Interest Rate and Type of Assistance, Table 3, Page 045161	HUD/ICF comments
Replaced "The applicant and the inspection personnel (A&E firm), as well as the responsible loan specialist, shall work cooperatively to develop the scope of work for the project." with "The inspection personnel (A&E firm) as well as the responsible project division staff, shall work cooperatively to develop the scope of work for the project."	Part 300- Loan Application Process, § 100-100.4-325 Initial Inspection of Residence, Paragraph 1, Page 045167	HUD/ICF comments
Replaced "CNMI" with "NMHC"	Part 300- Loan Application Process, § 100-100.4-335 Environmental Review Procedures for Entitles Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58), item (a), Page 045168	HUD/ICF comments
Removed "and (4) The footprint of the building will not increase in a floodplain or in a wetland."	Part 300- Loan Application Process, § 100-100.4-335 Environmental Review Procedures for Entitles Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58), item (b), Page 045169	HUD/ICF comments
Added "and there are no more than 4 dwelling units on any one site."	Part 300- Loan Application Process, § 100-100.4-335 Environmental Review Procedures for Entitles Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58), item (c), Page 045169	HUD/ICF comments
Replaced "Rehab Environmental Review (RER)" with "Broad-Level CEST Review"	Part 300- Loan Application Process, § 100-100.4-335 Environmental Review Procedures for Entitles Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58), item (d) # (1), Page 045169	HUD/ICF comments
Added "Site-Specific Review"	Part 300- Loan Application Process, § 100-100.4-335 Environmental Review Procedures for Entitles Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58), item (d) # (2), Page 045169	HUD/ICF comments
Added "if applicable."	Part 300- Loan Application Process, § 100-100.4-340 Rehabilitation or Reconstruction Loan Application, item (b), Page 045170	HUD/ICF comments
Replaced "Office of Housing" to "Housing Division"	Part 300- Loan Application Process, § 100-100.4-355 Administration, Approval, Appeals Process, item (a) # (1), Page 045171	HUD/ICF comments
Added "or loan specialists" and "(first batch of applications)"	Part 300- Loan Application Process, § 100-100.4-355 Administration, Approval, Appeals Process, item (a) # (2), Page 045171	HUD/ICF comments
Replaced "Office of Housing" to "Housing Division"	Part 300- Loan Application Process, § 100-100.4-355 Administration, Approval, Appeals Process, item (a) # (2), Page 045171	HUD/ICF comments
Added "and eventual transition to the Housing Administrator"	Part 300- Loan Application Process, § 100-100.4-355 Administration, Approval, Appeals Process, item (b), Page 045172	HUD/ICF comments
Added "/Housing Administrator"	Part 300- Loan Application Process, § 100-100.4-355 Administration, Approval, Appeals Process, item (b), Page 045172	HUD/ICF comments
Added "The other agency's environmental review must cover all project activities funded by the HUD recipient for each project."	Appendix A.1: Crosscutting Requirements, 1.3 Environmental Review, Paragraph 3, Page 045197	HUD/ICF comments
Replaced "Further information concerning the environmental review process is set forth in the Environmental Policies and Procedures." with "Further information concerning the specific HUD requirements for the adoption of other Federal agency environmental reviews can be found in the HUD Memorandum dated March 4, 2013, Adoption of FEMA and Other Federal Environmental Reviews Processing for Hurricane Sandy	Appendix A.1: Crosscutting Requirements, 1.3 Environmental Review, Paragraph 3, Page 045197	HUD/ICF comments

Supplemental Appropriation (H.R. 152) Activities. Additional information on the environmental review process in general is set forth in Section § 100-100.4-335, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58)."		
Added new section: "Appendix A.3: Environmental Review" Policy and Procedures • Tier I Review: Target Ares Assessment • Tier II: Site Specific Project Review Environmental Procedures • Step 1: Environmental Review Determination o 1. Exempt – Subject to Related Laws at 24 CFR 58.34 o 2. Categorically Excluded, not Subject to 58.5. (24 CFR 58.35) o 3. Categorically Excluded Subject to 58.5 o 4. Subject to an Environmental Assessment (24 CFR 58.36) o 5. Subject to an environmental impact statement (24 CFR 58.37) • Step 2: Preparation of Environmental Review o Tiered Environmental Review o 8-Step Decision Making Process for Projects in the Floodplain • Step 3: Publication of Notice of Intent (NOI) Request for Release of Funds (RROF) and Finding of No Significant Impact (FONSI) o Categorical Exclusions o Environmental Assessments (EA)	Appendix A.3: Environmental Review, Page 045227	HUD/ICF comments

SUBCHAPTER 100-100.4
POLICIES AND PROCEDURES FOR CDBG-DR HOMEOWNER REHABILITATION AND RECONSTRUCTION

Part 001 General Provisions

§ 100-100.4-001 Introduction
§ 100-100.4-002 Public Announcement

Part 100 Purpose and Requirements

§ 100-100.4-101 Purpose of the Program
§ 100-100.4-102 Ineligible Activities
§ 100-100.4-103 General Requirements

Part 200 Loan Specifications

§ 100-100.4-201 Loan Amount
§ 100-100.4-205 Target Group
§ 100-100.4-210 Income Eligibility
§ 100-100.4-215 Property Eligibility
§ 100-100.4-220 Interest Rate and Type of Assistance
§ 100-100.4-225 Loan Terms and Repayment
§ 100-100.4-230 Repayment Analysis
§ 100-100.4-235 Use of Loan Funds
§ 100-100.4-240 Eligible Costs

Part 300 Loan Application Process

§ 100-100.4-301 Confidentiality
§ 100-100.4-305 Discrimination Prohibited
§ 100-100.4-310 Pre-Qualification Interview
§ 100-100.4-315 Eligibility Notification
§ 100-100.4-320 Ineligible Applicants
§ 100-100.4-325 Initial Inspection of Residence
§ 100-100.4-330 Lead-Based Paint
§ 100-100.4-335 Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58)
§ 100-100.4-340 CDBG-DR Rehabilitation Loan Application
§ 100-100.4-345 Application Intake and Processing
§ 100-100.4-350 Credit History and Verification of Income
§ 100-100.4-355 Administration, Approval, Appeals Process
§ 100-100.4-360 Homeowner Counseling Session
§ 100-100.4-365 Commitment Letter
§ 100-100.4-370 Preliminary Title Report (PTR)
§ 100-100.4-375 Pre-Construction Conference
§ 100-100.4-380 Submission of Pre-Construction Documents
§ 100-100.4-385 Loan Closing/Settlement

Part 400 Rehabilitation

§ 100-100.4-401 Rehabilitation Work

Part 500 Payments

§ 100-100.4-501 Mortgage Loan Payments
§ 100-100.4-505 Failure to make payment as required

Part 600 Affordability
§ 100-100.4-601 Affordability Restrictions

Part 700 Conveyance
§ 100-100.4-701 Sale, Conveyance, or Transfer or Property

Part 800 Assumption
§ 100-100.4-801 Loan Assumption

Part 900 Financial Hardship
§ 100-100.4-901 Financial Hardship Assistance

Part 1000 Ethics
§ 100-100.4-1001 Conflict of Interest

Part 1100 Miscellaneous
§ 100-100.4-1101 Acronyms Reference Section
§ 100-100.4-1105 Homeowner Rehabilitation – Underwriting Guidelines and Referenced Sections

Part 001 - General Provisions

§ 100-100.4-001 Introduction

As a result of the 2018 storms, namely Typhoon Mangkhut and Super Typhoon Yutu, the Commonwealth of the Northern Mariana Islands (CNMI) received an allocation of Community Development Block Grant Disaster Recovery (CDBG-DR) funds which will be administered by the Northern Marianas Housing Corporation (NMHC). NMHC has developed the Homeowner Rehabilitation and Reconstruction Program to cover the eligible costs to rehabilitate or reconstruct storm-related damaged properties in order to restore them back to decent, safe, and sanitary conditions. The governor of the CNMI has placed housing as the highest recovery priority. The total allocation amount at this time under this Program is $36,120,667.

Due to the limited availability of CDBG-DR funds allocated to the CNMI from the U.S. Department of Housing and Urban Development (HUD), financial assistance will be prioritized for the elderly or disabled extremely low-income families and then to low- to very low-income homeowners subject to HOME program income limits for the area adjusted for household size in accordance with HOME regulations at 24 CFR 92. NMHC has recognized these target groups to assist under the CDBG-DR program. Funds will be made available for eligible homeowner rehabilitation and reconstruction activities through deferred loans, combination of deferred loans and loans (non-interest and interest-bearing loans), and low interest loans to assist in the rehabilitation and reconstruction of their principal place of residence. The Program is designed to create a habitable living environment for homeowners with the most serious and significant damaged homes, and to serve as many impacted households as possible. As such, the Program requires the use of standard building materials, which may not restore some damaged homes to pre-storm conditions if luxury materials were damaged in the storm. To ensure the funding will assist the maximum number of households, rehabilitation and/or reconstruction work and materials will be limited to those items necessary to make the home livable.

Homeowner rehabilitation activities include those items identified at the initial inspection which are necessary in bringing the home in compliance with the 2018 International Building Code enacted by law and any updates approved by regulation by the CNMI Department of Public Works Building Safety Office and zoning laws (if applicable for Tinian and Rota), International Energy Conservation Code as adopted by the CNMI government, NMHC written design standards for single family housing new/rehabilitation, and accessibility requirements (where applicable) including the reduction of lead-based paint hazards and the remediation of other home health hazards.

The NMHC, on behalf of the CNMI, has been designated as the responsible entity in implementing and carrying out the objectives of the program. The Housing Division under the CDBG-DR Program, Planning Division, will be responsible for the day-to-day operations of the Homeowner Rehabilitation and Reconstruction Program. Services include program outreach to potential eligible

homeowners, application intake, program eligibility verification (both for the household and property), Duplication of Benefits review, Verification of Benefits analysis, award calculation, and documentation execution. Support services will be provided by NMHC's Mortgage and Credit Division and Fiscal Division with respect to underwriting, disbursement of and collection of payments, accounting, and maintenance of financial records. Overall, the NMHC Corporate Director will assume ultimate responsibility for the efficient and proper administration of this program in accordance with statutory and regulatory requirements. Through these policies and procedures and by imposing NMHC and HUD-prescribed residential rehabilitation standards, NMHC will preserve and improve the quality of the general housing stock of the CNMI.

§ 100-100.4-002 Public Announcement

(a) Publicity.

(1) Upon notification from HUD of the approval of the grant agreement, NMHC shall publish such approval within thirty (30) calendar days from the date of the approval. General information of the Homeowner Rehabilitation and Reconstruction Program shall be published in the print media of the widest local circulation, on the NMHC website, and other suitable means available. The program information shall also be posted in public and private bulletin boards where announcements are commonly posted. Loan applications may be submitted on or after a specified date to be stated in the public notice.

(2) Note: When it is determined that funds have been exhausted, the application intake may be closed until funding is once again available. Those applicants who did not submit their loan applications when the funds were available may do so once NMHC is notified by HUD of the availability of funds and after such notice is published.

(b) Contents. Program announcements shall inform interested applicants on how and where they may obtain an application and additional information on the types of homeowner program activities being administered in the CNMI. Such announcements shall further contain the following information:

(1) Brief overview of the Homeowner Rehabilitation and Reconstruction Program;
(2) General list of eligible activities available;
(3) Amount of funding available;
(4) General eligibility requirements to qualify for financial assistance;
(5) Homeowner selection process;
(6) Fair Housing logo and Equal Opportunity language; and
(7) Opening date for acceptance of applications.

(c) Affirmative Marketing. To ensure that all persons are effectively and adequately informed about the rehabilitation and reconstruction program and the availability of funds, especially to those least likely to apply without regard to race, color, national origin, sex, religion, familial status, and disability, a marketing strategy such as brochures or information notices shall be

provided and distributed or posted in the following locations and shall contain the information described in subsection (b). NMHC shall maintain records of actions taken to affirmatively market the program, and maintain records to assess the results of those actions. Brochures and/or program information notices shall be made available at the following public and private areas:

(1) U.S. Post Offices;
(2) Major shopping centers;
(3) Public health centers;
(4) Places of worship;
(5) Government office buildings;
(6) The Nutrition Assistance Program (Food Stamp) office(s); and
(7) U.S. Social Security Administration office(s).

Part 100 - Purpose and Requirements

§ 100-100.4-101 Purpose of the Program

The purpose of the program is to provide no cost or low-cost financing assistance to extremely low, very low and low-income families for the rehabilitation or reconstruction of their principal residence. The rehabilitation goal is to increase the economic life of the existing dwelling, provide energy efficiency, and ensure a safe, decent, and healthy living environment for assisted families.

The rehabilitation component will be available to serve homeowners whose homes received Major or Severe damage but do not meet the definition of destroyed or substantially damaged. NMHC will use the services of A&E firms to provide construction management which includes conducting damage assessments, design services, developing scopes of work and costs estimates, progress inspections, and contractor assessments. The construction managers will work closely with the Housing Division staff and contractors throughout the rehabilitation or reconstruction process.

The reconstruction component will be available to serve homeowners whose homes were destroyed or substantially damaged. Applicants that have already demolished their storm-damaged homes must also provide documentation evidencing the pre-storm structure type, total square footage, and that the damage to the home was caused by the storm. Applicants must also provide notices of condemnation, substantial damage notifications, or other notices requiring the property be demolished.

§100-100.4-102 Ineligible Activities

The following activities are *ineligible* and CDBG-DR grant funds *cannot* be used for any portion:

- Assistance for homeowners whose home was in a flood hazard zone and previously received federal flood disaster assistance and failed to maintain the

required flood insurance;

- Assistance for homeowners for which (a) the combined household income is greater than 120% AMI of the national median, (b) whose property sustained damage in the typhoons and was located in a floodplain at the time of the disaster, **and** (c) the owner did not maintain flood insurance on the damaged property, even if the property owner was not required to obtain and maintain such flood insurance (see Section 4.4 below);
- Forced mortgage payoffs;
- SBA home/business loan payoffs;
- Funding for units occupied by any households except the owner household (no rental or lease properties are allowed);
- Funding for second homes; or
- Compensation payments.

§ 100-100.4-103 General Requirements

To qualify for rehabilitation assistance, the applicant(s) must meet the following:

(a) Qualify as Low Moderate-Income family as defined by HUD including applicants who are above the 80% but less than 120% of AMI. Eligible households over 80% AMI will meet the national objective of urgent need;

(b) The dwelling must be the applicant's primary residence prior to the storms and prior to applying for rehabilitation or reconstruction assistance;

(c) Must occupy and continue to occupy residence after the completion of such repairs and/or renovation;

(d) Own the property under an approved form of ownership as set forth in 24 CFR § 92.254(c), and as specified below:

(1) Has fee simple title to the property;
(2) Maintains a 40-year leasehold interest in the property;
(3) Owns a condominium fee simple or maintains a 40-year leasehold interest in the property;
(4) Owns or has a membership in a cooperative or mutual housing project that constitutes homeownership under state law; or
(5) Maintains an equivalent form of ownership approved by HUD.
(6) Undergo duplication of benefits analysis.

(e) Applicants not meeting any one of the above, do not qualify for assistance under this program.

Title 18, Section I 00 I, et seq. of the United States Code, the general false statement statute, outlaws making materially false statements, intentional or negligent misrepresentations in matters within the jurisdiction of a federal agency or department, such as federal disaster relief funding. Civil or criminal penalties, including but not limited to fine, imprisonment or both, as well as repayment of any assistance provided, may be pursued. Under Section 100I, a statement is a crime if it is false, regardless of whether it is made under oath. Failure to disclose accurate and complete information may affect eligibility requirements. Some of the information submitted by applicants will be validated through third-party sources during the eligibility process.

Part 200 - Loan Specifications

§ 100-100.4-201 Loan Amount

(a) Minimum and Maximum Loans: The minimum loan amount allowable under this program is ten thousand dollars to maximum HOME per-unit subsidy limits that apply to the jurisdiction provided by HUD. The maximum assistance amount cannot exceed the HUD HOME maximum per-unit subsidy limit. NMHC will assess the house and the proposed rehab to determine that when completed the after-rehab value of the house will not exceed the HOME 95% value limits for the CNMI published by HUD. NMHC will need to examine the sources and uses of funds for the project and determine that the costs are reasonable and that NMHC is not investing any more CDBG-DR funds, alone or in combination with other governmental assistance, than is necessary. In compliance with the Stafford Act, NMHC must determine that any assistance deemed to be duplicative must be deducted from the calculation of the applicant's total need prior to awarding the funds. Please see **published value limits which is set at 95% of the area median purchase price for "Existing Homes" [see TABLE 1] for rehabilitation projects.**

(1) **The amount of Homeowner Rehab loan that may be used to rehabilitate an existing principal residence shall be based on the borrower(s) ability to repay the loan as determined by the program underwriting standards, for which, not to exceed the debt-to-income (DTI) ratio of forty-five percent (45%); as well as, not to exceed the payment-to-income (PTI) ratio of thirty-five percent (35%)**

(2) **Borrower(s) who are determined to exceed the 35% loan payment ratio, or PTI, may be approved for additional Rehab funds to supplement excess costs associated with the rehabilitation of a principal residence. This assistance shall be a forgivable deferred loan with additional years/time added to the affordability period as indicated in § 100-100.4-601 NMHC Affordability Restrictions.**

(3) **Homeowner(s) who are eligible for 100% deferred loan assistance may be approved for a loan amount up to the full cost to rehabilitate or reconstruct an existing principal residence provided that the rehabilitation (but not the reconstruction) cost estimate does not exceed that of the maximum Rehab loan amount; or 80% of the most current HUD HOME maximum per-unit subsidy limits.**

TABLE 1:

(Data through June 2019; New limits effective April 1, 2020)										
	Existing Homes HOME Purchase Price Limit					New Homes HOME Purchase Price Limit				
Metro FMR	1-Unit	2-unit	3-unit	4-unit	Unadjusted Median Value	1-Unit	2-unit	3-unit	4-unit	Unadjusted Median Value
Northern Mariana Is.	$157,000	$201,000	$243,000	$301,000	$164,900	$238,000	$304,000	$368,000	$456,000	$250,000

§ 100-100.4-205 Target Group

Because of the limited funding allocated to the CNMI, NMHC has recognized the need to prioritize the level of assistance to qualified families. In the event that there are more applicants than available funds, NMHC shall establish and maintain an applicant waiting list. All applicants being assisted, as well as those placed on the waiting list shall be processed on a first come, first serve basis.

NMHC will categorize the target groups based on income levels as follows:

(a) 0% to 30%

(1) Priority given to elderly or disabled families with incomes between 0%-30% of the area median income. Elderly or disabled household applicants may receive 100% forgivable loan assistance with an affordability period of 20 years on a 30-year term

(i) An elderly family is a family whose head of household, spouse, or sole member is age 62 or older

(ii) A disabled family is a family whose head of household, spouse, or sole member is a person with a disability. Person with a disability:

(I) Means a person who:

(a) Has a disability, as defined in 42 U.S.C. § 423;

(b) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently, and

(iii)Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(c) Has a developmental disability as defined in 42 U.S.C. § 6001.

(II) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome; and

(III) Does not include a person whose disability is based solely on any drug or alcohol dependence.

The applicant's physician must complete the Homebuyer/Homeowner Program Disability Eligibility Verification to certify the borrower's disability. As appropriate, NMHC shall require a court legal guardianship in cases where the physician certification indicates that the applicant is incapacitated or incompetent to enter into a legal and binding agreement such as a mortgage.

(b) 30.01% to 50%: Extremely low- to very-low income families with limited financial resources; a combination of 25% non-interest loan and 75% forgivable loan assistance may be provided to extremely low- to very-low income applicants with an affordability period of 20 years on a 30-year term. If there are no missed payments during the affordability period, any remaining principal balance may be forgiven.
(c) 50.01% to 80%: Very low- to low-income families with limited financial resources; a 50% non-interest bearing loan and 50% forgivable loan shall apply throughout the term of the loan with an affordability period of 20 years on a 30-year term. If there are no missed payments during the affordability period, any remaining principal balance may be forgiven.
(d) 80.01% to 120%: a 75% non-interest bearing loan and 25% forgivable loan shall apply throughout the term of the loan with an affordability period of 20 years on a 30-year term. If there are no missed payments during the affordability period, any remaining principal balance may be forgiven.

§ 100-100.4-210 Income Eligibility

NMHC shall use the HUD CPD Income Eligibility Calculator when determining income eligibility. NMHC shall also refer to the Technical Guide for Determining Income and Allowances for the HOME Program, Third Edition in verifying the household's assets and income which can be found in the HUD website. The NMHC shall adopt the guide and make use of the Part 5 income and asset calculation worksheets including any and all forms required in determining an applicant's annual and adjusted income. Information provided by the applicant shall be accompanied with proper documentations (i.e., check stubs, bank statements, 1040 tax forms, etc.). The anticipated gross annual household income and assets for the next twelve months is used in determining if an applicant(s) is/are eligible to participate in the program. NMHC shall calculate the weekly average income and assets and multiply it by 52 weeks. If the total household income falls within the 80% area median income as indicated in § 100-100.4-220(b), the applicant(s) is/are eligible to participate in the program. Households whose incomes are between 80% and 120% of the area median income are also eligible should a waiver be required and approved by HUD.

§ 100-100.4-215 Property Eligibility

(a) Property Ownership: Interested applicant(s) must provide proof of fee simple ownership or must have at least a 40-year leasehold interest in the property to be improved. In addition, the applicant must be present and have interest on the property on or before the presidential disaster declaration date for Typhoon Mangkhut or Super Typhoon Yutu. The assisted unit must be located in the CNMI, more specifically, on Saipan, Rota, or Tinian.

(b) In the event of the death of an applicant that has been determined as eligible but prior to loan/grant execution, their heirs who are able to document they were occupants of the residence at the time of the disaster and can prove current ownership through heirship will be eligible to apply for Program assistance.

If an owner occupant of a property damaged by Typhoon Mangkhut and/or Super Typhoon Yutu has passed away, their heirs may apply for Program assistance, provided they are able to submit evidence the damaged property was also the heir's primary residence at the time of one of the storms.

Heirs who were not occupants at the time of either disaster event are not eligible for Program assistance.

(c) Conformance to Property Standards: All assisted properties that are rehabilitated with CDBG-DR assisted funds must meet the program's established rehabilitation standards (see APPENDIX A.2). The Rehabilitation Standards are the program's guidelines of acceptable construction methods and materials to be used when performing rehabilitation and the quality standards that the property must meet when all rehabilitation work is completed.

NMHC's HOME/CDBG-DR Written Rehabilitation Standards shall detail the methods, materials and requirements that the housing must meet upon completion of rehab, including all of the following:

(1) Health and Safety - identifying all life-threatening deficiencies that must be addressed immediately if the housing is occupied [24 CFR 92.251(b)(1)(i)];
(2) Major systems – requiring that, upon project completion, each major system, as defined in 24 CFR 92.251(b)(1)(ii), had a remaining useful life of a minimum of 5 years, or for a longer period as specified by the NMHC, or the major system was rehabilitated or replaced as part of the rehabilitation [24 CFR 92.251(b)(1)(ii)];
(3) Lead-based paint [24 CFR 92.251(b)(1)(iii)];
(4) Disaster mitigation (if applicable) – requiring the property meet the disaster mitigation requirements [24 CFR 92.251(b)(1)(vi)];
(5) State and local codes, ordinances and zoning requirements [24 CFR 92.251(b)(1)(vii)];
(6) Minimum deficiencies that must be corrected based on inspectable items and areas in HUD's Uniform Physical Condition Standards [24 CFR 92.251(b)(1)(viii)].

NMHC shall make the rehabilitation standards available to the Department of Public Works (DPW) inspectors and the inspectors shall use them as a guide to certify that completed work was done accordingly.

(d) Local/State, National, or International Codes: Upon completion of rehabilitation or reconstruction work, the CDBG-DR assisted owner-occupied rehabilitation property must meet the 2018 International Building Code (2018) enacted by law and updates approved by regulation by the CNMI Department of Public Works Building Safety Office, zoning laws, and International Energy Conservation Code as adopted by the CNMI government.

(e) Upon completion of rehabilitation work, the CDBG-DR assisted owner-occupied rehabilitation property must meet accessibility requirements, where applicable; and the homeowner must also maintain, at their own expense, property insurance on the mortgaged property covering fire, earthquake, typhoon, and if applicable, flood damage. An insurance waiver may be granted, in whole or in part, to homeowners who show financial hardship.

(f) Principal Residence and Annual Recertification:

(1) CDBG-DR rehab applicants approved to receive financial assistance must own the property and occupy the property as their principal residence at the time of application, upon completion of the CDBG-DR-funded project, and throughout the NMHC affordability period. In order to maintain compliance with the affordability restrictions, borrower(s) shall be recertified annually for principal residency throughout their affordability period. An annual recertification for principal residency notice and form shall be sent to homeowners/borrowers to complete, sign, and submit to NMHC in order to confirm and have on file that they are continually occupying the mortgaged property and housing. The following stipulations apply for a principal residence: (i) A deed restriction or covenant running with the land shall incorporate this requirement; (ii) A written agreement between the homeowner and NMHC shall also incorporate this requirement; (iii) Temporary subleases are not allowed.

(2) Annual recertifications are conducted in order for homeowners to maintain compliance with the affordability restrictions.

(3) Annual recertifications through field visits may be conducted if the required completed form has not been provided, or if the account status is pending probate, or the account has been accelerated to the collection attorney for foreclosure proceedings. The Loan Specialist shall verify the borrower(s) principal residence and, as necessary, to take photos and document the status of the residential unit.

(g) Maximum Property Value: The projected after rehabilitation value of each assisted property must not exceed the most current 95 percent area median purchase price for single family housing, as determined by HUD. To determine such value, a written appraisal (which is an eligible soft cost) must be obtained by the borrower from an

appraiser approved by NMHC. The appraisal report must document the appraised value and the appraisal approach used.

§ 100-100.4-220 Interest Rate and Type of Assistance

(a) The interest rate charged on the outstanding principal balance for each target group is determined by the gross household income which falls in the following percentage of the established Northern Mariana Islands Income Limits published by HUD for the HOME program. See Table 2 and Table 3 below for more details. NMHC from time to time may revise the specified interest rates below as it deems beneficial for the administration of the program.

Table 2

CDBG-DR Program Income Limits for the CNMI	Interest Rate	Type of Assistance
0% - 30%	0%	Deferred Loan†
30.01% - 50%	0%	75% Deferred Loan and 25% Non-Interest Bearing Loan
50.01 – 80%	0%	50% Deferred Loan and 50% Non-Interest Bearing Loan
80.01% - 120%	0%	25% Deferred Loan and 75% Non-Interest Bearing Loan

†—Priority given to qualified elderly or disabled household applicant(s).

The Area Median Income for the Northern Mariana Islands as established by the U.S. Department of Housing and Urban Development for the HOME program as periodically revised is provided below and referenced as Table 3. NMHC shall comply with any revisions that the U.S. Congress enacts.

Table 3

NORTHERN MARIANA ISLANDS HOME INCOME LIMITS 2020								
Person Household	**1 Person**	**2 Person**	**3 Person**	**4 Person**	**5 Person**	**6 Person**	**7 Person**	**8 Person**
15% of Median Income	$5,055	$5,775	$6,495	$7,215	$7,800	$8,370	$8,955	$9,525
30% of Median Income	$10,150	$11,600	$13,050	$14,450	$15,650	$16,800	$17,950	$19,100
50% of Median Income	$16,850	$19,250	$21,650	$24,050	$26,000	$27,900	$29,850	$31,750
80% of Median Income	$26,950	$30,800	$34,650	$38,500	$41,600	$44,700	$47,750	$50,850
120% of Median Income	$40,400	$46,200	$51,950	$57,700	$62,350	$66,950	$71,550	$76,200

For most current HOME or CDBG-DR 120% program income limits published by U.S. Department of Housing and Urban Development, please go to https://www.hudexchange.info/programs/home/home-income-limits/ or https://www.hudexchange.info/incomecalculator/

§ 100-100.4-225 Loan Terms and Repayment

(a) Deferred Loans: Deferred loans are provided with no requirements or expectations of repayment. Homeowners that receive deferred loans to rehabilitate or reconstruct their principal residence must occupy the assisted unit throughout the NMHC affordability period following completion of the rehabilitation or reconstruction. However, should the assisted homeowner(s) decide to vacate, rent out, transfer title, or sell the assisted unit during the NMHC affordability period, the homeowner must repay the deferred loan. See part 600 for an explanation of the affordability restrictions and recapture.

(b) Non-Interest Bearing Loans: The principal amount of loans is paid back on a regular basis over time, but no interest is charged. The repayment term of all non-interest bearing loans shall be 30 years or 360 months and shall be fully amortized to produce equal monthly payments.

(c) Interest-Bearing Loans (if applicable): These loans are amortizing loans. Repayment is expected on a regular basis so that over a fixed period of time, all the principal and interest is repaid. The repayment term of all interest-bearing loans shall be 30 years or 360 months and shall be fully amortized at either 1%, 1.5%, or 2%, to produce equal monthly payments. The interest rate is dependent on the applicant's gross household income as specified in § 100-100.4-220(a).

(d) Extended Terms: Should a financial hardship beyond the borrower(s) control exists, a request for an extended loan term may be considered provided that the borrower(s) are able to meet the repayment of their re-amortized loan. The borrower(s) must provide NMHC with documentation justifying their inability to meet the loan repayment term while at the same time providing an adequate standard of living for his/her/their family. An extended term must be recommended by the CDBG-DR Housing Administrator (or designee) and concurred by the MCD Mortgage Manager and approved by the Corporate Director. All extended terms granted must not exceed a five (5)-year extension term for each request made or in the case of leasehold interest, the extension should not exceed the remaining leasehold term. The maximum number of times such an extension may be requested by a homeowner is two (2). Financial hardship includes, but is not limited to:

(1) Reduction-in-force;
(2) Reduction in pay;
(3) Family medical emergency (including death of an immediate family member: parents, siblings, child(ren), spouse, and in-laws);

(4) Medical condition (including career-ending injury) that causes homeowner to discontinue employment. The borrower's physician must complete the homebuyer/homeowner program disability eligibility verification to certify the borrower's medical condition;
(5) Temporary relocation (provided that at least one of the original household members is still residing in the assisted unit; or
(6) Natural disaster.

§ 100-100.4-230 Repayment Analysis

(a) Deferred Loans: 100% deferred loan assistance need not be repaid so long as the homeowner is in compliance with the requirement to occupy the CDBG-DR assisted housing as the homeowner's principal residence throughout the NMHC affordability period. Provisions in § 100-100.4-225(a) apply to this section as well.

(b) Non-Interest and Interest-Bearing Loans: Maximum monthly debt service for either type of loan including existing long-term obligations, insurance, plus the rehabilitation loan that will be incurred shall not exceed **45%** of the gross household income.

(c) (1) The maximum debt-to-income ratio shall be not more than **45%** (or most current ratio) of the gross household income. The maximum payment-to-income ratio of the rehabilitation loan itself shall not be more than **35%** (or most current ratio) of the gross household income. (2) On a case-by-case basis, NMHC may provide an exception to exceed the **45%** debt-to-income ratio, but not more than **55%,** upon NMHC's determination that the applicant(s) can meet repayment responsibilities. This provision is also applicable in determining and providing financial hardship assistance (see part 900).

Additional CDBG-DR funds used to supplement excess costs associated with the rehabilitation/repair or reconstruction of the principal residence and household income exceeds the 35% loan payment ratio, shall be a forgivable loan but with additional years/time added to the affordability period as indicated by the following schedule:

Supplemental CDBG-DR Funds	Additional Years Added to the Affordability Period
$1.00 - $50,000	5 years
More than $50,000	10 years

§ 100-100.4-235 Use of Loan Funds

(a) (1) The loan/deferred funds will be used to assist existing homeowners to repair, rehabilitate, or reconstruct owner-occupied housing units affected by the storms for the primary purpose of correcting dwelling deficiencies ensuring a safe and healthy living condition, and preserving

and extending the physical life of the dwelling. All corrections shall conform to the 2018 International Building Code enacted by law and any updates approved by regulation by the CNMI Department of Public Works Building Safety Office, zoning laws, International Energy Conservation Code as adopted by the CNMI government, and also ensure that it meets the NMHC HOME/CDBG-DR Rehabilitation Standards as adopted by the NMHC Board.

(2) Special purpose homeowner repairs such as weatherization, emergency repairs, and accessibility may only be undertaken within a more comprehensive scope of work that brings the housing unit up to standard.

(b) (1) Rehabilitation - This includes the alteration, improvement, or modification of an existing structure. It also includes moving an existing structure to a foundation constructed with HOME funds. Rehabilitation may include adding rooms outside the existing walls of a structure.

(2) Adding a housing unit is considered new construction and is not eligible.

(c) Reconstruction - In most instances, applicant(s) requesting assistance under this program live in substandard homes which are often unsafe and unsanitary. Many of which are termite infested and dilapidated to the point where a complete tearing down of the unit would be most appropriate. These types of structures would most likely endanger the households during storms and other calamities. Reconstruction refers to rebuilding a structure on the same lot where the housing unit is standing at the time of the storms. CDBG-DR funds may be used to build a new foundation or repair an existing foundation. Reconstruction may take place on the same foundation that the existing structure was on. Reconstruction may take place anywhere on the lot. During reconstruction, the number of rooms per unit may change, but the number of units may not.

(d) Luxury items and improvements are not eligible, including but not limited to: barbecue pits, bathhouses, exterior hot tubs, saunas, whirlpool baths, swimming pools, satellite dishes, tennis courts, dirty kitchens, and granite counter tops. Any additions or alterations to provide for commercial use are not eligible.

§ 100-100.4-240 Eligible Costs

In line following the HOME Program, (a) As defined in 24 C.F.R. § 92.206(a)(2)-(5), (b), and (d), CDBG-DR funds can be used to cover the hard rehabilitation costs necessary to meet required rehabilitation standards and associated "soft costs." CDBG-DR funds may be used to pay for property improvements that are considered standard for the area. However, non-essential luxury or cosmetic improvements to the property are not permitted.

(1) Hard costs include the following:

(i) Meeting the rehabilitation standards;

(ii) Meeting applicable codes, standards, and ordinances;

(iii) Essential improvements;

(iv) Energy-related improvements;

(v) Lead-based paint hazard reduction;

(vi) Accessibility for disabled persons;
(vii) Repair or replacement of major housing systems;
(viii) Incipient repairs and general property improvements of a non-luxury nature; and
(ix) Site improvements and utility connections.

(2) Soft costs include the following:
(i) Financing fees;
(ii) Initial credit report;
(iii) Preliminary title report (PTR) and lender's title policy, if applicable;
(iv) Recordation fees, transaction taxes;
(v) Legal and accounting fees;
(vi) Appraisals;
(vii) Architectural/engineering fees, including specifications and job progress inspections;
(viii) Project costs incurred by the PJ that are directly related to a specific project; and
(ix) Refinancing of secured existing debt if the housing is owner-occupied and refinancing allows the overall costs of borrower to be reduced and the housing is made more affordable and rehabilitation cost was greater than the amount of debt refinanced.

(b) NMHC shall set aside $2,508.50 (more or less, depending on current costs) per project from the program budget to assist each qualified rehab or recon borrower to pay for the following loan closing fees and other related costs. This form of assistance shall not be in any way, a part of the rehab loan amount extended to the client. Borrowers will not be required to pay back any of this amount so long as they are in compliance with NMHC affordability restrictions. The entire amount shall be immediately due and payable by the borrower should NMHC determine that borrower(s) are not in compliance with NMHC affordability restrictions.

(1)	$400.00	Utility connection*;
(2)	$1200.00	First annual premium for hazard insurance;
(3)	$550.00	Appraisal report;
(4)	$150.00	Recordation of mortgage documents;
(5)	$200.00	Preliminary title report (PTR);
(6)	$8.50	Credit report @ $4.25 each.
	$2,508.50	Total

*Borrower must ensure that there are no outstanding issues with the utility company

(1) If the homeowner(s) opt to have a private inspector perform unit inspection, the first/initial unit inspection fee may be covered by NMHC, subject to any conditions set by NMHC. Any cost associated with any subsequent inspection shall be the responsibility of the homeowner(s).

Part 300 - Loan Application Process

§ 100-100.4-301 Confidentiality

As is NMHC's practice, all applicant information is kept confidential and shall be made available only to borrower(s); borrower(s') authorized representative; HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the participating jurisdiction, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts; and authorized NMHC personnel.

§ 100-100.4-305 Discrimination Prohibited

Under no circumstances shall any of the NMHC Board of Directors, its officers, employees, agents, or contractors providing services to the corporation discriminate any applicant or borrower on the basis of race, color, national origin, religion, sex, ancestry, disability, or familial status (including children under the age of 18 living with parents or legal custodians, pregnant women, and people securing custody of children under the age of 18).

§ 100-100.4-310 Pre-Qualification Interview

(a) Before an applicant can be given a formal application, the interviewing loan specialist must conduct a pre-qualification interview to initially determine an applicant's eligibility for assistance. A Homeowner Rehabilitation and Reconstruction Program Pre-Qualification Interview Worksheet shall be completed by the interviewing loan specialist.

(b) Because the information collected from the applicant during this process may not be accurate, as the loan specialist may only be relying on "assumed estimates" regarding their employment, debt, and assets, applicants who are initially determined eligible may later be determined ineligible for the program.

§ 100-100.4-315 Eligibility Notification

Once the applicant(s) has been pre-qualified and have been later determined eligible for the program, NMHC shall officially notify the applicant(s) in writing of their eligibility. Such notification shall be mailed no later than five (5) working days after the determination, and shall contain a listing of additional information to be submitted for completion of loan file. Eligible applicant(s) shall be given thirty (30) calendar days to submit the additional information requested. Applicant(s) who do not submit all pending information before the thirty (30) calendar day deadline, shall have their application(s) file placed in the pending files.

§ 100-100.4-320 Ineligible Applicants

All ineligible applicants shall be notified in writing of their ineligibility. Such notification shall be mailed no later than five (5) working days after the determination of ineligibility and shall include a description/reason of such determination. Those found ineligible may appeal such determination

to the Corporate Director within ten (10) working days from the date of receipt of the ineligibility notice. The Corporate Director will then review the appeal and render a decision within thirty (30) days from the date of receipt of the appeal letter. Ineligible applicants may further appeal the Corporate Director's decision to the NMHC Board for reconsideration.

§ 100-100.4-325 Initial Inspection of Residence

Initial inspections shall be conducted by NMHC's A&E firm contractor(s) or project manager and in coordination with the loan specialists or an NMHC representative to identify and verify deficiencies noted by eligible homeowners/applicants. NMHC personnel conducting the inspections shall note deficiencies in written form and shall document (i.e., obtain pictures) the condition of the unit. Such inspections shall also verify the eligibility and be the basis in estimating the costs of the rehabilitation activities requested and in developing the scope of work for the rehabilitation project. The inspection personnel (A&E firm) as well as the responsible project division staff, shall work cooperatively to develop the scope of work for the project. The rehab scope of work needs to adequately describe the work to be performed so the housing will meet NMHC's written rehabilitation standards at completion. The scope of work must be an eligible activity as described in § 100-100.4-235. The scope of work shall be provided to three (3) NMHC-approved contractors by the borrower(s) who shall prepare a cost breakdown estimate for the project. The estimates shall then be submitted along with the applicant(s) choice of contractor for the project upon submission of his/her/their loan application. If the applicant(s)'s choice of contractor is not on NMHC's approved contractor listing, the contractor shall be vetted prior to award of the contract. With regard to reconstruction projects, NMHC may provide pre-approved house plans to the applicant that best fit the footprint of the destroyed home. NMHC may, at its own discretion, select the appropriate contractor for the applicant if the rehab project is deeply subsidized using additional CDBG-DR funds. Deeply subsidized means additional funding assistance on top of the underwritten funding assistance.

§ 100-100.4-330 Lead-Based Paint

(a) The federal government banned lead-based paint from housing in 1978. Deteriorating lead-based paint (peeling, chipping, chalking, cracking, or damaged) is a hazard and needs immediate attention.

   (1) For Homeowner Rehabilitation Projects: Before any rehabilitation work is done, homeowners must provide documentation that shows that their homes were built either before or after January 1, 1978. Such documentation may include a copy of the building permit, if one can be provided; a notarized declaration/affidavit by the homeowner(s) or contractor attesting to the completion date of the home construction; and the age of the dwelling unit/property.

(b) For those homes deemed to have been completed before January 1, 1978, they must be checked for lead in one of two ways, or both:

(1) A paint inspection which shows the lead content of every different type of painted surface in the home;
(2) A risk assessment which shows if there are any sources of serious lead exposure (such as peeling paint and lead dust). A risk assessment provides the homeowner the necessary actions to take when addressing these hazards.

(c) Only a trained, certified professional is allowed to check the home for such hazards. Only a certified lead "abatement" contractor is allowed to permanently remove lead hazards. However, if the risk assessment does not reveal any lead-based paint hazards, NMHC will not require the homeowner to conduct any abatement of hazards.

(d) For those homes that were completed before January 1, 1978, the following forms must be completed:

(1) Lead Hazard Evaluation Notice;
(2) Notice of Lead Hazard Reduction;
(3) Relocation Screening Sheet for Projects with Lead Hazard Reduction Activities;
(4) Protection of Occupants' Belongings and Worksite Preparation for Projects with Lead Hazard Reduction Activities; and
(5) Property Owner/Rehab Contractor Contract Addendum Reduction of Lead Paint Hazards

(e) The following are required activities to address lead-based paint;

(1) Notification
(i) Lead Hazard Information Pamphlet—Occupants, owners, and purchasers must receive the EPA/HUD/Consumer Product Safety Commission (CPSC) lead hazard information pamphlet, or an EPA-approved equivalent.
(ii) Disclosure—Property owners must provide purchasers and lessees with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.
(iii) Notice of Lead Hazard Evaluation or Presumption—Occupants, owners, and purchasers must be notified of the results of any lead hazard evaluation work or the presumption of lead-based paint or lead hazards.

(2) Notice of Lead Hazard Reduction Activity—Occupants, owners, and purchasers must be notified of the results of any lead hazard reduction work.
(3) Lead Hazard Evaluation—Evaluation methods include visual assessments, paint testing, and risk assessments.
(4) Lead Hazard Reduction—Reduction methods described include paint stabilization, interim controls, standard treatments, and abatement.

§ 100-100.4-335 Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58)

(a) CDBG-DR rehabilitation activities to be undertaken by NMHC are subject to the environmental review requirements at 24 C.F.R. Part 58. NMHC is the responsible entity and is responsible for ensuring that the environmental review process is satisfied before CDBG-DR funds are committed to specific project site.

(b) Rehabilitation of homeowner housing may be categorically excluded per 24 C.F.R. §58.35(a)(3) when the following conditions are met:
(1) The building is for residential use and has one to four units;
(2) The density will not increase beyond four units; and
(3) The land use will not change.

(c) Reconstruction of a single-family unit in a new location on the same lot is classified as new construction for the purposes of environmental review. Reconstruction of homeowner housing may be categorically excluded per 24 C.F.R. § 58.35(4)(i) when it is an individual action (reconstruction only) on a one to four family dwelling and there are no more than 4 dwelling units on any one site.

(d) Homeowner rehabilitation housing categorically excluded per 24 C.F.R. § 58.35 is categorically excluded from an environmental assessment (EA) and finding of no significant impact (FONSI) under the National Environmental Policy Act (NEPA) except for extraordinary circumstances. To document compliance with environmental review requirements, NMHC must:

(1) Complete the Broad-Level CEST Review Rehab Environmental Review (RER) (which includes the Notice of Intent to Request Release of Funds for Tiered Projects and Programs, submitting a RROF to HUD, and obtaining the ATUGF from HUD), in accordance with 24 CFR 58; and,
(2) Complete the Site-Specific Review RER Appendix A when an individual loan or grant application is received before approving any site-specific loan or grant for each structure, document and implement the mitigation of impacts as necessary, and keep all supporting documents in the Environmental Review Record as evidence of compliance.

§ 100-100.4-340 Rehabilitation or Reconstruction Loan Application

(a) Applicants determined eligible for assistance will be provided a Rehabilitation or Reconstruction Loan Application. A checklist of all required documentation for submission is attached to the loan application. Preliminary requirements include:

(1) Certificate of title/deed/homestead permit/lease agreement;
(2) Property map and sketch of direction to property;
(3) 1040 tax form for the previous tax year;

(4) Program eligibility release form;
(5) Latest two (2) months of pay stubs;
(6) Verification of employment;
(7) Current loan statement or loan payment record;
(8) Most recent savings account statement (TCD, bonds, form passbook, money market accounts);
(9) The last six (6) months checking account statement available;
(10) Profit sharing plan (bank or duty free employees);
(11) Most recent retirement plan statement;
(12) Current certification of child care expenses;
(13) Current Certificate of Compliance from Division of Revenue and Taxation;
(14) Judgments (if any); divorce statement and/or probate decree;
(15) Verification of medical expenses (transportation and medication);
(16) Verification of full-time student status;
(17) Business income tax forms for three (3) previous years, if applicable;
(18) Most current financial statements, if applicable.

(b) For further verification purposes, the application shall also be attached with the following documents, if applicable:

(1) Verification of income from business;
(2) Verification of Social Security benefits;
(3) Verification of pension and annuities;
(4) Verification of Veterans Affairs benefits;
(5) Verification of public assistance income;
(6) Verification of child support payments;
(7) Verification of alimony or separation payments;
(8) Verification of recurring cash contributions;
(9) Verification of income from military service;
(10) Verification of assets on deposit;
(11) Verification of assets disposed;
(12) Record of oral verification;
(13) Three cost estimates for the rehabilitation project;
(14) Current appraisal by a licensed and Uniform Standard of Professional Appraiser Practice (USPAP) certified appraiser, if available.

(c) Add duplication of benefits verification

§ 100-100.4-345 Application Intake and Processing

Upon receipt of the Rehabilitation and Reconstruction Loan Application, the loan specialist must provide the applicant(s) with a Good Faith Estimate (GFE) Disclosure Statement as required by the Real Estate Settlement Procedures Act (RESPA) of 1974. The GFE discloses all costs and/or fees associated with the processing of such loan request. If the GFE is not provided to the client at the

time of their submission of their application, the form must be mailed out within three (3) business days after NMHC's receipt of the loan application. If the application is denied within a three (3) business day period, then NMHC is not obligated to send one out.

§ 100-100.4-350 Credit History and Verification of Income

As part of determining income eligibility and credit worthiness (NMHC may focus on the income and credit worthiness of the head of household and spouse; however, to determine income eligibility, NMHC needs to consider the income of ALL household members), the applicant(s) shall provide NMHC with an executed Program Eligibility Release Form to conduct a third-party verification of the following:

(a) Credit Report—The applicant(s) shall provide a written authorization for NMHC to request and obtain a written credit report from a recognized credit bureau, more specifically, Equifax. The credit report will be used as a reference in determining the applicant(s) credit worthiness. Poor repayment of credit obligations shall be considered a credit risk and shall be a reason for denial of assistance. On a case by case basis, NMHC may reconsider its decision if the applicant has reestablished his/her credit standing, or if the applicant demonstrates a good faith effort to pay-off or resolve his/her delinquent account(s) or bad debt(s), and shall be required to submit a letter justifying any delinquency and/or bad debt.

(b) Employment—NMHC shall send the employer(s) of all household members a signed Verification of Employment (V.O.E.) form who shall furnish the requested information on the V.O.E. NMHC may consider job stability as one of the bases in determining loan approval. As such, NMHC, on a case-by-case, may require that an applicant, or one of the applicants, be employed for at least two (2) years before the loan request is submitted to the Corporate Director for approval.

(c) Assets, Business Income, and Credit Accounts—All household members of the applicant(s) shall provide NMHC with a written authorization to obtain third party verifications whenever applicable. Monthly bank statements from the previous six (6) months for each checking account owned, and the most recent savings account, Time Certificates of Deposits (TCD), and other bank/investment accounts must be provided to NMHC for asset verification purposes. Third party verification from creditors shall also be conducted to determine applicant(s)' credit worthiness.

§ 100-100.4-355 Administration, Approval, Appeals Process

(a) Program Administration

(1) The MCD Manager shall assist the Housing Division in implementing and management of related tasks. The MCD Manager shall assign loan specialists to assist in loan and grant

origination, underwriting and closings under the Homeowner Rehabilitation and Reconstruction Program.

(2) The MCD Manager or loan specialists shall review each submitted application (first batch of applications) provided by the Housing Division, ensure all supportive documentation is in place and complete, and concur or make any necessary recommendations to the Corporate Director prior to the Corporate Director making the final decision on the loan application.

(b) Loan Review & Approval

Under the direction of the MCD Manager and eventual transition to the Housing Administrator, a loan specialist shall review and verify all applicants' credit, income, assets, liabilities, title reports, and any other requested reports and documentation. Upon completion of the review process, the loan specialist shall prepare a loan write-up containing his/her recommendations.

(1) The MCD Manager/Housing Administrator shall review the loan write-up for concurrence before submitting the same to the Corporate Director for a final decision. Final approval or denial of any loan shall be made by the Corporate Director except as follows:

(i) If the Corporate Director is off-island or on extended leave at the time the loan or grant is submitted to him/her for a final decision, then the Deputy Corporate Director may make the final decision to approve or deny the loan; or

(ii) If the Corporate Director and Deputy Corporate Director are both simultaneously off island or on extended leave at the time the loan is submitted for a final decision, then the Acting Corporate Director may make the final decision to approve or deny the loan.

(3) For purposes of these policies, off-island or extended leave shall be defined as an absence or leave that extends for more than three (3) working days after the loan or grant is submitted to the Corporate Director for his or her final decision.

(4) A written notice of the final decision shall be provided to the applicant and a copy/report of the decision shall be provided to the NMHC Board of Directors for informational purposes.

(c) Loan Denial Appeals Process

(1) Applicants denied assistance under this program may appeal the final decision to the NMHC Board of Directors (Board) by submitting their appeal in writing to the Corporate Director within ten (10) calendar days of the written notice of the final decision.

(2) Any appeal submitted must indicate the basis for the appeal and include any supporting documents. Upon receipt of an appeal, the Corporate Director shall submit the same to the Board of Directors for review and action at the next scheduled Board meeting.

§ 100-100.4-360 Homeowner Counseling Session

(a) All applicants for loan assistance must attend a Homeownership/Homebuyer Education and Counseling Session that will be provided by NMHC. On or before August 1, 2021, NMHC employees providing housing counseling will be HUD certified housing counselors, and NMHC will have applied directly to HUD and received approval, or NMHC will have applied to a HUD-approved intermediary and received approval by the entity to be its affiliate. NMHC shall notify the applicant(s) of the date, time, and location of the session. The education and counseling session shall be scheduled after the loan has been preliminarily approved and may be conducted before or on the day that NMHC issues the commitment letter to the applicant(s). The counseling session shall include a discussion of the terms and conditions of the loan, educate the homeowner(s) of their financial responsibilities, the importance of budgeting, making timely payments, foreclosure prevention, as well as, home maintenance and repair measures. Acceptable delivery method for housing counseling may be in-person, phone, or internet. Duration of the housing counseling is eight (8) hours. Upon completion of the housing counseling, the borrower(s) will receive a counseling certificate and this counseling certificate is valid for 2 years. Funding for housing counseling will come from project-related soft costs.

(b) NMHC shall inform applicant(s) at the time of their submission of their application of the required homeowner counseling session and again in written form when NMHC notifies the applicant(s) of NMHC's preliminary approval of their loan request. Failure to attend the required Homeownership/Homebuyer Education and Counseling Session may be grounds for denial or cancellation of assistance.

§ 100-100.4-365 Commitment Letter

(a) Once the loan request has been approved by the NMHC Corporate Director, the responsible loan specialist shall prepare the commitment letter for the Corporate Director's signature. The commitment letter is a binding agreement between NMHC and the borrower(s) wherein it discloses the terms and conditions of the approved loan including the estimated after rehab value to ensure compliance with 24 CFR 92.254(a)(2)(iii) and (b)(1); the housing is the principal residence of an income qualified homeowner; the amount and form of assistance (e.g., grant, amortizing loan, deferred payment loan); the rehabilitation work to be performed; the completion date; and the property standards that must be met. Borrowers who have been approved shall agree not to incur additional debts, unless formally requested by the borrowers and authorized by NMHC.

(b) The responsible loan specialist shall obtain a written certification (via email or memo format) from the Chief Financial Officer or Finance Manager that funds are available for the project before the Corporate Director executes the commitment letter.

(c) After the commitment letter has been signed and dated by the Corporate Director, the responsible loan specialist shall schedule the applicant(s) to come in and also sign and date the document should they agree with the terms and conditions.

(d) NMHC must reexamine the household's income eligibility if the determination was made more than six (6) months before signing the Commitment Letter.

(e) NMHC must set up the activity in DRGR following execution of the commitment letter and commitment of CDBG-DR funds.

§ 100-100.4-370 Preliminary Title Report (PTR)

(a) The responsible loan specialist shall order a preliminary title report (PTR) on behalf of the borrower(s) within two (2) weeks after the borrowers have executed their commitment letter. The purpose in obtaining a title report is to ascertain ownership of the proposed property for collateral and to ensure that NMHC holds the first lien on the property. A title search and review of recorded ownership information is conducted to verify that the property to be assisted with CDBG-DR funds is held in one of the eligible forms of ownership.

(b) The responsible loan specialist shall obtain the preliminary title report (PTR) by submitting an email request to the local title companies. The project will be granted on a first come, first serve basis to the company agreeing to the rate set by NMHC.

(c) The Loan Specialist shall obtain an updated PTR prior to loan closing to ensure that NMHC maintains the first lien on the property.

§ 100-100.4-375 Pre-Construction Conference

(a) The pre-construction conference shall be held after NMHC's receipt of the PTR and the same has been determined to have met NMHC's requirement as indicated in § 100-100.4-370. The responsible loan specialist shall inform the homeowner(s) and their contractor, and their private inspector (if applicable), in written form of the scheduled pre-construction conference. The notice shall include the date, time, and location of the conference. The conference shall be conducted by the responsible loan specialist and shall include the homeowner(s), their contractor, and their private inspector (if applicable).

(b) The homeowner(s) and their contractor, and if applicable, their private inspector, are to be provided with information such as their rights and responsibilities before, during, and after the rehabilitation period of their home.

§ 100-100.4-380 Submission of Pre-Construction Documents

The NMHC shall notify the contractor of the homeowner(s) selection of his/her/their company and shall likewise instruct the contractor to submit the required construction documents listed below. These documents are to be provided to NMHC within thirty 30 days from the date of notice.

(a) Building permit (if applicable);

(b) Zoning Permit (if applicable);

(c) Earthmoving & erosion control permit (if applicable);

(d) Construction contract;

(e) Performance bond;

(f) Plans & specifications approved by DPW;

(g) Private inspector's contract (if applicable).

§ 100-100.4-385 Loan Closing/Settlement

Promissory Note, Mortgage, Restrictive Covenant, Consent to Encumber Land, Affidavit

(a) Promissory Note: All loans will require borrowers to sign a promissory note. The promissory note shall be attached together with the mortgage and loan agreement and shall be filed at the Commonwealth Recorder's Office as one document in the following order: Mortgage, promissory note, and loan agreement.

(b) Mortgage, Consent to Encumber Land, Restrictive Covenant: All loans will require all legal owners, including the spouse of a borrower who may or may not be an applicant of the rehabilitation loan to sign the aforementioned documents. The consent to encumber land and restrictive covenant shall be attached together with the mortgage, loan agreement, and promissory note and shall be filed at the Commonwealth Recorder's Office as one document.

(c) Affidavit of Marital Status: All loans will require that all unmarried borrowers declare their marital status before executing the documents stated in subsections (a) and (b).

(d) The responsible loan specialist shall prepare the following disclosure forms to be executed by borrowers: Federal Truth-in-Lending Disclosure, HUD 1, Fixed Rate and Variable Rate Disclosure Form.

Part 400 - Rehabilitation

§ 100-100.4-401 Performing Rehabilitation Work

(a) Contractor Cost Estimates. The homeowner(s) shall be responsible in obtaining a minimum of three (3) written rehabilitation cost estimates from at least three (3) NMHC approved contractors, and each cost estimate submitted must include, at a minimum, the following information: bid price, cost breakdown of materials and labor charges, and schedule for completion of work. If for any reason that a construction cost estimate is unattainable, then a justification letter from the borrower and/or contractor may be accepted in lieu of this requirement (3 cost estimates).

(b) Selection of Contractor. The homeowner(s) shall have the right to select a contractor to perform the rehabilitation work, provided that the contractor's quotation and after rehab value does not exceed the HOME published after rehab value limits for existing homes and the assistance to the homeowner cannot exceed the maximum per unit subsidy limit. The contractor must be an NMHC-approved contractor or if not an approved contractor then NMHC must vet the contractor prior to award of the project. Should it exceed the loan amount, the homeowner shall negotiate with the contractor in reducing the contract amount. If the contractor is not willing to lower the contract amount, then the borrower shall select his/her/their next choice. Once the homeowner and contractor agree to the project and cost, the homeowner shall submit a contractor selection notice notifying NMHC of his/her/their selection.

(c) Construction Contract. The construction contract is a binding agreement strictly between the homeowner and the contractor whereby the contractor will provide the rehabilitation or repair or reconstruction work for a specified and agreed upon price. As NMHC's role is to finance the construction of the project, it is not a party to the construction contract. However, at any time the contractual provisions are not followed, NMHC shall meet with the homeowner and contractor to discuss the dispute and come to a mutual agreement. The construction contract shall include, but is not limited to, the following provisions:

(1) Contractor's name and mailing address;
(2) Homeowner(s) name and mailing address;
(3) Date of the contract, the contract amount, and payment schedule for each incremental billing;
(4) Calendar days to complete the work (includes Saturdays, Sundays, and holidays);
(5) Contractor will provide the performance bond, labor and material payment bond up to the contract amount, as well as a builder's risk policy for the project;
(6) The contractor will provide all the construction plans and permits necessary to comply with applicable local and federal laws;
(7) Issuance of the notice to proceed or the commencement of the project and that the rehab must start within 12 months of NMHC executing the commitment letter with the borrower;
(8) Contractor will provide a one-year warranty on all work completed;

(9) NMHC's right to inspect the progress of the project and right to withhold progress payments;
(10) Change order procedures, if any;
(11) A provision for liquidated damages must be included in the construction contract which shall be negotiated between the homeowner and contractor; and
(12) Description of the work to be performed so that inspections can be conducted and, for rehabilitation, so that housing will meet NMHC's rehabilitation standards.

(d) Contractor Notification and Pre-Construction Requirements. Once NMHC is in receipt of the homeowner's contractor selection notice, NMHC shall notify the contractor of the homeowner's selection of their company. NMHC shall inform the contractor of the scheduled pre-construction conference and shall likewise inform the contractor of the required construction documents for submission as listed below.

(1) Building permit (if applicable);
(2) Zoning permit (if applicable);
(3) Earthmoving and erosion control permit (if applicable);
(4) Construction contract;
(5) Performance and payment bonds;
(6) Plans and specification approved by DPW;
(7) Private inspector's contract (if applicable).

(e) Project Duration – Project needs to be completed within 4 years of the date of the Commitment Letter.

(1) Progress payment requests shall be submitted to NMHC by the contractor incrementally as specified in the payment schedule. NMHC shall ensure that all work description indicated on the payment schedule is completed prior to releasing the contractor's payment. An original and a copy of the request must be submitted to the NMHC. The contractor shall freely use his/her/their company's billing form when submitting a payment request. The payment request shall be accompanied with the following whenever applicable: inspection reports (DPW and/or private inspector), geotesting results, termite treatment certification and/or warranty, builder's warranty, and/or homeowner's acceptance of the project. In addition, each billing submitted must include pictures of the progress of the project and a copy of the payment schedule.

(2) Payment schedule shall be as follows:
(i) Payment request number 1 shall not be more than 10% of the contract amount. This shall include the installation of the project sign board accompanied with a picture, the delivery of materials to the construction site and commencement of the project;
(ii) Payment request number 2 shall not be more than 25% of the contract amount;
(iii) Payment request number 3 shall not be more than 25% of the contract amount;
(iv) Payment request number 4 shall not be more than 25% of the contract amount;

(v) Payment request number 5 shall be the 15% retainage request when all work is completed. The final payment request shall be accompanied with the certificate of occupancy from DPW's Building Safety Office, builder's warranty, window warranty if subcontracted, termite treatment warranty, final inspection report from the DPW and if applicable, the private inspector's inspection report, certificate of acceptance from the homeowners, geotesting results if applicable, pictures of the project's interior and exterior, and DEQ certificate of use (sewage disposal system), if applicable.

(3) Change Order Procedures. From time to time, homeowners may request for changes in the plans and specifications. In the event that this should occur, the following steps must be taken to address such request:

(i) Homeowner must notify contractor in written form of the proposed changes and provide NMHC a copy of the notification.

(ii) Upon receipt of the notification, the contractor must cease work at the project site and obtain NMHC's approval of the change order request. Upon approval the contractor shall then provide NMHC with the revised plans and specifications, including a revised payment schedule (if scheduled payments will be altered by the proposed changes). The contractor must obtain NMHC's approval of the change order request.

(iii) Once the change order request is approved, the homeowner will be required to deposit the additional money needed to NMHC (if applicable) to carry out the change order. The contractor will be required to submit the revised plans and specifications to DPW for approval.

(iv) Should the change order request be denied, then the contractor shall resume work to ensure timely completion of the project. The contractor may not be able to complete the project on time because of the delays the change order request may have caused. Therefore, the homeowners shall give the contractor additional days equal to the time the work was ceased up until the time the change order request was denied to complete the project. The homeowner shall not charge the contractor liquidated damages during this period.

(v) Once the contractor has obtained the DPW's approval of the plans and specifications, then it shall provide the NMHC with the same copy. The contractor shall proceed in carrying out the change order and completing the project.

(vi) Inspections: NMHC shall have the right, during the rehabilitation work or improvement of the unit, to inspect the same and with justification, to reject and to require to be replaced, any material or workmanship that does not comply with the plans and specifications, without any liability on the part of NMHC, as to workmanship or materials therein. Such inspection is solely for financing purposes and for the disbursement of funds, and any inspection or approval of any rehabilitation phase or increments of said dwelling shall not be deemed as a warranty by NMHC of the workmanship and material therein.

(vii) Inspector: Progress and final inspections shall be conducted by the Building Safety Office of the Department of Public Works (DPW) to ensure all work performed is

done according to the plans and specifications as approved by the applicant and DPW and applicable property standards. Homeowner(s) may have a private inspector, (i.e., a qualified licensed engineer or a qualified licensed architect), conduct inspection at the homeowner's costs with such inspection to be handled in accordance with § 100-100.4-240.

(viii) Minimum Property Standards (MPS): For new construction of housing and acquisition and/or rehabilitation of housing, CNMI Building Safety Code and zoning laws (if applicable for Tinian and Rota), International Energy Conservation Code, NMHC written design standards for single-family housing new/rehabilitation, and accessibility requirements (where applicable) must be adhered to. Homeowners, through their contractors, must ensure that they are familiar with these requirements. NMHC may rely on inspections performed by a qualified person. If using the funds solely for acquisition, the property must also meet the minimum property standards mentioned above (or the Uniform Physical Conditions Standards).

(ix) The contractor will provide all the construction plans and permits necessary to comply with applicable local and federal laws.

Part 500 Payments

§ 100-100.4-501 Mortgage Loan Payments

(a) Prepayment of Mortgage Loan—There shall be no prepayment penalties for all rehabilitation loans that are "paid-off" prior to the maturity date (original or revised). Pre-paying off the loan relieves the borrower(s) from the affordability restrictions imposed on the property. NMHC may terminate the affordability period restrictions when the homeowner pre-pays the loan because the HOME program does not require the enforcement of an affordability period for homeowners rehabilitation not involving acquisition or new construction.

(b) The monthly mortgage payments (inclusive of principal, interest, late charges, or any other amounts due) shall be made to the NMHC whose central office is located in the corner of Micro Beach Road and Chalan Pale Arnold Road, Garapan, Saipan. NMHC's respective field offices in Rota and Tinian are likewise accepting payments during business hours. NMHC's Rota Field Office is currently located in Songsong Village. NMHC's Tinian Field Office is located in San Jose Village. Acceptable forms of payment are cash, personal checks, debit or credit cards (available only in Saipan), cashier's check, money order, allotment, or direct deposit thru Bank of Guam.

(1) The first monthly mortgage payment inclusive of the principal and interest, shall begin thirty (30) days after all construction work is satisfactorily completed. Payment application shall be applied in the following order:

(i) Accrued interest;
(ii) Principal;

(iii) Late fees.

(2) Irregular payments from time to time may be made by borrowers. Should they occur, the NMHC shall apply the payments as follows:

(i) Partial payments made that are less than a borrower's scheduled payment shall be deposited and credited to the account, but shall not excuse the requirement of full payment.

(ii) Multiple Payments—In instances where borrower(s) may have two existing loan accounts with NMHC, but makes less than the combined scheduled payments, payments are to be applied first to the oldest loan and the balance shall be deposited and credited to the other loan.

(iii) Excess Payments—In instances where borrowers make more than their scheduled monthly payments, the payments are to be applied to the unpaid principal, unless the borrowers indicate in written form to have the payments applied as advance payments.

(iv) Charged-off Accounts—Borrowers whose account(s) have been charged off will still have the opportunity to pay-off such account. Borrower(s) will be required to execute a charged off payment agreement prior to making any payment.

§ 100-100.4-505 Failure to Make Payment as Required

(a) Late Fees for Overdue Payments: A penalty fee of one (1) percent of the monthly mortgage payment will be assessed on all accounts not paid by the fifteenth of each month each day that the full payment is not received.

(1) Delinquencies

(i) Notices—Written notices of past due accounts shall be sent to borrower(s) based on the following schedule:

(A) First notice—Account over 30 days past due;

(B) Second notice—Account over 60 days past due;

(C) Third notice (demand notice)—Account over 90 days past due;

(D) Fourth notice (2nd demand notice)—Account over 120 days past due.

(ii) In the event that the borrower(s) fail(s) to update the account after the receipt of the fourth notice, NMHC shall forward the account to legal for further collection efforts, which may include foreclosure.

(b) Default: Should a borrower under this loan program fail to make payment as required or breaches any of the terms and conditions of the mortgage and the promissory note, the borrower will be considered in default of said agreements. NMHC shall have the right to collect any and all outstanding amounts due and demand a full payment thereof. NMHC shall have the right to charge the borrower(s) all legal expenses and fees caused by the borrower's failure to pay.

(c) Foreclosure: NMHC may use its right of first refusal, as set forth in the loan documents, written agreement with the homeowner, and restrictive deed or land covenant, to purchase the property

before foreclosure or deed in lieu of foreclosure. Foreclosure triggers the NMHC recapture agreement enforceable through the restrictive deed or land covenant.

(1) Foreclosure and Recapture. If the assisted property is subject to recapture terms, NMHC has two options:
   (i) Recapture Option 1: NMHC will recapture and pay to the CNMI CDBG account the net proceeds from the foreclosure sale of the property in accordance with the recapture terms; or
   (ii) Recapture Option 2: NMHC may purchase the assisted property at foreclosure sale and additional CDBG-DR funds may be spent. However, the total amount of the original and additional funds spent may not exceed the maximum per unit subsidy amount.

(2) In the event of default by the borrower, the NMHC may foreclose its lien on the property as secured by the mortgage. Such foreclosure proceedings may result in the sale of the rehabilitated real property. If NMHC forecloses on its own loan, NMHC cannot use any additional CDBG-DR funds to acquire the property. Should the property be sold through foreclosure, then the amount due to NMHC will be the net proceeds of the sale up to the amount of loan assistance provided, including interest due, late charges, outstanding principal, legal fees, and any other amounts due.

Part 600 - Affordability

§ 100-100.4-601 NMHC Affordability Restrictions

(a) Long Term Affordability: NMHC has elected to impose NMHC affordability requirements that require that assisted properties remain affordable for a specific period of time, depending on the level of funds invested in the property and the nature of the activity funded:

DR Funds Invested per Unit	Minimum Length of the Affordability Period
Less than $49,999	5 years
$50,000-$100,000	10 years
More than $100,000 to Max. Loan Limit	15 years

Supplemental Rehab Assistance	**Additional Years Added to the Affordability Period**
$1.00 - $50,000	**5 years**
More than $50,000	**10 years**

(1) Affordability Restrictions
   (i) The affordability requirements are to be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure or upon loan payment in full.

(2) Affordability and Special Exceptions

(i) The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those whom, the former owner has or had family or business ties, obtains an ownership interest in the project or property. If a home rehabilitated with CDBG-DR assistance is sold during the NMHC affordability period, NMHC recapture provisions apply to ensure the continued provision of affordable homeownership.

(b) Right of First Refusal. During the affordability period, the homeowner(s) agrees not to sell or assign the residence hereby rehabilitated to any persons unless and until homeowner(s) proposes to sell same to NMHC, its successors or assigns on terms consistent with preserving affordability and allows then sixty (60) days' time within which to purchase said residence.

(c) Recapture. NMHC will ensure that it recoups all or a portion of the loan assistance provided to the homeowner(s), if the housing unit ceases to be the principal residence of the homeowner(s) for the duration of the period of affordability. Subsidy amounts (in the form of loans) that directly benefited the property owner (i.e., through deferred loans, non-interest bearing loans, interest bearing loans, etc.) are also subject to recapture. Recapture is capped at what is available out of net proceeds for agreements after November 2004. Net proceeds are defined as the sales price less superior non CDBG-DR debt (if any) less closing costs. NMHC shall utilize the following recapture options:

(1) Recapture the Entire Amount. NMHC may recapture the entire amount of the loan and/or subsidy from the homeowner(s) if the sale of the property occurs within halfway into the given NMHC affordability period. For example, a homeowner was approved for a $50,000 CDBG-DR loan to rehabilitate a home. The NMHC affordability period is therefore ten (10) years. On the fourth year, the homeowner sells the house for $60,000. Since the homeowner failed to comply with the minimum five (5) years of the ten (10) year affordability period, the recaptured amount is $50,000.

(d) Forgiveness: Reduction during NMHC Affordability Period. NMHC may reduce the deferred loan amount or loan amount to be recaptured on a pro rata basis for the period the homeowner(s) has/have owned and occupied the housing unit measured against the required NMHC affordability period; however, the homeowner(s) must occupy the housing unit as his/her/their principal residence for a minimum of five (5) years or at least halfway into the NMHC affordability, whichever is greater, in order to qualify for this recapture option. For example, if the assistance is $50,000 with a 10 year affordability period, the homeowner sells the property in the 6th year of the NMHC affordability period having lived in the home for a full 5 years for $60,000, the homeowner has a superior debt of $15,000, and the homeowner's share of the closing cost is $1,500, the amount subject to recapture is calculated as follows:

(i) Net Proceeds:

$60,000	(sales proceeds)

–$15,000	(superior private debt)
–$1,500	(closing cost)†
$43,500	**(net proceeds)**

†If client pays closing cost, it will be subtracted. If not, it will be added on as part of the net proceeds.

(ii) Reduction to Direct Subsidy:
$50,000 ÷ 10 year NMHC affordability period = $5,000
per year so, 5 years X $4,000 per year = $20,000 forgiven
Amount to Recapture:
$50,000 subsidy – $20,000 forgiven = $30,000 subject to recapture
(iii) Homeowner Gets:
(net proceeds amount to recapture)
$43,500 net proceeds – $30,000 recaptured = $13,500 for homeowner

(3) Homeowner(s) Recover of Initial Investment. The homeowner(s) investment (i.e., down payment and capital improvements made by the owner after completion of the rehab work) may be repaid in full before any funds are recaptured, provided that the homeowner(s) have occupied the housing unit at a minimum of five (5) years before the sale of the property and the homeowner's household income is at or below 50% of the Area Median Income.

(4) Shared Appreciation. In the case where net proceeds exceed the amount necessary to repay both the homeowner(s)' investment and the CDBG-DR assistance, the excess proceeds may be shared proportionately (i.e., percentage of investment provided) by both parties.

(d) Note: When the recapture requirement is triggered due to a voluntary or involuntary sale during the period of affordability and there are no net proceeds or the net proceeds are insufficient to repay the CDBG-DR investment due, NMHC may recapture an amount less than or equal to the net proceeds available.

(e) Legal Instruments to Enforce Recapture. NMHC must use deed restrictions, land covenants, or other similar legal documents approved by HUD to enforce these recapture restrictions as approved by HUD.

Part 700 - Conveyance

§ 100-100.4-701 Sale, Conveyance, or Transfer of Property

(a) Enforcement of the terms of the recapture provisions as set forth in the written agreements/commitment letters is triggered upon the sale, conveyance, or transfer of title of the rehabilitated and mortgaged real property under this program during the NMHC affordability period which may not necessarily result in the repayment of all CDBG-DR assistance. Upon

sale of the home and enforcement of the recapture provisions, the affordability period will terminate.

(b) At the sole discretion of NMHC, a title transfer will only be permitted through the laws of descent or through a loan assumption, or upon selling the property, provided that NMHC has been properly informed and the same has consented to such sale. If, should any of these occur, one must submit his/her intention of loan assumption or selling of the property and request for the NMHC Board's approval for the transfer of title. If the title changes hand through the laws of descent during the affordability period, the affordability period may not terminate and continue with the new homeowner if the new homeowner satisfies the eligibility requirements. The new homeowner may assume the loan and the affordability period if the new homeowner meets the eligibility requirements. If the title changes hand through the laws of decent during the NMHC affordability period and the new homeowner does not meet the eligibility requirements, NMHC will enforce the terms of recapture set forth in the commitment letter and enforced with recorded deed restrictions or land covenants. Upon enforcement of the recapture provisions, the NMHC affordability period will terminate.

Part 800 - Assumption

§ 100-100.4-801 Loan Assumption

(a) Death of a Borrower—Immediately upon notification to NMHC of a borrower's death, the surviving borrower or a family member of the borrower(s) shall complete a deceased borrower's report and/or submit a copy of the death certificate.
  (1) Upon the death of a borrower, the entire unpaid balance of the loan shall be immediately due and payable. NMHC shall instruct legal to file a claim against the estate; or
  (2) For those accounts covered with a mortgage life insurance, or where the borrower assigns his/her life insurance to NMHC, NMHC shall ensure that it files its claim with the insurance company to ensure that the outstanding balance including the principal, interest, insurance, late fees, and any other fees due to the account is paid off; or
  (3) In situations where there exists a surviving borrower, the same may submit a request to maintain the current monthly payment as scheduled without having the account sent for legal collection; or
  (4) If both borrowers are deceased, then NMHC may allow for an assumption of the loan by the heir(s) as indicated in the probate decree (which shall be provided to NMHC).
    (i) This assumption exception is permitted where transfer of title is through the laws of descent provided that the heir is of legal age, meets all program eligibility requirements and has a full, undivided interest in the real property. The heir will be required to fill out an application and execute a mortgage update and will be subject to a credit, income, and asset verification just like a new applicant.
    (ii) The heir or heirs of the deceased will be responsible in maintaining the account current as they await the probate decree. Once they are in receipt of the decree, they must submit it to NMHC so that NMHC will prepare the loan assumption agreement.

(b) Foreclosure Prevention
   (1) In situations where a foreclosure is imminent, the NMHC may allow a borrower to have a program eligible immediate relative (i.e., mother, father, brother, sister, son, daughter) assume the loan, all for the purpose of preserving the affordability period. The total outstanding balance thereof shall be fully amortized at the original interest rate and terms to produce equal monthly payments.
   (2) If the program eligible immediate relative assuming the loan cannot afford the repayment of the loan at its original rate and terms, NMHC may but is not required to waive that requirement and extend an additional term of up to a period of five (5) years or sixty (60) months to the existing term.

(c) Foreclosure—Should NMHC determine the borrower(s) or family member's absolute inability to repay the loan, then it shall sell the property to recover all assistance provided. Recapture provision shall take place. See § 100-100.4-505 for guidance on foreclosures and § 100-100.4-601 for guidance on recapture.

Part 900 - Financial Hardship

§ 100-100.4-901 Financial Hardship Assistance

(a) Reduction-In-Force—Monthly loan payments may be deferred for a period of up to twelve (12) months. Late charges will not accrue. If this approach is still deemed unaffordable, the current term rate may be extended and re-amortized with an additional sixty (60) months. Term extensions for leasehold properties are limited to the leasehold term.

(b) Reduction in Pay—Monthly loan payments may be deferred for a period of up to twelve (12) months. If this approach is still deemed unaffordable, the current term may be extended and re-amortized with an additional sixty (60) months. Term extensions for leasehold properties are limited to the leasehold term.

(c) Family Medical Emergency—Monthly loan payments may be deferred for a period of up to twenty-four (24) months. Late charges will not accrue. The current term may be extended and re-amortized with an additional sixty (60) months. Term extensions for leasehold properties are limited to the leasehold term.

(d) Medical Condition or Disability Assistance—Provided to borrower(s) who, after obtaining CDBG-DR rehabilitation or reconstruction assistance become physically or mentally disabled and are certified by a physician to be incapable of resuming work. The assistance may be conducted in the following manner:
   (1) Borrower(s) are to submit a doctor's certification certifying their incapability to resume work.
   (2) Borrower(s) outstanding loan balance may be converted to a grant.

(e) Natural Disaster including pandemic spread of disease
   (1) Monthly loan payments may be deferred for a period of up to six (6) months in the event of a natural disaster, such as fire, typhoon, earthquake, or flood. Final decisions regarding requested deferments shall be made by the Corporate Director. Late charges shall not accrue during deferment.
   (2) Borrowers may be eligible for a deferment upon written request accompanied by acceptable evidence of negative impact caused by natural disaster. Further, in order to qualify for a deferment, the borrower's loan and hazard insurance must be up to date.

(f) Other Hardships and Exceptions—Any other claimed financial hardship outside of the aforementioned eight listed hardships, as well as exceptions on a case-by-case basis, shall be brought to the Board for review and decision.

Part 1000 Ethics

§ 100-100.4-1001 Conflict of Interest

(a) Under no circumstances shall any immediate family members (whether by blood, marriage or adoption) the spouse, parent (including a stepparent), child (including a stepchild); brother, sister (including a stepbrother or stepsister), grandparent, grandchild, and in-laws of a covered person, elected or appointed officials of the CNMI government, NMHC's Board of Directors, its officers, agents, and employees may participate in any CDBG-DR assisted projects or units including the procurement of materials, or have an interest in any contracted services, or be a beneficiary in any proceeds. Other provisions in 24 C.F.R. § 92.356 shall apply. Conflict of interest applies to covered persons who exercise or have exercised any functions or responsibilities with respect to activities assisted with CDBG-DR funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities. Covered persons may not obtain a financial interest or financial benefit from a CDBG-DR activity, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-DR assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.

(b) Exceptions: Threshold requirements. Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions above on a case-by-case basis when it determines that the exception will serve to further the purposes of the CDBG-DR Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:
   (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's or state recipient's attorney that the interest for which the exception is sought would not violate state or local law.

(c) Factors to be considered for exceptions. In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements mentioned above, HUD will consider the cumulative effects of the following factors, where applicable:
(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;
(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
(6) Any other relevant considerations.

Part 1100 - Miscellaneous

§ 100-100.4-1101 Acronyms Reference Section

[For Rehab and Reconstruction Program Policies and Procedures]

(a) AIA—American Institute of Architects

(b) AMI—Area Median Income

(c) CD—Corporate Director

(d) CDBG-DR – Community Development Block Grant Disaster Recovery

(e) CFR—Code of Federal Regulations

(f) CNMI—Commonwealth of the Northern Mariana Islands

(g) CPSC—Consumer Product Safety Commission

(h) DCD—Deputy Corporate Director

(i) DEQ—Department of Environmental Quality

(j) DPW—Department of Public Works

(k) DTI—Debt-to-Income Ratio

(l) EA—Environmental Assessment

(m) GFE—Good Faith Estimate

(n) HOME Program—U.S. HUD Homeownership Investment Partnerships Program

(o) LEP—Limited English Proficiency

(p) LMI—Low Moderate Income

(q) MCD—Mortgage Credit Division

(r) MBE—Minority-Owned Business Enterprise

(s) MPS—Minimum Property Standards

(t) MPV—Maximum Property Value

(u) NAHA—National Affordable Housing Act

(v) NEPA—National Environmental Policy Act

(w) NMHC—Northern Marianas Housing Corporation

(x) NTP—Notice to Proceed

(y) PII—Personally Identifiable Information

(z) PITI—Principal, Interest, Taxes, and Insurance

(aa) PJ—Participating Jurisdiction

(bb) PTI—Payment-to-Income Ratio

(cc) PTR—Preliminary Title Report

(dd) RER—Rehab Environmental Review

(ee) RESPA—Real Estate Settlement Procedures Act

(ff) SCRA—Service Members Civil Relief Act

(gg) SSI—Supplemental Security Income [Social Security]

(hh) TCD—Time Certificates of Deposits

(ii) TILA—Truth in Lending Act

(jj) U.S. HUD—United States Department of Housing and Urban Development

(kk) USDA RD—United States Department of Agriculture Rural Development

(ll) USPAP—Uniform Standard of Professional Appraisal Practice

(mm) VOE—Verification of Employment

(nn) WMBE—Women-owned or minority-owned business enterprise

Definitions:

Adjusted Gross Income (AGI): AGI is an individual's total gross income minus specific deductions. Adjusted income is derived by subtracting any of the five allowed deductions that apply to household from the household's annual (gross) income. For elderly or disabled households, deductions for the type of household, dependent childcare, medical and disability assistance expenses are allowed; family households may deduct dependent, childcare and disability assistance expenses.

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

Beneficiary: An individual, person, family or household receiving advantage or assistance from the CDBG-DR funding.

Builder/Contractor: (Used interchangeably) A person who contracts to reconstruct or repair houses and or supervise building operations.

Case Management: The collaborative process of providing services that include assessment, planning, facilitation, coordination and advocacy for reconstruction or rehabilitation to individual homeowner applicants to ensure

they fully understand the Program's housing solutions, resulting in clear and transparent determination of eligibility, reconstruction or rehabilitation options, assistance award amounts, the construction management process, documentation and ongoing compliance requirements. Case Managers will work to decrease barriers for homeowners to participate in the program wherever possible. Case Workers will explain the Program's solutions and provide information on the Reconstruction/Rehabilitation process in standardize formats.

Common Area Under Roof: The total area under the common roof is primarily interior, conditioned spaces 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 considered *ineligible* areas.

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

Demolition: The clearance and proper disposal of dilapidated building and improvement materials.

Duplication of Benefits: The amount determined by the Program that would represent financial assistance covering costs that have been received from another source. 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 amount determined by the Program would result in the reduction of an award amount.

Environmental Review: All qualified projects must undergo an environmental review process. This process ensures that the activities comply with National Environmental Policy Act (NEPA) and other applicable federal and territorial laws. 24 CFR Part 58 Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities as well as Related Federal Laws and Authorities Listings under 24 CFR 50.4 and 58.6 will be

followed.

Estimated Cost of Repair (ECR): The report resulting from a damage assessment detailing the estimated project costs necessary to repair /or reconstruct the home to the minimum housing rehabilitation standards, and costs for mitigation and elevation efforts to reduce the impact of future storms.

Federal Emergency Management Agency (FEMA): The agency of the United States Department of Homeland Security with the primary purpose of coordinating the response to a disaster that has occurred within the United States and that overwhelms the resources of local authorities.

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: The land area covered by the floodwaters of the base flood is the Special Flood Hazard Area (SFHA) on NFIP maps. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. The SFHA includes Zones A, AO, AH, A1 -30, AE, A99, AR, AR/Al-30, AR/AE, AR/AO, AR/AH, AR/A, VO, Vl-30, VE, and V.

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). For property owners 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 a single family (including a family that consists of a single individual), 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 combined income of the household.

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, state, 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. as long as those improvements are not required to comply with local code requirements and did not exist on the housing unit prior to the disaster damage.

Low- to 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. Income eligibility 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). The most current income limits, published annually

by HUD, shall be used to verify the income eligibility of each household applying for assistance at the time assistance is provided.

Major or Severe Damages: $8,000 or more of FEMA inspected real property damage or 1 foot or more of flood water on the first floor. Inspection documentation must be maintained in the project file (a copy of the FEMA inspection, or photographic evidence of the flood water damage).

Manufactured Housing Unit (MHU): A structure, transportable in one or more sections which in the traveling mode is 8 body-feet or more in width, and 40 body-feet or more in length, or when erected on site, is at least 320 square feet, and which is built on a permanent chassis designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

Minimum Housing Standards: Assisted properties will meet the following standards upon project completion: each living unit will be used and maintained individually, having access such that it is unnecessary to pass through any other living unit, will include utilities and a water supply and will meet the CNMI

building codes in place at the time of assistance. Fixtures and finishes will be of "standard" and not "luxury" quality.

Mitigation: Improvements made to a property specifically to reduce the possibility of future property damage, personal and commercial hardship, as well as long lasting monetary burden. 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 too visible and effective mitigation projects that can be taken to make residents and communities safe in the face of natural disasters.

Modular Home: A home built in sections in a factory to meet state, local, or regional building codes. Once assembled, the modular unit becomes permanently fixed to one site.

National Flood Insurance Program (NFIP): The National Flood Insurance Program aims to reduce the impact of flooding on private and public structures by providing affordable insurance to property owners, renters and businesses and by encouraging communities to adopt and enforce floodplain management regulations.

New Construction: The site preparation for, and the construction of, an entirely new residential structure in a location that did not previously contain a residential structure.

Reconstruction: Demolition and rebuilding of a residential structure, including a modular housing unit, on the same lot and in substantially the same footprint and manner as the previous housing unit (whether demolished with CDBG-DR assistance, or demolished prior to Program application). This activity also includes replacing an existing substandard site-built, modular housing, or manufactured housing unit (MHU). The number of units may not be increased, and the total square footage of the reconstructed structure may not be substantially increased beyond the original principal residence square footage. However, the number of rooms within a unit may be increased or decreased based on the applicant's current household size.

Rehabilitation: Repair or restoration of a storm-damaged housing unit to applicable CNMI building and construction codes, and minimum property standards for a residential dwelling.

Single Family Home: A single unit containing any group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping and cooking. A single-family home may be detached or attached to another single unit.

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

Substantial Damage: Storm damage sustained by a structure whereby the cost of restoring the structure to its pre-storm damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred (44 CFR 59.1). Substantial damage includes properties that were fully destroyed by the storm events. A substantially damaged determination may be made by a Commonwealth government official or floodplain manager, or the determination may be made by the CDBG-DR Program based on the Estimated Cost to Repair.

Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as amended (Title 49 CFR Part 24) (42 U.S.C. 4601 et seq.) (URA): URA applies to all acquisitions of real property or displacements of persons resulting from federal or federally assisted program projects. The objective of the URA 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 involuntary displacements from residential units (49 CFR Subpart B) and acquisition or multifamily damaged/occupied activities that require the relocation of tenants.

Since participation in the Homeowner Reconstruction and Rehabilitation Program is voluntary, permanent relocation compensation is not available to the property owners.

However, NMHC must assure that the Uniform Relocation Act requirements will be followed and that both displaced occupants and any current occupants if any 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 delay.

Demonstrable Hardship - A demonstrable hardship is a substantial change in an applicant's financial situation that will prohibit or severely affect their ability to provide a minimal standard of living or the basic necessities of life including food, housing, clothing and transportation without causing economic distress well beyond mere inconvenience as shown by objective evidence. A demonstrable hardship must be occurring after the named storms. The demonstrable hardship must be of a severe, involuntary and unexpected nature. It must not be one that is generally shared by other applicants affected by the named storms. Examples of

demonstrable hardships may include job loss, failure of a business, divorce, severe medical illness, injury, death of a family member or spouse, unexpected and extraordinary medical bills, disability, substantial income reduction, unusual and excessive amount of debt due to a natural disaster, etc. None of the listed examples above, individually or taken together, automatically establish a demonstrable hardship nor is the listing above exhaustive as there may be other factors relevant to the issue of demonstrable hardship in a particular case. If an applicant believes that they are in the state of demonstrable hardship and that the demonstrable hardship causes them to not comply with any of the program policies, they may present their existence of a demonstrable hardship to their case worker (housing or loan specialist) and the Program will evaluate on a case-by-case basis after review of all of the circumstances. Applicants claiming a Demonstrable Hardship shall be required to provide evidence of such claimed Demonstrable Hardship to the case worker.

Not Suitable for Rehabilitation – properties where the cost of rehabilitation exceeds the after rehab appraisal and there is not a compelling historical or community justification to save the property.

Urgent Need National Objective: An activity that addresses an urgent need, defined as a situation where existing conditions pose serious and immediate threat to the health or welfare of the community and are recent or recently became urgent. The Territory, along with any and all subrecipient (s), must document no funds are available and costs cannot be financed for the activities. The CDBG certification requirements set forth in 24 CFR 570.208(c) and 570.489(d) have been waived per 83 FR 5844. The Territory and the subrecipients must document how each activity, program. and/or project funded under this National Objective category responds to a disaster-related impact. (See 24 CFR 570.208(c) and applicable Federal Register Notices which are 83 FR 5844 and 83 FR 40314.)

§ 100-100.4-1105 Homeowner Rehabilitation

Underwriting Guidelines and Referenced Sections

(a) Determining how much of a loan an applicant would be eligible for or if a loan can be extended is determined by the applicant(s) gross annual income, repayment ability, and credit worthiness. These could be found in §§ 100-100.4-205, 100-100.4-210, 100-100.4-220, 100-100.4-225, 100100.4-230, and 100-100.4-350. An applicant(s) debt ratio should not exceed forty-five (45) percent of their gross annual income. However, on a case-by-case basis, the debt ratio could be up to fifty-five (55) percent provided that the applicant could still meet payment responsibilities.

(b) The minimum and maximum loan assistance can be found in § 100-100.4-201 including the type to be extended to an applicant(s) which are further explained in §§ 100-100.4-220, 100-100.4-225, and 100-100.4230.

(c) The affordability restrictions that will be imposed on the property, a loan will only be extended to applicant(s) who will make their assisted unit their primary residence (see § 100-100.4-215(e)).

Records Management

NMHC 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 (if applicable) as part of their on boarding process.

In accordance with HUD regulations, as a grantee and recipient of CDBG-DR funds, NMHC 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 (5) years after closeout of the grant between HUD and NMHC.

APPENDIX A.1: Crosscutting Requirements

1.1 Crosscutting Requirements

1.2 Fair Housing

The Fair Housing Act requires all grantees, subrecipients, and/or developers funded in whole or in part with HUD financial assistance to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability or marital status. The Program complies with and enforces the Civil Rights requirements of Title I of the Housing and Community Development Act (HCDA) and the Fair Housing Law.

Projects must also assess how planning decisions may affect members of protected classes, racially and ethnically concentrated areas, as well as concentrated areas of poverty; will promote the availability of affordable housing in low-poverty, non-minority areas where appropriate; and will respond to natural hazard-related impacts. Program staff will use demographic, geographic, and social vulnerability analyses to determine any positive or negative impacts to protected classes. Should a project present negative impacts, project scope or design will be re-assessed to mitigate such impacts.

1.3 Environmental Review

Early environmental coordination must be completed to ensure effective implementation of all CDBG-DR Programs. CDBG-DR funding is contingent upon compliance with both local and federal environmental regulations. This includes compliance with NEPA and related environmental and historic preservation legislation and executive orders. In general, NMHC serves as the lead agency for purposes of NEPA.

HUD's Environmental Review process allows grantees to serve as the "Responsible Entity" to assume environmental review responsibilities under NEPA. As the grantee, NMHC serves as the Responsible Entity (through authorization from the Governor) as it relates to environmental review responsibilities under NEPA. Within NMHC, Environmental Review Staff will be responsible for performing environmental reviews and compiling the Environmental Review Records (ERR). Reviews are conducted either directly or using qualified environmental service contractors. NMHC 's Corporate Director, as the Certifying Officer, is ultimately responsible with certifying that NMHC's environmental reviews follow NEPA and HUD environmental regulations.

Federal Register Notice FR-6182-N-01 authorizes recipients of CDBG-DR funds under the Appropriations Act to adopt any environmental review, approval, or permit performed by a Federal agency for the same project to satisfy responsibilities with respect to environmental review, approval, or permit. The other agency's environmental review must cover all project activities funded by the HUD recipient for each project. NMHC will notify HUD in writing of its decision to adopt another agency's environmental review. NMHC will also retain a copy of the review in its environmental records. Further information concerning the specific HUD requirements for the adoption of other Federal agency environmental reviews can be found in the HUD Memorandum dated March 4, 2013, *Adoption of FEMA and Other Federal Environmental Reviews Processing for Hurricane Sandy Supplemental Appropriation (H.R. 152) Activities.* Additional information on the environmental review process in general is set forth in Section § 100-100.4-335, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

1.4 Labor Standards

The Davis-Bacon and Related Acts (DBRA) applies to all federally-funded or assisted construction contracts in excess of $2,000. This may apply to projects that are fully or partially

funded with CDBG-DR, including FEMA or FHWA match programs. In matched projects, only the scope of the CDBG-DR portion of the project are subject to crosscutting requirements DBRA requires all workers employed by contractors or subcontractors on CDBG-DR programs, be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with DBRA, as amended. DBRA also requires that workers on federally-assisted projects are paid not less than weekly.

Wage information for labor under CDBG-DR programs will be tracked in detail by both NMHC and relevant Implementing Partners and subrecipients throughout the life of the Program. Compliance for this requirement may be tracked in the following ways:

1. Additional NMHC Program staff hired to track wages and verify contractor and agency compliance
2. External contractor hired by NMHC to track DBRA compliance
3. Enhanced TA provided to Implementing Partners to track DBRA compliance

Procedures for this process are currently under development and will be incorporated in a future update to this document.

For prime contracts in excess of $100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular pay for all hours worked over 40 in a work week. Additionally, NMHC must follow the reporting requirements per HUD and U.S. Department of Labor (DOL) regulations. This requirement also extends to NMHC subrecipients, Implementing Partners, and contractors.

The Fair Labor Standards Act of 1938 (FLSA), as amended, establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week. These labor standards are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project.

1.5 Limited English Proficiency

Federal Executive Order 13166 requires NMHC and all satellite offices, programs, subrecipients, contractors, subcontractors, and/or developers funded whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP) and/or deaf/hard of hearing. Compliance with this requirement is detailed in NMHC's Language Action Plan (LAP) and will be coordinated and tracked by the Monitoring and Compliance division at NMHC. Depending on the program, NMHC, Implementing Partners, sub-recipients, and subcontractors will share the following expectations to comply with this Executive Order:

1. Document Translation: All documents defined as "vital documents" will be translated into Chamorro or Carolinian by NMHC, Implementing Partners, and sub-recipients. A

"vital document" is defined as a document that includes information regarding eligibility requirements, applications and instructions, program eligibility determinations, and appeals procedures. NMHC may aid ensure this requirement is met.

2. Where required, seek feedback from the community the project serves (advocacy groups serve vital role).

Language maps provided in the Language Action Plan will be used to determine the project's location and subsequent language context and if proactive LEP outreach will be required. These maps will be included as part of the Project Assessment Form used by NMHC to review the eligibility, priority level, and impacts of a potential project.

1.6 Minority and/or Women-Owned Business Enterprises

The Federal Executive Order 12432 guidelines require selected federal agencies to promote and increase the utilization of Minority-Owned and Women-Owned Business Enterprises (M/WBEs). Following procurement guidelines under 2 CFR 200.321, NMHC must make efforts to ensure that all subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with HUD CDBG-DR financial assistance encourage participation in contracts and other economic opportunities by small and minority firms, women-owned business enterprises (WBEs), and labor surplus area firms whenever possible. NMHC will accept a MWBE certification from another state, local or regional, DPW, SBA HUB Zone, SBA 8-A certification (economically disadvantaged and 51% locally-owned), and other eligible certification processes. Documentation and goals regarding M/WBE percentages and reporting will be determined in the contracting agreements.

1.7 Section 3 Economic Opportunities

Section 3 is triggered when the award of CDBG-DR funds for new construction and rehabilitation projects creates the need for new employment, contracting, or training opportunities.

Section 3 of the Housing and Urban Development Act of 1968 is to "ensure that employment and other economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed to low and very low income individuals, especially recipients of government assistance for housing and to businesses which provide economic opportunities to low and very low income individuals."

The Section 3 program requires that recipients of HUD CDBG-DR funds, to the greatest extent feasible, provide (a) employment and training, and (b) contracting opportunities for low- or very- low income residents in connection with construction projects in their neighborhoods.

It also specifically encourages economic opportunities for households who are recipients of government assistance for housing. NMHC and all administering entities will follow and require relevant contractors to follow Section 3 requirements in contracting.

Section 3 applies to the CNMI, as recipient of HUD funding, as well as to subrecipients or Implementing Partners/Sub-recipients receiving HUD funding exceeding $200,000. Whenever any portion of HUD funding is invested into projects involving housing construction, demolition or rehabilitation, commercial/private improvements for economic development, or other public construction (e.g., roads, sewers, community centers, and public facilities), the requirements of Section 3 apply.

In conjunction with construction activity, Section 3 applies to projects that are fully or partially funded with CDBG-DR assistance, including projects that are financed in conjunction with territory, local, or private matching or leveraged funds, provided that the Section 3 monetary threshold requirements are met. In particular:

- In conjunction with construction activities, Section 3 applies to contractors or subcontractors that receive contracts more than $100,000 for Section 3-covered projects/activities. Once it is determined that Section 3 applies to a project, the requirements apply to all contracts for construction work arising in connection with that project exceeding $100,000, including those not funded with CDBG-DR assistance. Contractors or subcontractors are required to comply with the Section 3 regulations in the same manner as the Commonwealth; and
- "Section 3-covered contract" includes professional service contracts, provided that the work to be performed is generated by the expenditure of funds in furtherance of Section 3 covered work (e.g., housing construction, housing rehabilitation, and other public construction), arising relating to construction projects. Professional service contracts that may constitute Section 3-covered contracts include construction contract oversight, engineering, architectural, environmental and property evaluation, construction progress and draw inspections, and prevailing wage labor compliance.

The regulations pertain to new hires required to complete Section 3-covered projects and activities. If the expenditure of funding for an otherwise covered project and activity does not result in new employment, contracting, or training opportunities, Section 3 reporting will still be required.

When NMHC awards CDBG-DR funds to other governmental departments, nonprofit organizations, subrecipients or other funded entities, NMHC will require they document how reasonable attempts were made to reach numerical goals set forth at 24 CFR Part 135.30. NMHC will inform its Implementing Partners and other funded entities of the requirements of Section 3, including the language required to be inserted into all construction-related contracts, assist them and their contractors with achieving compliance, and monitor their performance with respect to the Section 3 objectives and requirements.

Implementing Partners/Sub-recipients will receive training on this requirement and methods of compliance, technical assistance from Program staff, and continual monitoring from NMHC. Currently, a Section 3 Plan is under development, the details of which will be included in an

update to this manual.

1.8 System for Award Management (SAMs)

SAM is the federal System for Award Management and is a requirement for doing business with the U.S. government. All vendors are required to register in SAM in order to be awarded contracts under the CDBG-DR program. Vendors are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions. Vendors must update or renew their registration annually to maintain an active status.

1.9 Uniform Relocation and Real Property Acquisition Act (49 CFR 24)

The Uniform Relocation Assistance and Real Property Acquisition Act (URA), is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The URA's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects. The phrase "program or project" is defined in 49 CFR Part 24 as, "any activity or series of activities undertaken by a federal agency or with federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines."

The objectives of the URA are:

- To provide uniform, fair and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects;
- To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement;
- To ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means;
- To help improve the housing conditions of displaced persons living in substandard housing; and,
- To encourage and expedite acquisition by agreement and without coercion.

49 CFR 24.101(c)(1) provides that the subpart B requirements also apply to the acquisition of permanent and/or temporary easements necessary for the project. However, 49 CFR 24.101(c)(2) provides an exception for the acquisition of temporary easements which exclusively benefit the property owner.

APPENDIX A.2: Construction Standards

NMHC's CDBG-DR Written Rehabilitation Standards shall detail the methods, materials, and requirements that the housing must meet upon completion of rehab, including all of the following:

(1) **Exigent Health and Safety (EHS).** Identifying all life-threatening deficiencies[1] that present a direct threat to life or well-being, e.g., that are likely to cause severe injury or reduction in physical or mental ability. These EHS life-threatening deficiencies include: locked emergency/fire exit egress, missing/broken electrical cover plates/switches/outlets, inoperable smoke detectors, and exposed wires/missing covers. See Attachment B.

(2) **Major Systems.** Requiring that, upon project completion, each major system, as defined by federal regulation, had a remaining useful life of 5 years, or for a longer period as specified by NMHC, or the major system was rehabilitated or replaced as part of the rehabilitation. Major systems are: structural support; roofing; cladding and weatherproofing (e.g., windows, doors, siding, gutters); plumbing; electrical; and heating, ventilation, and air conditioning. For rental housing, the participating jurisdiction's standards must require the participating jurisdiction to estimate (based on age and condition) the remaining useful life of these systems, upon project completion of each major systems. For multifamily housing projects of 26 units or more, the participating jurisdiction's standards must require the participating jurisdiction to determine the useful life of major systems through a capital needs assessment of the project. For rental housing, if the remaining useful life of one or more major system is less than the applicable period of affordability, the participating jurisdiction's standards must require the participating jurisdiction to ensure that a replacement reserve is established and monthly payments are made to the reserve that are adequate to repair or replace the systems as needed. For homeownership housing, the participating jurisdiction's standards must require, upon project completion, each of the major systems to have a remaining useful life for a minimum of 5 years or for such longer period specified by the participating jurisdiction, or the major systems must be rehabilitated or replaced as part of the rehabilitation work[2].

(3) **Lead-based Paint.** NMHC's standards must conform with HUD's lead-based paint requirements at 24 CFR part 35[3].

(4) **Disaster Mitigation (if applicable).** Require the property to meet the disaster mitigation requirements, e.g., housing to be improved to mitigate the impact of potential disasters (e.g., earthquake, hurricanes, flooding, and wildfires) in accordance with State and local codes, ordinances, and requirements[4] such as the 2018 International Building Code or most

[1] **24 CFR 92.251(b)(1)(i)**
[2] **24 CFR 92.251(b)(1)(ii)**
[3] **24 CFR 92.251.(b)(1)(iii)**
[4] **24 CFR 982.251(b)(1)(vi)**

current building code adopted by the CNMI Department of Public Works Building Safety Office, zoning laws (note: zoning is currently applicable to Saipan only), International Energy Code, etc.

(5) **State and Local Codes, Ordinances, and Zoning Requirements.** NMHC's standards must require the housing to meet all applicable State and local codes, ordinances, and requirements in accordance to the 2018 International Building Code or most current building code adopted by the CNMI Department of Public Works Building Safety Office, zoning laws (note: zoning is currently applicable to Saipan only), International Energy Code, or, in the absence of a State or local building code, the International Building Code of the International Code Council[5].

(6) **Uniform Physical Conditions Standards.** NMHC's standards must reflect upon completion, the CDBG-DR-assisted project and units will be decent, safe, sanitary, and in good repair as described in 24 CFR 5.705. HUD will establish non-life threatening and minimum deficiencies that must be corrected under NMHC's standards based on inspectable items and inspected areas from HUD-prescribed physical inspection procedures (Uniform Physical Conditions Standards) pursuant to 24 CFR 5.705[6]. See Attachment B.

GENERAL NOTES:

1. **Scope Verification.** The contractor shall field verify locations, sizes, and quantities of work required for the project. Any quantities provided by NMHC need to be field verified for accuracy and exact installation requirements.

The contractor is responsible for coordinating with an in-house or third-party Architectural and Engineering (A&E) firm for their project design, proposal, and scope of work for review and certification as required.

2. **Tools, Material, and Equipment.** The contractor will supply all tools, materials, and equipment required to perform the Scope of Work unless otherwise specified.

3. **Permits, Inspections, and Testing.** Contractors and Subcontractors shall be responsible for all permits including but not limited to, the Saipan Zoning Board, the Bureau of Environmental and Coastal Quality (BECQ), and the Department of Public Works (DPW), inspections, testing, fees and licensing as pertaining to the law, ordinances, and regulations and as required to complete their respective Scopes of Work in this Agreement. The

[5] 24 CFR 92.251(b)(1)(vii)
[6] 24 CFR 92.251(b)(1)(viii)

contractor shall pay for the entire cost of any remedial work resulting from a failed inspection.

4. **Taxes.** The contractor shall be responsible for all federal, state, and local taxes imposed directly or indirectly for its Services required to fill this Agreement.

5. **Insurance.** The contractor shall provide and maintain General Liability and Worker's Compensation insurance throughout the Term of this Agreement and Project duration. The contractor shall provide certificates of insurance or other acceptable evidence of insurance (i.e., payment and performance bond) in the amount of 100 percent of the rehabilitation contract sum upon execution of this Agreement.

6. **Clean-Up.** The contractor is responsible for daily cleanup of all areas where work is performed and disposal of debris.

NMHC PROJECT PROPOSAL STANDARD REQUIREMENTS:

a) Contractors and/or A&E firms are to conduct assessments of the client's existing home and property condition, existing home structural condition, existing plumbing and drainage system conditions, and existing electrical condition. The contractor and/or A&E firm will also need to verify the home's existing power pole drop line and water meter locations for planning purposes and reference in the scope of work development.

Also, the contractor will identify any potentially life-threatening conditions to include but not limited to:

- Lead-Based Paint
- Asbestos
- Mold
- Structural issues/failures

b) The contractor and/or A&E firm is responsible for securing as-built measurements of the home and project site for conversion to AutoCAD format for planning, layout renovation, and development of the rehabilitation scope of work.

c) Only contractors on NMHC's approved contractor listing are eligible to work on home loan clients' new or rehab home projects.

Note: Interested contractors not currently listed on NMHC's contractor listing must first submit all documents as listed on the request for qualifications notice to be added to the contractor listing and become eligible to work on housing projects.

d) The contractor is responsible for applying for all permits necessary for a new house construction proposal or renovation, extension, rehab project for a regular home or disability home project for the record.

e) The contractor is responsible for having all project design drawings reviewed and certified by a licensed A&E firm. The contractor will utilize the certified drawings to apply for the DPW Building Permit as required.

f) The contractor is responsible for complying with all DPW Building Safety Code requirements including but not limited to: inspections, report documentation, and testing reports throughout the construction process for new, rehab, renovation home projects for regular home or disability home construction, extensions, or house conversions to disability home compliance projects.

g) The Contractor is responsible for gathering and maintaining all project records and documentation required by DPW for the issuance of the Certificate of Occupancy upon project completion. Copies of all reports are also to be submitted to NMHC.

h) The contractor is required to conduct a pre-final inspection of the project with the homeowner and NMHC officials, before final inspection with DPW Building Safety inspectors, to test all the building systems and finishing work.

i) Any major systems, as defined below, installed by the contractor shall have a warranty of no less than 5 years. Such warranty shall be stipulated on the rehabilitation contract between the contractor and the homeowner. Should it be determined at any time during the 5-year warranty period that a major system failure was a result of the work completed by the contractor then the contractor will be obligated to repair the failure.

j) All other rehabilitation work performed by the contractor shall have a warranty period of no less than 1 year, beginning on the date of the Certificate of Occupancy issued by the Department of Public Works. Such warranty shall be stipulated on the rehabilitation contract between the contractor and the homeowner.

Major systems as defined by 24 CFR 92.251(b)(1)(ii)] – Structural support; roofing; cladding and weatherproofing (e.g., windows, doors, gutters); plumbing; electrical; and heating, ventilation, and air conditioning.

ZONING REFERENCES AND REQUIREMENTS:

a) Contractors are required to apply for all zoning permit(s)/clearance(s) required for a home renovation or rehabbing project, including any new home extension projects. Contractors will need to ensure full compliance with all zoning setback requirements.

Example: For any extension in the front of the house, the extension should be 15' feet away from the front property line to the new front wall extension. For the left or right-side, the zoning setback requirements are 10' feet away from the boundary line to a new building wall extension. And for the rear setback, zoning requires 20' feet clearance away from the rear property line. Any failure to meet these requirements may result in the home client having to pay for zoning variance fees.

b) Zoning fencing setback requirements - For any proposed fencing for the front side of the house facing the road entry, the fence line should be two feet inward of the property line. For the left, right, and rear side setbacks, the requirement is one foot inward the property line.

c) Should a new septic tank and leaching field be required, the Zoning office setback requirements are a minimum of ten feet at any angle from the property line for both the septic tank and leaching field.

Note: New septic tanks should be constructed fifteen feet from the house. DEQ also has regulations on Septic tanks and leaching fields that need to be adhered to.

SITE WORK:

a) All debris including abandoned vehicles, scrap material, metal objects, trash, vegetation, and other objects that pose a safety and/or health threat, as determined by the local jurisdiction or person qualified to make such a determination, must be removed from the property before the start of construction.

b) Any identified lead-based paint hazards must be abated by the contractor per the guidelines outlined in 24 CFR 92.251(b)(1)(iii).

c) Any ground-level hazards i.e. potholes around the home must be backfilled to finish grade elevation to prevent tripping hazards.

d) If required, any existing boundary fencing around the house/project site that can be repaired must be restored to a safe condition. If the fencing poses safety and/or health hazard then it must be immediately removed from the project site.

Note: Repairing of an existing boundary fence does not alleviate the contractor from installing the required protective hoarding around the house/project site.

PEST CONTROL:

a) Termite control shall be applied by a reliable and licensed termite control company familiar with local soils and termite control conditions and licensed by the Division of Environmental Quality.

1. The contractor shall apply for all permits necessary for pest treatment.

b) The contractor shall attain a certification of 2-year warranty and retreatment should ground nesting of termite occurs within the 2 years at no cost to the homeowner.

c) The contractor shall apply termite treatment for any new construction, renovation, rehab, and extension project as required.

FOUNDATIONS:

a) Footings will be designed for an assumed allowable soil bearing capacity of 3,000 PSI

b) All structural fill beneath footings and slab-on-grade shall be placed 12 inches thick on 8-inch maximum layers. Foundation Backfill will be compacted to 95% compaction maximum dry density.

c) Any soft spots encountered during excavation operations for foundations shall be over excavated till hard dirt limits, then backfilled with suitable material and properly compacted to 95%.

d) Compaction tests for the foundation shall be required and paid for by the homeowner if not included in the contract after receiving the compaction test result for the record. The tests must be performed by a licensed soil testing firm.

CONCRETE AND REINFORCEMENT:

1. All concrete shall develop a minimum compressive strength at the end of 28 days as follows:

• Foundation	3,000 PSI	Max slump	@4 inches
• Beams, Walls & Columns	3,000 PSI	Max Slump	@4 inches
• Suspended Roof Slab	3,000 PSI	Max Slump	@4 inches
• Slab on Grade	2,500 PSI	Max Slump	@5 inches
• Sidewalk / Pathway	2,000 PSI	Max Slump	@5 inches
• Driveway & Car Parking	3,000 PSI	Max Slump	@4 inches

Note: For a concrete flat rooftop on the middle portion, pour 7½" thick concrete slab, sloping to all corners of the house's downspouts or drainage passageways at 5" finish. A 2½" slope to be applied in the middle of the rooftop to prevent water ponding on the rooftop.

TESTING:

1. Compression Tests: All concrete placed for foundations, structural slabs, beams, and columns shall have a minimum of three cylinders taken for every 50 cubic yards of concrete placed or for any one concrete placement. Concrete cylinders shall be tested for compressive strength at a testing laboratory. Two compression tests shall be performed at 14 days and one compression test at 28 days for each set of three cylinders taken.
2. Slump tests @ 3"- 4": A slump test shall be taken in the presence of the architect or engineer for each batch of concrete delivered to the job site and shall be taken before placing any concrete. In the event a slump test fails, the entire batch of concrete shall be rejected, including removal of concrete already placed, without cost to the homeowner for the record.
3. Additional water to concrete mixture batch at the job site shall not be permitted.
4. All materials and workmanship shall conform with the 2018 International Building Code requirements for residential projects. All contractors must comply with the code for receiving the finished project's Certificate of Occupancy.

MAINTAIN MINIMUM CONCRETE COVERAGE FOR REINFORCING STEEL AS FOLLOWS:

1. For concrete cast against and permanently exposed to earth @ 3"
2. Concrete exposed to earth or weather no. 5 rebar or smaller @ 1 ½"
3. Concrete not exposed to earth or in contact with ground slabs & walls @ ¾"
4. Concrete not exposed to earth or in contact with beams & columns @ 1 ½"
5. Reinforcement of new walls and columns shall be dowelled to supporting footings, beams, columns and walls with bars of the same size and spacing as vertical and horizontal bars

STRIPPING OF FORMS AND SHORES:

1. For foundation forms, it can be removed after 24 hours after pouring curing time. For Walls and Columns forms, they should be removed after 48 hours minimum. For concrete roof beams and roof slabs, forms should be removed after 14 days minimum. All forms can be removed after 28 days of the date.

2. All concrete shall be kept moist for a minimum of 7 days immediately after placing by the use of wet burlap, fog spraying, curing compounds, and other approved methods an architect or engineer.
3. No heavy construction load is permitted more than 50% of the specified design load within the 28 days of concrete placement. In cases, do not overload more than the specified design load after the 28 days of placement. No concentrated load is permitted except over supporting columns and walls.

CONCRETE BLOCK WALL:

1. Masonry units shall have a factory's minimum compressive strength of 1,000 PSI.
2. Masonry units shall be sound, dry, clean, and free from cracks when placed in the structure.
3. Where masonry unit cutting is necessary, all work should be neat and true.
4. The maximum aggregate size shall be 3/8" for pouring CMU block cells.
5. Concrete block units shall be laid in the common bond pattern unless otherwise shown.
6. For wall thickness 4", 6" and 8", use No. 4 vertical rebars @ 16" on center typical.
7. Horizontal bars are placed at every two layers of blocks all around w/No.3 rebars typical.
8. For all corner walls, vertical bars install three No.5 vertical rebars on each side from the corner out @2' feet typical.
9. For all intersection walls, vertical bars install four No.5 vertical rebars one in center of T and one on each side out @2' feet typical.
10. For all end walls install two No.4 vertical bars w/No.3 bars C-ties @ 12" O.C. typical.

Note: Any new door or window to be opened up on an existing concrete house wall, construct a new lintel beam at 12" out from each side on top by 8" height by wall thickness typical and new 4" thick concrete sidings on both sides of window edging typically for door openings.

11. "Dur-O-Wal" reinforcement shall be continuous around all walls, corners, and intersections and shall lap @ 12" minimum splicing for all vertical rebar extension for all walls to roof beam level as required.
12. All CMU block cells shall be solidly filled with cement grout. Grout all cells below slab on grade. Typical unless noted otherwise.
13. When plastering roof beams and columns. Apply concrete bonding into your cement mixture and paintbrush the portions before plastering.

14. Any hollow sound on existing and newly plastered walls found on walls to be chipped removed out and re-plaster all hollow walls detected to its solid sound plaster condition.

Note: To be inspected and verified for approval for the record.

15. For painted finish. Apply muriatic acid on newly plastered walls. Wash down, dry up before applying two primer coats on newly plastered walls, and then apply two coated final painting finish. For existing concrete wall paint scrape and water blast all bubbling peeling out paint on walls, ceilings, etc. Apply one primer coat on existing dirty/stained washed walls before applying its new final paint color.
16. Any hollow sound on the existing floor, wall and counter ceramics, chip out and remove. Install new floor, wall, and counter ceramic with no hollow sound on the ceramic finishing work.

Note: To be inspected and verified for approval for the record.

CONCRETE WALL AND CONCRETE ROOF STRUCTURE EXTENSION:

a) For rehabbing an existing semi-concrete house to construct a new concrete roof structure on top, the contractor will construct new 8"x12" concrete columns with a 10" thick foundation concrete pouring by 30" square column footings. If the existing house is longer than 20', the contractor will construct another new column in between or in the middle for more structural support. The specifications are only for a house renovation with concrete roof ceiling height at 8' to 9' flooring finish to roof ceiling finish. For a 10' roof ceiling or over, the contractor will construct a 12"x12" size concrete columns for all with a 10" thick concrete pouring by 36" square column footings. Rebar sizes are standard sizes approved from its building permit plans as specified. See construction drawings for rebar sizes and dimensions.

Note: To refurbish/renovate a damaged roof on an existing semi-concrete house, replacing or repairing a tin roof will not be accepted as a rehab project. All eligible applicants must have their rooftop converted solid concrete mitigate any future disasters as outlined in 24 CFR 92.251(b)(1)(vi) and to comply with the rehab program requirement for homeowner insurance.

Note: The existing CMU walls to be used as existing concrete wall partitions. Do Not depend on the existing wall as wall bearing walls for the record. It will only serve as a non-bearing wall. The new concrete columns are designed to carry the new 5" thick concrete roof slab with new 17"x8" or 10" concrete roof beams that are specified in the structural construction drawings for the record.

PLUMBING STANDARD NOTES:

1. Install a new ¾" ball valve at the existing CUC water meter box facing the house. Secure with cover level to the existing grade. (For emergency shut off valve).
2. Run a new ¾" PVC cold water line into the house project. (Following the Plumbing Floor Plans and Specifications).
3. For cold water lines, use PVC water pipes and for hot water lines, use CPVC water pipes.
4. For the waste line, use ABS pipes for all drainage waste line.
5. Make sure that the electric water heater has a Pressure Relief valve down at 12" above ground level. This is to ensure that should the water heater tank be over-pressured; the valve opens to relieve the pressure in the tank and prevent tank explosion.
6. Check slopes of waste/soil lines. Pipping below 3" diameter shall be sloped at ¼" per foot. Piping over 3" shall be sloped at 1/8" per foot for the proper sloping waste line to the septic tank as required in the plumbing code.
7. Lay new water lines higher than sewer/waste lines to prevent contamination. Provide sand cushion around any plumbing piping. Keep water lines away from soil/sewer lines if in the same trench by at least 24".
8. Install new air chambers for all fixture supply piping. Use 18" air chamber, one size larger than branch piping.
9. Testing of water lines pressures for 100 PSI for one hour without any drop in water pressure. Retest all leaky joints. Submit all test results together with the rest of the closing reports.
10. Static testing of waste lines and vent lines to 10' static head for at least one hour. Retest all leaky joints when detected until it has no more leak for the record. Submit all test results together with the rest of the closing reports.
11. Always check that the flow of the waste/soil lines is correct. The vent line is directed to the rooftop at 18" above the roofline. For sewer line, use long sweep elbow or tee.
12. Whenever a water closet is installed, make sure there is a minimum 2" vent thru roof at 18" above the rooftop.
13. Provide floor drains on 2nd or higher floors for housekeeping.
14. Clearwater lines and waste lines away from foundation footings, columns, and beams.
15. Do not install/embed water lines in concrete. Provide piping chase or sleeves.
16. Provide shut off valves at strategic points in the water lines.

17. For propane gas lines, use galvanized piping for LPG gas lines. Encased LPG piping in PVC piping, if piping is installed underground. Use a One bigger size PVC pipe to sleeve the galvanized pipe inside before pouring under the slab.
18. Always provide strap around water heaters, gas tanks to prevent it from moving during an earthquake.
19. Provide cushion sleeves around any piping penetrating through concrete walls and floors.
20. Provide 36" standpipe for washer and P-trap shall be above ground readily accessible. Do not install P-trap under the ground.
21. Provide P-traps for floor drains, shower drains, kitchen sinks, and lavatories.
22. Provide ground or floor cleanouts at every 50'. Provide cleanouts to every angle as required in the plumbing code for preventive maintenance.
23. Do not install sewer lines in the same trench as water lines. Where there is crossing, concrete encase the sewer line 10' at 10" around the line to the end of crossing. Sewer lines should be always located deeper than the water lines in a trench.
24. For a long stretch of hot water piping lines, provide a loop comprising of elbows to offset expansion for safety purposes.
25. Provide 2" high overflow piping above a flat rooftop in addition to roof drains.
26. Provide supports for piping under slabs.
27. Provide vent piping 10' away horizontally from any window or door. Preferably, install a vent to terminate above the roof at 18" above finish rooftop.
28. The contractor shall be responsible for chipping existing concrete floors and walls to install new plumbing piping. The contractor is responsible also to restore floor slabs and walls to the original condition. These are part of the rehab and renovation work process. All extra work shall not be an additional cost to the homeowner. Everything should be included in the contract.
29. Standard sizes for water, soil/waste, and vent lines for each fixture are as follows:

Fixture:	Cold Water:	Hot Water:	Soil/Waste:	Vent:
Floor Drain			2" ABS	2" ABS
Water Closet	½" PVC		3" or 4" ABS	2" ABS
Urinal	¾" PVC		2" ABS	2" ABS
Kitchen Sink	½" PVC	½" CPVC	2" ABS	2" ABS
Lavatory	½" PVC	½" CPVC	2" ABS	2" ABS
Shower	½" PVC	½" CPVC	2" ABS	2" ABS

Dirty Kitchen Sink	½" PVC	½" CPVC	2" ABS	2" ABS

Note: Always tighten, secure, brace, and clamp all wall-mounted fixtures properly. Provide concrete splash boxes for drainage downspouts.

ELECTRICAL STANDARD NOTES:

1. The contractor is responsible for obtaining permits for temporary power hook up including applying and paying hookup and monthly use fees for their use for the project without cost to homeowners for the record.
2. GFCI outlets to be installed in any kitchen counter at 4' min. away from the sink.
3. Use the GFCI outlet for the restroom wall outlet. Do not use a regular outlet.
4. Use the GFCI outlet for the outside wall outlet with a weatherproof cover typical.
5. Design for outlets should be limited to 8 outlets for a 20-amp single pole breaker.
6. Design for lights should be limited to 8 lights for a 20-amp single pole breaker.
7. Provide at least one outlet in the hallway for housekeeping use.
8. Installing new electrical boxes shall include an adapter, lock nut, and bushing. Bushing shall be insulated.
9. The service entrance conduit shall be galvanized steel per CUC requirements.
10. Conduits underground shall be PVC.
11. For any exposed conduits it shall be a rigid aluminum or galvanized steel.
12. Conduits inside building in-ceiling or exposed may be electrical metallic tubing-EMT.
13. Minimum size for homerun shall be ¾" conduit for easy pulling.
14. For computer circuits, make sure the ground wire is isolated.
15. All power circuit conduit shall have ground wire.
16. Follow electrical wires standard color-coding per National Electrical Code. For residential rehab, projects shall be a 120/240 Volt system, 1 phase:

Phase A-color Black Phase B-color Red Neutral color: White Ground color: Green

Note: The neutral and grounding colors shall be the correct color wire throughout without any exception. Avoid color coding with electrical tape. Electrical hazard.

17. Splicing shall be the plastic pressure type connectors. For larger wires, splicing shall be terminal lugs type.
18. Any conduit crossing roadways or in traffic areas shall be embedded in concrete, or located per NEC. The minimum conduit depth is 18" to top of the conduit.
19. Separate communications conduits from power conduits by at least 12" laterally. The minimum conduit size shall be ¾" conduit. Provide pull wire in every empty communications conduit extending 12" at both ends for computer and TV. line connections.
20. Contractor to coordinate with telephone/internet company to seek the advice of where hand holes or access panels may be located for ease of pulling and service.
21. Be sure to apply rust spray paint to all electrical boxes before embedding them in concrete.
22. Position outlets on a horizontal orientation.
23. Where to put new light switches, place them right after opening a door on the closest wall at 4' height typical.
24. Light switches to be set on a vertical position at 4' height center of electrical boxes.
25. Conduits underground outside the house building shall have warning tape at 12" below grade.
26. Maximum bends in conduits shall be limited to three (3).
27. Standard Breaker amp size and its proper wire size use to prevent power shortage and fire for health and safety measures.
28. For reference, a 20-amp circuit breaker has a total of 1,920 Watts.
29. For a single-pole 20-amp circuit breaker, use No. 12 solid wires. Separate outlets and lights circuit breaker switch.
30. Use No. 12 solid wires for receptacle outlets. A limit of 8-outlets per 20-amp single pole circuit breaker switch.
31. Use No. 12 solid wires for light fixtures. A limit of 8-lights per 20amp single pole circuit breaker switch.
32. Use a 20-amp single pole circuit breaker with a No. 12 solid wire. For 110 volts air conditioning separately, use a ½" electrical conduit from the panel box to outlet location.
33. Use a 30-amp double pole circuit breaker with a No. 10 solid wire. For 220 volts air conditioning separately, use a ¾" electrical conduit from the panel box to the outlet location

34. Use a 50-amp double pole circuit breaker with No. 6 stranded wires in a 1" electrical conduit for electrical range.
35. Use a 20-amp single pole circuit breaker with a No. 12 solid wire. For a refrigerator separately, use a ½" electrical conduit from the panel box to outlet location.
36. Use a 20-amp single pole circuit breaker with a No. 12 solid wire, for computer station separately, use a ½" electrical conduit from the panel box to outlet location.
37. Use a 30-amp double pole circuit breaker with a No. 10 solid wire. For 220 volts Electric Water Heater separately, use a ¾" electrical conduit from the panel box to outlet location.
38. For reference information, using a 100amp double pole circuit breaker use a # 2 wire.
39. A 125-amp double pole circuit breaker uses a # 1 wire.
40. A 150-amp double pole circuit breaker uses a # 1/0 wire.
41. A 175-amp double pole circuit breaker uses a # 2/0 wire.
42. A 200-amp double pole circuit breaker uses a # 3/0 wire.
43. Make sure any electrical splicing to be connected uses an electrical connector, not electrical tape.
44. Make sure to tighten all loose connections properly.
45. Provide 4" high concrete pad for mounting an electrical water heater equipment. Allow for 4" extra distance on the width and length of the water heater.
46. Exposed conduits in exposed areas shall be painted to match the adjacent wall finish.
47. All equipment and disconnect switch in weather shall be sealed waterproof.
48. All testing work shall be performed by the contractor and the contractor shall pay for all water, fuel, electricity, instrument, and personal.
49. The contractor shall submit a written guarantee certificate warranting all materials and workmanship free of defects for one year from the date of acceptance.
50. The contractor must submit As-Built drawings of the electrical system after project along with Certificate of Occupancy

ELECTRICAL MOUNTING HEIGHT REQUIREMENTS FOR ELECTRICAL:

1.	Meter Box Height	5'-6" from finish grade to center of the meter box
2.	Panel Box Height	5'-0" from finish floor to top of the panel box
3.	Light Switches Height	48" from finish floor to center of the elect. Box

4.	Outlet Height	12" from fin. floor, for ADA outlet height 15"- 48"
5.	Fire Alarm Height	5'- 6" from finish floor to center of the pull box
6.	Fire Alarm Horn/Bell Height	7'- 6" from finish floor to center of the box
7.	Disconnect Switch	5'- 6" from finish floor to the center of the box

ELECTRICAL GENERAL NOTES:

1. All electrical work shall be per the applicable sections of the National Electrical Code (NEC) latest edition, and the rules and regulations of the Dept. of Public Works and the Commonwealth Utilities Corporation.
2. All equipment and materials shall be UL listed where the listing is available for that type of equipment or conform to ANSI or NEMA standards.
3. Workmanship shall conform to the construction practices recommended by the American Electricians, Handbook by Croft, and shall be subject to the approval of the agency who has jurisdiction and the electrical engineer.
4. Conduit shall be EMT (indoor dry) locations concealed above ground, rigid aluminum (exposed installations, PVC (underfloor slab or grade, and inside concrete). Flexible conduit shall be jacketed type and per NEC 350.
5. Wiring shall be typed THWN, THW, XHHN, 600 volts. The conductor shall be copper.
6. Minimum size conduit shall be ½" inch diameter unless otherwise noted; minimum wire size shall be #12 AWG. Do Not Use #14 wires.
7. Electrical work shall be under the full supervision of a master electrician or a professional electrical engineer licensed to practice in the CNMI.
8. Panelboard shall be complete with bus bars, enclosure trim, molded case circuit breakers, bolt-on type branch circuit breakers, grounding, and neutral terminal lugs, panel board director, and keys. The laminated nameplate shall be provided on the front cover of the panel board or transformer.
9. All electrical devices and equipment exposed to weather shall be weatherproof.
10. Any device may be relocated within 10' of the location shown in the plans subject to the direction by the electrical engineer. Any such relocation shall be performed without additional cost to the homeowner.
11. The electrical contractor shall coordinate with a mechanical contractor for exact locations of water lines and waste lines before rough-in work.

12. Grounding:

    a. Metallic enclosures, raceways, and electrical shall be grounded per NEC 250. Provide green ground wire in every raceway per NEC Table 250-95.

    b. Grounding connection of the grounded circuit conductor (Neutral) shall be made only at the service disconnection means per NEC 250-23(a). Grounding on the neutral shall not be made on the load side of the service disconnect. The neutral shall not be made on the load side of the service disconnect. The neutral conductor shall be insulated from all equipment enclosures or any grounded parts. Bonding of the neutral bus to the ground bus in sub-panels shall be removed.

13. The electrical panel board and main switchboard, power meter box shall be furnished completely assembled from the factory.

14. Contractor to provide all labor, materials, equipment, tools, and all necessary materials including wire connectors, tapes, markers, etc. to accomplish the work shown in the plans. The cost of permits shall be the contractor's responsibility.

15. Minimum service clearance in front of the main switchboard shall be 4'.

16. Testing: Operation, Insulation Resistance, Grounding Tests.

FINISH MATERIAL STANDARDS:

Flooring Standards:

(a) For the living room, dining room, kitchen room, hallways, and bedrooms floor, the finish is to be plastered level with a vinyl tile or ceramic tile finish (depending on cost and durability).

(b) For the standard restroom floor finishing, to be a ceramic finish with white cement grouted finish. The restroom floor ceramic must be approved nonslip type of ceramic finish.

Note: Ceramic color should be the client's choice of ceramic color on the contractor's approved standard min. ceramic size.

(c) For all concrete stoops, landings and sidewalks floor finish, to be plastered sweep finish and for the carport, floor finish to be plastered fine finish.

Note: Plaster the sides of the concrete sidewalks, landings, ramps, and garage floorings.

Door Standards:

(a) For the exterior front entry door, use a 1¾" thick x 36"x 6'-8" solid core decorative door with heavy-duty door hinges, regular doorknob, deadbolt with keys, painted varnish finish, and door bottom with threshold and a door stopper on the back.

Note: Use a lever-type doorknob for a disability or elderly rehab home project.

(b) For any exterior exit door, use a 1¾" thick x 32"x 6'-8" min. regular solid core door with heavy-duty door hinges, regular doorknob with a deadbolt, painted varnish finish, and door bottom with threshold and a door stopper on the back.

Note: For disability or elderly rehab home project, use a lever type door knob with keys and a 36" size regular solid core door.

(c) For bedroom doors, use a 1½" thick x 36", 34", 32", or 30"x 6'-8" min. regular hollow-core door with light-duty door hinges and regular doorknob w/no key type and door painted with a varnish finish and a door stopper installed on the back.

(d) Aluminum Typhoon Shutters. Homeowners may include if the rehabilitation budget is sufficient, the installation of aluminum typhoon shutters on the exterior main entrance and rear exit doors of the housing unit.

- Typhoon shutters must be accordion-type with lock and key.
- Use 3"x1/4" screws to bolt the typhoon shutters to the concrete wall. The minimum number of screws is 3 per side.

Note: For a disability rehab home project, use a lever type door knob with keys only on 36" door size.

Window Standards:

(a) Living room window min. size 4'x4' sliding glass window with a ¼" thick safety tempered glass with aluminum frame. 4 screws on each side.
(b) Kitchen window min. size 3'x3' sliding glass window with a ¼" thick safety tempered glass window with aluminum frame. 3 screws on each side.
(c) Dining room window min. size 3'x4' Height with a ¼" thick safety tempered sliding glass window with aluminum frame. 3 screws on each side and 4 screws each on top and bottom.
(d) Bedroom window must have at least one set 4'x4' sliding glass window (For egress, in case of fire) with a ¼" thick safety tempered glass window with aluminum frame. 4 screws on each side.
(e) Restroom window min. standard size. 2'x2' sliding glass window with a ¼" thick safety tempered glass window with aluminum frame. 2 screws on each side.
(f) Seal all window edgings inside and outside
(g) All windows shall also include window screens
(h) Frame Color to be Clients choice of color
(i) Install new typhoon metal brackets at the outside walls for all windows w/painted finish
(j) Use 3"x1/4" screws to bolt the sliding windows to the concrete wall. The minimum number of screws per window is mentioned above.

(k) Aluminum Typhoon Shutters. Homeowners may include if the rehabilitation budget is sufficient, the installation of aluminum typhoon shutters on all housing unit windows.

- Typhoon shutters must be accordion-type with lock and key.
- Use 3"x1/4" screws to bolt the typhoon shutters to the concrete wall. The minimum number of screws is 3 per side.

Note: All aluminum typhoon shutters shall meet or exceed the wind rating outlined in the 2018 International Building Code (IBC) and the Tropical Energy Code.

Faucet Standards:

(a) Kitchen Sink Faucet to be a regular faucet type.

Note: For disability or elderly Rehab Home Project to be a lever faucet set type.

(b) Restroom Lavatory Sink Faucet to be a regular faucet type.

Note: For disability or elderly Rehab Home Project to be a lever faucet set type.

Regular and Disability Rehab Home Projects Standard Finishes:

(a) For disability, concrete sidewalk & landing size requirements. Concrete sidewalk width 36" min. and for landing size 5' sq. no less.

Note: Sidewalks and landings that are higher than 7" above existing grade during rehab work, requires all sides to be backfilled at 4" finish grade at 1' level and slope out at 4' on both sides to existing grade elevation, otherwise install new aluminum hand railings within 33" to 36" height along the hazard sidewalk, ramps and landings pathway.

Note: For regular rehab home projects sidewalks, same at 36" and for landing 36" sq. is allowable.

(b) For the front entry and exit doors outside, construct a 5' sq. concrete stoop floor landing at ½" lower from the finished house floor elevation.
(c) The restroom floor elevation should be ½" lower from the inside house flooring. Also, for the shower room flooring is ½" lower than the restroom flooring as required.
(d) Install hand railings along any sidewalks or pathways and landings that are higher than 7" above finish grade.
(e) Construct a new concrete ramp at a ratio of 1" drop = 1' slope.
(f) Install smoke alarms in bedrooms and hallways as required by Building Safety Code. Smoke alarms must be hard-wired smoke alarms and that the smoke alarms are interconnected.
(g) Install water sprinklers with warning fire light signals for impairment of client individuals only.

(h) In designing a new rehab disability home layout extension or for reconstructed disability house floor plan design, consider a 3' clear passage for a wheelchair to maneuver from the entry of the house to the inside of the house. Ensure that in your design layout, take into consideration the furniture space in planning for wheelchair accessibility, through bedrooms, restroom(s), living room, kitchen, dining, and for exiting the exit door to the outside of the house with no hazards along for emergency purposes as required.
(i) Disability lavatory height should be set at 34" maximum.
(j) disability water closet height from the finished floor to the toilet seat is within 17" to 19". Note: For regular standard toilet height is 15" from the finished floor to the toilet seat.
(k) Install a new 2' ADA grab bars on the back of ADA toilet centered, 2' length on shower faucet wall and 42" on the side shower wall at height within 33" to 36".
(l) Install ADA medicine cabinet at 40" from the finished floor to the bottom of the medicine cabinet.

Note: For regular standard medicine cabinet height is 64" from the finished floor to center of the medicine cabinet.

(m) Install a towel hanging bar within 36" to 48" for disability or regular restroom.
(n) Install a toilet paper holder to the nearest wall at 19" above the finished floor and a maximum of 36" from the rear wall.
(o) Rehab finishing projects paint colors to be the home client's choice of paint color for all paint finishing work.

All technical reference information applies to all building systems standard needs for new house construction, rehabilitation project, renovation project and house conversion to disability home compliance project that meet all current CNMI local building code regulations and meet Housing Quality Standards (HQS) and Uniform Physical Condition Standards (UPCS) requirements.

The HUD CPD Green Building Retrofit Checklist will also be included in the rehabilitation standards (Attachment A). "CPD recognizes that not all elements of the checklist will be applicable in all climates and geographies. Because of this, CPD will consider exceptions to these standards based on climate or geography, if a grantee identifies the specific standards that aren't applicable, including offering alternatives if available, and CPD's Office of Environment and Energy accepts the grantee's request."

Other building systems may be accepted provided that they meet or exceed the standards mentioned above. Third-party certifications or specific standard testing methods are required to substantiate or validate the claims.

Attachment A:

HUD CPD Green Building Retrofit Checklist

The CPD Green Retrofit Checklist promotes energy efficiency and green building practices for residential retrofit projects. Grantees must follow the checklist in its entirety and apply all measures within the Checklist to the extent applicable to the particular building type being retrofitted. The phrase "when replacing" in the Checklist refers to the mandatory replacement with specified green improvements, products, and fixtures only when replacing those systems during the normal course of the retrofit.

Note: CPD recognizes that not all elements of the checklist will be applicable in all climates and geographies. Because of this, CPD will consider exceptions to these standards based on climate or geography, if a grantee identifies the specific standards that aren't applicable, including offering alternatives if available, and CPD's Office of Environment and Energy accepts the grantee's request.

[redacted]

☐ **Water-Conserving Fixtures**
Install or retrofit water conserving fixtures in any unit and common facility, use the following specifications: Toilets-- 1.28 gpf; Urinals-- 0.5 gpf; Showerheads-- 2.0 gpm; Kitchen faucets-- 2.0 gpm; and Bathroom faucets-- 1.5gpm. [gpf = gallons per flush; gpm = gallons per minute]

☐ **ENERGY STAR Appliances**
Install ENERGY STAR-labeled clothes washers, dishwashers, and refrigerators, if these appliance categories are provided in units or common areas.

☐ **Air Sealing: Building Envelope**
Seal all accessible gaps and penetrations in the building envelope. If applicable, use low VOC caulk or foam.

☐ **Insulation: Attic** (if applicable to building type)

For attics with closed floor cavities directly above the conditioned space, blow in insulation per manufacturer's specifications to a minimum density of 3.5 Lbs. per cubic foot (CF). For attics with open floor cavities directly above the conditioned space, install insulation to meet or exceed IECC levels.

☐ **Insulation: Flooring** (if applicable to building type)
Install ≥ R-19 insulation in contact with the subfloor in buildings with floor systems over vented crawl spaces. Install a 6-mil vapor barrier in contact with 100% of the floor of the crawl space (the ground), overlapping seams and piers at least 6 inches.

☐ **Duct Sealing** (if applicable to building type)

In buildings with ducted forced-air heating and cooling systems, seal all penetrations of the air distribution system to reduce leakage in order to meet or exceed ENERGY STAR for Homes' duct leakage standard.

☐ **Air Barrier System**
Ensure continuous unbroken air barrier surrounding all conditioned space and dwelling units. Align insulation completely and continuously with the air barrier.

☐ **Radiant Barriers: Roofing**
When replacing or making a substantial repair to the roof, use radiant barrier sheathing or other radiant barrier material; if economically feasible, also use cool roofing materials.

☐ **Windows**
When replacing windows, install geographically appropriate ENERGY STAR rated windows.

☐ **Sizing of Heating and Cooling Equipment**
When replacing, size heating and cooling equipment in accordance with the Air Conditioning Contractors of America (ACCA) Manuals, Parts J and S, or 2012 ASHRAE Handbook--HVAC Systems and Equipment or most recent edition.

☐ **Domestic Hot Water Systems**
When replacing domestic water heating system(s), ensure the system(s) meet or exceed the efficiency requirements of ENERGY STAR for Homes' Reference Design. Insulate pipes by at least R-4.

☐ **Efficient Lighting: Interior Units**
Follow the guidance appropriate for the project type: install the ENERGY STAR Advanced Lighting Package (ALP); ***OR*** follow the ENERGY STAR MFHR program guidelines, which require that 80% of installed lighting fixtures within units must be ENERGY STAR-qualified or have ENERGY STAR-qualified lamps installed; ***OR*** when replacing, new fixtures and ceiling fans must meet or exceed ENERGY STAR efficiency levels.

☐ **Efficient Lighting: Common Areas and Emergency Lighting** (if applicable to building type)
Follow the guidance appropriate for the project type: use ENERGY STAR-labeled fixtures or any equivalent high-performance lighting fixtures and bulbs in all common areas; ***OR*** when replacing, new common space and emergency lighting fixtures must meet or exceed ENERGY STAR efficiency levels. For emergency lighting, if installing new or replacing, all exist signs shall meet or exceed LED efficiency levels and conform to local building codes.

☐ **Efficient Lighting: Exterior**
Follow the guidance appropriate for the project type: install ENERGY STAR-qualified fixtures or LEDs with a minimum efficacy of 45 lumens/watt; ***OR*** follow the ENERGY STAR MFHR program guidelines, which require that 80% of outdoor lighting fixtures must be ENERGY STAR-qualified or have ENERGY STAR-qualified lamps installed; ***OR*** when replacing, install ENERGY STAR compact fluorescents or LEDs with a minimum efficacy of 45 lumens/watt.

INDOOR AIR QUALITY

☐ **Air Ventilation: Single Family and Multifamily** (three stories or fewer)
Install an in-unit ventilation system capable of providing adequate fresh air per ASHRAE 62.2 requirements.

☐ **Air Ventilation: Multifamily** (four stories or more)
Install apartment ventilation systems that satisfy ASHRAE 62.2 for all dwelling units and common area ventilation systems that satisfy ASHRAE 62.1 requirements. If economically feasible, consider heat/energy recovery for 100% of corridor air supply.

☐ **Composite Wood Products that Emit Low/No Formaldehyde**
Composite wood products must be certified compliant with California 93120. If using a composite wood product that does not comply with California 93120, all exposed edges and sides must be sealed with low-VOC sealants.

☐ **Environmentally Preferable Flooring**
When replacing flooring, use environmentally preferable flooring, including the FloorScore certification. Any carpet products used must meet the Carpet and Rug Institute's Green Label or Green Label Plus certification for carpet, pad, and carpet adhesives.

☐ **Low/No VOC Paints and Primers**
All interior paints and primers must be less than or equal to the following VOC levels: Flats--50 g/L; Non-flats--50 g/L; Floor--100 g/L. [g/L = grams per liter; levels are based on a combination of the Master Painters Institute (MPI) and GreenSeal standards.]

☐ **Low/No VOC Adhesives and Sealants**
All adhesives must comply with Rule 1168 of the South Coast Air Quality Management District. All caulks and sealants must comply with regulation 8, rule 51, of the Bay Area Air Quality Management District.

☐ **Clothes Dryer Exhaust**
Vent clothes dryers directly to the outdoors using rigid-type duct work.

☐ **Mold Inspection and Remediation**
Inspect the interior and exterior of the building for evidence of moisture problems. Document the extent and location of the problems, and implement the proposed repairs according to the Moisture section of the EPA Healthy Indoor Environment Protocols for Home Energy Upgrades.

☐ **Combustion Equipment**
When installing new space and water-heating equipment, specify power-vented or direct vent combustion equipment.

☐ **Mold Prevention: Water Heaters**
Provide adequate drainage for water heaters that includes drains or catch pans with drains piped to the exterior of the dwelling.

☐ **Mold Prevention: Surfaces**
When replacing or repairing bathrooms, kitchens, and laundry rooms, use materials that have durable, cleanable surfaces.

☐ **Mold Prevention: Tub and Shower Enclosures**
When replacing or repairing tub and/or shower enclosures, use non-paper-faced backing materials such as cement board, fiber cement board, or equivalent in bathrooms.

☐ **Integrated Pest Management**
Seal all wall, floor, and joint penetrations with low-VOC caulking or other appropriate sealing methods to prevent pest entry. [If applicable, provide training to multifamily buildings staff.]

☐ **Lead-Safe Work Practices**
For properties built before 1978, if the project will involve disturbing painted surfaces or cleaning up lead contaminated dust or soil, use certified renovation or lead abatement contractors and workers using lead-safe work practices and clearance examinations consistent with the more stringent of EPA's Renovation, Repair, and Painting Rule and HUD's Lead Safe Housing Rule.

☐ **Radon Testing and Mitigation** (if applicable based on building location)
For buildings in EPA Radon Zone 1 or 2, test for radon using the current edition of American Association of Radon Scientists and Technologists (AARST)'s Protocols for Radon Measurement in Homes Standard for Single-Family Housing or Duplexes, or AARST's Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings. To install radon mitigation systems in buildings with radon level of 4 pCi/L or more, use ASTM E 2121 for single-family housing or duplexes, or AARST's Radon Mitigation Standards for Multifamily Buildings. For new construction, use AARST's Reducing Radon in New Construction of 1 & 2 Family Dwellings and Townhouses, or ASTM E 1465.

Attachment B: Uniform Physical Condition Standards for Single Family Housing Rehabilitation – Requirements for Site

Inspectable Item	Observable Deficiency	Type and Degree of Deficiency That Must Be Addressed
Fencing and Gates	Damaged/Failing/Leaning	

	Holes	
	Missing Sections	
Grounds	Erosion/Rutting Areas	
	Overgrown/Penetrating Vegetation	
	Ponding/Site Drainage (affecting unit)	
Health and Safety	Air Quality – Sewer Odor Detected	
	Air Quality – Propane/Natural Gas/Methane Gas Detected	
	Electrical Hazards – Exposed Wires/Open Panels	
	Electrical Hazards – Water Leaks on/near Electrical Equipment	
	Flammable Materials – Improperly Stored	
	Garbage and Debris – Outdoors	
	Play Equipment – Broken or Damaged	
	Hazards – Other (e.g., outbuildings)	
	Hazards – Sharp Edges	
	Hazards – Tripping	
	Infestation – Insects	
	Infestation – Rats/Mice/Vermin	
Mailboxes/Project Signs	Mailbox Missing/Damaged	
	Signs Damaged	
Driveways	Cracks	
	Potholes/Loose Material	
	Settlement/Heaving	
Retaining Walls	Damaged/Falling/Leaning	
Storm Drainage	Damaged/Obstructed	
Walkways/Steps	Broken/Missing Hand Railing	
	Cracks/Settlement/Heaving	
	Spalling	

Attachment B: Uniform Physical Condition Standards for Single Family Housing Rehabilitation – Requirements for Site

Inspectable Item	Observable Deficiency	Type and Degree of Deficiency That Must Be Addressed
Doors	Damaged Frames/Threshold/Lintels/ Trim	
	Damaged Hardware/Locks	
	Damaged Surface (Holes/Paint/Rusting/Glass)	
	Damaged/Missing Screen/Storm/Security Door	
	Deteriorated/Missing Caulking/Seals	
	Missing Door	
Foundations	Cracks/Gaps Spalling/Exposed Rebar	
	Cracks/Gaps Spalling/Exposed Rebar	
Health and Safety	Electrical Hazards – Exposed Wires/Open Panels	
	Electrical Hazards – Water Leaks on/near Electrical Equipment	
	Flammable/Combustible Materials – Improperly Stored	
	Garbage and Debris – Outdoors	
	Hazards – Other	
	Hazards – Sharp Edges	
	Hazards – Tripping	
	Infestation – Insects	
	Infestation – Rats/Mice Vermin	
Lighting	Broken Fixtures/Bulbs	
Roofs	Damaged Soffits/Fascia	
	Damaged Vents	
	Damaged/Clogged Drains	

	Damaged/Torn Membrane/Missing Ballast	
	Missing/Damaged Components from	
	Downspout/Gutter	
	Ponding	
Walls	Cracks/Gaps	
	Damaged Chimneys	
	Missing/Damaged Caulking/Mortar	
	Missing Pieces/Holes/Spalling	
	Stained/Peeling/Needs Paint	
Windows	Broken/Missing/Cracked Panes	
	Damaged Sills/Frames/Lintels/Trim	
	Damaged/Missing Screens	
	Missing/Deteriorated Caulking/Seals/Glazing Compound	
	Peeling/Needs Paint	
	Security Bars Prevent Egress	

Attachment B: Uniform Physical Condition Standards for Single Family Housing Rehabilitation – Requirements for Site

Inspectable Item	**Observable Deficiency**	**Type and Degree of Deficiency That Must Be Addressed**
Bathroom	Bathroom Cabinets - Damaged/Missing	
	Lavatory Sink - Damaged/Missing	
	Plumbing - Clogged Drains	
	Plumbing - Leaking Faucet/Pipes	
	Shower/Tub - Damaged/Missing	
	Ventilation/Exhaust System – Inoperable (if applicable	
	Water Closet/Toilet - Damaged/Clogged/Missing	
Ceiling	Bulging/Buckling	
	Holes/Missing Tiles/Panels/Cracks	
	Peeling/Needs Paint	

	Water Stains/Water Damage/Mold/Mildew	
Doors	Damaged Frames/Threshold/Lintels/Trim	
	Damaged Hardware/Locks	
	Damaged/Missing Screen/Storm/Security Door	
	Damaged Surface - Holes/Paint/Rusting/Glass	
	Deteriorated/Missing Seals (Entry Only)	
	Missing Door	
Electrical System	Blocked Access to Electrical Panel	
	Burnt Breakers	
	Evidence of Leaks/Corrosion	
	Frayed Wiring	
	GFI - Inoperable	
	Missing Breakers/Fuses	
	Missing Covers	
Floors	Bulging/Buckling	
	Floor Covering Damage	
	Missing Flooring Tiles	
	Peeling/Needs Paint	
	Rot/Deteriorated Subfloor	
	Water Stains/Water Damage/Mold/Mildew	
Health and Safety	Air Quality - Mold and/or Mildew Observed	
	Air Quality - Sewer Odor Detected	
	Air Quality - Propane/Natural Gas/Methane Gas	
	Detected	
	Electrical Hazards - Exposed Wires/Open Panels	
	Electrical Hazards - Water Leaks on/near Electrical	
	Equipment	
	Flammable Materials - Improperly Stored	
	Garbage and Debris - Indoors	
	Garbage and Debris - Outdoors	
	Hazards - Other	
	Hazards - Sharp Edges	
	Hazards – Tripping	
	Infestation - Insects	
	Infestation – Rats/Mice/Vermin	
Hot Water Heater	Inoperable Unit/Components	
	Leaking Valves/Tanks/Pipes	
	Pressure Relief Valve Missing	
	Rust/Corrosion	

Attachment B: Uniform Physical Condition Standards for Single Family Housing Rehabilitation – Requirements for Site

Inspectable Item	Observable Deficiency	Type and Degree of Deficiency That Must Be Addressed
HVAC System	Inoperable	
	Misaligned Chimney/Ventilation System	
	Noisy/Vibrating/Leaking	
	Rust/Corrosion	
Kitchen	Cabinets - Missing/Damaged	
	Countertops - Missing/Damaged	
	Dishwasher/Garbage Disposal –	
	Leaking/Inoperable	
	Plumbing - Clogged Drains	
	Plumbing - Leaking Faucet/Pipes	
	Range Hood/Exhaust Fans - Excessive	
	Grease/Inoperable	
	Range/Stove - Missing/Damaged/Inoperable	
	Refrigerator- Missing/Damaged/Inoperable	
	Sink – Damaged/Missing	
Laundry Area (Room)	Dryer Vent – Missing/Damaged/Inoperable	
Lighting	Missing/Inoperable Fixture	
Outlets/Switches	Missing	
	Missing/Broken Cover Plates	
Patio/Porch/Balcony	Baluster/Side Railings Damaged	
Smoke Detector	Missing/Inoperable	
Stairs	Broken/Damaged/Missing Steps	
	Broken/Missing Hand Railing	
Walls	Bulging/Buckling	
	Damaged	
	Damaged/Deteriorated Trim	

	Peeling/Needs Paint	
	Water Stains/Water Damage/Mold/Mildew	
Windows	Cracked/Broken/Missing Panes	
	Damaged/Rotting Window Sill	
	Missing/Deteriorated Caulking/Seals/Glazing Compound	
	Inoperable/Not Lockable	
	Peeling/Needs Paint	
	Security Bars Prevent Egress	

APPENDIX A.3: Environmental Review

ENVIRONMENTAL REVIEW

Policy and Procedures

CDBG-DR requires that an environmental review be completed for every activity before funds (even non-CDBG-DR funds associated with the activity) are committed or expended. Such environmental reviews must comply with the National Environmental Policy Act of 1969 (NEPA) and the related authorities listed at 24 CFR Part 58. An environmental review must be conducted considering federal laws, authorities, and regulations which address noise, air quality, historic properties, floodplains, wetlands, water quality, solid waste disposal, manmade hazards, farmlands protection, wild and scenic rivers, coastal areas, endangered species and others. In accordance with 24 CFR Part 58, recipients, owners, developers, sponsors or any other third-party partners cannot take any physical actions on a site, begin construction, commit, expend, or enter into any legally binding agreements that constitute choice limiting actions for any HUD or non-HUD funds before the environmental review process has been completed and the jurisdiction has received a Release of Funds approval.

Tier I Review: Target Area Assessment

The Northern Marianas Housing Corporation (NMHC) may conduct a tiered environmental review under 24 CFR 58.15 for its CDBG-DR Action Plan. A tiered environmental review allows for a general assessment of the impacts of an activity on the environment prior to identification of a

specific site. The Tier 1 review addresses and analyzes those environmental impacts related to the proposed activities that might occur on a typical site within the geographic area. The Tier 1 review also assesses project effects related to a longer list of environmental factors (e.g., compatibility with surrounding land uses, conformance with zoning plans, nuisances that affect site safety, displacement of people or businesses, solid waste management, etc.). All environment compliance requirements satisfactorily resolved in this first level of review, meaning findings of no significant impact or impact requiring mitigation, are excluded from any additional examination or consideration once the Tier 1 review is completed. The Tier 1 review identifies those compliance requirements that cannot be resolved until specific project locations become known. Site specific issues that cannot be resolved in a Tier 1 review may include: aboveground storage tanks that present a safety hazard to buildings and occupants of buildings; new residential units located in close proximity to the airport which generates high levels of noise; soils that are not suitable for multifamily structures; asbestos removal that may be necessary; or other potential impacts. The Tier 2 Site Specific Review will address such issues.

Tier II: Site Specific Project Review

A review for each individual property is required once sites are selected. The Tier 2 review focuses only on the environmental compliance requirements that could not be resolved in the Tier 1 Target Area Assessment. The NMHC or Implementing Partners (recipients of DR funds) performs the Tier 2 review. When NMHC identifies specific properties or sites within the target area and is ready to obligate funds (e.g. to buy a property, finance repairs, demolish a structure, etc.) it will use the written standards, checklists and narratives set forth in the Tier 1 review process to determine if there are any environmental issues associated with the site. This Site-Specific Project Review documents in writing that compliance standards for the specific project are met, and that required mitigation measures, if any, will be incorporated into the project. The Tier 2 review must be completed before funds (including non-CDBG-DR funds) are committed or expended on the project. The Tier 2 Site Specific Project Review will be maintained in the project files.

Environmental Procedures

STEP 1: Environmental Review Determination

In accordance with above internal review procedures, the Project Manager and/or Housing Administrator will review the program/project scope of work and determine at what level of environmental review needs to be conducted. The environmental consultant will provide technical assistance and support on complex environmental issues. The NEPA classifications that will be determined are listed below:

1. **Exempt – Subject to Related Laws at 24 CFR 58.34**
   Activities that by their very nature will have no physical impact upon the environment are exempt from NEPA requirements as well as Part 58.5. In

these cases, NMHC does not need to check for compliance with the requirements or perform an environmental review, consultation, or other action under NEPA. Some examples from NEPA requirements include:

- Environmental studies, plans & strategies
- Administrative & management expenses
- Inspections & testing properties
- Engineering or design costs
- Technical assistance & training
- Any of the CEST activities at §58.35(a) if Federal laws and authorities at §58.5 are not triggered

2. **Categorically Excluded, not Subject to 58.5. (24 CFR 58.35)**
Activities in this section are categorically excluded from the requirements at 58.5, due to HUD's determination that such activities will not alter any conditions that would require a NEPA review or a compliance determination under 58.5. When performing a categorically excluded activity not subject to 58.5, NMHC does not need to publish a Notice of Intent/Request for Release of Funds (NOI/RROF). Following the award of program funds, no further approval from HUD will be needed with respect to environmental requirements. Examples of categorically excluded, not subject to NEPA requirements are:

- Tenant-based rental assistance
- Supportive services
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs
- Economic development activities not associated with construction or expansion of existing operations
- Activities to assist homebuyers

- Affordable housing pre-development costs
- Supplemental assistance of previously-approved project

3. **Categorically Excluded Subject to 58.5**
Any of the categorically excluded activities in 58.35 are exempt from NEPA, provided that there are no circumstances that require compliance with any other federal law and authorities cited in 58.5. Using the statutory checklist, and after consulting with applicable agencies and organizations, NMHC can designate an activity as exempt if it can show that none of the federal laws and authorities are triggered through funding this activity. The statutory checklist deals with non-NEPA regulation which grantees must adhere to such as historic and wildlife preservation, floodplain management, noise control, etc. Examples of categorically excluded, subject to NEPA requirements are:

- Acquisition, repair, improvement, reconstruction or rehabilitation of public facilities and improvements when:
    - Facilities and improvements are in place
    - No more than 20% change in size or capacity
    - No change in land use
- Removal of architectural barriers that restrict accessibility
- Rehabilitation of buildings and improvements:
    - Residential Structures of 1 – 4 units: no more than 4 units; no change in land use; cannot increase into floodplain or wetland
    - Multifamily Residential Structures: unit density does not change more than 20%; no change in land use; cost of rehab is less than 75% of replacement cost after rehabilitation
    - Commercial, Industrial and Public Buildings: size and capacity does not increase by more than 20%; no change in land use
- Individual action on up to four dwelling units (One 4-unit structure or four 1-unit structures or any combination in between):
- Individual action on a project of five or more housing units when sites are more than 2000 feet apart and no more than four units on any one site.
- Acquisition, disposition or finance of existing structure or vacant land if retained for same use.
- Combination of any of the above activities.

4. **Subject to an Environmental Assessment (24 CFR 58.36)**
If a project is not exempt or categorically excluded under the above sections, NMHC must prepare an Environmental Assessment (EA). An EA is a concise public document that includes all the evidence and analysis supporting the NMHC's decision as to whether an environmental impact statement is warranted or if an activity will result in no significant impact to the environment. Examples when environmental assessments are needed are:

- New Construction (more than five (5) units);
- Construction of Public Facilities;

- Infrastructure Development;
- New construction, demolition and/or reconstruction of five or more single family units on scattered sites that are less than 2,000 feet apart;
- Extending the footprint of a single-family unit into the floodplain or wetland area or expanding the footprint of a structure that is already in a floodplain or wetland area;
- Major rehabilitation or reconstruction of multifamily residential units that increases or decreases the unit density more than 20 percent;
- Conversion of a non-residential structure to create a residential use;
- Acquisition of land for development of a housing subdivision;
- Activities that are normally exempt or categorically excluded but have an extraordinary circumstance that requires further review.

NMHC must file the completed checklist and a statement in the Environmental Review Record.

5. **Subject to an environmental impact statement (24 CFR 58.37)**
   If a project is subject to a full EA and is determined to have a potentially significant impact on the human environment, then an Environmental Impact Statement (EIS) is required. An EIS is also required if the project fits at least one of the following criteria:

   - It would provide a site or sites for or result in the construction of hospitals or nursing homes containing more than 2,500 or more beds;
   - It would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units or would result in the construction or installation of 2,500 or more housing units;
   - It would provide enough additional water and sewer capacity to support 2,500 or more additional housing units.

The Loan Supervisor or Project Supervisor must concur on the final environmental review determination (such as "Conversion to Exempt" or issuance of a "FONSI"). Depending on the type of project, the loan specialist, construction inspector, or administrative assistant receives the environmental review document log, scan, and digitally file in the NMHC shared drive to ensure all environmental records are maintained together.

STEP 2: Preparation of Environmental Review

Once the level of environmental review is determined, the loan supervisor or project supervisor will include the determination in the Environmental Assessment file. The loan supervisor or project supervisor will prepare environmental records.

The estimated timeframe, depending on consultations require for completing Environmental Process is as follows:

Environmental Determination	Estimated Timeline for Preparation
Exempt	1 Day
Categorically Excluded not Subject to 58.5	1 Day
Categorically Excluded Subject to 58.5	30-75 Days
Environmental Assessment	45-100 Days
Environmental Impact Statement	1-2 Years

Tiered Environmental Review

Environmental Reviews may be tiered to avoid repetition. Tiered reviews are used to identify and evaluate issues ripe for decision, excluding issues not relevant to the program, policy or project. They are appropriate when:

- Evaluating a policy or proposal
- Early Stages of Development
- When site-specific analysis is not feasible and more narrowed and focused review is better done at a later date
- *Tiered environmental reviews are not appropriate for projects requiring an Environmental Assessment.*

This review is conducted to achieve both compliance and speed because it does not require upfront identification of assisted properties.

In short, a tiered review focuses on a specific geographical area to address and analyze environmental impacts related to the proposed activities that might occur on the typical project site within that area. The specific addresses/locations of the individual properties are not known at this time. However, once individual project sites are located, any remaining environmental compliance issues that could not be resolved until project locations became known are completed according to standards for approval previously established for the target area. NMHC's tiered review focuses on scattered sites located throughout a particular targeted area.

The Tier 1 addresses all laws and authorities possible and establishes a plan (narrative) for the site-specific or subsequent review. NMHC must publish a public notice of intent to request a release of funds (NOI/RROF) and submit RROF as described in Step 3.

The Tier 2 site-specific review does not require a public notice or RROF required unless there are unanticipated impacts or impacts that are not adequately addressed in the Tier 1 review.

8-Step Decision Making Process for Projects in the Floodplain

1. Determine whether the action is located in a 100-year floodplain (or a 500-year floodplain for critical actions).

2. Notify the public for early review of the proposal and involve the affected and interested public in the decision-making process.

3. Identify and evaluate practicable alternatives. Identify the project site selection criteria and consider several alternative sites and actions:
    A. Locate the project within the floodplain
    B. Consider modifying the project
    C. Obtain a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR)

    or

    A. Locate the Project Outside of the Floodplain
    B. Consider other sites
    C. Consider no action or alternative actions that serve the same purpose

4. Identify Potential Direct and Indirect Impacts of Associated with Floodplain Development.

5. Where practicable, design or modify the proposed action to minimize the potential adverse impacts to lives, property, and natural values within the floodplain and to restore, and preserve the values of the floodplain.

6. Re-evaluate the Alternatives.

7. Determination of No Practicable Alternative

8. Implement the Proposed Action

STEP 3: Publication of Notice of Intent (NOI) Request for Release of Funds (RROF) and Finding of No Significant Impact (FONSI)

Categorical Exclusions
NMHC will publish a Notice of Intent to Request a Release of Funds (NOI/RROF) for projects that are Categorically Excluded Subject to §58.5 and projects requiring EAs, using the HUD recommended format. At a minimum, NMHC staff shall publish the NOI/RROF notice in a newspaper of general circulation and on the CDBG-DR website. Additionally, the following shall be notified:

1. Individuals and groups known to be interested in the activities
2. Appropriate tribal, local, State and Federal agencies

NMHC must consider the comments and make modifications, if appropriate, in response to the comments, before it certifies and submits the RROF to HUD. The public comment period is 7 days when published, counting from the day after the publication.

Environmental Assessments (EA)
If NMHC makes a Finding of No Significant Impact from an EA, it must prepare a Finding of No Significant Impact (FONSI) notice, using the HUD recommended format. At a minimum, NMHC staff shall publish the FONSI/NOI/RROF combined notice in a newspaper of general circulation and on the CDBG-DR website. Additionally, the following shall be notified:

1. Individuals and groups known to be interested in the activities
2. Appropriate tribal, local, State and Federal agencies

The FONSI public comment period is 15 days when published, counting from the day after the publication. NMHC typically publishes a FONSI notice at the same time it publishes the NOI/RROF. If the notices are released as a combined notice, the combined notice shall clearly indicate that it is intended to meet two separate procedural requirements; and, advise the public to specify in their comments which "notice" their comments address. The public comment period is 15 days when published, counting from the day after the publication.

CDBG-DR TRACKED CHANGES (PROGRAM POLICIES AND PROCEDURES)

CDBG-DR PROGRAM	AMENDMENTS	PAGE NO. and AMENDED SECTION and SUBSECTION	RATIONALE/REASON(S) FOR CHANGES
HOMEBUYER	**Added** a new section **§ 100-100.3-610 Homebuyer/New Construction Counseling Session**	Page 045112; PART 600 LOAN PROCESSING	A new HUD requirement
HOMEBUYER	**Amended** subsection 100-100.3-001 (a) to update amount: **$44,407,033**	Page 045114; § 100-100.3-001 (a)	HUD supplemental funding for CDBG-DR Housing Programs
HOMEBUYER	**Amended** § 100-100.3-001 to add the following new subsections: **(b) At the time of Typhoon Mangkhut and Super Typhoon Yutu, the CNMI was still and most recently recovering from Typhoon Soudelor that hit the islands in 2015. The Soudelor event received only FEMA assistance and did not receive HUD CDBG-DR funds so recovery efforts have been slow and on-going.** **(c) A shortage of available homes for sale or vacant house lots was in existence prior to the typhoons mentioned above. Overall damage to the housing stock compounded the shortage of affordable housing stock. Further, in July of 2017, there were still 2,614 homestead applicants on the waiting list per the Department of Public Lands.** **(d) The CDBG-DR Homebuyer Program provides an opportunity for first-time homebuyers to build resilient homes in lower risk areas and to add to the housing stock of typhoon-proof homes.**	Page 045114; § 100-100.3-001	HUD comments/recommendations

HOMEBUYER	**Amended** § 100-100.3-001 to move down and renumber subsection 100-100.3.-001 (b) to subsection 100-100.3.-001 (e): **(e) Funds will be made available for eligible projects and to eligible beneficiaries through the following forms of financial assistance or subsidy:** (1) **Interest bearing loans (not applicable at this time);** (2) **Non-interest-bearing loans;** (3) **No-interest subsidies** (4) **Forgivable Deferred loans**	Page 045114; § 100-100.3-001	Renumbered
HOMEBUYER	**Amended** § 100-100.3-001 to move down and renumber subsection 100-100.3.-001 (b) to subsection 100-100.3.-001 (f) and add more language to this provision: **(f)** Due to the limited availability of CDBG-DR funds allocated to the Commonwealth of the Northern Mariana Islands (CNMI) from the U.S. Department of Housing and Urban Development (HUD), financial assistance will be limited to qualified extremely low, very low-, low-, and moderate-income homebuyers. No less than eighty percent (80%) of CDBG-DR funds will be used to assist families with income levels at or below 80 percent of the area median income while the remaining twenty percent (20%) of the funds will be used to assist families with income levels at or below 120 percent of the area median income. **Eligible households over 80% AMI will meet the national objective of urgent need.** These families' income eligibility is based on their annual income. Annual income for this purpose is the gross	Page 045114; § 100-100.3-001	Renumbered and amended provisional language per HUD's comments/recommendations

	amount of income anticipated by all adults in a family during the 12 months following the effective date of the determination. The determination of income and allowances as a criterion to qualify these homebuyers shall be guided by 24 CFR Part 5 (Part 5 annual income).		
HOMEBUYER	**Amended** § 100-100.3-105 (a) 4 and (a) 5: § 100-100.3-105 Supplemental Information (a) Completed applications shall be submitted together with the following supporting information which shall be used solely for the purpose of determining applicant eligibility for financial assistance: (1) Prior year's income tax return and/or W-2 Tax Form; (2) Recent check stubs for the past two months prior to applying for CDBG-DR program financial assistance of all household members that are 18 years old or older; (3) Other forms of documentation of income (i.e., Social Security payments, SSI, retirement income, etc.), if any; **(4) If property has been identified, proof of land ownership or lease agreement for principal residence to be used as collateral for the loan;** **(5) If no land ownership or lease agreement is available, lot number and lot description;**	Page 045117; § 100-100.3-105 (a) 4 and (a) 5	HUD comments/recommendations

HOMEBUYER	**Amended** § 100-100.3-201(c): (c) **Must be a resident of the CNMI at the time of application or have been a resident of the CNMI at the time of the qualifying event.**	Page 045118; § 100-100.3-201 (c)	HUD FHEO comment: Residency requirement is unconstitutional.
HOMEBUYER	**Amended** § 100-100.3-201 (d)(1): (d) Household Income. (1) Homebuyer(s) must qualify as a low-income household as defined in the HOME program. Income eligibility is determined based on annual income. Combined anticipated gross household income of adults 18 years old or older, must not exceed 80% of the median income for the area (adjusted for family size), as prescribed by HUD (see § 100-100.3201(a)(2)). However, household income of adults 18 years old or older exceeding 80% of the median income for the area but not greater than 120% will also be eligible for assistance. **The Area Median Income for the Northern Mariana Islands as established by the U.S. Department of Housing and Urban Development for the HOME program as periodically revised is provided below and referenced below. NMHC shall comply with any revisions that the U.S. Congress enacts.**	Page 045118; § 100-100.3-201 (d)(1)	HUD comment/recommendation

	NORTHERN MARIANA ISLANDS HOME INCOME LIMITS 2020 **Person Household** / **1 Person** / **2 Person** / **3 Person** / **4 Person** / **5 Person** / **6 Person** / **7 Person** / **8 Person** **15% of Median Income** / $5,055 / $5,775 / $6,495 / $7,215 / $7,800 / $8,370 / $8,955 / $9,525 **30% of Median Income** / $10,150 / $11,600 / $13,050 / $14,450 / $15,650 / $16,800 / $17,950 / $19,100 **50% of Median Income** / $16,850 / $19,250 / $21,650 / $24,050 / $26,000 / $27,900 / $29,850 / $31,750 **80% of Median Income** / $26,950 / $30,800 / $34,650 / $38,500 / $41,600 / $44,700 / $47,750 / $50,850 **120% of Median Income** / $40,400 / $46,200 / $51,950 / $57,700 / $62,350 / $66,950 / $71,550 / $76,200 For most current HOME or CDBG-DR 120% program income limits published by U.S. Department of Housing and Urban Development, please go to https://www.hudexchange.info/programs/home/home-income-limits/ or https://www.hudexchange.info/incomecalculator/		
HOMEBUYER	**Amended** § 100-100.3-201 (e): (e) Determination of Repayment Ability	Page 045118; § 100-100.3-201 (e)	HUD comment/recommendation

	NMHC shall use **forty-five percent** (45%) (or most current ratio) of the gross monthly income of both applicant and co-applicant (homebuyers) combined, to determine the amount of available debt-service or repayment ability. Any remaining debt-service or repayment ability after existing monthly obligations (long- and short-term combined) is/are subtracted from the total available debt-service (not to exceed **thirty-five percent (35%)** of gross monthly income for loan mortgage payment (**principal and insurance**)		
HOMEBUYER	**Amended** § 100-100.3-501 (a) **§ 100-100.3-501 Notification of Eligibility or Ineligibility** (a) Eligible Applicants. NMHC shall send written notifications to all applicants determined eligible for financial assistance. Such notification shall be mailed no later than five working days after the determination, and shall contain a listing of additional information to be submitted for completion of loan file. Eligible applicant(s) shall be given thirty calendar days to submit the additional information requested. Applicant(s) that do not submit all pending information before the thirty (30) calendar day deadline, shall have their application file **placed on hold until required documentation/information is submitted.**	Page 045124; § 100-100.3-501 (a)	HUD comment/recommendation
	Amended PART 600 to include a new section: **§ 100-100.3-610 Homebuyer/New Construction Counseling Session** (a) All applicants for loan assistance must attend a Homebuyer/New Construction Education and Counseling Session that will be provided by NMHC. On or before August 1, 2021, NMHC employees providing housing counseling will be HUD certified housing counselors, and NMHC will have applied directly to HUD and received approval, or NMHC will have applied to a HUD-approved intermediary and received approval by the entity to be its	Page 045125; Part 600	HUD comment/recommendation

	affiliate. NMHC shall notify the applicant(s) of the date, time, and location of the session. The education and counseling session shall be scheduled after the loan has been preliminarily approved and may be conducted before or on the day that NMHC issues the commitment letter to the applicant(s). The counseling session shall include a discussion of the terms and conditions of the loan, educate the new homeowner(s) of their financial responsibilities, the importance of budgeting, making timely payments, foreclosure prevention, as well as, home maintenance and repair measures. Acceptable delivery method for housing counseling may be in-person, phone, or internet. Duration of the housing counseling is eight (8) hours. Upon completion of the housing counseling, the borrower(s) will receive a counseling certificate and this counseling certificate is valid for 2 years. Funding for housing counseling will come from project-related soft costs. (b) NMHC shall inform applicant(s) at the time of their submission of their application of the required homebuyer/new construction counseling session and again in written form when NMHC notifies the applicant(s) of NMHC's preliminary approval of their loan request. Failure to attend the required Homebuyer/New Construction Education and Counseling Session may be grounds for denial or cancellation of assistance.		

SUBCHAPTER 100-100.3
CDBG-DR POLICIES AND PROCEDURES FOR HOMEBUYER ACTIVITIES ACTIVITES

Part 001 - General Provisions

§ 100-100.3-001 Introduction
§ 100-100.3-005 Public Announcement

Part 100 - Application

§ 100-100.3-101 Formal Application
§ 100-100.3-105 Supplemental Information

Part 200 - Eligibility

§ 100-100.3-201 Eligibility Requirements

Part 300 - Affordability Restrictions

§ 100-100.3-301 Long Term Affordability
§ 100-100.3-305 Right of First Refusal
§ 100-100.3-310 Resale
§ 100-100.3-315 Recapture

Part 400 - Homebuyer Costs

§ 100-100.3-401 Eligible Costs

Part 500 - Notification to Applicants

§ 100-100.3-501 Notification of Eligibility or Ineligibility

Part 600 - Loan Processing

§ 100-100.3-601 Selection
§ 100-100.3-605 Administration; Approval; Appeals Process
§ 100-100.3-610 Homebuyer/New Construction Counseling Session

Part 700 - Terms and Conditions of Loan

§ 100-100.3-701 Maximum Homebuyer Program Loan Amount
§ 100-100.3-705 Minimum and Maximum CDBG-DR Homebuyer Programs Loan/Deferred Loan Amount
§ 100-100.3-710 Non-Interest-Bearing Loans
§ 100-100.3-715 Deferred Loans: Forgivable or Repayable
§ 100-100.3-720 Interest Subsidies
§ 100-100.3-725 Loan Guarantees
§ 100-100.3-730 Repayment Period
§ 100-100.3-735 After-Construction Property Value, After-Rehabilitation Property Value, or Property Value at Initial Purchase (if Acquisition Only)
§ 100-100.3-740 Security
§ 100-100.3-745 Late Charge
§ 100-100.3-750 Prepayment of Loan

Part 800 - Distressed Homebuyer(s)

§ 100-100.3-801 Distressed Homebuyer(s)

Part 900 - Assistance

§ 100-100.3-901 Types of Assistance

Part 1000 -Mitigation to Foreclosure

§ 100-100.3-1001 Items Needed to Cancel Foreclosure and Reinstate Account

Part 1100 - Performing New Construction Work

§ 100-100.3-1101 Performing New Construction Work

Part 1200 - Homebuyer Underwriting

§ 100-100.3-1201 Guidelines and Referenced Sections
§ 100-100.3-1205 Subsidy Layering
§ 100-100.3-1210 Acronyms Reference Section

APPENDIX A.1: Crosscutting Requirements

1.1 Crosscutting Requirements
1.2 Fair Housing
1.3 Environmental Review
1.4 Labor Standards
1.5 Limited English Proficiency
1.6 Minority and/or Women-Owned Business Enterprises
1.7 Section 3 Economic Opportunities
1.8 System for Award Management (SAMs)
1.9 Uniform Relocation and Real Property Acquisition Act (49 CFR 24)

APPENDIX A.2: HOMEBUYER APPLICATION CHECKLIST

Part 001 - General Provisions

§ 100-100.3-001 Introduction

(a) As a result of the 2018 storms, namely Typhoon Mangkhut and Super Typhoon Yutu, the Commonwealth of the Northern Mariana Islands (CNMI) received an allocation of Community Development Block Grant Disaster Recovery (CDBG-DR) funds which will be administered by the Northern Marianas Housing Corporation (NMHC). NMHC has developed the Homebuyer Program patterned after HUD's HOME program to cover the eligible costs to construct a new home, acquire a home, or to acquire and renovate a home. The governor of the CNMI has placed housing as the highest recovery priority. The total allocation amount under this Program is $44,407,033.

(b) At the time of Typhoon Mangkhut and Super Typhoon Yutu, the CNMI was still and most recently recovering from Typhoon Soudelor that hit the islands in 2015. The Soudelor event received only FEMA assistance and did not receive HUD CDBG-DR funds so recovery efforts have been slow and on-going.

(c) A shortage of available homes for sale or vacant house lots was in existence prior to the typhoons mentioned above. Overall damage to the housing stock compounded the shortage of affordable housing stock. Further, in July of 2017, there were still 2,614 homestead applicants on the waiting list per the Department of Public Lands.

(d) The CDBG-DR Homebuyer Program provides an opportunity for first-time homebuyers to build resilient homes in lower risk areas and to add to the housing stock of typhoon-proof homes.

(e) Funds will be made available for eligible projects and to eligible beneficiaries through the following forms of financial assistance or subsidy:

(1) Interest bearing loans (not applicable at this time);
(2) Non-interest-bearing loans;
(3) No-interest subsidies
(4) Forgivable Deferred loans

(f) Due to the limited availability of CDBG-DR funds allocated to the Commonwealth of the Northern Mariana Islands (CNMI) from the U.S. Department of Housing and Urban Development (HUD), financial assistance will be limited to qualified extremely low, very low-, low-, and moderate-income homebuyers. No less than eighty percent (80%) of CDBG-DR funds will be used to assist families with income levels at or below 80 percent of the area median income while the remaining twenty percent (20%) of the funds will be used to assist families with income levels at or below 120 percent of the area median income. Eligible households over 80% AMI will meet the national objective of urgent need. These families' income eligibility is based on their annual income. Annual income for this purpose is the gross amount of income anticipated by all adults in a family during the 12 months following the effective date of the determination. The determination of income and allowances as a criterion to qualify these homebuyers shall be guided by 24 CFR Part 5 (Part 5 annual income).

(g) NMHC, on behalf of the CNMI, has been tasked with the responsibility and administration of the CDBG-DR Homebuyer Program. In the interim, NMHC's Mortgage and Credit Division (MCD) will be assisting in the day-to-day administration of the program. Support services will also be provided by NMHC's Fiscal Division (FD) with respect to CDBG-DR related disbursement of funds and collection of payments, accounting, and maintenance of financial records. NMHC's AMD Property Manager will provide technical assistance and work with the CDBG-DR Project Manager, in-house engineer/architect, and hired A&E firms with respect to reasonableness of cost estimates, dwelling unit inspections, and other related matters. Overall, the NMHC Corporate Director will assume ultimate responsibility for the efficient and proper administration of the CDBG-DR Homebuyer Program in accordance with federal and local statutory and regulatory requirements.

(h) With these policies and procedures, NMHC will strive to accomplish the following objectives:

(1) Provide for the efficient and effective administration of the CDBG-DR Program wherein eligible beneficiaries can avail the financial assistance provided for the construction of their principal residence, acquisition of their principal residence, or acquisition and repair of their principal residence;

(2) Foster positive working relationships among NMHC, homebuyers assisted with CDBG-DR monies, and Minority and Women-Owned Businesses (MBE/WBE); as well as, prospective developers;

(3) Enforce the 2018 International Building Code (IBC) enacted by law and any updates approved by regulations by the CNMI Department of Public Works; and HUD-prescribed residential building standards; and

(4) Preserve and improve the general housing stock of the CNMI. There was an existing housing shortage prior to the storms and the housing/homebuyer market has been stressed and exacerbated by the storms.

(f) These policies and procedures shall govern; however, in situations in which these policies and procedures are silent, the HOME Program federal regulations shall apply followed by NMHC's general standard loans policies/procedures to address these situations in the administration of the CDBG-DR Homebuyer Program.

§ 100-100.3-005 Public Announcement

(a) Publicity.

- Upon notification from HUD of the approval of the grant agreement, NMHC shall publish such approval within thirty calendar days from the date of the approval. General information of the CDBG-DR Homebuyer Program shall be published in the print media of the widest local circulation and other suitable means available (social media, CDBG-DR website, etc). CDBG-DR Homebuyer Program information shall also be posted in public and private bulletin boards where announcements are commonly posted. Loan applications may be submitted on or after a specified date to be stated in the public notice.

    (1) Note: When it is determined that CDBG-DR funds have been exhausted, the application intake may be closed until funding is once again available. Those applicants who did not submit their loan applications when funds were available may do so once NMHC is notified by HUD of the availability of funds and after such notice is published.

(b) Contents. Program announcements shall inform interested applicants on how and where they may obtain an application and additional information on the type of CDBG-DR Homebuyer Program activity being administered in the CNMI. Such announcements shall further contain the following information:

    (1) Brief overview of the Homebuyer program;

    (2) General list of eligible activities available;

    (3) Amount of funds available;

    (4) General eligibility requirements to qualify for financial assistance;

    (5) Homebuyer selection process;

    (6) Fair Housing logo and Equal Opportunity language;

    (7) Opening date for acceptance of applications;

(c) Affirmative Marketing. To ensure that all persons are effectively and adequately informed about the CDBG-DR Homebuyer Program and the availability of funds, brochures or program information notices shall be provided and distributed or posted in the following locations and shall contain the information described in subsection (b). Brochures and/or program information notices shall be made available at the following public and private areas:

    (1) U.S. Post Offices;
    (2) Major shopping centers;
    (3) Public health centers;

(4) Places of worship;
(5) Government office buildings;
(6) The Nutrition Assistance Program (Food Stamp) office(s); and
(7) U.S. Social Security Administration office(s).

Part 100 - Application

§ 100-100.3-101 Formal Application

Upon initial determination of eligibility after completion of the pre-qualification process, applicants may obtain a Uniform Residential Loan Application form along with a checklist of required documents in order to complete the application submission. Such application form shall be in accordance with loan applications widely used by financial lending institutions. Those applicants who are initially determined eligible shall be notified to provide additional documents to further process their applications. Proper completion of the formal application and submission of supplemental information shall be in accordance with CDBG-DR Homebuyer Program and NMHC loan processing procedures. Loan applications shall be completed and signed by applicant(s) requesting assistance and such signature(s) shall certify to the truth of all statements contained therein.

§ 100-100.3-105 Supplemental Information

(a) Completed applications shall be submitted together with the following supporting information which shall be used solely for the purpose of determining applicant eligibility for financial assistance:

(1) Prior year's income tax return and/or W-2 Tax Form;

(2) Recent check stubs for the past two months prior to applying for CDBG-DR program financial assistance of all household members that are 18 years old or older;

(3) Other forms of documentation of income (i.e., Social Security payments, SSI, retirement income, etc.), if any;

(4) If property has been identified, proof of land ownership or lease agreement for principal residence to be used as collateral for the loan;

(5) If no land ownership or lease agreement is available, lot number and lot description;

(6) Property map for principal residence;

(7) Preliminary Title Report (PTR) showing clear title to property;

(8) Savings and checking account(s) information, if any; and

(9) Private life insurance policies, if any.

(b) A checklist of the above-described supplemental information shall be provided with each formal application obtained. Additional information may be requested if deemed necessary by NMHC to ensure the eligibility of each applicant. NMHC must complete the Borrower's income eligibility within six months before the homebuyer(s) acquires the property.

(c) To substantiate eligibility, supplemental information submitted with each loan application shall be verified in writing, from a reliable third party and such verification shall be considered valid for a period of one hundred eighty calendar days from the date the verification was completed. Prior to verifying any applicant information, NMHC shall obtain written authorization from the applicants.

(d) If a written third party verification is not used, notarized statements or signed affidavits by the applicants shall be an acceptable form of verification, but only in situations where a more acceptable form of verification cannot be obtained.

Part 200 - Eligibility

§ 100-100.3-201 Eligibility Requirements

(a) Must be a U.S. Citizen or green card holder.

(b) Must be a first-time homebuyer. A **first-time homebuyer** is an individual who has had no ownership in a principal residence during the 3-year period ending on the date of purchase of the property or new home construction completion. This includes a spouse (if either meets the above test, they are considered **first-time homebuyers**).

(c) Must be a resident of the CNMI at the time of application or have been a resident of the CNMI at the time of the qualifying event.

(d) Household Income.

(1) Homebuyer(s) must qualify as a low-income household as defined in the HOME program. Income eligibility is determined based on annual income. Combined anticipated gross household income of adults 18 years old or older, must not exceed 80% of the median income for the area (adjusted for family size), as prescribed by HUD (see § 100-100.3201(a)(2)). However, household income of adults 18 years old or older exceeding 80% of the median income for the area but not greater than 120% will also be eligible for assistance.

The Area Median Income for the Northern Mariana Islands as established by the U.S. Department of Housing and Urban Development for the HOME program as periodically revised is provided below and referenced below. NMHC shall comply with any revisions that the U.S. Congress enacts.

NORTHERN MARIANA ISLANDS HOME INCOME LIMITS 2020								
Person Household	**1 Person**	**2 Person**	**3 Person**	**4 Person**	**5 Person**	**6 Person**	**7 Person**	**8 Person**
15% of Median Income	$5,055	$5,775	$6,495	$7,215	$7,800	$8,370	$8,955	$9,525
30% of Median Income	$10,150	$11,600	$13,050	$14,450	$15,650	$16,800	$17,950	$19,100
50% of Median Income	$16,850	$19,250	$21,650	$24,050	$26,000	$27,900	$29,850	$31,750
80% of Median Income	$26,950	$30,800	$34,650	$38,500	$41,600	$44,700	$47,750	$50,850
120% of Median Income	$40,400	$46,200	$51,950	$57,700	$62,350	$66,950	$71,550	$76,200

For most current HOME or CDBG-DR 120% program income limits published by U.S. Department of Housing and Urban Development, please go to https://www.hudexchange.info/programs/home/home-income-limits/ or https://www.hudexchange.info/incomecalculator/

(2) NMHC shall use HUD's Section 8 of Part 5 Technical Guidelines as the basis in calculating annual gross household income. NMHC will verify their income using at least two months of source documentation such as wage statements, interest statements, and SSI documents to determine if program applicants are income-eligible.

(3) CDBG-DR Homebuyer Program Underwriting Guidelines and Subsidy Layering is further outlined herein under Part 1200, § 100-100.3-1201.

(e) Determination of Repayment Ability

(1) NMHC shall use **forty-five percent** (45%) (or most current ratio) of the gross monthly income of both applicant and co-applicant (homebuyers) combined, to determine the amount of available debt-service or repayment ability. Any remaining debt-service or repayment ability after existing monthly obligations (long- and short-term combined) is/are subtracted from the total available debt-service (not to exceed **thirty-five percent (35%)** of gross monthly income for loan mortgage payment (principal and insurance), shall be used to determine if homebuyers/applicants can afford to repay the entire loan amount needed.

(2) On a case-by-case basis, NMHC may provide an exception to exceed the **45%** debt-to-income ratio, but not more than **55%**, upon NMHC's determination that the applicant(s) can meet repayment responsibilities. This provision is also applicable in determining and providing financial hardship assistance.

(f) Property Ownership. Interested applicants must provide proof of ownership such as fee simple title to the property. Ownership also includes leases of 40 years or more provided that the applicant must have at least a minimum of thirty (30) years leasehold interest remaining on the property to be improved.

(g) Principal Residence and Annual Recertification.

(1) Homebuyers/Applicants approved to receive financial assistance must occupy the property as their principal/primary residence immediately upon completion of all CDBG-DR Homebuyer funded activities. An annual recertification for principal residency notice and form shall be sent to homebuyers/borrowers to complete, sign, and submit to NMHC in order to confirm and have on file that they are continually occupying the mortgaged property and housing. The following stipulations apply for a principal residence:

(i) A deed restriction or covenant running with the land shall incorporate this requirement;

(ii) The loan documents between the homeowner and NMHC shall also incorporate this requirement;

(iii) Temporary subleases are not allowed.

(2) Annual recertifications shall be required for all CDBG-DR homebuyer-assisted borrowers. This is conducted in order for homeowners to maintain compliance with the affordability restrictions.

(3) Annual recertifications through field visits may be conducted if the required completed form has not been provided, or if the account status is pending probate, or the account has been accelerated to the collection attorney for foreclosure proceedings. The Loan Specialist shall verify the borrower(s) principal residence and, as necessary, to take photos and document the status of the residential unit.

(h) Loan Cancellation. NMHC reserves the right to cancel any loan if in its opinion the homebuyer(s)/applicant(s) have not substantially complied with all the terms and conditions herein.

Part 300 - Affordability Restrictions

§ 100-100.3-301 Long Term Affordability

(a) HOME rules require that assisted properties remain affordable for a specific period of time, depending on the level of HOME funds invested in the property and the nature of the activity funded. The CDBG-DR Homebuyer program will abide by these rules.

(b) For interest bearing loans, non-interest bearing loans, and repayable deferred loans, the affordability schedule is as follows;

CDBG-DR Funds Invested per Unit	Minimum Length of the Affordability Period
Less than $15,000	5 years
$15,000-$40,000	10 years
More than $40,000	15 years

(c) For forgivable deferred loans, which are CDBG-DR-funded loans that fall within the 35% loan payment ratio or payment-to-income (PTI) ratio, the affordability schedule is as follows:

CDBG-DR Funds Invested per Unit	Minimum Length of the Affordability Period
Less than $15,000	10 years
$15,000-$30,000	15 years
More than $30,000 to Maximum Loan Limit	20 years

(d) Additional subsidies used to supplement excess costs associated with the construction, purchase, or the acquisition and repair of a principal residence shall incur additional years/time to the affordability period as indicated by the following schedule:

Supplemental CDBG-DR Subsidies	Additional Years Added to the Affordability Period
$1.00 - $50,000	5 years
More than $50,000	10 years

(e) The affordability requirements are to be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon transfer in lieu of foreclosure. NMHC may use its right of first refusal, as set forth in the loan documents, to purchase the housing before the transfer in lieu of foreclosure to preserve affordability.

(f) The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, or any entity that includes the former owner or those whom, the former owner has or had family or business ties, obtains an ownership interest in the project or property. If a home purchased with CDBG-DR assistance is sold during the affordability period, recapture provisions

apply to ensure the continued provision of affordable homeownership. Loan payoffs do not end the affordability period.

§ 100-100.3-305 Right of First Refusal

During the affordability period, the homeowner(s) agrees not to sell or assign the residence hereby built or purchased to any persons or persons unless and until homeowner(s) proposes to sell same to NMHC, its successors or assigns, on terms consistent with preserving affordability and allows then sixty (60) days time within which to purchase said residence.

§ 100-100.3-310 Resale

[Reserved]

§ 100-100.3-315 Recapture

(a) Recapture. NMHC will ensure that it recoups all or a portion of the CDBG-DR loan assistance provided to the homebuyer(s), if the housing unit ceases to be the principal residence of the homebuyer(s) for the duration of the period of affordability. All subsidy amounts (in the form of loans) that directly benefited the property owner (i.e., through down payment and/or closing cost assistance, deferred payment loans, interest rate buydowns, property discount, etc.) are also subject to recapture. Recapture is capped at what is available out of net proceeds for agreements after November 2004. Net proceeds are defined as the sales price less superior non CDBG-DR debt (if any) less closing costs. NMHC will utilize the following recapture options:

(1) Recapture entire amount. NMHC may recapture the entire amount of the loan and/or subsidy from the homebuyer(s) if the sale of the property occurs within halfway into the given affordability period. For example, a homebuyer was approved for a $50,000 CDBG-DR loan to construct a home. The affordability period is therefore, fifteen years. On the seventh year, the borrower sells the house for $60,000. Since the borrower failed to comply with the minimum seven and one half (7 ½) years of the fifteen-year affordability period, the recaptured amount is $50,000.

(2) Forgiveness. NMHC may reduce the loan amount and/or subsidy to be recaptured on a pro rata basis for the period the homebuyer(s) has/have owned and occupied the housing unit measured against the required affordability period; however, homebuyer(s) must occupy the housing unit at a minimum of ten years or at least halfway into the affordability period, whichever is greater, in order to qualify for this recapture option. For example, if the CDBG-DR subsidy is $60,000 with 15-year affordability and the owner sells the property in the 12th year of ownership the recapture amount will equal $12,000. ($60,000/15 years affordability period x 3 years remaining = $12,000 recapture.)

(3) Buyer's recovery of initial investment. The homebuyer(s) investment (down payment and capital improvements made by the owner since purchase) may be repaid in full before any CDBG-DR funds are recaptured, provided that the homebuyer(s) occupied the housing unit at a minimum of ten years before the sale of the property and the homebuyer's household income level is at or below 50% of the area median income in order to qualify for this recapture option.

(4) Shared appreciation. In the case where net proceeds exceed the amount necessary to repay both the homebuyer(s)' investment and the CDBG-DR assistance, the excess proceeds may be shared proportionately (i.e., percentage of investment provided) by both parties.

(b) When the recapture requirement is triggered due to a voluntary or involuntary sale during the period of affordability and there are no net proceeds or the net proceeds are insufficient to repay the HOME investment due, NMHC may recapture an amount less than or equal to the net proceeds available.

(c) Circumstances Under Which Recapture Will Apply. Recapture restrictions must be used in cases where interest bearing loans or advances, non-interest bearing loans or advances, deferred loans (repayable), interest subsidies, or loan guarantees were provided to the homebuyer(s) in order to subsidize the purchase of the property to cover the down payment or closing costs.

(d) Legal Instrument to Enforce Recapture. NMHC must use deed restrictions, land covenants, or other similar legal documents to enforce these recapture restrictions.

Part 400 - Homebuyer Costs

§ 100-100.3-401 Eligible Costs

(a) Hard costs include:
(1) Acquisition of land and existing structures;
(2) Site preparation or improvement, including demolition;
(3) Securing buildings; and
(4) Construction materials and labor.

(b) Soft costs include:
(1) Credit reports;
(2) Title binders and insurance;
(3) Recordation fees;
(4) Legal & accounting fees;
(5) Appraisals;
(6) Architectural/engineering fees, including specifications and job progress inspections;

(7) Environmental investigations, which shall be addressed in the commitment letter as a condition before any Homebuyer activity is to be committed or funded;
(8) Builders' or developers' fees;
(9) Affirmative marketing and marketing costs where applicable and as indicated in NMHC's impending affirmative marketing plan; absent of this affirmative marketing plan, NMHC shall defer to its Section 8 Administrative Plan where applicable;
(10) Homebuyer counseling provided to purchasers of CDBG-DR-assisted housing;
(11) Management fees; and
(12) Direct project costs incurred by the PJ.

(c) Relocation costs include:
(1) Replacement housing, moving costs, and out-of-pocket expenses;
(2) Advisory services; and
(3) Staff and overhead related to relocation assistance and services.

(d) **Loan closing fees and related costs:**
NMHC shall charge $3,914.00 (more or less, depending on current costs) to the borrower(s) for certain loan closing fees and other related costs such as but not limited to the following:

a.	**$14.00**	**----**	**Credit Report**
b.	**$200.00**	**----**	**Preliminary Title Report (PTR)**
c.	**$600.00**	**----**	**Appraisal Report**
d.	**$150.00**	**----**	**Recordation of Mortgage Documents**
e.	**$1,050.00**	**----**	**First Annual Premium for Hazard Insurance**
f.	**$500.00**	**----**	**Initial Utility Connection**
g.	**$1,400.00**	**----**	**Title Policy**
	$3,914.00		**Total**

Loan closing fees and associated hard and soft costs may be bundled into the total approved loan amount. In essence, a borrower who is approved for a $120,000 loan may use a portion of the loan to pay for the loan closing costs and soft costs. In this case, the $3,914.00 incurred closing costs shall be subtracted from the total approved loan of $120,000 and the resulting net amount of $116,086.00 shall then be used for the construction, purchase and/or rehabilitation of their principal residence.

CUC utility connection: Borrower(s) are responsible for ensuring that there are no outstanding issues with CUC and resolving any such issues. Any costs not related to initially connecting to CUC utilities are not loan closing fees and related costs and none of the approved loan amount will be used to resolve such issues.

(e) If the homebuyer(s) opt to have a private inspector perform unit inspection, the first/initial unit inspection fee may be covered by NMHC, subject to any conditions set by NMHC.

Any cost associated with any subsequent inspection shall be the responsibility of the homebuyer client(s).

Part 500 - Notification to Applicants

§ 100-100.3-501 Notification of Eligibility or Ineligibility

(a) Eligible Applicants. NMHC shall send written notifications to all applicants determined eligible for financial assistance. Such notification shall be mailed no later than five working days after the determination, and shall contain a listing of additional information to be submitted for completion of loan file. Eligible applicant(s) shall be given thirty calendar days to submit the additional information requested. Applicant(s) that do not submit all pending information before the thirty (30) calendar day deadline, shall have their applications file placed in the inactive files. Extensions may be granted.

(b) Ineligible Homebuyers/Applicants. All ineligible applicants shall be notified in writing of their ineligibility. Such notification shall be mailed no later than five working days after the determination of ineligibility and shall include a description/reason of such determination.

Part 600 - Loan Processing

§ 100-100.3-601 Selection

(a) Financial assistance shall be based on available CDBG-DR Program funds and such assistance shall be awarded to eligible applicants on a first-come, first-serve basis. The application will have the date and time stamped when received; however, to be considered received, the application must be completely filled-out and the applicant has submitted all additional information requested by NMHC to perform an eligibility review.

(b) Potential homebuyers displaced by the storms and can show that they are mortgage ready (completed application form along with all necessary documents) and their incomes do not exceed 80% of AMI will be prioritized. No less than 80% of the funding will be reserved for those applicants at or below 80% AMI.

(c) The elderly and/or the disabled applicants who were displaced by the storms are prioritized over non-elderly and non-disabled applicants. However, eligible applicants that are mortgage ready will also be prioritized on a first come, first serve basis over the elderly and/or disabled applicants who are not mortgage ready.

(d) In the event that there are more applicants than available funds, NMHC shall establish and maintain an applicant waiting list. Applicants placed on the waiting list shall be assisted in the event that funds available are not entirely used up or committed by the homebuyers/applicants initially awarded financial assistance. Those applicants unable to

be assisted with remaining funds shall be given first priority if and when additional funds are available.

§ 100-100.3-605 Administration; Approval; Appeals Process

(a) Program Administration.

(1) The CDBG-DR Housing Administrator with the assistance of NMHC's MCD Manager shall be responsible for the CDBG-DR Homebuyer program implementation and management of related asks. The CDBG-DR Housing Administrator shall supervise division staff in loan and grant origination, underwriting and closings under the CDBG-DR Homebuyer program. However, the duplication of benefits analysis must be conducted by the CDBG-DR Compliance Manager to determine net financial assistance to be provided to the homebuyer applicant.

(2) The CDBG-DR Housing Administrator and MCD Manager shall review each submitted application, ensure all supporting documentation is in place and make any necessary recommendations to the Corporate Director prior to the Corporate Director making the final decision on the loan or grant application.

(b) Loan Review and Approval

(1) Under the direction of the CDBG-DR Housing Administrator, a CDBG-DR Loan Supervisor and/or a Loan Specialist shall review and verify all applicants' credit, income, assets, liabilities, title reports, and any other requested reports and documentation. Upon completion of the review process, the Loan Specialist shall prepare a loan write-up containing his/her recommendations.

(2) In the interim, after the CDBG-DR Housing Administrator review, the MCD Manager shall review the loan write-up for concurrence before submitting the same to the Corporate Director for a final decision. Final approval or denial of any CDBG-DR loan or grant shall be made by the Corporate Director except as follows:

(i) If the Corporate Director is off-island or on extended leave at the time the loan or grant is submitted to him/her for a final decision, then the Deputy Corporate Director may make the final decision to approve or deny the HOME loan or grant; or

(ii) If the Corporate Director and Deputy Corporate Director are both simultaneously off-island or on extended leave at the time the loan or grant is submitted for a final decision, then the Acting Corporate Director may make the final decision to approve or deny the CDBG-DR loan or grant.

(3) For purpose of these policies, off-island or extended leave shall be defined as an absence or leave that extends for more than three working days after the loan or grant is submitted to the Corporate Director for his or her final decision.

(4) A written notice of the final decision shall be provided to the applicant.

(c) Loan Grant/Denial Appeals Process.

(1) Applicants denied assistance under the CDBG-DR Homebuyer program may appeal the final decision to the NMHC Board of Directors by submitting their appeal in writing to the Corporate Director within ten (10) working days of the written notice of the final decision.

(2) Any appeal submitted must indicate the basis for the appeal and include any supporting documents. Upon receipt of an appeal, the Corporate Director shall submit the same to the Board of Directors for review and action at the next scheduled Board meeting. A decision must be rendered within thirty (30) days from the date of receipt of the appeal letter.

§ 100-100.3-610 Homebuyer/New Construction Counseling Session

(a) All applicants for loan assistance must attend a Homebuyer/New Construction Education and Counseling Session that will be provided by NMHC. On or before August 1, 2021, NMHC employees providing housing counseling will be HUD certified housing counselors, and NMHC will have applied directly to HUD and received approval, or NMHC will have applied to a HUD-approved intermediary and received approval by the entity to be its affiliate. NMHC shall notify the applicant(s) of the date, time, and location of the session. The education and counseling session shall be scheduled after the loan has been preliminarily approved and may be conducted before or on the day that NMHC issues the commitment letter to the applicant(s). The counseling session shall include a discussion of the terms and conditions of the loan, educate the new homeowner(s) of their financial responsibilities, the importance of budgeting, making timely payments, foreclosure prevention, as well as, home maintenance and repair measures. Acceptable delivery method for housing counseling may be in-person, phone, or internet. Duration of the housing counseling is eight (8) hours. Upon completion of the housing counseling, the borrower(s) will receive a counseling certificate and this counseling certificate is valid for 2 years. Funding for housing counseling will come from project-related soft costs.

(b) NMHC shall inform applicant(s) at the time of their submission of their application of the required homebuyer/new construction counseling session and again in written form when NMHC notifies the applicant(s) of NMHC's preliminary approval of their loan request. Failure to attend the required Homebuyer/New Construction Education and Counseling Session may be grounds for denial or cancellation of assistance.

Part 700 - Terms and Conditions of Loan

§ 100-100.3-701 Maximum Homebuyer Programs Loan Amount

(a) The amount of CDBG-DR Homebuyer loan funds that may be used for a new construction, purchase, or for an acquisition and repair shall be based on the borrower(s) ability to repay the loan as determined by the program underwriting standards, for which, not to exceed the debt-to-income (DTI) ratio of forty-five

percent (45%); as well as, not to exceed the payment-to-income (PTI) ratio of thirty-five percent (35%) as per *Section 100-100.3-201 (b), Determination of Repayment Ability.*

Notwithstanding the borrower(s) ability to repay the loan, the maximum CDBG-DR assistance as per HOME regulations is capped at the HOME maximum per unit subsidy limit.

Moreover, the value of a CDBG-DR-assisted housing cannot exceed the most current 95% Area Median Sales Price Limits or the HOME maximum value limits for existing or new homes as published annually by HUD.

(b) For NMHC-owned properties, NMHC may sell the property directly to the CDBG-DR Homebuyer-approved applicant(s) but only after the property has been publicly auctioned at least once and resulted in an unsuccessful bid.

§ 100-100.3-705 Minimum and Maximum CDBG-DR Homebuyer Program Loan/Deferred Loan Amount

The minimum loan/deferred loan amount shall not be less than $1,000.00.

The maximum loan/deferred loan amount shall not exceed $250,000.00.
Provided that circumstances, where additional costs may be incurred, will be reviewed against cost reasonableness guidelines and to meet reasonable accommodations and accessibility requirements. However, the sales price must not exceed HUD's existing or new homes HOME purchase price limits (§ 92.254(a)(2)(iii)).

§ 100-100.3-710 Non-Interest Bearing Loans

These loans are zero percent interest loans. Repayment is expected on a regular basis, usually monthly, so that over a fixed period of time, all of the principal is repaid:

(a) If the applicant(s)' annual household income is between 80.01% and 120% of the HUD income Limits, 75% of the loan at zero percent interest (0%) shall apply throughout the term of the loan. If there are no missed payments during the affordability period, any remaining principal balance may be forgiven.

(b) If the applicant(s)' annual household income is between 50.01% and 80% of the HUD income Limits, 50% of the loan at zero percent interest (0%) shall apply throughout the term of the loan. If there are no missed payments during the affordability period, any remaining principal balance may be forgiven.

(c) If the applicant(s)' annual household income is between 30.01% and 50% of the HUD Income Limits, 25% of the loan at zero percent interest (0%) shall apply throughout the term of the loan. If there are no missed payments during the affordability period, any remaining principal balance may be forgiven.

§ 100-100.3-715 Deferred Loans: Forgivable or Repayable

(a) These loans are not fully amortized. Instead, some, or even all of the principal payments are deferred to some point in the future. Deferred payment loans can be forgivable or repayable.

(b) The forgiveness may be forgiven incrementally based on the affordability period. In order to qualify for deferred forgivable loans, the applicant(s)' annual household income must be at or below 30% of the HUD Income Limits. Priority in processing applications are given to homebuyer(s)/applicant(s) who are 62 years of age or older or, disabled and unable to be gainfully employed. A disabled family is a family whose head of household, spouse, or sole member is a person with a disability.

(c) Persons with a disability:

(1) Means a person who:

(iii) Has a disability, as defined in 42 U.S.C. § 423;

(iv) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

(a) Is expected to be of long-continued and indefinite duration;

(b) Substantially impedes his or her ability to live independently, and

(c) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(v) Has a developmental disability as defined in 42 U.S.C. § 6001.

(2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome; and

(3) Does not include a person whose disability is based solely on any drug or alcohol dependence.

(d) The applicant's physician must complete the Homebuyer/Homeowner Program Disability Eligibility Verification to certify the borrower's disability. As appropriate, NMHC shall require a court legal guardianship in cases where the physician certification indicates that the applicant is incapacitated or incompetent to enter into a legal and binding agreement such as a mortgage. The legal guardian shall be included as a co-borrower in the mortgage or the CDBG-DR-assistance that is provided.

Table 2

CDBG-DR Program Income Limits for the CNMI	Interest Rate	Type of Assistance
0% - 30%	0%	Deferred Loan†
30.01% - 50%	0%	75% Deferred Loan and 25% Non-Interest Bearing Loan
50.01% - 80%	0%	50% Deferred Loan and 50% Non-Interest Bearing Loan
80.01% - 120%	0%	25% Deferred Loan and 75% Non-Interest Bearing Loan

†—Priority given to qualified elderly or disabled household applicants.

(e) Full repayment will be required at the sale, transfer, or the property being no longer the principal residence less than halfway into the affordability period. The deferred loan will be structured to begin incremental forgiveness when the homebuyer is more than halfway into the affordability period.

(f) For example, a homebuyer acquires a CDBG-DR assisted property that has a HOME subsidy of $50,000. The affordability period is therefore 20 years. The homebuyer would have to live in the CDBG-DR assisted property for ten years before forgiveness will begin. Beginning with the 121st month of the affordability period, NMHC will forgive principal and interest for each month thereafter **on a pro-rata** basis that homebuyer principally resides in the CDBG-DR-assisted property.

§ 100-100.3-720 Interest Subsidies

[Reserved]

§ 100-100.3-725 Loan Guarantees

[Reserved]

§ 100-100.3-730 Repayment Period

The maximum repayment term shall not exceed 360 months or the affordability period, whichever is greater, unless the repayment term is amended or revised and approved by the Corporate Director to accommodate requests for relief from borrowers who have been determined not able to repay their obligations, with the amended or revised repayment terms not to exceed an additional 60 months.

§ 100-100.3-735 After-Construction Property Value, After-Rehabilitation Property Value, or Property Value at Initial Purchase (if Acquisition Only).

The projected after-construction value, **after-rehabilitation value, or property value at initial purchase (if acquisition only) of each homebuyer property to be assisted with CDBG-DR funds must not exceed the most current 95 percent of the area median purchase price for single family housing, as determined by HUD.** NMHC will request for a real estate appraisal from a licensed real estate appraiser, prior to loan closing to determine such value.

§ 100-100.3-740 Security

(a) To insure borrowed CDBG-DR funds, NMHC shall secure a mortgage on the property. The mortgage shall be maintained for no less than the term of each approved loan or the affordability period, whichever is greater.

(b) NMHC will execute a written agreement with the homebuyer that will specify the use of CDBG-DR funds, description of the project, roles and responsibilities, compliance with affordability period requirements, qualifications for affordable homeowner housing, monitoring, the purchase price, date by which housing must be acquired, address or legal description of the property, and duration of the agreement. Additionally, the purchase price, date by which housing must be acquired, address or legal description of the property must be indicated in the applicable written agreement.

(c) During the term of the loan, homebuyer shall also be required to maintain, at their expense, property insurance on the mortgaged property for fire, earthquake, typhoon, and flood damage (if applicable) covering the replacement value of all properties at a minimum equal to the loan amount. Financial hardships will be reviewed on a case-by-case basis.

(d) NMHC will require the homebuyer to execute and file for record a deed or deeds of restriction, land covenant or similar legal documents approved by HUD that will assure compliance with the principal residency and affordability period requirements and enforce CDBG-DR restrictions.

§ 100-100.3-745 Late Charge

For interest-bearing loans, a fixed one percent late installment charge of the missed monthly principal and interest (P & I) payment shall be assessed for every monthly payment that is over fifteen calendar days late or past due.

For non-interest-bearing loans, a fixed one percent late installment charge of the missed monthly principal payment shall be assessed for every monthly payment that is over fifteen calendar days late or past due.

§ 100-100.3-750 Prepayment of Loan

There shall be no prepayment penalties for loans that are paid-off prior to the completion of the term of the loan. The affordability period provision is still applicable to loans that are paid-off.

Part 800 - Distressed Homebuyer(s)

§ 100-100.3-801 Distressed Homebuyer(s)

Distressed homebuyer(s) are those who are having a difficult time meeting their monthly loan payments due to external circumstances beyond their control. These circumstances include:

(a) Reduction-in-force;

(b) Reduction in pay;

(c) Family medical emergency (including death of an immediate family member: parents, siblings, child(ren), spouse, and in-laws);

(d) Medical condition (including career-ending injury) that causes homebuyer to discontinue employment. The borrower's physician must complete the Homebuyer/Homeowner Program Disability Eligibility Verification to certify the borrower's medical condition; and

(e) Natural disaster.

Part 900 - Assistance

§ 100-100.3-901 Types of Assistance

(a) NMHC may offer the following types of assistance depending on the circumstances mentioned above:

(1) Reduction-in-force. Monthly loan payments may be deferred for a period of up to twelve months. Late charges would not accrue. If this approach is still deemed unaffordable, the current term may be extended and reamortized with an additional sixty (60) months.

(2) Reduction in pay. Monthly loan payments may be deferred for a period of up to twelve months. If this approach is still deemed unaffordable, the current term may be extended and reamortized with an additional sixty (60) months.

(3) Family medical emergency. Monthly loan payments may be deferred for a period of up to twenty-four (24) months. Late charges would not accrue. The current term may be extended and reamortized with an additional sixty (60) months.

(4) Medical condition that causes borrower to discontinue employment – Principal amount may be forgiven incrementally (based on term).

(5) Natural Disaster. Monthly loan payments may be deferred for a period of up to six (6) months in the event of a natural disaster, such as fire, typhoon, earthquake, flood, and local or pandemic spread of disease. Final decisions regarding requested

deferments shall be made by the Corporate Director. Late charges shall not accrue during deferment. Borrowers may be eligible for a deferment upon written request accompanied by acceptable evidence of negative impact caused by the natural disaster. Further, in order to qualify for a deferment, the Borrower's loan and hazard insurance must be up to date.

(6) Other Hardships. Any other claimed financial hardship outside of the aforementioned five listed hardships shall be brought to the **Corporate Director** for review and decision.

(7) Denial of assistance may be appealed to the NMHC Board.

(b) In addition, NMHC may offer the following types of assistance:

(1) Penalty Waiver. Accrued penalty fees for delinquent borrowers may be waived to assist them in making their accounts current.

(2) Loan Assumption

(i) Death of a homebuyer/borrower: Upon the death of the borrower which occurs within the affordability period, the entire unpaid balance of the loan shall be immediately due and payable. Title transfer without sale triggers the CDBG-DR recapture agreement enforceable through the restrictive deed or land covenant. The Corporate Director may allow assumption of the loan by the heirs of the borrower if a final decree in the probate of the borrower identifies the heirs and approves distribution to them of the improved property and the loan, and if the heirs themselves would qualify as a new applicant for the loan.

(ii) At the sole discretion of the NMHC Board, the loan may be assumed by a legal heir of a deceased borrower(s) of the CDBG-DR-assisted unit. This assumption exception is permitted where transfer of title is through the laws of descent provided that the heir is of legal age, meets all CDBG-DR Program eligibility requirements and has a full, undivided interest in the real property. The heir will be required to fill out an application and will be subject to credit, income, and asset verification.

(5) Foreclosure Prevention. In situations where a foreclosure is imminent, the Corporate Director may allow a borrower to have a CDBG-DR eligible immediate relative (i.e., mother, father, brother, sister, son, daughter) assume the loan, all for the purpose of preserving the affordability period. The total outstanding balance thereof shall be fully amortized at the original interest rate and terms to produce equal monthly payments. If, however, the CDBG-DR eligible immediate relative assuming the loan cannot afford the repayment of the loan at its original rate and terms, the NMHC Board may extend the term up to a period of sixty months. Should

this accommodation still prove unaffordable, the property will go through the foreclosure process.

(6) Foreclosure. NMHC may use its right of first refusal, as set forth in the loan documents, written agreement with homebuyer, and restrictive deed or land covenant, to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. Foreclosure triggers the CDBG-DR recapture agreement enforceable through the restrictive deed or land covenant.

(7) Foreclosure and Recapture. If the CDBG-DR assisted property is subject to recapture terms, NMHC has two options:

(i) Recapture Option 1: NMHC will recapture and pay to the CNMI CDBGCR account the net proceeds from the foreclosure sale of the property in accordance with the recapture terms; or

(ii) Recapture Option 2: NMHC may purchase the CDBG-DR assisted property at foreclosure sale and additional CDBG-DR funds may be spent. However, the total amount of the original and additional CDBG-DR funds spent may not exceed the maximum per unit subsidy amount.

(c) If NMHC forecloses on its own loan, NMHC cannot spend any additional CDBG-DR funds to acquire the property.

Part 1000 - Mitigation to Foreclosure

§ 100-100.3-1001 Items Needed to Cancel Foreclosure and Reinstate Account

To cancel foreclosure and reinstate account, the Borrower shall:

(a) In accordance with 2 CMC § 4536(a), pay the entire amount then due under the terms of the mortgage other than such portion of principal as would not then be due had no default occurred, and reasonable attorney's fees actually incurred.

(b) Pay delinquent account current inclusive of one month advance payment.

(c) Have the homebuyer(s) submit a written proposal on how he/she will maintain the account in good standing.

(d) Submit paid in full receipt of homebuyer(s)' insurance coverage for fire and earthquake.

(e) Submit 2-3 recent check stubs and/or verification of benefits

Part 1100 - Performing New Construction Work

§ 100-100.3-1101 Performing New Construction Work

(a) Contractor Cost Estimates: The homebuyer(s)/applicant(s) shall be responsible in obtaining a minimum of three written construction cost estimates from at least three NMHC approved contractors, and each cost estimate submitted must include, at a minimum, the following information: bid price, cost breakdown of materials and labor charges, and schedule for completion of work. If for any reason that a construction cost estimate is unattainable, then a justification letter from the borrower and/or contractor may be accepted in lieu of this requirement.

(b) Selection of Contractor/Contract Award: The homebuyer(s) shall have the right to select whichever contractor to perform the construction work, provided that NMHC has assessed the sources and uses of funds and determined that the costs are reasonable, provided that the contractor's quotation and the appraiser's after-construction estimated value does not exceed the approved loan amount and the most current HUD-approved value limits, and provided that the contractor is an NMHC-approved contractor. Should it exceed the loan amount, the homeowner shall choose to either deposit the difference or negotiate with contractor in reducing the contract amount. Should the borrower not be able to deposit the difference or the contractor unwilling to lower the contract amount, then the borrower shall select his/her/their next choice. The homebuyer(s) shall submit a contractor selection notice notifying NMHC of his/her/their selection. NMHC may, at its own discretion, select the appropriate contractor for the applicant if the homebuyer project is deeply subsidized using additional CDBG-DR funds. Deeply subsidized means additional funding assistance on top of the underwritten funding assistance.

(c) Construction Contract: The construction contract is a binding agreement strictly between the homebuyer(s) and the contractor whereby the contractor will provide the construction or repair work for a specified and agreed upon price. As NMHC's role is to finance the construction of the project, it is not a party to the construction contract. However, at any time the contractual provisions are not followed, NMHC shall have the right to withhold any progress payment until the contractor has complied with such provisions. The construction contract shall include, but is not limited to, the following provisions:

(1) Contractor's name and mailing address;

(2) Homeowner(s) name and mailing address;

(3) Date of the contract, the contract amount, and payment schedule for each incremental billing;

(4) Calendar days to complete the work (includes Saturdays, Sundays, and holidays);

(5) Contractor will provide the performance bond, and labor and material payment bond up to the contract amount, as well as a builder's risk policy for the project;

(6) The contractor will provide all the construction plans and permits necessary to comply with applicable local and federal laws;

(7) Issuance of the notice to proceed or the commencement of the project;

(8) Contractor will provide a one-year warranty on all work completed;

(9) NMHC's right to inspect the progress of the project and right to withhold progress payments;

(10) Change order procedures, if any; and

(11) A provision for liquidated damages must be included in the construction contract which shall be negotiated between the borrower(s)/homebuyer(s) and the contractor.

(12) Description of the work to be performed so that inspections can be conducted and, for rehabilitation, so that housing will meet NMHC's rehabilitation standards.

(d) Contractor Notification and Pre-Construction Requirements: Once NMHC is in receipt of the borrower(s)/homebuyer(s) contractor selection notice, NMHC shall notify the contractor of the borrower(s) selection of their company. NMHC shall inform the contractor of the scheduled pre-construction conference and shall likewise inform the contractor of the required construction documents for submission as listed below:

(1) Building permit (if applicable)
(2) Earthmoving and erosion control permit (if applicable)
(3) Construction contract
(4) Performance and payment bonds
(5) Plans and specification approved by DPW
(6) Private inspector's contract (if applicable)
(7) Notice that an environmental review and clearance has been conducted.

(e) Project Duration: Construction must start within 12 months of NMHC's execution of the CDBG-DR written agreement with the homebuyer(s).

(1) Progress payment requests shall be submitted to NMHC by the contractor incrementally as specified in the payment schedule. NMHC shall ensure that all work description indicated on the payment schedule is completed prior to releasing contractor's payment. An original and a copy of the requests must be submitted to NMHC. The contractor shall freely use his/her/their company's billing form when submitting a payment request. The payment request shall be accompanied with the following whenever applicable: inspection reports (DPW and/or private inspector), geotesting results, termite treatment certification and/or warranty, builder's warranty, and borrower/homebuyer's acceptance of the project. In addition, each

billing submitted must include pictures of the progress of the project and a copy of the payment schedule.

(2) Payment schedule shall be as follows:

(i) Payment request number 1 shall not be more than 10% of the contract amount. This shall include the installation of the project sign board accompanied with a picture, the delivery of materials to the construction site, and commencement of the project.

(ii) Payment request number 2 shall not be more than 25% of the contract amount.

(iii) Payment request number 3 shall not be more than 25% of the contract amount.

(iv) Payment request number 4 shall not be more than 25% of the contract amount.

(v) Payment request number 5 shall be the 15% retainage request when all work is completed. The final payment request shall be accompanied with the certificate of occupancy from the Commonwealth Building Safety Office, builder's warranty, window warranty if subcontracted, termite treatment warranty, final inspection report from the DPW and if applicable, the private inspector's, certificate of acceptance from the homeowners, geotesting results if applicable, pictures of project interior and exterior, and DEQ certificate of use (sewage disposal system), if applicable.

(3) Change Order Procedures. From time to time, the homebuyer(s) may request for changes in the plans and specifications. In the event that this should occur, the following steps must be taken to address such request:

(i) The borrower/homebuyer must notify contractor in written form of the proposed changes and provide NMHC a copy of the notification.

(ii) Upon receipt of the notification, the contractor must cease work at the project site and obtain NMHC's approval of the change order request. Upon approval the contractor shall then provide NMHC a revised plan and specifications, including a revised payment schedule (if scheduled payments will be altered by the proposed changes). The contractor must obtain NMHC's approval of the change order request.

(iii) Once the change order request is approved, the homeowner will be required to deposit the additional money needed to NMHC (if applicable) to carry out the change order. The contractor will be required to submit the revised plans and specifications to DPW for approval.

(iv) Should the change order request be denied, then the contractor shall resume work to ensure timely completion of the project. The contractor may not be able to complete the project on time because of the delays the change order request may have caused. Therefore, the homebuyer(s) shall give the contractor additional days equal to the time the work was ceased up until the time the change order request was denied to complete the project. The homebuyer shall not charge the contractor liquidated damages during this period.

(4) Once the contractor has obtained the DPW's approval of the plans and specifications, then it shall provide NMHC with the same copy. The contractor shall proceed in carrying out the change order and completing the project.

(f) Inspections: NMHC shall have the right, during the construction or improvement of the building, to inspect the same and to reject and to require to be replaced, any material or workmanship that does not comply with the plans and specifications, without any liability on the part of NMHC, as to workmanship or materials therein. Such inspection is solely for financing purposes and for the disbursement of funds, and any inspection or approval of any construction phase or increments of said dwelling shall not be deemed as a warranty by NMHC of the workmanship and material therein.

(g) Inspector: Upon completion, the building is subject to inspection by the Building Safety Office of the Department of Public Works (DPW) prior to the issuance of an occupancy permit or other permits as provided in the Building Safety Code codified in 3 CMC § 7101 et seq. Applicant(s) may have a private inspector, (i.e., a qualified licensed engineer or a qualified licensed architect), conduct inspection with the costs with such inspection to be handled in accordance with § 100-100.2-240.

(h) Minimum Property Standards (MPS): For new construction of housing and acquisition rehabilitation of housing, the 2018 International Building Code enacted by law and any updates approved by regulation by the Department of Public Works Building Safety Office and zoning laws (if applicable for Tinian and Rota), International Energy Conservation Code, NMHC written design standards for single family housing new/rehabilitation, and accessibility requirements (where applicable) must be adhered to.

(1) Further adherence to CDBG-DR acquisition and repair standards, which details the methods, materials, and other requirements that the housing must meet upon completion, including each of the following:

(i) Health and Safety [24 CFR 92.251(b)(1)(i)]
(ii) Major systems that were rehabilitated or replaced as part of the rehabilitation [24 CFR 92.251(b)(1)(ii)]
(iii) Lead-based paint [24 CFR 92.251(b)(1)(iii)]
(iv) Disaster mitigation, if applicable [24 CFR 92.251(b)(1)(vi)]
(v) State and local codes, ordinances and zoning requirements [24 CFR 92.251(b)(1)(vii)]

(vi) Minimum deficiencies that must be corrected based on inspectable items and areas in HUD's Uniform Physical Condition Standards [24 CFR 92.251(b)(1)(viii)]

(i) Homebuyer(s), through their contractors, must ensure that they are familiar with these requirements. PJs using MPS may rely on inspections performed by a qualified person. If using CDBG-DR funds solely for acquisition, the property must also meet the minimum property standards mentioned above or HUD's Uniform Physical Condition Standards (UPCS). The contractor will provide all the construction plans and permits necessary to comply with applicable local and federal laws.

(j) Project Completion:

(1) Project shall be completed within 4 years of the date of the CDBG-DR written agreement (the date the CDBG-DR funds were committed to the project). [24 CFR 92.205(e)(2)]

(2) Project completion information shall be entered in the Disaster Recovery Grant Reporting (DRGR) System within 120 days of the final project draw.

(k) Record Retention:

(1) NMHC shall retain CDBG-DR homebuyer project records for five years after project completion. [24 CFR 92.508(c)(2)]

(2) NMHC shall retain documents imposing recapture provisions for five years after the period of affordability terminates. [24 CFR 92.508(c)(2)]

(3) NMHC shall retain CDBG-DR homebuyer project written agreement records for five years after the agreement terminates. [24 CFR 92.508(c)(4)]

Part 1200 - Homebuyer Underwriting

§ 100-100.3-1201 Guidelines and Referenced Sections

In order to determine the specific amount of CDBG-DR assistance needed to ensure that the unit is affordable and sustainable over the long-term, NMHC's CDBG-DR Homebuyer Program design reflects and incorporates underwriting standards that the HOME regulations at § 92.254(f) has set forth; and further examines the following for each homebuyer:

(a) Program Eligibility and income;
(b) Housing and overall debt;
(c) Monthly expenses;
(d) Assets or cash reserve, as applicable; and
(e) Appropriateness of the amount of assistance

In addition to the underwriting provisions of these regulations, the following applies to Homebuyer activities:

(a) Determining how much of a loan an applicant would be eligible for or if a loan can be extended is determined by the applicant(s) gross annual income, repayment ability, and credit worthiness. These could be found in § 100-100.3-201.

(1) The NMHC CDBG-DR Homebuyer Program methodology for determining income-eligibility, income as a component of underwriting, income verification and required source documentations, treatment and the calculation of assets are derived from the HUD *Part 5 Technical Guidelines* as herein stated

(i) To receive CDBG-DR assistance, households must have incomes at or below 80 percent of the area median household income, adjusted for household size, and determined annually by HUD. Households with incomes at or below 120 percent of the area median household income, adjusted for household size, are also eligible for assistance.

(ii) CDBG-DR Homebuyer Program regulations require that income of all family members be included in the determination of income for the purpose of eligibility. The HOME regulations at 24 CFR 92.203 (d) require that a PJ must project a household's income for the next 12 months. Chapter Two of the Part 5 Technical Guide reviews this in detail. The NMHC CDBG-DR Homebuyer Program shall also use the same methodology of projecting income for the purpose of underwriting.

(iii) The Part 5 definition of annual income provides specific guidance pertaining to whose income in a household must be included in that calculation. Chapter Three reviews this in detail.

(iv) Gross amount. NMHC uses the monthly gross amounts, before any deductions have been taken, for those types of income counted. Adjusted income is not required for CDBG-DR-funded homebuyer or for owner-occupied rehabilitation as per the Part 5 Technical Guide.

(v) For the purpose of underwriting and in determining loan repayment ability, the ratios loan payment-to-income (PTI) and the debt-to-income (DTI), NMHC shall use income and debt obligations from the loan applicant(s)/borrower(s). Any household member to be included in the mortgage must be underwritten accordingly by examining and factoring-in their income, debt, assets, credit information/analysis and any other information that is deemed applicable in the underwriting process.

(vi) The HOME regulations at 24 CFR 92.203(a) require that PJs determine income eligibility of HOME (and adopted for CDBG-DR) applicants by examining source documents, such as wage statements or interest

statements, as evidence of annual income. NMHC requires additional supporting information to confirm eligibility and for purposes of underwriting. This is specified in §100-100.3-105, Supplemental Information. Review of documents and third-party verification is further reviewed in detail in Chapter Two of the Part 5 Technical Guide.

(vii) What to include as an Asset. There is no asset limitation for participation in the CDBG-DR Homebuyer Program. In essence, eligible families are not required to "spend down" assets before they can participate in the Program. Income from assets is, however, recognized as part of annual income under the Part 5 definition.

(viii) In general terms, an asset is a cash or non-cash item that can be converted to cash. Income that is earned, such as interest on a savings or checking account, is counted or factored into annual income. Chapter Three of the Part 5 Technical Guide explains in detail the treatment of assets and considers what is to be included as an asset, as well as, explains actual income from assets.

(2) Assessment of a homebuyer's debt is made by calculating two key ratios:

(i) The loan Payment-to-Income Ratio is determined by taking the expected monthly payment of the loan, which is the principal and interest, and dividing it by the total combined monthly gross income. For the NMHC CDBG-DR Homebuyer Program, this ratio should not exceed thirty-five percent of the homebuyer's gross monthly income.

Note on Insurance Premiums: Estimated monthly premium shall be factored into the ratio calculation and must not exceed the ratio threshold of thirty-five percent for approval.

(ii) The Debt-to-Income Ratio, or DTI, is determined by factoring all related debts, including the monthly loan payment and estimated insurance premium; plus, all recurring consumer debt, such as auto loan, credit card, student loan payments, and other installment and revolving debt that appears on the credit report. For the NMHC CDBG-DR Homebuyer Program, a homebuyer's DTI ratio should not exceed forty-five percent of their gross annual income. However, on a case-by-case basis, the debt ratio could be up to fifty-five percent provided that the applicant could still meet payment responsibilities.

(iii) Recurring monthly expenses, or those that are considered fixed monthly living expenses such as utilities and transportation costs are not factored in the DTI ratio but these type of expenses should be considered in the underwriting process and must be carefully budgeted and monitored by the homebuyer. The housing counseling shall address these types of essential expenses so that it does not decrease residual income and affect the homebuyer's ability to sustain the mortgage. A careful analysis of the overall debt obligations, housing costs,

and recurring monthly living expenses shall be performed in determining the appropriate amount of CDBG-DR assistance to provide.

(b) The minimum and maximum loan assistance including the type to be extended to an applicant(s) are further explained in Part 700.

(c) The affordability restrictions that will be imposed on the property, a loan will only be extended to applicant(s) who will make their home assisted unit their primary residence (see § 100-100.3-201(d)).

§ 100-100.3-1205 Subsidy Layering

(a) NMHC may provide eligible homebuyers with additional locally-funded assistance to cover additional housing cost that is deemed to have exceeded the maximum CDBG-DR assistance limit.

(b) Homebuyer(s) that are approved for any additional, or supplemental assistance whether it be a CDBG-DR deferred loan or with NMHC's local funds, shall be required to choose from NMHC's house design and layouts. Such house layout and unit size is dependent on the household size, the original approved CDBG-DR assistance, as well as, the total estimated costs to construct a new principal residence. This requirement is also applicable to eligible-homeowners who are approved for a CDBG-DR Rehab assistance for the reconstruction of a principal residential unit.

§ 100-100.3-1210 Acronyms Reference Section

[For Rehab & Homebuyer Policies and Procedures]

(a) AIA—American Institute of Architects

(b) AMI—Area Median Income

(c) CD—Corporate Director

(d) CFR—Code of Federal Regulations

(e) CNMI—Commonwealth of the Northern Mariana Islands

(f) CPSC—Consumer Product Safety Commission

(g) DCD—Deputy Corporate Director

(h) DEQ—Department of Environmental Quality

(i) DPW—Department of Public Works

(j) DTI—Debt-to-Income Ratio

(k) EA—Environmental Assessment

(l) GFE—Good Faith Estimate

(m) HOME Program—U.S. HUD Homeownership Investment Partnerships Program

(n) HQS—Housing Quality Standards

(o) MCD—Mortgage Credit Division

(p) MPS—Minimum Property Standards

(q) MPV—Maximum Property Value

(r) NAHA—National Affordable Housing Act

(s) NEPA—National Environmental Policy Act

(t) NMHC—Northern Marianas Housing Corporation

(u) NTP—Notice to Proceed

(v) PITI—Principal, Interest, Taxes, and Insurance

(w) PJ—Participating Jurisdiction

(x) PTI—Payment-to-Income Ratio

(y) PTR—Preliminary Title Report

(z) RER—Rehab Environmental Review

(aa) RESPA—Real Estate Settlement Procedures Act

(bb) SCRA—Service members Civil Relief Act

(cc) SSI—Supplemental Security Income [Social Security]

(dd) TCD—Time Certificates of Deposits

(ee) TILA—Truth in Lending Act

(ff) U.S. HUD—United States Department of Housing and Urban Development

(gg) USDA RD—United States Department of Agriculture Rural Development

(hh) USPAP—Uniform Standard of Professional Appraisal Practice

(ii) VOE—Verification of Employment

APPENDIX A.1: Crosscutting Requirements

1.1 Crosscutting Requirements

1.2 Fair Housing

The Fair Housing Act requires all grantees, subrecipients, and/or developers funded in whole or in part with HUD financial assistance to certify that no person was excluded from participation in, denied the benefit of, or subjected to discrimination in any housing program or activity because of their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability or marital status. The Program complies with and enforces the Civil Rights requirements of Title I of the Housing and Community Development Act (HCDA) and the Fair Housing Law.

Projects must also assess how planning decisions may affect members of protected classes, racially and ethnically concentrated areas, as well as concentrated areas of poverty; will promote the availability of affordable housing in low-poverty, non-minority areas where appropriate; and will respond to natural hazard-related impacts. Program staff will use demographic, geographic, and social vulnerability analyses to determine any positive or negative impacts to protected classes. Should a project present negative impacts, project scope or design will be re-assessed to mitigate such impacts.

1.3 Environmental Review

Early environmental coordination must be completed to ensure effective implementation of all CDBG-DR Programs. CDBG-DR funding is contingent upon compliance with both local and federal environmental regulations. This includes compliance with NEPA and related environmental and historic preservation legislation and executive orders. In general, NMHC serves as the lead agency for purposes of NEPA.

HUD's Environmental Review process allows grantees to serve as the "Responsible Entity" to assume environmental review responsibilities under NEPA. As the grantee, NMHC serves as the Responsible Entity (through authorization from the Governor) as it relates to environmental review responsibilities under NEPA. Within NMHC, Environmental Review Staff will be responsible for performing environmental reviews and compiling the Environmental Review Records (ERR). Reviews are conducted either directly or using qualified environmental service contractors. NMHC's Corporate Director, as the Certifying Officer, is ultimately responsible with certifying that NMHC's environmental reviews follow NEPA and HUD environmental regulations.

Federal Register Notice FR-6182-N-01 authorizes recipients of CDBG-DR funds under the Appropriations Act to adopt any environmental review, approval, or permit performed by a Federal agency for the same project to satisfy responsibilities with respect to environmental review, approval, or permit. NMHC will notify HUD in writing of its decision to adopt another agency's environmental review. NMHC will also retain a copy of the review in its environmental records. Further information concerning the environmental review process is set forth in the

Environmental Policies and Procedures. Further information concerning the specific HUD requirements for the adoption of other Federal agency environmental reviews can be found in the HUD Memorandum dated March 4, 2013, *Adoption of FEMA and Other Federal Environmental Reviews Processing for Hurricane Sandy Supplemental Appropriation (H.R. 152) Activities.* Additional information on the environmental review process in general is set forth in Section § 100-100.4-335, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 C.F.R. Part 58).

1.4 Labor Standards

The Davis-Bacon and Related Acts (DBRA) applies to all federally-funded or assisted construction contracts in excess of $2,000. This may apply to projects that are fully or partially funded with CDBG-DR, including FEMA or FHWA match programs. In matched projects, only the scope of the CDBG-DR portion of the project are subject to crosscutting requirements DBRA requires all workers employed by contractors or subcontractors on CDBG-DR programs, be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with DBRA, as amended. DBRA also requires that workers on federally-assisted projects are paid not less than weekly.

Wage information for labor under CDBG-DR programs will be tracked in detail by both NMHC and relevant Implementing Partners and subrecipients throughout the life of the Program. Compliance for this requirement may be tracked in the following ways:

(1) Additional NMHC Program staff hired to track wages and verify contractor and agency compliance
(2) External contractor hired by NMHC to track DBRA compliance
(3) Enhanced TA provided to Implementing Partners to track DBRA compliance

Procedures for this process are currently under development and will be incorporated in a future update to this document. DBRA only applies on structures with 8 or more units. DBRA will not apply to single family homes projects.

For prime contracts in excess of $100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular pay for all hours worked over 40 in a work week. Additionally, NMHC must follow the reporting requirements per HUD and U.S. Department of Labor (DOL) regulations. This requirement also extends to NMHC subrecipients, Implementing Partners, and contractors.

The Fair Labor Standards Act of 1938 (FLSA), as amended, establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week. These labor standards are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project.

1.5 Limited English Proficiency

Federal Executive Order 13166 requires NMHC and all satellite offices, programs, subrecipients, contractors, subcontractors, and/or developers funded whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP) and/or deaf/hard of hearing. Compliance with this requirement is detailed in NMHC's Language Action Plan (LAP) and will be coordinated and tracked by the Monitoring and Compliance division at VIHFA. Depending on the program, NMHC, Implementing Partners, sub-recipients, and subcontractors will share the following expectations to comply with this Executive Order:

(1) Document Translation: All documents defined as "vital documents" will be translated into Chamorro or Carolinian by NMHC, Implementing Partners, and sub-recipients. A "vital document" is defined as a document that includes information regarding eligibility requirements, applications and instructions, program eligibility determinations, and appeals procedures. NMHC may aid to ensure this requirement is met.
(2) Where required, seek feedback from the community the project serves (advocacy groups serve vital role).

Language maps provided in the Language Action Plan will be used to determine the project's location and subsequent language context and if proactive LEP outreach will be required. These maps will be included as part of the Project Assessment Form used by NMHC to review the eligibility, priority level, and impacts of a potential project.

1.6 Minority and/or Women-Owned Business Enterprises

The Federal Executive Order 12432 guidelines require selected federal agencies to promote and increase the utilization of Minority-Owned and Women-Owned Business Enterprises (M/WBEs). Following procurement guidelines under 2 CFR 200.321, NMHC must make efforts to ensure that all subrecipients, contractors, subcontractors, and/or developers funded in whole or in part with HUD CDBG-DR financial assistance encourage participation in contracts and other economic opportunities by small and minority firms, women-owned business enterprises (WBEs), and labor surplus area firms whenever possible. NMHC will accept a MWBE certification from another state, local or regional, DPW, SBA HUB Zone, SBA 8-A certification (economically disadvantaged and 51% locally-owned), and other eligible certification processes. Documentation and goals regarding M/WBE percentages and reporting will be determined in the contracting agreements.

1.7 Section 3 Economic Opportunities

Section 3 is triggered when the award of CDBG-DR funds for new construction and rehabilitation projects creates the need for new employment, contracting, or training opportunities.

Section 3 of the Housing and Urban Development Act of 1968 is to "ensure that employment and other economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed to low and very low income individuals, especially

recipients of government assistance for housing and to businesses which provide economic opportunities to low and very low income individuals."

The Section 3 program requires that recipients of HUD CDBG-DR funds, to the greatest extent feasible, provide (a) employment and training, and (b) contracting opportunities for low- or very-low income residents in connection with construction projects in their neighborhoods.

It also specifically encourages economic opportunities for households who are recipients of government assistance for housing. NMHC and all administering entities will follow and require relevant contractors to follow Section 3 requirements in contracting.

Section 3 applies to the CNMI, as recipient of HUD funding, as well as to subrecipients or Implementing Partners/Sub-recipients receiving HUD funding exceeding $200,000. Whenever any portion of HUD funding is invested into projects involving housing construction, demolition or rehabilitation, commercial/private improvements for economic development, or other public construction (e.g., roads, sewers, community centers, and public facilities), the requirements of Section 3 apply.

In conjunction with construction activity, Section 3 applies to projects that are fully or partially funded with CDBG-DR assistance, including projects that are financed in conjunction with territory, local, or private matching or leveraged funds, provided that the Section 3 monetary threshold requirements are met. In particular:

- In conjunction with construction activities, Section 3 applies to contractors or subcontractors that receive contracts more than $100,000 for Section 3-covered projects/activities. Once it is determined that Section 3 applies to a project, the requirements apply to all contracts for construction work arising in connection with that project exceeding $100,000, including those not funded with CDBG-DR assistance. Contractors or subcontractors are required to comply with the Section 3 regulations in the same manner as the Commonwealth; and
- "Section 3-covered contract" includes professional service contracts, provided that the work to be performed is generated by the expenditure of funds in furtherance of Section 3 covered work (e.g., housing construction, housing rehabilitation, and other public construction), arising relating to construction projects. Professional service contracts that may constitute Section 3-covered contracts include construction contract oversight, engineering, architectural, environmental and property evaluation, construction progress and draw inspections, and prevailing wage labor compliance.

The regulations pertain to new hires required to complete Section 3-covered projects and activities. If the expenditure of funding for an otherwise covered project and activity does not result in new employment, contracting, or training opportunities, Section 3 reporting will still be required.

When NMHC awards CDBG-DR funds to other governmental departments, nonprofit organizations, subrecipients or other funded entities, NMHC will require they document how reasonable attempts were made to reach numerical goals set forth at 24 CFR Part 135.30. NMHC will inform its Implementing Partners and other funded entities of the requirements of Section 3,

including the language required to be inserted into all construction-related contracts, assist them and their contractors with achieving compliance, and monitor their performance with respect to the Section 3 objectives and requirements.

Implementing Partners/Sub-recipients will receive training on this requirement and methods of compliance, technical assistance from Program staff, and continual monitoring from NMHC. Currently, a Section 3 Plan is under development, the details of which will be included in an update to this manual.

1.8 System for Award Management (SAMs)

SAM is the federal System for Award Management and is a requirement for doing business with the U.S. government. All vendors are required to register in SAM in order to be awarded contracts under the CDBG-DR program. Vendors are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions. Vendors must update or renew their registration annually to maintain an active status.

1.9 Uniform Relocation and Real Property Acquisition Act (49 CFR 24)

The Uniform Relocation Assistance and Real Property Acquisition Act (URA), is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The URA's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects. The phrase "program or project" is defined in 49 CFR Part 24 as, "any activity or series of activities undertaken by a federal agency or with federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines."

The objectives of the URA are:

- To provide uniform, fair and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects;
- To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement;
- To ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means;
- To help improve the housing conditions of displaced persons living in substandard housing; and,
- To encourage and expedite acquisition by agreement and without coercion.

49 CFR 24.101(c)(1) provides that the subpart B requirements also apply to the acquisition of permanent and/or temporary easements necessary for the project. However, 49 CFR 24.101(c)(2) provides an exception for the acquisition of temporary easements which exclusively benefit the property owner.

Demonstrable Hardship - A demonstrable hardship is a substantial change in an applicant's financial situation that will prohibit or severely affect their ability to provide a minimal standard

of living or the basic necessities of life including food, housing, clothing and transportation without causing economic distress well beyond mere inconvenience as shown by objective evidence. A demonstrable hardship must be occurring after the named storms. The demonstrable hardship must be of a severe, involuntary and unexpected nature. It must not be one that is generally shared by other applicants affected by the named storms. Examples of demonstrable hardships may include job loss, failure of a business, divorce, severe medical illness, injury, death of a family member or spouse, unexpected and extraordinary medical bills, disability, substantial income reduction, unusual and excessive amount of debt due to a natural disaster, etc. None of the listed examples above, individually or taken together, automatically establish a demonstrable hardship nor is the listing above exhaustive as there may be other factors relevant to the issue of demonstrable hardship in a particular case. If an applicant believes that they are in the state of demonstrable hardship and that the demonstrable hardship causes them to not comply with any of the program policies, they may present their existence of a demonstrable hardship to their case worker (housing or loan specialist) and the Program will evaluate on a case-by-case basis after review of all of the circumstances. Applicants claiming a Demonstrable Hardship shall be required to provide evidence of such claimed Demonstrable Hardship to the case worker.

Not Suitable for Rehabilitation – properties where the cost of rehabilitation exceeds the after rehab appraisal and there is not a compelling historical or community justification to save the property.

APPENDIX A.2: HOMEBUYER APPLICATION CHECKLIST

NORTHERN MARIANAS HOUSING CORPORATION
Community Development Block Grant – Disaster Recovery (CDBG-DR) Division
P.O. BOX 500514, Saipan, MP 96950-0514
Email: cnmi-cdbg-dr@nmhcgov.net
Website: http://www.cnmi-cdbgdr.com

Tels: (670) 233-9447
233-9448
233-9449
233-9450
Fax: (670) 233-9452

CDBG-DR PROGRAM LOAN APPLICATION CHECKLIST

Applicant(s):_____ **Date:**_____ **Submission Date:**_____

In order to complete your application for assistance, we need the following items as checked below:

- [ ] **Uniform Residential Loan Application**
- [ ] **Eligibility Release Form (each adult member of the household must sign date and initial)**
- [ ] **Use of Funds Certification (both Applicant and Co-Applicant must sign)**
- [ ] **Duplication of Benefits Affidavit and Subrogation Agreement (both Applicant and Co-Applicant must sign)**
- [ ] **Verification of Employment (employee's employer must complete this form)**
- [ ] **Statement of Unemployment (each adult member of the household who is unemployed must complete this form)**
- [ ] **Verification of Child Support Payments, if applicable**
- [ ] **Social Security -Consent to Release Information (must be completed by each household member)**
- [ ] **Check/Pay stubs (4 most current)**
- [ ] **1040 Tax Form for previous two (2) years (20__ and 20__)**
- [ ] **Division of Tax & Revenue- Certificate of Compliance (for both Applicant and Co-Applicant)**
- [ ] **Loan Payment record(s), if any**
- [ ] **Checking Account Statement (6 most recent statements)**
- [ ] **Savings Account Statement (most recent statement)**
- [ ] **Assets – Retirement 401 (a)/(k), Supplemental Life, etc. (most recent statement with each cash value)**
- [ ] **Divorce Decree, Judgment(s), etc., if applicable**
- [ ] **Certificate of Title, Deed, or Residential Homestead Permit, etc. with Property Map (if applicable)**
- [ ] **FEMA Applicant Information Request form (both Applicant and Co-Applicant must sign)**
- [ ] **Photo I.D. -Driver's License, MOS, Passport (for applicants only) and Birth Certificates (for each member of the household)**
- [ ] **Documentation for any Federal assistance such as WIC, MEDICAD, MEDICARE, LIHEAP, NAP, CHILDCARE ASSISTANCE, etc.**
- [ ] **Utility Bill (most current)**
- [ ] **If a bankruptcy has been filed, a copy of your discharge letter (WE CANNOT PROCEED WITHOUT THE LETTER)**
- [ ] **Affidavit**

Due to the fact that many families are in the same position you are and the high demand for our services, we ask that you notify us one (1) day prior to your appointment if are unable to attend. If you are unable to submit ALL the necessary photocopied documents to your appointment, your eligibility assistance may be delayed.

Please read carefully:
As head of the household, I declare that members of my household have no ownership, in full or in part, of any assets other than those identified above, the value of which have been disclosed. Please sign below:

_____ _____
APPLICANT/DATE **CO-APPLICANT/DATE**

_____
DR LOAN SPECIALIST/DATE

"NMHC is an equal employment and fair housing public agency"

Tinian Field Office
Tel: (670)433-9213
Fax: (670)433-3690

CDBG-DR Office
Tel: (670)233-9447/9448/9449

Rota Field Office
Tel: (670)532-9410
Fax: (670)532-9411

AFFORDABLE RENTAL HOUSING DEVELOPMENT PROGRAM POLICIES AND PROCEDURES
TRACKED POLICY AND PROCEDURAL CHANGES

NEW	PAGE NO. AND AMENDED SECTION/SUBSECTION	RATIONALE/REASON(S) FOR CHANGES
Changed version number from "Version 1.0" to "Version 1.1" and effective date from "December 31, 2020" to "May 10. 2021."	Cover Page, Page 045228	The policy published on the Commonwealth Register was revised with the below changes.
Amended to update allocation amount: **$39,407,033** and/or as detailed in the CDBG-DR Action Plan and Amendments from $36,120,667	1.0 Introduction, Section 1.1 Summary, Item 1, Page 045231	HUD supplemental funding for CDBG-DR Housing Programs
Replaced "NMHC defines affordable rent as rental costs (including utilities) that do not exceed 30% of a renter's income." with "NMHC defines affordable rents as defined in the LIHTC program, i.e., rents set at a rate not greater than 30% of 50% of median or 30% of 60% of median income."	1.0 Introduction, Section 1.1 Summary, Item 2, Page 045231	HUD/ICF comments
Replaced "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." with "Affordable rent: Rental housing costs, including utilities, as defined in the LIHTC program, i.e., rents set at a rate not greater than 30% of 50% of median or 30% of 60% of median income."	2.0 Policies, Section 2.4 Definitions, Item (1), Page 045233	HUD/ICF comments
Replaced "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. "Affordable unit: A Housing unit in which the tenant is the recipient of rental assistance and the total rental expenses (including utilities) does not exceed 30 percent of a low-to moderate income household's (pre-tax) income, or alternatively for units in which tenants do not receive rental assistance the rents are set at rates not greater than the maximum amounts as permitted in the LIHTC program."	2.0 Policies, Section 2.4 Definitions, Item (2), Page 045233	HUD/ICF comments
Added "or if a tenant has project-based assistance."	2.0 Policies, Section 2.4 Definitions, Item (37), Page 045237	HUD/ICF comments
Replaced "der" with "under"	2.0 Policies, Section 2.4 Definitions, Item (47), Page 045238	HUD/ICF comments
Replaced "For LIHTC projects, rents are restricted and calculated using HUD income limits." with "For LIHTC projects, rents are set based on market conditions and at rates not greater than permitted under the LIHTC program and rents are restricted based on income limits published by HUD."	3.0 Program Overview, Item (2), Page 045239	HUD/ICF comments
Replaced "pubic" with "public"	3.0 Program Overview, Section 3.1 Affordable Rental Housing Development Program, Item (1), Page 045239	HUD/ICF comments

Replaced "individually-scattered houses" to "scattered-site houses"	3.0 Program Overview, Section 3.1 Affordable Rental Housing Development Program, Item (2), Page 045239	HUD/ICF comments
Updated Allocation amount to $39,407,033 from $31,120,667.	3.0 Program Overview, Section 3.2 Total Allocation, Page 045239	HUD/ICF comments
Added "(Typhoon Mangkhut and/or Super Typhoon Yutu)" and "(Federal Register, Vol. 85, No. 17 issued January 27, 2020, as amended and effective February 3, 2020)"	3.0 Program Overview, Section 3.3 Tie-back to the Storm, Page 045240	HUD/ICF comments
Removed "(only if structure is elevated)"	3.0 Program Overview, Section 3.5 Eligible Activities, Item (3)(e)(vii) & (viii) Page 045241	HUD/ICF comments
Added "specifically, HUD has identified allocations to the jurisdictions of Saipan, Tinian, and Rota, with Saipan and Tinian earmarked as a "most impacted and distressed" area. No less than 80% of the funding shall be allocated to the Saipan and Tinian Municipalities."	3.0 Program Overview, Section 3.9 Geographic Area(s) Served, Page 045242	HUD/ICF comments
Replaced "a housing project" to "multifamily program"	3.0 Program Overview, Section 3.10 Maximum Award, Item (1), Page 045242	HUD/ICF comments
Added "(excluding LIHTC unit cap)"	3.0 Program Overview, Section 3.10 Maximum Award, Item (1), Page 045242	HUD/ICF comments
Updated The maximum CDBG-DR award amount for rental housing of LMI residents to $8,286,366 from $5,000,000.	3.0 Program Overview, Section 3.10 Maximum Award, Item (2), Page 045242	HUD/ICF comments
Replaced "New construction or reconstruction of individual houses to be used as rental housing is also capped at $200,000." with "New construction or reconstruction of individual houses to be used as rental housing is capped at $250,000."	3.0 Program Overview, Section 3.10 Maximum Award, Item (2), Page 045242	HUD/ICF comments
Replaced "which do not allow households above 60% AMI." with "which do allow households up to 80% of AMI provided that the overall income for a project is at or less than 60% of AMI (through income averaging)."	3.0 Program Overview, Section 3.10 Maximum Award, Item (3), Page 045242	HUD/ICF comments
Removed a. Amortized Loans: i. Requires repayment (annually). ii. Interest rates 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 (NMHC), 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. b. Deferred Payment Loans: i. Loan terms can be from 10 - 20 years, or at the sale or transfer of the property. ii. Interest rates will range from zero percent (0%) to rates	3.0 Program Overview, Section 3.10 Maximum Award, Item (5), Page 045243	HUD/ICF comments

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 (NMHC), 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. d. Non-Interest-Bearing Loans i. Loan terms vary and will be negotiated with the implementing agency (NMHC). Interest rate is zero percent (0%). ii. The principal is paid back on a regular basis (annually), but no interest is charged. iii. A Deed of Trust will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer. e. Surplus Cash Loans i. 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.		
Removed "ii. Most commonly used for projects with special needs populations or target below the loan income AMI threshold populations."	3.0 Program Overview, Section 3.10 Maximum Award, Item (5)(f)(ii), Page 045243-045244	HUD/ICF comments
Replaced "Ten (10) years" with "twenty (20) years"	4.0 Underwriting Criteria and Program Commitments, Section 4.1 Timing of Underwriting Reviews, Item (5)(b), Page 045246	HUD/ICF comments
Replaced "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" with "In the case of a transaction involving a change of use, the acquisition price must not exceed the "as is" value of the property."	4.0 Underwriting Criteria and Program Commitments, Section 4.3 Acquisition, Item (4) (b), Page 045247	HUD/ICF comments
Added "The funds shall be paid for from a source other than CDBG-DR funds (such as equity proceeds, lender funds, etc.) and"	4.0 Underwriting Criteria and Program Commitments, Section 4.8 Reserves, 4.8.1 Rent-up Reserves, Item (1), Page 045250	HUD/ICF comments
Added "(funded out of equity proceeds or other sources of funds; not CDBG-DR funds)"	4.0 Underwriting Criteria and Program Commitments, Section 4.8 Reserves, 4.8.3 Operating Reserves, Item (1), Page 045251	HUD/ICF comments
Replaced "For the existing allocation, NMHC will be considered a qualified developer. If funding becomes available as noted in the Action Plan or Amendments, other qualified	5.0 Program Administration, Section 5.4 Eligibility Criteria, Item (1), Page 045251	HUD/ICF comments

developers may be for-profit or not-for-profit housing developers applying to rehabilitate, reconstruct or develop new rental housing." with "For the existing allocation, NMHC may be considered a qualified developer and compete with other qualified developers that are for-profit or not-for-profit housing developers applying to rehabilitate, reconstruct or develop new rental housing."		
Replaced "NMHC will act as the initial developer and take precedence over other developers and if no other housing projects are construction ready for rehabilitation or new construction. NMHC will review other project according to Program priorities and criteria for funding. Eligible and feasible projects submitted through this process are reviewed by NMHC CDBG-DR Division for available funding." with "NMHC may act as a developer and compete with other developers to take on housing projects either for rehabilitation or new construction. A third-party reviewer such as a PHA from another jurisdiction will select the project based on priorities and criteria for funding."	5.0 Program Administration, Section 5.7 Project Selection, Page 045253-045254	HUD/ICF comments
Added "for all projects" and "(LIHTC unit cap not included)"	5.0 Program Administration, Section 5.11 Award Calculation for Project Scope and Budget Proposals, Item (3), Page 045255	HUD/ICF comments
Replaced "scattered" with "site"	5.0 Program Administration, Section 5.11 Award Calculation for Project Scope and Budget Proposals, Item (3), Page 045255	HUD/ICF comments
Updated maximum total award to $8,286,366 from $5,000,000.	5.0 Program Administration, Section 5.11 Award Calculation for Project Scope and Budget Proposals, Item (3), Page 045255	HUD/ICF comments
Removed "xviii. Builder procured"	5.0 Program Administration, Section 5.15 Agreements, Item (m) (xviii), Page 045258	HUD/ICF comments
Added "be" and "NMHC's"	5.0 Program Administration, Section 5.20 Flood Insurance Policy, 5.20.5 Environmental Inspection Request and Clearance, Page 045267	HUD/ICF comments
Added Appendix A Environmental Procedures • Step 1: Environmental Review Determination o 1. Exempt – Subject to Related Laws at 24 CFR 58.34 o 2. Categorically Excluded, not Subject to 58.5. (24 CFR 58.35) o 3. Categorically Excluded Subject to 58.5 o 4. Subject to an Environmental Assessment (24 CFR 58.36) o 5. Subject to an environmental impact statement (24 CFR 58.37) • Step 2: Preparation of Environmental Review o Tiered Environmental Review o 8-Step Decision Making Process for Projects in the Floodplain • Step 3: Publication of Notice of Intent (NOI) Request for Release of Funds (RROF) and Finding of No	Appendix A, Page 045268	HUD/ICF comments

Significant Impact (FONSI) o Categorical Exclusions o Environmental Assessments (EA) • Step 4: Preparation and Submission of the Request for Release of Funds (RROF) • Step 5: After Approval of the Environmental Review Record • Step 6: Environmental Review Recordkeeping		

NORTHERN MARIANAS HOUSING CORPORATION

AFFORDABLE RENTAL HOUSING DEVELOPMENT PROGRAM POLICIES AND PROCEDURES

VERSION: 1.1

May 10, 2021

Prepared by:

Northern Marianas Housing Corporation- CDBG-DR Program Division

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1.0 INTRODUCTION

1.1 Summary

1) As a direct result of the damages sustained from Typhoon Mangkhut and Super Typhoon Yutu in September and October 2018, respectively, the Commonwealth of the Northern Mariana Islands (CNMI) received an allocation of Community Development Block Grant Disaster Recovery (CDBG-DR) funds which will be administered by the Northern Marianas Housing Corporation (NMHC). The CNMI through NMHC has allocated $39,407,033 to the Affordable Rental Housing Development Program. This program seeks to redevelop and create new affordable rental housing stock. Eligible development activities include development of low-income housing units through infill construction of new housing units, new construction on private lots or public lands, acquisition and rehabilitation of multi-family residential or commercial properties that include vacant or uninhabitable dwellings, and rehabilitation of residential units. These activities will result in additional rental housing units that will be available to low- and moderate-income households.

2) The program will incentivize the replacement of affordable housing units damaged in the storms and complemented with the development of new low-income housing units. While low-income housing stock remains an urgent priority, mixed-income housing is also needed throughout the CNMI, given the unmet needs 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 that do not avail of income averaging (e.g. households with incomes between 60% - 80% of AMI), and tenants that can afford market rate units. NMHC defines affordable rents as defined in the LIHTC program, i.e., rents set at a rate not greater than 30% of 50% of median or 30% of 60% of median income. NMHC uses the HUD-defined fair market rents (FMRs) as a basis to determine the payment standards as affordable rent caps.

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

2.0 POLICIES

2.1 Version Policy

1) 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 the table. The first version of this document is 1.0.

2) After adoption by the NMHC Board of Directors, any substantive changes to 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 revisions and the issuance of a new primary version number.

3) Non-substantive changes, i.e., wording and editing, and/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 that will follow the primary version number, e.g., 2.1, 2.2,

etc.

2.2 Policy Change

Policy review and changes for the CNMI's Affordable Rental Housing Development Program (Program) are pursued through a change control process. For example, when policy clarifications, additions, or deletions are required to accurately define the rules by which the Program will operate, Program staff will work with the Corporate Director to prepare a request to amend the policy. The NMHC Board of Directors is responsible in the review and approval of the request to amend the policy.

2.3 Acronyms

(1)	**AMI**	Area Median Income
(2)	**CDBG**	Community Development Block Grant
(3)	**CDBG-DR**	Community Development Block Grant Recovery
(4)	**CFR**	Code of Federal Regulations
(5)	**CPD**	Community Planning and Development
(6)	**DBRA**	Davis-Bacon and Related Acts
(7)	**DOB**	Duplication of Benefits
(8)	**DOL**	Department of Labor
(9)	**ECR**	Estimated Cost or Repair
(10)	**FEMA**	Federal Emergency Management Administration
(11)	**HCDA**	Housing and Community Development Act
(12)	**HCV**	Housing Quality Standards
(13)	**HUD**	U.S. Department of Housing and Urban Development
(14)	**IMM**	Individual Mitigation Measures
(15)	**LLC**	Limited Liability Corporation
(16)	**LIHTC**	Low Income Housing Tax Credit
(17)	**LMA**	Low- and Moderate-Income Area
(18)	**LMH**	Low- and Moderate-Income Housing
(19)	**LMI**	Low- and Moderate Income

(20) **LMJ** Low- and Moderate-Income Jobs

(21) **MBE** Minority-owned Business Enterprise

(22) **MWBE** Minority- and Women-Owned Business Enterprises

(23) **NEPA** National Environmental Policy Act

(24) **NFIP** National Flood Insurance Program

(25) **OMB** Office of Management and Budget

(26) **PII** Personally Identifiable Information

(27) **RFI** Request for Information

(28) **RFP** Request for Proposals

(29) **RFQ** Request for Qualifications

(30) **SFHA** Special Flood Hazard Area

(31) **UN** Urgent Need

(32) **URA** Uniform Relocation Act

(33) **USC** United States Code

(34) **WBE** Women-owned Business Enterprise

2.4 Definitions

(1) **Affordable rent:** Rental housing costs, including utilities, as defined in the LIHTC program, i.e., rents set at a rate not greater than 30% of 50% of median or 30% of 60% of median income.

(2) **Affordable unit:** A Housing unit in which the tenant is the recipient of rental assistance and the total rental expenses (including utilities) does not exceed 30 percent of a low-to moderate income household's (pre-tax) income, or alternatively for units in which tenants do not receive rental assistance the rents are set at rates not greater than the maximum amounts as permitted in the LIHTC program.

(3) **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.

(4) **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.

(5) **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.

(6) **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.

(7) **Carryover Allocation:** a document issued by a state housing credit agency (NMHC) that extends the amount of time that is allowed for a 9% competitive LIHTC project to be placed in service.

(8) **Choice Limiting Action:** The commitment of CDBG-DR funds through Acquisition (which includes executing a Purchase Agreement or Sales Contract), **and/or** any 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 NMHC Certifying Officer.

(9) **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.

(10) **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.

(11) **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 the most currently adopted building 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.

(12) **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]

(13) **Demolition:** The clearance and proper disposal of dilapidated building and improvements debris.

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

[1] Community Planning Development Act of 1974. (2019). Retrieved October 4, 2019, from https://www.hudexchange.infor/resources/documents/Housing-and-Community-Development-Act -1974.pdf

(15) **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.

(16) **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.

(17) **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.

(18) **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.

(19) **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.

(20) **Final Cost Certification:** A report of the total actual costs incurred by the Developer in the delivery of a Development. This will assist NMHC in determining certain development costs and the amount of subsidy to be allocated to the Development.

(21) **Form 8609:** An IRS Low-Income Housing Credit Allocation and Certification. Owners of residential low-income rental buildings are allowed a low-income housing credit for each qualified building over a 10-year credit period. A separate Form 8609 must be issued for each building in a multiple building project.

(22) **Flood Hazard Area:** Areas designated by FEMA as having risk of flooding.

(23) **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 Area (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.

(24) **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.

a. **"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.

b. **"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.

(25) **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.

(26) **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.

(27) **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.

(28) **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, Commonwealth, 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.

(29) **LIHTC:** a federal tax incentive that encourages private sector investors, developers and lenders to finance, construct and operate affordable housing pursuant to Section 42(h)(4) of the Code.

(30) **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.

(31) **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.

(32) **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.

(33) **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.

(34) **Northern Marianas Housing Corporation (NMHC): NMHC** is the Grantee for HUD's Community Development Block Grant-Disaster Recovery (CDBG-DR) funding. NMHC 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. NMHC will also be a developer within this program.

(35) **Not Suitable for Rehabilitation:** The NMHC 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 CNMI 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.

(36) **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."

(37) **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 or if a tenant has project-based assistance.

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

(39) **Reservation Certificate**: An agreement binding upon the Owner, and all successors in interest to the Owner as owners of the Project, as to the allocation of Low Income Housing Tax Credit authority to the building(s) in the Project, subject to compliance by the Owner with the requirements of Section 42 of the Code and the additional requirements of the NMHC CDBG-DR.

(40) **Section 3**: Section 3 is a provision of the Housing and Urban Development 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.

(41) **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.

(42) **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.

(43) **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).

(44) **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 the fiscal year period ending prior to the annual installment date.

(45) **Ten-percent Cost Certificate:** If a project is not placed in service by the end of the calendar year in which the LIHTC allocation was received, the project must qualify for a carryover allocation.

(46) **Uniform Relocation Assistance:** The Uniform Relocation Assistance and Real Property Acquisitions Policies 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 14 Subpart B) and acquisition or multifamily damaged/occupied activities that require the relocation of tenants.

(47) **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 CNMI must document how each program and/or activity funded under this category responds to a disaster-related impact. See 24 CFR 570.208(c).

3.0 PROGRAM OVERVIEW

(1) The Program seeks to redevelop and create new affordable rental housing stock including subsidized rental units. Eligible development activities include development of low-income housing units through infill construction of new housing units, new construction on private lots or public lands, acquisition and rehabilitation of multi-family residential or commercial properties that include vacant or uninhabitable dwellings, and rehabilitation of residential units. These efforts will increase the supply of affordable housing available to low- and moderate-income households.

(2) This program intends to enable the development of rental housing which prevents concentrations of poverty. NMHC defines affordable rent as rental costs (including utilities) that do not exceed 30% of a renter's income. NMHC uses the HUD defined fair market rents as a basis to determine payment standards for affordable rent caps. For LIHTC projects, rents are set based on market conditions and at rates not greater than permitted under the LIHTC program and rents are restricted based on income limits published by HUD.

(3) This program proposes to address the current housing rental shortage through the rehabilitation and development of affordable rental housing, including acquisition, demolition, rehabilitation and new construction, as it pertains to the development of subsidized and affordable units for LMI individuals.

3.1 Affordable Rental Housing Development Program

(1) The Affordable Rental 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 public lands (property) and Low-Income Housing Tax Credits.

(2) The Program supports the development of new affordable housing (including scattered-site houses), to address the rental housing shortage and help revitalize hard hit communities.

(3) 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 more LMI and non-LMI units.

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

(5) 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: **$39,407,033.**

3.3 Tie-back to the Storm

All projects must include a tie-back to the storms (Typhoon Mangkhut and/or Super Typhoon Yutu), and documentation supporting this tie-back must be maintained in the project files. CDBG DR funds can only be spent to meet the recovery needs caused by disasters specifically stated in appropriation measures (Federal Register, Vol. 85, No. 17 issued January 27, 2020, as amended and effective February 3, 2020) and as declared a major disaster area pursuant to the Stafford Act[2].

3.4 National Objective

(1) 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.

(2) The Program will obtain written commitments and source documentation from developers/partners showing that a minimum of 51% or more of the housing units will be rented to LMH tenants accordingly. 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, and throughout the Affordability Period.

3.5 Eligible Activities

(1) Eligible activities include the rehabilitation and new construction of affordable housing as listed and described below:

a. Acquisition of Real Property subject to HUD's "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs"[3] (HCDA Section 105(a)(1);

b. Public Facilities and Improvements[4] (HCDA Section 105 (a)(2);

c. Clearance, Rehabilitation, Reconstruction and Construction of Buildings (including Housing) (HCDA Section

[2] Community Development Block Grant Disaster Recovery Policy Guidance for Grantees (2019)
[3] 49 CFR Part 24
[4] 24 CFR § 570.202 - Eligible rehabilitation and preservation activities

105(a)(4));

d. Public Services (HCDA Section 105(a)(8)).

(2) 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.

(3) Program funds may be used for:

a. 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.

b. 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. Reimbursement is also applicable to the repair of individual houses that cater to LMI residents.

c. When practical and warranted, reimbursement for cost of mitigating future damage (including elevation when practical and cost effective) for properties located within a 100-year floodplain.

d. "Gap financing" for Low Income Housing Tax Credit projects to reduce debt service and increase long term viability.

e. Assistance for cost-effective mitigation activities including but not limited to:

i. The replacement of disaster-impacted non-luxury residential appliances
ii. Elevation of substantially damaged properties located within the 100-year floodplain.
iii. 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 and environmental agencies (if applicable).
iv. Elevation of electrical systems and components
v. Securing of fuel tanks
vi. Use of flood resistant building materials below base flood elevation
vii. Installation of backflow valves
viii. Installation of roof strapping
ix. Installation of window shutters

3.6 Ineligible Activities

(1) Activities are ineligible for CDBG funding if the activity:

a. Does not respond to an identified Typhoon Mangkhut or Super Typhoon Yutu-related impact.

b. Is restricted in the Public Laws appropriating the CDBG-DR funds (Public Law 116-20) 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).

c. Is a prohibited activity in the CDBG-DR authorizing Public Laws or Federal Register Notice(s) for the CDBG-DR funding.

d. Is ineligible according to CDBG Program requirements (and a waiver has not been granted).

e. Fails to meet an appropriate national objective.

3.7 Eligible Applicants

Eligible applicants include governmental and non- governmental entities and owners of multi-family housing rental development dedicated for low-and moderate-income households. Owners shall be any individual, joint venture, partnership, limited partnership, trust, corporation, limited liability company, other legal entity, or any combination thereof which meets the requirements below:

a) Be organized on a for-profit, including limited profit, or nonprofit basis, and

b) Must demonstrate experience relevant to owning and developing affordable rental housing through evidencing current capacity (including financial resources, an office and payroll), and one or both of the following:

(1) Successful prior ownership and development of affordable rental housing, or

(2) Employment of a staff with demonstrated experience owning and developing affordable rental housing.

c) If the Owner entity is a joint venture and qualifies as an eligible Applicant Owner under a) and b) above based on the experience of only one joint venture partner, that partner must have a controlling interest in the joint venture and a substantial and continued role in the Project's ongoing operations, as evidenced in the documents governing the joint venture.

3.8 Estimated Start and End Dates

Acquisition, reconstruction and/or rehabilitation activities will occur between 2021 through 2026, and/or as detailed in the CDBG-DR Action Plan and Amendments.

3.9 Geographic Area(s) Served

The geographic areas served will be within the CNMI, specifically, HUD has identified allocations to the jurisdictions of Saipan, Tinian, and Rota, with Saipan and Tinian earmarked as a "most impacted and distressed" area. No less than 80% of the funding shall be allocated to the Saipan and Tinian Municipalities.

3.10 Maximum Award

(1) The maximum CDBG-DR award amount for the multifamily program is $31,120,667, and a per unit construction cost cap of up to $200,000 (excluding LIHTC unit cap) 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.

(2) The maximum CDBG-DR award amount for the individual houses program used or to be used for rental housing of

LMI residents is $8,286,366. A cap of up to $200,000 per unit has been set. Reimbursement of actual costs of rehabilitation must be provided and materials used must not be luxurious. New construction or reconstruction of individual houses to be used as rental housing is ~~also~~ capped at $250,000.

(3) 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 including Low Income Housing Tax Credits which do allow households up to 80% of AMI provided that the overall income for a project is at or less than 60% of AMI (through income averaging).

(4) 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.

(5) To incentivize the development of this stock, the CNMI 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:

a. Forgivable Loans

i. Loan forgiveness may occur at one point in time (at the end of the affordability) or forgiven incrementally overtime. This is typically applicable to projects with subsidized rents.
ii. A Deed of Trust will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

b. Grants

i. Provided with no requirement or expectation for repayment. NMHC elects to provide grant funding as the first choice for all rental program developers.
ii. A Deed of Trust will be secured for the length of the Affordability Period, or the term of the loan, whichever is longer.

3.11 Federal Labor Standards

(1) 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.

(2) 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.

(3) 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 AND PROGRAM COMMITMENTS

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:

a. The submitted project is consistent with the CDBG-DR Action Plan goals.
b. The funding request is feasible.
c. There is a tie back to Typhoon Mangkhut or Super Typhoon Yutu.
d. The developer has the experience and capacity to complete the proposed development.
e. The developer has the experience in running a federal housing program such as Section 8 Housing Choice Voucher Program, LIHTC Program, etc.
f. The costs associated with the development portion of the proposal are necessary, reasonable, and financially feasible.
g. The projected operational costs are necessary and reasonable, and that the proposed development is sustainable for the duration of the Affordability Period.
h. The sources and uses of funds statement and lender commitments reflecting sufficient resources to complete the proposed development (usually for LIHTC projects).
i. 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

(1) NMHC 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.

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

(3) For approved LIHTC projects that want to include CDBG-DR commitments, the program will require proof that the reviews have been concluded, as required by Section 42 of the Internal Revenue Code. These supporting documents include:
   a. LIHTC application
   b. Reservation Letter
   c. Carryover Allocation Agreement
   d. Ten Percent (10%) Cost Certification (when available)
   e. Final Cost Certification (when available)
   f. Form 8609 (when available)

(4) For initial LIHTC projects that want to include CDBG-DR commitments but have not completed the review and approval process, NMHC will follow its QAP procedures when conducting three reviews, as required by Section 42 of the Internal Revenue Code: 1) prior to making an award of credit, 2) at 10% Cost Certification, and 3) at Placed in Service (Subsection 3) c. under this section. 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:

a. 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 proforma.

b. 10% Cost Certification - NMHC 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. NMHC 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.

c. Placed in Service/Issuance of IRS Form 8609 (Low-Income Housing Credit Allocation form) - NMHC 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. NMHC 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.

d. 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.

(5) **Collateral**

CDBG-DR shall provide Gap Financing grants to Developers. To secure the financing provided by CDBG-DR ("Gap Financing Grant"), the Developer shall execute and deliver to the NMHC certain documents to the CDBG-DR program. At closing, Developers shall deliver the following documents:

a. CDBG-DR Leasehold Mortgage (Construction Security Interest) Assignment of Leases and Rents and Security Agreement and any Addenda thereto (the "Leasehold Mortgage"). The Leasehold Mortgage will be recorded against the Property in the Office of the Recorder of Deeds and shall be subordinate to a construction loan for the construction of improvements on the Property and a permanent loan obtained by the Developer to finance such improvements after completion.

b. CDBG-DR Gap Financing Loan Agreement. The CDBG-DR reserves the right to assign interest rates when required for financing and shall be enforceable for a term of twenty (20) years (the "CDBG-DR Loan").

c. CDBG-DR Multi Family Gap Financing Note. All Grants will be assigned an interest rate of 0%. The Repayment of the Grant shall be made in the event of the sale or refinancing of the Property.

4.2 Evaluation of Project Development Costs

(1) NMHC has established minimum underwriting standards (i.e., QAP and NCSHA best practices) for evaluation of project development costs. Where required, NMHC 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 NMHC must be supported by written explanation and appropriate documentation. The use of the NMHC maximum cost limits or any alternate standards for determining reasonableness of the development costs of the proposed project is at the sole discretion of NMHC.

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

b. NMHC determines that the cost of the project as presented is not reasonable using NMHC'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.

c. The following standards will be applied to specific cost items. Even if the specific line item is not being paid with LIHTC equity or NMHC 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, NMHC reserves the right to require any applicant to provide a justification of any development cost line item.

4.3 Acquisition

(1) 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. A CNMI-licensed independent professional appraiser will perform the appraisal and the applicant will pay the costs of any required appraisals. However, NMHC, in its sole discretion, may accept an appraisal that is required by another lender and prepared by an independent professional appraiser for that lender.

(2) 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.

(3) 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.

(4) In general, the acquisition price must meet the following requirements:

a. 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.

b. In the case of a transaction involving a change of use, the acquisition price must not exceed the "as is" value of the property.

c. 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 NMHC.

d. 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.

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

4.4 Construction Hard Costs

NMHC 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 including multifamily housing. These costs include the following:

(1) For new construction projects: costs to meet the new construction standards set forth by NMHC consistent with currently adopted codes by the Department of Public Works:

(2) For rehabilitation: costs to meet the property standards for rehabilitation standards set forth by NMHC consistent with currently adopted codes by the Department of Public Works:

(3) For both new construction and rehabilitation project 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.

4.4.1 Construction Hard Cost Contingency

(1) Construction hard cost contingencies will be limited to the following:

a. All new construction projects shall have a construction hard cost contingency line item of **no more than ten percent (10%)** of total construction hard costs, including general requirements, builder's profit and overhead.

b. Rehabilitation or 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.

c. Rehabilitation or rehabilitation and adaptive reuse project applicants with a proposed contingency **in excess of ten (10%) must request for a waiver;** the waiver request shall include a detailed explanation of the reasons for the increased contingency. NMHC 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.

4.5 Maximum Rents

Mainly for LIHTC development, maximum unit rents (inclusive of tenant paid utilities (utility allowance rates as published by NMHC) 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% of 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 NMHC.

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

4.6 Vacancy Rate

All projects will be underwritten with a minimum vacancy rate of 5%.

4.7 Operating Expenses

(1) Annual operating expenses, including all real estate taxes but excluding replacement reserve deposits and debt service, should be no less than $3,000 per unit per year and no more than $5,500 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.

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

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

(4) 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.

4.8 Reserves

4.8.1 Rent-up Reserves

(1) 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 shall be paid for from a source other than CDBG-DR funds (such as equity proceeds, lender funds, etc.) and 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.

(2) 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.

4.8.2 Replacement Reserves

(1) 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.

(2) 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.

(3) NMHC 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, NMHC 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.

4.8.3 Operating Reserves

As part of the development budget, each project (except those receiving loan funds from RD) must establish an operating reserve (funded out of equity proceeds or other sources of funds; not CDBG-DR funds) 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 NMHC, the operating reserves 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 fee, reduce any State loan, fund other reserves, fund project betterments, or otherwise be applied as approved by NMHC. The operating reserves must be maintained for the duration of the extended use period. The operating reserves 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.

4.9 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.

4.10 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

(1) NMHC will administer and oversee all activities and expenditures in connection with the CDBG-DR funds. NMHC employees, along with contractors procured to aid NMHC 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.

(2) NMHC will monitor the activities in accordance with HUD, CDBG-DR and NMHC 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

(1) NMHC, 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, NMHC may also carry out eligible activities, and will undertake the development of affordable housing units, both projects within the NMHC portfolio and projects being developed by private or non-profit developers.

(2) NMHC 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. NMHC, when carrying out development activities, and NMHC 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. NMHC will have approval rights and program compliance oversight responsibilities for all CDBG-DR projects.

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

5.2 Northern Marianas Housing Corporation (NMHC) Role as Grantee

(1) NMHC, as the HUD CDBG-DR grantee representing the CNMI, 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. NMHC will also provide technical assistance to developers when applicable, conduct eligibility and feasibility reviews, and conduct project underwriting.

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

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

5.3 Program Marketing

NMHC CDBG-DR Division will fund housing projects after reviewing for eligibility and feasibility. If additional funding becomes available, a Notice of Funding Availability would be published in local printed media, NMHC'S website and other online publication sites.

5.4 Eligibility Criteria

(1) For the existing allocation, NMHC may be considered a qualified developer and compete with other qualified developers that are 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 CNMI 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.

(2) To be eligible for assistance, projects must:

a. Be located in the CNMI.

b. 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).

c. Provide housing primarily for Low- and Moderate-Income persons.

5.5 Affordability Period

(1) Per Federal Register 6109-N-01, multi-family rental projects with 8 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.

(2) 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. **Note:** Multi-family rental projects or scattered unit owners of less than 8 units that receive funds for reimbursement of the cost of repairs will be required to adhere to an affordability period of 10 years, while new construction of multi-family rental projects or scattered units with less than five units will be required to adhere to an affordability period of 15 years.

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 5.19 Cross-Cutting Federal Requirements Tenant Protection Under Uniform Relocation Act (URA) below.

5.7 Project Selection

NMHC may act as a developer and compete with other developers to take on housing projects either for rehabilitation or new construction. A third-party reviewer such as a PHA from another jurisdiction will select the project based on priorities and criteria for funding.

5.8 Prioritization of Projects

(1) Due to limited funding, NMHC CDBG-DR Division will prioritize NMHC projects (including LIHTC projects), including rehabilitation and new construction, which will be reviewed based on the Initial Scope and Capacity Assessment submissions.

5.9 Technical Assistance and Review of Project Scope and Budget

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

a. Review of the project description, recovery rationale, budget including source and use of funds and operating budget for review.
b. Discussion of NMHC staff review project readiness and alignment with program policies and priorities.
c. CDBG-DR program eligibility requirements, including "tie-back" to the storm and green building requirements.
d. Cross-cutting federal requirements for compliance with Davis-Bacon, Uniform Relocation Act (URA), Section 3, Fair Housing.

5.10 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.

5.11 Award Calculation for Project Scope and Budget Proposals

(1) 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.

(2) 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 CNMI.

(3) NMHC will provide funding up to the unmet need amount for the selected projects, subject to a maximum award for all projects of $31,120,667, and $200,000 per unit cap (LIHTC unit cap not included). For individual site housing projects, the maximum total award is $8,286,366 with a $200,000 per unit cap. 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.

(4) 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.

5.12 Evaluation of Projects

NMHC will review the projects for:
a. Tie to the storm
b. CDBG-DR eligibility
c. Meet LMI National Objective
d. Duplication of Benefits

e. Cost Reasonableness

5.13 Duplication of Benefits (DOB)

(1) 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.

(2) 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.

(3) 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 CNMI's policy is in accordance with HUD's guidance on duplication of benefits.

(4) 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 or federal programs, or private or nonprofit charities. Developers should pay special attention to the following potential sources of benefits:

a. **National Flood Insurance Program (NFIP):** Insurance proceeds received must be disclosed by the project owner and/or Subrecipient.
b. **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.
c. **FEMA:** FEMA proceeds received must be disclosed by the project owner and/or Subrecipient.
d. **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.

(5) 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 CDBG-DR funds will be the funding source reduced.

5.14 Project Funding and Disbursement

(1) CDBG-DR funds may be available at either a Grant or 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.

(2) 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 NMHC'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.

5.15 Agreements

(1) NMHC will enter into an agreement with developer partners which will include the following federal requirements including, but not limited to those listed below:

a. 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);

b. 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 $50,000);

c. 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 $50,000 by grantees and their contractors or subrecipients);

d. 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);

e. 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);

f. 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);

g. 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);

h. Compliance with Uniform Relocation Act;

i. Notice of awarding agency requirements and regulations pertaining to reporting;

j. 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;

k. Retention of all required records for three years after grantees or subrecipients make final payments and all other pending matters are closed;

l. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. I 857(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);

   i. Mandatory standards and policies relating to energy efficiency (if applicable)

   ii. 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.

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

i. Project budget
ii. Development and 15 or 20 year pro forma depending on affordability requirements
iii. Project description, number of units, unit type, design, construction standards
iv. Unit breakdown
v. Rent schedule
vi. Affordability requirements
vii. Lease requirements
viii. Tenant selection criteria
ix. Compliance with Commonwealth and local tenant-landlord laws
x. Conditions for faith-based organizations
xi. Lead-Based Paint requirements
xii. Fair housing and equal opportunity provisions
xiii. Fund disbursement
xiv. Record keeping and reporting provisions
xv. Enforcement provisions
xvi. Procedures for securing rent increases
xvii. Compliance requirements, including the monitoring checklist that will be used

5.16 Construction Monitoring

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

(2) For NMHC developed projects, NMHC will select construction contractors and/or developers and monitor project construction and occupancy.

(3) NMHC will also oversee and monitor partner developments. Specifically, NMHC will provide oversight to the construction through progress inspections for payments as well as periodic quality reviews. NMHC will monitor partner projects for compliance, which includes:

a. Overall management systems;
b. Financial management;
c. Eligible costs;
d. Cost allowability;
e. Cost allocation;
f. Construction management;
g. Bond requirements;
h. Written agreements deadlines, milestones or other requirements;
i. Property standards;
j. Relocation;
k. Labor standards;
l. Production outcomes;
m. Construction contracts;
n. Reporting;
o. Initial and ongoing occupancy;
p. Requirements for properties located in a special flood hazard area; and
q. Requirements as outlined in Subrecipient Agreement (if applicable).

5.17 Documents Required Upon Completion of Construction

(1) Upon completion of the funded project, the developer will provide the following documents
(2) Required Documents:
(3) All required Program Eligibility Documents or any updates thereto;
(4) Certificate of Occupancy;
(5) Certificate of Completion;

a. Elevation Certificate (if elevated)
b. 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;
c. Current title;
d. Satisfactory indication that all compliance obligations including Fair Housing, Davis Bacon, Section 3, Section 504 and M/WBE are up to date;
e. Copies of all Program approved change orders;
f. Permits as required and applicable.

5.18 Lease-Up Compliance and Monitoring

5.18.1 Determining Tenant Eligibility

(1) The executed grant agreement defines the number of affordable housing units that must be included in the project. The Developer and any subsequent project owners must ensure 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.

(2) Tenant eligibility for NMHC projects will be based on income and rent determinations as defined in 4350.3 HUD Handbook.

(3) 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. NMHC will ensure project compliance for any Affordable Rental Housing projects implemented for the CDBG-DR activity. NMHC 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.

(4) Project owners of projects where NMHC 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.

(5) 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.

5.18.2 Monitoring Plan

(1) NMHC is responsible for all oversight and compliance for all activities funded with CDBG-DR, regardless of the entity undertaking the implementation of the activity. Monitoring fee of $200 per unit per year shall be assessed.

(2) Although the CDBG-DR funding has a six-year expenditure deadline (from signing of the initial grant agreement), NMHC has compliance responsibilities throughout the term of the HUD grant through closeout, and for long-term compliance of the NMHC and other partner developer projects throughout each project's Affordability Period.

(3) NMHC 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 benefits, 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.

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

(5) The Monitoring Plan serves to identify risks, deficiencies, and remedies relating to NMHC directly administered programs, administrative and financial management, and programs administered via NMHC partners. The Monitoring Plan seeks to accomplish the following objectives:

a. Determine if a developer/partner is carrying out its obligations, and its activities as described in the Action Plan for CDBG-DR assistance and its related grant or partner agreement.

b. Determine if a developer/partner is carrying out its activities in a timely manner, in accordance with the schedule included in the partner agreement.
c. Determine if a developer/partner 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.
d. Determine if a developer/partner 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.
e. Assess if the developer/partner has a continuing capacity to carry out the approved project, as well as future grants for which it may apply.
f. Identify potential problem areas and to assist the developer/partner in complying with applicable laws and regulations.
g. Assist developers/partners in resolving compliance problems through discussion, negotiation, and technical assistance (TA) and training.
h. Provide adequate follow-up measures to ensure that performance and compliance deficiencies are corrected by affordable rental housing developers/partners, and not repeated.
i. Comply with the federal monitoring requirements of 24 CFR 570.50 I(b) and with 2 CFR 200, as applicable.
j. Determine if any conflicts of interest exist in the operation of the CDBG-DR program per 24 CFR 570.611.

(6) Long term compliance review will be conducted by NMHC. These reviews will include, but not be limited to documentation covering:

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

5.19 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.

5.19.1 Tenant Protection Under Uniform Relocation Act (URA)

(1) NMHC 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 delay.

(2) **Demonstrable Hardship** - A demonstrable hardship is a substantial change in an applicant's financial situation that will prohibit or severely affect their ability to provide a minimal standard of living or the basic necessities of life including food, housing, clothing and transportation without causing economic distress well beyond mere inconvenience as shown by objective evidence. A demonstrable hardship must be occurring after the named storms. The demonstrable hardship must be of a severe, involuntary and unexpected nature. It must not be one that is generally shared by other applicants affected by the named storms. Examples of demonstrable hardships may

include job loss, failure of a business, divorce, severe medical illness, injury, death of a family member or spouse, unexpected and extraordinary medical bills, disability, substantial income reduction, unusual and excessive amount of debt due to a natural disaster, etc. None of the listed examples above, individually or taken together, automatically establish a demonstrable hardship nor is the listing above exhaustive as there may be other factors relevant to the issue of demonstrable hardship in a particular case. If an applicant believes that they are in the state of demonstrable hardship and that the demonstrable hardship causes them to not comply with any of the program policies, they may present their existence of a demonstrable hardship to their case worker (housing or loan specialist) and the Program will evaluate on a case-by-case basis after review of all of the circumstances. Applicants claiming a Demonstrable Hardship shall be required to provide evidence of such claimed Demonstrable Hardship to the case worker.

(3) ***Not Suitable for Rehabilitation*** – properties where the cost of rehabilitation exceeds the after-rehab appraisal and there is not a compelling historical or community justification to save the property.

5.19.2 Fair Housing

Development Partners are subject to NMHC's Affirmative Fair Marketing requirements and will be required to provide a marketing plan and report on compliance in accordance with NMHC'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.

5.19.3 Section 504

(1) Section 504 of the **Rehabilitation Act of 1973,** Pub. L. No. 93-112, 87 Stat. 394 (Sept. 26, 1973), 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).

(2) 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.

(3) 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.

(4) 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) Per unit cap on the maximum amount of assistance may be exceeded when necessary to provide accessibility features as a reasonable accommodation for a person with a disability.

5.19.4 Davis-Bacon and Related Acts I 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".

5.19.5 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 NMHC's M/WBE participation requirements applicable at the time of application submitted to the RFQ.

5.19.6 Section 3

(1) Awardee shall comply with 12 U.S.C. 170lu and its regulations ("Section 3"). In compliance with Section 3, the CDBG-DR Program will require fund recipients 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.

(2) 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.

(3) (If applicable) 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).

(4) 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:

   a. At least 30% of all hires must be Section 3 Residents; and
   b. 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,
   c. 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.

5.19.7 Environmental Review

(1) 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.

(2) 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.

5.19.8 Green Building Standards

All reconstruction and new construction of residential buildings and substantially damaged homes must adhere to the extent practicable to the 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.

5.19.9 Bonding Requirements

For construction and facility improvement contracts exceeding $150,000, the Contractor/Subcontractor must comply with, at minimum:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
(2) A performance bond on the part of the Contractor/Subcontractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's/Subcontractor's obligations under such contract.
(3) A payment bond on the part of the Contractor/Subcontractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

5.19.10 Insurance Requirements

Contractors/Subcontractors must maintain liability insurance for protection against claims for damages because of bodily injury or death, claims for damages, to property which may arise out of or result from the Contractor's operation under a contract whether such operations be by the Contractor or by any Subcontractor or anyone directly or indirectly employed by any of them. This amount shall be in the amount as determined by NMHC's Procurement Policy. Contractor shall present the Agency with a certificate of such insurance. Additionally, Contractor is required to carry Workers' Compensation insurance.

Property owners are required for carrying enough physical and liability insurance coverage to fully protect the CDBG-DR program asset throughout the period of affordability or loan, whichever is longer, with NMHC listed as a lienholder on all policies. When the project is placed into service, hazard insurance coverage for the whole property with replacement cost coverage, including all buildings, project contents and revenues during the affordability period or loan, whichever is longer.

5.19.11 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 recipients must comply with these federal regulations. However, at this time, NMHC will not be providing financial assistance on properties located in a floodplain.

5.20 Flood Insurance Policy

(1) 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 regulations 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.

(2) 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.5 I54a).

5.20.1 Validation of Development Costs and Inspections

Once a project is determined to be eligible and is selected for participation in the Program the NMHC 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).

5.20.2 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.

5.20.3 Mold Assessment and Remediation

(1) Mold assessment consists of visual assessment only, performed by the Project 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 project 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.

(2) 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.

(3) 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.

(4) 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 Project Manager 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.

5.20.4 Asbestos Survey Requirement (if applicable)

(1) In accordance with Federal 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 structure. 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 least destructive manner possible. Presumed asbestos containing materials (PACM) will be documented and recorded.

(2) 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 Commonwealth regulations by firms and individuals properly licensed for the work. If asbestos should become apparent once construction begins, procedures align with Commonwealth 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.

5.20.5 Environmental Inspection Request and Clearance

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

6.0 RECORD KEEPING AND REPORTING

(1) NMHC, 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:

a. Minimizing the use of PII on program documents and records.
b. Providing access to PII only to those who require it for official business.

c. Securing PII appropriately for paper or electronic forms.
d. Training for data security and compliance with the Privacy Act will be provided to all employees and contractors as part of their onboarding process.

(2) In accordance with HUD regulations, as a grantee and recipient of CDBG-DR funds, NMHC 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 NMHC. NMHC established requirements in its contractor agreements for compliance with all HUD cross cutting requirements outlined in 2 CFR 200: Appendix 11, including record keeping requirements. Records such as grant 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.

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

APPENDIX A

Environmental Procedures

STEP 1: Environmental Review Determination
In accordance with above internal review procedures, the project manager and/or housing administrator will review the program/project scope of work and determine at what level of environmental review needs to be conducted. The environmental consultant will provide technical assistance and support on complex environmental issues. The NEPA classifications that will be determined are listed below:

1. **Exempt – Subject to Related Laws at 24 CFR 58.34**
   Activities that by their very nature will have no physical impact upon the environment are exempt from NEPA requirements as well as Part 58.5. In these cases, NMHC does not need to check for compliance with the requirements or perform an environmental review, consultation, or other action under NEPA. Some examples from NEPA requirements include:

   - Environmental studies, plans & strategies
   - Administrative & management expenses
   - Inspections & testing properties
   - Engineering or design costs
   - Technical assistance & training
   - Any of the CEST activities at §58.35(a) if Federal laws and authorities at §58.5 are not triggered

2. **Categorically Excluded, not Subject to 58.5. (24 CFR 58.35)**
   Activities in this section are categorically excluded from the requirements at 58.5, due to HUD's determination that such activities will not alter any conditions that would require a NEPA review or a compliance determination under 58.5. When performing a categorically excluded activity not subject to 58.5, NMHC does not need to publish a Notice of Intent/Request for Release of Funds (NOI/RROF). Following the award of program funds, no further approval from HUD will be needed with respect to environmental requirements. Examples of categorically excluded, not subject to NEPA requirements are:

   - Tenant-based rental assistance
   - Supportive services
   - Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs
   - Economic development activities not associated with construction or expansion of existing operations
   - Activities to assist homebuyers

- Affordable housing pre-development costs
- Supplemental assistance of previously-approved project

3. **Categorically Excluded Subject to 58.5**
Any of the categorically excluded activities in 58.35 are exempt from NEPA, provided that there are no circumstances that require compliance with any other federal law and authorities cited in 58.5. Using the statutory checklist, and after consulting with applicable agencies and organizations, NMHC can designate an activity as exempt if it can show that none of the federal laws and authorities are triggered through funding this activity. The statutory checklist deals with non-NEPA regulation which grantees must adhere to such as historic and wildlife preservation, floodplain management, noise control, etc. Examples of categorically excluded, subject to NEPA requirements are:

   - Acquisition, repair, improvement, reconstruction or rehabilitation of public facilities and improvements when:
     - Facilities and improvements are in place
     - No more than 20% change in size or capacity
     - No change in land use
   - Removal of architectural barriers that restrict accessibility
   - Rehabilitation of buildings and improvements:
     - Residential Structures of 1 – 4 units: no more than 4 units; no change in land use; cannot increase into floodplain or wetland
     - Multifamily Residential Structures: unit density does not change more than 20%; no change in land use; cost of rehab is less than 75% of replacement cost after rehabilitation
     - Commercial, Industrial and Public Buildings: size and capacity does not increase by more than 20%; no change in land use
   - Individual action on up to four dwelling units (One 4-unit structure or four 1-unit structures or any combination in between):
   - Individual action on a project of five or more housing units when sites are more than 2000 feet apart and no more than four units on any one site.
   - Acquisition, disposition or finance of existing structure or vacant land if retained for same use.
   - Combination of any of the above activities.

4. **Subject to an Environmental Assessment (24 CFR 58.36)**
If a project is not exempt or categorically excluded under the above sections, NMHC must prepare an Environmental Assessment (EA). An EA is a concise public document that includes all the evidence and analysis supporting the NMHC's decision as to whether an environmental impact statement is warranted or if an activity will result in no significant impact to the environment. Examples when environmental assessments are needed are:

   - New Construction (more than five (5) units);
   - Construction of Public Facilities;

- Infrastructure Development;
- New construction, demolition and/or reconstruction of five or more single family units on scattered sites that are less than 2,000 feet apart;
- Extending the footprint of a single-family unit into the floodplain or wetland area or expanding the footprint of a structure that is already in a floodplain or wetland area;
- Major rehabilitation or reconstruction of multifamily residential units that increases or decreases the unit density more than 20 percent;
- Conversion of a non-residential structure to create a residential use;
- Acquisition of land for development of a housing subdivision;
- Activities that are normally exempt or categorically excluded but have an extraordinary circumstance that requires further review.

7.0 NMHC must file the completed checklist and a statement in the Environmental Review Record.

5. **Subject to an environmental impact statement (24 CFR 58.37)**
   If a project is subject to a full EA and is determined to have a potentially significant impact on the human environment, then an Environmental Impact Statement (EIS) is required. An EIS is also required if the project fits at least one of the following criteria:

   - It would provide a site or sites for or result in the construction of hospitals or nursing homes containing more than 2,500 or more beds;
   - It would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units or would result in the construction or installation of 2,500 or more housing units;
   - It would provide enough additional water and sewer capacity to support 2,500 or more additional housing units.

The housing supervisor or project supervisor must concur on the final environmental review determination (such as "Conversion to Exempt" or issuance of a "FONSI"). Depending on the type of project, the housing specialist, construction inspector, or administrative assistant receives the environmental review document log, scan, and digitally file in the NMHC shared drive to ensure all environmental records are maintained together.

STEP 2: Preparation of Environmental Review

Once the level of environmental review is determined, the housing supervisor or project supervisor will include the determination in the Environmental Assessment file. The housing supervisor or project supervisor will prepare environmental records.

The estimated timeframe, depending on consultations require for completing Environmental Process is as follows:

Environmental Determination	Estimated Timeline for Preparation
Exempt	1 Day
Categorically Excluded not Subject to 58.5	1 Day
Categorically Excluded Subject to 58.5	30-75 Days
Environmental Assessment	45-100 Days
Environmental Impact Statement	1-2 Years

8.0 Tiered Environmental Review

Environmental Reviews may be tiered to avoid repetition. Tiered reviews are used to identify and evaluate issues ripe for decision, excluding issues not relevant to the program, policy or project. They are appropriate when:

- Evaluating a policy or proposal
- Early Stages of Development
- When site-specific analysis is not feasible and more narrowed and focused review is better done at a later date
- *Tiered environmental reviews are not appropriate for projects requiring an Environmental Assessment.*

This review is conducted to achieve both compliance and speed because it does not require upfront identification of assisted properties.

In short, a tiered review focuses on a specific geographical area to address and analyze environmental impacts related to the proposed activities that might occur on the typical project site within that area. The specific addresses/locations of the individual properties are not known at this time. However, once individual project sites are located, any remaining environmental compliance issues that could not be resolved until project locations became known are completed according to standards for approval previously established for the target area. NMHC's tiered review focuses on scattered sites located throughout a particular targeted area.

The Tier 1 addresses all laws and authorities possible and establishes a plan (narrative) for the site-specific or subsequent review. NMHC must publish a public notice of intent to request a release of funds (NOI/RROF) and submit RROF as described in Step 3.

The Tier 2 site-specific review does not require a public notice or RROF required unless there are unanticipated impacts or impacts that are not adequately addressed in the Tier 1 review.

8-Step Decision Making Process for Projects in the Floodplain

1. Determine whether the action is located in a 100-year floodplain (or a 500-year floodplain for critical actions).

2. Notify the public for early review of the proposal and involve the affected and interested public in the decision-making process.

3. Identify and evaluate practicable alternatives. Identify the project site selection criteria and consider several alternative sites and actions:
    A. Locate the project within the floodplain
    B. Consider modifying the project
    C. Obtain a Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR)

    or

    A. Locate the Project Outside of the Floodplain
    B. Consider other sites
    C. Consider no action or alternative actions that serve the same purpose

4. Identify Potential Direct and Indirect Impacts of Associated with Floodplain Development.

5. Where practicable, design or modify the proposed action to minimize the potential adverse impacts to lives, property, and natural values within the floodplain and to restore, and preserve the values of the floodplain.

6. Re-evaluate the Alternatives.

7. Determination of No Practicable Alternative

8. Implement the Proposed Action

STEP 3: Publication of Notice of Intent (NOI) Request for Release of Funds (RROF) and Finding of No Significant Impact (FONSI)

Categorical Exclusions
NMHC will publish a Notice of Intent to Request a Release of Funds (NOI/RROF) for projects that are Categorically Excluded Subject to §58.5 and projects requiring EAs, using the HUD recommended format. At a minimum, NMHC staff shall publish the NOI/RROF notice in a newspaper of general circulation and on the CDBG-DR website. Additionally, the following shall be notified:

1. Individuals and groups known to be interested in the activities
2. Appropriate tribal, local, State and Federal agencies

NMHC must consider the comments and make modifications, if appropriate, in response to the comments, before it certifies and submits the RROF to HUD. The public comment period is 7 days when published, counting from the day after the publication.

9.0 Environmental Assessments (EA)
If NMHC makes a Finding of No Significant Impact from an EA, it must prepare a Finding of No Significant Impact (FONSI) notice, using the HUD recommended format. At a minimum, NMHC staff shall publish the FONSI/NOI/RROF combined notice in a newspaper of general circulation and on the CDBG-DR website. Additionally, the following shall be notified:

1. Individuals and groups known to be interested in the activities
2. Appropriate tribal, local, State and Federal agencies

The FONSI public comment period is 15 days when published, counting from the day after the publication. NMHC typically publishes a FONSI notice at the same time it publishes the NOI/RROF. If the notices are released as a combined notice, the combined notice shall clearly indicate that it is intended to meet two separate procedural requirements; and, advise the public to specify in their comments which "notice" their comments address. The public comment period is 15 days when published, counting from the day after the publication.

STEP 4: Preparation and Submission of the Request for Release of Funds (RROF)

If no comments are received or once the comments are addressed, a HUD-7015.15 Request for Release of Funds (RROF) will be prepared by Environmental Specialist and signed by the Certifying Officer. Once the signature is obtained, it will be submitted to the local HUD office. If comments are received NMHC must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. *The RE cannot sign the RROF until the day after the public comment period closes.*

The form must be printed on both sides and the original copy must be submitted to HUD. The RROF cannot be altered in any way. In preparing a RROF, NMHC must ensure that all applicable sections are completed. This includes the following:

- HUD program for which funds are being requested is included
- The Name and Address of the RE
- Project description for which RE is requesting funds
- Indication of whether an EIS was or was not required
- Signature of the Certifying Officer
- Certification Date after expiration of public notice comment period
- Date of signature of the Recipient after expiration of the public notice comment period
- Attach a copy of the public notice
- Attach a copy of the citizen comments and responses

The receipt of which will begin the fifteen (15) day period for HUD to receive comments. The original RROF document and a copy of the publication will be emailed to the Disaster Recovery email at disaster_recovery@hud.gov.

After HUD's fifteen (15) day comment period and no comments were received, HUD will send NMHC an Authority to Use Grant Funds (form HUD-7015.16). At this point NMHC is authorized to commit and use federal funds to undertake the various project(s).

STEP 5: After Approval of the Environmental Review Record

1. Depending on the project, the responsible supervisor shall add (if applicable) all public notice affidavits, citizen comments and responses, RROF, and the ATUGF to the environmental review record.

2. The responsible supervisor shall notify the agency of approved environmental record.

3. The responsible supervisor shall ensure all mitigation and environmental requirements are incorporated into any contractual agreements.

STEP 6: Environmental Review Recordkeeping

1. The responsible supervisor shall ensure all Environmental Review Records are certified by the Certifying Officer.

2. The responsible supervisor shall submit the certified Environmental Review Records including the Public Notice Affidavit, Request for Release of Funds (RROF) Form 7015.15, and the Authority to Use Grant Funds (ATUG) Form 7015.16 to the CDBG-DR Administrative Manager for digital scanning and logging in the shared-access drive.

3. The CDBG-DR Administrative Manager shall maintain the logged and recorded hard version of the Environmental Review Record in the appropriate project file.

4. NMHC Administrative Manager shall ensure the Environmental Review Records remain accessible in the centralized located shared-access drive for availability.

INFRASTRUCTURE	**Amended** "Appendices" page (Page 044991) changing the Heading "Appendix" to "Appendices." In addition, corrected and removed Appendix C: HUD Rider and replacing it with Appendix C: Intergovernmental Agreement. Full Text of Intergovernmental Agreement is posted below and attached. The wrong documented was referenced and provided in the regulations. **APPENDI~~X~~CES:** 1. **Appendix A: Crosscutting Requirements and Process Overview** 2. **Appendix B: Project Application Form** 3. **Appendix C: ~~HUD Rider~~ Intergovernmental Agreement**	Page 045329; Appendices page.	Clerical Error

NORTHERN MARIANAS HOUSING CORPORATION

INFRASTRUCTURE PROGRAM POLICIES

VERSION: 1.0

May 25, 2021

Prepared by:

Northern Marianas Housing Corporation – CDBG-DR Program Division

The policies stated in this manual are current as of May 25, 2021. This Manual represents the current version of the Northern Marianas Housing Corporation's (NMHC) policies which provide general guidance for the operation of the Infrastructure Programs. All manuals will be reviewed periodically and updated. Therefore, users are strongly encouraged to visit our website: www.cnmi-cdbgdr.com to access the latest version.

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1.0 CONTENT

1.1 Version Policy

Version history is tracked in Table 1, 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.

1.2 Agencies and Acronyms

BCA Benefit Cost Analysis

DOB Duplication of Benefits

CUC Commonwealth Utilities Corporation

DLNR CNMI Department of Lands and Natural Resources

DPL CNMI Department of Public Lands

DPW CNMI Department of Public Works

FEMA Federal Emergency Management Agency

GIS Geographic Information System

HCDA Housing and Community Development Act

HMGP Hazard Mitigation Grant Program

HPO Historic Preservation Office

HUD U.S. Department of Housing and Urban Development

NAI No Adverse Impacts

NMHC	Northern Marianas Housing Corporation
NTP	Notice to Proceed
PW	Project Worksheet
QPR	Quarterly Status Report
USACE	United States Army Corps of Engineers
USDOL	U.S. Department of Labor
HSEM	CNMI Homeland Security and Emergency Management

1.3 Definitions

Action Plan: A plan to guide the spending of a HUD CDBG-DR grant award to address housing economic, and infrastructure needs after a disaster.

Allocation: 1) Amount of a grant award that has been determined for a particular grantee. 2) Amount of funding attributed to a program.

Community Development Block Grant-Disaster Recovery: Flexible grant assistance from HUD to help the CNMI recover from presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations.

Cross-cutting regulations: Regulations outside CDBG-DR regulations that apply to CDBG-DR programs. These include regulations pertaining to financial management, procurement, environmental, labor, acquisition, relocation, fair housing, and non-discrimination.

Davis Bacon and Related Acts (DBRA): Federal law requiring payment of prevailing wages as determined by the U.S. Department of Labor on certain federally funded projects or most HUD-assisted construction projects. It applies to contractors and subcontractors performing work on federally funded or assisted contracts in excess of $2,000 for the construction, alteration, or repair of public buildings or public works.

Duplication of Benefits (DOB): A duplication of benefit is the receipt of funding from multiple sources for the same purpose. 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 Disaster Recovery funding with respect to any part of the loss resulting from a major disaster as to which he/she has already received financial under any other program or from insurance or any other sources. It is an amount determined by the program that may result in the reduction of an award value.

Eligible Activity: Activities eligible to be assisted under the CDBG program. All CDBG-DR grantees must: (1) use CDBG funds only for activities that fall under an authorized category of

basic eligibility; (2) properly classify the activity; and (3) provide adequate documentation as required by the category it selects for each such activity.
Emergency work: FEMA's Public Assistance program designation for disaster response tasks including debris removal (Category A) and emergency protective measures (Category B) that occur immediately after a disaster.

Emergency Review Record (ERR): The document resulting from required environmental review which includes a description of activities, evaluation of environmental impact, documentation of compliance with applicable environmental regulations, and an environmental determination.

FEMA Individual Assistance Program (FEMA IA): Provides financial help or direct services to those who have necessary expenses and serious needs if they are unable to meet these needs through other means. The forms of help available are housing assistance (temporary housing, repair, replacement) and other needs assistance (personal property, other items).

FEMA Public Assistance Program (FEMA PA): Provides grants to state, tribal, territorial, and local governments, and certain types of private non-profit organizations so that communities can quickly respond to and recover from major disasters or emergencies. Through the program, FEMA provides supplemental federal disaster grant assistance for debris removal, life-saving emergency protective measures, and the repair, replacement, or restoration of disaster-damaged publicly-owned facilities, and the facilities of certain private non-profit organizations.

Grantee: HUD grantees receive funding from HUD to support HUD's mission to create strong, sustainable, inclusive communities and quality affordable homes for all. HUD grantees include state and local governments, non-profit and for-profit organizations, public housing authorities, and tribal entities.

Implementing Partner: CNMI agencies that are provided CDBG-DR funds by a grantee for their use in carrying out agreed-upon, eligible activities through an Intergovernmental Agreement with NMHC.

Low- and Moderate-Income (LMI): A household considered to be of low- and moderate-income if the household income (including income derived from assets) is at or below 80 percent of an area's median income. All income is based on the Area Median Income limits set annually by HUD.

National Objective: The authorizing statute of the CDBG program requires that each activity funded, except for program administration and planning activities, must meet one of three national objectives. The three national objectives are: 1) Benefit to low- and moderate (LMI) persons; 2) Aid in the prevention or elimination of slums and blight; and 3) Meet a need having a particular urgency (referred to as urgent need). An activity that does not meet a national objective is subject to recapture.

Permanent work: FEMA's Public Assistance program designation for "recovery work" which restores or rebuilds a damaged asset and is comprised of five categories: roads and bridges

(Category C); water control facilities (Category D); building and equipment (Category E); utilities (Category F); and parks, recreation facilities, and other facilities (Category G).

Project Worksheet (PW): FEMA form used to document the scope of work and cost estimate for a FEMA Public Assistance project. This form supplies FEMA with the information necessary to approve the scope of work and itemized cost estimate prior to funding.

Request for Release of Funds (RROF): An environmental review term for a process used by Responsible Entities (CNMI) when requesting the release of funds and the authority to use such funds for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and states. The approval of the RROF is required before environmental clearance may be provided to a recipient of CDBG-DR funds.

Section 3: A provision of the Housing and Urban Development (HUD) Act of 1968 that requires the recipients of HUD financial assistance, to the greatest extent feasible, provide training, employment, and contracting opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods.

Section 504: A provision of the Rehabilitation Act of 1973 which provides that no qualified individual with a disability should, only by reason of his or her disability, be excluded from the participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance.

2.0 INTRODUCTION

2.1 Summary

As a result of the 2018 typhoons Mangkhut and Super Typhoon Yutu, the Commonwealth of the Northern Mariana Islands (CNMI) received an allocation of Community Development Block Grant Disaster Recovery (CDBG-DR) funds which are being administered by the Northern Marianas Housing Corporation (NMHC). The U.S. Department of Housing and Urban Development's (HUD) allocations for the CNMI's CDBG-DR program total $243,946,000 to assist local entities with unmet recovery needs for housing, infrastructure, and economic development. This document represents the policies of implementation of the Infrastructure Programs, which include the Local Match for Federal Disaster Recovery Program, the Infrastructure Repair and Resilience Programs.

2.2 Background

In the wake of the storms, President Trump announced a Major Disaster Declaration for Typhoon Mangkhut (**DR-4396**) and another for Super Typhoon Yutu (**DR-4404**) to make federal disaster assistance available to the CNMI. Subsequently, the U.S. Congress approved Supplemental Appropriations for Disaster Relief Requirements (Public Laws 115-254 and 116-20, respectively, which made available $243,946,000 for the purpose of addressing disaster recovery unmet needs following the onslaught of Typhoon Mangkhut and Super Typhoon Yutu. The CNMI will be

strategic in optimizing the mix of the allocation towards infrastructure programs to ensure effective and efficient use of funds. The CNMI, through NMHC, requested for a *Tourism Waiver* by which HUD subsequently approved with certain conditions. *See* **Federal Register Notice No. 85 60821**

3.0 Infrastructure Programs Overview

3.1 Summary

The Infrastructure Programs, designed to conform with NMHC's CDBG-DR Action Plan addresses multiple unmet needs for proper functioning of its infrastructure systems. Reliance on these systems which include but not limited to public utilities, educational institutes, and transportation infrastructure, was clearly evident when many failed and closed following the aftermath of Typhoon Mangkhut and Super Typhoon Yutu.

The CNMI has identified multiple infrastructure priorities that must be addressed, many of which directly support housing needs. Residents not only suffered from direct damage to their homes from the 2018 disasters, but also endured the loss of critical services such as power due to damaged public infrastructure. Without water and power, residents were forced to evacuate their homes and seek shelter and emergency assistance.

3.2 Objectives

The objectives of this Infrastructure Programs' policy and procedural manual in addressing the unmet needs of the CNMI through:

(1) Comprehensive planning to identify resilience opportunities;
(2) Adoption and enforcement of codes to bring critical infrastructure up to industry standards;
(3) Holistic mitigation designs to meet future challenges and hazards; and
(4) Covering a portion of the CNMI's local match obligations.

All CDBG-DR programs must meet one of three HUD National Objectives: benefit low- to moderate-income persons (LMI), elimination of slum and blight, or address an urgent need. For the Infrastructure Programs, it is expected that most projects will seek to meet the Low- to Moderate-Income Area (LMA) Benefit as the National Objective. This objective is met when at least 51% of residents in the service area are classified as LMA. Projects seeking funding under these programs will need to assess the service area and beneficiaries of the project's impact as a part of the overall benefit requirement.

4.0 METHOD OF DISTRIBUTION

4.1 Prioritization Criteria Definitions

A standard set of criteria was developed through the Action Plan to ensure funding is allocated to projects that will have the biggest benefit to recovery first. Infrastructure Programs are designed

around the same set of criteria, which are used in the concept development and project design phases. These criteria are defined as follows:

(1) **LMI:** Project beneficiaries are documented to be at least 51% low- and moderate-income persons;
(2) **LMA:** Project service area has been determined to be at least 51% low/mod and is predominately residential;
(3) **Readiness:** Projects demonstrate they are ready to begin rehabilitation or construction. A project is considered "ready" if environmental review and engineering have already been completed, where required OR the project can demonstrate an accelerated timeline. For instance, external factors like gubernatorial executive orders or the approach of a new typhoon season may warrant a heightened priority.
(4) **Criticality:** Determined based on the extent to which the normal conduct of social, economic, or government processes is impeded without the project. Special consideration will be given to projects that have a strong tie to housing unmet needs or will contribute to long-term recovery and restoration of housing.
(5) **Resilience:** Project includes measures that prevent vulnerability in the future or provide innovative solutions to existing vulnerabilities.
(6) **Technical Feasibility:** The degree of specialized equipment or advanced technical capacity required.
(7) **Sustainability:** Degree to which modern sustainability standards or best practices are taken into consideration for the project.
(8) **Economic Benefit:** The project is evidenced to resolve an impediment to or create new opportunities for economic activities.

Documentation supporting the fulfillment of relevant criteria will be collected in coordination between Implementing Partners and NMHC during the Initial Scop and Budget Phase and the Detailed Scope and Budget Phase. Program staff will then determine the priority level of each project taking into account the criteria as well as the other project needs at the time and evaluation and selection will follow the methodology as prescribed in NMHC's Action Plan and in accordance to HUD requirements on the use of CDBG-DR funds.

Infrastructure activities will be based on a scoring criterion with concentrations on the islands of Saipan and Tinian as most impacted areas. It was also desired that infrastructure activities selected would benefit the Islands as a whole due to the fact that any block group and/or any combination of block groups qualifies as a low- and moderate-income benefit area and that over 90 percent of the population on any island are minority residents. These factors also ensure economic stability so residents can remain in homes and residences and retain their jobs because the infrastructure is improved. The actual size of the Islands also means that all persons will benefit from most of the infrastructure improvements.

The following scoring criteria will be utilized to select priority infrastructure projects and activities.

Scoring Criteria			Max Points
1	*All priority needs must support housing* **Priority Need:** Meets one of the priority needs identified in the CDBG DR Action Plan		25
	Priority 1	Support the restoration/improvement of utilities, water, and sewer facilities (25 points)	
	Priority 2	Support the restoration/improvement of roads and drainage systems (20 points)	
	Priority 3	Support the restoration/improvement of critical facilities such as the schools, hospital, and others that improve services to the general public (15 points)	
	Priority 4	Support the leverage of funding with other disaster assistance (such as FEMA and USACE) to ensure resiliency in infrastructure (10 points)	
	Priority 5	Support the restoration of other public facilities such as community centers, gymnasiums, etc. (5 points)	
2	**Storm Resilience:** In addition to addressing housing unmet needs, program or project proposals need to show how they would improve resilience to future storm-related damage.		15
3	**Overall LMI benefit (Percent LMI benefit of the activity):** Higher LMI benefit of the activity will receive a higher score. For example, a project with 100 percent LMI benefit would be scored higher than a project with 65 percent LMI benefit.		25
4	**Management Capacity:** Subrecipient, program manager, and/or developer presents a depth of program or project, case, and compliance management capacity to deliver services on-time and on-budget.		15
5	**Cost Reasonable Budget:** Budgets reflect cost reasonableness and affirmative efforts to leverage CDBG-DR funds with additional funding to address unmet needs. The budget narrative reflects research, quotes and/or contracted pricing.		20
	Total Maximum Points		**100**

4.2 Local Match for Federal Disaster Recovery Method

4.2.1 Program Administration

Administering Entities: NMHC and CNMI Public Assistance Office

Eligible Applicants: Governmental and quasi-governmental entities

Estimated Start and End Dates: November 24, 2020 to November 24, 2026.

Eligibility Criteria: The projects must be currently funded under a federal funding source that requires a local match and demonstrate a tie to the storm or have clear evidence of resiliency functions to prevent future damage. Infrastructure projects must exhaust other eligible funding sources, such as FEMA, prior to receipt of CDBG-DR. Applicants need not meet all prioritization criteria to be eligible.

Program Allocation: $107,361,835

Maximum Award: There is no maximum award for an individual project. Awards will be based on project cost estimates and benefit analysis.

National Objectives: Low- and Moderate-Income Area and Urgent Need

4.2.2 Program Description

Typically, federal disaster recovery programs require State or local governments to pay a share of the cost of a project, commonly referred to as "local match." In the aftermath of a disaster, the local match requirements can be burdensome on grant recipients with limited resources that have been overwhelmed and depleted by emergency and relief work and further exacerbated by lost government revenues.

To address this financial burden, Congress allows CDBG-DR funds to be used to provide the local match. The CNMI, through NMHC, has developed the Local Match for Federal Disaster Relief Program (Match Program) to provide the cost share for CDBG-DR eligible projects. Priority will be given to infrastructure projects providing critical services directly related to housing needs. CDBG-DR funds for local match will be used as the funding of last resort and only after an eligibility determination has been made and a duplication of benefits analysis is completed.

The CNMI is receiving FEMA PA funds through two disasters: FEMA-4396-DR for Typhoon Mangkhut and FEMA-4404-DR for Super Typhoon Yutu. As of 12/01/2020, FEMA has written one-hundred and twenty-four (124) Project Worksheets (PWs) for a total of $16.5 million.

CDBG-DR funds are limited in the Match Program for FEMA PA-eligible PWs and other federal funding sources requiring a local match, such as EDA funding. For these projects, the CDBG-DR funds many not be used to expand a project beyond the scope already approved by the federal agency. In addition, to be eligible for CDBG-DR assistance, the activity must be an eligible activity and meet a national objective, per CDBG-DR rules and regulations. Similarly, the project must fully comply with all applicable rules and regulations, to include Davis Bacon and Related Acts,

Section 3, Section 504, procurement, environmental review and all other CDBG-DR, cross-cutting, local applicable statutes, rules and regulation.

All infrastructure under the FEMA PA program is being designed to consider mitigation components to protect against future damages. Proactive measures to promote risk-informed infrastructure development include diversification of power generation, relocation of critical facilities, and flood mitigated roads. All projects undertaken through the CDBG-DR program will be coordinated with the results of a planning process.

To align future CDBG-DR projects with existing CNMI capital improvement projects, Implementing Partners may be required to consult with the CNMI Department of Public Lands (DPL), CNMI Lands and Natural Resources (DLNR), CNMI Historic Preservation Office (HPO), and CNMI Department of Public Works (DPW). Given the historic and cultural significance of a multitude of buildings and areas, infrastructure projects should also address the historic preservation priorities of HPO. Much of the proposed power and water-related work through this Infrastructure Program are already aligned with the goals of capital projects envisioned by the Commonwealth Utilities Corporation (CUC) and NMHC's HUD-approved Action Plan.

Roles and Responsibilities

NMHC

NMHC administers the grant funds for the Match Program through its CDBG-DR Division. Program staff are responsible for ensuring projects comply with all applicable federal and local regulations, including but not limited to, Pub. L. 115-254 and Pub. L. 116-20, NEPA, HCDA, and local procurement regulations where applicable, and aligned with the CDBG-DR Action Plan. Program staff provide technical assistance to Implementing Partners to meet these requirements as needed. NMHC may proactively identify priority PWs for match based on reporting on PW obligation and draw status provided the PAO.

(1) Determine sufficient capacity and payment procedures are in place for Implementing Partners;
(2) Determine project eligibility and mechanisms to comply with crosscutting requirements;
(3) Disburse funds in accordance with NMHC financial policies;
(4) Complete desk, onsite, and formal monitoring of the project; and
(5) Prepare and maintain documentation of activities and compliance with requirements for monitoring and audits.

Implementing Partner

The Implementing Partner under the Match Program is the entity that serves as the project applicant under any federal program requiring local cost share for Mangkhut and Yutu. Implementing Partners coordinate between NMHC and PAO to ensure critical documentation of activities, such as invoices, timesheets, and records of construction are available for monitoring. Implementing Partners can request funds from the Match Program by submitting the Project Application form (*See* **Appendix B**).

- Meet the requirements of NMHC grant conditions
- Manage all aspects of design and construction
- Coordinate activities with the other federal and CNMI government agencies
- Report back to NMHC on a monthly basis
- Prepare and maintain documentation of activities and compliance with requirements for monitoring and auditing

PAO

PAO is the administering entity for federal cost share of FEMA projects. It is responsible for processing and approving drawdown requests under the FEMA programs requiring local cost shares. NMHC and PAO may be required to coordinate closely on the timing of draw requests, document sharing, and payment schedules to ensure eligible invoices are paid in a timely manner. PAO is responsible for reporting on the status of PW obligations and drawdowns to NMHC to assist in identifying priority PWs.

4.2.3 Method of Match Implementation

Once a project has been identified as a priority for the Match Program, NMHC intends to use a "coordinated match" approach to consolidate requirements and reduce administrative burden. Using the 10% local match requirement for FEMA PA as an example, the following scenarios demonstrate the advantages of a coordinated match strategy over a traditional approach.

4.2.3.1 Traditional Match

A traditional approach to matching the local cost share is to provide 10% of individual PW line items. This carries heavy administrative burdens as for each FEMA PW requiring a match, every single activity will have to adhere to CDBG-DR and crosscutting requirements, requiring a tedious line-item review. These requirements go beyond the requirements of FEMA, so applying them across the entirety of the project is a heavy administrative requirement and may result in ineligible projects.

4.2.3.2 Coordinated Match

Coordinated match approaches the required cost shares as a holistic package, then isolates 10% of the total activities to focus only on those that are HUD-eligible costs. A project may use CDBG-DR for design, FEMA PA for construction, for example. This reduces administrative burden and avoids duplication of benefits.

4.3 Infrastructure Repair and Resilience Program

4.3.1. Program Administration

Administering Entity: NMHC

Estimated Start and End Dates: November 24, 2020 to November 24, 2026

Eligible Applicants: Governmental and quasi-governmental entities

Eligibility Criteria: Must be a project that meets the proposed goals stated above. Infrastructure projects must exhaust other eligible funding sources such as FEMA prior to receipt of CDBG-DR. Applicants need not meet all prioritization criteria to be eligible.

Program Allocation: $107,361,835

Maximum Award: There is no maximum award for an individual project. Awards will be based on project cost estimates and cost benefit analysis.

National Objective: Low- and Moderate-Income Area benefit, Low- and Moderate-Income Limited Clientele, or Urgent Need.

4.3.2 Program Description

The goals of the Infrastructure Repair and Resilience Program (Repair and Resilience Program) are to:

- Repair and replace damaged infrastructure
- Harden infrastructure against extreme weather events; and
- Construct new infrastructure to improve the level and breadth of service to communities

The CNMI, through NMHC, shall ensure that there is no duplication of benefits and will follow the guidance for proper documentation and administration of the program. There will be a review process for project selection as contained in the Administrative Plan and based on the priorities identified and Intergovernmental Agreements as deemed necessary.

Program funds will be used to meet the three goals described below. Priority will be given to projects directly supporting housing needs and critical services. Roads and public and community facilities will be prioritized as they are sectors with the greatest unmet need.

- *Repair and Replacement:* The Repair and Resilience Program will pay for eligible costs to complete repairs and replacements for public infrastructure that have not yet been completed (e.g., repair of non-federal aid roads)
- *Hardening:* The Repair and Resilience Program will cover activities to harden infrastructure against severe weather conditions. This will include both structural and non-structural measures to harden facilities against high winds, heavy rainfall, flood exposure, storm water run-off, and their effects (e.g., erosion).
- *New Construction:* The Repair and Resilience Program will cover the cost of new construction to extend public services to populations that are not currently connected and/or to deliver services more effectively. This reduces the cost of each individual project, minimizes disturbances to traffic flow, and decreases the risk of damage to previously placed but unmarked utilities.

Roles and Responsibilities

NMHC

NMHC administers the grant funds for the Repair and Resilience Program through the CDBG-DR Division. Division staff are responsible for ensuring projects comply with all applicable federal and local regulations including but not limited to, Pub. L. 115-254 and Pub. L. 116-20, NEPA, HCDA, and local procurement regulations where applicable, and aligned with the CDBG-DR Action Plan. NMHC's responsibilities include:

- Determine sufficient capacity and payment procedures for Implementing Partners
- Determine project eligibility and mechanisms to comply with crosscutting requirements
- Disburse funds in accordance to NMHC's financial policies
- Complete desk, onsite, and formal monitoring of projects
- Prepare and maintain documentation of activities and compliance with requirements for monitoring and audits

Implementing Partners

The Implementing Partner under the Repair and Resilience Program refers to the entity managing and executing the project activities. Implementing Partners can request funds from the Repair and Resilience Program by submitting a Project Application (Appendix B). The Implementing Partner's responsibilities include:

- Meet the requirements of NMHC Capacity Assessment and grant conditions
- Manage all aspects of design and construction
- Responsibly manage project funds
- Coordinate activities with other federal and local agencies
- Implement crosscutting requirements
- Report back to NMHC on a monthly basis
- Prepare and maintain documentation of activities and compliance with requirements for monitoring and audits.

5.0 CDBG-DR PROGRAM REQUIREMENTS

The CNMI will ensure that each project that receives funding under the Infrastructure Programs corresponds to a CDBG-DR eligible activity, meets a national objective, and demonstrates a direct connection to the disaster. Funds will be provided as payment to governmental agencies, eligible organizations, or other entities for eligible activities within approved scopes with relevant documentation from Implementing Partners.

5.1 Overall Program Administration

NMHC will oversee all activities and expenditures in connection with the CDBG-DR funds. Existing NMHC employees, additional personnel and contractors will be hired to aid in the administration of, and to carry out, the recovery programs. These partners will ensure that the Program meets all requirements, including but not limited to: the disaster threshold, eligibility, national objective, compliance, fair housing, labor standards, nondiscrimination, environmental regulations, Section 3, and procurement regulations.

NMHC has created a Compliance and Monitoring Manual in accordance with CDBG-DR requirements so that each activity funded will meet the disaster threshold and one of HUD's three national objectives, which emphasis on eligible activities achieving the primary national objective of benefiting low- and moderate-income persons.

All projects must comply with any applicable federal laws and regulations and effectively meet their stated goals. In accordance with HUD requirements, NMHC will submit a Quarterly Progress Report (QSR) through DRGR no later than thirty days following the end of each calendar quarter. QPR's will posted on a quarterly basis until all funds have been expended and all expenditures have been reported. QPRs will be informed by monthly reports submitted by Implementing Partners to NMHC.

5.2 Tie to the Disaster

All activities funded with CDBG-DR in the Infrastructure Program must in some way respond to a direct to indirect impact of one of the following federally-declared disasters:

- Typhoon Mangkhut (DR-4396)
- Super Typhoon Yutu (DR-4404)

Match Program

FEMA disaster recovery programs, along with the EPA disaster recovery programs, require clear documentation showing a direct storm-related impact as a prerequisite for entry into these programs and funding. Only after an impact threshold has been met will the lead federal agency consider making disaster funds available to the applicant. It is assumed that if the applicant received funding and support through one of the federal recovery programs, set out above, the applicant was impacted by one or more of the declared disasters. For example, the FEMA PA program, a tie to the storm is documented by FEMA's approval of the PW.

Repair and Resilience and Electrical Power System Program

For non-FEMA projects, the tie to the disaster will be determined by one of the following:

- For physical losses – Damage, rebuilding estimates, or insurance estimates
- For economic or other non-physical losses – Post disaster analyses or assessments (documenting relationship between loss and disaster)[1]

[1] https://www.hudexchange.info/resources/documents/CDBG-DR-Eligible-Activities-Slides.pdf

- Funds may be used to address an unmet need that arose from a previous disaster, which was exacerbated by a disaster cited in the Appropriation.
- If an impact or need originating from a disaster identified in the Appropriation is subsequently exacerbated by a future disaster, funds may also be used to address the resulting exacerbated unmet need.

5.3 Eligible Activities

Table 5 below summarizes the total infrastructure CDBG-DR allocations in accordance with basic eligible activities per HCDA Section 105:

Table 5. Summary of Infrastructure Program Eligible Activities

Program	Sectors	HCDA Eligible Activities (Section 105(a))	Total Allocation
Local Match for Federal Disaster Relief Programs	• Educational Facilities • Energy • Government Facilities • Hospitals & Healthcare Facilities • Telecommunications • Transportation (including roads, ports, & airports) • Waste: Solid Waste/ Landfill • Debris Water & Wastewater	• Payment of the Non-federal Share • Acquisition of Real Property • Public Facilities and Improvements • Clearance, Rehabilitation, Reconstruction, and Construction of Buildings • Public Services • Relocation • Assistance to Institutions of Higher Education (must be facility)	
Infrastructure Repair and Resilience	Same as above	• Acquisition of Real Property • Public Facilities and Improvements • Clearance, Rehabilitation, Reconstruction, and Construction of Buildings • Public Services • Relocation • Assistance to Institutions of Higher Education (must be facility)	
Electrical Power Systems Enhancement and Improvements	Energy	• Acquisition of Real Property • Public Facilities and Improvements • Clearance, Rehabilitation, Reconstruction, and Construction of Buildings • Relocation • Payment of the Non-federal Share	
Total			

For each activity, the CNMI will determine the appropriate service area based on factors including: the nature of the activity; the location of the activity; accessibility issues; the availability of comparable activities; and boundaries for facilities and public services. The CNMI will ensure that projects will be prioritized to provide services to LMI persons and support unmet housing needs.

5.3.1 Ineligible Activities

The CDBG-DR program regulations identify certain activities as categorically ineligible. They also identify certain other activities that are ineligible unless they are carried out under the authority of §570.204.

The general rule in the CDBG-DR program is that any activity that is not authorized under the provisions of §570.201-570.206 (or, where applicable, the statute) is ineligible to be assisted with CDBG-DR funds. However, the eligible activities are so broad that it is easy to forget that some activities that are ineligible and to provide guidance in determining the eligibility of other activities frequently associated with housing and community development.

Categorically Ineligible

The following activities may not be assisted with CDBG-DR funds under any circumstance:

- General government expenses. Except as otherwise specifically authorized in Subpart C of Part 570 or under OMB Circular A-87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under their part. Reference: §570.207(a)(2)
- Political activities. CDBG funds may not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any. Reference §570.207(a)(3)

Generally Ineligible

The following activities may not be assisted with CDBG-DR funds unless authorized as Special Economic Development Activities under §570.203 or §570.204.

- Furnishings and personal property. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG-DR funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with PMB Circulars A-21, A-87, or A-122, as applicable) for such items when necessary for use by a recipient or its subrecipients in the administration of activities assisted with CDBG-DR funds, or when eligible as firefighting equipment, or when such items constitute all or part of a public service pursuant to §570.201(e)2. Also, these items are eligible when carried out by a for-profit business as

part of CDBG-DR assistance under the authority of §570.203(b). Reference: §570.207(b)(1)

- Operating and maintenance expenses. The general rule is that any expense associated with repairing, operating, or maintaining public facilities, improvements, and services are ineligible.
    - However, specific exceptions to this general rule are operating and maintenance expenses associated with public service activities [see §570.201(e)], interim assistance [see §570.201(f)], and office space for program staff employed in carrying out the CDBG program (see §570.206).
    - For example, the use of CDBG-DR funds to party the allowable costs of operating and maintaining a facility used in providing a public service (e.g., salaries, rent) would be eligible under §570.201 (e), even if no other costs of providing the service there are assisted with such funds. Examples of operating and maintenance expenses that are generally ineligible include:
- Maintenance and repair of publicly-owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior center, centers for persons with disabilities, parking, and other public facilities and improvements. Examples of maintenance and repair activities for which CDBG-DR funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of grass in city or county parks, and the replacements of street light bulbs.
- Payment of salaries for staff, utility costs, and similar expenses necessary for the operation of public works and facilities. Reference: §570.207(b)(2).

5.4 National Objectives

Per HUD CFR 570 Section 101(c), the primary objective of the Program is the development of viable communities by the provision of decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. The statute further states that this is to be achieved in the CDBG program by ensuring that each funded activity meets one of three named national objectives. Those three objectives are identified as: benefiting low- and moderate-income persons; preventing or eliminating slums or blight; and meeting urgent needs. Federal Register FR-6109-N-01 states that each grantee must ensure that at least 70% of all CDBG-DR funds must be used for activities qualifying under the national objectives of Benefit to Low- and Moderate-Income Persons. The following national objectives are applicable to all Infrastructure Programs and all projects will be required to meet at least one of the national objectives below.

National Objective: Low- and Moderate-Income Area, Low- and Moderate-Income Limited Clientele, or Urgent Need, Slum and Blight.

5.4.1 Low- and Moderate-Income Area (LMA)

To be eligible as LMA, the project service area must be at least 51%LMI households and be predominantly residential. In instances where the infrastructure investment activity does not serve the entire island but a particular location, an LMA analysis will be conducted to determine the low- and moderate-income benefit.

5.4.2 Low- and Moderate-Income Limited Clientele (LMC)

In contrast to the area benefit category, it is not the LMI concentration of the service area of the activity that determines whether the activity will qualify or not, but rather the actual number of LMI persons that benefit from the activity. Activities in this category provide benefits to a specific group of persons rather than everyone in an area. It may benefit particular persons without regard to their residence, or it may be an activity that provides a benefit to only particular persons within a specific area.

5.4.3 Urgent Need

While at least 70% of the entire CDBG-DR grant will be used for activities that benefit LMI persons, for certain activities the Northern Mariana Islands will use the Urgent Need national objective. Activities carried out under the urgent need objective will not count towards the 70% LMI benefit.

5.4.4 Required Documentation

National Objective	Required Documentation
LMI Area Benefit	Boundaries of service area of activity; Census data including total persons and percentage LMI; Evidence area is primarily residential; and Survey documentation (if applicable).
LMI Limited Clientele	Documentation that the beneficiaries are or are presumed o be LMI (by category).
Urgent Need	Per 83-FR-5856, CDBG certification requirements for documentation of urgent need, located at 24 CFR 570.483(d), are waived and replace with: 1. Document how each program and/or activity funded under the urgent need national objective responds to a disaster-related impact. 2. For each activity that will meet an urgent need national objective, the grantee must reference in its action plan needs assessment the type, scale, and location of the disaster-related impacts that each program and/or activity is addressing over the course of the applicable deadline for the expenditure of obligated grant funds.

5.5 Duplication of Benefits

The Infrastructure Programs will include a duplication of benefits as part of the scope and budget review and award calculation process. The requirements of the Robert T. Stafford Act (Stafford Act), as amended, prohibit any person, business concern, or other entity from receiving federal funds for any part of such loss for which they have already received financial assistance under any other program, private insurance, charitable assistance, or any other source. This duplicative funding is called Duplication of Benefit (DOB). Any government entity that provides disaster

recovery assistance must both prevent and correct any DOB by the establishment and implementation of policies to identify and adjust for such duplicative assistance payments.

DOB may apply in the following circumstances: when assistance for the same purpose has been received; when assistance for the same purpose will be received; or when assistance for the same purpose is reasonably available from another source, such as insurance or legal settlements due to the property owner.

All Implementing Partners will be reasonable for accurately reporting the availability or receipt of duplicative grants, loans, insurance payments, legal claims, gifts or other payments pertaining to the property being mitigated. Reporting should occur at any point that such information becomes available, including:

- During scoping process development, pre-award, and approval;
- During the gran period of performance;
- During closeout; and
- After grant closeout, if duplicative funds are received at a later date.

Implementing Partners are responsible for reporting DOB information or NMHC. NMHC is ultimately responsible for ensuring that project participants comply with federal laws and regulations. Any agency receiving duplicate benefits is legally responsible for the repayment of those benefits.

5.5.1 Preventing Duplication

All Implementing Partners and subrecipients must complete the DOB calculations as part of the Initial Scope of Work, as well as the Project Application Form, with assistance from Program staff. Both forms request information about all other sources of funding the agencies must be aware of that may impact the DOB. Agencies must provide documentation of these sources but NMHC will also verify these funding sources with other federal partners. This process will be supported by TA from Program staff. Also included in these forms is the standard calculation method used by Program staff to determine if a duplication is present. Project DOB information must be maintained by the agency and reported to NMHC throughout the life of the project. The agency reviews reported DOB and makes appropriate deductions. Additionally, CDBG-DR funds may not be used to supplant local resources use for infrastructure projects.

NMHC maintains records in accordance with Federal grants requirements and assures that the agency has accurately completed DOB reviews and made deductions as appropriate. FEMA must also take steps to assure that it's disaster-related assistance funds do not duplicate other assistance by providing information to NMHC and agency, as needed, to clarify DOB requirements.
FEMA's role may include coordination with other Federal agencies, insurance companies, or any other public or private entity to request and provide access to records to assure there is no DOB.

5.5.2 Recapture

An applicant may be required to repay all, or a portion of the funds received. The reasons for recapture include but are not limited to the following:

- An Implementing Partner or subrecipient is determined to have provided false or misleading information to the Program;
- An Implementing Partner or subrecipient withdraws from the Program prior to completion of the project;
- An Implementing Partner or subrecipient does not complete construction;
- An Implementing Partner or subrecipient fails to meet a national objective of the Program;
- An Implementing Partner or subrecipient is found to have used program funds for an ineligible activity; and/or
- An Implementing Partner or subrecipient does not report the receipt of additional insurance, SBA, FEMA, non-profit assistance and/or any other duplication of benefits received after award.

The Program will develop a detailed recapture policy for the overall CDBG-DR program. The policy, once developed, will be referenced in an update to this manual.

5.6 Elevation Requirements

The following elevation standards apply to new construction, repair of substantial damage, or substantial improvement of structures located in an area delineated as a flood hazard area or equivalent in FEMA's data source identified in 24 CFR 55.2(b)(1).

Mixed-use structures with no dwelling units and no residents below two feet above base flood elevation, must be elevated or flood proofed, in accordance with FEMA floodproofing standards at CFR 60.3(c)(3)(ii) or successor standard, up to at least two feet above base flood elevation. Implementing entities should review the UFAS accessibility checklist available at https://www.hudexchange.info/resources/796/ufas-accessibility-checklist/ along with the HUD Deeming Notice, 79 FR 29671 (May 23, 2014) to ensure that these structures comply with accessibility requirements.

All Critical Actions, as defined as 24 CFR 55.2(b)(3) within the 500-year (or 0.2 percent annual chance) floodplain must be elevated or flood proofed (in accordance with the FEMA standards) to the higher of the 500-year flood plain elevation or three feet above the 100-year floodplain elevation. If the 500-year floodplain is unavailable, and the Critical Action is in the 100-year floodplain, then the structure must be elevated, or flood-proofed at least three feet above the 100-year floodplain elevation. Critical Actions are defined as an "activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons or damage property." Critical actions include hospitals, nursing homes, police stations, fire stations and principal utility lines.

5.7 Infrastructure Program/Specific Requirements

HUD established infrastructure planning and design requirements for Grantees of this and the Prior Notice. Grantees are required to address long-tern recovery and hazard mitigation planning in their Action Plan or substantial amendment by describing how projects will:

(1) Promote sound sustainable long-tern recovery planning informed by post-disaster hazard risks;
(2) Adhere to elevation requirements of Prior Notice;
(3) Coordinate with local and regional planning efforts, including how Grantee will promote community-level and/or regional post-disaster recovery and mitigation planning;
(4) For infrastructure allocations, Grantee must describe how mitigation measures will be integrated into rebuilding activities, how infrastructure activities will be informed by cost-benefits analysis, how Grantee will ensure infrastructure does not have adverse impact on vulnerable populations, how Grantee will align investments with other planning capital improvements and infrastructure efforts and work to foster and leverage funding from other sources, and how Grantee will employ adaptable and reliable technologies to guard against premature obsolescence of infrastructure. Subrecipients and Implementing Partners will also be held to the requirements.

5.7.1 Integration of Mitigation for Resilience

The CNMI is acutely concerned with the potential impacts of future storms and therefore will prioritize mitigation across all programs to build comprehensive resilience. Resilience is the state of a community in which the foundational systems are strong and capable of withstanding, or quickly bouncing back from, a disruption. Whether this is a natural or man-made hazard or an unanticipated economic downturn, the social cohesion, diverse economic opportunities, strong infrastructure, and emergency response capacities all contribute to such resilience.

All infrastructure under the FEMA PA is being designed to consider mitigation components and this will continue to be done under CDBG-DR. proactive measures to promote risk-informed infrastructure development may include diversification of power generation, micro-grid development, relocation of critical facilities, and flood-mitigated roads.
Recipients of funds may be required to provide a narrative in Project Application of how mitigation principles and practices will be incorporated before the signing of contract agreements to ensure mitigation is a key factor from the onset of project design. The specific mitigation measures and technologies included in the project or program will again be evaluated during a Detailed Scope and Budget phase. This may be done in collaboration with HMPG work to ensure coordination the CNMI's other approaches to mitigation. Potential infrastructure or resilience projects may also be evaluated based on guidance outline in FEMA's Hazard Mitigation Assistance Guidance including:

- Technical Feasibility
- Cost and cost-reasonableness
- Effects on the environment and cultural resources
- Community support
- Promotion of community resilience
- To what extent the project design reduces vulnerability

- To what extent the project includes measures to avoid or minimize adverse impacts to floodplains, wetlands, or other environmental and cultural resources
- Accessibility accommodations for individuals with disabilities and/or access and functional needs

5.7.2 Green Infrastructure

In addition to hardening infrastructure and following elevation requirements, the CNMI will seek to incorporate the "no adverse impacts" approach (NAI) set forth by the Association of State Floodplain Managers. This strategy relies on calculated mix of mitigation approaches to ensure infrastructure development does not increase flooding risks. A key consideration in NAI is green conveyance of water through communities. All proposed projects under the Infrastructure Programs will be required to provide a narrative summary of the green infrastructure components applicable to the project during the Initial Scope and Budget Phase and are encouraged to use the ASFPM's NAI How-to-Guide for Infrastructure to assist in effective project design.[2]

Green infrastructure and sustainable design may be incorporated in multiple stages of NMHC's process for the selection and design of projects. implementing Partners must describe again in the Detailed Scope and Budget Phase, how after more in-depth design, the project will incorporate green infrastructure components.

5.7.3 Costs and Benefits

Infrastructure projects typically carry a high cost of labor and materials, relative to the continental U.S., due to the isolated geography and limited workforce in the CNMI. Each project will be informed by a consideration of cost and benefits, considering these unique circumstances, but whenever possible, should utilize local/regional talent and materials to deduce costs.

The CNMI's approach to assessing costs and benefits may be based on two existing frameworks. The first, HMPG's Guidance on cost effectiveness, relies on a Benefit Cost Analysis, where projects for which benefits exceed costs are generally considered cost effective. The project cost estimate includes a line-item breakdown of all anticipated costs, including, as applicable:

- Costs for anticipated environmental resource impact treatment or historic property treatment measures
- Costs for engineering designs/specifications, including hydrologic and hydraulic studies/analyses required as an integral part of designing the project
- Construction/demolition/relocation costs, such as survey, permitting, site preparation, and material/debris disposal costs
- All other costs required to implement the mitigation project, including any applicable project-type specific costs

Benefits in this methodology are often calculated using standard loss of function estimates provided by relevant federal agencies, which may also be utilized by the CNMI.

[2] https//www.floods.org/ace-images/ASFPMInfrastructureFinalJuly28.pdf

Given the CNMI's approach to mitigation and resilience as giving full consideration systemic, inter-related processes that promote resilience, the method produced through the National Disaster Resilience Competition (NDRC) may help to supplement some of the factors.

Under this method, to the greatest extent possible, a narrative description may be produced to identify evidence-based practices as the basis for the project proposal. This method includes the following steps:

- A full proposed cost, including Federal, Territorial, and private funding, as well as expected operations and maintenance costs and functionally related to geographically related work;
- A description of the current situation and the problem to be solved (including anticipated changes over the analysis period);
- A description of the proposed project or program including functionally or geographically related elements and estimated useful life;
- A description of the risks to the community if the proposal and any land use, zoning or building code changes are not implemented, including costs that might be avoided if a disaster similar to the qualifying disaster struck again, including costs avoided if as a result of the project remaining effective in a future disaster;
- A list of the benefits and costs of the proposal and the rationale for including each effect using the table provided according to the following categories:
- Lifecycle Costs;
- Resiliency Value;
- Environmental Value;
- Social Value; and,
- Economic Revitalization.
- A description of risks to ongoing benefits from the proposed project or program; and
- An assessment of challenges faced with implementing the proposal.[3]

NMHC will determine applicability of these cost and benefit analyses at the time of the Detailed Scope and Budget development.

5.7.4 Opportunities and Impacts

A key target papulation for this program will be low-income residents and businesses that qualify under Section 3. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent possible, provide training, employment, contracting and other economic opportunities to low- and very low-income persons, especially recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons. Each agency receiving funds under the Infrastructure Programs will receive technical assistance from NMHC and direct hiring and training assistance from CNMI DOL to ensure their projects are compliant with Section 3 to the greatest extent feasible.

[3] https://www.hudexchange.info/resources/documents/NDRC-Phase-2-NOFA-Appendix-H-Benefits-Cost-Analysis-Instrucctions.docx

It is a guiding principle of this allocation to combat the effects of disproportionate impacts for vulnerable populations. Each project will be assessed during design and implementation to determine who benefits from the resulting infrastructure repairs and improvements. For all three Infrastructure Programs, geographic and demographic analysis will be used to determine how oft-neglected communities will be impacted by a project. In the CNMI, low- and moderate-income residents will be the priority beneficiaries for all infrastructure work.

These guiding principles should be incorporated into the projects under the Infrastructure Programs and include:

- Design of processes and materials to facilitate access and full participation by at-risk groups.
- Facilitating access to financial resources, technical assistance, and logistics support to ensure adequate preparation and full participation.
- Ensuring that at-risk groups can articulate and represent their interests.
- Ensuring that assessment protocols for policies, programs, strategies, and projects include measures for assessing the impact on at-risk groups.

5.7.5 Covered Projects

Requirements under 83 FR 40314 state that projects surpassing a total investment of $200 million threshold or that are complex enough in the opinion of the Federal Permitting Improvement Steering Council will require enhanced oversight including additional environment reviews. While the CNMI has not identified any infrastructure projects that currently reach this threshold, should any projects meet this criteria, the CNMI may choose to complete these additional requirements under Fixing America's Surface Transportation, Title 41 (FAST-41), which established federally accepted procedure to improve early consultation and coordination among government agencies; increase transparency through the publication of project-specific timetables with completion dates for all federal authorizations and environmental reviews; and increase accountability through consultation and reporting on projects.[4] per the Federal Register Notice, CDBG-DR grantees may choose to participate in reporting on their environmental review and permitting of covered projects under FAST-41.

NMHC may be administering projects which meet this threshold through any of the two Infrastructure Programs. NMHC will be actively reporting environmental reviews and permitting for projects of all sizes to HUD and relevant Territorial agencies but does not currently plan to participate in FAST-41.

[4] https://www.energy.gov/oe/mission/transmission-permitting-and-technical-assistance-division/fast-41

APPENDIX

1. **Appendix A: Crosscutting Requirements and Process Overview**
2. **Appendix B: Project Application Form**
3. **Appendix C: HUD Rider**

APPENDIX A: CROSS CUTTING REQUIREMENTS AND PROCESS REVIEW

1.0 Crosscutting Requirements

1.1 Fair Housing

The Fair Housing Act requires all grantees, Implementing Partners and/or developers funded in whole or in part with HUD financial assistance to certify that no person was excluded from participation in,
denied the benefit of, or subjected to discrimination in any housing program or activity because of
their age, race, color, creed, religion, familial status, national origin, sexual orientation, military status, sex, disability or marital status. The Program complies with and enforces the Civil Rights requirements of Title I of the Housing and Community Development Act (HCDA) and the Fair Housing Law. Projects must also assess how planning decisions may affect members of protected classes, racially and ethnically concentrated areas, as well as concentrated areas of poverty; will promote the availability of affordable housing in low-poverty, non-minority areas where appropriate; and will respond to natural hazard-related impacts. Program staff will use demographic, geographic, and social vulnerability analyses to determine any positive or negative impacts to protected classes. Should a project present negative impacts, project scope or design will be re-assessed to mitigate such impacts.

1.2 Environmental Review

Early environmental coordination must be completed to ensure effective implementation of all CDBG-DR Programs. CDBG-DR funding is contingent upon compliance with both Territorial and
federal environmental regulations. This includes compliance with NEPA and related environmental and historic preservation legislation and executive orders. In general, NMHC serves as the lead agency for purposes of NEPA.

HUD's Environmental Review process allows grantees to serve as the "Responsible Entity" to assume environmental review responsibilities under NEPA. As the grantee, NMHC serves as the Responsible Entity as it relates to environmental review responsibilities under NEPA.

Within NMHC Environmental Review Staff will be responsible for performing environmental reviews and compiling the Environmental Review Records (ERR). Reviews are conducted either directly or using qualified environmental service contractors. NMHC's Corporate Director, as the Certifying Officer, is ultimately responsible with certifying that CNMI's environmental reviews are in compliance with NEPA and HUD environmental regulations.

Federal Register Notice FR-6109-N-01 authorizes recipients of CDBG-DR funds under the Appropriations Act to adopt any environmental review, approval, or permit performed by a Federal
agency for the same project to satisfy responsibilities with respect to environmental review, approval, or permit. NMHC will notify HUD in writing of its decision to adopt another agency's

environmental review. NMHC will also retain a copy of the review in its environmental records. Further information concerning the environmental review process is set forth in the Environmental
Policies and Procedures.

1.3 Labor Standards

The Davis-Bacon and Related Acts (DBRA) applies to all federally-funded or assisted construction
contracts in excess of $2,000. This may apply to projects that are fully or partially funded with CDBG-DR, including FEMA or FHWA match programs. In matched projects, only the scope of the CDBG-DR portion of the project are subject to crosscutting requirements DBRA requires all workers employed by contractors or subcontractors on CDBG-DR programs, be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with DBRA, as amended. DBRA also requires that workers on federally-assisted projects are paid not less than weekly.

Wage information for labor under CDBG-DR programs will be tracked in detail by both NMHC and relevant Implementing Partners and subrecipients throughout the life of the Program. Compliance for this requirement may be tracked in the following ways:

1. Additional NMHC Program staff hired to track wages and verify contractor and agency compliance

2. External contractor hired by NMHC to track DBRA compliance

3. Enhanced TA provided to Implementing Partners to track DBRA compliance
Procedures for this process are currently under development and will be incorporated in a future update to this document.

For prime contracts in excess of $100,000, contractors and subcontractors must also, under the provisions of the Contract Work Hours and Safety Standards Act, as amended, pay laborers and mechanics, including guards and watchmen, at least one and one-half times their regular pay for all hours worked over 40 in a work week. Additionally, NMHC must follow the reporting requirements per HUD and U.S. Department of Labor (DOL) regulations. This requirement also extends to NMHC Implementing Partner, and contractors.

The Fair Labor Standards Act of 1938 (FLSA), as amended, establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week. These labor standards
are applicable to the entire construction contract whether or not CDBG-DR funds finance only a portion of the project.

1.4 Limited English Proficiency

Federal Executive Order 131661 requires NMHC and all satellite offices, programs, Implementing Partners, contractors, subcontractors, and/or developers funded whole or in part with CDBG-DR financial assistance to ensure fair and meaningful access to programs and services for families and individuals with Limited English Proficiency (LEP) and/or deaf/hard of hearing.

Compliance with this requirement is detailed in NMHC's Action Plan (LAP) and will be coordinated and tracked by the Monitoring and Compliance division at NMHC. Depending on the program, NMHC, Implementing Partners, and subcontractors will share the following expectations to comply with this Executive Order:

1. Document Translation: All documents defined as "vital documents" will be translated into the CNMI's three dominant languages: Chamorro and Carolinian, Implementing Partners, and sub-recipients. Vital documents will be made available in other languages upon request. A "vital document" is defined as a document that includes information regarding eligibility requirements, applications and instructions, program eligibility determinations, and appeals procedures. NMHC may provide assistance to ensure this requirement is met.

2. Where required, seek feedback from the community the project serves (advocacy groups serve vital role).

Language maps provided in the Action Plan will be used to determine the project's location and subsequent language context and if proactive LEP outreach will be required.

1.5 Minority and/or Women-Owned Business Enterprises

The Federal Executive Order 12432 guidelines require selected federal agencies to promote and increase the utilization of Minority-Owned and Women-Owned Business Enterprises (M/WBEs). Following procurement guidelines under 2 CFR 200.321, NMHC must make efforts to ensure that all Implementing Partners, contractors, subcontractors, and/or developers funded in whole or in part with HUD CDBG-DR financial assistance encourage participation in contracts and other economic opportunities by small and minority firms, women-owned business enterprises (WBEs), and labor surplus area firms whenever possible. NMHC will accept a MWBE certification from another state, local or regional, DPW, SBA HUB Zone, SBA 8-A certification (economically disadvantaged and 51% locally-owned), and other eligible certification processes. Documentation and goals regarding M/WBE percentages and reporting will be determined in the contracting agreements.

1.6 Section 3 Economic Opportunities

Section 3 is triggered when the award of CDBG-DR funds for new construction and rehabilitation projects creates the need for new employment, contracting, or training opportunities.

APPENDIX A: CROSS CUTTING REQUIREMENTS AND PROCESS REVIEW

Section 3 of the Housing and Urban Development Act of 1968 is to "ensure that employment and other economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed to low and very low-income individuals, especially recipients of government assistance for housing and to businesses which provide economic opportunities to low and very low-income individuals."

The Section 3 program requires that recipients of HUD CDBG-DR funds, to the greatest extent feasible, provide (a) employment and training, and (b) contracting opportunities for low- or very low-income residents in connection with construction projects in their neighborhoods. It also specifically encourages economic opportunities for households who are recipients of government assistance for housing. NMHC and all administering entities will follow and require relevant contractors to follow Section 3 requirements in contracting.

Section 3 applies to the Commonwealth of the Northern Mariana Islands (CNMI), as recipient of HUD funding, as well as to Implementing Partners receiving HUD funding exceeding $200,000. Whenever any portion of HUD funding is invested into projects involving housing construction, demolition or rehabilitation, commercial/private improvements for economic development, or other public construction (e.g., roads, sewers, community centers, and public facilities), the requirements of Section 3 apply.

In conjunction with construction activity, Section 3 applies to projects that are fully or partially funded with CDBG-DR assistance, including projects that are financed in conjunction with CNMI, local, or private matching or leveraged funds, provided that the Section 3 monetary threshold requirements are met. In particular:

□ In conjunction with construction activities, Section 3 applies to contractors or subcontractors that receive contracts more than $100,000 for Section 3-covered projects/activities. Once it is determined that Section 3 applies to a project, the requirements apply to all contracts for construction work arising in connection with that project exceeding $100,000, including those not funded with CDBG-DR assistance. Contractors or subcontractors are required to comply with the Section 3 regulations in the same manner as the CNMI; and

□ "Section 3-covered contract" includes professional service contracts, provided that the work to be performed is generated by the expenditure of funds in furtherance of Section 3 covered work (e.g., housing construction, housing rehabilitation, and other public construction), arising relating to construction projects. Professional service contracts that may constitute Section 3-covered contracts include construction contract oversight, engineering, architectural, environmental and property evaluation, construction progress and draw inspections, and prevailing wage labor compliance.

The regulations pertain to new hires required to complete Section 3-covered projects and activities.

If the expenditure of funding for an otherwise covered project and activity does not result in new employment, contracting, or training opportunities, Section 3 reporting will still be required. When NMHC awards CDBG-DR funds to other governmental departments, nonprofit organizations, subrecipients or other funded entities, NMHC will require they document how reasonable attempts were made to reach numerical goals set forth at 24 CFR Part 135.30. NMHC will inform its Implementing Partners and other funded entities of the requirements of

Section 3, including the language required to be inserted into all construction-related contracts, assist them and their contractors with achieving compliance, and monitor their performance with respect to the Section 3 objectives and requirements.

Implementing Partners will receive training on this requirement and methods of compliance, technical assistance from Program staff, and continual monitoring from NMHC. Currently, a Section 3 Plan is under development, the details of which will be included in an update to this manual.

1.7 System for Award Management (SAMs)

SAM is the federal System for Award Management and is a requirement for doing business with the U.S. government. All vendors are required to register in SAM in order to be awarded contracts under the CDBG-DR program. Vendors are required to complete a one-time registration to provide basic information relevant to procurement and financial transactions. Vendors must update or renew their registration annually to maintain an active status.

1.8 Uniform Relocation and Real Property Acquisition Act (49 CFR 24)

The Uniform Relocation Assistance and Real Property Acquisition Act (URA), is a federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The URA's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects. The phrase "program or project" is defined in 49 CFR Part 24 as, "any activity or series of activities undertaken by a federal agency or with federal financial assistance received or anticipated in any phase of an undertaking in accordance with the federal funding agency guidelines."

The objectives of the URA are:

• To provide uniform, fair and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally funded projects;

• To ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement;

• To ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means;

• To help improve the housing conditions of displaced persons living in substandard housing; and,

• To encourage and expedite acquisition by agreement and without coercion.

49 CFR 24.101(c)(1) provides that the subpart B requirements also apply to the acquisition of permanent and/or temporary easements necessary for the project. However, 49 CFR 24.101(c)(2) provides an exception for the acquisition of temporary easements which exclusively benefit the property owner.

2.0 Contracting Agreements

2.1 Implementing Partner and Subrecipient Criteria

As a CDBG-DR program Implementing Partner or subrecipient, entities should demonstrate the following qualities:

Prior experience with executing CDBG, CDBG-DR, or other federal funded projects including, but not limited to, knowledge or prior experience with the following:

☐ 2 CFR 200 requirements;

☐ Documentation that the project meets a CDBG National Objective; and

☐ Documentation that the project's expenditures are for CDBG Eligible Activities.

Have internal staff capacity to effectively manage CDBG-DR grants, including but not limited to:

☐ Capacity to perform financial management and oversight;

☐ Capacity to perform grant management functions as demonstrated through prior experience with managing grants with in-house staff or with a grants management consultant;

☐ Internal auditing capability;

☐ Administrative staffing; and

☐ Knowledge of both federal and local procurement and contracting requirements.

Knowledge and experience in financial management of Federal grant funds, specifically of CDBGDR funds; and the ability of financial systems to meet all federal and Territorial requirements including, but not limited to:

☐ Accounting methods, and budget controls;
☐ Proof that expenditures are necessary, reasonable, and directly related to the grant;
☐ Monitoring and controls of timely expenditure of Federal funds;
☐ Compliance with 2 CFR 200;

□ Completion and results of prior audits under 2 CFR 200 Subpart if applicable;
□ Completion and results of any other audits as it relates to financial capacity;
□ In good standing with the CNMI (for entities other than public entities); and,
□ Davis-Bacon and all labor standards, Section 3, M/WBE, Civil Rights, Section 504, Uniform Relocation Act, Fair Housing Act, ADA, Age Discrimination Act, and records management.

Based on the Capacity Assessment and Initial Scope and Budget Phase, NMHC will develop a Subrecipient Agreement between the agencies for the implementation of the CDBG-DR Programs.

2.2 Capacity Assessment and Initial Scope and Budget
Implementing Partners and subrecipients are required to produce a Capacity Assessment and Project Application Form (Appendix B) for the Program to develop the Intergovernmental Agreement. The Capacity Assessment and Project Application Form are based on a standard form provided by NMHC to all Implementing Partners.

The Capacity Assessment and Project Application submission is a package of information submitted to NMHC.

The purpose of the CDBG-DR Capacity Assessment is to proactively identify the capacity and management practices of the potential Implementing Partners of CDBG-DR funds being administered by NMHC. These types of assessments can be a useful tool in identifying ways to improve economy, efficiency, and effectiveness of disaster recovery operations, understand the level of compliance with relevant rules and regulations, and provide guidance and insight for ongoing monitoring of Implementing Partners.

The methodology to be used is based on the 2 CFR 200 requirements and also HUD's guidance on assessing capacity of Implementing Partners. The process includes assessing the Implementing Partner's history of grant management, program and activity experience, staffing capacity and experience, financial processes, and knowledge of relevant rules and regulations.

2.2.1 Capacity Assessment Process Overview

1. Independent research and information gathering – A review of publicly-available documentation shall be undertaken to provide context for interviews with stakeholders.

Documents to review shall include:

a. Current Action Plans and associated regulations
b. News/media articles related to the agency
c. Agency websites and online materials
d. Previous grant applications or public reports on previous grant funded spending
e. Prior federal/local OIG reports and other audit/inspection reports relevant to agency programs/projects or operations

f. or other annual audit reports

2. Analysis: Information will be reviewed, and observations will be compiled to identify areas/items for consideration in conducting site visits, additional stakeholder discussions and in preparing the overall summary.

3. Document request – A document request list will be sent to each agency regarding documentation which is needed from them in order to facilitate the process.

a. Accounting policies and procedures including record retention policy, system of internal controls, and source documentation retention policy.

b. Procurement policies and procedures

c. Grants management policy and procedures for disaster recovery funds (including fraud, waste, and abuse reporting).

d. Copy of last Single Audit final report (or applicable annual audit if not publicly available

4. Analysis: Policies will be reviewed for level of detail present and capacity to manage significant amounts of Federal disaster grant funding. Audit reports will be reviewed for information related to internal controls.

5. Site visit – a site visit meeting shall take place with key individuals involved in managing federal disaster grant funded projects, in particular the managing of CDBG-DR funded projects
a. Agency participants: Leadership, finance/accounting, procurement, grant managers, etc.

2.3 Project Application Form

The purpose of the Project Application Form is to document:
- How the project is tied to one of the two disasters.
- How all activities of the project are eligible under the Program
- How the project meets one of HUD's three National Objectives

The Project Application Form consists of:

1. Project eligibility review under 24 CFR 570.482

2. A project description (include general timeline and how the project could include mitigation)

3. Tie to the disaster

4. Assigned National Objective according to 24 CFR 570.483

5. Project cost estimate

6. Statement of justification and recommendation

7. Other relevant information

8. Initial Duplication of Benefits review

NMHC engages primarily with the entities who have relevant jurisdictional oversight for each project and selects a suitable Implementing Partner for each project by direct, discretionary selection.

2.4 Contract Agreement Details

NMHC works with Implementing Partners and subrecipients to execute the Subrecipient Agreement which serves as the mechanism for the transfer of funds to the agency and submission of required documents to establish proof of compliance with all federal and local laws as applicable. For projects receiving CDBG-DR funding for multiple project phases, individual amendments may be utilized for each phase. Each amendment will include the scope, budget, and performance metrics of the applicable phase.

2.4.1 Subrecipient Agreements

A subrecipient is considered a public or private nonprofit agency, authority or organization, or community-based development organization receiving CDBG-DR funds from NMHC (or another subrecipient) to undertake CDBG-DR eligible activities (24 CFR 570.500(c)). For the CDBG-DR Programs, NMHC enters into "subrecipient agreements" with these partners. These agreements allow NMHC to ensure that every subrecipient is prepared and understands requirements needed to satisfy applicable CDBG-DR award requirements, as well as local laws. These agreements may include provisions to help determine the subrecipient's procedures are sufficient to reduce risk of noncompliance and to ensure that NMHC can meet its own responsibility to HUD for performance and financial reporting.

2.4.2 Memorandums of Understanding (MOUs)

Most projects requiring funding from the CDBG-DR Programs will likely be implemented by Partner CNMI agencies, referred to hereafter as Implementing Partners. NMHC selects a suitable Implementing Partner for each project by direct, discretionary selection. Because many of the projects requiring a local cost share are designed to further the recovery of the local governments and repair critical infrastructure impacted by Typhoons Mangkhut and Yutu, NMHC engages primarily with the entities who have relevant jurisdictional oversight for these projects.

The agreements should include:

• Scope of Work that includes performance measures and completion of pertinent documents

• CDBG-DR Compliance Provisions: Equal Employment Opportunity, Section 504, Section 3, Access to Records, Duplication of Benefits, etc.

• Statement of Assurances that covers all federal regulations and CDBG-DR requirements

• Budget line-items with general categories such as Salaries & Benefits, Supplies, Travel, Professional Services, & Contracts: maintain detailed budget separately from the contract

• Term of Agreement

NMHC CDBG-DR Division staff and will work with Implementing Partners throughout implementation of disaster recovery programs' phases to ensure that:

□ An approved program is implemented in a manner that is consistent with application and public procurement process;

□ Approved activities are carried out and completed in a timely manner;

□ Activities and certifications are conducted in accordance with the requirements and the primary objectives of the Subrecipient Agreement, program requirements, and other applicable CNMI and federal rules, regulations, policies, and related statures; and,

□ Administrative systems, policies, and procedures provide adequate protection for the prevention and mitigation of fraud, waste, and abuse.

2.4.3 Fraud, Waste, and Abuse

HUD requires that specific policies are developed to prevent fraud, waste, and abuse. Therefore, the Program has established procedures for verifying the accuracy of information provided by program applicants, vendors, and Implementing Partners. The Program's Anti-Fraud, Waste and Abuse (AFWA) check is designed to identify discrepancies and risk-relevant issues in information provided by third parties that may be indicative of fraud, waste, and abuse. The Program will ensure that accurate information obtained from third party vendors and AFWA checks are conducted systematically, utilizing standardized research methodologies, and flag identification processes for consistency and equitable treatment across relevant sources. Flag codes, notations, and relevant supporting documents are checked for errors.

2.4.5 Timely Expenditure of Funds
As per the Supplemental Appropriations for Disaster Relief Requirements, 2018 (P.L.s 115-254 and 116-20), funds must be disbursed by November 24, 2026 - six (6) years from the signing of the initial Grant Agreement between HUD and NMHC.

3.0 Implementation

3.1 Inter-agency Liaisons

Inter-agency coordination will be a critical component of all projects implemented through the CDBG-DR Programs. As such, it is strongly encouraged that all Implementing Partners increase their staff capacity with a dedicated Interagency Liaison in order to effectively remain compliant with HUD CDBG-DR regulations, follow local planning and procurement requirements, as well as to coordinate timelines of complimentary projects with other government agencies. NMHC staff will provide TA to ensure this agency staff is trained to perform the role.

3.2 Technical Assistance (TA)

To assist Implementing Partners in complying with all CDBG-DR regulations and any NMHC policies, as well as to build capacity, CDBG-DR Program staff and project coordinators will provide Implementing Partners with necessary TA throughout the life cycle of the project. NMHC's TA is comprised of formal trainings (prepared materials, in-person presentations and webinars) and informal trainings (verbal or written advice, provided as needed, through in-person meetings, emails or telephone calls). The nature and rigor of TA is continuously tailored to meet the Implementing Partner's unique needs.

3.3 Detailed Scope and Budget Phase

Once a project's Initial Project Application is approved, the Implementing Partner or subrecipient completes and submits to NMHC the detailed project scope and budget. CDBG-DR Program staff and project coordinators (if applicable) provide the applicants with support in completing the detailed scope and budget. The full package of information developed at this phase provides:

- ☐ Information pertaining to CDBG-DR eligibility
- ☐ A detailed description of the project
- ☐ Tie to the disaster
- ☐ A detailed project cost estimate
- ☐ Detailed Duplication of Benefits documentation
- ☐ Project maps detailing location of project activities
- ☐ Project maps detailing project service area
- ☐ Project time schedule with relevant phasing and milestones
- ☐ Activity beneficiary form
- ☐ Green Infrastructure Components

□ Section 3 projection

Duplication of Benefits documentation refers to documents needed for the DOB Calculation. An example is provided below based on HUD's guidance, though additional line items may be added by the NMHC as necessary for individual projects.

3.3.1 Project Application Acceptance

Once a project is advanced by NMHC staff, the Implementing Partner will be notified of the decision via an acceptance letter that is sent electronically. A copy of this letter is placed in the project file. The results of all Duplication of Benefits checks will be available in the project file.

3.5 Project Development Phase

In the project development phase, NMHC provides substantial TA to Implementing Partners so they remain in compliance with all requirements through the life of Appendix A: Cross Cutting Requirements and Process Overview 11 the project including the project development phase. The following steps, if relevant to a project, are taken in the project development phase:

1. Procurement of Architectural and Engineering (A/E) professionals to design project if not previously procured.

2. Environmental review completed (unless already adopted by another federal agency).

3. Development of project design by A/E professionals.

4. Preparation of the environmental review record by NMHC.

5. Acquisition of real property, rights of way, permits, by Implementing Partners.

6. DPW agency approvals of plans and permits.

7. Creating and initiating Section 3, MWBE outreach strategies and plans for the project.

8. Obtainment of federal wage decisions and local wage decisions by Implementing Partners.

9. Environmental review record approved and formal "Release of Funds" for construction letter sent.

10. MOU amended for changes in scope or budget (if required).

11. Authorization to proceed to advertise for bids issued.

12. Preparation of the bidding documents for construction by Implementing Partners.

13. Authorization of the subrecipients/Implementing Partner to proceed to bidding/contract award by NMHC.

All projects may not proceed to procurement and construction until environmental review is complete.

3.6 Construction Services Bidding/Pre-construction Phase

NMHC provides substantial TA to Implementing Partners so they remain in compliance with all requirements through the life of the project. This is particularly true for the pre-construction bidding phases of the project. CDBG-DR Program staff and the project coordinators will review and work closely with the subrecipients and Implementing Partners in this phase. The contract should be awarded to the lowest-priced responsible bidder that has complied with the specifications. In some cases, the lowest bid received will exceed the amount of funds allocated for the project. When this happens, subrecipients and Implementing Partners must work with CDBG-DR Program staff to determine the best option to proceed. Agencies may advertise the Invitation For Bid (IFB) after receiving a letter, or e-mail notification from NMHC authorizing them to do so. This communication, letter or email follows:

- ☐ NMHC review of plans and specifications
- ☐ Environmental clearance of all project activities
- ☐ Verification that all necessary lands, rights-of-way, and easements have been acquired
- ☐ Verification that all other program requirements have been met.

Upon completion of bidding, subrecipients and Implementing Partners enter the pre-construction phase, which focuses on the subrecipients and Implementing Partners' understanding of CDBG-DR compliance. During this phase, specific pre-construction and construction phase TA is provided to keep agency projects HUD CDBG-DR eligible.

All Implementing Partners must comply with the detailed information on bidding and procurement, available in the Procurement Policies and Procedures.
During this phase:

1. NMHC will set up agencies/subrecipients and contractors in the system of record for financial reporting and compliance (Section 3, Davis-Bacon, M/WBE, and other NMHC requirements). Each project will contain a project file and be set up at the begging of each project to store evidence of compliance with each crosscutting requirement.

2. Agencies/Implementing Partners will report to NMHC staff on compliance with CDBG-DR and program requirements and NMHC staff will input the data into the system of record.
3. Change orders will be reviewed and approved/denied.

The exact procedures for this process are under development as the information management systems for these records have not been procured by NMHC. Upon procurement, a more detailed process flow of information for this phase will be included in an update to this manual.

3.7 Construction Phase

During the construction phase, subrecipients and Implementing Partners will be responsible for:

o Review of weekly Davis Bacon payrolls (or CNMI payrolls as applicable)
o Conducting interviews of workers for all contractors and sub-contractors
o Monthly status reports provided to NMHC
o Review and approval of contractor pay applications
o Review and approval or rejection of change orders
o Submission of claim vouchers to NMHC
o Contractor payments
o Implementing Partner continues to utilize the system of record to report on Section 3, Davis-Bacon, M/WBE, and other NMHC requirements

If a change to the project is necessary during construction, contractors must submit the preliminary construction change order to Implementing Partner for review. NMHC will review and revise the requested change order to ensure that all cost and changes are CDBGDR eligible and procured according to requirements of 2 CFR 200 for all Program activities; for those who administer procurement through the DPP, an additional review from that office will be required. The review requirements may include but are not limited to:

1. Sufficient grant or local funds are available to meet any increased costs;
2. Documentation that all items listed on the change order were reviewed for price reasonableness;

3. Documentation that all items listed on the change order are included in the scope of the environmental review record; and,

4. Documentation that all items listed on the change order are within the scope of the approved application.

If a change of scope or cost occurs after application approval, but before construction begins, NMHC will issue an application amendment.

4.0 Procurement

In addition to verifying the accuracy of information provided by program applicants, the Program verifies the accuracy of information provided by its vendors. As part of the NMHC's procurement process, contractors are required to complete a vendor background questionnaire and to report derogatory information relating to the contractor and/or its key personnel. Prior to Contract execution, the Program's procedures include, but are not limited to: reviewing debarment lists, searching known databases for information (such as tax liens and incorporation

documents), conducting internet research, and obtaining information available from CNMI and federal agencies (such as substantiated investigative findings and audit reports). The Program has established regular channels of communication with other CNMI and local government agencies who are contracting with various entities for services relating to storm recovery efforts in order to be on guard for issues relating to contractor fraud, waste, and abuse.

Implementing Partners who have a contract agreement with NMHC and any subsequent parties must follow federal and NMHC's procurement rules when purchasing services, supplies, materials, or equipment. The procurement requirements found in 2 CFR 200 establish CDBG-DR standards and guidelines for the procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services.

Implementing Partners must also follow applicable conflict of interest provisions in Federal and local regulations. If a real or perceived potential conflict of interest is identified, Implementing Partners must contact NMHC for further guidance. Additional information on procurement requirements can be found in NMHC's Procurement Regulations

4.1 Conflicts of Interest

The CDBG-DR Division requires all program staff to disclose any relationship with an Implementing Partner or contractor. CDBG-DR Program staff, sub-grantees, program administrators, and contractors who disclose such relationships are placed in roles where there is no opportunity for them to display favoritism or collude in order to financially or otherwise benefit themselves, the agency, or the contractor. For example, a customer representative may not perform work on the application of a family member. For purposes of this regulation, "family" is defined to include spouse, parents, mother-in-law, father-in-law, grandparents, siblings, brother-in- law, sister-in-law, and children of an official covered under the CDBG-DR conflict of interest regulations at 24 CFR 570.489(h).

NMHC may consider granting an exception to the conflict of interest provisions per 24 CFR 570.489(h)(4) if NMHC has determined that the subrecipient has adequately and publicly addressed all of the concerns generated by the conflict of interest and that an exception would serve to further the purposes of Title I of the Housing and Community Development Act of 1974, as amended and the subrecipient has complied with the requirements listed in 24 CFR 570.489(h)(4)(i) and (ii).

NMHC would consider whether the:

1. exception provides a significant cost benefit or essential degree of expertise;
2. opportunity was provided for under open competitive bidding or negotiation;
3. person affected is an LMI person;
4. affected person has withdrawn from his or her functions or responsibilities;
5. interest or benefit was present before the affected person was in a position to benefit from the conflict of interest; or,

6. undue hardship results from failure grant the exception.

4.2 Professional Services

In order to develop a detailed project description and a conceptual cost estimate for a project scope and budget, NMHC or the Implementing Partner may engage the services of professional architects or engineers. If the agency engages the architect or engineer directly, the agency must comply with CDBG-DR procurement guidelines. The scope of the procurement may also include future services for design, surveying, and construction inspection/representation services. The CDBG-DR Programs may allow Implementing Partners to conduct professional services using force account labor with prior approval and with an understanding that additional oversight from NMHC to ensure cost reasonableness in lieu of competitive bidding.

The procurement of professional services process is as follows:

1. The Implementing Partner prepares and publicizes RFP/RFQ, soliciting responses from an adequate number of sources, through NMHC and conforming with NMHC's procurement regulations.

2. The Implementing Partner/NMHC conducts a technical evaluation of responses and selects the most advantageous offer.

3. The Implementing Partner/NMHC verifies response eligibility, using system for award management.

4. The Implementing Partner/NMHC conducts contract negotiations.

5. NMHC awards a contract to the selected contractor.

6. The Implementing Partner executes contract.

4.3 Construction Services
NMHC provides substantial TA to Implementing Partners so that projects remain in compliance with all requirements through the life of the project. This is particularly true for the pre-construction bidding and construction phases of the project. NMHC notifies the Implementing Partner that it will advertise for bids following the completion of:
- ☐ NMHC review of plans and specifications
- ☐ Environmental clearance of proposed construction activities
- ☐ Permit approval from local permitting agencies and/or federal agency as required
- ☐ Verification that all lands, rights-of-way and easements have been acquired
- ☐ Verification that all other program requirements have been met.

After notification to advertise for bids has been issued, the Implementing Partner may proceed with public advertising for bids in accordance with Federal and local procurement

standards.

5.0 Administrative Records

5.1 Recordkeeping

Implementing Partners and subrecipients must establish a system for recordkeeping that assists NMHC with the review of files for compliance. In other words, records should be kept in a manner that clearly tells the whole story of a Community Development Block Grant Disaster Recovery (CDBG-DR) project from beginning to end. The Implementing Partner is responsible for maintaining all records pertinent to a grant, including supporting documentation, for three (3) years from the date NMHC closes the CDBG-DR program with HUD. Because this required record retention period is not an exact date or time period, NMHC will notify Implementing Partners when the program has been closed with HUD and include the end date of the record retention period. A list of potential records, by activity, can be found in the Recordkeeping and Reporting Policy.

5.2 Reporting

Implementing Partners are required to submit a Monthly Performance Report (MPR) to NMHC. Monthly reports will be used to assess program progress, timeliness, and to justify needs. It is important because it provides NMHC with information that is required to be provided to the HUD on a quarterly basis. Therefore, reports must be submitted on time and accurately. Submission of the required Monthly Performance Report begins with the first report deadline after the Implementing Partner receives project approval and continues until the Implementing Partner has submitted the Final Monthly Performance Report and the closeout forms. The report template can be found in the Administrative Manual.

6.0 Official Monitoring Phase

NMHC will conduct interim official monitoring as needed through the life of the project. The official monitoring process includes the following:

More information on this phase is available in the Monitoring and Compliance Manual.

APPENDIX B: PROJECT APPLICATION

APPENDIX

1. **Appendix A: Crosscutting Requirements and Process Overview**
2. **Appendix B: Project Application Form**
3. **Appendix C: Intergovernmental Agreement**

Northern Marianas Housing Corporation
Community Development Block Grant – Disaster Recovery (CDBG-DR) Program

CDBG-DR Project Application Form
(Scope, Eligibility, and Budget)

Company/Agency Name: _____

Project Name: _____

Northern Marianas Housing Corporation
Main Office
P.O. Box 500514
Saipan MP, 96950
Phone (670)234-6866

Northern Marianas Housing Corporation
CDBG-DR
(670)233-9447

GENERAL DESCRIPTION FORM INSTRUCTIONS

Mark the appropriate box at the top of the form to indicate whether this is the original application or amended application. An amended application must be submitted each time there is a change to the project. Please enter the amendment number that corresponds to each change. (ex: *First change to the original approved application would be Amended Application #1)*

1. In the **Applicant Name** box indicate the entity's name (ex: *Northern Marianas Housing Corporation*), the person in the applicant's office to be contacted regarding this application, address, phone numbers of the entity requesting funds and contact person, and e-mail address of contact person.

2. **Program.** Select program your proposed project falls under.

3. In the **Project Name** box indicate the name of the project (ex: *Building of Low/Mod Rental Units*).

4. In the **Architectural/Engineering Firm** box indicate the name, address, phone number, and e-mail address of the architectural/engineering firm for this project if one was hired by the applicant.

5. In the **Environmental Firm** box indicate the name, address, phone number, and e-mail address of the environmental firm for this project if one was hired by the applicant.

6. **Tie to the Disaster.** Provide a detailed explanation on how your project is tied to Super typhoon Yutu and/or Typhoon Mangkhut. ***Note:*** *Please provide before and after pictures if appliable, reports or data received to support your proposed activity.*

7. **Project Description.** Provide a concise description of the project for which you are requesting funds. The description should tell the entire story of the proposed project that will enable NMHC to make a sound decision on the eligibility of the project. Please respond to as many questions as possible that pertain to the proposed project in this section. If the question does not apply to the project, please enter "N/A".

8. In the **National Objective** box indicate which national objective will be addressed by the project.

9. **Eligible Activities.** Select the appropriate eligible activity that your proposed project will fall under. Most CDBG-DR appropriations require funds to be used for necessary expenses for activities related to disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in the most impacted and distressed areas.

   The activity must be CDBG-DR eligible or allowed via a waiver, address a disaster-related impact in a Presidentially declared county, and meet a national objective. Disaster-related activities are those that demonstrate (1) a logical connection to the disaster, and (2) how the activity will contribute to long-term recovery. ***Note:*** *Grantee must determine what documentation is sufficient and reasonable to show how activities respond to disaster-related impact.*

10. **Duplicate of Benefits.** Provide information that may be seen as an additional funding source (ex. Insurance, monetary donations, FEMA, SBA) for the intended project.

Note: *The applicant's Organizational Head must initial the appropriate pages, sign and date the completed application and the project budget to signify approval. Type the* ***Organizational Head's*** *name and title in the appropriate boxes. A signature signifies the approval by the Organizational Head.*

Please attach additional sheet(s) if extra space is needed.

General Description Form

Place a check mark in the appropriate box: ☐ Original Application ☐ Amended Application #_____

1. Applicant Name, Contact Person's Name, Address, Phone Number, and Email Address:
2. Program: ☐ Housing ☐ Infrastructure ☐ Economic Revitalization ☐ Planning ☐ Public Services/Public Facilities
3. Project Name:

4. Name, Address, Phone Number, and Email Address of Architectural/Engineering Firm: ***(if applicable)***	**5. Name, Address, Phone Number, and Email Address of Environmental Firm:** ***(if applicable)***
	Date of ERR: ***(if applicable)***

6. Describe in detail, your project's physical loss or social impact or economic impact or loss in function of a system, that will serve as a "Tie to the Disaster":

7.	**Project Description** ***(Answer the questions below)***
a.	Based on the CNMI action plan and the program selected in section 2 of this form, describe the proposed project to be funded with CDBG-DR funds. This section should include the project timeline.
b.	Briefly explain the needs to be addressed with the proposed project
c.	Show that the project considers and/or proposes a mitigation plan to minimize damage in the event of future floods or typhoons.
d.	How extensive is the proposed construction? Is there site work, digging/earthwork, etc.?
e.	Identify the proposed improvements, location of the proposed improvements, and/or project (making sure to answer who owns the property, what is near and around i.e. landmarks, and where it is located). Current size/capacity of and area served by the project, etc.

f.	Describe whether the project will require the acquisition of property, easements, or right-of-way and the approximate number of parcels to be acquired.
g.	Describe how the project relates to existing infrastructure. For example, if you plan to install new sewage collection lines, then can the treatment plant handle the increase?
h.	Is there green infrastructure or other sustainability design components? To complete this section, green infrastructure is defined as the integration of natural systems and processes, or engineered systems that mimic natural systems and processes, into investments in resilient infrastructure. "Green Infrastructure" takes advantage of the services and natural defenses provided by land and water systems such as wetlands, natural areas, and vegetation, while contributing to the health and quality of life of those in recovering communities.
i.	For government and private developers, describe how people will benefit from the project and indicate whether the benefits will be direct and/or indirect. Direct benefits are defined as those that will take place on private property, such as an increased stock of housing units or utility hookups. Provide an estimated number of housing units or utility hookups, for example.

j.	Identify who will retain ownership of the system/project deliverables after the completion of the project. Describe the method by which the applicant can ensure that adequate revenues will be available to operate and maintain the proposed project. The description must identify the source and the estimated amount of funds that will be generated for this purpose.
k.	Describe the physical boundaries of the target area(s) in relation to the beneficiaries of the project.
l.	Will the proposed project directly cause any demolition or conversion of any existing residential or commercial units resulting in the permanent, temporary, or economic displacement of existing tenants? If yes, indicate whether the households are low income and the estimated number of households that may be affected. **Note:** *Attach a plan describing the steps taken to minimize displacement, including what assistance/benefits will be provided to displaced households and what plans have been developed to replace the units and ensure that they stay at or below Fair Market Rent for XXXX years*
m.	If the property was built before 1978, is it exempt from lead-based paint abatement? If yes, list the reason. If no, has the property been evaluated? Please indicate if the property needs remediation. **Note:** *Attach record indicating year of construction and proof of exemption.*

n. For rehabilitation projects, has there been an evaluation of asbestos hazards? Does the property need Asbestos remediation? **Note**: *Provide a copy of the reports.*

o. Was the building occupied at the time of typhoon(s)? ☐ Yes ☐ No

If yes, how many units were occupied? ___ Unoccupied units? ____ Total units? ____

Describe Buildings: ☐ Residential ☐ Commercial ☐ Industrial ☐ Other: _____

Describe Occupants: ☐ Owner ☐ Rental ☐ Lease

Who owns the property or building? _____ **Note:** *Submit a copy of the deed or lease.*

p. If this is a housing project, does it have more than five (5) units? If yes, at least 5% (or 1, whichever is greater) must be accessible to persons with mobility impairments and 2% (or 1, whichever is greater) must be accessible to persons with sensory impairments if the project is new construction or requires substantial rehabilitation. The remaining units must meet the accessibility requirements of the Federal Fair Housing Act, which requires that all units in elevator buildings and ground units in other buildings be ADA accessible.

q. Have steps been established to further Fair Housing? Please explain.

8. National Objectives to be addressed (check one).

To be eligible for the CDBG-DR funding, a project must meet at least one of the national objectives outlined in Title 24, Section 570.208 of the Code of Federal Regulations. Select from below the national objective(s) to be met by this project.

☐ Activities Benefiting Low/Moderate Income Persons

☐ *Area benefit activities* are one that benefits all residents of low to moderate-income in a particular area, which 51% of the residents are low to moderate-income persons. (**Note:** This selection is applicable only if the project will be located in a neighborhood or census tract where more than 51% of the persons or households qualify as low to moderate-income. *Please refer to the census maps attached at the end of the application*

☐ *Limited Clientele*. Limited to a specific group of persons and at least 51% of them qualify as low to moderate-income.

☐ *Housing activities*. An eligible activity carried out for a purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households.

☐ *Job creation or retention activities*. An activity designed to create or retain permanent jobs where at least 51% of the jobs, computed on a full-time equivalent basis, involve the employment of low- and moderate-income persons.

☐ Prevention/Elimination of Slums or Blight including historic restoration to remove conditions that threaten health and safety. ***Please note that the designation of areas of "slum and blight" must have been established by local law.***

☐ Urgent Need. Activity designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which is of recent origin or which recently became urgent, that the applicant is unable to finance the activity on its own, and that other sources of funding are not available.

☐ None (Planning, Capacity Building, Administrative)

9. Eligible Activities

To be eligible for funding, a proposal must include one or more of the activities described in Title 24 570.200 to 570.206 of the Code of Federal Regulations. Select from the listing below the activity this proposed project entails.

☐ Acquisition of real property 201(a)
☐ Disposition 201(b)
☐ Public Facilities and Improvements 201(c)
☐ Clearance and remediations 201(d)
☐ Public Services 201(e)
☐ Interim Assistance 201(f)
☐ Relocation 201(i)
☐ Loss of Rental Income 201(j)
☐ Privately-Owned Utilities 201(l)
☐ Construction of Housing 201(m)
☐ Homeownership Assistance 201(n)
☐ Special Economic Development Activities 201(o); 203
☐ Microenterprise Assistance 201(o)
☐ Miscellaneous Other Activities 201 (g), (h), (p), (q)
☐ Rehabilitation and Preservation 202(a), (b), (c), (d), (e), (f)
☐ Planning activities 205(a)
☐ General management, oversight and coordination 206(a)
☐ Public information 206(b)
☐ Fair Housing Activities 206(c)
☐ Indirect Costs 206(e)
☐ Submission of applications for federal programs 206(f)
☐ Administrative expenses to facilitate housing 206(g)
☐ Section 17 of the U.S. Housing Act of 1937 206(h)

10. Duplication of Benefits.

Did the applicant file an insurance claim (or receive other funding) for the damages referenced in this application? If yes, what were the proceeds used for? If the funds were not used what will the funds be used for? Provide the dollar amounts in the High-Level Budget section of this application

☐ Yes ☐ No

HIGH LEVEL BUDGET INSTRUCTIONS

Indicate the total dollar amount of Project Funds expected from each funding source. Round all amounts to the nearest dollar. The **TOTAL FUNDS** amount should equal the total project cost. Identify the funding source and the status of each of those funds (*committed, applied for, etc.*).

Once the budget table is completed, provide the responses to the below question.

Note: *A cost analysis must be completed for this entire project to complete the budget. A detailed budget/cost summary will be required once your project is deemed eligible.*

CDBG-DR funding is the funding of last resort; therefore, if the proposed project activities were formerly part of your organization's annual budget please identify and indicate the amount below. Also, identify all other funding sources you have pursued and will become available to you during the life of the project. If your project will generate Program Income during the life of project, please indicate as well below. ***(Attach an additional sheet if more space is required.)***

Project Funds	Amount	Funding Source	Status of Funds
CDBG-DR			
Local Funds			
Private Funds			
Insurance Proceeds			
Federal Funds (ie. FEMA)			
Other Funds			
Program Income			
TOTAL FUNDS			

1. Please explain how your organization will generate program income?

PROJECT BUDGET INSTRUCTIONS

Section I – Project Information

- Please enter the perspective applicant name.
- Please enter the Intergovernment/Developer Agreement Number (Leave blank until the number has been assigned and communicated upon executed intergovernment/developer agreement.)
- Please enter the Project Number (Leave blank until the number has been assigned and communicated upon an executed Project Addendum)
- Provide the project name that will budgeted in Section II.

Section II – Budget Information

Fill out the section that applies and add additional lines as needed. The categories are defined below. (**Note:** *Subsequent payment requests will be required to be submitted by budgeted line items. Any increases or decreases in budgeted line item will have to be requested and approved by the Grantee).*

1. **Program Administration**: Costs associated with the administration, financial requirements, reports, documentation and compliance records, monitoring and oversight. **Note:** *This cost must be allowed by the Grantee in the Intergovernment/Developer's agreement.*

2. **Project Cost (Direct)**: This refers to both the hard and soft costs of the project, including design, environmental and construction services. This also includes any planned equipment purchased, which must be identified on a separate line item as a budget item.

3. **Project Cost (Activity Delivery Costs)**: All project related implementation activities per a written agreement between the grantee and/or agency/developer. It may include personnel cost for employees directly related to the day to day specific oversight and implementation of CDBG-DR eligible activities. Personnel cost must be based on records that accurately reflect the work performed. 2 CFR 200.430(i) and should include timesheets and activity logs signed and dated by staff and their supervisor. The time sheet should have a description of the work performed. If time is split between multiple programs, the time sheet should accurately reflect the time split and no time should be left un-allocated.

4. **Indirect Cost**: Indirect costs are costs used by multiple activities, and which cannot therefore be assigned to specific cost objects. As noted in 2CFR Section 200.331(a)XIII, the subaward should include, "Indirect cost rate for Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs)". Additionally, Section 200.331 (a)(4), requires "an approved federally recognized indirect cost rate negotiated between the fund recipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the fund recipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f).

   Acceptance of the 10 percent de minimis rate is predicated upon the following conditions: (1) the non-Federal entity has never received a Negotiated Indirect Cost Rate Agreement (NICRA) from a Federal agency and is therefore eligible for the 10percent de minimis rate; (2) that no costs other than those incurred by the non-Federal entity will be recovered by using the 10 percent de minimis rate and such costs are legal obligations of the non-Federal entity; (3) that the same costs that have been treated as indirect costs have not neem claimed as direct costs; and (4) that similar types of costs have been accorded consistent.

Section III – AUTHORIZATION

1. The applicant's **Organizational Head** must sign and date the form to signify the approval. Type the **Organizational Head's** name and title in the appropriate box.

2. **NMHC ONLY**. NMHC will review for approval.

PROJECT BUDGET FORM

Effective Date:

FORM: CDBGDR-PBUDGT-XX-XX-XX

SECTION I – PROJECT INFORMATION

Agency/Developer Name:		Project Name:	
Agreement Number:		Project Number:	

(Complete the below detailed budget. Attach a second sheet if additional space/detail is needed. Include the cost analysis when submitting the application.)

SECTION II – BUDGET INFORMATION

CATEGORY	CDBG-DR BUDGET	OTHER SOURCES OF FUNDS			TOTAL COSTS
Program Administration ***(At the discretion of the grantee)***					
Budget Item A					
Budget Item B					
Subtotal Program Administration					
Project Costs (Direct)					
Budget Item A					
Budget Item B					
Budget Item C					
Budget Item D					
Budget Item E					
Subtotal Program Administration					
Project Costs (Activity Delivery Cost)					
Budget Item A					
Budget Item B					
Budget Item C					
Subtotal Project Cost (Activity Delivery Cost)					
TOTAL PROJECT COST					
Indirect Cost					
Planning					
Budget Item A					
Budget Item B					
Budget Item C					
TOTAL PLANNING COST					
GRAND TOTAL IN COST					

SECTION III – AUTHORIZATION

The applicant agrees to substantially abide by the above budget in the utilization of funds provided under the Intergovernment/Developer Agreement.

Organizational Head:

Print Name and Official Title

Signature Date

NMHC-CDBG-DR Use Only

Reviewed by CDBG-DR Compliance Manager:

Print Name and Official Title

Signature Date

Reviewed by CDBG-DR Project Manager:

Print Name and Official Title

Signature Date

Reviewed by CDBG-DR Finance Manager:

Print Name and Official Title

Signature Date

Approved / Rejected by NMHC Corporate Director:

Print Name and Official Title

Signature Date

PROJECT DISBURSEMENT SCHEDULE INSTRUCTIONS

Section I – Project Information

- Please enter the perspective agency/developer name.
- Provide the project name of the specific project.
- Please enter the Intergovernment/Developer Agreement Number (*Leave blank until the number has been assigned and communicated upon an executed intergovernment/developer agreement.*)
- Please enter the Project Number (*Leave blank until the number has been assigned and communicated upon an executed Project Addendum.*)

Section II – Disbursement Schedule

1. **Project Amount**: The Project Amount refers to the total CDBG-DR funded part of the project budget

2. **Cumulative Amount**: The Cumulative Amount is a quarter over quarter projection of the projected costs.

3. **Milestones**: If a milestone is Not Applicable (NA) to your project, please mark as such. If you have an additional milestone critical to your project, please add.

4. **Duration**: The Grant Expenditure Period for the CBDG-DR program is six (6) years. It began on November 25, 2020, with the signing of the Grant Agreement with HUD and ends November 24, 2026. If your project will take more than two years to complete, please add additional sheets.

5. **Quarters**: Please mark the Quarter when the activity starts with an "X".

Note: *Complete the appropriate disbursement schedule for the proposed project.*

PROJECT DISBURSEMENT SCHEDULE (CONSTRUCTION)

SECTION I – PROJECT INFORMATION

Agency/Developer Name:		**Project Name:**	
Intergovernment/Developer Number:		**Project Number:**	

SECTION II – DISBURSEMENT SCHEDULE

Milestone	Amount	*Insert Year*											
		Quarter			Quarter			Quarter			Quarter		
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	$0.00			$0.00			$0.00			$0.00			$0.00
Environmental Clearance													
Execution of Agreement or Memorandum of Understanding and the Issuance of the Notice to Proceed													
Solicitation and Selection of Architect													
Design or Development of Scope of Work in progress													
Solicitation and Selection of Contractor													
Construction work in progress													
Final Inspection and Close Out													
Cumulative Drawdown				$0.00			$0.00			$0.00			$0.00

Milestone	Amount	*Insert Year*											
		Quarter			Quarter			Quarter			Quarter		
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	$0.00			$0.00			$0.00			$0.00			$0.00
Environmental Clearance													
Execution of Agreement or Memorandum of Understanding and the Issuance of the Notice to Proceed													
Solicitation and Selection of Architect													
Design or Development of Scope of Work in progress													
Solicitation and Selection of Contractor													
Construction work in progress													
Final Inspection and Close Out													
Cumulative Drawdown				$0.00			$0.00			$0.00			$0.00

PROJECT DISBURSEMENT SCHEDULE (PUBLIC SERVICES)

SECTION I – PROJECT INFORMATION

Agency/Developer Name:		Project Name:	
Interagency/Developer Agreement Number:		Project Number:	

SECTION II – DISBURSEMENT SCHEDULE

Milestone	Amount	*Insert Year*											
		Quarter			Quarter			Quarter			Quarter		
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	$0.00			$0.00			$0.00			$0.00			$0.00
Environmental Clearance													
Execution of Agreement or Memorandum of Understanding and the Issuance of the Notice to Proceed													
Solicitation and Selection of Architect													
Design or Development of Scope of Work in progress													
Solicitation and Selection of Contractor													
Construction work in progress													
Final Inspection and Close Out													
Cumulative Drawdown				$0.00			$0.00			$0.00			$0.00

Milestone	Amount	*Insert Year*											
		Quarter			Quarter			Quarter			Quarter		
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
	$0.00			$0.00			$0.00			$0.00			$0.00
Environmental Clearance													
Execution of Agreement or Memorandum of Understanding and the Issuance of the Notice to Proceed													
Solicitation and Selection of Architect													
Design or Development of Scope of Work in progress													
Solicitation and Selection of Contractor													
Construction work in progress													
Final Inspection and Close Out													
Cumulative Drawdown				$0.00			$0.00			$0.00			$0.00

ACTIVITY BENEFICIARY FORM INSTRUCTIONS

Objective: The Activity Beneficiary Form reports information for actual beneficiaries of intended CDBG-DR activities.

1. Mark the appropriate checkbox that applies (Grantee or Agency/Developer) and enter the name of the Grantee or Agency/Developer.

2. Enter the Interagency/Developer/Project ID assigned by NMHC CDBG-DR.

3. Enter Activity Name assigned by NMHC CDBG-DR

Part I – BENEFICIARY INCOME INFORMATION

A. Based upon the location of the project, enter the number and percentage of individuals benefitting by income level.

B. Enter the data source(s) (e.g.) HUD American Community Survey, household survey) and any additional information describing how the beneficiaries were determined.

Part II – AREA INFORMATION (*If the activity is a direct benefit activity, leave this Part II area blank*)

A. Enter whether the project is target area or communitywide and the census block groups of the project area. Please list each census tract(s) and/or block group(s) that define the area; separating each census tract with a ";". Please continue on another page, if necessary. This information should be determined using the 2010 Census data attached at the end of this document.

B. Enter the exact location of the geographical center of the project by identifying the latitude and longitude numbers. This information may have been initially reported on the supplemental information page in the approved project application.

Part III – DIRECT BENEFIT DEMOGRAPHIC INFORMATION (*If the activity is an area wide benefit, leave this Part III area blank)*

A. Enter the total individuals who will benefit by racial and ethnicity and by income level. This total for LMI is any person 80% or below the area median income and Non-LMI are 81% or higher of the area median income. The LMI and Non-LMI total should equal the population total in Part I-A.

   Race and ethnicity are independent of each other and should be counted separately. For instance, fi the activity served 20 White persons, 15 of which are not of Hispanic/Latino ethnicity and 5 of which are of Hispanic/Latino ethnicity, the information to be added into row "A. Race and Ethnicity, 1. White "should be 20 for Total and 5 for Hispanic/Latino".

B. Enter female headed households for those LMI (80% or below area median income) and those non-LMI (above 80% area median income).

Project Maps

A map (or maps) that delineate(s) the following items for each target area must be included in the application package:

1. Existing Conditions Map: Provide a detailed map of the existing improvements. The map should delineate such items as the location of project and/or size of waterlines, elevated water tanks, sewer lines, manholes, location of treatment plants, etc.

2. Proposed Improvements Map: Provide a detailed map showing the location of project, sizes, etc. of the proposed improvements.

3. Census tracts and/or block groups (by number) and/or logical records numbers.
4. Location of concentrations of low- and moderate-income persons, showing numbers and percent by census tracts and/or block groups and/or logical record number.

5. Boundaries of areas in which the activities will be concentrated; and

6. The specific location of each activity.

Note: *The Existing Conditions map and the Proposed Improvements map may be combined into one map if all the information shown can be depicted in such a way as to easily determine the difference between the existing and proposed.*

NMHC COMMUNITY DEVELOPMENT BLOCK GRANT – DISASTER RECOVERY ACTIVITY BENEFICIARY FORM	
1. ☐ **Grantee** ☐ **Interagency/Developer**	**2. Int./Dev./Project ID**
3. Activity Name:	

PART I – BENEFICIARY INCOME INFORMATION

A. Income Levels	**Total**	**Percentage**
1. Total number of persons less than or equal to 50% Area Median Income		
2. Total number of persons over 50% not greater than 80% Area Median Income		
3. Total number of persons over 80% Area Median Income		
Total Population		

A. Source(s) for Determining Beneficiary Data:

PART II – AREA INFORMATION *(Skip Part II if this is a direct benefit project)*

A. Indicate whether the completed project was target area(s) specific or community-wide

☐ Target Area(s) ☐ Community-Wide

List Census Tract(s) and/or Block Group(s):

_____

_____

_____

_____

B. Provide Latitude/Longitude for the project location at or near geographical center:

Latitude: _____ Longitude: _____

PART III – DIRECT BENEFIT DEMOGRAPHIC INFORMATION *(Skip Part III if this is an area wide benefit project)*

A. Race and Ethnicity	**Total**		**Hispanic/Latino**	
	LMI	**Non-LMI**	**LMI**	**Non-LMI**
1. White				
2. Black/African American				
3. Asian				
4. American Indian/Alaskan Native				
5. Native Hawaiian/Other Pacific Islander				
6. American Indian/Alaskan Native and White				
7. Asian and White				
8. Black/African American and White				
9. American Indian/Alaskan Native and Black/African American				
10. Other multi-racial				
11. Unknown				
Total Persons				
B. Head of Household	**LMI**		**Non-LMI**	
1. Female-Headed Households				

OTHER FUNDS SUPPLEMENTAL DOCUMENTATION

Some projects may cost more than is available under the approved NMHC action plan programs. The applicant may propose to use other funds in conjunction with the CDBG-DR funds. These other funds must be identified and must be available and ready to spend. If these funds involve loans or grants from other local, federal, or private sources, the monies must have already been awarded. To substantiate the immediate availability of the other funds, one of the following items of supporting documentation will be required:

1. Letter and adopted resolution from the local governing body stating the specific source, amount, and location of local cash;

2. A line of credit letter from a financial institution such as a bank stating the amount available as a loan;

3. Specific evidence of funds to be received from a tax or bond election that has already passed; or

4. A letter from another funding agency stating that the funds have been awarded and are currently available for expenditure.

Note: *Attach the supporting documentation to this application.*

AUTHORIZATION

In the event that the NMHC or HUD determines that any funds were expended by the Agency/Developer for unauthorized or ineligible purposes or the expenditures constitute disallowed costs in any other way, then NMHC or HUD may order repayment of the same. The Agency/Developer shall remit the disallowed amount to NMHC within thirty (30) days of written notice of the disallowance.

I certify that all information provided as part of this application is true and correct to the best of my knowledge. I agree to substantially abide by the above budget in the utilization of funds provided under this Intergovernment/Developer Agreement. I certify under penalty of perjury that : (1) the information provided in this Community Development Block Grant Disaster Recovery Project application is true and correct as of this date and that any intentional or negligent misrepresentation may result in civil liability, including monetary damages, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec 1001, et seq.; and (2) the property will not be used for any illegal or prohibited purpose or use.

Organizational Head:

Print Name and Official Title

Signature | Date

NMHC-CDBG-DR Use Only

Reviewed by CDBG-DR Compliance Manager:

Print Name and Official Title

Signature | Date

Reviewed by CDBG-DR Project Manager:

Print Name and Initials

Signature | Date

Reviewed by Finance Manager:

Print Name and Initials

Signature | Date

Approved / Rejected by NMHC Corporate Director:

Print Name and Official Title

Signature | Date

APPENDIX C: INTERGOVERNMENTAL AGREEMENT

APPENDIX

1. **Appendix A: Crosscutting Requirements and Process Overview**
2. **Appendix B: Project Application Form**
3. **Appendix C: Intergovernmental Agreement**

NORTHERN MARIANAS HOUSING CORPORATION ("NMHC")

INTERGOVERNMENTAL AGENCY AGREEMENT

BETWEEN

NMHC (GRANTEE)

AND

[INTER-GOVERNMENTAL AGENCY NAME]

This INTERGOVERNMENTAL AGENCY AGREEMENT, hereinafter called "Agreement", made this _____ day of _____, **2021**, by and between the **Northern Marianas Housing Corporation ("NMHC")** hereinafter called the "Grantee", whose address is P.O. Box 500514, Saipan, MP 96950, and the **[Inter-governmental Agency Name]]** hereinafter called the "Agency", whose address is **[Inter-governmental Agency Address]** concerning the **[Enter Project Title].**

WITNESSETH

WHEREAS, the Grantee has received Community Development Block Grant Disaster Recovery (CDBG-DR) funds from the U.S. Department of Housing and Urban Development ("HUD") under Title I of the Housing and Community Development Act of 1974, as amended. Public laws are the appropriation acts that provide funding for each disaster. In addition, to any requirements cited in the appropriation acts, the CDBG-DR regulations in 24 CFR § 570 apply to CDBG-DR funds.

WHEREAS, the purpose of this Agreement is to ensure that the Agency takes full responsibility of the project upon completion. The Grantee will be responsible for adhering to HUD's monitoring requirements, which includes frequent inspections by the Compliance Specialist or the Compliance Manager and reports the inspection findings to the Corporate Director.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Grantee and the Agency agree as follows:

I. Use of CDBG-DR Funds

The CDBG-DR program will fund the completion of **the [Enter Project Title]** in the amount of **[Enter Project Allocation Amount] ($0.00)**.

II. Scope of Services

A. Program Delivery and Performance Standards:
(Note: Program delivery and performance standards are subject to monitoring by Grantee after the completion of the project.)

1. The activity involves the construction services of the **[Enter Project Title and Brief Description]**

2. The Agency will ensure proper care and maintenance of the facility upon completion of the aforementioned project in Activity 1.

3. The activity meets specified national objective set forth in the CDBG-DR Action Plan. **National Objective: Benefit to low- and moderate- income (LMI) persons.**

4. The Agency must consult with the Grantee prior to changing the approved use and intended beneficiaries in the CDBG-DR Action Plan. The Grantee will review the proposed change in use and will issue a determination whether to approve or disapprove the change.

5. The Agency will ensure that citizens are given the opportunity to comment on any proposed change.

6. The Agency would be required to reimburse the CDBG-DR program if the Agency decides to change the use to a non-eligible activity which does not meet the CDBG-DR National Objectives.

7. Upon completion of the Project, the Northern Marianas Housing Corporation will turn over the plans, drawings, and the facility to the Agency.

B. General Administration

1. Local and HUD Procurement Requirements

The Grantee and the Agency agree to coordinate their efforts on the solicitation of the contractor for the construction of the **[Enter Project Title]**. All federal and Commonwealth procedures will be followed. Agency and the Grantee are responsible for ensuring that the proper local and HUD procurement requirements are followed.

In the event that a budget shortfall occurs for the Project, the Agency will be responsible in identifying other funding sources to complete the project. If the Agency fails to do so, the Agency will be solely responsible for reimbursing HUD the amount of CDBG-DR funds allocated to the Project.

2. **National Objectives**

All activities funded with CDBG-DR funds must meet one or all of the CDBG-DR Program's national objectives; benefit low-moderate income persons; aid in the prevention or elimination of slum and blight; or meet community development needs which have a particular urgency, as defined in 24 CFR § 570.208 (a)(1).

3. **Level of Accomplishment**

The Agency agrees to provide the following levels of program services: Activities 1-7 will benefit the following areas:

National Objective: Benefit to low- and moderate- income (LMI) persons

4. **Performance Monitoring**

The Grantee will monitor the performance of the Agency against the goals and performance standards as stated above. Sub-standard performance as determined by the Grantee will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Agency within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures will be initiated.

III. Time of Performance (Project Commencement)

Services of the Contractor shall start upon the issuance of the Notice to Proceed and end with a specified number of Calendar days per project. The term of this Agreement and provisions herein shall be extended to cover any additional time period during which the Agency remains in control of CDBG-DR funds or other CDBG-DR assets, including program income.

IV. Budget

Project Cost(s):

The Grantee may require a more detailed budget breakdown than the one contained herein, and the Agency shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the Grantee. Any amendments to the budget must be approved in writing by both the Grantee and the Agency, including any foreseeable change orders necessary for the completion of the project, as allowed by NMHC Procurement regulations.

All costs associated with the proposed project will be directly taken from the established project budget. In the event bid submissions provided by the contractors exceed the established budget amounts and negotiations to bring down costs pursuant NMHC's procurement regulations, NMIAC § 100-60-205 (m)(3)[1], NMHC will review the submissions and determine whether it will be feasible for affected projects to move forward.

V. Payment

It is expressly agreed and understood that the total amount to be paid by the Grantee under this agreement shall not exceed **[Enter Project Allocation Amount] ($0.00).** Such funds will go to the contractor and not directly to or through the Agency. Drawdowns for the payment of eligible expenses shall be made against the line-item budgets specified in Paragraph IV herein and in accordance with performance.

VI. Notices

Notices required by this Agreement shall be in writing and delivered via U.S. postal service (postage prepaid), commercial courier, or personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice. All agreements must have the consent of the Grantee and the Agency.

Grantee:

NMIAC §100-60-205 (m)(3) states: In the event all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than five percent, and time or economic considerations preclude re-solicitation of work of a reduced scope, the official with expenditure authority may authorize the Procurement Officer to negotiate an adjustment of the bid price including changes in bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

Northern Marianas Housing Corporation (NMHC)
Jesse S. Palacios
NMHC Corporate Director
P.O. Box 500514
Saipan, MP 96950
Phone: (670) 234-7670 Fax: (670) 234-9021
jspalacios@nmhcgov.net

Intergovernmental Agency:
[Inter-governmental Agency Name]
[Name of Agency Head]
[Title]
[Enter Address]
Saipan, MP 96950
[Enter Phone Number]

VII. General Conditions

A. The Agency agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations, concerning Community Development Block Grants (CDBG-DR) including subpart K of those regulations, and Part 200 of Title 2 of the Code of Federal Regulations, concerning Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards, as now in effect and as may be amended from time to time. Except that (1) the Agency does not assume the grantee's environmental responsibilities described in 24 CFR § 570.604 and (2) the Agency does not assume the grantee's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Agency also agrees to comply with all other applicable Federal, state and local laws, regulations, and policies governing the funds provided under this contract. The Agency further agrees to utilize the funds available under this agreement to supplement rather than supplant funds otherwise available.

B. Hold Harmless

The Agency shall hold harmless, defend and indemnify the Grantee from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Agency's performance or nonperformance of the services or subject matter called for in this Agreement.

C. Grantee Recognition

The Agency shall insure recognition of the role of the Grantee in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be labeled as to funding source. In addition, the Agency will include a reference to support provided herein in all publications made possible with funds made available under this Agreement.

D. Amendments

The Grantee or Agency may amend this Agreement at any time provided such amendments make specific reference to this Agreement, and are executed in writing, signed by duly authorized representatives of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Agency

from its obligations under this Agreement. The Grantee may, in its discretion, amend this Agreement to conform with Federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Agency.

E. Suspension or Termination

In accordance with 2 CFR § 200.340 (a) (1), the Grantee may suspend or terminate this Agreement if the Agency materially fails to comply with any terms of this Agreement, which include (but are not limited to) the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;

2. Failure, for any reason, of the Agency to fulfill in a timely and proper Manner its obligations under this Agreement;

3. Ineffective or improper use of funds provided under this Agreement; or

4. Submission by the Agency to the Grantee reports that are incorrect or incomplete in any material respect.

In accordance with 2 CFR § 200.340 (a) (4), this Agreement may also be terminated for Convenience by either the Grantee or the Agency, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, the Grantee determines that the remaining portion of the award will not accomplish the pose for which the award was made, the Grantee may terminate the award in its entirety.

VIII. Administrative Requirements

A. Financial Management

1. Accounting Standards

The Grantee agrees to comply with 2 CFR § 200.300-309 and agrees to adhere to the accounting principle and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Grantee shall administer its program in conformance with 2 CFR § 200.400-475, "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" as specified in 2 CFR Part 200. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Grantee and Agency shall maintain all records required by Federal regulations specified in 24 CFR § 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

a. Records providing a full description of each activity undertaken;
b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG-DR programs;
c. Records required to determine the eligibility of activities;
d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG-DR assistance;
e. Records documenting compliance with the fair housing equal opportunity components of the CDBG-DR program;
f. Financial records as required by 24 CFR § 570.502, and 2 CFR § 200.300-309; and
g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Agency shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement in compliance with 2 CFR § 200.334. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the three-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

3. Client Data

The Grantee and Agency shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the Grantee monitors or their designees for review upon request.

4. Disclosure

The Agency understands that client information collected under this contract is private and the use or disclosure of such information, when not connected with the Administration of the Grantee's or Agency's responsibilities with respect to services provided under this contract, is prohibited by law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Audits and Inspections

All Agency records with respect to any matters covered by this Agreement shall be made available to the Grantee, grantor agency, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit report must be fully cleared by the Agency within 30 days after receipt by the Agency. Failure of the Agency to comply with the above audit requirements will constitute a violation of this agreement hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning Agency audits and 2 CFR Part 200 Subpart F.

C. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR Part 200 and 24 CFR 570. §§502, 570.503, 570.504 and 570.505 as applicable, which include, but are not limited, to the following:

1. The Agency shall transfer to the Grantee any CDBG-DR funds on hand and any Receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.

2. Real property under the Agency's control that was acquired or improved, in whole or in part with funds under this Agreement in excess of $25,000 shall be used to meet one of the CDBG-DR National Objectives pursuant to 24 CFR § 570.208. If the Agency fails to use CDBG-DR-assisted real property in a manner that meets a CDBG-DR National Objective pursuant to 24 CFR § 570.208, the Agency shall pay the Grantee an amount equal to the current fair market of the Property less any portion of the value attributable to expenditures of non-CDBG-DR Funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee.

3. In all cases in which equipment acquired, whole or in part; with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by Agency for activities under this agreement shall be (a) transferred to the Grantee for the CDBG-DR program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG-DR funds to acquire the equipment].

IX. Relocation, Real Property Acquisition and One-for-One Housing Replacement

The Agency agrees to comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR § 570.606(b); (b) the requirements of CFR § 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under Section 104(d) of the HCD Act; and (c) the requirement in 24 CFR § 570.606(b)(2) people who are displaced as a direct result of acquisition, rehabilitation, demolition, or conversion for a CDBG-DR-assisted project. The Agency also agrees to comply with applicable Grantee ordinance, resolutions and policies concerning the displacement of persons from their residences.

X. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement should not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

XI. Section Headings and Subheadings

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

XII. Waiver

The Grantee's failure to act with respect to a breach by the Agency does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XIII. Entire Agreement

This agreement constitutes the entire agreement between the Grantee and the Agency for the use of funds received under Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and Agency with this Agreement.

Date: _____

IN WITNESS WHEREOF, the Parties have executed this agreement by:

Northern Marianas Housing Corporation ("NMHC")	and	**[Inter-governmental Agency Name]**
By: _____ Marcie M. Tomokane Chairwoman NMHC Board of Directors		By: _____ **[Name of Board Chair (If Applicable)]** **Chairman** **[Title of Board]**
By: _____ Jesse S. Palacios NMHC Corporate Director		By: _____ **[Inter-governmental Agency Head]** **[Title]**
By: _____ Roger Dris NMHC Acting Chief Financial Officer		By: _____ **[Name of CFO]** **[Official Title]**

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

_____
NMHC Legal Counsel

Commonwealth of the Northern Mariana Islands
Department of Lands and Natural Resources
Lower Base, Caller Box 10007
Saipan, MP 96950
Tel: 670-322-9834 Fax: 670-322-2633

PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF
The Department of Lands & Natural Resources

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 43, Number 4, pp 045766-045778, of April 28, 2021

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Lands & Natural Resources ("DLNR"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act,1 CMC § 9104(a). The DLNR announced that it intended to adopt them as permanent, and now does so. (Id.) I also certify by signature below that:

> as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: In §85-10.1.135, Limitations on use; Annual Certification, Section b. Perennial Crops, DLNR eliminated "papayas" as perennial crop and can be planted within and along borders of the Farm Plot. Other perennial crops to be planted for whatever reason must still be approved by the Director.

AUTHORITY: The Department has the authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to 1 CMC § 2654

EFFECTIVE DATE: These regulations were proposed on April 28, 2021 and are hereby being adopted as Permanent Regulations of the Department of Lands and Natural Resources pursuant to 1 CMC §9102and §9104 (a) or (b), which, in this instance, is thirty (30) days after publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153€ (To review and approve, as to form and legal sufficiency, al rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including pubic corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the _____ day of June, 2021, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

ANTHONY T. BENAVENTE
Secretary, Department of Lands and Natural Resources

6/24/2021
Date

Filed and
Recorded by:

ESTHER SN. NESBITT
Commonwealth Registrar

06.28.2021
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations).

Dated the 28 day of JUNE, 2021.

EDWARD MANIBUSAN
Attorney General

1. **§85-10 1.100 Kagman Farm Plot Program Regulations**

2. **§85-10 1.105 Purpose**

The purpose of this permit is to established regulations governing the administration and management of the Kagman Farm Plot program at the Division of Agriculture under the Department of Lands and Natural Resources.

3. **§85-10 1.110 Permit**

The permit will show the date, the name of applicant, his or her assigned farm plot, the size of the farm plot, the farm plot number and a map showing the location of the property on the island of Saipan.

(a) This permit shall be subject to all existing easements, roadways, and rights-of-way across or through the permitted property. The DLNR retains all rights of ingress and egress from those portions of the Farm Plot where public utilities and other improvements are located. This Permit shall not impair, and shall not be construed to impair, the DLNR's right to enter the Farm Plot for the following: to construct, maintain, operate, and repair public utilities, or parts thereof (including electric power transmissions, telegraph lines, telephone lines, pipelines, and drainage systems); to construct, maintain, operate, or repair roads; or to perform any other work for a public purpose.

(b) DLNR reserves the rights to all mineral resources and underground resources on the Farm Plot, and retains the right of access to and use of such parts of the surface of the premises as may be necessary for the mining and saving of said minerals. This permit does not convey any mining rights or any rights in the minerals to the Permittee.

(c) The permit shall be restricted to citizens and nationals of the United States; provided that they are domiciliaries of the Commonwealth, as prescribed by 2 CMC § 4117.

4. **§85-10 1.115 NON-ASSIGNMENT OF PERMIT**

This permit or any interest therein shall not be assigned or otherwise transferred by Permittee to a corporation, partnership, or other individual. Any purported assignment or transfer of this permit, whether written or verbal, shall be null and void.

5. **§85-10 1.120 NATURE AND TERM OF PERMIT**

(a) This Permit authorizes the Permittee to enter and use the Farm Plot for farming. This Permit does not in any manner, substance, or form grant any property interest, whether freehold or leasehold, in the Farm Plot, and it shall not be construed to do so.

(b) The term of the Permit shall commence on the date the permit was issued.

6. **§85-10 1.125 ANNUAL PERMIT FEE**

(a) The Permittee shall pay a permit fee of $0.02 per square meter per annum for the use of the Farm Plot. The permittee shall deliver the annual permit fee to the Department of Public Lands. The fee shall be paid by check payable to the Department of Public Lands and the money will be deposited in a special account to be established for this purpose.

(b) The Permittee shall pay the above fee on or before the date of the last signature on this permit; the Permit shall not become effective until the initial payment is made. The Permittee shall make all subsequent yearly payments on the anniversary date of the permit.

(c) Failure to pay the required annual permit fee within 30 days of the due date shall be grounds for termination of the permit.

7. §85-10 1.130 RENEWAL

(a) This permit may be extended for any term up to five (5) years upon the request of the Permittee and with the approval of DLNR. If the Permittee wishes to renew the permit, the Permittee shall send or otherwise deliver a written request of renewal to the Secretary of DLNR or his designee at least sixty (60) days before the expiration of this permit.

(b) The Secretary of DLNR will not approve the renewal if the Permittee has failed to comply with the conditions of this permit or the general conditions governing the use of farm plots. If the Secretary of DLNR approves the request for renewal, the renewal will take the form of newly executed permit between DLNR and the Permittee, with the terms and conditions and permit fee to be negotiated prior to renewal. DLNR is under no obligation to renew the permit.

8. §85-10 1.135 LIMITATIONS ON USE; ANNUAL CERTIFICATION

a. Use and Inspection

i. The Permittee shall use the Farm Plot for farming purposes in accordance with the conditions of this Permit and the applicable regulations. The Permittee's failure to use the Farm Plot for farming purposes in accordance with the conditions of this permit and the applicable regulations shall be grounds for termination of the Permit.

ii. DLNR shall inspect the Farm Plot at least once per year and annually certify in writing that the Permittee is using the Farm Plot for farming purposes and in accordance with the conditions of this Permit. If DLNR inspects the Farm Plot and determines that the Permittee is not using the Farm Plot in accordance with this Permit, DLNR shall terminate the Permit in accordance with Article 11.

b. Perennial Crops

i. Perennial crops include, but are not limited to, the following: coconut, betel nut, citrus fruits, and mango.

ii. The Permittee shall not plant perennial crops on the Farm Plot, unless otherwise excepted by the Director of Agriculture ("Director"). Bananas may be planted along borders of the Farm Plot and around temporary farm buildings only.

iii. The Director may recommend and approve perennial crops to be planted along borders to serve as infield windbreaks, to control soil erosion as part of a conservation plan, to protect water quality, or to conserve water.

c. Structures and Improvements

i. The Permittee may not erect temporary or permanent structures on the Farm Plot without first obtaining written permission from the Director. The Director may authorize the Permittee to erect a structure if he or she determines that the structure is consistent with the use of the land for farming purposes. Examples of permissible structures include, but are not necessarily limited to, barns, storage sheds, and concrete water tanks.

ii. Residential structures. Whether temporary or permanent, residential structures are not consistent with use of the land for farming and shall not be erected on the Farm Plot. These structures are prohibited by 2 CMC § 4117.

iii. Outhouses. Outhouse toilets are permissible provided that they are constructed and used in a manner conforming to the sanitation standards established by the Bureau of Environmental Health, Commonwealth Healthcare Corporation. The Permittee must obtain a permit from the community Sanitation Services and the Division of Environmental Quality before beginning construction of an outhouse.

iv. Hydroponic Facilities. Hydroponic facilities may be built in areas where the Director determines that the soil is not of sufficient depth to make crop farming feasible. The Permittee's permit must specifically provide that hydroponic farming is permitted. Prior to beginning construction of hydroponic facilities, the Permittee must obtain all necessary permits and the approval of the Secretary of DLNR. Permittee shall bear all costs associated with building hydroponic facilities on the Farm Plot.

d. Pesticides

i. If Permittee uses pesticides and/or fertilizers, such use shall be in compliance with the rules and regulations set forth by the Bureau of Environmental and Coastal Quality (BECQ).

ii. Permittee must ensure that BECQ locally certifies all pesticide applicators that he or she is using on their crops. Permittee shall submit to the Division of Agriculture Plant Industry Office a copy of the certification(s) of the pesticides applicator(s). Any use of restricted pesticides on the premises of the Permittee without a valid certification required by the Bureau of Environmental and Coastal Quality is strictly prohibited and could result in termination of the Permit.

iii. Pesticides, insecticides, fungicides, or other chemicals must be secured in a storage area to which no unauthorized persons can gain access. Pesticides should be stored separately from fertilizers. Pesticides can potentially contaminate fertilizers if they are stored together. All empty pesticide containers, such as cans and bottles as well as excess pesticides, must be stored in a secured structure until they can be properly disposed of. The Permittee is solely responsible for preventing poisoning or other injury to a person who comes into the farm plot, whether or not he is authorized or invited to do so. Neither the Commonwealth Government nor any of its agents assume any responsibility or liability arising from or related to the storage or use of chemicals by Permittee.

e. Animals

i. Raising of livestock, poultry, and domestic pets within the defined Farm Plots is prohibited as the most appropriate use for the farm plots is for agricultural purposes.

9. §85-10 1.140 MAINTENANCE OF PLOTS

a. Safe and Sanitary

i. Permittee shall maintain his or her assigned Farm Plot in a safe and sanitary condition.

ii. Rodent control: Permittee shall be responsible for rodent control on the assigned Farm Plot and is expected to participate in Rodent Control Programs in cooperation with the Division of Agriculture. Crop residue should be promptly plowed or disked under, and trash shall be removed regularly to minimize rodent populations.

iii. Conservation Plan: Each Permittee will develop and implement a conservation plan that is mutually agreed upon by the Permittee, Division of Agriculture, and the Saipan and Northern Islands Soil and Water Conservation District (SWCD). The Permittee shall develop a conservation plan to address erosion control, protection of water, conservation of water, and benefits derived from other natural resources. Technical assistance in making a conservation plan can be obtaining from the Natural Resources Conservation Services (NRCS), Saipan and Northern Islands Soil and Water Conservation District (SWCD).

a. A total resource management system approach is taken with the interdependency of soil, water, and relates plant and animal resource being recognized. Environmentally safe systems, which are in harmony with the area, are sought.

b. Permanent conservation practices such as windbreakers, diversion canals, drainage ditches, and waterways installed by the Division of Agriculture that benefits more than one farm plot will be maintained by the Division. Permanent conversation practices installed as part of the Permittee's conservation plan, such as windbreaks, hedgerows, diversion, waterways, or irrigation systems that benefit individual farm plots will be maintained by the Permittee. No permanently installed conservation systems shall be removed or destroyed without the express written consent of the Director of Agriculture. Any destruction of a conservation practice within the Permittee's assigned plot shall be the responsibility of the Permittee to replace and/or reconstruct a Permittee's own expense. The Permittee shall have made every effort possible to implement the approved conservation plan as scheduled in order to prevent soil erosion on their assigned plot.

c. The Saipan and Northern Islands Soil and Water Conservation District will be responsible for maintenance and operation of permanent conservation practices install as part of the Kagman Watershed Project. These practices include waterways, mainline irrigations system, drop structures, diversion, wells, wetlands and reservoirs that benefit all Kagman Local Farm Plots.

d. The Bureau of Environmental and Coastal Quality: Permittees must comply with all BECQ regulations and recommendations regarding the application, storage and handling of pesticides.

b. Full Utilization

1.. Permittee must fully utilize his or her farm plot to the maximum extent possible throughout the growing season.

a. "Fully Utilize" is defined as cultivating and growing crops for harvest on at least seventy-five (75%) of the assigned farm plots.

b.. "Growing Season" is defined as the period of absence of adverse climatic conditions, such as typhoon and flooding rains.

c. Land lying fallow shall not be considered under cultivation when determining whether the farm plot is being fully utilized if the Permittee has obtained certification from the Director to allow the land to lie fallow. To obtain certification to fallow land, Permittee shall submit a request to the Director with the basis for and duration of the period of fallow. If the Director approves and certifies the request, then the fallowed land shall be excluded from the utilization determination for the period stated in the certification.

d. Permittee may use assigned plots on a year-round basis (i.e. at times outside of the growing season) at his or her own risk by implementing conservation practices to protect the land from erosion during the rainy season.

e. Failure to fully utilize the Farm Plot during the growing season may result in termination of the Permit.

f. If Permittee has a permit for more than one farm plot, the Division of Agriculture shall treat all such plots as one plot, for purpose of the 75% full utilization requirement. Plots may not be subdivided in order to meet the 75% full utilization requirement.

10. §85-10 1.145 PERMITTEE EMPLOYEES

a. Registration: Before the permittee allows his employees (including farm laborers) to begin working on his plot(s), he shall submit to the Division of Agriculture office the names of all of his employees, and documents to identify the residence status of each employee including but not limited to: a copy of employee's driver's license, if any; a photograph of the employee; the employee's social security number; and a copy of the employee's work permit. If the employee has previously been employed by the Permittee, he shall also submit a copy of the employee's paycheck stub. An updated list of names of all employees or farm laborers must be submitted annually on each anniversary date of the permit. In addition, the Permittee must submit the name of and documentation for any newly hired employee, prior to that employee stating work at the farm plot. Employee registration must be kept current.

b. Unauthorized Employee: The Director of Agriculture or his representative may evict any person working at the Permittee's assigned plot who is not registered with the Division of Agriculture as an employee of the Permittee. Only those employees registered with the Division of Agriculture will be considered authorized employee of the Permittee.

11. §85-10 1.150 NO OBLIGATION TO PROVIDE WATER OR UTILITY SERVICES

DLNR and the Commonwealth Government do not have an obligation to provide the Permittee with water or other utility services, and this Permit shall not be construed to create such an obligation. It is expressly understood that the Permittee is responsible for obtaining water and utility services at Permittee's sole cost and expense, consistent with Sections 1 and 4 of the Regulations Of The Use Of Irrigation Water, published in the Commonwealth Register on October 26, 2004, Volume 26 Number 10, page 22988.

12. §85-10 1.155 DESTRUCTION OF GOVERNMENT PROPERTY

a. Permittee shall be responsible for any damage to or removal and destruction of any property of DLNR or the Commonwealth Government caused by the Permittee during Permittee's use and occupancy of the Farm Plot. The Permittee shall promptly restore, repair, or replace the injured property to the satisfaction of DLNR, or otherwise provide adequate compensation, in an amount determined by DLNR, to DLNR to account for the destruction or damage. Failure to make timely repairs required under this Article could subject the Permit to termination.

b. If the Farm Plot has improvements designed and/or installed by the Natural Resources Conservation Service ("NRCS") of the United States Department of Agriculture ("USDA"), the Permittee may not destroy, remove, or otherwise alter such improvements without prior written approval from NRCS. Such improvements may include, but are not limited to the following: irrigation systems, including buried pipelines; above-ground risers and all necessary appurtenances; water storage tanks; tile drains and underground outlets; water diversions, hillside ditches, grasses waterways, and lined waterways; composting facilities; terraces; hedgerows; and windbreakers. If Permittee causes an improvement made by NRCS to be destroyed, altered, or removed without prior approval of NRCS, the Permittee shall promptly restore, repair, or replace the improvement to the satisfaction of NRCS, or otherwise pay for the costs of restoring, repairing, or replacing the improvement.

13. §85-10 1.160 TERMINATION OF PERMIT

a. It is expressly understood and agreed that DLNR may terminate this permit at any time if the Permittee fails to use the Farm Plot for farming purposes or otherwise violates the Permit conditions.

b. To terminate this Permit before its natural expiration date, DLNR shall provide the Permittee with sixty days' advance, written notice. The notice shall state the reason(s) for termination, including any relevant facts, and shall provide a procedure through which the Permittee can show that he or she is in compliance with this Permit or otherwise challenge the basis for termination. DLNR shall have the right to re-enter and take possession of the Farm Plot, or any part thereof, upon the expiration of the sixty days.

c. The Permittee may terminate this permit at any time by giving thirty days' advance notice to DLNR. Permittee shall be responsible for any losses associated with early termination.

14. §85-10 1.165 VACATING THE PREMISES

Upon the expiration or earlier termination of this permit, the Permittee shall quietly and peacefully vacate the premises and surrender the possession thereof. Upon the failure or

neglect of the Permittee to remove his property from the premises, DLNR or its agents may enter the said premises and remove all persons and property therefrom. Such removal shall be at the cost and expense of the Permittee and no claim for damage of any nature whatsoever against DLNR or its agents thereof shall be created by or made on account of such removal.

15. §85-10 1.170 HOLD HARMLESS AND INDEMNITY CLAUSE

Permittee shall protect, defend, and hold the Government of the Commonwealth of the Northern Mariana Islands, its officials, employees, agents and successors in interests completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of the Permittee or its officers, agents, employees, contractors, subcontractors, or invitees' use of this Permit and/or the use or occupancy of the Farm Plot regardless of where the injury, death, or damage may occur. The provisions of this section shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this Permit.

16. §85-10 1.175 SUCCESSORS AND ASSIGNS

DLNR and the Division of Agriculture herein shall include their lawful successor agencies. Permittee shall include Permittee's lawful successor and assigns, to the extent otherwise allowed by this permit.
Successor: DLNR - Division of Agriculture

17. §85-10 1.180 COMPLIANCE WITH LAW

Permittee shall not use the farm plot for any purpose in violation of any applicable Federal or Commonwealth Law, regulation, or order, as such statute, regulation, or order now exists, or may hereafter provide, concerning the use, occupancy, and safety of the farm plot. Permittee shall notify the Director of Agriculture prior to performing any draining, dredging, or filling activities, and any such activities shall be conducted in compliance with applicable laws and regulations. The Permittee shall obtain required government permits prior to conducting any type of activity for which a permit is required on the Farm Plot.

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Bureau of Environmental and Coastal Quality
Division of Coastal Resources Management
P.O. Box 501304, Saipan, MP 96950
Tel: (670) 664-8300; Fax: (670) 664-8315
www.dcrm.gov.mp

Eli D. Cabrera
Administrator

Janice E. Castro
Director, DCRM

PUBLIC NOTICE OF PROPOSED AMENDMENTS TO NMIAC CHAPTER 15-10 TO CREATE INCENTIVES FOR BUILDING REDEVELOPMENT AND STORMWATER MANAGEMENT

NOTICE OF INTENDED ACTION: The Commonwealth of the Northern Mariana Islands, Office of the Governor, Coastal Resources Management (CRM) Regulatory Agencies intend to amend NMIAC Chapter 15-10 to create incentives for building redevelopment and stormwater management pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC §§ 9101 *et seq.*, and the Coastal Resources Management Act, 2 CMC §§ 1501 *et seq.*

AUTHORITY: These amendments are promulgated under the authority of the CRM Regulatory Agencies to adopt new regulations under 1 CMC § 1531(d). These proposed regulations were approved by the CRM Regulatory Agencies in a public meeting on May 19, 2021, and the Division of Coastal Resources Management (DCRM) Director was authorized to promulgate these regulations on behalf of the CRM Regulatory Agencies.

TERMS AND SUBSTANCE: These proposed amendments seek to:

1. Revise the definition of "LEED certifiable" to allow application of subsequent versions of accredited criteria and principles;
2. Clarify major siting permit fee reduction incentives for building redevelopment, including for installation of Energy-Star rated appliances and LED lighting, and add incentives for installation of renewable energy sources;
3. Add major siting permit fee reduction incentives for stormwater management, pervious surface area, and green infrastructure;
4. Add language clarifying that the fee reduction incentives for stormwater management require collection and treatment/containment of stormwater from off-site;
5. Revise the list of high priority watersheds with a designated conservation management plan in which green infrastructure elements must be considered for development projects;
6. Require evaluations of impacts to use data from best available science (such as DCRM-adopted coastal flood scenarios) when available.

CITATION OF RELATED AND/OR AFFECTED STATUTES, RULES, AND REGULATIONS: The proposed amendments affect NMIAC Chapter 15-10 by amending the following provisions:

- NMIAC §15-10-020 Definitions, (rr) Leed certifiable
- NMIAC §15-10-101 Types of CRM Permits and When Permits are Required, (c) Early action for flood zone risk reduction
- NMIAC §15-10-205 Permit Application Procedures, (h) Fees
- NMIAC §15-10-505 Specific Criteria for Major Sitings, (g) Mitigation of Adverse Impacts

DIRECTIONS FOR FILING AND PUBLICATION: The proposed amendments shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9201(a)(1)) and posted in convenient places in the civic center and in local governmental offices in each senatorial district, both in English and in the principal vernacular (1 CMC § 9104(a)(1)).

COMMENTS: Interested parties may submit written comments on the proposed amendments to Sam Sablan, DCRM Permit Branch Manager, to the following address, fax, or email address, with the subject line "Proposed Incentives for Building Redevelopment and Stormwater Management."

BUREAU OF ENVIRONMENTAL AND COASTAL QUALITY
DIVISION OF COASTAL RESOURCES MANAGEMENT
PO Box 501304
Saipan, MP 96950
Fax: (670) 664-8540
Email: ssablan@dcrm.gov.mp

Comments are due within thirty (30) calendar days from the date of publication of this notice. 1 CMC § 9104(a)(2).

Submitted by:

6/11/2021

Janice E. Castro
Director, Division of Coastal Resources Management

Date

Received by:

06/11/21

Ms. Mathilda A. Rosario
Special Assistant for Administration

Date

Filed and Recorded by:

06.25.2021

Ms. Esther SN. Nesbitt
Commonwealth Registrar

Date

I certify, pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), that I have reviewed and approved these regulations as to form and legal sufficiency.

Mr. Edward Manibusan
Attorney General

6/14/2021
Date

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Bureau of Environmental and Coastal Quality
Division of Coastal Resources Management
P.O. Box 501304, Saipan, MP 96950
Tel: (670) 664-8300; Fax: (670) 664-8315
www.dcrm.gov.mp

Eli D. Cabrera
Administrator

Janice E. Castro
Director, DCRM

NUTISIAN PUPBLIKU PUT I MÅ PROPONI PÅRA MÅ ÅMENDA I NMIAC KAPITULU KINSI ESTA DIES (15-10) ANAI PÅRA U GUAHA INEPPOK PÅRA MÅ HATSA YAN MÅ AGUN MÅCHO'GUI I MINANEHAN MILAK HÅNOM PAKYU

NUTISIA PUT I INTENSION AKSION: I Gobietnamenton i San Katan na Islas Marianas, Ofisinan Gobietno, yan i Minanehan Frenkas Kanton Tåsi (CRM) Areklamentun Asensia ha intension-na påra u åmenda I NMIAC Kapitulu kinsi esta dies (15-10) anai påra u guaha ineppok påra må hatsa yan må agun mâcho'gui i minanehan milak hånom pakyu sigun ginen i Aktun Dinirihin Atministrasion (APA), 1 CMC §§ 9101 et seg., yan i aktun Minanehan Frenkas Kanton Tåsi, 2 CMC §§ 1501 et seq.

ATURIDAT: I må åmenda-ña må diklara gi påpa' i aturidat i regulasion i CRM asensia nai påra må ådopta i nuebu na areklamentu gi påpa' 1 CMC § 1531 (d). Esti i må proponi na regulasion siha må åpreba nai regulasion i CRM asensia gi huntan pupbliku gi Mayu dia disi nuebi, dos mit benti uno; ya i direktot i dibosion i Minanehan Frenkas Kanton Tåsi må aturisa påra u deklara esti siha na regulasion en kuenta ginen i Regulasion i CRM asensia.

TETMINU YAN SUSTANSIA: Esti i må proponi påra må åmenda ha espipiha påra må:

1. Ribisa i sustansia-ña i palabra, "LEED CERTIFIABLE" anai siña omlat i aplikasion i sigenti siha na fina'tinas nai man må lisensia na eskalera yan prinsipat;

2. Klarifika i mayot patti i tumunok åpas pitmision lisensia påra u inneppok i påra må hatsa yan må agun macho'gui yan inklusu i påra må pega-ña i man må desik-na na tibula na fuetsan elektrisi-da nisisidatña na klasen makiniria yan i LED na glop kandet yan lokkue' uma omentåyi mås eneppok påra må pega otro siha na klasen renueban fuetsa.

3. Umentåyi mayot patti i tumunok enneppok apås pitmision lisensia påra minanehan milak hånom pakyu, lugat luñio', yan i påra u fan må hatsa propriadåt propio, umaya yan i oriyan lugat.

4. Umentåyi pålåbra anai påra u klarifika i tumunok enneppok apås påra i minanehan milak hånom pakyu yan debi di u må rikohi yan u mana' gasgas i milak hånom pakyu.

5. Rebisa i listan mås man impottanti na lugat imbutnåt separåo yan i hånom hagoi nai må desikna kumo planun menanehan konsetba anai siña må konsidera ya umana' aya yan i oriyan lugat na elementu todu hinatsan propriadåt.

6. Opbliga yan ibalua i ginamak gi lugat siha yan pâra må usan infotmasion ginen i man prisenti na inestudian "science" (tat komu i DCRM-nai man må ådopta na sinisedin milak yangin guaha.

SITASION I MAN Å-ÅCHULI' SIHA NA LAI, AREKLAMENTU YAN REGULASION: I må propoponi na amenda pâra tinilaika ha ifefek-ta NMIAC Kapitulu Kinsi esta Dies (15-10) anai inamemenda i sigenti siha na probision:

- NMIAC §15-10-020 Sustansia-ña i palabra, (rr) Leed certifiable
- NMIAC § 15-10-101 Håfa na klasen lisensia yan ñaihan i lisensia nai opbligao, (c) Aksion yan prebiniyin taftaf para menos dåñosu yangin guaha milak hånom.
- NMIAC § 15-10-205 I checheʼgue-ña i aplikasion lisensia, (h) Presiu.
- NMIAC §15-10-505 Espisifiku i dipotsi pâra mayot patti, (g) menos i ginamak gi lugat

DIREKSION PÅRA MÅ REHISTRA YAN PÅRA MÅ PUPBLIKA: I må propoponi pâra må åmenda debi di u må pupblika yan må rihistra gi "Commonwealth Register" i må propoponi na seksion- na yan i nuebu na må adopta na regulation (1 CMC § 9201(a)(1)) ya debi di u må kåna' gi kombinenti na lugat tat kumo i sentron sibid yan i munisipat ofisinan gobietnamentu gi distritun senadot Luta, Tiniʼan yan Saʼipan gi linguahin Amerikano yan i prinsipio na linguahin Chamoru. (1CMC § 9104 (a)(1)).

INEPI: Todus man interisao na pattida/taotao, siña man naʼhålom inepi nai måtugiʼ pâra esti i må propoponi pâra u fan må åmenda guatu gi as Sam Sablan, DCRM Manehantin i Ramas Lisensia guatu gi address, fax or email address ya Matka I Asuntu: "Priniponin INEPPOK PÅRA MÅ HATSA YAN MÅ AGUN MÅCHOʼGUI I MINANEHAN MILAK HÅNOM PAKYU."

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Email: ssablan@dcrm.gov.mp

I inepi debi di u fattu gi hålom trenta dias (30 days) ginen anai må pupblika esti na notisia. 1 CMC § 9104 (a)(2).

Ninaʼ Hålom Ginen As

JANICE E CASTRO
DIREKTOT, DIBUSION I MINANEHAN FRENKAS KANTON TASI

6/11/2021
FECHA

Må Risibi As

06/11/21

Ms. Mathilda A. Rosario
Espisiat Na Ayudantin Atministrasion

FECHA

Må Rihistra Yan Ma Rikod

06.25.2021

Ms. Esther SN. Nesbitt
Commonwealth Registrar

FECHA

Hu testiguyi, sigun ginen i åturidat gi påpa' i 1 CMC §2153 (e) yan i 1 CMC § 9104(a)(3), ya hu ripåsa yan hu apreba esti siha na regulasion ya hu kon fotma na sufisenti gi legat.

6/14/2021

Mr. Edward Manibusan
Hineråt Na Abugao (Attorney General)

FECHA

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Eli D. Cabrera
Administrator

Janice E. Castro
Director, DCRM

ARONGORONGOL TOULAP REEL POMMWOL SIIWEL NGÁLI NMIAC CHAPTER 15-10 BWE EBWE AYOORA INCENTIVE REEL BUILDING REDEVELOPMENT ME STORMWATER MANAGEMENT

Arongorongol Pommwol Mwóghutughut: Commonwealth of the Northern Mariana Islands, Office of the Governor, CRM Regulatory Agencies re mwuschel siiweli NMIAC Chapter 15-10 bwe rebwe ayoora incentives reel building redevelopment me stormwater management sángi Administrative Procedure Act (APA), 1 CMC § 9101 *et seq*., me Coastal Resources Management Act, 2 CMC § 1501 *et seq*.

Bwángil: Siiwel kkaal nge re ayoora sángi bwángil CRM Regulatory Agencies bwe rebwe adóptááli allégh kka e ffé faal 1CMC § 1531(d). Pommwol allégh kkaal nge e fil reel CRM Regulatory Agencies sángi yéélágh we wóól March 19, 2021 nge eyoor bwángil Samwoolul Division of Coastal Resource Management (DCRM) bwe ebwe ayoora allégh kkaal sángi CRM Regulatory Agencies.

Kkapasal me Aweewe: Pommwol allégh kkaal nge ebwe:

1. Siiweli faal mille "LEED certifiable" bwe ebwe ngalleey bwángil application of subsequent versions of accredited criteria me principles;
2. Aweeweey major siting permit fee reduction incentive reel building redevelopment, me bwal yaal installation peirágh kka e rated Energy-Star me denke kka LED, me rebwe ayoora incentive reel yaal installation renewable energy sources;
3. Ayoora major siting permit fee reduction incentives reel stormwater management, lappal sóóbw, me green infrastructure;
4. Affata kkapasal bwe fee reduction incentive iye reel stormwater management nge e fil bwe ebwe yoor collection and treatment/containment of stormwater mereel off-site;
5. Siiweli listaal high priority watersheds ye eyoor yaal conservation management plan iye green infrastructure emmwel ebwe yáayá reel akkayúúl projects;
6. Ayoora evaluations of impacts reel rebwe yáali data mereel science ye eghi lap (ngare DCRM-adopted coastal flood scenarios) ngare eyoor.

Citation reel allégh me Rules and Regulations: Pommwol siiwel mwóghutughut kkaal nge e tabweey NMIAC Chapter 15-10 igha ebwe siiweli:

- NMIAC § 15-10-020 Definitions, (rr) LEED certifiable

- NMIAC §15-10-101 Types of CRM Permits and When Permits are Required, (c) Early action for flood zone risk reduction
- NMIAC §15-10-205 Permit Application Procedures, (h) Fees
- NMIAC § 15-10-505 Specific Criteria for Major Sitings, (g) Mitigation of Adverse Impacts

Afal Reel Ammwelil me Akkatééwowul: Pommwol mwóghutughut kkaal ebwe akkatééwow lóll Commonwealth Register llól tálil pommwol me ffél mwóghutughut ikka ra adóptáali (1CMC § 9201 (a) (1) me rebwe appaschetá lóll civic center me bwal lóll bwulasiyool gobetnameento lóll senatorial district, fengál reel English me mwáliyasch (1CMC § 9104 (a) (1)).

Reel Isiisilongol Kkapas: Afanga ngáre bwughiiló yóómw ischil kkapas reel pommwol mwóghutughut kkaal ngáli Sam Sablan, DCRM Permit Branch Manager reel address, fax ngáre email address reel "Proposed Incentives for Building Redevelopment and Stormwater Management".

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Ebwe toolong ischil kkapas lóll eliigh ráál mwiril aal akkatééwow arongorong yeel, (1CMC § 9104 (a) (2).

Isaliiyalong:

6/11/2021

Janice E. Castro
Director, Division of Coastal Resources Management

Ráál

Bwughiyal:

06/11/21

Ms. Mathilda A. Rosario
Special Assistant for Administration

Ráál

Ammwelil:

06-25-2021

Ms. Esther SN. Nesbitt
Commonwealth Registrar

Ráál

I apilúghúlúghúw reel 1 CMC ss 2153 (e) me 1 CMC ss 9104 (a) (3) bwe yaa takkaal amweri fischiiy me aa lléghéló reel ffééról me aal legal sufficiency.

6/14/2021

Mr. Edward Manibusan
Soulemelemil Allégh Lapalap

Ráál

§ 15-10-020 Definitions
(rr) "LEED certifiable" means that project proposal meets or exceeds current standardized rating systems for "Leadership in Energy and Environmental Design" (LEED) criteria and Guiding Principles established by the United States Green Building Council (USGBC) as assessed by application of the LEED v4 Building Design and Construction Checklist or any subsequent version that is accredited by the USGBC.

§ 15-10-101 Types of CRM Permits and When Permits are Required
(c) Early action for flood zone risk reduction.

(1) When a major siting proposal falls within a coastal hazard APC or a FEMA designated AE/AO flood zone, the applicant and DCRM shall coordinate with the Zoning Office and Department of Public Works at the earliest possible time to ensure relevant flood hazard reduction standards are met.

(2) "Soft measures" such as living shorelines, planting native beach vegetation, maintaining or establishing vegetative buffers, or building green swales for water collection and the like must be considered as alternatives to hard structures, such as sea walls, to limit coastal erosion. If "hard structures" are proposed, application must explain what "soft measures" were considered and why they were determined to be inappropriate.

(3) Implementation of green infrastructure elements such as permeable paving, ~~and~~ roof top gardens, and related best management practices must be considered for development projects in listed high priority watersheds with designated conservation management plans including Achugao, ~~Garapan~~West Takpochao, Laolao, and Talakaya. If development in these watersheds is less than one acre such that impervious cover greater than 75% may be allowed, the applicant must explain how potential impacts to the watershed have been minimized, what "green infrastructure" interventions were considered, and, if not chosen for implementation, why they were determined to be inappropriate.

§ 15-10-205 Permit Application Procedures
CRM permit application forms, including APC permits and temporary permits for emergency repairs, shall be maintained at the DCRM office on Saipan. For activities proposed on Rota or Tinian, copies of the application form shall also be maintained at DCRM Branch Offices on Rota and Tinian. These permit applications shall also be available and can be tracked through the DCRM Online Permitting System. CRM permit applicants shall complete and file an application for each proposed APC permit, temporary permit for emergency repair, or major siting permit. The following conditions shall apply to all CRM permit applications:

(h) Fees. CRM permit applications shall be accompanied by a non-refundable CRM permit application and administrative fee in accordance with the following fee schedule, by check made payable to CNMI Treasurer.

(5) Fees for Major Siting projects shall be based upon appraisal of construction costs.

FEE AMOUNT	COST OF PROJECT OR PERMIT AMENDMENT

$200	less than or equal to $ 50,000
$400	value between $ 50,001 and $ 100,000
$1,000	value between $ 100,001 and $500,000
$2,000	value between $ 500,001 and $ 1,000,000
$2,000	For every $1,000,000 cost increment exceeding $1,000,000.

(i) Discounted fees for qualifying "green" and/or "low impact development" projects. Discounts may be applied for application and administrative fees at the recommendation of the Permit Manager and approval of the Director. Discretionary guidance for tier permit reductions are as provided in subsections (h)(5)(i)(A) and (B).

(A) Tiered permit discounts for qualifying ~~"Energy Star" rated~~ or "LEED certifiable" projects are available as follows:

Tier	Qualifications	Incentive
Tier 1 Reduction	Building design and construction are "LEED Certifiable," scoring between 40-49 points on the LEED v4 or subsequent Building Design and Construction Checklist	10% fee reduction
Tier 2 Reduction	Building design and construction are "LEED Silver Certifiable," scoring between 50-59 points on the LEED v4 or subsequent Building Design and Construction Checklist	15% fee reduction
Tier 3 Reduction	Building design and construction are "LEED Gold Certifiable," scoring between 60-79 points on the LEED v4 or subsequent Building Design and Construction Checklist	20% fee reduction
Tier 4 Reduction	Building design and construction are "LEED Platinum Certifiable," scoring between 80-110 points on the LEED v4 or subsequent Building Design and Construction Checklist	25% fee reduction

(B) Tiered permitting fee reductions for building redevelopment and/or stormwater management ~~best practices~~ are available as follows:

Tier	Building Redevelopment	Stormwater Management	Incentive

Tier 1 BMP Reduction	- Permittee or its operators implements and maintains on site recycling and composting programs to reduce 50% or more of the waste stream; AND/OR - Project installs, utilizes, and maintains 20% or more of "Energy Star" rated high efficiency / LED lighting and appliances or a renewable energy source supplying 20% or more of a project's electricity	- Project implements and maintains on-site stormwater management practices that collect from an off-site source and treat or contain an additional 10%-24% of the project's total stormwater runoff volume, based on the 25 year 24 hour duration storm event; AND/OR - Project implements and maintains 30% - 49% of pervious surface area or green infrastructure elements	5% fee reduction
Tier 2 BMP Reduction	Applicant redevelops or rehabilitates 15% - 25% of the existing building	- Project implements and maintains on-site stormwater management practices that collect from an off-site source and treat or contain an additional 25%-49% of the project's total stormwater runoff volume, based on the 25 year 24 hour duration storm event; AND/OR - Project implements and maintains 50% or more of pervious surface area or green infrastructure elements	10% reduction
Tier 3 BMP Reduction	Applicant redevelops or rehabilitates 26% - 50% of the existing building	- Project implements and maintains on-site stormwater management practices that collect from an off-site source and treat or contain an additional 50%-74% of the project's total stormwater runoff volume, based on the 25 year 24 hour duration storm event	20% reduction
Tier 4 BMP Reduction	Applicant redevelops or rehabilitates 51% - 74% of the existing building	- Project implements and maintains on-site stormwater management practices that collect from an off-site source and treat or contain an additional 74% or more of the project's total stormwater runoff volume, based on the 25 year 24 hour duration storm event	30% reduction

Tier 5 BMP Reduction	Applicant redevelops or rehabilitates over 75% of the existing building	- Not applicable	50% reduction

(ii) Qualifying for Discounted Major Siting permit fee. To qualify for the tiered permit fee reductions listed above, major siting applicants must request discount in writing at least 30 days prior to submitting a major siting application. Applicants are encouraged to discuss proposed fee reduction in advance with Director and Permitting staff to identify any required documentation to support discounted permit fee request. The DCRM Director shall respond to permit fee reduction requests in writing and state whether the request is granted in full, granted in part, or denied and the reasons therefore within 30 days of receiving the request and all required supporting documentation. If no response is received within 30 days of the submission of the request, the request will be considered denied by the DCRM Director. If reduction is approved, agreed upon project implementation will be included as conditions of the major siting permit.

(iii) Forfeiture of applied permit discount. At the DCRM Director's discretion, a violation of major siting permit conditions or engaging in unpermitted activity with a nexus to the permit discount received by the permit applicant or failure to implement improvements for which the discount was granted may result in forfeiture of applied permit discount, and any outstanding balance may become due at the time of the issuance of a Notice of Violation.

(iv) All permit fee reduction requests for stormwater management practices must meet the standards set forth in 2.1 and 2.2 of the 2006 CNMI and Guam Stormwater Management Manual, specifically E&SC Standards 1-11 and Postconstruction Standards 1-13. DEQ stormwater management standards require the on-site detention of 100% of stormwater runoff volume, based on the 25 year 24 hour duration storm event; therefore, applicants requesting a fee reduction for stormwater management must account for the additional percentage by collecting additional stormwater from off-site, and treating or containing it.

§ 15-10-505 Specific Criteria for Major Sitings

The CRM Agency Officials and the DCRM Director shall evaluate a proposed project found to constitute a major siting based on the specific criteria listed below, as well as the general criteria for all major siting and APC permits at § 15-10-301 and general standards at § 15-10-305. A major siting application must contain an evaluation by the applicant of the proposed project based on the criteria below, as required by § 15-10-206.

(g) Mitigation of Adverse Impacts. Wherever practicable, adverse impact(s) of the proposed project on the environment shall be mitigated. Mitigation shall include the incorporation of management measures for the control of nonpoint source pollution and with general management objectives to limit risk of loss and damage from sea level rise and coastal flooding. ~~Where data is available, c~~Current and future risks ~~should~~ shall be ~~considered~~ evaluated when assessing potential direct, indirect, and cumulative impacts, and proposing avoidance, minimization, and

mitigation measures, using data from best available science (such as DCRM-adopted coastal flood scenarios) when available. To limit avoidable impacts from coastal hazards, major siting proposals must meet or exceed the Department of Public Works flood hazard reduction standards as codified in ~~Chapter 155-10.2, Part 200~~the CNMI Flood Damage Prevention Regulations (NMIAC, title 155, chapter 10.2, Part 200).

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Eli D. Cabrera
Administrator

Janice E. Castro
Director, DCRM

PUBLIC NOTICE OF PROPOSED AMENDMENTS TO NMIAC CHAPTER 15-10 TO SPECIFY THE LOCATION OF PUBLIC HEARINGS

NOTICE OF INTENDED ACTION: The Commonwealth of the Northern Mariana Islands, Office of the Governor, Coastal Resources Management (CRM) Regulatory Agencies intend to amend NMIAC Chapter 15-10 to specify the location of public hearings pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC §§ 9101 *et seq.*, and the Coastal Resources Management Act, 2 CMC §§ 1501 *et seq.*

AUTHORITY: These amendments are promulgated under the authority of the CRM Regulatory Agencies to adopt new regulations under 1 CMC § 1531(d). These proposed regulations were approved by the CRM Regulatory Agencies in a public meeting on May 19, 2021, and the Division of Coastal Resources Management (DCRM) Director was authorized to promulgate these regulations on behalf of the CRM Regulatory Agencies.

TERMS AND SUBSTANCE: These proposed amendments seek to establish and clarify that:

1. Public hearings pursuant to permit applications for proposed projects on Saipan, Tinian, and Rota shall be conducted on the island where the proposed project is located; hearings for proposed projects on Agiguan shall be conducted on Tinian; and hearings for proposed projects in the Northern Islands municipality shall be conducted in the Northern Islands municipality, unless the DCRM Director at his/her discretion determines, on the basis of economic and/or logistical feasibility, that the hearing shall be conducted on Saipan;
2. Appellate hearings shall be held on the same island as designated for permit hearings;
3. Public hearings regarding a new or modified Areas of Particular Concern (APC) or proposed boundary change for an APC shall be conducted on Saipan;
4. All permit enforcement hearings shall be conducted on Saipan; and
5. Public hearings or meetings may be held at any location within the Commonwealth except as otherwise provided in Chapter 15-10.

CITATION OF RELATED AND/OR AFFECTED STATUTES, RULES, AND REGULATIONS: The proposed amendments affect NMIAC Chapter 15-10 by amending the following provisions:

- NMIAC §15-10-220 CRM Permit Hearing, (d) Location
- NMIAC §15-10-235 Appeal of CRM Permit Decision
- NMIAC §15-10-405 Procedure
- NMIAC §15-10-825 Permit Enforcement Hearing
- NMIAC §15-10-1001 Public Information and Education, (c) Public Hearings

DIRECTIONS FOR FILING AND PUBLICATION: The proposed amendments shall be published in the Commonwealth Register in the section on proposed and newly adopted

regulations (1 CMC § 9201(a)(1)) and posted in convenient places in the civic center and in local governmental offices in each senatorial district, both in English and in the principal vernacular (1 CMC § 9104(a)(1)).

COMMENTS: Interested parties may submit written comments on the proposed amendments to Sam Sablan, DCRM Permit Branch Manager, to the following address, fax, or email address, with the subject line "Proposed Revisions to CRM Public Hearing Provisions."

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Comments are due within thirty (30) calendar days from the date of publication of this notice. 1 CMC § 9104(a)(2).

Submitted by:

Janice E. Castro
Director, Division of Coastal Resources Management

06/11/2021
Date

Received by:

Ms. Mathilda A. Rosario
Special Assistant for Administration

06/11/21
Date

Filed and Recorded by:

Ms. Esther SN. Nesbitt
Commonwealth Registrar

06.25.2021
Date

I certify, pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), that I have reviewed and approved these regulations as to form and legal sufficiency.

Mr. Edward Manibusan
Attorney General

6/18/2021
Date

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Eli D. Cabrera
Administrator

Janice E. Castro
Director, DCRM

NUTISIAN PUPBLIKU PUT I MÅ PROPONI PÅRA MÅ ÅMENDA I NMIAC KAPITULU KINSI ESTA DIES (15-10) ANAI PÅRA MÅ ESPISIFIKA I LUGAT PÅRA INEKOÑGOK PUPBLIKU

NUTISIA PUT I INTENSION AKSION: I Gobietnamenton i San Katan na Islas Marianas, Ofisinan Gobietno, yan i Minanehan Frenkas Kanton Tåsi (CRM) Areklamentun Asensia ha intension-ña påra u åmenda I NMIAC Kapitulu kinsi esta dies (15-10) anai påra må espisifika i lugat påra inekoñgok pupbliku sigun ginen i Aktun Dinirihin Atministrasion (APA), 1 CMC §§ 9101 et seg., yan i aktun Minanehan Frenkas Kanton Tåsi, 2 CMC §§ 1501 et seq.

ATURIDAT: I må åmenda-ña må diklara gi påpa' i aturidat i regulasion i CRM asensia nai påra må ådopta i nuebu na areklamentu gi påpa' 1 CMC § 1531 (d). Esti i må proponi na regulasion siha må åpreba nai regulasion i CRM asensia gi huntan pupbliku gi Mayu dia disi nuebi, dos mit benti uno; ya i direktot i dibosion i Minanehan Frenkas Kanton Tåsi må aturisa påra u deklara esti siha na regulasion en kuenta ginen i Regulasion i CRM asensia.

TETMINU YAN SUSTANSIA: Esti i må proponi påra må åmenda ha espipiha påra u estapblesi yan påra u klarifika i:

1. Inekoñgok pupbliku sigun ginen i aplikasion lisensia påra i man må propoponi na hinatsan projek propiadåt giya Sa'ipan, Tini'an yan Luta ya debi di u må kondukta gi eyu na isla anai påra må hatsa i projek propiadåt. I inekoñok pupbliku påra i man må propoponi påra Agiguan debi di u kondukta giya Tini'an. I inekoñgok pupbliku påra i man må propoponi påra i San Katan na Islan Munisipat, debi di u må kondukta gi San Katan na Isla solu i Direktot i DCRM ha ditetmina na bula molestia siha ya maolek-ña na u må kondukta-ha' i inekoñgok pupbliku giya Sa'ipan.

2. Inekoñgok apela debi di u mana' guha gi parehu na isla anai må desikna påra inekoñgok lisensia.

3. Inekoñgok pupbliku påra i nuebu osino i man må tulaikan ñaihon i lugat pattikulat menti interes pat priniponi yan tinilaikan lugat mohon debi di u må kondukta giya Sa'ipan.

4. Todu inekoñgok pupbliku påra enfuetsan lisensia debi di u må kondukta giya Sa'ipan.

5. I Inekoñgok pupbliku osino i hunta siña mana' guaha gi maseha månu na lugat gi hålom i "Commonwealth" solu tisiña sigun ginen i Kapitulu 15-10.

SITASION I MAN Å-ÅCHULI' SIHA NA LAI, AREKLAMENTU YAN REGULASION: I må propoponi na åmenda påra tinilaika ha ifefek-ta NMIAC Kapitulu Kinsi esta Dies (15-10) anai inamemenda i sigenti siha na probision:

- NMIAC §15-10-220 CRM Inekoñgok lisensia, (d) Lugat
- NMIAC §15-10-235 Apela i disision i CRM påra lisensia
- NMIAC §15-10-405 I Eskalera
- NMIAC §15-10-825 Inekoñgok Infuetsan Lisensia
- NMIAC §15-10-1001 Infotmasion yan Inidukan Pupbliku, (c) Inekoñgok Pupbliku

DIREKSION PÅRA MÅ REHISTRA YAN PÅRA MÅ PUPBLIKA: I må propoponi påra må åmenda debi di u må pupblika yan må rihistra gi "Commonwealth Register" i må propoponi na seksion- na yan i nuebu na må adopta na regulation (1 CMC § 9201(a)(1)) ya debi di u må kåna' gi kombinenti na lugat tat kumo i sentron sibid yan i munisipat ofisinan gobietnamentu gi distritun senadot Luta, Tini'an yan Sa'ipan gi linguahin Amerikano yan i prinsipio na linguahin Chamoru. (1CMC § 9104 (a)(1)).

INEPI: Todus man interisao na pattida/taotao, siña man na'hålom inepi nai måtugi' påra esti i må propoponi påra u fan må åmenda guatu gi as Sam Sablan, DCRM Manehantin i Ramas Lisensia guatu gi address, fax or email address ya Matka I Asuntu: Priniponi påra må rebisa i Probision i CRM na Inekoñgok Pupbliku."

BUREAU OF ENVIRONMENTAL AND COASTAL QUALITY
DIVISION OF COASTAL RESOURCES MANAGEMENT
P.O. BOX 501304
SAIPAN, MP 96950
FAX: (670) 664-8540
Email: ssablan@dcrm.gov.mp

I inepi debi di u fattu gi hålom trenta dias (30 days) ginen anai må pupblika esti na notisia. 1 CMC § 9104 (a)(2).

Nina' Hålom Ginen As

JANICE E CASTRO — FECHA 6/11/2021
DIREKTOT, DIBUSION I MINANEHAN FRENKAS KANTON TASI

Må Risibi As

Ms. Mathilda A. Rosario — FECHA 06/11/21
Espisiat Na Ayudantin Atministrasion

Må Rihistra Yan Ma Rikod

Ms. Esther SN. Nesbitt
Commonwealth Registrar

06-25-2021
FECHA

Hu testiguyi, sigun ginen i åturidat gi påpa' i 1 CMC §2153 (e) yan i 1 CMC § 9104(a)(3), ya hu ripåsa yan hu apreba esti siha na regulasion ya hu kon fotma na sufisenti gi legat.

Mr. Edward Manibusan
Hineråt Na Abugao (Attorney General)

6/18/2021
FECHA

Commonwealth of the Northern Mariana Islands
OFFICE OF THE GOVERNOR
Bureau of Environmental and Coastal Quality
Division of Coastal Resources Management
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Eli D. Cabrera
Administrator

Janice E. Castro
Director, DCRM

ARONGORONGOL TOULAP REEL POMMWOL SIIWEL KKA REEL NMIAC CHAPTER 15-10 REEL REBWE AFFATA LEELIYEL YAAR YÉÉLÁGH TOULAP

Arongorongol Pommwol Mwóghutughut: Commonwealth of the Northern Mariana Islands, Office of the Governor, Coastal Resources Management (CRM) Regulatory Agencies re mwuschel rebwe siweli NMIAC Chapter 15-10 reel rebwe amweri fischiiy igha ebwe ghal lo yaar yéélágh toulap iye sángi alléghúl Administrative Procedure Act (APA), 1 CMC § 9101 *et seq*., me Coastal Resources Management Act, 2 CMC § 1501 *et seq*.

Bwángil: Siiwel kkaal nge re féérú sángi lemelemil CRM Regulatory Agencies bwe ebwe adóptáali allégh kka e ffé iye e lo faal 1 CMC § 1531 (d). Pommwol allégh nge aa fil reel CRM Regulatory Agencies reel yaar yéélágh toulap iwe wóól May 19, 2021, iwe Division of Coastal Resources Management (DCRM) Director e authorize li bwe ebwe pommwoli allégh sángi CRM Regulatory Agencies.

Kkapasal me Aweewe: Pommwol allégh nge ebwe ayoora me amweri fischiiy bwe:

1. Schuulapáár toulap ikka e apasa permit applications reel pommwol project kka wóól Seipél, Tchúlúyól me Luuta nge ebwe lo wóól falúw la ebwe lo iye project la re kki pommwoli; arongorongol pommwol project kka wóól Agiguan nge ebwe lo wóól Tchúlúyól; nge arongorongol pommwol project kka wóól téél falúw kka efáng nge ebwe lo wóól falúw kka efáng, nge emmwel ebwe lo wóól Seipél ngare DCRM Director e mángi bwe ilaal milla e fil bwe ebwe féérú ngare eyoor weiresil reel economic me ngare logistical feasibility.
2. Arongorongol Appellate nge ebwe lo wóól falúw la ebwe bwal lo iye arongorongol permit;
3. Schuulapáár toulap reel mille e ffé ngare modified Areas of Particular Concern ngare pommwol sóóbw iye ebwe siiwel reel APC nge ebwe lo wóól Seipél;
4. Alongal arongorongol alléghúl permit nge ebwe lo wóól Seipél; me
5. Schuulapáár toulap me ngare yéélágh nge emmwel rebwe isáli wóól tafal falúw kka lóll Commonwealth nge e fil ebwe tabwey mille e lo lóll Chapter 15-10.

Citation reel allégh me Rules and Regulations: Pommwol siiwel mwóghutughut kkaal nge e tabweey NMIAC Chapter 15-10 igha ebwe siweli:

- NMIAC § 15-10-220 CRM Permit Hearing, (d) Location

- NMIAC § 15-10-235 Appeal of CRM Permit Decision
- NMIAC § 15-10-405 Procedure
- NMIAC § 15-10-825 Permit Enforcement Hearing
- NMIAC § 15-10-1001 Public Information and Education, (c) Public Hearings

Afal Reel Ammwelil me Akkatééwowul: Pommwol mwóghutughut kkaal ebwe akkatééwow lóll Commonwealth Register lóll tálil pommwol me ffél mwóghutughut ikka ra adóptáali (1CMC § 9201 (a) (1) me rebwe appaschetá lóll civic center me bwal lóll bwulasiyool gobetnameento lóll senatorial district, fengál reel English me mwáliyasch (1 CMC § 9104 (a) (1)).

Reel Isiisilongol Kkapas: Afanga ngáre bwughiiló yóómw ischil kkapas reel pommwol mwóghutughut kkaal ngáli Sam Sablan, DCRM Permit Branch Manager reel address, fax ngáre email address reel "Proposed Revisions to CRM Public Hearing Provisions".

BUREAU OF ENVIRONMENTAL AND COASTAL QUALITY
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Email: ssablan@dcrm.gov.mp

Ebwe toolong ischil kkapas lóll eliigh ráál mwiril aal akkatééwow arongorong yeel, (1CMC § 9104 (a) (2).

Isaliiyalong:

6/11/2021

Janice E. Castro
Director, Division of Coastal Resources Management

Ráál

Bwughiyal:

06/11/21

Ms. Mathilda A. Rosario
Special Assistant for Administration

Ráál

Ammwelil:

06.25.2021

Ms. Esther SN. Nesbitt
Commonwealth Registrar

Ráál

I apilúghúlúghúw reel 1 CMC § 2153 (e) me 1 CMC § 9104 (a) (3) bwe yaa takkaal amweri fischiiy me aa lléghéló reel ffééról me aal legal sufficiency.

6/18/2021

Mr. Edward Manibusan
Soulemelemil Allégh Lapalap

Ráál

§ 15-10-220 CRM Permit Hearing

When a hearing on a permit application is required or requested pursuant to this section the DCRM Director shall schedule the hearing, inform the party or parties involved of the hearing date and publish notices of the hearing two times in a newspaper of general circulation in the Commonwealth at least 14 days prior to the hearing. The DCRM Director at his/her discretion may require that notice be posted at the proposed site no later than one week before the scheduled public hearing.

(d) Location. ~~Public meetings may be held at any location within the Commonwealth.~~ Public hearings pursuant to permit applications for proposed projects on Saipan, Tinian, and Rota shall be conducted on the island where the proposed project is located; hearings for proposed projects on Aguiguan shall be conducted on Tinian; and hearings for proposed projects on all other islands shall be conducted on Saipan. ~~Appellate hearings shall be held on the same island as the permit hearings, or if no CRM permit hearing was held, on the island where the proposed project is located. All other public hearings shall be conducted on Saipan.~~

§ 15-10-235 Appeal of CRM Permit Decision

Any aggrieved person as defined at § 15-10-020 may appeal the decision of CRM Agency Officials or in the case of a APC development, the DCRM Director decision to grant, deny, or condition a new CRM permit to the CRM Appeals Board by filing a notice of the appeal with the DCRM Office within 30 days of the issuance of the CRM permit decision. In the absence of an appointed CRM Appeal Board at the time that the appeal is filed, the appeal shall be to the Superior Court as set forth in Administrative Procedure Act 1 CMC §§ 9101 et seq. The DCRM Director shall then schedule an appellate hearing before the CRM Appeals Board. Appellate hearings shall be held on the same island as designated for permit hearings pursuant to §15-10-220(d).

§ 15-10-405 Procedure

Requests for new or modified APCs shall include detailed documentation supporting the APC designation or boundary change. The documentation shall be based on criteria set forth in § 15-10-410, but may include other information pertinent to the area nominated or proposed boundary change. Within 30 days of a nomination or proposed boundary change, the DCRM Director shall circulate it to the CRM Agency Officials. The DCRM Director shall, within that same period, publish notice of the nomination or proposed boundary change, describing the area involved, in a newspaper of general circulation within the Commonwealth. The DCRM Office shall be available to receive public comment for a period of 30 days from the date such notice is published. Within the 30 day minimum comment period, the CRM Agency Officials shall submit to the DCRM Office comments and recommendations, and a public hearing shall be conducted on Saipan by the DCRM Office. Within 30 days after the closure of the comment period the CRM agency officials shall make the final decision regarding the proposed creation or modification.

§ 15-10-825 Permit Enforcement Hearing

Upon receipt of a request for a permit enforcement hearing, the DCRM Director shall schedule a hearing within 45 days. The request for an enforcement hearing shall not stay the imposition of specified penalties. The DCRM Director or their designee shall preside at CRM enforcement hearings, shall control the taking of testimony and evidence, and shall cause to be made an audio recording or stenographic record of CRM enforcement hearings. Evidence presented at such hearings need not conform with any prescribed rules of evidence but may be limited by the DCRM Director in any manner she/he reasonably determines to be just and efficient and promote the ends of justice. All permit enforcement hearings shall be conducted on Saipan. Permit enforcement hearings shall conform to the provisions of the Administrative Procedure Act, 1 CMC §§ 9108, et seq. The DCRM Director shall issue a decision within 15 days of the close of the enforcement hearing and all orders shall be in writing and accompanied by written findings of fact and conclusions of law. The standard of proof for such hearing shall be by the preponderance of the evidence." The decision of the DCRM Director shall be final as within the CRM program. Appeal from an enforcement decision shall be to the Commonwealth Superior Court within 30 days following service of the DCRM Director's written enforcement decision on the offending party.

§ 15-10-1001 Public Information and Education

The DCRM Office shall make information and educational materials available to the public and CRM Agency Officials. The CRM Office, under the direction of the DCRM Director, shall assist a CRM permit applicant, CRM Agency Officials, the Governor and the CRM Appeals Board, by explaining the policies and procedures of the CRM permit process.

(c) Public Hearings. Any hearing or meeting held for purposes of the CRM permit or enforcement process, or the Coastal Advisory Council, shall be open to the public. Such hearings or meetings may be held at any location within the Commonwealth except as otherwise provided in this chapter.

Commonwealth Ports Authority
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PUBLIC NOTICE

Proposed Amendments to the Airport Rules and Regulations of the Commonwealth Ports Authority

The Executive Director of the Commonwealth Ports Authority ("CPA") hereby notifies the public that the Commonwealth Ports Authority intends to promulgate amendments to its Airport Rules and Regulations.

INTENDED ACTION TO ADOPT THESE PROPOSED AMENDMENTS TO THE AIRPORT RULES AND REGULATIONS OF THE COMMONWEALTH PORTS AUTHORITY: Notice is hereby given pursuant to 1 CMC § 9104(a) of the Administrative Procedure Act that the Commonwealth Ports Authority intends to promulgate the following additional section to its Airport Rules and Regulations.

TERMS, SUBSTANCE, AND DESCRIPTION OF THE SUBJECTS AND ISSUES INVOLVED: These proposed regulations amend the Airport Rules and Regulations of the Commonwealth Ports Authority to establish a new rate methodology for air carriers operating at CPA airports. These proposed regulations, among other things, redefine and provide additional definitions of terms used throughout § 40-10.1; amend § 40-10.1-740 by providing general provisions regarding the use of CPA airports, the requirements to occupy and use airline assigned areas, and information regarding and governing CPA's "Letters of Authorization," airlines' privileges, uses, and rights, the accommodation of other airlines, and airport system security; adds § 40-10.1-742, which provides rules governing airlines' assigned areas; adds § 40-10.1-743, which provides regulations regarding the operation and maintenance responsibilities of CPA and the airlines; adds § 40-10.1-744, which governs the obligations of the airlines; amends § 40-10.1-745, which adds indemnification provisions and revises insurance requirements; adds § 40-10.1-746, which states the rights and privileges reserved by CPA; adds § 40-10.1-747, which provides the procedure to be followed when damage or destruction occurs to an Airlines' Assigned Area; adds § 40-10.1-748, which provides general conditions regarding the environment, including groundwater and solid and hazardous waste; amends § 40-10.1-750 Surety Bond; adds § 40-10.1-751, which governs Airlines' and CPA's property rights upon termination; adds § 40-10.1-752, which, among other things, requires compliance with CPA's Rules and Regulations and provides nondiscrimination requirements; amends § 40-10.1-1201 by providing terms regarding airline fees and charges; amends § 40-10.1-1205 Landing Fees; adds § 40-10.1-1206, which provides rental charges for use of CPA Terminals; removes §§ 40-10.1-1210, 1215, 1220, which provided terms regarding public apron and operational area charges, departure facility service charges, and international arrival facility service charges; removes § 40-10.1-1230(b)(2), which provided an exception to in-transit passenger service charge to airlines that executed CPA operating agreements; updates the amount and terms of the Fuel Flowage Fee, and Ground Handling Permit Fees, and the Passenger Facility Charges; adds § 40-10.1-1256, which provides terms regarding other CPA Fees and Charges; adds § 40-10.1-1257, which provides provisions regarding the

amendment of fees and charges; adds § 40-10.1-1258, which requires Airlines to submit reports to CPA; and amends § 40-10.1-1260 in regard to the payment of charges.

AUTHORITY: The substance of the following proposed amendments, which implements the new rate methodology for the use of CPA airports, has been previously approved by the CPA Board of Directors. The substance of these proposed amendments was included in the Airport System Operating Agreement, and on May 27, 2021, the CPA Board of Directors, through Resolution No. 2021-05, authorized the publication of these proposed amendments. Thus, these proposed amendments are for publication in the Commonwealth Register for Notice and Comment pursuant to the Administrative Procedure Act and for approval by the Attorney General pursuant to 1 CMC § 2153(e). The Commonwealth Ports Authority has the authority to promulgate these regulations pursuant to 2 CMC § 2122.

DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations, 1 CMC § 9102(a)(l), and posted in convenient places in the civic center and in local governments in each senatorial district, both in English and in the principal vernacular. 1 CMC § 9104(a)(l).

TO PROVIDE COMMENTS: Persons or entities wishing to submit comments must do so in writing to Mr. Christopher S. Tenorio, Executive Director, CPA, by means of one of the following: Email, fax, mail or hand-delivery to the CPA Administrative Office located on the Second Floor of the Francisco C. Ada/Saipan International Airport with the subject line **"Comments on Proposed Airport Rules and Regulations."**

Commonwealth Ports Authority
P.O. Box 501055 Saipan, MP 96950
Tel. (670) 237-6500/6501
Fax: (670) 234-5962
Email: cpa.admin@pticom.com

All written comments shall be submitted within 30 days after publication of this notice.

Submitted by: _____ 6/18/21
CHRISTOPHER S. TENORIO — Date
Executive Director, CPA

Received by: _____ 06/21/21
MATILDA ROSARIO — Date
Special Assistant for Administration

Filed and Recorded by: _____ 06.25.2021
ESTHER SN. NESBITT — Date
Commonwealth Registrar

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NUTISIAN PUPBLIKU

I Manmaproponi na Amenda para i Areklamentu yan Regulasion i Plåsa gi Commonwealth Ports Authority

I Eksakatibu Direktot gi Commonwealth Ports Authority ("i CPA") ha infotma guini i pupbliku na i intensiona i Commonwealth Ports Authority para u pupblika i amenda siha gi iyon Areklamentu yan Regulasion i Plåsa.

I AKSION NI MA'INTENSIONA PARA U ADÅPTA ESTI I MANMAPROPONI NA AMENDA SIHA PARA I AREKLAMENTU YAN REGULASION I PLÅSA GI COMMONWEALTH PORTS AUTHORITY: I nutisia guini munå'i sigun para 1 CMC § 9104(a) gi Åkton "Administrative Procedure" na i Commonwealth Ports Authority ha intensiona para u pupblika i tinattiyi na dinanña na seksiona para iyon Areklamentu yan Regulasion i Plåsa.

I TEMA, SUSTÅNSIA, YAN I DISKRIPSION I SUHETU NI MASUMÅRIA YAN ASUNTU NI TINEKKA: Esti i manmaproponi na regulasion siha inamenda i Areklamentu yan Regulasion i Plåsa gi Commonwealth Ports Auhtority para u establesi nuebu na "rate methodology" para i kinalamtin i "air carriers" gi plåsan CPA siha. Esti i manmaproponi na regulasion siha yan otru siha, ha ta'lun dumifina yan pribebeni definision nu usun i palåbra gi todu § 40-10.1; amenda § 40-10.1-740 ni prinibebeni heneråt na "provision" put i usun nu plåsan i CPA, i dinimånda siha para u ma'ukupa yan usa i "airline" ni ma'asikna na aria siha, yan imfotmasion put yan i gumubiebietnan i CPA na "Kåttan Auturisasion," "airlines' privileges," inisa siha, yan diretchu, i "accommodation" nu otru "airlines," yan sikuridåt sisteman plåsan"; suma § 40-10.1-742, ni ha pribebeni areklamentu ni gumubiebietna i ma'asikna årian "airlines'; suma i § 40-10.1-743, ni ha pribebeni regulasion siha put i kinalamtin yan inadahin na responsibilidåt nu CPA yan i "airlines"; suma § 40-10.1-744, ni ha gubietna i ubligasion i "airlines"; inamenda § 40-10.1-745, ni ha suma i "indemnification provisions" yan rinibisa i dinimåndan insurance siha; suma § 40-10.1-746, ni ha sångan i diretchu yan pribilehu ni marisetba ni CPA; suma § 40-10.1-747, ni ha pribebeni i manera ni para u matåttiyi an dåñu o sino distruktu sinisedi gi Asikna na Årian "Airlines'; suma § 40-10.1-748, ni ha pribebeni heneråt na kundision siha put i uriya, kuntodu "groundwater" yan "solid" yan "hazardous waste"; inamenda § 40-10.1-750 "Surety Bond"; suma § 40-10.1-751, ni ha gubietna "Airlines'" yan i diretchun propiedåt i CPA gi titmina; suma § 40-10.1-752, ni, yan otru siha, dimånda parehu yan i Areklamentu yan Regulasion i CPA yan pribeni "nondiscrimination" na dinimånda siha; inamenda § 40-10.1-1201 ni para u pribebeni tema siha put i åpas "airline" yan i ginagaogåo na åpas siha; inamenda § 40-10.1-1205 "Landing Fees"; suma § 40-10.1-1206, ni ha pribebeni ginagaogåo na åpas atkilon para isan nu CPA "Terminals"; na'suha §§ 40-10.1-1210, 1215, 1220, ni ha pribebeni tema siha put i "apron" pupbliku yan "operational area" na ginagaogåo na åpas siha; i ginagaogåo na åpas siha para sitbisiun fasilidåt hinanåo, yan i ginagaogåo åpas siha para sitbisiun fasilidåt intetnasionåt finattu; na'suha § 40-10.1-1230(b)(2), ni ha prinibeniyi kuenta para ginagaogåo na åpas sitnisiun "in-transit" pasaheru para "airlines" ni ha "executed CPA operating" na kuntråta siha; na'nuebu i tutåt yan teman i Åpas

"Fuel Flowage", yan Åpas "Ground Handling Permit", yan i Ginagaogåo na Åpas Fasilidåt Pasaheru siha; suma § 40-10.1-1256, ni ha pribebeni tema put otru Åpas yan Ginagaogåo na Åpas i CPA; suma § 40-10.1-1257, ni ha pribebeni "provisions" put i amendan nu åpas yan i ginagaogåo na åpas siha; suma § 40-10.1-1258, ni ha dimånda i "Airlines" para u na'hålum ripot para i CPA; yan inamenda § 40-10.1-1260 put para i åpasin i ginagaogåo na åpas siha.

ÅTURIDAT: I "substance" nu i tinattitiyi na manmaproponi na amenda siha, ni umimplimenta i nuebu na "rate methodology" para i isan nu plåsan CPA, ginen maninaprueba gi ma'pus ni Kuetpun Direktot i CPA. I "substance" nu esti na manmaproponi na amenda siha ginen ma'ingklusu gi halum "Airport System Operating" na Kuntråta, yan gi Måyu 27,2021, i Kuetpun Direktot i CPA, ginen "Resolution No. 2021-05", ha aturisa i pupblikan nu esti i manmaproponi na amenda siha. Pues, esti i manmaproponi na amenda siha para pupblikasion gi halum Rehistran Commonwealth para i Nutisia yan Upiñon sigun para i Åkton Administrative Procedure yan para inaprueba ni i Heneråt Abugådu sigun para 1 CMC § 2153(e). I Commonwealth Ports Authority gai aturidåt para u pupblika esti siha na regulasion sigun para 2 CMC § 2122.

DIREKSION PARA U MAPO'LU YAN PUPBLIKASION: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum Rehistran Commonwealth gi halum seksiona ni Manmaproponi yan i Mannuebu na Manma'adåpta na Regulasion siha, 1 CMC § 9102(a)(1), ya u mapega hålum gi kumbinienti na lugåt gi halum civic center yan gi halum ufisinan gubietnamentu gi kada distritun senadot, parehu Inglis yan i prinsipåt na lingguåhin natibu. 1 CMC § 9104(a)(l).

PARA U MAPRIBENIYI UPIÑON SIHA: I petsona siha pat atyu i malagu muna'halum upiñon siha debi di u macho'gui gi tinigi' para guatu as Siñot Christopher S. Tenorio, Eksakatibun Direktot, CPA, gi unu na tinattiyi na manera: Email, fax, mail o sino intrega hålum gi Ufisinan Atministradot i CPA ni gaigi gi Sigundu na Bibienda gi plåsan Francisco C. Ada/Saipan International yan i suhetu na råya "**I Upiñon siha gi Manmaproponi na Areklamentu yan Regulasion i Plåsa.**"

Commonwealth Ports Authority
P.O. Box 501055 Saipan, MP 96950
Tel. (670) 237-6500/6501
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Email: cpa.admin@pticom.com

Todu i tinigi' na upiñon siha debi na u fanhålum gi halum 30 dihas dispues di pupblikasion nu esti na nutisia.

Nina'hålum as:

CHRISTOPHER S. TENORIO
Eksakatibun Direktot, CPA

6/18/21
Fetcha

Rinisibi as:

MATILDA ROSARIO
Ispisiåt na Ayudånti para i Atministrasion

06/21/21
Fetcha

Pine'lu yan ninota as:

ESTHER SN. NESBITT
Rehistran Commonwealth

06-25-2021
Fetcha

Sigun i 1 CMC § 2153(e) yan i 1 CMC § 9104(a)(3) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligåt ginin i Abugådu Heneråt CNMI yan debi na u mapupblika, 1 CMC § 2153(f).

EDWARD MANIBUSAN
Abugådu Heneråt

6/21/2021
Fetcha

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ARONGORONGOL TOULAP

Pommwol Liiwel ngáli Alléghúl me Mwóghutughutúl Plaasa me Commonwealth Ports Authority

Executive Director-il Commonwealth Ports Authority ("CPA") e aronga toulap bwe Commonwealth Ports Authority re mángemángil reel rebwe arongawow liiwel kka ngáli Alléghúl me Mwóghutughutúl Plaasa.

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL LIIWEL NGÁLI ALLÉGHÚL ME MWÓGHUTUGHUTÚL PLAASA ME COMMONWEALTH PORTS AUTHORITY: Arongorong yeel e isiisiwow sángi 1 CMC § 9104(a) reel Administrative Procedure Act iye Commonwealth Ports Authority re mángemángil rebwe aronga reel tálil ikka e amwirimwiritiw ngáli Alléghúl me Mwóghutughutúl Plaasa.

KKAPASAL, AUTOL, ME WEEWEL IKKA E SCHUULONG IGHA: Pommwol mwóghutughut kkal e liiweli Alléghúl me Mwóghutughutúl Commonwealth Ports Authority igha e itittiw ffél "rate methodology" ngáli alongal "air carriers" me plaasal CPA. Pommwol mwóghutughut kkal, llól akkááw kkosas, e ffééru sefááliy weewel me ayoora maas weewel reel kkapas ikka e lo reel alongal § 40-10.1; liiweli § 40-10.1-740 iye e ayoorai "general provisions" ikka e ssúl ngáli yáayál plaasal CPA, "requirements to occupy" me yáayál "airline assigned areas", me arongorong ikka e ssúl ngáli lemelemil aar CPA "Letters of Authorization", "airlines' privileges", yáayál, me weel, leliyál akkááw "airlines", me "airport system security; aschuulong § 40-10.1-742, iye e ayoorai alléghúl "airlines' assigned areas"; aschuulong § 40-10.1-743, iye e ayoorai mwóghutughut ikka e ssúl ngáli mwóghutughutúl me ammwelil CPA me aar "airlines"; aschuulong 40-10.1-744, iye e ayoorai lemelemil "airlines"; liiweli § 40-10.1-745, iye e schuulong "indemnification provision" me ffééru sefááliy "insurance requirements"; aschuulong § 40-10.1-746. Iye e apasa bwe weel me "privileges" sángi CPA; aschuulong § 40-10.1-747, iye e ayoorai mwóghutughut iye rebwe attabweey ngáre eyoor "damage or destruction" ngáli "Airlines' Assigned Area"; aschuulong § 40-10.1-748, iye e ayoorai "general conditions" ikka e ssúl ngáli leliyál, e bwal schuulong "groundwater" me "solid and hazardous waste"; liiweli § 40-10.1-750 "Surety Bond"; aschuulong § 40-10.1-751, iye e lemelemi aar Airlines me CPA weel reel falúw atol "termination"; aschuulong § 40-10.1-752, iye, llól akkááw kkosas, ebwe yoor abwungubwung fengál me Alléghúl me Mwóghutughutúl me e ayoora "nondiscrimination requrements"; liiweli § 40-10.1-1201 reel igha ebwe ayoora kkapasal "airline fees and charges"; liiweli § 40-10.1-1205 "Landing Fees"; aschuulong § 40-10.1-1206, iye e ayoorai "rental charges" ngáli yáayál CPA "Terminals"; siiweli §§ 40-10.1-1210, 1215, 1220, iye e ayoorai kkapasal "public apron" me "operational area charges", "departure facility service charges", me "international arrival facility service charges"; siiweli § 40-10.1-1230(b)(2), iye e ayoorai "exception" ngáli "in-transit passenger service charge" ngáli "airlines that executed CPA operating agreements"; rebwe aghatchú kkapasal "Fuel Flowage Fee"; me "Ground Handling Permit Fees", me "Passenger

Facility Charges"; aschuulong § 40-10.1-1256, iye e ayoorai kkapasal "CPA Fees and Charges"; aschuulong § 40-10.1-1257, iye e ayoorai pay ngáli liiwelil óbwóssul me ghumwáár; aschuulong § 40-10.1-1258; iye e mwuschel bwe Airlines rebwe isiisilong repoot ngáli CPA; liiweli § 40-10.1-1260 iye e ssúl ngáli óbwóssul ghumwáár.

BWÁNGIL: Autol pommwol liiwel ikka e amwirimwiritiw, iye e ayoorai ffél mwóghutughutúl "rate methodology" ngáli yáayál plaasal CPA, iye ra átirowa sángi CPA Board-il Directors. Ebwal schuulong llól autol pommwol liiwel llól Aiport System Operating Agreement, me wóól Ghúúw 27, 2021, CPA Board-il Directors, sángi Resolution No. 2021-05, iye eyoor bwángil reel akkatééwowul pommwol liiwel kkal. Me, ebwe akkatééwow pommwol liiwel kkal me llól Commonwealth Register ngáli Arongorong me Kkapas sángi Administrative Procedure Act me ebwe átirow sángi Soulemelemil Allégh Lapalap sángi 1 CMC § 2153(e). Eyoor bwángil Commonwealth Ports Authority reel rebwe arongawow mwóghutughut kkal sángi 2 CMC § 2122.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow Pommwol Mwóghutughut kkal me llól Commonwealth Register llól tálil Pommwol me Ffél Mwóghutughut ikka ra Adóptááli, 1 CMC 9102(a)(1), me ebwe appaschetá llól civic center me bwal llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwaliyaasch. 1 CMC § 9104(a)(1).

REEL ISIISILONGOL KKAPAS: Schóó kka ngáre aramas ikka re tipáli rebwe isiisilong kkapas rebwe isch ngáli Mr. Christopher S. Tenorio, Executive Director, CPA, inamwo Email, fax, mail ngáre bwughiló CPA Administrative Office iye e lo Second Floor me Francisco C. Ada/Saipan International Airport me ebwe lo wóól subject line bwe **"Comments on Proposed Airport Rules and Regulations."**

Commonwealth Ports Authority
P.O. Box 501055 Saipan, MP 96950
Tel. (670) 237-6500/6501 Fax: (670) 234-5962
Email: cpa.admin@pticom.com

Ebwe toolong alongal ischil kkapas llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel.

Isáliyalong: _____ 6/18/21
CHRISTOPHER S. TENORIO Ráál
Executive Director, CPA

Bwughiyal: _____ 06/21/21
MATILDA ROSARIO Ráál
Special Assistant ngáli Administration

Ammwelil: _____ 06-25-2021
ESTHER SN. NESBITT Ráál
Commonwealth Registrar

Sángi 1 CMC § 2153(e) me 1 CMC § 9104(a)(3) pommwol mwóghutughut ikka e appasch ra takkal amwuri fischiiy me aa átirow bwe aa llégh**l**ó reel ffé**é**rúl me legal sufficiency sángi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatéé**w**ow. 1 CMC § 2153(f).

EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap

6/24/2021
Ráál

SUBCHAPTER 40-10.1
AIRPORT RULES AND REGULATIONS

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Subchapter Authority: 2 CMC § 2122(j).

Subchapter History: Amdts Adopted 42 Com. Reg. 44065 (Sept. 28, 2020); Amdts Proposed 42 Com. Reg. 43527 (May 28, 2020); Amdts Adopted 39 Com. Reg. 39592 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39040 (Dec. 28, 2016); Amdts Adopted 39 Com. Reg. 39216 (Feb. 28, 2017); Amdts Proposed 38 Com. Reg. 39062 (Dec. 28, 2016); Amdts Emergency 30 Com. Reg. 28519 (June 27, 2008) (effective for 120 days from June 3, 2008); Amdts Adopted 26 Com. Reg. 21710 (Jan. 22, 2004); Amdts Proposed 25 Com. Reg. 21465 (Nov. 17, 2003); Amdts Adopted 23 Com. Reg. 18385 (Sept. 24, 2001); Amdts Proposed 23 Com. Reg. 17826 (Apr. 23, 2001); Amdts Adopted 23 Com. Reg. 17842 (Apr. 23, 2001); Amdts Proposed 23 Com. Reg. 17614 (Jan. 19, 2001); Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999); Amdts Adopted 21 Com. Reg. 16803 (June 23, 1999); Amdts Proposed 21 Com. Reg. 16693 (Apr. 19, 1999); Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998);* Amdts Adopted 19 Com. Reg. 15381 (May 15, 1997); Amdts Proposed 19 Com. Reg. 14878 (Jan. 15, 1997); Amdts Adopted 16 Com. Reg. 11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

*A notice of adoption for the 1998 proposed amendments was never published.

Commission Comment: On May 12, 2008, Governor Benigno R. Fitial issued Executive Order No. 2008-3 (Reorganization Plan No. 1 of 2008). In Executive Order No. 2008-3, Governor Fitial allocated CPA to the Office of the Governor. 30 Com. R. 28757 (September 25, 2008). On May 13, 2008, Governor Fitial signed Executive Order No. 2008-4 and declared a state of emergency "due to the inability of [CPA] to avoid technical default on the March 1, 1998 indenture on the CPA Airport Revenue Bonds." 30 Com. Reg. 28760 (September 25, 2008). On May 13, 2008, Governor Fitial issued Executive Order No. 2008-5 (Reorganization Plan No. 2 of 2008). In Executive Order No. 2008-5, Governor Fitial superseded Executive Order No. 2008-03. 30 Com. Reg. 28762 (September 25, 2008). On June 12, 2008, Governor Fitial issued Executive Order No. 2008-6, which renewed the declaration of a state of disaster set forth in Executive Order No. 2008-4. 30

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Com. Reg. 28765 (September 25, 2008). On July 14, 2008, Governor Fitial issued Executive Order No. 2008-7, declared that a state of emergency still existed "[u]ntil a sufficient number of the appointments [on the board of directors of CPA] have been made and consented to by the Senate." On August 13, 2008, Governor Fitial issued Executive Order No. 2008-11, which renewed the declaration of a state of disaster set forth in Executive Order No. 2008-7. 30 Com. Reg. 28779 (Sept. 2008). On September 3, 2008, Governor Fitial issued Executive Order No. 2008-12, which terminated the declaration of a state of disaster set forth in Executive Order No. 2008-7. 30 Com. Reg. 28782 (Sept. 2008).

PL 2-48, the "Commonwealth Ports Authority Act," codified as amended at 2 CMC §§ 2101-2190, took effect October 8, 1981. It was based on the "Mariana Islands Airport Authority Act" enacted by the Congress of Micronesia as PL 6-58. See the commission comment to 2 CMC § 2101. PL 2-48 created the Commonwealth Ports Authority to implement its provisions and operate the ports of the Commonwealth. See 2 CMC §§ 2121-22. Transition provisions of PL 2-48 provided for the transfer of the Mariana Islands Airport Authority to the newly created Commonwealth Ports Authority. See 2 CMC §§ 2181, et seq.

Executive Order 94-3 (effective August 23, 1994), reprinted in the commission comment to 1 CMC § 2001, reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. Executive Order 94-3 § 304(a) allocated the Commonwealth Ports Authority to the Department of Public Works for purposes of administration and coordination. PL 11-109 (effective December 21, 1999) vacated section 304(a) in its entirety and reenacted and reinstated all provisions of 2 CMC, division 2, chapter 1, 2 CMC §§ 2101-2190, in effect immediately prior to the effective date of Executive Order 94-3. PL 11-109 §§ 2(b) and 4.

The Commonwealth Ports Authority Act contains special provisions related to rules and regulations. See 2 CMC §§ 2141-2146.

The precursor to the Commonwealth Ports Authority with regard to airport regulation in the Commonwealth was the Mariana Islands Airport Authority (MIAA). The MIAA published several amendments to earlier Trust Territory airport rules and regulations as follows:

Amdts Proposed 3 Com. Reg. 1233 (May 20, 1981) (amending earlier regulations); Amdts Proposed 1 Com. Reg. 375 (July 16, 1979);* Adopted 1 Com. Reg. 53 (Nov. 16, 1978); Proposed 1 Com. Reg. 39 (Oct. 16, 1978) (amending earlier regulations promulgated by the Trust Territory of the Pacific Islands government).

*A notice of adoption for the July 1979 proposed amendments was never published. The MIAA May 1981 proposed amendments were adopted by the Commonwealth Ports Authority in 1983.

After its creation in 1981, the Commonwealth Ports Authority continued to amend the existing regulations as follows:

Amdts Adopted 12 Com. Reg. 7199 (July 15, 1990); Amdts Proposed 12 Com. Reg. 6871 (Apr. 15, 1990); Amdts Adopted 10 Com. Reg. 5433 (Jan 18, 1988); Amdts Proposed 9 Com. Reg. 5279 (Nov. 15, 1987); Amdts Adopted 9 Com. Reg. 4923 (Apr. 15, 1987); Amdts Proposed 9 Com. Reg. 4911 (Feb. 17, 1987); Amdts Proposed 8 Com. Reg. 4834 (Dec. 16, 1986);* Amdts Adopted 8 Com. Reg. 4392 (June 3, 1986); Amdts Proposed 8 Com. Reg. 4328 (Apr. 18, 1986); Amdts Adopted 7 Com. Reg. 4157 (Dec. 17, 1985); Amdts Proposed 7 Com. Reg. 4153 (Nov. 20, 1985); Adopted Amdts 6 Com. Reg. 2863 (June 15, 1984); Amdts Proposed 6 Com. Reg. 2742 (May 15, 1984); Amdts Adopted 6 Com. Reg. 2745 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2707 (Apr. 15, 1984); Amdts Adopted 6 Com. Reg. 2710 (Apr. 15, 1984); Amdts Proposed 6 Com. Reg. 2566 (Feb. 15, 1984); Amdts Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Amdts Proposed 5 Com. Reg. 2165 (May 27, 1983); Amdts Proposed 4 Com. Reg. 1745 (Dec. 10, 1982); Amdts Proposed 3 Com. Reg. 1233 (May 20, 1981) (proposed by the MIAA); Amdts Adopted 4 Com. Reg. 1753 (Dec. 10, 1982); Proposed Amdts 4 Com. Reg. 1453 (May 24, 1982).

*A notice of adoption for the December 1986 proposed amendments was never published.

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The Commonwealth Ports Authority published a complete revision of the Airport Rules and Regulations in 1992. The history sections in this subchapter date from that publication and adoption.

On May 12, 2008, Governor Benigno R. Fitial issued Executive Order No. 2008-3 (Reorganization Plan No. 1 of 2008). In Executive Order No. 2008-3, Governor Fitial allocated CPA to the Office of the Governor. 30 Com. R. 28757 (September 25, 2008). On May 13, 2008, Governor Fitial signed Executive Order No. 2008-4 and declared a state of emergency "due to the inability of [CPA] to avoid technical default on the March 1, 1998 indenture on the CPA Airport Revenue Bonds." 30 Com. Reg. 28760 (September 25, 2008). On May 13, 2008, Governor Fitial issued Executive Order No. 2008-5 (Reorganization Plan No. 2 of 2008). In Executive Order No. 2008-5, Governor Fitial superseded Executive Order No. 2008-03. 30 Com. Reg. 28762 (September 25, 2008). On June 12, 2008, Governor Fitial issued Executive Order No. 2008-6, which renewed the declaration of a state of disaster set forth in Executive Order No. 2008-4. 30 Com. Reg. 28765 (September 25, 2008). On July 14, 2008, Governor Fitial issued Executive Order No. 2008-7, declared that a state of emergency still existed "[u]ntil a sufficient number of the appointments [on the board of directors of CPA] have been made and consented to by the Senate." On August 13, 2008, Governor Fitial issued Executive Order No. 2008-11, which renewed the declaration of a state of disaster set forth in Executive Order No. 2008-7. 30 Com. Reg. 28779 (Sept. 2008). On September 3, 2008, Governor Fitial issued Executive Order No. 2008-12, which terminated the declaration of a state of disaster set forth in Executive Order No. 2008-7. 30 Com. Reg. 28782 (Sept. 2008).

Part 001 - General Provisions

§ 40-10.1-001 Authority

The rules and regulations in this subchapter are promulgated by the Commonwealth Ports Authority in accordance with 2 CMC § 2122(j) and shall have the force and effect of law.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-005 Purpose

The purpose of this subchapter is to provide for and to insure the orderly, safe, and sanitary operation of airports in the Commonwealth of the Northern Mariana Islands under the jurisdiction and control of the Commonwealth Ports Authority. The effective date of the 2021 amendments to Subchapter 40-10.1, Part 001, Part 700, and Part 1200 shall be October 1, 2021.

Modified, 1 CMC § 3806(d).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-010 Definitions

The following terms, as used in this subchapter, shall have the following meanings:

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(a) ~~(a)~~ "Affiliated Airline Company" shall mean any Air Transportation Company that is regarded or appears to operate as a related entity and is now or hereafter (1) a subsidiary of Airline, (2) owned in whole or in part by Airline or its parent company, (3) owns Airline in part, or (4) so affiliated with Airline or its parent company by virtue of a code sharing agreement and in any case shall have been designated in writing by Airline as an Affiliated Airline Company. Airline shall be responsible for and unconditionally guarantees the payment of rentals, fees, and charges, including Passenger Facility Charges by its Affiliated Airline Company. An Affiliated Airline Company hosted by Airline will pay rates, fees, and charges at the rate charged to Airline.

(b) "Air Transportation Business" shall mean that business operated by an Airline for the commercial transportation by air of persons, property, mail, parcels, and cargo at one or more of the Airports.

(c) "Air Transportation Company" shall mean a legal entity engaged in the business of scheduled or non-scheduled commercial transportation by air of person, property, mail, parcels, and cargo and authorized by the Authority to conduct such business at one or more of the Airports.

(d) "Aircraft" shall mean and include any and all contrivances, now or hereafter used for the navigation of or flight in air or space, including, but not limited to, airplanes, airships, dirigibles, helicopters, gliders, amphibians, and seaplanes.

~~(1)~~ ~~(b) "Authority~~"Airfield" shall mean the ~~Commonwealth Ports Authority~~Landing Area and the Ramp Area of an ~~.~~

(e) ~~(c)~~ "Airport.

(f) "Airfield Cost and Revenue Center" shall include all Capital Charges, all direct and indirect Operation and Maintenance Expenses, and Revenues for an Airport Airfield as may be revised from time to time.

(g) "Airline" shall mean ~~all publicly owned airports~~an Air Transportation Company, including any Affiliates of Airline, engaged in the ~~Commonwealth of the Northern Mariana Islands, together with all related facilities. On Saipan this includes Saipan International Airport, formerly known as "Isley Field." On Tinian it~~business of scheduled or non-scheduled commercial transportation by air of persons, property, cargo, or mail.

(h) "Airline Assigned Area or Assigned Area" shall mean ~~West Tinian International Airport. On Rota it~~those areas in a Terminal the Authority has licensed for use by an Airline as Preferential Use Premises or Common Use Premises, or licensed for use by Airlines on a per use basis.

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(i) "Airline Supported Areas" shall mean the ~~Rota~~ direct and indirect Operation and Maintenance Expenses and Capital Charges charged to the Airfield Cost and Revenue Center and the Terminal Cost and Revenue Center.

(j) "Airport" shall mean an Authority owned Airport within the Airport System, including Francisco C Ada/Saipan International Airport, Benjamin Taisacan Manglona International Airport, Tinian International Airport~~. On~~, Pagan ~~it shall mean the Pagan Airport~~Airport together with all appurtenances thereto, structures, buildings, fixtures, and all tangible personal property now or hereafter owned, leased, or operated by the Authority.

(k) ~~(d)~~ "Airport Rules and Regulations" shall mean the rules and regulations as set forth in Northern Mariana Islands Administrative Code (NMIAC) Subchapter 40-10.1 and subsequent amendments thereto.

(l) "Airport System" shall mean all Airports owned and operated by the Authority and which includes Francisco C Ada/Saipan International Airport, Benjamin Taisacan Manglona International Airport, and Tinian International Airport, together with all appurtenances thereto, structures, buildings, fixtures, and all tangible personal property now or hereafter owned, leased, or operated by the Authority.

(m) "Authority" shall mean the Commonwealth Ports Authority, a public corporation created, organized and existing under Title 2, Section 2101 et seq., Commonwealth Code, Commonwealth of the Northern Mariana Islands.

(n) "Bond Resolution" shall mean Resolution No. 02-98, dated March 4, 1998, as supplemented and amended from time to time authorizing the issuance by the Authority of Bonds or other financing obligations with respect to the Airport System or any successor resolution, indenture, or trust agreement.

(o) "Bonds" shall mean any bonds or other financing instrument or obligation of the Authority, other than Subordinated Bonds, issued for the purposes of improving the Airport System, all pursuant to the Bond Resolution.

(p) "Capital Charges" shall mean with respect to any Fiscal Year, the sum of Debt Service (exclusive of capitalized interest) and Other Debt Service payable by Authority in that Fiscal Year; plus Debt Service Coverage.

(q) "Common Use Formula" shall mean that formula which prorates one hundred percent (100%) of the cost of a service or space within a Terminal based on the ratio of each Scheduled Air Carrier's Enplaned Passengers using the service or space at an Airport during the month, to the total of all Enplaned Passengers using the service or space at an Airport during the month. Notwithstanding the foregoing, Authority shall, after completion of any promotional offering, adjust the computation to reflect enplanements of additional Scheduled Air Carriers at an Airport or after the deletion of a Scheduled Air Carrier at an Airport.

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(r) "Common Use Premises" shall mean space managed by Authority that may be made available to Airline from time to time for use in common with other airlines, as assigned by the Executive Director, subject to the Airport Rules and Regulations.

(s) "Cost and Revenue Centers" shall mean those areas of functional activities of an Airport used for the purposes of accounting for Revenues, Operation and Maintenance Expenses, and Capital Charges.

(t) "Cost Centers" shall mean those areas or functional activities of an Airport used for the purposes of accounting for Operation and Maintenance Expenses and Capital Charges.

(u) "Debt Service" shall mean with respect to any series of Bonds, the total, as of any particular date of computation and for any particular period or year, of the aggregate amount required pursuant to the Bond Resolution to be deposited during such period or year in the Bond Fund.

(v) "Debt Service Coverage" shall mean one hundred and twenty-five percent (125%) of the debt service payable in each Fiscal Year as stated in Section 6.11 of the Bond Indenture (adjusted as may be permitted under the Bond Indenture).

(w) "Deplaned Passenger" shall mean any passenger disembarking an aircraft at a Terminal, including any such passenger that shall subsequently board another aircraft of the same or a different Air Transportation Company or the same aircraft, previously operating under a different flight number.

(x) "Enplaned Passenger" shall mean any passenger boarding an aircraft at a Terminal, including any such passenger that previously disembarked from another aircraft of the same or a different Air Transportation Company or from the same aircraft, previously operating under a different flight number.

(y) "Executive Director" shall mean the Executive Director of the Authority or his duly authorized representative.

(z) ~~(e)~~ "Extraordinary Coverage Protection" shall mean the requirements set forth in Section § 40-10.1-1201.

(aa) "FAA" shall mean the Federal Aviation Administration, or its authorized successors.

(bb) "Federal Aviation Regulations" shall mean the United States Federal Aviation Regulations, as currently amended, and promulgated by the United States Federal Aviation Administration.

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(cc) ~~(f)~~ "Fiscal Year" shall mean the annual accounting period of the Authority for its general accounting purposes which is the period of twelve consecutive months, ending with the last day of September of any year.

(dd) "Fuel handling" shall mean the transportation, delivery, fueling, and draining of fuel or fuel waste products.

(ee) ~~(g)~~ "Fuel storage area" shall mean and include any portions of the airport designated temporarily or permanently by the Authority as areas in which gasoline or any other type of fuel may be stored, including but not limited to, gasoline tank farms and bulkheads, piers, or wharves at which fuel is loaded.

(ff) ~~(h)~~ "General Aviation" shall mean all phases of aviation other than military aviation and scheduled or non-scheduled commercial air carrier operations.

(gg) "General Aviation Operator" shall mean a Person conducting civil aviation operations other than scheduled or non-scheduled Air Transportation Companies.

(hh) "Hazardous Material" shall mean: (1) any oil petroleum products, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which pose a hazard to the Airport System premises or to the safety and/or health of persons on or about the Airport System and/or cause an Airline Assigned Area to be in violation of federal, Commonwealth, or local laws governing or regulating hazardous materials; (2) asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment which contains dielectric fluid containing regulated levels of polychlorinated biphenyls, or radon gas; (3) any chemical, material or substance defined as or included in the definition of "hazardous substances", "hazardous waste", "hazardous material", "extremely hazardous waste", "restricted hazardous waste", "toxic substance" or similar words under any applicable local, Commonwealth, or federal laws, or any regulations promulgated pursuant thereto, including, but not limited to: the Comprehensive Environmental Response, Compensation Act of 1980 (CERCLA), as amended, 42 U.S.C. §§ 9601 et seq; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101, et. seq.; the Federal Water Pollution Control Act (CWA), 33 U.S.C. §§ 1251 et. seq.; the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §§ 6901 et. seq.; the Toxic Substances Control Act (TSCA), as amended, 15 U.S.C. §§ 2601 et. seq; or defined by the US DOT Pipeline and Hazardous Materials safety admin in 49 Code of Federal Regulations (CFR) 172.101. Also applicable are the Commonwealth of the Northern Mariana Islands (CNMI) BECQ Harmful Substance & Hazardous Waste Regulations; Pesticide and Used Oil Regulations; Storage Tanks: Aboveground & Underground Regulations and Solid Waste Management Regulations; (4) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by government authority, and which may pose a hazard to the health and safety of occupants of the Airport System, and or to any person entering upon the Airport System or adjacent property; and/or (5) any other chemical, material or substance which may pose a hazard to the environment or persons.

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(ii) "Indenture" shall mean that certain bond indenture dated March 1, 1998 authorizing the issuance of $20,050,000.00 Senior Series A, Airport System Revenue Bonds, authorized by the Bond Resolution, and successor indentures.

(jj) "Landing Area" shall mean those portions of an Airport provided for the landing, taking off, and taxiing of aircraft, including without limitation, approach and turning zones, aviation or other easements, runways, taxiways, runway and taxiway lights, and other appurtenances in connection therewith.

(kk) "Landing Fee" shall mean a fee expressed in tenths of a cent per thousand pounds of the Maximum Gross Landed Weight of each type of Airline's aircraft and shall be multiplied by the total of all Maximum Gross Landed Weight for all Revenue Landings of each type of aircraft landed at the Airport System by Airline.

(ll) "Letter of Authorization" shall mean a letter issued by the Authority which constitutes a permit by the Authority authorizing an Air Transportation Company with the requisite federal regulatory approvals to conduct Air Transportation Business at an Airport or Airports and to use and occupy certain premises at an Airport or Airports in compliance with the terms of the Airport Rules and Regulations.

(mm) "Maintenance and Operation Expenses" shall mean "Maintenance and Operation Expenses" as defined in the Indenture including the current expenses, paid or accrued, of operation, maintenance, and ordinary current repairs of an Airport and shall include, without limiting the generality of the foregoing, insurance premiums, administrative expenses of the Authority relating solely to said Airport, including engineering, architectural, legal, consultants, and accounting fees and expenses as shall be in accordance with sound accounting practice. "Maintenance and Operation Expenses" shall not include any allowance for depreciation or renewals or replacements or obsolescence of capital assets of the Authority, or any operation and maintenance expenses of Special Purpose facilities buildings where the lessees thereof are obligated to pay such operation and maintenance expenses.

(nn) "Maximum Gross Landed Weight" shall mean the maximum gross certificated landing weight in one-thousand-pound units for which each aircraft operated at an Airport by Airline as certificated by the FAA or its successor.

(oo) "Net Requirement" shall mean, with respect to a Terminal, the direct and indirect Maintenance and Operation Expenses for said Terminal and reserves required by the Indenture, plus its proportional share of Capital Charges, less reimbursements; with respect to an Airfield, the direct and indirect Maintenance and Operation Expenses for the Airfield and reserves therefore, plus the proportional share of Capital Charges.

(pp) "Operational ~~area~~Area" shall mean any place on ~~the airport~~an Airport not leased or demised to ~~anyone~~a Person for exclusive use, and not a public area, highway, or public vehicular area~~; but shall~~. Operational Areas include ~~the~~ runways, public taxiways, ~~public ramp and apron areas, public~~Ramp Areas, Public cargo ramp and apron areas, public

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aircraft parking and storage areas, ~~and fuel~~Terminal Aircraft Aprons, and Fuel storage areas.

~~(i) "Operational agreement" shall mean an airline use agreement entered into by the Authority and an aircraft operator.~~

(qq) ~~(j)~~ "Operator" shall mean the owner of an aircraft or any person who is using an aircraft for the purpose of operation by himself or his agents.

(rr) ~~(k)~~ "Other Debt Service" shall mean any principal, interest, premium, and other fees and amounts, either paid or accrued, on Other Indebtedness of Authority.

(ss) "Other Indebtedness" shall mean any debt incurred by Authority for Airport System purposes that is outstanding and not authenticated and delivered under and pursuant to the Indenture.

(tt) "Passenger Facility Charge" or "PFC" shall mean the fees authorized by 49 U.S.C. 40117 and regulated by 14 CFR Part 158 as such statute and regulations currently exist or as they may be amended.

(uu) "Per Use Fee" shall mean a charge assessed by the Authority for each use of an unassigned aircraft gate facility and / or an unassigned ticket counter for a period not to exceed two (2) hours. The gate facility includes holdroom, loading bridge, pre-conditioned air, and 400 Hertz (Hz) power systems. A ticket counter shall include one 2-position ticket counter. Per Use Fees shall not apply to the use of gate facilities or ticket counters that are included in an Air Transportation Company's Preferential Use Premises pursuant to a Letter of Authorization issued by the Authority. The location of an aircraft gate facility and / or ticket counter will be assigned by the Executive Director and will be contingent upon the size of the aircraft operating at the Airport.

(vv) "Permission" or "permit" shall mean permission granted by the Executive Director unless otherwise herein specifically provided. "Permission" or "permit" whenever required by this chapter shall always mean written permission, except that verbal permission in specific instances may be granted under special circumstances where the obtaining of written permission would not be practicable.

(ww) ~~(l)~~ "Person" shall mean any individual, firm, partnership, co-partnership, corporation, trust association, or company (including any assignee, receiver, trustee, or similar representatives thereof) or the United States of America, any state or political subdivision thereof, any foreign government, or the United Nations.

~~(m) "Airport Rules and Regulations" shall mean the rules and regulations in this subchapter and subsequent amendments thereto.~~

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(xx) ~~(n)~~ "Preferential Use Premises" shall mean those portions of a Terminal and Terminal Aircraft Apron to which an Airline has priority over all other users, subject to the provisions of the Airport Rules and Regulations.

(yy) "Public aircraft parking and storage area" shall mean that area of ~~the airport~~an Airport to be used for public aircraft parking and storage space for the parking and storing of aircraft, or for the servicing of aircraft with fuel, lubricants, and other supplies, or for making emergency repairs to aircraft, or for any or all such purposes.

(zz) ~~(o)~~ "Public cargo ramp and apron area" shall mean and include any portions of ~~the airport~~an Airport designated and made available temporarily or permanently by the Authority for the loading or unloading of ~~passengers~~, cargo, freight, mail, and supplies, to and from aircraft, and for performing those operations commonly known as "ramp service," and for performing inspections, minor maintenance, and other services upon or in connection with aircraft incidental to performing "ramp service," but shall not mean those areas designated for the storage of cargo, freight, mail, and supplies, nor those areas designated for the purpose of performing fueling and other ramp services, or those areas designated for the purpose of parking operations.

(aaa) ~~(p)~~ "Public Space" shall mean all utility rooms, duct-ways, janitorial rooms and closets, stairways, hallways, elevators, escalators, entranceways, public or common use lobbies and areas, public toilet areas and other areas used for the operation, maintenance, or security of a Terminal, even if used solely by Authority.

(bbb) "Public taxiway" shall mean and include any public taxiways designated for the purpose of the ground movement of aircraft on ~~the airport~~an Airport.

(ccc) ~~(q)~~ "Public vehicular parking area" shall mean and include any portion of ~~the airport~~an Airport designated and made available, temporarily, or permanently, by the Authority for the parking of vehicles.

(ddd) ~~(r)~~ "Ramp Area" shall mean the aircraft parking and maneuvering areas adjacent to a Terminal, and shall include within its boundaries all Terminal Aircraft Aprons.

(eee) "Revenue Landing" shall mean any aircraft landing by Airline at an Airport for which Airline receives revenue.

(fff) "Revenues" shall mean Revenues as defined in the Indenture including income accrued by the Authority in accordance with generally accepted accounting principles, including investment earnings, from or in connection with the ownership or operation of the Airport System or any part thereof, or the leasing or use thereof, but do not include PFC's except as authorized for the payment of Debt Service and Debt Service Coverage.

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(ggg) "Rota Terminal" shall mean the Benjamin Taisacan Manglona International Airport terminal building, associated curbside entrance areas, adjoining landscaped areas, and aircraft aprons at the Benjamin Taisacan Manglona International Airport terminal building.

(hhh) "Runway area" shall mean and include any portion of the paved runway as well as the clear zones and field area to the lateral clearance lines of said runway.

(iii) ~~(s)~~ "Saipan Commuter Terminal" shall mean the Francisco C. Ada/Saipan International Airport terminal building for passengers flying within CNMI, associated curbside entrance areas, adjoining landscaped areas and aircraft aprons at the Francisco C. Ada/Saipan International Airport terminal building for passengers flying within CNMI as well as to and from Guam.

(jjj) "Saipan Main Terminal" shall mean the Francisco C. Ada/Saipan International Airport international passenger terminal building, associated curbside entrance areas, and aircraft aprons at the Francisco C Ada/Saipan International Airport terminal building.

(kkk) "Scheduled Air Carrier" shall mean any Air Transportation Company performing or desiring to perform, pursuant to published schedules, seasonal or non-seasonal commercial air transportation services over specified routes to and from an Airport or Airports and holding the necessary authority from the appropriate federal or Commonwealth agencies to provide such transportation.

(lll) "Sightseeing flights" shall mean flights on which passengers are carried for hire, and which originate and terminate at ~~the airport~~an Airport with no intermediate stops other than emergency stops.

(mmm)~~(t)~~ "Shall" means mandatory and not merely directory.

(nnn) "Subordinated Bond Indenture" shall mean an indenture or trust agreement subordinated to the Indenture authorizing the issuance by Authority of Subordinated Bonds, as such may be supplemented or amended from time to time.

(ooo) "Subordinated Bonds" shall mean any bonds or other financing instrument or obligation subordinate to the Bonds, issued pursuant to any Subordinated Bond Indenture.

(ppp) "Terminal Aircraft Aprons" shall mean those areas of an Airport that are designated for the parking of passenger aircraft and support vehicles, and the loading and unloading of passenger aircraft.

(qqq) "Terminal" shall mean the Francisco C. Ada/Saipan International Airport Commuter Terminal Building and Temporary Commuter area, Francisco C. Ada/Saipan International Airport Main Terminal Building, Benjamin Taisacan Manglona International Airport Terminal Building or Tinian Terminal Building and appending structures, law enforcement and security activities, paging systems, multi-user flight information display systems, and terminal roadway systems including entrance/exit/recirculating roadways,

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terminal curb front, and taxi/bus/ staging areas, but excluding roadways exclusively serving the public parking areas.

(rrr) "Terminal Cost and Revenue Center" shall include all Capital Charges, all direct, indirect, and general administrative Operation and Maintenance Expenses, and Revenues for a Terminal.

(sss) "Terminal Rental Rate" shall mean the fees and charges imposed by the Authority on a per square foot basis for the use of a Terminal.

(ttt) "Tinian Terminal" shall mean the Tinian International Airport terminal building, associated curbside entrance areas, adjoining landscaped areas, and aircraft aprons at the Tinian International Airport.

(uuu) "Transportation Security Administration" or "TSA" shall mean the Office of Homeland Security and Transportation Security Administration, or their authorized successors.

(vvv) "Vehicles" shall mean and include automobiles, trucks, buses, motorcycles, horse-drawn vehicles, bicycles, push carts, and any other device in or upon or by which any person or property is or may be transported, carried, or drawn upon land, aircraft excluded.

(www) ~~(u)~~ The words "ingress" and "egress" shall refer to the use of an area, or portion of ~~the airport~~an Airport, as a means of going from one place to another without undue delay.

~~(v) "Commercial Aircraft Operator" shall mean an operator conducting civil aviation operations involving scheduled or non-scheduled air transportation operations of persons or property from one place to another for remuneration or hire.~~

~~(w) "General Aviation Operator" shall mean an operator conducting civil aviation operations other than scheduled or non-scheduled air transportation operations of persons or property from one place to another for remuneration or hire.~~

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 39 Com. Reg. 39216 (Feb. 28, 2017); Amdts Proposed 38 Com. Reg. 39062 (Dec. 28, 2016); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: In subsections (c) and (o), the Commission moved a period and a comma, respectively, inside of the closing quotation marks to correct manifest errors. The Commission inserted a close quotation mark after the word "permission" in subsection (k) pursuant to 1 CMC § 3806(g). In subsection (u), the Commission inserted an opening quotation mark before "egress."

Part 100 - General Operational Rules and Regulations

§ 40-10.1-101 General Rules

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(a) ~~(a)~~ All aeronautical activities at ~~the airport~~an Airport, and all flying of aircraft departing from or arriving at ~~the airport~~an Airport, shall be conducted in conformity with applicable provisions of the regulations of the Federal Aviation Administration, the United States Department of Transportation, or any successor agencies.

(b) ~~(b)~~ The owner, operator, pilot, agent, or their duly authorized representatives agree, as a condition of use of ~~the airport~~an Airport, to release and discharge the Authority, its officers, and its employees of and from any liability for any damage which may be suffered by any aircraft and its equipment, and for any personal injury or death, except where such damage, injury, or death is due solely to the negligence of the Authority.

(c) ~~(c)~~ All persons using any part of ~~the airport~~an Airport shall be held liable for any property damage caused by carelessness and negligence on or over the ~~airport~~Airport, and any aircraft being operated so as to cause such property damage may be retained in the custody of the Authority and the Authority may have a lien on said aircraft until all charges for damages are paid. Any persons liable for such damage agree to indemnify fully and to save and hold harmless the Authority, its directors, its officers, and its employees from claims, liabilities, and causes of action of every kind, character, and nature and from all costs and fees (including attorney's fees) connected therewith, and from the expenses of the investigation thereof.

(d) ~~(d)~~ The pilot or operator of any aircraft involved in an accident ~~-~~causing personal injury or property damage shall, in addition to all other reports required to be made to other agencies, make a complete report concerning said accident to the office of the Executive Director within 24 hours of the accident. When a written report of an accident is required by the Federal Aviation Regulations, a copy of such report may be submitted to the Executive Director in lieu of the report required above.

(e) ~~(e)~~ Subject to compliance with appropriate Federal Aviation Regulations, the aircraft owner shall be responsible for the prompt removal of all disabled aircraft and/or parts of such aircraft at ~~the airport~~an Airport, as reasonably directed by the Executive Director. In the event of the owner's failure or refusal to comply with such directions, such disabled aircraft or any and all parts thereof may be removed by the Authority at the owner's expense and without liability for damage which may be incurred as a result of such removal.

(f) ~~(f)~~ The Executive Director shall have the right at any time to close ~~the airport~~an Airport in its entirety or any portion thereof to air traffic, to delay or restrict any flight or other aircraft, and to deny the use of ~~the airport~~an Airport or any portion thereof to any specified class of aircraft or to any individual or group when the Executive Director considers any such action to be necessary and desirable to avoid endangering persons or property and to be consistent with the safe and proper operation of the ~~airport~~Airport. In the event the Executive Director believes the condition of ~~the airport~~an Airport to be unsafe for landings or takeoffs, it shall be within his authority to issue, or cause to be issued, a NOTAM (notice to aircraft) closing the ~~airport~~Airport or any portion thereof.

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(g) ~~(g)~~ All aircraft landing or taking off at ~~the airport~~an Airport shall have a properly functioning two-way radio capable of communicating with the airport communication system.

(h) ~~(h)~~ The Executive Director may require from time to time and may designate, at his or her discretion, appropriate locations for the registration of pilots and aircraft using ~~the airport~~an Airport, and such pilots shall comply with the requirements of such registration. The payment of rentals, fees, and charges relating to the use of ~~airport~~Airport premises and facilities shall be made before takeoff. In lieu of such payment, satisfactory credit arrangements shall be made by the operator of aircraft with the office of the Authority or such office as may be otherwise designated by the Executive Director before the aircraft leaves the ~~airport~~Airport.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: In subsection (b), the Commission deleted the repeated phrase "discharge the Authority, its officers, and its employees of and from any liability."

Part 100 was originally sections 1.4 through 1.12 of part 1, entitled "General Provisions." See 14 Com. Reg. at 9543-47 (Aug. 15, 1992). The Commission re-designated these sections as part 100 and created the part title.

§ 40-10.1-105 Compliance with Rules and Regulations

(a) Any permission granted by the Authority, directly or indirectly, expressly or by implication, to any person or persons, to enter or use the airport, or any part thereof (including aircraft operators, crew members and passengers, spectators, sightseers, operators of pleasure and commercial vehicles, officers and employees or airlines, and any other persons occupying space on or within the airport, persons doing business with the Authority, or at the airport, its lessees, or sublessees and permittees, and any other persons whatsoever) is conditioned upon strict compliance with the rules and regulations in this subchapter.

(b) The Executive Director may, upon notice and for cause consisting of repeated or flagrant violation of this subchapter, terminate the permission or privilege of any person to utilize ~~the airport~~an Airport, and/or disqualify any such person from bidding or submitting a proposal for any concession or contract to be let by the Authority. Such action shall be in addition to any civil penalties which may be assessed under this subchapter. Any person affected by the Executive Director's decision to terminate their permission or privilege may petition the Authority for reconsideration. The petition shall set forth a clear statement of the facts and grounds upon which reconsideration is sought. The Authority shall grant the petitioner a public hearing within 30 days after filing the petition and the Authority's decision shall be publicly released not more than 20 days after the final public hearing held upon the petition.

Modified, 1 CMC § 3806(d), (f).

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History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-110 Commercial Activity

No person shall carry on any commercial activity whatsoever at ~~the~~an Airport without the written consent of the Executive Director.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-115 Sightseeing

No person shall conduct sightseeing flights at ~~the airport~~an Airport, except under a permit from the Executive Director or his duly appointed representative establishing conditions and specifying fees payable to the ~~airport~~Authority for such privileges. Sightseeing passengers shall not be subject to the fees imposed pursuant to § 40-10.1-~~1215~~1255 of this subchapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-120 Parking and Storage of Aircraft

Unless otherwise provided by a lease or other contractual agreement, no person shall use any area of ~~the airport~~an Airport (other than the public aircraft parking and storage areas) for parking and storage of aircraft without the permission of the Executive Director. If, notwithstanding the above prohibition, a person uses such areas for parking or storage as aforesaid, without first obtaining permission, then the Executive Director shall have the authority to order the aircraft removed, or to cause same to be removed and stored, at the expense of the owner or consignee thereof, without responsibility or liability for damages arising therefrom.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-125 Storage of Cargo, Etc.

Unless otherwise provided by a lease or other contractual agreement, no person shall use any area of ~~the airport~~an Airport for storage of cargo, equipment, or any other property without permission of the Executive Director. If, notwithstanding the above prohibitions, a person uses such areas for storage as aforesaid, without first obtaining such permission, then the Executive Director shall have authority to order the cargo or equipment or any other property removed, or to cause the same to be removed and stored, at the expense of the owner or consignee thereof, without responsibility or liability for damages arising therefrom.

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Modified, 1 CMC § 3806(d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission corrected the spelling of the word "of" pursuant to 1 CMC § 3806(g).

§ 40-10.1-130 Use of Operational Areas

No person shall use or occupy an ~~operational area~~Operational Area for any purpose whatsoever, except for a purpose pertaining to the landing, takeoff operations and servicing of aircraft, airline activities associated with aircraft, or governmental agencies in the performance of their functions or for a purpose connected with the maintenance and operation of ~~the airport~~an Airport.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-135 Payment of Charges

(a) No person shall land an aircraft on or take off from ~~airport~~an Airport, or use an ~~operational area~~Operational Area, except upon the payment of such fees and charges as may from time to time be approved and published by the Authority, unless such person is entitled to use such area under a lease or other contract providing therefor. Except as otherwise provided therein, any operating rights under a lease or contract shall be null and void if the payment of fees and charges for the use of ~~the airport~~an Airport are more than ninety days in arrears, and any subsequent landing or takeoff of an aircraft from ~~the airport~~an Airport, or use of an ~~operational area~~Operational Area, shall be conditioned upon the payment of such fees and charges at the time of use as provided for in ~~part~~Part 1200 hereof.

(b) Except as otherwise specifically provided in an agreement to which the Authority is a party, all fees and charges due to the Authority from any person, arising out of the use and/or occupancy of ~~any airport~~an Airport, shall be due ten days after the delivery of the Authority's invoice. In the event that the Executive Director finds that a particular airline, concessionaire, tenant, or other ~~airport user~~Person is habitually late in the payment of invoices, or in the event a particular invoice is not paid within ten days, the Executive Director may, in his sole judgment, and upon notice to the debtor, shorten the time for the payment of future invoices to and including a requirement for payment upon presentation of the invoice.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-140 Commercial Photography

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No person shall take still, motion, or sound pictures for a commercial purpose, nor shall they transmit any program for commercial purposes on ~~the airport~~an Airport, without written permission of the Executive Director.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Part 200 - Operation of Vehicles

§ 40-10.1-201 Required Licenses

No vehicles shall be operated in or upon a public vehicular parking area, or any road within ~~the airport~~an Airport, or upon any of the ~~operational areas~~Operational Areas of ~~the airport~~an Airport, unless:

(a) The driver thereof is duly authorized to operate such vehicle under the laws of the Commonwealth of the Northern Mariana Islands, except that approved ramp equipment may be operated on ~~the public aircraft area~~an Airport by accredited employees certified by their employer to the Executive Director as qualified to operate such equipment; and

(b) Such vehicle is registered in accordance with the laws of the Commonwealth of the Northern Mariana Islands or is specifically authorized by the Executive Director to be operated on or within ~~the airport~~an Airport, but not on public highways or parking areas.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-205 Obeying Signals and Orders

Every person operating a vehicle in or upon a public vehicular parking area ~~operational area~~, Operational Area, or any road ~~within the air terminal,~~ must at all times comply with any lawful order, signal, or direction of any authorized representative of the Authority, or of any airport security officer. Whenever traffic is controlled by traffic lights, signs, mechanical or electrical signals, or pavement markings, all such shall be obeyed unless an authorized Authority representative or airport security officer directs otherwise.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-210 Speed Limits

All vehicles operated within ~~the airport~~an Airport shall comply with the speed limits prescribed and posted by the Executive Director. Where no limit is posted, the speed limit in the area shall be twenty-five miles per hour.

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Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-215 Vehicles Within Operational Areas

No vehicle shall be operated within any ~~operational area~~Operational Area, except as authorized by the Executive Director, who may require that such vehicles display visible identifying symbols or numbers. The movement of vehicles may be restricted by the Executive Director to specific zones within the ~~operational areas~~Operational Areas.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-220 Responsibility in Cases of Accidents

In addition to all other requirements of law, the driver of any vehicle involved in an accident ~~within the airport area~~on Airport property which results in injury or death to any person or damage to property, shall make a report to an airport security officer, or police officer assigned to the ~~airport~~Airport, within twenty-four hours of such accident.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-225 Right-of-way

(a) The driver of a motor vehicle shall, on approaching an intersection, give right-of-way to every vehicle which is approaching to enter said intersection from the main street of entrance or departure to ~~the terminal area~~a Terminal whenever traffic is not regulated by traffic signals, signs, or security or police officers.

(b) On approaching a street, intersection, or junction of any road, speed shall be reduced. Likewise, speed shall be reduced on approaching any public conveyance which has stopped to discharge or take on passengers.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-230 Parking

(a) No person shall park a motor vehicle on the airport except in an area specifically designated and posted for parking.

(b) No person shall park a motor vehicle in any area on the airport for a period longer than is prescribed and posted for that space by the Executive Director.

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(c) No person shall park a motor vehicle in a restricted or reserved area on the airport unless such person displays, in the manner prescribed by the Executive Director, a parking permit issued by the Executive Director for that area.

(d) No person shall double park a motor vehicle on the roadways of the airport.

(e) No person shall abandon a motor vehicle on the airport. A motor vehicle will be presumed abandoned if it is left parked and unattended for a period greater than forty-eight hours, unless it is parked in a space specifically set aside for parking longer than forty-eight hours. In such event, a motor vehicle shall be presumed abandoned if left unattended for a period twenty-four hours longer than the maximum authorized parking period.

(f) No person shall park a motor vehicle on the airport, in a space marked for the parking of vehicles, in such a manner so as to occupy a part of another marked space.

(g) No person shall leave a motor vehicle unattended or parked on the airport with a key in the ignition switch or the motor running, or a key in the door lock, or with a door open.

(h) No person shall park a motor vehicle at any place on the airport in violation of any sign posted by the Executive Director.

(i) No person shall park a motor vehicle within ten feet of a fire hydrant or in front of a driveway.

(j) Except as otherwise authorized by the Executive Director, no person shall park a motor vehicle for the purposes of cleaning, polishing, or repairing said vehicle except for those minor repairs necessary to remove said vehicle to an authorized area or from the airport.

(k) Every parked motor vehicle shall be parked, when parallel to the roadway, to its extreme right and at a distance of not more than six inches from the sidewalk or promenade, unless the parking space is otherwise marked. The entrance and exit of passengers shall be on the right-hand side of the vehicle.

(l) Public parking shall be permitted for a period of greater than forty-eight hours only in those areas designated for extended parking. No person may park a motor vehicle in an extended parking facility unless such person has purchased a permit authorizing the use of the extended parking facility from the Airport Security Office, or other designated location. The fee for an extended parking permit shall be FIVE DOLLARS per day which shall be paid in advance at the time the permit is purchased. The permit shall be displayed on the dashboard of the vehicle at all times while parked in the extended parking facility. In addition to the penalties available under § 40-10.1-255(f) of this section the permittee, or owner, of any vehicle left parked in the extended parking facility shall be subject to a charge of TEN DOLLARS per day for each day, or part of a day, the vehicle remains parked in the facility without a permit or in excess of the permitted period.

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Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-235 Taxicab Operations and Permits

(a) Before being permitted to load passengers at the airport, a taxicab shall:
(1) Be currently licensed as a taxicab by the Bureau of Motor Vehicles and driven by a person with a license properly endorsed for the transportation of passengers for hire pursuant to the laws of the Commonwealth of the Northern Mariana Islands.
(2) Have secured from the Executive Director a current written authorization enabling such loading.
(3) Have paid to the Executive Director the appropriate fees, if any, required for said permit.

(b) Taxicabs shall conduct their business at the airport in a manner and at places to be designated from time to time by the Executive Director by written notice to the permit holders and otherwise in accordance with this subchapter.

(c) All taxicabs shall be stopped or parked in such manner and in such areas as may be designated from time to time by the Executive Director.

(d) Operators of taxicabs shall load passengers at the airport only in designated zones as may be from time to time prescribed in writing by the Executive Director.

(e) Only taxicab operators authorized in writing by the Executive Director may solicit taxi fares on the airport premises; provided, however, that the Executive Director will not issue an exclusive authorization under this subparagraph to any one taxi company or taxi operator; and provided further that solicitation shall be expressly restricted to areas designated by the Executive Director. The term "solicitation" as used in this subparagraph shall be specifically defined to mean the asking of a passenger or other person if he or she desires a taxicab. Upon request, taxicab operators shall courteously inform passengers or other of alternate means of ground transportation, the location, and frequency, if any exists.

(f) Taxicab drivers or any other persons connected therewith shall be specifically prohibited from soliciting taxicab fares on the airport at places other than those designated by the Executive Director. Cruising of taxicabs is prohibited.

(g) Taxicab permits shall be valid for a period of one year commencing at the beginning of the fiscal year of the airport, which at the present time commences on October 1. Initial permits granted upon the promulgation of this subchapter and any permits granted during a fiscal year shall have the annual fees prorated according to the length of time the permits will remain valid. All permits will expire automatically on September 30 of each year.

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(h) Each taxicab company or taxicab operator holding a permit shall pay a monthly fee to the Authority, in advance, of five dollars per month for each taxicab owned or operated by said permit holder.

(i) Each taxi servicing the airport must carry the following minimum coverages of insurance:
Liability for bodily injury, including death (limits $100,000.00 for each person, $300,000.00 each accident) and for property damage (limit $50,000.00).

(j) Each taxicab company or operator shall submit a certificate of insurance and a copy of the insurance policy for review and acceptance by the Executive Director as part of the conditions to obtain a permit to operate a taxicab at the airport. Such policy shall not be cancellable except upon 30 days' notice to the Authority.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (j).

In subsection (e), the Commission changed "meant" to "mean" to correct a manifest error.

§ 40-10.1-240 Attire for Taxicab Operators and Related Matters

(a) Because all ports of entry in the Commonwealth convey to guess and visitors a "first impression" of the Northern Mariana Islands and its people, it is important that such impression convey not only its natural beauty and the friendliness of its people, but also that of safety, neatness, and proper decorum. To promote these objectives, the Authority finds it both necessary and proper to implement a dress code for taxicab operators authorized by the Authority to pick up passengers and customers at all airports under its jurisdiction.

(b) All taxicab operators having a valid permit to pick up passengers and customers at airport premises are required to wear dark dress pants, island print dress shirt, and dark dress shoes with socks. No taxicab operator shall be permitted to wear zorris or slippers, t-shirt or polo shirt, or short pants. All dress attire required of taxicab operators shall be neat and clean.

(c) No employee, officer, or director of the Commonwealth Ports Authority shall be permitted to operate a taxicab at any public airport in the Commonwealth.

(d) No person having a felony conviction or a misdemeanor conviction involving moral turpitude shall be given a permit by the Authority to operate a taxicab on airport premises.

(e) All taxicab operators applying for a permit to pick up passengers at airports under the jurisdiction of the Authority shall be required to provide the Authority with a current police clearance, a copy of the applicant's business license and driver's license, a copy of

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the applicant's current automobile liability insurance policy, and a copy of the applicant's Taxicab Bureau permit. Furthermore, the taxicab operator shall provide the Authority with a certified copy of his/her business gross revenue (BGR) report as filed with the CNMI Division of Revenue and Taxation, no later than 30 days after the end of each calendar year.

(f) All taxicab operators shall provide service to their customers and passengers courteously, cheerfully, promptly, and safely. Further, a taxicab operator shall, at all times, not be under the influence of intoxicating liquor or drugs, shall not be disorderly, boisterous, or argumentative, shall not be sleeping in his/her cab and shall comply with all rules and regulations of the CNMI Taxicab Bureau [NMIAC, title 20, chapter 80].

(g) No taxicab operator shall leave his/her vehicle unattended for longer than ten minutes. Leaving one's vehicle unattended for longer than ten minutes may result in the vehicle being towed away, at the operator's expense; unless for good reason, written permission is granted by the Commonwealth Ports Police for a taxicab operator to be away from his/her vehicle for longer than ten minutes.

(h) All taxicab operators shall adhere to this subchapter and the directions and instructions of the Commonwealth Ports Police Office. The Commonwealth Ports Police Office shall make sure that all taxicab operators are in compliance with this subchapter. Failure to comply may result in the suspension or revocation of the taxicab operator's permit to pick up passengers and customers at the airport.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 19 Com. Reg. 15381 (May 15, 1997); Amdts Proposed 19 Com. Reg. 14878 (Jan. 15, 1997).

Commission Comment: With respect to the references to the Taxicab Bureau, see Executive Order 94-3, reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001; see also NMAIC, title 20, chapter 80. The Commission corrected the phrase "to be away form" to "to be away from" in subsection (h) pursuant to 1 CMC § 3806(g).

§ 40-10.1-245 Permit Required for Vehicle Rental Service

(a) No vehicle rental business or solicitation for such business may be conducted upon or within the airport unless:
(1) On-premises Vehicle Rental Concessionaires. The vehicle rental business is operating under the terms of a valid lease or concession agreement with the Authority; or,
(2) Off-premises Vehicle Rental Permittees. The vehicle rental business shall obtain and have in full force and effect a written permit issued by the Executive Director, upon such terms and conditions as he shall deem to be in the best interests of the Authority. Such permit shall authorize the permittee to pick up pre-confirmed and prearranged customers only and only at such areas as the Executive Director shall designate for customer pick-up. In no event shall permittee be allowed to solicit customers at the airport, nor shall permittees be allowed to pick up any disembarking passengers or their baggage at the

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customs/passenger arrival area of the airport nor at the commuter terminal of the Francisco C Ada/Saipan International Airport.

(b) Any vehicle rental business operating under the terms and conditions of a permit issued under this section shall provide transportation for its customers by unmarked vehicles, so as not to encourage the solicitation of customers at the airport. The term "solicitation" as used in this section shall be specifically defined to mean the asking of a passenger or other person if he or she desires to rent a vehicle. Use of the public vehicular parking area by vehicle rental business operating under the terms of subsection (a)(2) is strictly prohibited. Such vehicle rental businesses shall not suffer or permit its customers to use such areas to pick up or drop off any rental vehicle, or for the storage of any rental vehicle. Permits issued under subsection (a)(2) shall not be exclusive. The fee for any permit issued under subsection (a)(2) shall be five thousand dollars per month for Francisco C. Ada/Saipan International Airport, three thousand five hundred dollars per month for ~~Rota~~Benjamin Taisacan Manglona and Tinian International Airports, and shall be payable monthly in advance. Failure to pay such permit fee within seven days of its due date shall serve to invalidate any permit understanding. Any vehicle rental business operating at or upon the airport without a valid permit, or in violation of the terms and conditions of its permit, or this subchapter, shall be subject to such penalties as set forth under § 40-10.1-255(f) and may have its privilege to conduct such business at the airport terminated pursuant to § 40-10.1-105.

(c) Liability for bodily injury, including death (limits $100,000.00 for each person, $300,000.00 each accident and for property damage limit $50,000.00).*

*So in original; see the comment to this section.

(d) Each vehicle rental business shall submit a certificate of insurance and a copy of the insurance policy for review by the Executive Director prior to obtaining a permit to operate a vehicle rental business at the airport. A certificate or certificates evidencing such insurance shall provide that such insurance coverage will not be cancelled or reduced without at least thirty days prior written notice to the Authority.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 26 Com. Reg. 21710 (Jan. 22, 2004); Amdts Proposed 25 Com. Reg. 21465 (Nov. 17, 2003); Amdts Adopted 16 Com. Reg. 11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d).

The 1994 amendments amended and readopted subsections (a) through (d). The 2004 amendments amended subsection (b).

In subsection (c), it appears that the following language was erroneously omitted in the 1994 amendments: "Each vehicle rental business servicing the Airport under Subpart (a) [subsection (a)(1)] of this Part 2.9 [§ 40-10.1-245] shall carry such insurance coverage for its customers as is provided in its agreement with the Authority. Each vehicle rental business servicing the Airport under subpart (b) [subsection (a)(2)] of this Part

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2.9 [§ 40-10.1-245] shall carry at least the following insurance coverage for its customers:" Compare 14 Com. Reg. at 9552 (Aug. 15, 1992) and 16 Com. Reg. at 11688-89 (Feb. 15, 1994).

§ 40-10.1-250 Group Transportation Permits

No owner or operator of any vehicle carrying passengers for hire, including tour buses or any hotel/motel vehicle carrying hotel guests, shall pick up or unload passengers upon the airport without a written permit issued by the Executive Director, which permit shall state, among other requirements, those which relate to safety, licensing, traffic regulations, and insurance, and shall prescribe fees and shall state what privileges are granted by the permits issued. Permits issued under this section will not be exclusive.

(a) Bus, or any vehicle with a seating capacity in excess of 25 (licensed for hire)
A basic monthly fee of one hundred and twenty-five dollars per vehicle.

(b) Bus, limousine, stretch-out or any vehicle with a seating capacity of 25 or less (licensed for hire)
A basic monthly fee of one hundred dollars per vehicle.

(c) Hotel-motel vehicles (owned, leased, or operated)
A basic monthly fee of seventy-five dollars per hotel or motel.

(d) Time and place of payments
(1) The monthly permit fees shall be applicable only for the period in which issued and shall be paid to the Executive Director in advance of providing ground transportation services at the airport.
(2) Payments shall be made at the Office of the Executive Director.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-255 Implementing Rules

(a) Notice of Violation. Any person violating any of the provisions of §§ 40-10.1-201 through 40-10.1-250, inclusive, shall be given written notice thereof by a duly authorized employee of the Authority.

(b) Same; Form of Notice. The written notice shall be in a form prescribed by the Executive Director. The form shall be prepared in a duplicate, with the original copy being served upon the violator in the manner provided herein, and the duplicate copy being returned to the Office of the Executive Director.

(c) Same; Manner of Service. Service of the notice of violation shall be served upon the violator as follows: If the violator is physically present at the scene of the violation, the notice of violation shall be served upon him personally. If the violator is not so present,

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service may be effected by leaving the notice of violation upon the windshield of the offending vehicle, or alternatively upon any other prominent place upon such vehicle.

(d) Same; Who May Serve. Persons authorized to serve the notice of violation provided for herein are the Executive Director, the Airport Manager, any employee of the Department of Public Safety of the Government of the Northern Mariana Islands, and any security officer of the Authority.

(e) Denial of Liability. Any person against whom a violation of any of the provision of §§ 40-10.1-201 through 40-10.1-230, inclusive, is alleged shall have ten days either to deny liability therefor, or to pay the fine as established herein. The notice of violation shall state that failure to pay fine assessed within the ten--day period may result in collection of said fine through the courts of the Northern Mariana Islands. In the event suit is brought to recover any fine assessed under this part 200, the offender shall also be liable for court costs and reasonable ~~attorneys~~attorney's fees.

(f) Schedule of Fines. The schedule of fines to be assessed for the violation of §§ 40-10.1-201 through 40-10.1-250 of this part shall be as follows:
(1) § 40-10.1-210: $50.00
(2) §§ 40-10.1-201, 40-10.1-205, 40-10.1-215, 40-10.1-220 and 40-10.1-225: $30.00
(3) § 40-10.1-230: $20.00 plus towing and storage charges.
(4) §§ 40-10.1-235, 40-10.1-245, 40-10.1-250: $100.00; and in addition, any found in violation of these sections may have the privilege to conduct such business at the airport terminated pursuant to § 40-10.1-105.

(g) Removal of Vehicles. Whenever a vehicle is parked so as to create a blockage or other hazard to the orderly flow of traffic to, in, or from the airport, or when a vehicle has been abandoned, or when a rental vehicle operating pursuant to § 40-10.1-245 is parked within the public vehicular parking area, the Executive Director may order the vehicle removed to an authorized parking location, or to the Authority impound lot, if no authorized space can be found at the airport. All abandoned vehicles shall be taken to the impound lot where the owners may reclaim them in accordance with applicable law and regulations, and upon payment of fines or charges established by the Executive Director.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs of section (f) were not designated. The Commission designated subsections (f)(1) through (f)(4).

In subsections (f)(2) and (f)(4), the Commission inserted colons before the monetary fine amounts to ensure consistent punctuation.

Part 300 - General Operation on Public Aircraft Area

§ 40-10.1-301 Identification

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Drivers of all vehicles operating on ~~the operational areas~~an Operational Area shall obtain permission from the Executive Director before entering upon the taxiways and runways. Between the hours of sunrise and sunset such vehicle shall have a functioning radio receiver in operation or an overhead red light shall be displayed, or it shall be painted bright yellow, or it shall display a checkered flag, not less than three feet square of international orange and white, the checks being at least one foot on each side; and between the hours of sunset and sunrise conspicuous overhead operating red lights shall be displayed. The Executive Director shall in all cases specify in writing the identifications required.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-305 Enplaning or Deplaning Passengers

No vehicle shall move ~~or*~~on or across the ~~public ramp and apron areas~~Airline Ramp Area or Terminal Aircraft Apron while passengers are enplaning or deplaning, except in conformity with traffic directives issued by the Executive Director. No vehicle shall be operated without operating lights on ~~the operational area~~an Operational Area during the hours of darkness.

*So in original; probably should be "on."

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-310 Safety of Aircraft Operation

The Executive Director may suspend or restrict any or all operations without regard to weather conditions whenever such action is deemed reasonably necessary in the interest of safety.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-315 Deviation from Rules

Any deviation from the rules in this part shall be coordinated with the Executive Director prior to conducting operations which are contrary to provisions herein contained, except that the Executive Director may temporarily authorize deviation or suspension of portions of this part as may be required in the interest of safety. Any deviation from this part shall be the sole responsibility of the person conducting the operation which is not in strict accord with the provision herein contained.

Modified, 1 CMC § 3806(d), (g).

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History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission changed "operation" to "operations" to correct a manifest error.

Part 400 - Taxiing Rules

§ 40-10.1-401 Taxiing and Ground Rules

(a) No aircraft engine shall be run at the airport unless a pilot or a certificated A & P (airframe and power-plant) mechanic qualified to run the engines of that particular type of aircraft is attending the controls.

(b) No person shall taxi an aircraft on the airport until he has ascertained that there will be no danger of collision with any persons or objects.

(c) All aircraft shall be taxied at a safe and reasonable speed.

(d) All aircraft operating on the airport shall be equipped with wheel brakes in proper working order.

(e) No aircraft shall taxi between the airline passenger terminal gates and aircraft parked on ~~the terminal~~a Terminal apron.

(f) Where taxiing aircraft are converging, the aircraft involved shall pass each other bearing to the right-hand side of the taxiway unless otherwise instructed by traffic control.

(g) No aircraft shall be taxied into or out of any hangar under its own power.

(h) All aircraft being taxied, towed, or otherwise moved at the airport shall proceed with navigation lights on during the hours between sunset and sunrise.

(i) Aircraft engines shall be started or operated only in the places designated for such purposes by the Authority.

(j) All repairs to aircraft or engines shall be made in the areas designated for this purpose. Adjustments and repairs may be performed on air carrier aircraft at gate positions on ~~the terminal~~a Terminal apron when such repairs can be accomplished without inconvenience to other persons. Any aircraft being repaired at a gate position shall be moved immediately upon the request of the Executive Director. No aircraft engine shall be run up above idle power for test purposes at any gate position.

(k) Aircraft shall not be washed except in areas and in the manner designated by the Authority.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

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Part 500 - Traffic Pattern, Landing and Takeoff

§ 40-10.1-501 Left-hand Traffic

All aircraft in flight below fifteen hundred feet above the ground surface within a three-mile radius of the airport shall conform to a standard left-hand flow of traffic and to the designated traffic pattern, and to the following rules, unless specifically instructed otherwise by traffic control, when operational:

(a) The traffic direction shall be as indicated by such devices as a segmented circle or by wind sock.

(b) All landings and takeoffs shall be confined to the paved runway and shall not be conducted on a taxiway or apron, except by helicopters which may land on designated ~~apron areas~~Apron Areas.

(c) No turn shall be made after takeoff until the airport boundary has been reached and the aircraft has attained an altitude of at least four hundred feet and the operator has ascertained there will be no danger of collision with other aircraft.

(d) Aircraft shall enter the traffic pattern on or before the downwind leg and shall exercise caution and courtesy so as not to cause aircraft already in the pattern to deviate from their course at the discretion of the pilot.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-505 Ceiling Limitations

When ceiling and/or visibility are less than those authorized by Federal Aviation Regulations for conduct of visual flight operations, no takeoffs or landings are to be authorized at the airport, except when proper clearance has been obtained from traffic control, when operational.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-510 General Traffic Rules

(a) In advance of any flight test, practice instrument flight, or practice low approach to be conducted within the airport clear zone, the pilot shall make the necessary arrangements with the FAA airport traffic controller on duty, when available, and shall receive clearance before starting such maneuvers, and shall observe all local traffic and avoid interference with same.

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(b) No motorless aircraft shall land or take off from the airport.

(c) The Executive Director shall have the right to deny the use of the airport to any aircraft or pilot violating Authority or federal regulations, whether at the airport or elsewhere, pursuant to § 40-10.1-105.

(d) All aircraft operations shall be confined to hard-surfaced runways, taxiways, and aprons.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-515 Helicopter Operations Rules

(a) Helicopters arriving and departing the airport shall operate under the direction of the airport communication system at all times while within three miles of the airport.

(b) Helicopters shall avoid fixed-wing aircraft traffic patterns and attitudes to the maximum extent possible.

(c) Helicopters shall not be taxied, towed, or otherwise moved with rotors turning unless there is a clear area of at least fifty feet in all directions from the outer tips of the rotors.

(d) Helicopters shall not be operated within two hundred feet of any area on the airport where unsecured light aircraft are parked.

(e) During landings and takeoffs, helicopter aircraft shall not pass over any airport buildings, structures, their adjacent auto parking areas, passenger concourses, or parked aircraft.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Part 600 - Rules for Ground Operations

§ 40-10.1-601 Engine Run-up Restrictions

Aircraft engines shall be started or warmed up only by qualified persons, and at the places designated for such purposes. At no time shall engines be run-up in hangars, shops, other buildings, or when spectators are in the path of propeller streams or jet blasts.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-605 Aircraft Parking

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Aircraft shall only be parked in areas designated for such purposes by the Executive Director.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-610 Area for Repairs

All repairs to aircraft or engines, except emergency repairs, shall be made only in areas designated for this purpose by the Executive Director.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-615 Runway Area Restrictions

No person or persons, except personnel authorized by the Executive Director, shall be permitted to enter the public runway area.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-620 Overparking of Aircraft on Apron

Any aircraft operator, upon notice from the Executive Director, shall move or cause an aircraft to be removed from any portion of the ~~public~~Public ramp and apron ~~areas~~area within twenty minutes of such notification, notwithstanding the fact that he published tariffs of the Authority may prescribe fees for ramp occupancy by aircraft, establishing definite periods of time for such purpose.

Modified, 1 CMC § 3806(e).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-625 Power-in, Push-out of Aircraft

(a) All jet aircraft parking anywhere on the apron at Francisco C Ada/Saipan International Airport shall be permitted to power-in, but must be pushed or towed out upon departure.

(b) It is recognized that some models of jet aircraft require starting of engines prior to push-out due to lack of an internal APU. In such case, the push-out requirement of subsection (a) of this section shall not apply; however, in such cases, such aircraft shall be towed or pushed out to a safe distance away from ~~the terminal~~a Terminal and from other aircraft before breakaway jet engine power is applied.

(c) Subject to the provisions of § 40-10.1-315, the Executive Director may make exceptions to the provisions of this section when he determines that power-out operations will not pose a hazard to other operations or aircraft upon the apron, and will not pose a

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hazard, inconvenience, or discomfort to passengers in the departure area of ~~the terminal~~a Terminal or in the process of boarding or deboarding another aircraft. However, no exception to this section may be granted by the Executive Director when more than one jet aircraft is on the apron at any one time.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-630 Running of Engines During Operations

No propeller-driven aircraft engine shall be operated while such aircraft is parked on the ramp, or during the loading or unloading of passengers or cargo, unless

(a) A duly authorized agent of operator of the aircraft is present during such loading or unloading, and such agent shall take all necessary steps to assure the safety of passengers and other persons upon the ramp; and

(b) The operator of such aircraft shall have deposited with the Authority a certificate or other evidence of insurance, in a form and upon a company satisfactory to the Authority, insuring the operator, the Authority, and their respective agents, employees, and officers, against the risks of personal injury, loss of life, and property damage in an amount of not less than $1,000,000.00 per person, $3,000,000.00 for each accident, and $500,000.00 for property damage, provided that this insurance requirement shall not apply to any airline which has ~~executed an airline use/operating agreement~~a Letter of Authorization with the Authority ~~pursuant to § 40-10.1-740~~, while such agreement remains in force and effect.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 16 Com. Reg. 11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The 1994 amendments amended and readopted this section in its entirety.

§ 40-10.1-635 Flight Service Station

(a) The Authority operates a flight service station at ~~Saipan~~Benjamin Taisacan Manglona and Tinian International ~~Airport~~Airports. The purpose of the flight service station is solely for the purpose of providing information to aircraft operators concerning weather, and for no other purpose.

(b) This service is provided strictly as a convenience to aircraft operators, each of whom is free to obtain weather information from any other source whatsoever. No operator of an aircraft is entitled to rely on any information provided by the flight service stations, for any purpose whatsoever, whether such information relates to weather or any other subject matter.

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(c) Without limiting the generality of any of the foregoing, all aircraft operators are reminded that all decisions relating to the operation of aircraft in the air are outside the responsibility of the Authority and the flight service station, and that neither the Authority nor its flight service station has any authority to transmit any orders relating to the operation of aircraft in the air. However, the Authority and its flight service station have authority to transmit orders relating to the operation of aircraft on the ground.

(d) Every person who owns or operates an aircraft to, from, or within any airport in the Northern Mariana Islands which is under the direction and control of the Authority, or within any airspace of the Northern Mariana Islands, as a condition of such operation, hereby agrees to save, hold harmless, and indemnify the Authority, and its agents, servants, workmen, officers, and employees, from any and all claims demands, and liabilities whatsoever arising out of the operations of the flight service station.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d).

Part 700 - Conditions of Use of Airport

§ 40-10.1-701 Public Apron and Aircraft Parking Area Use

All aircraft, whether operated for revenue or nonrevenue purposes, shall use the public apron and aircraft parking area only under the conditions stated in this subchapter and shall be subject to such fees and charges as may from time to time be approved and published by the Authority.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-705 Departing Passenger Restrictions

All passengers departing from the airport and being carried for hire shall be processed through the facilities designated for such purpose by the Executive Director, and the use of such facilities shall be subject to such fees and charges as may from time to time be approved and published by the Authority.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-710 Arriving Passenger Restrictions

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All terminating passengers and their baggage being carried for hire arriving at the airport shall be processed only through the facilities designated for such purposes by the Executive Director, and the use of such facilities shall be subject to such fees and charges as may from time to time be approved and published by the Authority.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-715 Transit Passenger Restrictions

Passengers transiting the airport may utilize, in common with the general public, the facilities of any terminal building. At any time, when required by Commonwealth of the Northern Mariana Islands Health, Immigration, and/or Customs regulations, all such transit passengers shall be held during any transit layover in a separate transit lounge provided by the Authority. If transit passengers are so required to use such transit lounge, such passenger use shall be subject to such fees and charges for use thereof as may from time to time be approved and published by the Authority.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-720 Restrictions on Purchase of Aviation Fuels

No aircraft may be fueled on the airport unless the operator thereof has a valid agreement with the Authority permitting such fueling, or unless said operator has obtained a written clearance therefor from the Executive Director. Such fueling clearance shall be issued to an aircraft operator upon showing the Executive Director that all of these conditions of use of airport have been or will be responsibly complied with and the fees and charges have been, or will be, paid under the terms hereof.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-725 Cargo Operations

(a) Except for tenants operating under a valid lease which provides otherwise, cargo may be boarded on aircraft only at locations designated by the Executive Director and subject to the conditions stated in this chapter, and shall be subject to such fees and charges as may from time to time be approved and published by the Authority.

(b) Air cargo may not be accepted for carriage, or delivered to consignees, at airline ticket counters or inside any security fence at ~~Saipan International~~an Airport; except that shipments not exceeding 25 lbs. in weight and 45 inches in the sum of length, width, and height, may be accepted or delivered at ticket counters.

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Modified, 1 CMC § 3806(d).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-730 Ground Handling Services

(a) Ground Handling Permits.
(1) No person or company shall operate at any airport as a ground handling company without a ground handling permit issued by the Authority.
(2) In order to provide for and to insure the orderly, safe, effective and efficient operation of the airports at the three major islands, and in keeping with international standards on ground handling operations, the Authority shall issue not more than three ground handling permits for each major island.

(b) Qualified Services. Each ground handler shall provide ground handling services to the highest international standards and in accordance with any reasonable requirements of the Authority as stipulated from time to time. Without limiting the particular requirements of each airline and the general need for orderly, safe, effective, and efficient operations of the airport, a ground handler may provide the following services:
(1) Loading and unloading of freight and luggage to and from aircraft and the movement of such freight and luggage between passenger and/or freight terminals and the supervision of the collection of baggage and freight;
(2) The removal from aircraft of waste, rubbish, sewage, and the like;
(3) Cleaning the aircraft cabins, cockpit, galleys, toilets;
(4) Replenishing supplies of literature, toiletries and other in-flight consumable used by passengers other than those to be supplied by the airline flight catering contractors;
(5) Move, park, and provide day-to-day services for aircraft;
(6) Provide concierge services; and
(7) Carry out such other operations and activities as may be conveniently carried out if related to the overall responsibilities accorded ground handlers under international standards.

(c) Qualified Employees.
(1) In carrying out its responsibilities hereunder, each ground handler shall use staff specifically approved by the Authority who have been fully and properly trained to operate typical equipment at the airport including but not limited to the operation of air bridges, lifts, escalators, conveyors, power supply units, and sewage disposal systems and will only use equipment previously approved by the Authority.
(2) Each ground handler bears the responsibility to provide competent supervisors and staff at all times and also bears the burden of obtaining federal licenses and permits to qualify its employees to the technical particulars of the ground handling operations.
(3) Because of security concerns at the airport, it is necessary that all personnel employed by each ground handler have appropriate security clearance and be acceptable to the Authority and accordingly the ground handler must comply with all requirements imposed by the Authority relative to personnel. Furthermore, the Authority has the right at any time at its sole and absolute discretion to advise the ground handler that any person employed by the ground handler is not acceptable to the Authority in connection with the

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airport operation, and thereafter, the ground handler shall not use such person in connection with its ground handling activities.

(d) Equipment Requirements.

(1) In carrying out its responsibilities under the permit, each ground handler must at all times maintain the minimum equipment inventory necessary to provide the qualified services contained in this part. The equipment inventory must include, but is not limited to, the following: aircraft tow tractors, ~~airstart~~air start units, aircraft axle jacks, baggage carts, belt conveyor loaders, generator units, ground power units, container and pallet dollies, and lavatory trucks.

(2) The ground handler bears the responsibility to include additional equipment in its inventory to meet the requirements of the airline(s) it is servicing.

(e) Authority Right of Inspection. During the term of the permit, the Authority has the right to inspect the ~~work place~~workplace, offices, equipment and other possessions and facilities of each ground handler at any reasonable time.

(f) Indemnity by Ground Handler. In accepting a ground handling permit, each ground handler shall protect, defend, and hold the Authority and its officers, employees, agents, and representatives completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines, or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to legal and court costs and expert fees), of any nature whatsoever arising out of or incidental to the permit and/or the use of airport facilities or the acts or omissions of the ground handler, its officers, agents, employees, contractors, subcontractors, invitee regardless of where the injury, death, or damage may occur, unless injury, death, or damage is caused solely by the negligence of the Authority.

(g) Insurance Requirements.

(1) Each ground handler must maintain in force during the term of the permit public liability and property damage insurance in the sum of $5,000,000.00 for injury to* or death of each of any one person, and in the sum of $5,000,000.00 for injury to or death of more than one person, and in the sum of $1,000,000.00 for damage to property. The ground handler agrees that the Commonwealth Ports Authority shall be named as an additional insured under such insurance policy or policies. A certificate of insurance evidencing such insurance shall provide that such insurance coverage will not be cancelled or reduced without at least thirty** days prior written notice to the Commonwealth Ports Authority.

(2) The ground handler shall submit a certificate of insurance and a copy of the insurance policy for review and acceptance by the Executive Director as part of the conditions to obtain a permit to operate a ground handling service at the airport.

~~*So in original; probably should be "injury to or death of."~~
~~**So in original; probably should be "thirty days."~~

(h) Financial Responsibilities.

(1) In order to assure orderly, safe, effective, and efficient airport operations, each ground handler must demonstrate and maintain financial suitability during the duration of

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the permit term. At a minimum, the ground handler must maintain a total equity of $500,000.00.

(2) The Authority may inspect the financial and accounting records of the ground handler at any time during working hours after having given sufficient notice for such inspection.

(3) The ground handler shall submit semi-annual financial reports within thirty days after the end of such period. Audited annual financial statements shall be submitted to the Authority within ninety days after the end of the fiscal year.

(i) Permit Period. A ground handling permit shall be for a period of five years and shall be renewable for additional five--year periods provided that the Authority finds the services provided by the ground handler acceptable and that the ground handler has complied with all general mandates as to order, safety, efficiency, and effectiveness as intended in this chapter, and the specific provisions of this subchapter.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs of subsections (a), (c), (d), (g) and (h) were not designated. The Commission designated subsections (a)(1) and (a)(2), (c)(1) through (c)(3), (d)(1) and (d)(2), (g)(1) and (g)(2), and (h)(1) through (h)(3).

The Commission inserted commas after the word "effective" in subsections (a)(2) and (h)(1) and after the phrase "power supply units" in subsection (c)(1) pursuant to 1 CMC § 3806(g). In subsection (b)(7), the Commission changed "relation" to "related" to correct a manifest error. In subsection (g)(1), the Commission changed "certificate of certificates" to "certificate of insurance" to correct a manifest error.

§ 40-10.1-735 Security Screening

Whenever security screening of passenger departing from the airport, and their carry-on baggage, is required by federal or other applicable laws or regulations, such security screening shall be conducted electronically, utilizing an electronic security screening system. Hand screening of passengers and their carry-on baggage shall also be permitted. The Authority provides an electronic security screening system for this purpose, which is available for use by all airlines serving Francisco C Ada/Saipan International Airport on a reasonable and non-discriminatory basis. The use of said system is subject to the payment of such reasonable fees and charges as may be established, either by agreement with the system operator or otherwise.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-740 Use Regulations for Airline ~~Use/Operating Agreement~~Operations

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(a) ~~No air carrier providing scheduled service or scheduled charter service to or from any airport in the Commonwealth~~General Provisions

The provisions of ~~the Northern Mariana Islands~~this chapter shall ~~utilize any terminal facility owned or operated by the Authority~~apply to all Airlines from and after the date of adoption the Airport Rules and Regulations unless ~~such air carrier~~ (and during the period that) the Airline shall have ~~entered into~~ a ~~written airline use/operating agreement~~ lease for the use of the Airport System with the Authority. ~~Such agreement shall provide, among other things, that the failure to pay any fees and charges for the use of airport facilities in the Commonwealth~~Said lease, if in effect, shall be subordinate to the Airport Rules and Regulations. Upon termination of any such lease, the provisions of this chapter shall apply as to any authorized activity on the Airport System.

(b) Requirements to Occupy and Use Airline Assigned Areas; Letter of Authorization.

(1) Prior to occupying and using space in a Terminal or otherwise engaging in an Air Transportation Business at an Airport, an Airline shall present satisfactory evidence to the Executive Director that the Airline meets the requirements of the Airport Rules and Regulations, including, without limitation, insurance requirements established by Authority for engaging in Air Transportation at the Airport. Upon Authority's acknowledgement that an Airline meets the requirements of the Airport Rules and Regulations, including the insurance requirements of § 40-10.1-745, the Executive Director shall issue a Letter of Authorization to conduct an Air Transportation Business at the Airport and occupy and use its Assigned Area in a Terminal. Once the Executive Director receives an executed Letter of Authorization from Airline, an Airline shall occupy its Assigned Area and commence operations. Such Airline Assigned Area occupancy shall be on a month-to-month basis until such occupancy is canceled by the Airline or Authority. An Airline's submittal to the Authority of satisfactory evidence of insurance and executed Letter of Authorization shall be deemed to constitute acceptance by Airline of all terms and conditions of the Letter or Authorization and the Airport Rules and Regulations.

(2) Any permission granted by the Authority, directly or indirectly, expressly or by implication, to any Airline to enter upon or use the Airport or any part thereof is conditioned upon compliance with the Airport Rules and Regulations; and entry upon or into the Airport by any Airline shall be deemed to constitute an agreement by said Airline to comply with such Airport Rules and Regulations.

(3) A Letter of Authorization will be automatically renewed each month provided Airline is in compliance with the provisions of the Airport Rules and Regulations. In the event an Airline violates any of the provisions of the Letter or Authorization or the Airport Rules and Regulations, the Executive Director may terminate the Letter of Authorization at the end of the current month by providing no less than fifteen (15) days' notice to the Airline of non-renewal. An Airline may terminate a Letter of Authorization by providing notice to the Executive Director no less than fifteen (15) days prior to the end of the current month. If not terminated, a Letter of Authorization will automatically be renewed on its monthly anniversary date. The Airline's rights and privileges to use the Airline Assigned Area, the services, and facilities of an Airport shall cease upon cancellation of the Letter of Authorization.

(c) ~~grounds for eviction from terminal~~Description of Privileges, Uses, and Rights.

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Airline shall be entitled, in common with others authorized by the Authority, to the general use of all Public Airport System facilities and ~~the denial of the right of use of airport~~improvements which now are or may hereafter be connected with or appurtenant to an Airport, except as hereinafter provided. "Public Airport System facilities" shall include, but not be limited to runways, taxiways, aprons, aircraft parking areas, roadways, sidewalks, navigational aids, lighting facilities or other public facilities at an Airport.

Airline's use of Public Airport System facilities shall be for the sole purpose of operating its Air Transportation Business, which use, without limiting the generality hereof, shall include:

(1) The handling, ticketing, billing, and manifesting of passengers, baggage, cargo, mail, and Airline's property, in air transportation by Airline.

(2) The repairing, maintaining, conditioning, servicing, testing, parking, or storing of aircraft or other equipment operated by Airline.

(3) The training of personnel in the employ of or to be employed by Airline.

(4) The sale, lease, transfer, disposal or exchange of Airline's aircraft engines, accessories, and other equipment or supplies. Said right shall include the sale, lease, transfer or disposal of any article or goods used by or bought for use by Airline in connection with its conduct of its Air Transportation Business; provided, however, that Airline shall not:

(i) Sell food or beverages, except for consumption aloft, as provided in subsection c.8.

(ii) Sell gasoline, fuel, propellants, greases, or other lubricants except when said products are of particular grade desired by others and are not otherwise available .

(5) Upon approval from the Authority, and subject to the Airport Rules and Regulations, Airline may provide technical and mechanical services to other airlines not having a valid agreement with the Authority.

(6) The landing, taking off, flying, taxiing, towing, parking, loading, and unloading of Airline's aircraft or other equipment operated by Airline used in the operation of schedules, shuttle, courtesy, test, training, inspection, and emergency flights. Said right shall include, without limiting the generality hereof, the right to load and unload airline's aircraft adjacent to a convenient entrance to a Terminal; provided, however, that flights carrying cargo or freight only shall load and unload at convenient and accessible points to be designated by Authority.

(7) The loading and unloading of property, cargo, and mail by such motor vehicles or other means of conveyance as Airline may desire or require in the operation of its air transportation service, with the right to designate the particular carrier or carriers who shall transport Airline's property, cargo, and mail.

(8) The right to provide food and beverage for consumption by passengers and crews of Airline. Nothing in a Letter of Authorization or these Airport Rules and Regulations shall be deemed to give Airline the right, without prior written approval from the Authority, to maintain or operate a cafeteria, restaurant, vending machine, bar or cocktail lounge or club for the purpose of selling or in any manner otherwise providing food or beverage to the public or to its employees and passengers.

(9) The right to replace existing signs identifying Airline's business on and in a Terminal. Signs shall be substantially similar to existing signs in size, type, design, and

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location shall be subject to the written approval of Authority prior to installation. Such installation and operation shall be without cost to the Authority.

(10) The right to install, maintain, and operate by Airline alone, by Airline in conjunction with any other scheduled passenger Air Transportation Companies who have been issued Letters of Authorization, or through a nominee, radio communication, meteorological and air navigation equipment and facilities in or on Airline's Preferential Use Premises. The installation, maintenance and operation of such equipment shall be without cost to Authority and shall require the prior written approval of Authority as to location, method, and type of installation.

(11) The right, except as herein otherwise specifically provided, to purchase or otherwise obtain personal property of any nature (including, but not limited to, gasoline, fuel, propellants, and supplies) deemed by Airline necessary or incidental to its operation, its exercise of the rights herein imposed. These purchases may be made through any person, partnership, firm, association, or corporation Airline may choose.

(12) Airline may, upon receiving prior written approval from the Authority, exercise on behalf of any other Air Transportation Company having Letter of Authorization issued by the Authority any of the rights granted Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Air Transportation Business.

(d) Rights and Privileges Specifically Excluded.

(1) Except as specifically provided for in § 40-10.1-740(b), Airline shall not sell any goods or services to the public or to its employees and passengers, other than those directly related to its Air Transportation Business without the prior written approval of the Authority. Airline shall not exercise, or take any action inconsistent with, any right granted to any concessionaire of the Authority at any Airport .

(2) Airline shall not receive and dispatch property, cargo, or freight (except that owned by Airline) within Airline's Preferential Use Premises, except packages normally tendered to Airline in small, single shipment packages for counter-to-counter express delivery services.

(e) Right to Ingress and Egress

(1) Airline shall have the right of ingress to and egress from those areas and facilities designated as Preferential Use or Joint Use Premises by the Authority, and by Airline in common with other airlines, for Airline, its employees, agents, nominees, passengers, guests, patrons, its suppliers of materials or furnisher of services, its aircraft, equipment, vehicles, machinery, or other property.

(f) Accommodation of Other Airlines

(1) If a Scheduled Air Carrier not currently serving an Airport wishes to initiate Scheduled Air Carrier service, and such air carrier has a requirement for Preferential Use Premises (Requesting Scheduled Air Carrier), and Authority has insufficient Preferential Use Premises to offer for use to such air carrier, then Authority shall in writing request all existing Scheduled Air Carriers having substantially similar Letters of Authorization with the Authority (Existing Scheduled Air Carriers), to accommodate such Requesting Scheduled Air Carrier, either individually or jointly. Such accommodation may consist of an agreement between any or all Existing Scheduled Air Carriers to accommodate such

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Requesting Scheduled Air Carrier, whereby;
(i) Any or all Existing Scheduled Air Carriers shall handle the operations of the Requesting Scheduled Air Carrier, or;
(ii) An Existing Scheduled Air Carrier shares its Preferential Use Premises, as defined within its Letter of Authorization, with the Requesting Scheduled Air Carrier.
(2) If the reasonable requirements of the Requesting Scheduled Air Carrier are not met in the foregoing manner within thirty (30) days of such written request of the Authority to the Existing Scheduled Air Carriers, then the Authority shall have the right to direct any Existing Scheduled Air Carrier to share its Preferential Use Premises with the Requesting Scheduled Air Carrier. In making this determination, the Authority shall: (i) calculate the number of revenue passengers carried by each Existing Scheduled Air Carrier, and any other carrier handled at its Preferential Use Premises, or with which it shares its Preferential Use Premises during the previous six (6) months and (ii) divide the number of revenue passengers calculated in (i) above by the linear feet of ticket counter space preferentially leased by each Existing Scheduled Air Carrier. The Existing Scheduled Air Carrier having the lowest quotient shall be required by the Authority to share its Preferential Use Premises with the Requesting Scheduled Air Carrier as necessary to accommodate the reasonable requirements of the Requesting Scheduled Air Carrier. In no event shall an Existing Scheduled Air Carrier be required to share more than one-half of its Preferential Use Premises with a Requesting Scheduled Air Carrier.

(g) Installed Improvements and Property.
(1) All improvements, fixtures, equipment, and other property bought, installed, erected or placed by Airline in, on, or about the Airport System and its Assigned Area shall be deemed to be personal and remain the property of Airline.

(h) Airport System Security.
(1) Airline shall be responsible for obtaining and/or coordinating any required Airport System badging, vehicle decaling, training and/or other activities required to ensure their agents, employees, vendors, suppliers, service providers, directors, or officers are in compliance with the Authority's security plan, TSA Regulations 49 CFR Parts 1500, 1515, 1520, 1540, 1542, 1544, 1546, 1548, 1549, 1550, and 1560, as promulgated, and the terms and conditions of the Airport Rules and Regulations. Airline shall be responsible to pay any and all related costs associated with such badges and/or access privileges. Said badges shall be valid only for the period of issuance and in no event shall said badges and the access privileges which they authorize exist beyond the term of a Letter of Authorization. Badges shall be returned within twenty-four (24) hours or the next business day after expiration of the badge, termination, suspension or other cessation of employment, or cancellation of a Letter of Authorization, whichever shall occur first.
(2) Airline shall be responsible for the proper certification and background check for all its employees, agents, vendors, suppliers, service providers, contractors, subcontractors, officers, and directors for which it requests and/or obtains an Authority issued Security Badge. In the event Airline, or any of its employees, agents, vendors, suppliers, service providers, contractors, subcontractors, officers, or directors fails to return such badges upon cessation of employment or other similar circumstances, and/or any cause of action that either singularly or collectively would require Authority to re-badge all badged personnel,

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as required under TSA Regulations and the Authority's security plan, Airline shall bear the total cost of such re-badging process.

(3) Airline will at all times preserve the integrity of the Authority's security plan and TSA Regulations 49 CFR Parts 1500, 1515, 1520, 1540, 1542, 1544, 1546, 1548, 1549, 1550 and 1560, as promulgated and that it will always preserve the security of any airfield access which Airline maintains. Airline shall be responsible for any and all of the actions of its employees, contractors, subcontractors, suppliers, agents, and/or representatives and shall provide any and all escorts, as outlined in the Authority's security plan, at all times.

(4) Should Airline, its employees, contractors, subcontractors, suppliers, agents, and/or representatives cause any security violation, and should Authority be cited for a civil penalty for such violation, Airline shall reimburse Authority for any monetary civil penalty which may be imposed by the FAA and/or TSA. Airline may have badge/access privileges immediately suspended and/or revoked by the Authority for failure to adhere to the Authority's security plan or for failure to return all badges within the time frame specified herein. In the event of a severe incident, such actions may also result in the immediate cancellation of a Letter of Authorization, at the sole discretion of the Authority.

§ 40-10.1-742 Airline Assigned Areas

(a) "As-Is" Condition of Airline Assigned Area.

Airline's submittal to the Authority of satisfactory evidence of insurance and an executed Letter of Authorization shall be deemed to constitute acceptance of its Assigned Area in an "As-Is" condition. Airline's occupancy and use of its Assigned Area shall serve as acknowledgement that Authority has made no representations or warranties of any nature whatsoever regarding the Airport System facilities or its Airline Assigned Area including, but not limited to, the physical and/or environmental condition of its Airline Assigned Area, or any improvements located thereon, or the value of the Assigned Area or improvements thereto, their zoning, the suitability of the Assigned Area, or any improvements thereto, or Airline's legal ability to use the Assigned Area or Airport for Airline's intended use.

(b) Surrender of Assigned Area

(1) Except as otherwise provided for herein, Airline shall, upon cancellation of its Letter of Authorization, quit and deliver up the Assigned Area to Authority peaceable, quietly and in as good order and condition as the same now are or may hereafter be improved by Airline or Authority; reasonable use and wear, damage by the elements, fire, explosion, or other causes beyond the control of Airline excepted.

(2) Provided Airline is not in default for payment of rentals, fees, and charges, Airline shall have the right at any time during the during the occupancy of the Airline Assigned Area, and prior to cancellation of the Letter of Authorization, to remove its aircraft, tools, equipment, trade fixtures, and other personal property, title to which shall remain in Airline, unless otherwise set forth in the Airport Rules and Regulations, and shall remove such aircraft, tools, equipment, trade fixtures, and other personal property within fifteen (15) business days following cancellation of a Letter of Authorization, subject to any valid lien which Authority may have thereon for unpaid rentals, fees, and charges. Airline shall not abandon any portion of its property on an Airport without the written consent of

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Authority. Any and all property not removed by Airline within thirty (30) business days following the cancellation of a Letter of Authorization shall, at the option of Authority, (i) become the property of Authority at no cost to Authority; (ii) be stored by Authority at no cost to Authority; or (iii) be sold at public or private sale at no cost to Authority. Except as may be agreed to otherwise by Authority and Airline, all Authority property damaged by or as a result of the removal of Airline's property shall be restored by Airline to the condition existing before such damage at Airline's expense.

(3) In the event Airline uses its Assigned Area without the written consent of Authority after cancellation of a Letter of Authorization, Airline shall be deemed a tenant at sufferance during the period of such use and shall pay the rate for rental, fees, and charges established by Authority for Air Transportation Companies during such period. In such event, Authority shall have the right to all remedies provided under applicable laws.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 16 Com. Reg. 11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994).

Commission Comment: The 1994 amendments added this section and moved the existing Airport Rules and Regulations § 7.9, entitled "Notice of Airline Schedule Changes" to the end of this part. See 14 Com. Reg. at 9566 (Aug. 15, 1992); 16 Com. Reg. at 11686-87 (Feb. 15, 1994); see also § 40-10.1-755.

§ 40-10.1-743 Operation and Maintenance

(a) Authority Operation and Maintenance Responsibilities

(1) Except as otherwise specifically provided herein, Authority shall, maintain, operate, and keep in good repair all Airports in the Airport System.

(2) Authority shall take all action reasonably necessary, with reasonable promptness, to keep the Airport System runways, taxiways, and loading areas free and clear in order to insure the safe, convenient, and proper use of the Airport System by the Airline. Authority shall maintain and operate the Airport System in a reasonably prudent manner and in all respects in a manner at least equal to the highest standards or rating issued by the Federal Aviation Administration for Airport Systems of substantially similar size and activity and in accordance with all rules and regulations of the Federal Aviation Administration, or its successor organization.

(3) Authority shall keep the public and passenger space in a Terminal adequately supplied, equipped, furnished, and decorated, and shall provide signs in said spaces and in all other public spaces on the Airport System. Said signs shall include, but not be limited to, signs indicating the location of all public restaurants, rest rooms, shops, telephones, customs area, baggage area, security office, holding room and all other facilities for passenger or public use in a Terminal or elsewhere on the Airport System.

(4) Authority shall provide and supply adequate lighting for ramps and adequate airfield lighting.

(5) Authority shall also provide janitors and other cleaners necessary to keep all Common Use Premises, public and passenger space, and the Landing Area of the Airport System clean, neat, orderly, sanitary, and presentable at all times.

(b) Maintenance and Service in Airline's Preferential Use Premises.

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(1) Authority shall provide, at no additional charge, the following services to Airlines in the an Airport's Preferential and Common Use Premises: exterior building maintenance; structural maintenance; centralized heating, ventilation, and air conditioning system (HVAC) maintenance; mechanical and electrical systems maintenance, and exterior window washing. Each Airline shall be responsible for the maintenance, repair, and replacement of split-type HVAC system as they exist now or into the future.

(c) Governmental Facilities.
(1) If funds for the provision, and maintenance and operation of air navigation aids or other facilities required or permitted by the United States and/or Authority and needed by Airline for its operation at the Airport System and which are now or may hereafter be furnished by the United States and/or Authority are discontinued by the United States and/or Authority, Authority shall not be required to furnish said facilities.

(d) Utility Charges.
(1) Airline will pay to the Commonwealth Utilities Corporation directly or the Authority a charge for the use of electricity, water, and sewer on Airline's Assigned Area. Such charges will not be more than the actual charge to Authority by Authority's supplier of electrical, water, and sewer services. Telephone services are the sole responsibility of the Airline.

§ 40-10.1-744 Obligation of Airline

(a) Maintenance of Airline's Preferential Use Premises
(1) Except for exterior building, structural, and electrical mechanical systems maintenance, and exterior window washing by Authority, Airline shall be obligated, without cost to Authority, to maintain its Preferential Use Premises and every part thereof in good order, repair, and safe condition.
(2) Airline shall, at its own expense, provide janitorial services in Airline's Preferential Use Premises. Said services may be provided by Airline alone, by Airline in conjunction with other firms or companies who may hereafter be lessees at the Airport System, or by a nominee approved by Authority.
(3) Airline shall re-lamp light fixtures as necessary, shall repaint the interior of the Airline's Preferential Use Premises as necessary, and shall provide for interior window washing at periodic intervals. All such maintenance, repairs and replacement shall be of quality equal to the original in materials and workmanship. All paint colors shall be subject to the prior approval of Authority.

(b) Alterations, Additions or Replacements.
(1) Airline shall make no alterations, additions, or replacements to the Airline Assigned Area without the prior written approval of Authority.
(2) Airline shall likewise obtain prior approval from Authority before installing, at its own expense, any additional equipment which requires new electrical or plumbing connections or changes in those already installed on the Airline Assigned Area.

(c) Trash Garbage and Aircraft Sewage.

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(1) Airline shall provide and use suitable receptacles that meet local health standards for all trash, garbage, aircraft sewage and all other refuse on or in connection with the Airline Assigned Area or in the operation of Airline's aircraft. Piling of receptacles, boxes, cartons, barrels, or other similar items in an unsafe or unsightly manner in or about the Airline Assigned Area shall not be permitted. The removal or disposal of such trash, garbage, and aircraft sewage containers from an Airport will be at the sole expense of the Airlines.
(2) Airline shall utilize the Authority's incinerator and triturator for the disposal of aircraft trash and sewage and will pay applicable service fees as established in the Airport Rules and Regulations.

(d) Taxes and Licenses.
(1) Airline shall pay all taxes of whatever nature that may be levied or charged upon Airline's improvements or operations and upon Airline's right to use the Airline Assigned Area. Airline shall obtain and pay for all licenses or permits necessary or required by law for the construction of any additional improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its Air Transportation Business. The Authority may assist Airline where necessary in obtaining said permits. The Authority shall not be required to pay any taxes by reasons of Airline's use of the Airline Assigned Area. Airline shall indemnify fully and save harmless Authority from any taxes imposed or levied against Authority by reason of Airline's use of the Airline Assigned Area.

(c) Public Address System and Flight Information Display Systems.
(1) A public address system and flight information display systems may be provided by Authority to all Airlines on a nondiscriminatory basis. The use of such facilities may be provided for in one or more separate agreements between the Authority and one or more Airlines, and any Airline desiring the use of such facilities may have such use in accordance with the terms of such agreement or agreements. Copies of such agreements are available for inspection at the offices of the Authority.

(d) Hand-Carried Items.
(1) Airline shall accept, free of charge, as accompanying baggage, merchandise purchased by a passenger from, or delivered to a passenger by, any concessionaire of the Authority, subject only to Airline's usual size and weight limitations on accompanying baggage, and to any and all governmental limitations on accompanying baggage.

§ 40-10.1-745- Indemnification and Insurance

(a) ~~Every Commercial Aircraft Operator, unless otherwise directed under the terms~~Indemnification.
(1) Airline is and shall be deemed to be an independent contractor and operator and not an agent or employee of ~~an airline use agreement~~the Authority with respect to its acts or any omissions.
(2) Airline shall indemnify and save harmless the Authority, its directors, officers, agents, employees, elected or appointed officials, or volunteers from and against any and

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all liabilities, losses, damages, cost and expenses, claims, suits, judgments, actions and proceedings resulting from any injuries to, or death of, any person or persons, or loss or damage to property (including property and officers, employees, and agents of the Authority) arising out of the following except to the extent caused by the negligent acts or omission of the Authority or its agents, officers and employees:

(i) Suits alleging a taking of property or interest in property without just compensation, trespass, nuisance, or similar suits based upon the use of the Airport System for the landing and taking off of an aircraft;

(ii) Airline's use or occupancy of the Airport System (other than that covered by Subsection i) of this Section);

(iii) The condition of Airline's Preferential Use Premises and/or Common Use Premises, including any equipment or facilities located thereon, and any repairs, construction, and alteration thereto by Airline, its employees, agents, contractors, or subcontractors;

(iv) The violation by Airline of any covenant or condition of the Airport Rules and Regulations, or the violation by airline of any other contract, law, ordinance, regulation, or court order relating to the Airport System or Authority;

(v) Acts and omissions of the Airline's employees and agents;

(vi) Claims for environmental and pollution damages arising from the acts and omissions of the Airline and its employees; and

(vii) Patent and trademark infringement claims arising from or related to Airline or its operations.

(3) The Authority shall promptly notify Airline in writing of any claim or action brought against the Authority in respect of which indemnity may be sought by the Authority against Airline hereunder, furnishing Airline with a copy of all suit's papers and legal process, Airline shall have the right to assume the defense thereof, including the right to employ counsel and the right to compromise or settle such claim or action to the extent of its interest.

(b) Airline's Insurance.

(1) Airline shall at all times during its use of the Airport System keep in effect the forms of insurance set forth in this Section. All policies or certificates shall contain a provision that written notice of cancellation, reduction in amount, non-renewal of coverage or any material change in said policy by the insurer shall be delivered to Authority ninety (90) days in advance of the effective date thereof. Airline shall procure all insurance coverages from carriers rated at least "A" or higher by the A.M. Best Company, or Aa3 (Excellent) by Moody's, or AA- (Strong) by Standard & Poors; all such carriers shall be subject to the approval of the Authority.

(2) All policies of insurance shall name the Authority as an additional insured party. Airline shall furnish Authority with certificates of insurance from the insurance carrier evidencing all insurance required hereunder to be in full force and effect during the entire term of its Letter of Authorization. No operations shall commence at an Airport unless and until the required insurance is in effect and the required certificates(s) of insurance has been approved by Authority.

(3) The insurance coverages and limits required of Airline under the Airport Rules and Regulations are designed to meet the minimum requirements of the Authority. They are

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not designed as a recommended insurance program for Airline. Airline is responsible for insuring its real and personal property located at the Airport. Airline, alone, shall be responsible for the sufficiency of its own insurance program and its Affiliates' programs. Should Airline have any question concerning its exposures to loss under the Airport Rules and Regulations, or the possible insurance coverages needed therefor, it should seek professional advice.

(4) The minimum limits of the insurance herein required may from time to time become inadequate, and Airline shall increase such minimum limits as reasonably required by Authority upon receipt of written notice. Airline shall furnish Authority, within sixty (60) days of the effective date thereof, a certificate of insurance evidencing such insurance is in force for itself and its Affiliates.

(5) Airline's insurance companies or its authorized representative shall give Authority sixty (60) days prior written notice by certified mail and email of any cancellation, intent not to renew in any policy's coverage, except in the application of the Aggregate Limits Provisions. In the event of a reduction to the Aggregate Limit, immediate steps will be taken to have it reinstated. Said notices shall be sent to the addresses indicated in Section 752 of the Airport Rules and Regulations.

(6) Should at any time Airline not provide or maintain the insurance coverages required in the Airport Rules and Regulations, Authority may terminate or suspend Airline's Letter of Authorization. Such insurance coverages include:

(i) Property Insurance: Airline shall procure and maintain coverage for risks of Direct Physical Loss or Damage to all real and personal property of every kind and description belonging to the Airline and the property of others which is (a) in Airline's care, custody, or control, and (b) for which the Airline is legally liable, in an amount equal to the full replacement value of such property. All property insurance policies shall name both Airline and Authority as insured parties as their respective interests may appear at the time of loss.

(ii) Aviation Liability Insurance: Airline shall procure and maintain Commercial Airline Liability insurance providing coverage for Bodily Injury, Personal Injury, Property Damage, Airport Liability, Premises Liability, Product Liability, Hangarkeepers Legal Liability, Passenger Liability, Cargo Legal Liability, Contractual Liability, and Liquor Liability. Insurance shall be procured with a combined single limit of liability not less than the product of One Million Dollars ($1,000,000.00) multiplied by the number of passenger seats in the largest aircraft operated by the Airline, but in no event less than Ten Million Dollars ($10,000,000.00) combined single limit of liability. Bodily injury insurance coverage shall include sickness or disease including death therefrom. Property Damage insurance shall include the loss of use of such property.

(iii) Automobile Liability Insurance: Airline shall procure and maintain Commercial Automobile Liability providing coverage for Bodily Injury and Property Damage for all owned and non-owned vehicles used on the premises of the Airport System. Insurance shall be procured with a combined single limit of liability not less than One Million Dollars ($1,000,000.00) land side, and Four Million Dollars ($4,000,000.00) air side.

(iv) Workman's Compensation Insurance: Airline shall procure and maintain statutory Workman's Compensation Insurance in amounts required under the laws of the Commonwealth of the Northern Mariana Islands.

(c) Every General Aviation Operator shall carry liability insurance as follows:

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(1) ~~(1)~~ Auto - Owned and Non-owned
(i) $300,000 Landside
(ii) $4,000,000 Airside over 100 feet from aircraft
(iii) $10,000,000 Airside less than 100 feet from aircraft
(2) General Liability - $~~1,000~~300,000 Landside
(3) Aviation Liability - $ 1,000,000 per passenger seat, minimum $~~10~~4,000,000.
~~(4) Worker's Compensation - as per statute~~
(d) The provisions of § 40-10.1-745 are the minimum requirements established by the Authority and shall not be modified or waived.
~~(1)~~.

~~(b) Every General Aviation Operator, or an operator who is not a signatory to an airline use agreement with the Authority, shall carry liability insurance as follows:~~
~~(1) Auto - Owned and Non-owned~~
~~(i) $300,000 Landside~~
~~(ii) $4,000,000 Airside over 100 feet from aircraft~~
~~(iii) $10,000,000 Airside less than 100 feet from aircraft~~
~~(2) General Liability - $300,000 Landside~~
~~(3) Aviation Liability - $ 1,000,000 per passenger seat, minimum $4,000,000.~~

Modified, 1 CMC § 3806(g)

History: Amdts Adopted 39 Com. Reg. 39216 (Feb. 28, 2017); Amdts Proposed 38 Com. Reg. 39062 (Dec. 28, 2016); Amdts Adopted 16 Com. Reg. 11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-746 Rights and Privileges Reserved by Authority

(a) Right to Improve and Protect the Airport System.
(1) The Authority specifically reserves the following privileges:
(i) The right to develop or improve the Airport System as it deems necessary. If feasible, such improvements shall be made in a manner, which will cause Airline as little inconvenience as possible.
(ii) In the event a governmental order or requirement results in significantly increased cost or expense that may affect Airline, Authority shall notify Airline with reasonable promptness in the manner provided in Section 752.
(iii) The right to take any action it considers necessary to protect the aerial approaches of the Airport System against obstructions, together with the right to prevent Airline from erecting or permitting to be erected any building or other structure on the Airport System which, in the opinion of Authority, would constitute a hazard to aircraft or limit the usefulness of the Airport System.
(iv) The right during time of war or national emergency to lease the Airport System or any part thereof to the United States Government for military use. In the event any such lease is executed, the privileges granted in its Letters of Authorization, insofar as they are inconsistent with the privileges of the lease to the government, shall be suspended.

(b) Subordination to Indenture.

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(1) The Airport Rules and Regulations, and all rights granted to Airline, are expressly subordinated and subject to the lien and provisions of the pledges, transfer, hypothecation, or assignment made by the Authority in the Indenture. The holder, or holders, of the Bonds, or their designated representatives, shall have the right to exercise any and all rights of the Authority.

(2) The Authority shall notify Airline in advance of any amendments or supplements to the Indenture that would materially alter the terms and provisions of the Airport Rules and Regulations.

(3) With respect to property provided by Authority to Airline which was or is to be acquired by the Authority with proceeds of Bonds, the interest on which is, or is intended to be, excludable from the gross income of the holders of such Bonds for federal income tax purposes, Airlines shall protect the tax-exempt status of the Bonds.

§ 40-10.1-747 Damage or Destruction of Assigned Area

(a) Partial Damage.

(1) If Airline's Assigned Area is partially damaged by fire, explosion, the elements, the public enemy, or other casualty, but not rendered untenantable, Airline shall not be entitled to any abatement of or reduction in any of the fees and charges payable to the Authority under Part 1200 of the Airport Rules and Regulations. Such damage will be repaired with due diligence by Authority, at its own cost and expense; provided, however, that if such damage is caused by an act or omission of Airline, its sublessees, agents, nominees, or employees, Airline shall reimburse Authority for its reasonable cost incurred in making such repairs.

(b) Extensive Damage.

(1) If Airline's Assigned Area is damaged by fire, explosion, the elements, the public enemy, or other casualty, and thereby reduced to at least partially untenantable, but capable of being repaired within ninety (90) days, Airline shall be entitled to a reduction in the fees and charges payable to the Authority pursuant to the provisions of Part 1200 of the Airport Rules and Regulations, in a percentage equal to the percentage of Airline's Assigned Area so rendered untenantable, until such damage shall be repaired. Such damage shall be repaired with due diligence by Authority, at its own cost and expense, provided, however, Airline shall reimburse Authority for its reasonable cost incurred in making such repairs.

(c) Complete Destruction.

(1) If the Airline's Assigned Area is damaged by fire, explosion, the elements, the public enemy, or other casualty, and thereby rendered at least partially untenantable and not capable of being repaired within ninety (90) days, Airline shall be entitled to a reduction in the fees and charges payable to Authority, pursuant to the provisions of Part 1200 of the Airport Rules and Regulations, computed in the manner set forth in Part 1200 of the Airport Rules and Regulations. In such event, Authority shall be under no obligation to repair or reconstruct said Assigned Area. Authority may, in its discretion, repair the Assigned Area at its own cost and expense; provided, however, that if such damage is caused by an act or omission of Airline, its sublessees, agents, nominees or employees, Airline shall reimburse Authority for its reasonable costs incurred in making such repairs.

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(2) Airline shall not be entitled to any reduction in any fees and charges by reason of any damage to Airline's Common Use Premises. Airline shall not be entitled to any abatement or reduction of any other charge payable to Authority pursuant to the provisions of Part 1200 of the Airport Rules and Regulations on account of any damage to its Preferential Use Premises.

(d) Right to Recover Damages.
(1) Nothing in the Airport Rules and Regulations shall be construed as a waiver of the right of either Authority or Airline to recover damage from the other arising out of the fault or negligence of the other.

(e) Limit of Authority's Obligation Defined.
(1) It is understood that, in the application of the foregoing Sections of the Airport Rules and Regulations, Authority's obligation (if any) shall be limited to repair and reconstruction of a Terminal to the same extent and of equal quality as obtained at the commencement of the operations hereunder. Redecoration and replacement of Airline's furniture, equipment and supplies in its Assigned Area shall be the responsibility of Airline unless damages thereto are caused by an act or omission of the Authority, its agents or employees, in which event the Authority shall be responsible for the redecoration and replacement. Any such redecoration and refurnishing-re-equipping shall be equivalent quality to that originally installed hereunder.

§ 40-10.1-748 Environment

(a) General Conditions.
(1) Notwithstanding any other provisions in the Airport Rules and Regulations, and in addition to any and all other requirements of the Airport Rules and Regulations or any other covenants, representations or warranties of Airline, Airline expressly covenants, warrants, and represents to Authority in connection with Airline's operations at the Airport System the following:
(i) Airline shall adhere to all applicable federal, Commonwealth, and local environmental laws, ordinances, rules, regulations, and orders which apply to Airline's operations.
(ii) Airline shall not cause or permit any Hazardous Material to be placed, stored, generated, used, released, or disposed of in, on, under about or transported from any Airport by Airline, its agents, employees, contractors or other person, unless it has complied with the following: (a) with respect to Hazardous Materials other than oil, petroleum products, and flammable substances reasonably necessary in connection with Airline's Air Transportation Business, the prior written consent of Authority shall be required, which shall not be unreasonably withheld. Authority in its sole discretion may deem reasonable or desirable, including without limiting the generality of the foregoing, requirements as to the manner in which, the time at which, and the contractor by whom such work shall be done, and (b) Airline must comply with all environmental laws and regulations, and with prudent business practices, with respect to such Hazardous Materials and (c) the presence of Hazardous Materials must be reasonably necessary for the operation of Airline's Air Transportation Business.

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(iii) Except as provided for in (ii) above, Airline shall comply, and shall at all times ensure that its Assigned Area is kept in compliance with all applicable federal, Commonwealth, and local laws, ordinances, regulations, guidelines, and orders relating to health, safety, and protection of persons, the public, and the environment (collectively "Environmental Laws"). Airline shall furnish all reports, assessments or other documents satisfactory to the Authority showing that its Assigned Area is being used nor have been used by Airline for any activities involving, directly or indirectly, the use, generation, treatment, storage or disposal of any Hazardous Materials.

(iv) Airline shall not install or allow to be installed any above ground or underground storage tanks on the Airport System unless done in compliance with all federal and Commonwealth applicable laws, done with the required permits, certification, and maintenance for such storage, and approved in writing by the Authority's Executive Director according to the Airport Rules and Regulations (NMIAC Subchapter 40-10.1).

(v) Airline shall warrant that it shall keep its Assigned Area free of all environmental, health or safety hazards and nuisances of any kind whatsoever. Prior to Airline's occupancy of any Assigned Area, Airline and Authority, or Authority's designated agent shall review the condition of premises to be occupied by Airline, and shall make written notation of any pre-existing conditions discovered; subsequently, Airline shall not be responsible to Authority with respect to such pre-existing conditions.

(vi) Airline shall notify Authority immediately upon discovery of any Hazardous Material on, in, under or emanating from its Assigned Area, any release or threat of release of a Hazardous Material, illness caused by exposure thereto, as well as any actual, threatened, or potential environmental health or safety liability, including but not limited to claims lawsuits, notices of violation, complaints and investigations. Airline shall immediately, and at its own expense, take all action necessary to remediate, abate, and rectify any such conditions at or upon the Airport System. If Authority is required to remediate or abate any such condition on or upon Airline Assigned Areas, it may do so upon reasonable notice to Airline, and Airline shall pay all costs incurred by Authority in undertaking such remediation or abatement.

(vii) Except as may otherwise be provided herein, Airline will not make or allow to be made any change in usage, addition, or improvements in, on or to any Airport which will result in the presence or release of Hazardous Materials.

(viii) If Airline breaches the obligations stated in this section, or if the presence of Hazardous Materials on Airline's Assigned Area results in a release of Hazardous Materials on, from or onto said Airline Assigned Area or contamination of the Airport System (including groundwater), or if contamination of the Airport System by Hazardous Materials otherwise occurs as a result of Airline's actions or operations, then, in addition to any other indemnification provisions contained in the Airport Rules and Regulations, Airline shall indemnify, and hold Authority, its directors, officers, employees, agents, and volunteers harmless from any and all resulting claims, judgments, damages, penalties, fines, costs, liabilities or losses, from any and all resulting claims, judgments, damages, penalties, fines, costs, liabilities or losses, (including without limitation, diminution in value of the premises, damages for the loss or restriction of use of rentable or usable space or of any amenity of the premises, natural resource damages, damages arising from any adverse impact on marketing of space, damage to other property, or the environment, and such paid in settlement of claims, attorney's fees, consultant and expert fees) except to the

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extent caused by the negligence or willful misconduct of Authority.
(ix) Airline shall cooperate with any investigation, audit or inquiry by Authority or any governmental agency, regarding possible violation of any environmental law or regulation upon the Airport System.
(x) All remedies of Authority provided herein with regard to violation of any federal, Commonwealth or local environmental laws, ordinances, rules, regulation, or orders shall be deemed cumulative in nature and shall survive cancellation of an Airline Letter of Authorization.
(xi) Any notice of violation, notice of non-compliance, or other enforcement action shall be provided to Authority within twenty-four (24) hours of receipt by Airline or Airline's agent. Any violation or notice of violation or non-compliance with federal, state, or local environmental law or ordinance shall be deemed a default under the Airport Rules and Regulations. Such default shall be cured within ten (10) days of receipt of notice of default from Authority, or such longer period as may be required to effect a cure provided Airline commences a cure within said ten (10) days and thereafter diligently prosecutes the cure to completion. Any such default that is not cured shall be grounds for immediate cancellation of its Letter of Authorization.

(b) Groundwater.
(1) Certain properties within the Airport System or owned by the Authority contain groundwater and a water lens that provides water to inhabitants of the Commonwealth. These properties are subject to certain rules and regulations issued by both the federal and Commonwealth governments governing use of said property. Airline shall observe and abide by such groundwater rules and regulations as may be applicable to Authority's property and uses thereof.

(c) Solid and Hazardous Waste.
(1) If an Airline is deemed to be a generator of hazardous waste as defined by federal, Commonwealth, or local law, Airline shall obtain a generator identification number from the Environmental Protection Administration (EPA), and the appropriate generator permit shall comply with all federal, Commonwealth and local laws, and any rules and regulations promulgated thereunder, including but not limited to, insuring that the transportation, storage, handling and disposal of such hazardous wastes are conducted in full compliance with applicable law.
(2) Airline shall provide Authority, upon request, copies of all hazardous waste permit application documentation, permits, monitoring reports, transportation, responses, storage, and disposal plans and material safety data sheets, within ten (10) days of any such requests by Authority.

§ 40-10.1-750 Surety Bond

(a) Unless Airline has provided regularly scheduled flights to and from an Airport during the eighteen (18) months prior to the effective date of its Letter of Authorization without the occurrence of any act or omission that would have resulted in Airline being in violation of the Airport Rules and Regulations, if its Letter of Authorization had been in effect during that period, and any such violation of the Airport Rules and Regulations

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remains uncured, Airline shall provide Authority on the effective date of its Letter of Authorization with a contract bond, irrevocable letter of credit or other similar security acceptable to Authority ("Contract Security") in an amount equal to the estimate of three (3) months' rentals, fees and charges payable by Airline (excluding PFC's) pursuant to Part 1200, to guarantee the faithful performance by Airline of its obligations under the Airport Rules and Regulations and the payment of all rentals, fees and charges due hereunder. Airline shall be obligated to maintain such Contract Security in effect until the expiration of eighteen (18) consecutive months during which period Airline commits no violation of the Airport Rules and Regulations. Such Contract Security shall be in a form and with a company reasonably acceptable to Authority and licensed to do business in the CNMI. In the event that any such Contract Security shall be for a period less than the full period required by this subsection (a) or if Contract Security shall be canceled, Airline shall provide a renewal or replacement Contract Security for the remaining required period at least sixty (60) days prior to the date of such expiration or cancellation.

(b) In the event Authority is required to draw down or collect against Airline's Contract Security for any reason, Airline shall, within ten (10) business days after Authority's written demand, take such action as may be necessary to replenish the existing Contract Security to its original amount (three months' estimated rentals, fees, and charges) or to provide additional or supplemental Contract Security from another source so that the aggregate of all Contract Security is equal to three months' estimated rentals, fees, and charges payable by Airline.

(c) Notwithstanding the above subsection (a), Authority shall have the right in its sole discretion to waive such Contract Security requirements for an Airline which has not provided regularly scheduled flights at and from the Airport during the eighteen (18) months prior to the effective date of its Letter of Authorization. Any such waiver by Authority shall be conditioned upon said Airline having provided regularly scheduled flights at six (6) other airports with activity levels and characteristics similar to the Airport during the most recent eighteen (18) month period, without committing any material default under the terms of the respective lease and use agreements at each of the six (6) facilities, and without a pattern of untimely payments for rentals, fees and charges. The burden shall be on Airline to demonstrate to Authority its compliance with these requirements at the six (6) other airports.

(d) ~~(a) Amount. Every person who operates an aircraft at any airport and who is not a signatory to an airline use agreement with the Authority shall post a surety bond in an amount equal to the greater of~~

~~(1) Ten thousand dollars, or~~

~~(2) The sum of the following:~~

~~(i) Three months' departure facility service charges as provided in § 40-10.1-1215. The three months' departure facility service charges provided herein shall equal one-quarter of the aggregate of the departure facility service charges due and owing by the aircraft operator over the immediately preceding twelve month period. In the event that the aircraft operator has not previously served an airport for the entire preceding twelve month period, the Authority shall estimate the amount of departure facility service charges based~~

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~~upon prior departures facility service charges due and owing by the aircraft operator to the Authority, if any, and/or the first and subsequently monthly history of the aircraft operator's flight operations in the Commonwealth; plus~~

~~(ii) Three months' landing fees, as provided in § 40-10.1-1205 The three months' landing fees shall equal one-quarter of the aggregate of the aircraft operator's landing fees due and owing for the immediately preceding twelve-month period. In the event that the aircraft operator has not previously utilized an airport for the entire preceding twelve month period, the Authority shall estimate the amount of landing fees based upon prior landing fees due and owing by the aircraft operator to the Authority, if any, and/or the first and subsequent monthly landings of the aircraft operator; plus~~

~~(iii) An amount equal to three months' fees and charges under the remaining provisions of part 1200 of this subchapter. The Authority shall estimate the amount of such fees and charges based upon the operating history of aircraft operator at the airports, and/or the anticipated utilization of the airports by the aircraft operator. The Authority reserves the right to adjust the surety bond, upward or downward, taking into consideration subsequent changes in estimated fees and charges~~Upon the occurrence of any Airline act or omission that results in a violation of the Airport Rules and Regulations, by written notice to Airline given at any time within fifteen (15) days of the date such event becomes known to Authority, may impose or reimpose the requirements of subsection (a) on Airline. In such event, Airline shall provide Authority with the required Contract Security within ten (10) days from its receipt of such written notice and shall thereafter maintain such Contract Security in effect until the expiration of a period of eighteen (18) consecutive months during which Airline commits no additional violation of the Airport Rules and Regulations.

(e) If Airline shall fail to obtain and/or keep in force such Contract Security required hereunder, such failure shall be grounds for immediate cancellation of its Letter of Authorization. Authority's rights under this Section shall be in addition to all other rights and remedies provided to Authority under the Airport Rules and Regulations.

~~(3)~~.

~~(b) Bond. The form of the surety bond required by subsection (a) of this section, and the identity of the surety, shall be subject to the approval of the Authority. Such surety bond shall provide that the bond may not be cancelled or reduced except upon thirty days' prior written notice to the Authority. The terms and conditions of such bond shall further provide that, at any time when the aircraft operator fails to pay, when due, any fees and charges due and owing to the Authority pursuant to this subchapter or otherwise, the surety shall, upon demand by the Authority, pay to the Authority such sums as are then due and owing by the aircraft operator to the Authority.~~

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission inserted a colon after the word "following" in subsection (a)(2) pursuant to 1 CMC § 3806(g).

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§ 40-10.1-751 Property Rights Upon Termination

(a) Airline's Right of Removal.
(1) Upon termination of its Letter of Authorization for any reason, Airline shall have the right, for a period of thirty (30) days after the date of termination, to remove any or all of its property from the Airport System; provided, however, that Airline shall not be in default in its payments to Authority and provided that Airline shall restore said premises to their original condition as of the beginning of occupancy, ordinary wear and tear, damage by the elements, fire, explosion or other causes beyond the control of Airline excepted.

(b) Authority Rights at Termination.
(1) Title to any and all property not removed by Airline prior to the expiration of the aforesaid 30-day period shall vest in Authority; provided, however, that Authority reserves the right to require Airline to remove such improvements and property, the cost of which shall be borne by Airline.

§ 40-10.1-752 General Provisions

(a) Compliance with Airport Rules and Regulations.
(1) The Authority may prescribe civil penalties and injunctive remedies for violations of the Airport Rules and Regulations and same may be applied to Airline for violations of their agents, employees, and contractors acting on Airline's behalf.

In the event Authority shall be subject to any civil fine or penalty by reason of Airline's violation of any governmental rules, regulations, and standards as now or hereafter promulgated or enacted, the cost of such fine or penalty shall be borne by Airline. Airline shall indemnify fully and save harmless Authority from any fine or penalty charged against Authority by reason of Airline's violation of any governmental rules, regulations, and standards.

(b) Interpretation of Airport Rules and Regulations.
(1) Nothing in the Airport Rules and Regulations shall be construed or interpreted in any manner whatsoever as limiting, relinquishing or waiving any rights of ownership enjoyed by Authority in the Airport System , or in any manner waiving or limiting the Authority's control over the operation, maintenance and general administration of Airport System property or operations, nor in derogation of, such governmental rights as Authority possesses. Upon cancellation of its Letter of Authorization, all rights of Airline with respect to the use of facilities at the Airport System shall at once cease and terminate.

(c) Invalid Provisions
(1) In the event any condition or provision of the Airport Rules and Regulations is held to be invalid by any court of competent jurisdiction, the invalidity of such condition or provisions shall in no way affect any other condition or provision of the Airport Rules and Regulations.

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(d) United States Government

(1) The Airport Rules and Regulations shall be subordinate to the provisions of any existing or future agreement between:

(i) The Authority and the United States of America relative to the maintenance and operation of the Airport System, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport System.

(ii) CNMI and the United States of America relative to the joint use of the Airport System.

(e) Nondiscrimination.

(1) The Airline, for itself, its successors in interest and assigns, warrants and certifies, that in the event facilities are constructed, maintained or otherwise operated on the said property described in the Airport Rules and Regulations for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, CFR, Department of Transportation, Sub-Title A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, effectuating the provisions of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

(2) The Airline, for itself, its successors in interest and assigns, as part of the consideration hereof, warrants and certifies, that:

(i) No person on the grounds of race, color, creed, or national origin shall be excluded from participation in, denied the benefit of, or be otherwise subjected to discrimination in the use of said facilities;

(ii) In the construction of any improvements on, over or under the Airport Assigned Area, and the furnishing of services thereon, no person, on the grounds of race, color, creed, or national origin shall or otherwise be subjected to discrimination; and

(iii) That the Airline shall use the Airport System in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Sub-Title A, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, effectuating the provisions of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, the Authority shall have the right to immediately terminate its Letter of Authorization and to reenter and repossess said Airline Assigned Area and the facilities thereon, and hold the same as if said Letter of Authorization had never been made or issued.

(f) No Exclusive Right.

(1) Nothing contained in the Airport Rules and Regulations shall be construed to grant or authorized the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the Authority reserves the right to grant to others the privilege and right of conducting any one or all activity of the aeronautical nature.

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(g) Inspection.
(1) Authority, through its authorized agents, shall have the right at all reasonable times to enter upon the Assigned Area to inspect said Assigned Area, to observe the performance by Airline of its obligations hereunder, and to do any act which Authority may be obligated to have the right to do under the Airport Rules and Regulations.

(h) Covenant of Quiet Enjoyment.
(1) Authority warrants that, upon payments of all rental and other charges due hereunder by Airline to Authority, and upon observance by Airline of all the remaining covenants of Airline provided for in the Airport Rules and Regulations, Airline shall hold and may quietly enjoy its Assigned Area described in its Letter of Authorization.

(i) Public Auditor.
(1) The Public Auditor of CNMI shall, pursuant to 1 CMC § 7845, have the right to examine and copy any records, data or papers relevant to the Airline's use and occupancy of the Airport System for a period of three (3) years after cancellation or termination of a Letter of Authorization.

(j) Rules and Regulations Made in Accordance with Local Laws.
(1) The Airport Rules and Regulations has been made in and shall be construed in accordance with the laws of the CNMI.

(k) Notices.
(1) Any Notice made by Airline to Authority shall be sufficient if sent by certified mail, postage prepaid, addressed to:

The Commonwealth Ports Authority
Attention: Executive Director
Francisco C Ada/Saipan International Airport
P.O. Box 501055
Saipan, MP 96950

(l) The provisions of this chapter shall apply to all Airlines from and after the date of adoption unless (and during the period that) the Airline shall have a lease for the use of the Airport Facilities with the Authority which lease is not subordinate to the Airport Rules and Regulations. Upon termination of any such lease, the provisions of this chapter shall apply as to any authorized activity on the Airport System.

(m) Nothing herein shall be construed to exempt any Airline from compliance with any and all provisions of this title.

§ 40-10.1-755 Notice of Airline Schedule Changes

Every air carrier operating regularly scheduled service, or scheduled charter service, to or from any airport of the Commonwealth shall, as soon as practicable, notify the Authority of any and every change in the scheduled arrival and departure of its flights. The Authority

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deems such notification necessary in order that the Authority may assure that airports are adequately staffed to handle such flights. If notification of a proposed scheduled change is not provided to the Authority at least forty-five days prior to the effective date of such schedule change, the Authority cannot guarantee that sufficient staff will be available at the airport affected.

Modified, 1 CMC § 3806(e), (f).

History: Adopted Amdts 16 Com. Reg. 11809 (Mar. 15, 1994); Proposed Amdts 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-740.

Part 800 - Conduct of the Public

§ 40-10.1-801 Obstruction of Public Use

No person shall travel by foot or vehicle on any portion of ~~the operational area of the airport~~an Operational Area of an Airport, except upon the roads, walkways, or places provided for the particular class of traffic, nor occupy the roads or walkways in such a manner as to hinder or obstruct their proper use.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-805 Restricted Areas

No person shall enter any restricted area of the airport posted as being closed to the public, except those persons authorized by the Executive Director.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-810 Entrance Into Public Areas

Operational ~~areas, ramps, aprons, and loading positions~~Areas are closed to the public, and no tenant, either corporate or personal, shall permit any unauthorized person to gain access to such areas either by private or common-use passageways or through private areas. No person shall enter upon ~~the public ramp and apron area or public cargo ramp and apron area of the airport~~an Operational Area, except those persons authorized by the Executive Director, and those persons assigned to duty therein, or those persons entering upon the ~~public ramp areas~~Ramp Areas for purposes of aircraft embarkation or debarkation.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

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§ 40-10.1-815 Signs and Advertisements

No person shall post, distribute, or display signs, advertisements, circulars, printed or written matter of any kind or character at the airport or on any leased premises therein where such signs are visible from any public area, except when authorized in writing by the Executive Director. All signs shall be of a design, size, and character placed in a manner approved in writing by the Executive Director, and subject to such fees and charges as may from time to time be approved and published by the Authority.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-820 Soliciting of Funds

No person shall solicit funds, for any purpose whatsoever, at the airport.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-825 Selling, Soliciting, and Entertaining

(a) No person, except those persons authorized by written contract to do so, or any other persons with the written permission of the Executive Director for specific occasions, shall in or upon any area of the airport:
(1) Sell, offer for sale, distribute, or give away any article of merchandise, any promotional or informational materials, leaflets, or ~~any thing~~anything of value;
(2) Solicit any business or trade, including the carrying of baggage for him, the shining of shoes or boot blacking, or the rental or hire of cars, taxicabs, or aircraft;
(3) Entertain any persons by singing, dancing, or playing any musical instrument;
(4) Solicit alms or other contributions.

(b) The Executive Director shall grant permission for activities protected by the First Amendment, but subject to such restrictions as to time, manner, and place as the Executive Director shall deem reasonable under the circumstances.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-10.1-830 Loitering

No person shall loiter in or about any toilet area, waiting room, or any other appurtenance of the airport. Continued and willful violation of this rule by any individual will justify his

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ejection from the airport; and admittance again thereto will be barred unless a legitimate purpose can be shown.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-835 Gambling

To the extent authorized by law and to the extent not prohibited by any existing contractual obligations, the Commonwealth Ports Authority (CPA) may authorize the operation of lawful gambling and amusement devices at any of the public airports under its jurisdiction to interested concessionaires, on such terms and conditions as the Authority may determine necessary or appropriate to govern such operation. Such conditions shall include, but shall not be limited to, the types of gambling and/or amusement devices permitted, the location and placement of such devices, access thereto, the hours of operation, the minimum qualifications that a concessionaire must have, and so forth.

History: Amdts Adopted 23 Com. Reg. 18385 (Sept. 24, 2001); Amdts Proposed 23 Com. Reg. 17826 (Apr. 23, 2001); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-840 Disorderly Conduct

Any person who shall commit any disorderly or obscene act or engage in other offensive conduct, or commit any criminal act on the airport will be immediately ejected therefrom, and may be subjected to prosecution in accordance with the laws of the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

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§ 40-10.1-845 Preservation of Property

No person shall:

(a) Destroy, injure, deface, or disturb in any way any building, sign, furniture, equipment, marker, other structure, tree, flower, lawn, or other property on the airport.

(b) Walk or operate a vehicle on lawns and seeded areas on the airport.

(c) Abandon any personal property on the airport.

(d) Litter or dispose of any waste on any portion of airport property or portion of access road.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-850 Disposition of Waste Articles

No person shall dispose of paper, cigars, cigarettes, bottles, chewing gum, betel nut, or any waste or refuse material, on the floor of any terminal building or grounds adjacent thereto, except in receptacles provided for such purposes.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-855 Pets

(a) No persons shall enter any public building or ~~operational area of the airport~~Operational Area with any pet, except a "seeing-eye" dog, or one properly confined for shipment, on a leash, or confined in such a manner as to be under control.

(b) No tenant of ~~the terminal buildings~~a Terminal , or any employee of such tenant, shall be permitted to keep pets on airport premises.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-860 Other Animals

No person shall permit livestock or any other animals under his or her control or custody to enter the airport, except one properly confined for shipment. Any stray livestock or animal on the airport will be disposed of by the Authority in accordance with the laws and ordinances applicable thereto.

Modified, 1 CMC § 3806(f).

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History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-865 Sanitary Care

No person shall place, discharge, or deposit, in any manner whatsoever, any offal, garbage, or refuse in or upon any airport road or ~~operational area~~Operational Area, except at such places and under such conditions as the Authority may prescribe. Spitting on the floor or sidewalks of the terminal buildings is prohibited.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-870 Penalties

(a) Any person violating any provision of this part shall be given written notice thereof by a duly authorized employee of the authority and shall be assessed a civil penalty as follows:
(1) $25 for violations of §§ 40-10.1-801, 40-10.1-815, 40-10.1-820, 40-10.1-825, 40-10.1-830, 40-10.1-855, and 40-10.1-860.
(2) $100 for violations of § 40-10.1-835, 40-10.1-840, 40-10.1-845, 40-10.1-850, 40-10.1-865.
(3) $1,000 for violations of § 40-10.1-805, and 40-10.1-810.

(b) The provisions of § 40-10.1-255(e) shall apply ~~of*~~if liability for such penalty is denied.

~~*So in original; probably should be "if."~~

Modified, 1 CMC § 3806(c).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

Part 900 - Use of Particular and Designated Areas

§ 40-10.1-901 Areas Designated for Specific Uses

Except as otherwise provided for in contracts with the Authority, the use of the following designated areas shall be limited to the following purposes:

(a) Public aircraft parking and storage areas may be used only for parking and storing aircraft fuel and lubricants which must be in tanks, other supplies for use on such aircraft, and for making repairs to aircraft.

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(b) ~~Public ramp~~Terminal Aircraft Aprons and ~~apron areas~~Ramp Areas may be used only for loading and unloading passengers, cargo, mail, and supplies, to or from aircraft, servicing aircraft with fuel and lubricants, performing the operations commonly known as "ramp service," performing inspections, minor maintenance, and other services upon or in connection with aircraft incidental to performing "ramp service" and parking mobile equipment actively used in connection with such operations. Washing of aircraft, vehicles, or other equipment, without the authorization of the Executive Director, is prohibited.

(c) Public taxiways may be used only for the ground movement of aircraft to, from, and between runways, ~~public~~Public cargo ramp and apron areas, ~~public ramp, and apron areas~~Terminal Aircraft Aprons, Ramp Areas, public aircraft parking and storage areas, and other portions of the airport; and for the movement of approved ramp equipment and airport equipment properly identified.

(d) Runways may be used only for the landing and takeoff of aircraft and for the towing of aircraft to the closest towing exist thereupon after completion of landing roll. No braked wheel turns will be permitted on the runways.

(e) Airport roads may be used as a means of ingress and egress for vehicles to, from, and between the public roads with which such roads connect, and the various buildings and land areas at the airport abutting upon such roads; and sidewalks along such roads (and other portions of such roads, when designated for that purpose) may be used by pedestrians as a means of ingress and egress to, from, and between various portions of the airport.

(f) In case of labor disputes, picketing or other demonstrations shall be confined to the entrance road of the airport, and in no event within five hundred feet of any terminal buildings.

(g) Hallways, corridors, lobbies, and waiting rooms in passenger terminal buildings may be used as a means of ingress and egress to, from, and between the airport roads and the ramp and apron space and the various offices and places of business within ~~the terminal buildings.~~a Terminal. Such hallways, corridors, lobbies and waiting rooms may also be used at such places of business for the purposes of carrying on any transactions authorized by a valid lease, permit, or license from the Authority.

(h) Hallways, corridors, and lobbies in buildings to which members of the public are admitted, other than passenger terminal buildings, may be used as a means of ingress and egress to, from, and between the airport highways and other portions of the airport, abutting upon such buildings, and the various offices and other places of business in such buildings.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

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§ 40-10.1-905 Personnel Authorized to Use Areas

Nothing herein contained shall be construed to limit the use of any area, or portion of the airport, by any security officer, fireman, Customs Officer, Immigration and Naturalization Officer, Law Enforcement Officer, or any other public officer or employee, from entering upon any part of the airport when properly required in the performance of his official duties.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-910 Compliance with Rules and Regulations

The use of the foregoing areas and portions of the airport is subject to compliance with this subchapter, and the payment of such rates, fees, or charges as may be established by the Authority for such use.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Part 1000 - Safety Provisions

§ 40-10.1-1001 Dangerous Acts

No persons in or upon the airport shall do, or omit to do, any act if the doing or omission thereof endangers unreasonably, or is likely to endanger unreasonably, persons or property.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The 1998 amendments proposed to amend and readopt part 1000 in its entirety as a new part 1000, entitled "Fire Safety Provisions." A notice of adoption for the 1998 amendments has not been published and, therefore, the proposed changes are not incorporated.

§ 40-10.1-1005 Smoking

(a) No person shall smoke or carry lighted cigars, cigarettes, pipes, matches, or any naked flame, in or upon any fuel storage area, ~~public ramp and apron area, public~~Ramp Areas, Public cargo ramp and apron ~~area~~areas, Terminal Aircraft Aprons, or public aircraft parking and storage area, or in any other place where smoking is specifically prohibited by signs, or upon any open space within fifty feet of any fuel carrier or aircraft which is not in motion; nor shall any person throw from any open deck, gallery, or balcony, contiguous to such areas or such carriers or aircraft, cigars, cigarettes, or similar articles.

(b) No person shall start fires of any type, including flare pot and torches, on any part of the airport without permission of the Executive Director.

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Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1010 Explosives

No person shall, without prior permission of the Executive Director, keep, transport, handle, or store at, in, or upon the airport any cargo of explosives or other dangerous articles which are barred from loading in, or transportation by, civil aircraft in the United States, under the provisions of the Federal Aviation Regulations. No waiver of such regulations, or any part thereof, shall constitute, or be construed to constitute, a waiver of this section, nor an implied permission to keep, transport, handle, or store such explosives or other dangerous articles at, in, or upon the airport.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

The Commission changed "fo" to "of" and corrected the spelling of "waiver."

§ 40-10.1-1015 Use of Fire Extinguishers

Fire extinguishing equipment at the airport shall not be tampered with at any time, nor shall it be used for any purpose other than ~~fire fighting~~firefighting or fire prevention. All such equipment shall be kept inspected in conformity with the regulations of the National Board of Fire Underwriters. Tags showing the date of the last inspection shall be attached to each unit, or records acceptable to fire underwriters shall be kept, showing the status of such equipment.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1020 Storage of Inflammable Materials

No person shall keep or store any volatile inflammable liquids, gasses, signal flares, or other similar material in the hangars or in any other building on the airport. Such material, however, may be kept in aircraft or vehicles in their installed supply or operating tanks, or in approved containers, or in rooms or areas specifically approved for such storage by the Executive Director.

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Modified, 1 CMC § 3806(f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1025 Lubricating Oils

No person shall keep or store lubricating oils in or about the airport; provided, however, that such material may be kept in aircraft or vehicles in their installed supply or operating tanks, or in containers provided with suitable draw-off devices, or in areas or sealed containers specifically approved for such storage by the Executive Directors.

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1030 Fire Apparatus

All tenants, or lessees, or owners of hangars, or shop facilities shall supply and maintain adequate and readily accessible fire extinguishers and fire equipment of the type approved by the Department of Public Safety. They shall be subject to the periodic inspection of the Department of Public Safety. The Executive Director may prescribe fire drills for all tenants from time to time.

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1035 Fuel Handling while Engines Are Running

Aircraft fueling is prohibited while the engine of the aircraft being fueled is running, unless carried out in accordance with a previously approved company standard operating procedure.

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1040 Proper Grounds

During all fuel handling operations, in connection with any aircraft at the airport, the aircraft and the fuel dispensing, or draining apparatus, shall be grounded by wire to prevent the possibility of static ignition of volatile liquids.

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Modified, 1 CMC § 3806(f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1045 Distance from Buildings

Aircraft fuel handling at the airport shall be conducted at a distance of at least fifty feet from any hangar or other building.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1050 Fire Extinguishers Required

During fuel handling operations, in connection with any aircraft at the airport, at least two CO2 fire extinguishers (15-pound or larger) or other type extinguisher approved by the fire underwriters shall always be immediately available for use in connection therewith.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1055 When Passengers Are Aboard

During fuel handling, in connection with any aircraft, no passenger shall be permitted to remain in such aircraft unless a cabin attendant is at the door and a passenger ramp is in position for the safe and rapid debarkation of passengers.

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1060 Smoking Near Aircraft

Smoking is prohibited in or about any aircraft or on any ramp, apron, or loading position. Only personnel engaged in fuel handling or in the maintenance and operation of the aircraft being fueled shall be permitted within a distance of fifty feet of the fuel tanks of such aircraft during fuel handling operations.

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Modified, 1 CMC § 3806(e), (g).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission changed "he" to "be" to correct a manifest error. See the comment to § 40-10.1-1001.

§ 40-10.1-1065 Starting Engines

No person shall start the engines of any aircraft when there is gasoline, or any type of fuel, on the ground under the aircraft. In the event the spillage of gasoline, or any type of fuel, no person shall start an aircraft engine in the area in which the spillage occurred, even though the spillage may have been flushed, until permission has been granted for the starting of engines in that area by the Airport Fire Chief or his designee.

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1070 Cleaning of Aircraft

Interior and exterior cleaning of aircraft shall be done only in areas designated or approved for that purpose.

Modified, 1 CMC § 3806(g).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission inserted the word "for" to correct a manifest error. See also the comment to § 40-10.1-1001.

§ 40-10.1-1075 Fuel and Oil Spillage

(a) In the event of spillage or dripping of fuel, oil, grease, or any other material, except such spillage or dripping as may be normal in aircraft or vehicular operation, which may be hazardous or unsightly or detrimental to the pavement in any area at the airport, the same shall be removed immediately. The responsibility for the immediate removal of such fuel, oil, grease, or other material will be discharged by the operator of the equipment causing the same, or by tenant or concessionaire responsible for the deposit thereof.

(b) Receptacles containing waste oil, or such waste oil, must be placed in containers provided by the tenant for such purposes for further disposition. Throwing oil on pavement or on any grassed or planted area is prohibited, and any offender shall be liable for damage thereto or subject to § 40-10.1-1120.

Modified, 1 CMC § 3806(c), (f).

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History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1080 Enforcement of Safety Provisions

(a) In case of any violation of this part, the Executive Director shall take such steps as may be required by the situation to prevent any harmful effects upon persons or property, and to preserve the safe and efficient operation of the airport facilities.

(b) In the event the Executive Director shall take such steps as he or she deems necessary to prevent any harmful effects upon persons or property, the Executive Director and the Authority shall be held harmless and without liability for any and all adverse consequences and/or damages resulting from the Executive Director's actions pursuant to this part.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

Part 1100 - Miscellaneous Provisions

§ 40-10.1-1101 Conformance with U.S. Regulations

All aeronautical activities at the airport shall be conducted in accordance with rules, regulations and provisions adopted in conformity with applicable provision approved by the Federal Aviation Administration. The Air Traffic Rules as contained in the regulations of the United States Federal Aviation Agency and other appropriate rules and regulations of that body as they pertain to aircraft operations on the airport are hereby adopted by reference and made a part of this subchapter rules as though they were fully contained herein.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1105 Careless or Reckless Operation

No person shall operate an aircraft in a careless or reckless manner so as to endanger life or property or to constitute a disturbance of the peace.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

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§ 40-10.1-1110 Safety of the Public

The Executive Director shall, at all times, have authority to take such summary action as may be convenient or necessary to safeguard the public.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1115 Lost and Found Articles

Any person finding mislaid articles at the airport shall turn over to a security officer or to the office of the Executive Director. Articles unclaimed by the owner within ninety days after their receipt will be considered as lost articles to be disposed of in a manner to be determined by the Authority. Nothing in this section will be construed to deny the right of scheduled air carriers to maintain lost and found services for their passengers.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission inserted a period at the end of the sentence ending with "determined by the Authority" to correct a manifest error.

§ 40-10.1-1120 Observance of Rules and Regulations

Tenants on the airport are responsible for their ~~employees~~employee's observance of the rules; however, for continued willful and flagrant violation, any employee of any tenant, may be ejected or barred from the airport by the Executive Director.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1125 Penalties

(a) Except as otherwise provided, any violation of this subchapter is punishable by a fine of not to exceed one thousand dollars or by imprisonment not to exceed three months, or both upon conviction by a court of competent jurisdiction. If the violation is a continuing one, each day the violation continues is a separate offense. Any person who has received notice of violation and assessment of a civil penalty shall have fifteen days to answer the assessment by denying liability, by offering a compromise to the Executive Director, or by paying the assessment. If such civil penalty is not paid fifteen days, the Authority may ~~result in the Authority's exercising its authority~~seek collection of the penalty through the Commonwealth Superior Court or the U.S. District Court pursuant to 2 CMC § 2146(b~~).*~~).

~~*So in original.~~

(b) Personal property or other goods placed on the airport premises in violation of this subchapter may be removed from the place where found by the Executive Director and

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kept by the Executive Director until reclaimed by the owner, or if not reclaimed, then disposed of by the Executive Director. Such articles may not be reclaimed except upon the payment of a fee, to be determined by the Executive Director, for the cost of storage and removal of the property in question.

(c) Nothing contained within this section shall in any way alter or restrict the rights and remedies of the parties having valid leases or other ~~operating~~ agreements with the Authority as may be found in the respective agreements with the Authority.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Part 1200 - Schedule of Fees and Charges

§ 40-10.1-1201 Airline Fees and Charges Methodology

(a) Airline shall pay Authority for ~~Non-signatory Carriers~~use of Airline Assigned Area, and fees and charges for the other rights, licenses, and privileges granted under its Letter of Authorization including rentals, fees, and charges payable by Airline with respect to the Airfield Cost and Revenue Center and Terminal Cost and Revenue Center. The rentals, fees, and charges for each of these Cost and Revenue Centers shall be equal to the Airline's share of the Net Requirement in each respective area of the Airport. Landing Fees and Terminal Rental Rates will be calculated annually unless otherwise modified by the Authority as provided herein.

~~The fees and charges set forth in § 40-10.1-1205 through § 40-10.1-1220, multiplied by a factor of 1.5 shall be payable for the use of facilities at Saipan International Airport by any air carrier which is not a party to a valid airline use agreement with the Authority pursuant to § 40-10.1-740. At Rota International Airport and West Tinian International Airport, and the Saipan Commuter Terminal, the multiplying factor for non-signatory carriers shall be 1.25.~~

~~Modified, 1 CMC § 3806(e), (f).~~

~~History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).~~(b) Accounting Procedure.

(1) For purposes of assigning and allocating costs, the Authority shall utilize generally accepted accounting practices utilized for airports operating as an enterprise fund, and include only those charges properly attributable to the Airport System.

(2) All rates and charges shall be at reasonable and non-discriminatory rates and adjusted annually based on Authority's cost, as defined in the Airport Rules and Regulations, of the facility or service provided to and used by Airline.

(3) Indirect and general administrative costs shall be allocated in a reasonable, transparent cost allocation formula calculated consistently for all cost centers of the Authority.

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(c) Cost Excluded.
(1) The portion of capital costs of facilities and improvements paid by the Federal government or other governmental gifts or grant-in-aid, and depreciation, shall not be included in the cost factors in determining the establishment of rates and charges.

(d) Insufficiency of Airport System Revenues, Adjustment of Fees and Charges
(1) If at any time the Authority determines that Airport Revenues are or will be insufficient to pay, when due, all principal of and interest and premium on, any Bonds or other instruments of indebtedness issued by the Authority in connection with the Airport System, any requirements of the Airport Indenture or any other expense or cost in incidental or necessary to, or arising out of, the maintenance or operation of the Airport System, including without limitation, emergency repairs or expenses, the costs of defending, settling, or satisfying any litigation which relates to the Airport System, or any aspect thereof, or to compensate for the loss of Airport System Revenue, the Authority may, upon thirty (30) days' notice to Airline, increase the fees and charges to such amount as is sufficient to assure that all such items, expenses, and costs shall be paid in full, when due, solely from Airport System Revenues.
(2) Airline shall pay Extraordinary Coverage Protection payments in any Fiscal Year in which the amount of Revenues less Operating and Maintenance Expenses is projected to be less than one hundred twenty-five percent (125%) of the Debt Service requirement. Any amounts which must be collected for such Extraordinary Coverage Protection payments will be allocated to Cost and Revenue Centers within the Airline Supported Areas on the basis of the Net Requirement of such Cost and Revenue Centers.

§ 40-10.1-1205 Landing Fees

~~(a) A charge of one dollar and forty cents per thousand pounds certified maximum gross landing weight of the aircraft as determined by the FAA for said aircraft, for each landing at Saipan International Airport, shall be paid to the Authority.~~

~~(b) A charge of one dollar and six cents per thousand pounds certified maximum gross landing weight of the aircraft as determined by the FAA for said aircraft, for each landing at West Tinian International Airport or at Rota International Airport, shall be paid to the Authority~~(a) Airline shall pay monthly to Authority fees for Revenue Landings for the preceding month. Airline's Landing Fees shall be determined as the product of the Landing Fee rate for the period, and Airline's total landed weight for the month. Airline's landed weight for the month shall be determined as the sum of the products obtained by multiplying the Maximum Gross Landed Weight of each type of Airline's aircraft by the number of Revenue Landings of each said aircraft during such month.

~~(1)~~ (b)

~~(c)~~ Exempted from paying landing fees are diplomatic, U.S. military, and Mariana Islands government aircraft, and any other aircraft operator which has a valid written agreement with the Authority, which provides for landing fees other than as provided for in this section.

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Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 21 Com. Reg. 16803 (June 23, 1999); Amdts Proposed 21 Com. Reg. 16693 (Apr. 19, 1999); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

The 1999 amendments amended and readopted sections (a), (b) and (c). The 1999 amendments provided: "The foregoing amendments to Part 12: Schedule of Fees and Charges of the Airport Rules and Regulations shall become effective March 1, 2000. Until then, the existing Schedule of Fees and Charges shall apply." 21 Com. Reg. at 16700 (April 19, 1999).

§ 40-10.1-1206 Terminal Rentals

(1) Airline's Terminal rentals shall be determined as the sum of Airline's rentals for Preferential Use and Common Use Premises. Airline's rental payment for Preferential Use Premises shall be determined as the sum of the products obtained by multiplying the rental rate for the period, by the amount of the corresponding type of space assigned to Airline as Preferential Use Premises.

(2) Total Terminal rentals for Common Use Premises shall be calculated as the product of the Terminal rental rate for the period, and the amount of each category of Common Use Premises. Airline's share of the total Terminal Complex rentals due each month for Common Use Premises shall be determined in accordance with the Common Use Formula.

(3) For inclusion in the Common Use Formula, Airline shall include in its monthly report of Enplaned Passengers and Deplaned Passengers the total number of Enplaned Passengers and Deplaned Passengers handled or otherwise accommodated by Airline for its Affiliated Airline Companies and other Air Transportation Companies handled by Airline and not having a Letter of Authorization from the Authority that provides for the direct payment to Authority of appropriate charges for the use of Common Use Premises.

§ 40-10.1-1210 Public Apron and Operational Area Charge

(a) A minimum charge of twenty-five dollars, or if greater, fifteen cents per thousand pounds maximum gross certified landing weight, as determined by FAA for said aircraft for each one hour, or faction thereof, for parking on the public apron adjacent to the terminal building shall be paid to the Authority by the aircraft operator. The payment of which shall, in addition to permitting the parking of the aircraft, also permit the use by the aircraft crew and nonrevenue passengers of the public facilities in the departure building and on the airport (but not including use of the arrival building and in-bound baggage handling facilities). Maximum time limit for aircraft apron use is three- and one--half hours, after which aircraft must be moved to the public aircraft parking area.

(b) Exceptions:
(1) Diplomatic, U.S. military, and Mariana Islands government aircraft.

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(2) ~~Any airline which has executed an operating agreement with the Authority pursuant to the provisions of § 40-10.1-740, while such agreement remains in force or effect. Any such airline operating under such an agreement shall pay a public apron and operational charge as set forth in its operating agreement. The Authority shall take all steps necessary to ensure that all operating agreements currently in effect shall be brought into compliance with the schedule of fees and charges set forth in this part on or before October 1, 1992.~~

~~Modified, 1 CMC § 3806(e), (e), (f).~~

~~History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).~~

~~Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).~~

~~§ 40-10.1-1215 Departure Facility Service Charge (DFSC)~~

~~(a) To cover costs of operations and maintenance of terminal buildings and to service the revenue bond debt payment obligations incurred by the Authority to operate and maintain the various airport facilities, a departure facility service charge shall be assessed each aircraft operator, which charge shall be calculated on a per revenue passenger basis as follows:~~
~~(1) The DFSC at Saipan International Airport for FY 2001 shall be $6.35 per passenger; for FY 2002, it shall be $6.90 per passenger; for FY 2003, it shall be $7.45 per passenger; and for FY 2004 and thereafter, it shall be $8.00 per passenger.~~
~~(2) The DFSC at Rota International Airport and at West Tinian International Airport for FY 2001 shall be $4.58 per passenger; for FY 2002, it shall be $4.70 per passenger; for FY 2003, it shall be $4.82 per passenger; and for FY 2004 and thereafter, it shall be $4.95 per passenger.~~
~~(3) The DFSC at the Saipan Commuter Terminal for FY 2001 shall be $2.98 per passenger; for FY 2002, it shall be $3.10 per passenger; for FY 2003, it shall be $3.25 per passenger; and for FY 2004 and thereafter, it shall be $3.35 per passenger.~~

~~(b) The DFSC schedule set forth in subsection (a) above shall be paid to the Authority by every aircraft operator transporting revenue passengers from such airports. Diplomatic aircraft and U.S. military aircraft are exempted from the departure facility service charge.~~

~~(c)~~ Notwithstanding the foregoing ~~departure facility service~~terminal rental charge schedule, the ~~Commonwealth Ports~~ Authority may provide to ~~signatory~~ airlines servicing the airports of the Commonwealth, an airline incentive fee discount on the ~~applicable departure facility service charge, the passenger arrival fee,~~ terminal rental charges and other airport fees and charges~~,~~ based on a discount rate which the Authority determines to be reasonable and appropriate under the circumstances, taking into account the Authority's financial condition, the Authority's future revenue projection, the Authority's revenue bond debt service obligations, and its operations and maintenance expenses. The airline incentive fee discount program is intended to encourage the ~~signatory~~ airlines to bring in more visitors to the Commonwealth and stimulate its economy.

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~~(d) The foregoing amendments shall retroactively commence on January 1, 2001.~~

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17842 (Apr. 23, 2001); Amdts Proposed 23 Com. Reg. 17614 (Jan. 19, 2001); Amdts Adopted 21 Com. Reg. 16803 (June 23, 1999); Amdts Proposed 21 Com. Reg. 16693 (Apr. 19, 1999); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The 1999 amendments amended subsections (a) and (b). The 1999 amendments provided: "The foregoing amendments to Part 12: Schedule of Fees and Charges of the Airport Rules and Regulations shall become effective March 1, 2000. Until then, the existing Schedule of Fees and Charges shall apply." 21 Com. Reg. at 16700 (April 19, 1999).

The 2001 amendments added new subsections (c) and (d) and amended and readopted subsections (a) and (b). Subsection (d) refers to all of § 40-10.1-1215. See 23 Com. Reg. at 17619 (Jan. 19, 2001).

§ 40-10.1-1220 International Arrival Facility Service Charge

(a) To cover the added costs of operations and maintenance of the arrival terminal building for international deplaned passengers at the Authority's ~~Saipan International~~ Airport, a service charge calculated on the basis of two dollars and twenty cents per revenue passenger shall be paid to the Authority by every aircraft operator transporting international revenue passengers~~ to the Saipan.~~

(b) For purposes of this part, "international deplaned passengers" is defined as all those deplaned passengers at the Authority's Airport ~~Saipan International Airport~~ whose departure did not originate in Tinian, Rota, Guam, and whose destination is Saipan.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-10.1-1225 Aircraft Parking Charge

Aircraft shall be parked at designated locations only.

(a) For aircraft paying the public apron and ~~operational area~~Operational Area charges cited in § 40-10.1-1210, aircraft parking charges shall be three cents per thousand pounds maximum gross certified landing weight as determined by FAA for said aircraft for each twenty-four hours, or faction thereof, beginning at the time the aircraft moves to the parking area from the public apron.

(b) For aircraft not requiring use of the public apron and thus not subject to a charge thereof, aircraft parking charges shall be a minimum of five dollars, or three cents per thousand pounds for each twenty-four hours, or faction thereof, thereafter.

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(c) Monthly rates shall be twenty-two times the daily rate. All such charges shall be paid by the aircraft operator to the Authority prior to departure of the aircraft from the assigned parking position.

(d) Locally based aircraft parked in areas designated by the Executive Director for such purpose shall pay fifteen dollars per month, payable in advance.

(e) Exceptions:
(1) Diplomatic, U.S. military, and Mariana Islands government aircraft.
~~(2) Any airline which has executed an operating agreement with the Authority pursuant to the provisions of § 40-10.1-740, while such agreement remains in force or effect. Any such airline operating under such an agreement shall pay an aircraft parking charge as set forth in its operating agreement. The Authority shall take all steps necessary to ensure that all operating agreements currently in effect shall be brought into compliance with the schedule of fees and charges set forth in this part on or before October 1, 1992.~~

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The final paragraph was not designated. The Commission designated it subsection (e).

In subsection (b), the Commission changed "hall" to "shall" to correct a manifest error.

§ 40-10.1-1230 In-transit Passenger Service Charge

(a) Any operator using the airport for an in-transit stop (i.e., not involving airport-originating or terminating passengers) shall pay a service charge of a minimum of ten dollars or, if greater, a service charge calculated on the basis of thirty-five cents for each in-transit passenger to cover the costs of operating and maintaining the public use portion of ~~the terminal buildings~~a Terminal utilized by said in-transit passengers.

(b) Exceptions:
(1) Diplomatic, U.S. military, and Mariana Islands government aircraft.
~~(2) Any airline which has executed an operating agreement with the Authority pursuant to the provisions of § 40-10.1-740, while such agreement remains in force or effect. Any such airline operating under such an agreement shall pay an aircraft parking charge as set forth in its operating agreement. The Authority shall take all steps necessary to ensure that all operating agreements currently in effect shall be brought into compliance with the schedule of fees and charges set forth in this part on or before October 1, 1992.~~

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

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§ 40-10.1-1235 Catering Fee

(a) A fee equal to twelve percent of the gross billings (charges) made for the sale, delivery, boarding, and removal of inflight catering food and beverages shall be paid to the Authority by the supplier thereof as a condition of access to the airport.

(b) Exceptions.
~~In flight~~Inflight catering provided directly and not by contract, by a bona fide airline lessee of the airport, or by a concessionaire operating on the airport, under the terms of a valid lease.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-10.1-1240 Fuel Flowage Fee

A fee equal to ~~one~~two and one-~~-~~half cents for each gallon of aviation gasoline and jet fuel delivered to the airport is hereby imposed. ~~Effective July 1, 1999, the fuel flowage fee shall increase to two and one-half cents per gallon.~~ The fuel flowage fee shall be paid by the seller thereof, upon the delivery of aviation gasoline and jet fuel to the airport. The seller shall deliver to the Authority, no later than the 15th day of every month, the fuel flowage fee payable for deliveries made to the airport during the previous month, together with appropriate documentation evidencing such fuel deliveries.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1245 Ground Handling Permit Fee

The fee for a ground handling permit shall be ~~five thousand dollars per calendar quarter. Effective July 1, 1999, the ground handling permit fee shall increase to~~ ten thousand dollars per calendar quarter.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1250 Ground Rent

(a) Any exclusive use of ground space on the airport shall be subject to ground rent.

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(b) Any such exclusive use of ground space shall encompass the entire amount of ground space effectively occupied (i.e., in the case of building or facility, the ground space underlying that building or facility; and, in addition, all surrounding area effectively utilized for setbacks, parking, access, etc., shall be included). In the case where such effectively utilized area cannot be precisely described, it shall be assumed that the effective area shall be, at a minimum, equal to five times the ground space occupied by the building or facility.

(c) No tenant of the Authority may sublease or assign its leased premises or any interest thereon, without the prior written consent of the Authority. Such consent, if granted, shall be conditioned upon payment to the Authority of not less than 25% of the total consideration for such sublease or assignment.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c). The Commission corrected the phrase "shall be, at a minimum, equal five times" in subsection (b) to "shall be, at a minimum, equal to five times" pursuant to 1 CMC § 3806(g).

§ 40-10.1-1255 Passenger Facility Charges

(a) The Authority is authorized to impose passenger facility charges (PFCs) not to exceed ~~three~~four dollars and fifty cents per eligible enplaning passengers. All such charges shall comply with applicable federal laws, rules, and regulations as amended from time to time.

(b) Pursuant to the requirements of 14 CFR Part 158, Authority shall have the right to cancel a Letter of Authorization in the event any portion of the Assigned Area is not fully utilized and is not made available for use by potentially competing air carriers or foreign air carriers. The foregoing provision shall apply only if and to the extent required by 14 CFR Part 158 or by any PFC assurance executed by Authority pursuant to said regulation.

(c) As long as a PFC is being collected by the Authority, The Authority may immediately cancel, in whole or in part, a Letter of Authorization should an Airline not fully utilize its Assigned Area or not make available for use its Assigned Area by potentially competing Air Transportation Companies.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission changed "PFC's" to "PFCs" to correct a manifest error.

§ 40-10.1-1256 Other Fees and Charges

(a) Other fees and charges include, but are not limited to:

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(1) Airport System security recovery fees and incinerator and triturator use fees incorporated into the Airport Rules and Regulations.
(2) Reasonable and non-discriminatory fees and charges for services or facilities not enumerated in the Airport Rules and Regulations, but provided by Authority or its contractors and utilized by Airline.
(3) Pro rata shares of any charges for the provision of any services or facilities which Authority is required or mandated to provide by any governmental entity (other than Authority acting within its proprietary capacity) having jurisdiction over the Airport System.

§ 40-10.1-1257 Amendment of Fees and Charges

Authority may, in the manner provided in this Part 1200, amend any of the fees and charges specified in the Airport Rules and Regulations by Resolution. Authority shall approve the budget and the corresponding amendments to such fees and charges by September 1st of each year. Except when Authority acts pursuant to the provision of Section 1201(d), all amendments of such fees and charges shall take effect at the beginning of the Authority's fiscal year (October 1st), and shall continue thereafter until revised in accordance with this Agreement.

§ 40-10.1-1258 Airline Reports

(a) Airline shall file with Authority, on forms prescribed by Authority, no later than the tenth (10th) day of each month, Airline's report showing the actual landings made at an Airport during the preceding month, which report shall include the number and type of aircraft. The Airline shall provide the Authority with FAA-approved certified maximum gross landing weights for each type of aircraft it operates at an Airport.

(b) Airline shall also file with the Authority, no later than the tenth (10th) day of each month, Airline's report showing the actual number of Enplaned and Deplaned Passengers and the amount of enplaned and deplaned cargo and enplaned and deplaned mail at an Airport during the preceding month. Airline shall also provide to the Authority copies of other public statistical reports pertinent to the Airport System as may be requested by the Authority, without charge to the Authority, and within a reasonable time after such request.

(c) Authority shall have the right to audit Airline's books and records, at any or all mutually convenient times, to determine the accuracy of Airline's reports to Authority. All costs of such audit shall be borne by Authority; provided, that if such audit discloses an underpayment of fees or charges due from the Airlines to the Authority of a magnitude of three (3) percent or greater, Airline shall promptly reimburse the Authority for the total cost of such audit.

(d) Airline shall have the right to audit the Authority's books and records, at any or all mutually convenient times, to determine whether the fees and charges paid by the Airline,

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and other airlines operating at the Airport System, are consistent with the provisions of the Airport Rules and Regulations. All cost of such audit shall be borne by Airline.

§ 40-10.1-1260 Payment of Charges

(a) All fees are to be paid in U.S. currency by the aircraft operator to the Office of the Executive Director~~, upon arrival (except in the case of parking charges which are to be paid prior to departure, and fuel flowage fees which shall be paid upon purchase of fuels)~~ as described in the following sections, unless special arrangements have been made with the Authority in writing in advance. The Executive Director may authorize, in writing, fees to be paid in a manner different from that provided herein.

(b) For all fees and charges set forth in the Airport Rules and Regulations, Airline shall tender monthly the amounts due within ten (10) days after receipt of invoice from Authority. In the event that an unpaid balance remains after thirty (30) days from such receipt:
(i) an additional one percent (1%) per month of the unpaid balance shall become due and payable by Airline; and
(ii) airline shall be liable for all costs of collection, including reasonable attorney's fees and court costs.

(c) In the event that Airline shall fail to tender any payment due, the Authority may tender statements of fees and charges due on a basis more frequent than monthly, and/or may require payment of such fees and charges upon presentation of statements; and/or may require that payment be made in cash or by cashier's check or money order if:
(i) an unpaid balance remains after forty-five (45) days from receipt of the invoice; or
(ii) the Airline has previously failed to tender the monthly amounts due as provided in Section 1260(b) within the prior 12 months; or
(iii) the Airline tenders a negotiable instrument as payment upon invoice and such instrument is not honored upon presentment.

(d) All fees and charges due and owing by Airline are payable to Authority or its assignee under any security interest granted by the Authority provided, that in the event of default by Authority the Indenture, to which it is a party, such fees and charges shall be payable to the Trustee of such Bonds may from time to time direct.

(e) Procedures to Recover Over-Payment.
(1) It is the obligation of Airline to pay all fees and charges levied against it pursuant to the Airport Rules and Regulations, on or before the date due. In the event that Airline desires to contest the validity or amount of any such fees or charges, Airline shall first pay the same to Authority, and may then seek a refund in any appropriate forum.

Modified, 1 CMC § 3806(g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

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Commission Comment: The Commission deleted a semicolon between "been" and "made" to correct a typographical error.

§ 40-10.1-1265 Surcharges on Airline Tickets Prohibited

No airline or other seller of tickets for air transportation operating at any airport owned and operated by the Authority shall state, charge, or collect any fees and charges specified in § 40-10.1-1205 through § 40-10.1-1225 separately from the price of an airline ticket; provided, however, that nothing herein shall prevent or restrict any such airline or other seller from charging and collecting a single fare, which may be periodically adjusted, subject to applicable restrictions imposed by law, to reflect the airline's costs, which costs include but are not limited to such fees and charges.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1270 Taxicab Operator Permit Fee

(a) All taxicab operators authorized by the Executive Director to operate a taxicab at the airport shall pay a monthly taxicab permit fee of $25.00 per vehicle, payable upon issuance of the taxicab permit.

(b) No vehicle or taxicab may operate at the airport without a valid taxicab decal issued by the Authority on an annual basis. This fee shall become effective on July 1, 1999.

History: Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-10.1-1275 Public Parking Fee

(a) All vehicles owned by members of the general public shall park their vehicles in designated public parking areas, and shall pay a public parking fee, as follows:

Parking Category	Fee
16 minutes to 1 hour	$2
Hourly rate	$2
Each additional hour (or fraction of an hour)	$2
Daily rate (maximum 24 hours)	$15

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Annual rate per vehicle for employees of airport tenants	$50
Rate per vehicle for frequent flyers – annual	$400
Rate per vehicle for frequent flyers – semi annual	$250
Annual rate per vehicle for service and delivery vehicles	$200

(b) No fee is imposed for CPA vehicles, for vehicles owned by CPA employees and officials, for cars rented from companies with whom CPA has an ~~operating~~car rental concession agreement, and for U.S. government and CNMI government vehicles.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 39 Com. Reg. 39592 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39040 (Dec. 28, 2016); Amdts Adopted 23 Com. Reg. 17842 (Apr. 23, 2001); Amdts Proposed 23 Com. Reg. 17614 (Jan. 19, 2001); Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999).

Commission Comment: In June 2008, CPA made emergency amendments to this part addressing fees and charges for incineration and aircraft waste handling services. See 30 Com. Reg. 28519 (June 27, 2008). These amendments were effective for only 120 days from June 3, 2008. The notice referred to the permanent adoption of the amendments pursuant to an attached notice of proposed regulations. However, no such notice was attached and Chamorro and Carolinian translations were not published. The regulations were re-proposed in March of 2012. 34 Com. Reg. 32372 (Mar. 29, 2012). If adopted, these sections will be codified as § 40-10.1-1280 and § 40-10.1-1285.

The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 2001 amendments amended subsections (a) and (b) and deleted former subsection (c).

§ 40-10.1-1280 Miscellaneous Fee Schedule

SIDA BADGE FEES	
Fee Type	**Cost per Badge**
Fingerprint and Security Threat Assessment Processing	$45.00
New, Renewal, Broken, or Change of Status on SIDA Badge	$15.00
Lost or Stolen Badge	$50.00
Failure to Immediately surrender SIDA Badge after expiration	$100.00

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PERMITS	
Fee Type	**Per Permit**
AOA Driving Permit	$15.00
AOA Driving Permit - Replacement	$5.00
Ground Transportation Permit – Replacement	$15.00
Hot Work Permit	$25.00
Filming/Photography	$25.00

PACIFIC REGION ARFF/AVIATION TRAINING FACILITY (PRATC)	
Fee Type	**Per Student**
FAR Part 139 Live Fire Burn	$500.00
Structure Fire Burn	$300.00
ARFF Basic Academy (Airport Fire Fighter, Driver Operator, EMS First Responder)	$5,500.00
Part 139 ~~Courses~~Course – 5 Days (Bundle)	$2,205.00
Part 139 Course – 4 Days	$1,850.00
Part 139 Course – 3 Days	$1,400.00
Part 139 Course – 2 Days	$950.00
Part 139 Course – 1 Day	$500.00

COPY FEES	
Fee Type	**Per Page**
8.5" x 11" – Black and white	$0.25
8.5" x 11" – Color	$0.50
8.5" x 14" – Black and white	$0.25

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8.5" x 14" – Color	$0.50
11" x 17" – Black and white	$0.50
11" x 17" - Color	$1.00
24" x 36" – Black and white	$2.00
24" x 36" – Color	$5.00
36" x 48" – Black and white	$3.75
36" x 48" – Color	$6.00

Decals, Cards, Keys, Room and Equipment Rental	**Fees**
Vehicle Decals – Secured Area	$15.00 per vehicle
Fingerprint Cards – 2 Sets	$15.00 per set of 2
Tenant Key Replacement	$14.00 each
Airport Conference Room Rental – Room Use Only	$10.00 per hour
Airport Conference Room Equipment Fee	$25.00 per use
Saipan Airport ARFF Classroom Rental – Room Use Only	$10.00 per hour
Saipan Airport ARFF ~~Classroom~~Class Room Rental Equipment Fee	$25.00 per use
ARFF Self Contained Breathing Apparatus (SCBA) Refill – Maximum of 10 cylinders per refill	$5.00 per refill
Returned Check	$25.00 plus additional bank fees
Administrative Fee	25% of Total Billing

Modified, 1 CMC § 3806(g).

History: Adopted 42 Com. Reg. 44065 (Sept. 28, 2020); Proposed 42 Com. Reg. 43527 (May 28, 2020).

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:	)	**Labor Case No. 17-001**
Edren Dizon,	)	
Complainant,	)	**ORDER OF DISMISSAL**
v.	)	
Imperial Pacific International (CNMI), LLC,	)	
Respondent.	)	

Pursuant to NMIAC § 80-20.1-485 (b), "[a] complaint may be dismissed upon its abandonment or settlement by the parties." On February 8, 2017, Complainant filed a request to voluntarily dismiss this case. Respondent did not contest dismissal. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby **DISMISSED**. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.[1]

So ordered this **11th** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

[1] The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:	**Labor Case No. 18-007**
Yi-Jo Chang, Complainant, v. Imperial Pacific International (CNMI), LLC, Respondent.	**ORDER OF DISMISSAL**

Pursuant to NMIAC § 80-20.1-485 (b), "[a] complaint may be dismissed upon its abandonment or settlement by the parties." Further, "dismissal may be entered against any person who has left the CNMI and has been absent for six months or more without having notified that Administrative Hearing Office of their contact information." *Id.* Here, the matter was scheduled for mediation with Administrative Hearing Officer Cody in 2018. Subsequently, the parties were ordered to report on potential settlement. The parties did not report. Further, there has been no contact from the parties, in relation to this case, since 2018.

Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby **DISMISSED**. Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.[1]

So ordered this **11th** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

[1] The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	**PUA Case No. 20-0033**
Franklin Joel Rios Cruz,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
v.	)	
CNMI Department of Labor, Division of Employment Services-PUA,	)	
Appellee.	)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on March 15, 2021 at 9:00 a.m. and on March 19, 2021 at 9:30 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Franklin Joel Rios Cruz ("Appellant") was present and represented by Michael N. Evangelista, Esq. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker Dennis Cabrera, PUA Coordinator Suvanna Sablan, and PUA Coordinator Brenda Lyn Sablan. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Qualifying Determination (dated September 01, 2020);
2. Exhibit 2: Disqualifying Determination (dated October 20, 2020);
3. Exhibit 3: Appellant's Appeal Form (dated November 04, 2020);
4. Exhibit 4: Appellant's Email of November 04, 2020 to the Department of Labor Administrative Hearing Office;
5. Exhibit 5: Appellant's Email of November 02, 2020 to the Department of Labor Administrative Hearing Office;

6. Exhibit 6: Appellant's Letter of November 02, 2020 to the Department of Labor Administrative Hearing Office;
7. Exhibit 7: Copy of emails of October 13, 2020 to October 16, 2020 between PUA Coordinator Suvanna Sablan and Appellant regarding the uploading of supporting documents;
8. Exhibit 8: Email from Mr. Simon Sin of the Water Company dated March 25, 2020;
9. Exhibit 9: Email from Ms. Alice Agulto of Tan Holdings dated August 17, 2020;
10. Exhibit 10: Email from Ms. Lucretia C. Borja of Public School System dated October 19, 2020;
11. Exhibit 11: Letter from Mr. Max Kretzers of D & Q Saipan Co., Ltd.;
12. Exhibit 12: Letter from Mr. Jovencio Cruz of CTSI Logistics;
13. Exhibit 13: Application Snapshot;
14. Exhibit 14: Notice of Determination of PUA Overpayment dated December 28, 2020.

For the reasons stated below, the Department's Determination dated October 20, 2020 is **AFFIRMED**. Claimant is not eligible for benefits for the period of March 22, 2020 to December 26, 2020.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")[1] and Federal Pandemic Unemployment Compensation ("FPUC").[2] On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.[3] On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC

[1] *See* Section 2102 of the CARES Act of 2020, Public Law 116-136.
[2] *See* Section 2104 of the CARES Act of 2020, Public Law 116-136.
[3] Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

programs to March 13, 2021.[4] On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs.

Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued a Disqualifying Determination, with a mail date of October 20, 2020. The Department's determination found that Appellant was not eligible to receive PUA effective March 22, 2020 to December 26, 2020 because Appellant's employment was not affected by the COVID-19 public health emergency. On November 04, 2020, Appellant filed a request to appeal the Disqualifying Determination. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the appeal was timely filed, (2) whether Appellant is eligible for PUA and (3) whether there are any overpayments necessitating the return of PUA funds in this case.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. In December of 2019, Appellant relocated to Saipan, Commonwealth of the Northern Mariana Islands from Guam to join the CNMI workforce. Prior to Appellant's move to the CNMI, Appellant was employed at Guam Waterworks Authority as a Water Meter Repair Worker.
2. In January of 2020, Appellant applied for positions at the Commonwealth Utilities Corporation ("CUC"). In March of 2020, CUC implemented cost-cutting measures due to the impact of the COVID-19 pandemic. CUC did not hire Appellant.[5]

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[4] *See* Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").
[5] Exhibit 13.

3. From March to October, 2020 Appellant applied for other jobs in Saipan, namely the CNMI Public School System, CTSI Logistics, Tan Holdings, the Water Company, and D & Q Saipan Co. Ltd[6].
4. The Water Company postponed its recruiting plan and did not hire Appellant.[7]
5. Tan Holdings cancelled its Job Vacancy Announcement and did not hire Appellant.[8]
6. The Public School System determined that Appellant was not qualified and did not hire him.[9]
7. D & Q Saipan Co., Ltd. decided not to fill the position and did not hire Appellant.[10]
8. CTSI Logistics cancelled its Job Vacancy Announcement and did not hire Appellant.[11]
9. On August 11, 2020, Appellant filed his online application to claim PUA and FPUC benefits. Appellant certified that he applied for two positions at the Commonwealth Utilities Corporation, that he was interviewed for a position, and that he received no feedback from CUC.[12]
10. Appellant also certified that as a result of CUC's COVID-19 cost cutting measures, announced on March 25, 2020, he therefore was terminated or laid off from CUC on March 25, 2020.[13]
11. In 2020, the PUA program relied on each claimant's self-certifications and did not require claims to submit documents to substantiate their claims, unless audited or requested. In his initial application, Appellant acknowledged and certified that all the information submitted is true and correct. Appellant further acknowledged and understood that it was his responsibility to read the PUA Handbook and provided material so that she can provide complete and accurate information in his claims.[14]

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[6] Id.
[7] Exhibit 8.
[8] Exhibit 9.
[9] Exhibit 10.
[10] Exhibit 11.
[11] Exhibit 12.
[12] Exhibit 13.
[13] Id.
[14] Id.

12. On September 01, 2020 the Guam Department of Labor issued a Qualifying Determination, qualifying Appellant to receive Pandemic Unemployment Assistance effective March 22, 2020.[15]
13. Appellant received $10,200.00 in Federal Pandemic Unemployment Compensation and $9,660.00 in Pandemic Unemployment Assistance for the weeks of March 28, 2020 to October 03, 2020.[16]
14. On October 20, 2020, the CNMI Department of Labor issued a Disqualifying Determination disqualifying Appellant from receiving Pandemic Unemployment Assistance effective March 22, 2020 to December 26, 2020, because Appellant's unemployment was not due to the COVID-19 pandemic.[17]
15. On November 04, 2020, Appellant filed the present appeal claiming that he qualified for PUA because the employers' decisions not to hire Appellant were due to the COVID-19 pandemic.[18]

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant did file a timely appeal.

Generally, an appeal should be filed within ten days after the Notice of Determination was issued or served to the claimant. However, the Department may extend the period to thirty days, by a showing of good cause.[19] Good cause means: (1) illness or disability; (2) keeping an appointment for a job interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent a reasonable person from complying as directed.[20]

Here, Appellant received the disqualifying determination on October 20, 2020. According to the appeal instructions, Appellant was to email or mail his appeal to the Administrative Hearing

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[15] Exhibit 1.
[16] Exhibit 14.
[17] Exhibit 2.
[18] Exhibit 3.
[19] HI. Rev. Statute § 383-38(a).
[20] HAR § 12-5-81(j).

Office by November 03, 2020. Appellant did email the "I appeal" portion of the determination on November 02, 2020 but did not include the appeal form. Appellant testified that he meant to email the appeal form but did not attach it to his email by mistake. The undersigned notes that although Appellant did not attach the appeal form, Appellant did refer to the appeal form in his November 02, 2020 email. Upon learning of his mistake, Appellant emailed the appeal form and a cover letter to the Administrative Hearing Office on November 04, 2020.

The undersigned finds that there is good cause to extend the appeal period to thirty days. Accordingly, Appellant's appeal was therefore timely filed.

2. Appellant's employment was not affected as a direct result of COVID-19.

Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified for regular unemployment, extended benefits under state or federal law, or pandemic emergency unemployment compensation (PEUC).[21] Second, the claimant must show that he or she is able and available for work, as defined by Hawaii law, except they are unemployed, partially unemployed, or unable or unavailable for work due to at least one of the following COVID-19 reasons identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

(a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;

(b) A member of the individual's household has been diagnosed with COVID-19;

(c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;

(e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;

(g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

[21] This was not at issue in this matter.

(h) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(i) The individual has to quit his or her job as a direct result of COVID-19;

(j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(k) The individual meets any additional criteria established by the US Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (k)[22], above, includes:

(1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
(2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
(3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
(4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Here, Appellant submitted a claim for PUA self-certifying that he relocated back to the CNMI and was unable to find employment due to COVID-19. Appellant's inability to find suitable work is not a COVID-19 reason listed above. Appellant argues that because he was interviewed for a position at CUC but was not selected due to the COVID-19 public health emergency, he therefore qualifies for PUA because his non-selection was due to COVID-19. The undersigned disagrees.

[22] *See* Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

Granted, Appellant applied for jobs at CUC, PSS, CTSI Logistics, Tan Holdings, the Water Company, and D & Q Saipan Co. Ltd. However, Appellant ultimately did not receive job offers from the aforementioned employers. Second, during the investigation, DOL confirmed that Appellant was not given job offers to commence employment and that vacancies for certain positions he applied for were retracted. Finally, when questioned under oath as to whether he was scheduled to commence employment or received a job offer, Appellant responded in the negative. Therefore, one cannot be scheduled to commence employment if they were never offered a job.

Accordingly, Appellant's employment was not affected as a direct result of COVID-19 because he was never offered a job by an employer.

3. An overpayment occurred and Appellant is required to pay the amount back.

"Benefits shall be paid promptly in accordance with a determination, redetermination, or decision or appeal."[23] However, "[a]ny individual who has received any amount as benefits . . . to which the individual was not entitled shall be liable for the amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience."[24] Fault[25] is defined as:

> (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
> (B) Failure to furnish information which the individual knew or should have known to be material; or
> (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

Based on federal guidance, "contrary to equity and good conscience" is tantamount to placing an individual below the poverty line and taking away basic necessities to live. In evaluating equity and good conscience,[26] the factors to consider include, but are not limited to:

> (A) Whether notice of a redetermination was given to the claimant, as required ...
> (B) Hardship to the claimant that the repayment may impose; and

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[23] HRS § 383-43.
[24] HRS § 383-44.
[25] HRS 12-5-83.
[26] *Id.*

(C) The effect, if any, that the repayment will have upon the fulfillment of the objectives of the program.[27]

Considering that Appellant's employment was not directly affected by the COVID-19 pandemic, the $19,860.00 in Federal Pandemic Unemployment Compensation and Pandemic Unemployment Assistance received by Appellant is an overpayment.

Here, Appellant argues that the overpayment was not his fault because he submitted all of the required documents, researched the PUA Handbook, and was initially approved by the Department to receive PUA benefits. Ultimately, Appellant's argument is not persuasive. As stated above, Appellant certified and acknowledged that it was his responsibility to read the benefit handbook and must provide accurate and complete information. The undersigned recognizes that some fault is assignable to the Department for failure to institute the necessary controls in issuing payments of claims. However, any fault of the Appellant restricts eligibility of a waiver.

Upon review of the evidence and testimony provided, Appellant is not entitled to a waiver because the overpayment was partially his fault. First, Appellant provided material statements on his initial application that he knew or should have known to be incorrect. Specifically, he incorrectly certified that he was terminated or laid off from CUC on March 25, 2020. Based on the evidence presented, Appellant was never hired or was never scheduled to commence work at CUC or any other agency or company. Further, Appellant made contradictory statements on his initial application when he certified that the last date he performed work was on March 25, 2020, but in a separate statement said he never received an offer to work from any company or agency. Considering the contradictory and inaccurate information provided in Appellant's initial application, fault is assigned to Appellant. Accordingly, Appellant is not entitled to a waiver of repayment of the overpayment.

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[27] PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. PUA is not an excuse to refuse suitable work. PUA is not free or unencumbered money. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

VI. CONCLUSION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Determination is **AFFIRMED**;
2. The Appellant is **INELIGIBLE** to receive PUA benefits for the weeks of March 22, 2020 to December 26, 2020;
3. The CNMI Department of Labor's Notice of Overpayment dated December 28, 2020 is **AFFIRMED**;
4. Appellant is not entitled to a waiver for repayment;
5. Appellant is ordered to report to the Department's Benefit Payment Control Unit to submit to a reasonable payment plan, as determined by the Department's Benefit Payment Control Unit.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this **26th** day of May, 2021.

/s/
JOEY P. SAN NICOLAS
Pro Tem Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of: Elina Gharti Chhetri, Appellant, v. CNMI Department of Labor, Division of Employment Services-PUA, Appellee.	)	**PUA Case No. 20-0043** **ADMINISTRATIVE ORDER**

I. INTRODUCTION

This matter came before the undersigned for a Hearing on Appellant's Motion to Reopen Decision to Correct A Clear Error of Law on April 30, 2021 at 1:30 p.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Elina Gharti Chhetri ("Appellant") was present and represented by Matthew J. Holley, Esq. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker Dennis Cabrera.

Exhibits:

1. Exhibit 1: Department's Determination mail dated November 24, 2020;
2. Exhibit 2: Appellant's Request for Appeal dated December 15, 2020;
3. Exhibit 3: Department's Determination mail dated October 20, 2020;
4. Exhibit 4: Appellant's Request for Reconsideration dated October 20, 2020;
5. Exhibit 5: Appellant's Application Snapshot;
6. Exhibit 6: Copy of Appellant's EAD Card;
7. Exhibit 7: SAVE Response dated October 28, 2020;
8. Exhibit 8: SAVE Response dated November 02, 2020;
9. Exhibit 9: Email from Dennis Cabrera dated September 18, 2020;
10. Exhibit 10: Email from David King dated October 01, 2020;

11. Exhibit 11: Appellant's Parole from February 20, 2018;
12. Exhibit 12: Federal Register dated December 9, 2020;
13. Exhibit 13: Notice of Action dated August 06, 2018;
14. Exhibit 14: Copy of Appellant's EAD cards from December 24, 2016 to October 24, 2020;
15. Exhibit 15: Letter from Marianas Creations, LLC dated March 17, 2020;
16. Exhibit 16: Copy of Appellant's Passport with I-94 Stamp; and
17. Exhibit 17: Email from David King dated November 17, 2020.

For the reasons stated below, the Department's Determination dated November 24, 2020 is **REVERSED**. Claimant is eligible for benefits for the period of March 15, 2020 to December 26, 2020.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")[1] and Federal Pandemic Unemployment Compensation ("FPUC").[2] On March 29, 2020, the CNMI Government executed an agreement with the US Secretary of Labor to operate the PUA and FPUC program in accordance to applicable law.[3] On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.[4] On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI. The

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[1] *See* Section 2102 of the CARES Act of 2020, Public Law 116-136.
[2] *See* Section 2104 of the CARES Act of 2020, Public Law 116-136.
[3] Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.
[4] *See* Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

CNMI Department of Labor Administrative Hearing Office has been designated to preside over first level appeals of the aforesaid programs.

III. PROCEDURAL HISTORY & ISSUE

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued and mailed its first disqualifying determination on October 20, 2020. The Department's determination found that Appellant was not eligible to receive PUA effective March 15, 2020 to December 26, 2020. On October 20, 2020, Appellant filed a request for reconsideration. The Department issued and mailed a second disqualifying determination on November 24, 2020 finding that Appellant was not qualified to receive PUA because she was not a qualified alien. On December 15, 2020, Appellant filed a request to appeal the disqualifying determination. An Administrative Hearing was held on January 25, 2021. The undersigned issued its Administrative Order in this case on March 10, 2021, affirming the Department of Labor's Determination that the Appellant was ineligible to receive PUA benefits for the period of March 15, 2020 to December 26, 2020. Appellant filed her Motion to Reopen Decision to Correct A Clear Error of Law on March 23, 2021. The Administrative Hearing Office granted Appellant's Motion to Reopen Decision and heard arguments on April 30, 2021. The issue before the Administrative Hearing Office was whether Appellant was a qualified alien at the time relevant to her claim for PUA benefits.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant was employed as a Manager at Marianas Creations, LLC ("Employer"). Appellant worked for Employer from February 22, 2020 to March 17, 2020. Appellant worked 40 hours per week for the hourly rate of $8.00. As Manager, Appellant oversaw retail sales and bartender duties.[5]
2. On March 17, 2020, Employer furloughed Appellant due to the Governor's Executive Order 2020-04 declaring a public health emergency.[6]

[5] Exhibit 5.
[6] Exhibit 15.

3. On June 17, 2020, Appellant filed an application to claim PUA and FPUC benefits. In the application, Appellant certified under penalty of perjury that she was an alien/refugee lawfully admitted to the U.S. and that her place of employment was closed as a direct result of the COVID-19 public health emergency.[7]
4. On October 01, 2020, U.S. Department of Labor UI Program Specialist David King emailed Labor Certification Worker Dennis Cabrera advising that TPS was not a qualified alien, unless it falls under "an alien whose deportation is being withheld."[8]
5. On October 20, 2020, the Department issued and/or mailed a determination disqualifying Appellant from PUA benefits because it deemed that Appellant did not meet the qualifications required by the CARES Act of 2020 for Pandemic Assistance.[9]
6. On October 20, 2020, Appellant filed her Request for Reconsideration at the CNMI Department of Labor stating that she qualified to receive PUA benefits because she was paroled into the United States under Temporary Protected Status since 2015.[10]
7. The Department, on October 28, 2020, entered Appellant's information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division.[11] The SAVE results revealed that Appellant was under temporary protected status and was temporarily authorized to work in the United States. Moreover, the SAVE results showed that Appellant had Employment Authorization Document cards with the Categories A12 (temporary protected status granted under 8 CFR 244.12) and C09 (adjustment of status applicant). The SAVE results further showed that Appellant's Category A12 was effective August 06, 2018 to June 24, 2019 and Category C09 was effective October 25, 2019 to October 24, 2020.
8. On November 02, 2020, the Department conducted a second SAVE verification and found that Appellant had a pending I-485 Application to Register for Permanent Residence or Adjust Status.[12]

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[7] Exhibit 5.
[8] Exhibit 10.
[9] Exhibit 3.
[10] Exhibit 4.
[11] Exhibit 7.
[12] Exhibit 8.

9. On November 17, 2020, UI Specialist David King emailed Labor Certification Worker Dennis Cabrera again reiterating his position that TPS status alone is not sufficient to qualify for PUA purposes, unless it falls under an alien whose deportation is being withheld.[13]
10. On November 24, 2020, the Department issued and/or mailed a determination disqualifying Appellant from PUA benefits because it deemed that Appellant was not a qualified alien eligible to receive PUA.[14]
11. On December 15, 2020, Appellant filed her Appeal Form at the CNMI Department of Labor, Administrative Hearing Office. Appellant argues that she is eligible to receive PUA benefits because she was paroled into the United States under Temporary Protected Status ("TPS").[15]
12. On February 20, 2018, Appellant, a Nepali national, was paroled into the United States until June 24, 2018, as evidenced by the I-94 stamp placed in Appellant's passport.[16] Appellant was paroled based on her TPS for humanitarian reasons, pursuant to § 212(d)(5)(A) of the Immigration and Naturalization Act ("INA").[17]
13. On August 06, 2018, Appellant's Temporary Protected Status was extended to June 24, 2019.[18] The benefits of TPS are temporary protection from removal (or deportation) and employment authorization in the United States. TPS was granted to Nepali citizens in the United States after an earthquake devastated Nepal in 2015.
14. On December 09, 2020, the Department of Homeland Security ("DHS") issued a notice in Vol. 85, No. 237 of the Federal Register, announcing Automatic Extension of EADs issued under the TPS designations for Nepal with an expiration date of June 24, 2018 were automatically extended to October 04, 2021.[19]
15. Appellant has Employment Authorization Document ("EAD")[20] cards valid for the following periods:[21]

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[13] Exhibit 17.
[14] Exhibit 1.
[15] Exhibit 2.
[16] Exhibit 11.
[17] Exhibit 11.
[18] Exhibit 13.
[19] Exhibit 12.
[20] An EAD is a work permit that allows noncitizens to work in the United States.
[21] Exhibit 14.

a. Category C19: October 20, 2015 to December 24, 2016;

b. Category A12: February 03, 2017 to June 24, 2018;

c. Category A12: August 06, 2018 to June 24, 2019; and

d. Category C09: October 25, 2019 to October 24, 2020.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. The Appeal was timely filed.

Generally, an appeal should be filed within ten days after the Notice of Determination was issued or served to the claimant. However, the Department may extend the period to thirty days by a showing of good cause.[22] Good cause means: (1) illness or disability; (2) keeping an appointment for a job interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent a reasonable person from complying as directed.[23]

Here, Appellant electronically received the disqualifying determination on November 24, 2020. The Appellant did not file her Appeal until December 15, 2020 – approximately 20 days after receiving the determination. Although the Appeal was filed beyond the ten-day deadline, the undersigned recognizes that this is due to the faulty instructions included on the determination. Specifically, the determination incorrectly indicated that the deadline to file her appeal was December 15, 2020. However, despite the technical errors and inconsistent filing instructions, the undersigned finds that Appellant acted diligently to pursue this appeal. Based on above, there is good cause to extend the filing period to 30 days from the day Appellant received the determination. Accordingly, Appellant's filing is timely.

2. Appellant's employment was affected as a direct result of COVID-19.

Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified for regular unemployment, extended benefits under state or federal law, or pandemic emergency unemployment compensation (PEUC).[24] Second, the claimant must attest[25] that he or she is able and available for work, as defined by Hawaii law, except they are unemployed, partially

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[22] HI. Rev. Statute § 383-38(a).
[23] HAR § 12-5-81(j).
[24] This is not at issue in this case.
[25] The PUA program relies on self-certifications and self-reporting under penalty of perjury.

unemployed, or unable to work or unavailable for work as a direct result[26] of a COVID-19 reason identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

(aa) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
(bb) A member of the individual's household has been diagnosed with COVID-19;
(cc) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
(dd) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
(ee) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
(ff) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
(gg) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
(hh) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
(ii) The individual has to quit his or her job as a direct result of COVID-19;
(jj) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
(kk) The individual meets any additional criteria established by the US Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)[27], above, includes:

(1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;

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[26] Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.
[27] *See* Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

(2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
(3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
(4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Generally, the CNMI was heavily impacted by the threat of COVID-19. Due to the threat of COVID-19 and pursuant to the Governor's Executive Orders, there were closures of government offices, restrictions on private businesses, and an overall reduction in revenue from the immediate halt in tourism. Here, Employer, a bar and restaurant heavily reliant on the tourism industry, closed its doors on March 18, 2020 due to the Governor's Executive Order declaring a public health emergency. Accordingly, the undersigned finds that Appellant's employment was affected as a direct result of COVID-19 public health emergency.

3. Appellant is a qualified alien eligible for PUA.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;

7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

For Appellant to be a qualified alien under 8 USC §1641, she must prove that she was paroled into the US under section 212(d)(5) of the INA for at least one year. Based on the evidence and arguments presented, Appellant has met her burden of showing she was paroled into the US under section 212(d)(5) for at least one year, as evidenced by her I-94 stamp. Specifically, Appellant was paroled from February 20, 2018 to June 24, 2018 and her parole was automatically extended from June 24, 2018 to October 04, 2021, pursuant to the December 09, 2020 DHS announcement in the Federal Register.

Accordingly, Appellant was a qualified alien at the time of the weeks claimed and is therefore eligible for PUA.

4. An overpayment did not occur.

"Benefits shall be paid promptly in accordance with a determination, redetermination, or decision or appeal."[28] However, "[a]ny individual who has received any amount as benefits . . . to which the individual was not entitled shall be liable for the amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience."[29]

Here, Appellant did not receive PUA benefits. Therefore, an overpayment did not occur.

VI. CONCLUSION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Determination is **REVERSED**; and
2. The Appellant is **ELIGIBLE** to receive PUA benefits for the period of March 15, 2020 to December 26, 2020.

This Administrative Order shall constitute a **FINAL AGENCY DECISION**.

[28] HRS § 383-43.
[29] HRS § 383-44.

In the event a party aggrieved by this Order would like to dispute or contest this decision, said party may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act within 30 days of this Order. See 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this **4th** day of June, 2021.

/s/
JOEY P. SAN NICOLAS
Pro Tem Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:	)	**Labor Case No. 21-035**
Chun Li,	)	
Complainant,	)	**ORDER OF DISMISSAL**
v.	)	
Garilo Francis D. Gamab dba Design Flower & Gift Shop	)	
Respondent.	)	

This matter came for an Order to Show Cause Hearing on June 13, 2021 at 2:00 p.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Chun Li ("Complainant") was present and self-represented. Respondent Garilo Francis D. Gamab dba Design Flower & Gift Shop ("Respondent") failed to appear. The hearing was facilitated by Interpreter Brandon Doggett.

This Order to Show Cause Hearing was scheduled to determine whether the complaint should be dismissed for lack of jurisdiction and failure to state a claim. "The hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit." 3 CMC § 4947. Pursuant to 3 CMC § 4942, "[t]he Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of labor and wage laws of the Commonwealth . . . ." Additionally, "[t]he Administrative Hearing Office shall have jurisdiction to conduct adjudicative proceedings with respect to all issues of fact and law arising under labor laws applicable in the Commonwealth." NMIAC § 80-20.1-450. Generally, the claims that fall within the Administrative Hearing Office's jurisdiction are those that allege a violation or Commonwealth labor and wage laws and arise from an employee-employer relationship. 41 Com. Reg. 042161 (June 28, 2019); *see also* 41 Com. Reg. 042197 (June 28, 2019) (breach of employment contract claim dismissed against a non-party to contract).

On April 1, 2021, Complainant filed a claim for breach of contract and sought damages for the cost of unpaid labor and cost of materials. On April 25, 2021, Frank Cabrera filed a written response stating that: (1) A man named Jason approached him and Respondent to solicit for work; (2) Respondent is his Godson and not a named party to the agreement; (3) this case involved a construction project for Mr. Cabrera's home; and (4) that work was not completed according to the parties' agreement.

Based on the filings and testimony provided, this claim does not arise from a violation of labor and wage laws between an employee[1] and employer. Instead, this dispute is a breach of construction contract between a homeowner owner and independent contractor.[2] During the Administrative Hearing, Complainant purported to be a Commonwealth Only Transitional Worker ("CW-1") allegedly authorized to work as a construction worker for ZYS Corporation. However, Complainant stated that this construction project does not involve his employer, ZYS Corporation, but himself in his personal capacity. Notably, Complainant does not have written documentation to substantiate that he is authorized to work for Respondent or Mr. Cabrera nor does he have a business license to engage in the business of construction during the alleged time period.

In consideration of above, this matter does not arise from a labor and wage violation between an employee and an employer. Moreover, the complaint does not adequately identify the correct parties and fails to state a claim against Respondent. Accordingly, the undersigned finds that dismissal for lack of jurisdiction and failure to state a claim is appropriate. Pursuant to 3 CMC § 4947, this complaint is hereby **DISMISSED**, with prejudice.

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[1] Unlike an employee, "an independent contractor is: [A] person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking." *Castro v. Hotel Nikko Saipan, Inc.*, 4 NMI 268, N7 (1995).

[2] The factors to determine whether an individual is an employee or independent contractor are: "(a) The extent of control which, by the agreement, the [employer] may exercise over the details of the work; (b) Whether or not the one employed is engaged in a distinct occupation or business; (c) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (d) The skill required in the particular occupation; (e) Whether the employer of the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (f) The length of time for which the person is employed; (g) The method of payment, whether by the time or by the job; (h) Whether or not the work is a part of the regular business of the employer; (i) Whether or not the parties believe they are creating the relations of master and servant; and (j) Whether the principal is or is not a business." *Castro v. Hotel Nikko Saipan, Inc.*, 4 NMI 268 (1995).

Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.[3]

So ordered this **14th** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

[3] The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:	)	**Labor Case No. 21-036**
Chun Li,	)	
Complainant,	)	**ORDER OF DISMISSAL**
v.	)	
Jenny N. Deleon Guerrero,	)	
Respondent.	)	

This matter came for an Order to Show Cause Hearing on June 10, 2021 at 1:30 p.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Chun Li ("Complainant") was present and self-represented. Respondent Jenny N. Deleon Guerrero ("Respondent") was present and self-represented. The hearing was facilitated by Interpreter Brandon Doggett.

This Order to Show Cause Hearing was scheduled to determine whether the complaint should be dismissed for lack of jurisdiction and failure to state a claim. "The hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit." 3 CMC § 4947. Pursuant to 3 CMC § 4942, "[t]he Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of labor and wage laws of the Commonwealth . . . ." Additionally, "[t]he Administrative Hearing Office shall have jurisdiction to conduct adjudicative proceedings with respect to all issues of fact and law arising under labor laws applicable in the Commonwealth." NMIAC § 80-20.1-450. Generally, the claims that fall within the Administrative Hearing Office's jurisdiction are those that allege a violation or Commonwealth labor and wage laws and arise from an employee-employer relationship. 41 Com. Reg. 042161 (June 28, 2019); *see also* 41 Com. Reg. 042197 (June 28, 2019) (breach of employment contract claim dismissed against a non-party to contract).

On April 1, 2021, Complainant filed a claim for breach of contract and sought damages for the cost of unpaid labor and cost of materials for a home renovation. Notably, Respondent disputes entering into a contract with Complainant—rather, Respondent claims she entered into the contract with Complainant's interpreter, Jason. Moreover, Respondent alleges that she paid Jason and Jason allowed deductions due to unsatisfactory work performed. Ultimately, Respondent claims that it was Complainant who is in breach of contract.

Based on the filings and testimony provided, this claim does not arise from a violation of labor and wage laws between an employee[1] and employer. Instead, this dispute is a breach of construction contract between a homeowner owner and independent contractor.[2] During the Administrative Hearing, Complainant purported to be a Commonwealth Only Transitional Worker ("CW-1") allegedly authorized to work as a construction worker for ZYS Corporation. However, Complainant stated that this construction project does not involve his employer, ZYS Corporation, but himself in his personal capacity. Notably, Complainant does not have written documentation to substantiate that he is authorized to work for Respondent or Mr. Cabrera nor does he have a business license to engage in the business of construction during the alleged time period.

In consideration of above, this matter does not arise from a labor and wage violation between an employee and an employer. Moreover, the complaint does not adequately identify the correct parties and fails to state a claim against Respondent. Accordingly, the undersigned finds that dismissal for lack of jurisdiction and failure to state a claim is appropriate. Pursuant to 3 CMC § 4947, this complaint is hereby **DISMISSED**, with prejudice.

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[1] Unlike an employee, "an independent contractor is: [A] person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking." *Castro v. Hotel Nikko Saipan, Inc.*, 4 NMI 268, N7 (1995).

[2] The factors to determine whether an individual is an employee or independent contractor are: "(a) The extent of control which, by the agreement, the [employer] may exercise over the details of the work; (b) Whether or not the one employed is engaged in a distinct occupation or business; (c) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (d) The skill required in the particular occupation; (e) Whether the employer of the workman supplies the instrumentalities, tools, and the place of work for the person doing the work; (f) The length of time for which the person is employed; (g) The method of payment, whether by the time or by the job; (h) Whether or not the work is a part of the regular business of the employer; (i) Whether or not the parties believe they are creating the relations of master and servant; and (j) Whether the principal is or is not a business." *Castro v. Hotel Nikko Saipan, Inc.*, 4 NMI 268 (1995).

Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.[3]

So ordered this **14th** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

[3] The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of: Soawanee N. Witer, Appellant, v. CNMI Department of Labor, Division of Employment Services-PUA, Appellee.	)	**PUA Case No. 21-0044** **ADMINISTRATIVE ORDER**

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on June 9, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Soawanee N. Witer ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Coordinator Zachary Taitano. The hearing was facilitated by Interpreter Poonsri Algaier.

Exhibits:

1. Exhibit 1: Copy of the Appellant's Application Snapshot filed July 27, 2020;
2. Exhibit 2: Copy of Department's Disqualifying Determination dated December 30, 2020;
3. Exhibit 3: Copy of Appellant's Request to File an Appeal filed January 4, 2021;
4. Exhibit 4: Copy of Notice of Hearing issued January 5, 2021;
5. Exhibit 5: Copy of Department's Disqualifying Determination dated April 15, 2021;
6. Exhibit 6: Copy of the Notice of Hearing issued April 23, 2021;
7. Exhibit 7: Copy of USCIS Save Response, initiated December 28, 2020;
8. Exhibit 8: Copy of Appellant's EAD C09 Card, valid June 1, 2020 to May 31, 2021;
9. Exhibit 9: Copy of Appellant's USCIS Notice of Action;
10. Exhibit 10: Copy of Appellant's Notice of Parole;

11. Exhibit 11: Copy of Appellant's Business License;

12. Exhibit 12: Copy of Appellant's 1040CM Form filed in 2020; and

13. Exhibit 13: Copy of Appellant's Business Gross Revenue Tax Return.

For the reasons stated below, the Department's Determination dated December 30, 2020 is **AFFIRMED**. Claimant is not eligible for benefits for the period of March 15, 2020 to December 26, 2020. Also, the Department's Determination dated April 15, 2021 is **AFFIRMED**. Claimant is not eligible for benefits for the period of December 27, 2020 to March 13, 2021.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")[1] and Federal Pandemic Unemployment Compensation ("FPUC").[2] On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.[3] On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law.[4] The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued a Disqualifying Determination on December 30, 2020. On January 4, 2021, Appellant filed a

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[1] *See* Section 2102 of the CARES Act of 2020, Public Law 116-136.
[2] *See* Section 2104 of the CARES Act of 2020, Public Law 116-136.
[3] *See* Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").
[4] Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

request to appeal the Disqualifying Determination stating that she believes she is eligible for PUA based on her employment authorization. The matter was scheduled for an Administrative Hearing, which was subsequently continued in order to obtain an interpreter. On April 15, 2021 the Department issued a second Disqualifying Determination for next round of unemployment benefits. On April 23, 2021 the Administrative Hearing Office was able to secure a licensed interpreter and scheduled the matter for a hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds should be returned.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the COVID-19 pandemic, Appellant was self-employed as a taxi driver for "T Witer Taxi Service".[5] Due to the COVID-19 pandemic, there was a decrease in tourism and a substantial reduction in available customers. In comparison to the prior tax year, Appellant reported a significant diminution of income in the year 2020.[6] Appellant still has not return to her customary income.[7]
2. On June 17, 2020, the Department launched the PUA and FPUC programs. On or around July 27, 2020, Appellant submitted an application[8] for unemployment assistance under the PUA and FPUC programs administered by the Department. In her application, Appellant self-certified under penalty of perjury that:
    a. She is an Alien/Refugee lawfully admitted to U.S.;
    b. That her employment was affected as a direct result of a COVID-19 because her place of employment was closed; and
    c. Her employment was affected since March 21, 2020.

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[5] Exhibit 1 and Exhibit 11.
[6] Exhibit 12.
[7] Exhibit 13.
[8] Exhibit 1.

3. With respect to Appellant's immigration status and employment authorization, Appellant provided testimony and substantiating evidence to demonstrate the following:
    a. On January 11, 2019, USCIS issued a Notice of Action approving Appellant's Application for Employment Authorization under EAD Code C11,[9] valid for March 7, 2018 to June 29, 2019.[10]
    b. On October 25, 2019, USCIS issued a Notice of Parole stating that "[o]n June 29, 2019 USCIS automatically extended Appellant's transitional parole through October 28, 2019." Further, Notice of Parole stated that "[Appellant's] period of parole is valid from October 29, 2019 to June 29, 2020.[11]
    c. On or around December 2019, Appellant applied for permanent residency. To date, Appellant's application for permanent residency is pending. However, upon submitting her application, Appellant was granted employment authorization EAD Code C09,[12] valid for June 1, 2020 to May 31, 2021.
    d. Appellant does not have employment authorization from June 29, 2019 to June 1, 2020.
    e. Appellant has no other documents or evidence to demonstrate that she is a qualified alien during the time period she is claiming benefits.
4. Upon further review of Appellant's supporting documents, the Department entered Appellant's information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division. This database is used to determine the immigration status of PUA applicants so only those entitled to benefits receive them.
5. The SAVE results indicate that Appellant is a non-national of the U.S. with temporary employment authorization. The results confirm that Appellant's employment authorization is under Category C09.[13]
6. On December 30, 2020, the Department issued a determination disqualifying Appellant from PUA and FPUC benefits from March 15, 2020 to December 26, 2020 because they

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[9] Category C11 is an EAD Code established by USCIS to demark that the individual's employment authorization is pursuant to their parolee status. Category C11 is linked to the Qualified Alien definition, provided that the individual meets the aggregate one-year requirement.
[10] Exhibit 9.
[11] Exhibit 10.
[12] Category C09 is an EAD Code established by USCIS to demark that the individual's status is pending an adjustment. Category C09 is not linked to any provision in the Qualified Alien definition.
[13] Exhibit 7.

found that Appellant was not a US Citizen, Non-citizen National, or Qualified Alien eligible for federal public benefits.[14]

7. On January 4, 2021, Appellant filed an appeal to contest the determination.[15] The next day, the Administrative Hearing Office issued a Notice of Hearing scheduling the matter for a hearing on February 10, 2021. On February 10, 2021, the hearing was continued due to the need for an interpreter.
8. While the appeal was pending, the Department issued a second Disqualifying Determination on April 15, 2021.[16] Therein, the Department disqualified Appellant for benefits effective December 27, 2020 to March 13, 2021 for the same reason. After securing an interpreter, the Administrative Hearing Office issued a second Notice of Hearing and scheduled the matter for June 9, 2021.[17]
9. During the hearing, the Appellant confirmed that she contests and would like to appeal both determinations.
10. During the Administrative Hearing, the Department confirmed there are no overpayment issues in this case.[18]

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's employment was affected as a direct result of COVID-19.

In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;[19] (2) self-certifies[20] that the individual is unemployed, partially unemployed, or unable or unavailable to work[21]

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[14] Exhibit 2.
[15] Exhibit 3.
[16] Exhibit 5.
[17] Exhibit 6.
[18] Accordingly, the issue of overpayment is moot and not discussed further in this Order.
[19] This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.
[20] The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of perjury.
[21] A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible

as a direct result[22] of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides required documentation of employment/self-employment within the applicable period of time.[23]

With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act specifically identifies the COVID-19 qualifying reasons[24] as:

> (aa) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
> (bb) A member of the individual's household has been diagnosed with COVID-19;
> (cc) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
> (dd) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
> (ee) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
> (ff) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
> (gg) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
> (hh) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
> (ii) The individual has to quit his or her job as a direct result of COVID-19;
> (jj) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
> (kk) The individual meets any additional criteria established by the US Secretary of Labor for unemployment assistance under PUA.

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for benefits. *See* HAR § 12-5-35.

[22] Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

[23] Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020.

[24] These reasons are further defined or illustrated in UIPL 16-20, Change 4.

Additional criteria established by the US Secretary of Labor under item (kk)[25], above, includes:

> (1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
> (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
> (3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
> (4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Here, Appellant submitted a claim for PUA and FPUC Benefits self-certifying, under penalty of perjury, that her employment was affected as a direct result of COVID-19 because her business was closed. While the business was not closed completely, it is clear that Appellant suffered a significant diminution of income since the onset of the pandemic. Specifically, in 2019, Appellant reported $24,400 in income. However, because of the lack of tourism and available customers, Appellant did not make as much the following year. Specifically, in 2020, Appellant reported $1,200 in income. Based on the applicable law and evidence provided, Appellant's employment was affected under item (kk)(1), listed above. Accordingly, Appellant's employment was affected as a direct result of COVID-19.

2. Appellant is a qualified alien from March 15, 2020 to June 29, 2020.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

[25] *See* Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Further, Section 265 of the Continued Assistance Act provides that a Commonwealth Only Transitional Worker (CW-1) shall be considered a qualified alien for purposes of eligibility under the PUA and FPUC programs.

When Appellant filed her appeal, Appellant argued she was a qualified alien simply because of her employment authorization. However, Appellant's argument does not accurately reflect the applicable law.

Based on the evidence provided, the undersigned finds that Appellant meets the qualified alien definition above from the time she began her claims on March 15, 2020 to the end of her parole period, June 29, 2020. Here, Appellant substantiated that she was a parolee from March 7, 2018 to June 29, 2020. Further, considering the length and uninterrupted period of parole, Appellant met the aggregate one-year requirement for parolees. However, Appellant was not a qualified alien after June 29, 2020. Here, Appellant has no other documents or evidence to demonstrate parolee status after June 29, 2020. When asked about the other provisions of the qualified alien definition, Appellant could not satisfy any other provision. Specifically, Appellant indicated she applied for permanent residency on or around December 2019 but her application is still pending. Pending applications fall short of the alien admitted for permanent residence provision above. Accordingly, Appellant is a qualified alien for the limited time period of March 15, 2020 to June 29, 2020.

3. Appellant is not able and available to work in the CNMI outside the relevant employment authorization period.

A claimant must be able to work and be available for work to be eligible for benefits. "An individual shall be deemed able and available for work...if the individual is able and available for suitable work during the customary work week of the individual's customary occupation which falls ***within the week for which a claim is filed.***"[26] "An individual shall be deemed ***able*** to work

[26] HAR § 12-5-35(a) (emphasis added).

if the individual has the physical and mental ability to perform the usual duties of the individual's customary occupation or other work for which is the individual is reasonably fitted by training and experience."[27] "An individual shall be deemed ***available*** for work only if the individual is ready and willing to accept employment for which the individual is reasonably fitted by training and experience. The individual must intend and wish to work, and there must be no undue restrictions either self-imposed or created by force of circumstances which prevent the individual from accepting employment."[28] For qualified aliens, the inquiry of whether an individual is "able and available" also hinges on whether they are authorized to work during the weeks claimed.

Here, the limitations on Appellant's employment authorization seriously restrict her ability to work in the CNMI—as well as her ability to claim PUA benefits. PUA benefits cannot be distributed or paid out for any time period the claimant is not legally authorized to work because the individual does not meet the above-stated "able and available" requirement. While Appellant was deemed a qualified alien from March 15, 2020 to June 29, 2020 – there was no showing that she was authorized to work at that time. Moreover, Appellant confirmed that she does not have an EAD card or any other authorization during that time because she was waiting for the approval of her permanent residency. Considering that Appellant cannot meet the able and available requirement during the time period her employment was affected and she was a qualified alien, she is ineligible for PUA and FPUC benefits.

VI. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated December 30, 2020, is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 15, 2020 to December 26, 2020;
3. The CNMI Department of Labor's Disqualifying Determination, dated April 15, 2021, is **AFFIRMED**; and
4. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of December 27, 2020 to March 13, 2021.

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[27] HAR § 12-5-35(a)(1) (emphasis added).
[28] HAR § 12-5-35(a)(2) and (b) (emphasis added).

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this **15th** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	**PUA Case No. 21-0079**
Patrick M. Takai	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
v.	)	
CNMI Department of Labor, Division of Employment Services-PUA,	)	
Appellee.	)	

On June 7, 2021, the Department filed a Motion to Dismiss the above-captioned appeal. Therein, the Department states that it issued a new determination finding Appellant qualified for PUA benefits, effective March 29, 2020. On June 8, 2021, Appellant confirmed receipt of the new determination and did not contest dismissal.

In consideration of above, the undersigned finds that there are no issues for appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for June 10, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **9th** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	**PUA Case No. 21-0101**
Michael M. Williams,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
v.	)	
CNMI Department of Labor, Division of Employment Services-PUA,	)	
Appellee.	)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on June 8, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Michael M. Williams ("Appellant") was not present or represented in the CNMI. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker Dennis Cabrera and PUA Coordinator Vincent Sablan.

Exhibits:

1. Exhibit 1: Copy of Appellant Application Snapshot, filed October 6, 2020;
2. Exhibit 2: Copy of Appellant Weekly Certification;
3. Exhibit 3: Copy of Online Portal Review;
4. Exhibit 4: Copy of Department's Request for Documents;
5. Exhibit 5: Department's Disqualifying Determination issued February 18, 2021;
6. Exhibit 6: Appellant's Request to File an Appeal, filed March 18, 2021; and
7. Exhibit 7: Notice of Hearing, issued March 18, 2021;

For the reasons stated below, the Department's Determination dated February 18, 2021 is **AFFIRMED**. Claimant is not eligible for benefits for the period of May 10, 2020 to March 13, 2021.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")[1] and Federal Pandemic Unemployment Compensation ("FPUC").[2] On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.[3] On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law.[4] The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

Upon review of the records, the appeal was not timely filed. Accordingly, as discussed below, jurisdiction is not established.

III. PROCEDURAL HISTORY & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued a Disqualifying Determination on February 18, 2021. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the appeal is timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an overpayment occurred and funds should be returned.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. On October 6, 2020, Appellant filed an online application to claim PUA and FPUC benefits.[5] Therein, Appellant self-certified, under penalty of perjury that:

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[1] *See* Section 2102 of the CARES Act of 2020, Public Law 116-136.
[2] *See* Section 2104 of the CARES Act of 2020, Public Law 116-136.
[3] *See* Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").
[4] Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.
[5] Exhibit 1.

a. His employment was affected as a direct result of the COVID 19 pandemic when his place of employment was closed as a direct result of the COVID-19 public health emergency;
b. His last place of employment was Capricciosa in Saipan;
c. His employment was affected as of May 11, 2020; and
d. He is able and available to work in Saipan for the weeks claimed.

2. There is no showing that Appellant has any attachment to the CNMI Workforce.
   a. Upon review of Appellant's Application, the Department found that Appellant was filing his claim with an IP address in London, England.[6]
   b. Upon request, Appellant failed to submit any documents to substantiate his employment with Capricciosa in Saipan.[7]
   c. On April 5, 2021, Appellant filed a proposed exhibit purporting to be a 1040 form demonstrating Appellant was employed as a "Worker" for Young N Turnt Kidz LLC incorporated in Florida.
   d. Appellant has not provided any contact information in the CNMI.
3. Based on fraud triggers on Appellant's application, the online portal automatically adjudicated Appellant's claim. On February 18, 2021, the Department issued a Determination disqualifying Appellant for benefits from May 10, 2020 to March 13, 2021.[8]
4. On March 18, 2021, Appellant filed an appeal with the Administrative Hearing Office.[9]
5. On March 18, 2021, the Administrative Hearing Office issued a Notice of Hearing, setting the present matter for a hearing and advising the parties of the proceedings.[10]
6. On June 8, 2021, Appellant failed to provide any proposed exhibits to support his claim and did not appear for the scheduled hearing.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

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[6] Exhibit 3.
[7] Exhibit 4.
[8] Exhibit 5.
[9] Exhibit 6.
[10] Exhibit 7.

1. Appellant's appeal is not timely filed.

Generally, an appeal should be filed within ten days after the Notice of Determination was issued or served to the claimant. However, the Department may extend the period to thirty days by a showing of good cause.[11] Good cause means: (1) illness or disability; (2) keeping an appointment for a job interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent a reasonable person from complying as directed.[12]

Here, Appellant failed to file within the 10-day deadline. Specifically, the Determination was issued on February 18, 2021 and Appellant did not file his appeal until 30 days after on March 18, 2021. Additionally, based on his failure to appear or participate in the hearing, there is no showing of good cause for an extension of the filing deadline. Accordingly, the appeal is not timely filed and jurisdiction is not established. Moreover, because the appeal is untimely, the Administrative Hearing Office does not have jurisdiction to review the Department's Determination and the Determination shall be deemed final.

VI. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated February 18, 2021, is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of May 10, 2020 to March 13, 2021.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,

[11] HI. Rev. Statute § 383-38(a).
[12] HAR § 12-5-81(j).

filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this **9th** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	**PUA Case No. 21-0107**
Richer Phan Ta,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
v.	)	
CNMI Department of Labor, Division of Employment Services-PUA,	)	
Appellee.	)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on May 26, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Richer Phan Ta ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker Dennis Cabrera.

Witness:

1. Tony M. Sablan, Assistant Manager

Exhibits:

1. Exhibit 1: Copy of Appellant Application Snapshot, filed December 18, 2020;
2. Exhibit 2: Department's Disqualifying Determination issued April 7, 2021;
3. Exhibit 3: Department's Disqualifying Determination issued May 4, 2021;
4. Exhibit 4: Appellant's Request to File an Appeal, filed April 14, 2021;
5. Exhibit 5: Notice of Hearing, issued April 14, 2021;
6. Exhibit 6: Copy of Appellant's Employment Certification, dated December 18, 2020
7. Exhibit 7: Copy of Appellant's Travel Itinerary
8. Exhibit 8: Copy of Phan, Inc. Workforce Listing
9. Exhibit 9: Copy of Appellant's Paystubs

10. Exhibit 10: Email Communication from Benefit Payment Control Unit dated May 19, 2021.

For the reasons stated below, the Department's Determination dated May 4, 2021 is **AFFIRMED**. Claimant is not eligible for benefits for the period of February 16, 2020 to December 26, 2020.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")[1] and Federal Pandemic Unemployment Compensation ("FPUC").[2] On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.[3] On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law.[4] The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued a Disqualifying Determination on April 7, 2021 finding that Appellant was not qualified for PUA because he was not connected to the CNMI workforce. On April 14, 2021, Appellant filed a request to appeal the determination and provided documents to substantiate employment in the

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[1] *See* Section 2102 of the CARES Act of 2020, Public Law 116-136.
[2] *See* Section 2104 of the CARES Act of 2020, Public Law 116-136.
[3] *See* Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").
[4] Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

CNMI. Subsequently, on May 4, 2021, the Department issued a second Disqualifying Determination finding that Appellant was not eligible for PUA because he was not able and available to work in the CNMI while he was off island. As stated on the Notice of Hearing, the issues during the Administrative Hearing were: (1) whether Appellant was eligible for PUA benefits; and (2) whether an overpayment occurred to which Appellant must pay back.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Appellant was employed as a Range Safety Officer[5] at Phan Inc. dba Bing Beng Bang Shooting Gallery ("Employer"), located in Garapan, Saipan. Prior to the pandemic, Appellant was a full-time employee paid a salary of $1,200 per month.[6]
2. Prior to the COVID-19 pandemic, Appellant decided to travel to New Zealand for his brother in law's wedding. A couple months before his trip, Appellant bought his plane ticket. On February 22, 2020, Appellant departed Saipan.[7] After transiting through Guam and Osaka, Appellant arrived in New Zealand on February 24, 2020.[8] At this time, Appellant did not have a return ticket to Saipan.
3. Appellant alleges he was furloughed from Employer due to the economic impact of the COVID-19 pandemic. The circumstances of Appellant's alleged furloughed status is questionable. Additionally, Appellant's testimony was not credible due to a number of ambiguous, inconsistent, and contradictory statements made under oath.
    a. First, Appellant indicated he was able to take an indefinite amount of leave from work because his father owned the company.
    b. Second, Appellant stated he was furloughed on Saturday, February 22, 2020—the same day he departed Saipan. However, in his application, Appellant stated that he was not laid off within the last twelve months.
    c. Third, Appellant stated he was never given written notice but only heard about the furlough through word of mouth. Alternatively, the Assistant Manager stated that furloughed employees were given written notice.

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[5] Appellant testified to being the Range Safety Officer and Manager. Appellant's testimony is not credible because the evidence provided contradict his testimony. Specifically, the workforce listing names someone else as the Manager and the paystubs only match his Range Safety Officer salary. *See* Exhibits 8-9.
[6] Exhibit 8.
[7] Exhibit 7.
[8] Exhibit 7.

d. Fourth, at the request and direction of Appellant, the Assistant Manager provided Appellant a letter stating he was furloughed on February 22, 2020. This letter[9] was dated December 18, 2020—the date Appellant had his sister submit his online application for PUA. Appellant could not provide a written furlough or separation notice that was sent to him on or around February 22, 2020.

4. Despite having constructive knowledge of the developing COVID-19 pandemic[10] and alleging a fear of travel, Appellant continued his travel to California. Appellant departed New Zealand on March 17, 2020. After transiting through Australia, Appellant arrived in Orange County, California on March 17, 2020.[11]
5. During this time, California was in a state of emergency, experiencing a spike in COVID-19 cases, and had several shelter-in-place or lockdowns in Northern California. Generally, the public was encouraged to limit travel and quarantine.
6. Notwithstanding above, Appellant was allowed to travel back to Saipan. However, Appellant chose not to return to Saipan due to fear of contracting the COVID-19 virus while travelling with his pregnant wife and two children.
7. While off island, certain fraud controls on the online portal prevented Appellant from filing a claim for unemployment benefits. Appellant resorted to having his sister file his claim on his behalf. Appellant stated that he and his sister filled out the application and weekly certifications together while he was on facetime.
8. Appellant and his sister filed the online application on December 18, 2020. In his application, Appellant self-certified, under penalty of perjury that:[12]
    a. He did not receive notice of termination, layoff, or military separation in the last twelve months;
    b. His employment was affected as a direct result of the COVID 19 pandemic because he was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of COVID-19;
    c. He is not able to telework with at least the same hours and pay;
    d. He was supposed to start working on March 1, 2020;

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[9] Exhibit 6.
[10] The World Health Organization declared the outbreak a Public Health Emergency of International Concern on January 30, 2020 and a pandemic on March 11, 2020.
[11] Exhibit 7.
[12] Exhibit 1, pages 3-4, and 6.

e. His employment was affected as of February 22, 2020; and

f. He understood that he must be able and available to go to work during the weeks he was claiming.

9. On February 13, 2021, Appellant departed Orange County, California and arrived in Saipan on February 15, 2021.[13] Appellant indicated that he was not ordered to quarantine upon return to the CNMI.

10. On April 7, 2021, the Department issued the first Disqualifying Determination finding that Appellant was not connected to the CNMI workforce.[14] Therein, Appellant was disqualified for benefits effective February 16, 2020.

11. On April 14, 2021, Appellant filed the present appeal and the Administrative Hearing Office set the matter for a hearing.[15]

12. On May 4, 2021, the Department issued a second Disqualifying Determination[16] finding that Appellant was not eligible for PUA benefits because he did not meet the "able and available" requirements under state law. Therein, Appellant was disqualified for benefits effective February 16, 2020 to December 26, 2020.

13. During the Administrative Hearing, the Department's Benefit Payment Control Unit ("BPC") confirmed there were no overpayment issues in this case.[17] Accordingly, the overpayment issue is not discussed further.

14. To date, Appellant was not recalled back to work.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant was not able and available to work in the CNMI.

In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State

[13] Exhibit 7.
[14] Exhibit 2.
[15] Exhibit 4-5.
[16] Exhibit 3.
[17] Exhibit 10.

or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;[18] (2) self-certifies[19] that the individual is unemployed, partially unemployed, or ***unable or unavailable*** to work[20] as a direct result[21] of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides required documentation of employment/self-employment within the applicable period of time.[22] Section 2 of the "covered individual" definition above generally requires that a claimant's employment was directly affected by qualifying COVID-19 reason and but for that reason, the claimant is able and available to work.

"An individual shall be deemed able and available for work . . . if the individual is able and available for suitable work during the customary work week of the individual's customary occupation which falls within the week for which a claim is filed."[23] "An individual shall be deemed ***able*** to work if the individual has the physical and mental ability to perform the usual duties of the individual's customary occupation or other work for which is the individual is reasonably fitted by training and experience."[24] "An individual shall be deemed ***available*** for work only if the individual is ready and willing to accept employment for which the individual is reasonably fitted by training and experience. The individual must intend and wish to work, and there must be no undue restrictions either self-imposed or created by force of circumstances which prevent the individual from accepting employment."[25] In determining whether an individual is able and available, it is proper to consider the individual's geographical location at the time benefits are claimed.[26] Generally, a claimant must be in the CNMI to be able and available to work. 42 Com. Reg. 044471 (Nov. 28, 2020); 43 Com. Reg. 045423 (Feb. 28, 2021); 43 Com. Reg. 045555 (Mar. 28, 2021). If a claimant is not physically able or available for work, he or she

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[18] This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.
[19] The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of perjury.
[20] A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible for benefits. *See* HAR § 12-5-35.
[21] Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.
[22] Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020.
[23] HAR § 12-5-35(a)
[24] HAR § 12-5-35(a)(1) (emphasis added).
[25] HAR § 12-5-35(a)(2) and (b) (emphasis added).
[26] *See* HAR § 12-5-3(b) ("The geographical extent of such area is limited to the area in which the individual lives and within which the individual reasonably can be expected to commute to work.")

may be disqualified for PUA, unless the reason he or she is unable or unavailable is directly related to a COVID-19 reason, such as illness and orders to quarantine.

As a preliminary matter, the undersigned recognizes the limitations and volatility in travel during the COVID-19 pandemic. Further, the undersigned recognizes the substantial fear in potentially contracting COVID-19 while travelling. However, it is also important to note that Appellant chose to travel to New Zealand amidst a developing pandemic for personal reasons unrelated to COVID-19. Moreover, Appellant chose to continue to travel to California during the state's peak or surge of COVID-19 outbreaks. Lastly, while Appellant could have returned home, Appellant remained in California for almost a year because he was afraid of contracting COVID-19 while traveling. The fear of contracting COVID-19 is not a qualifying reason affecting employment under the CARES Act. While Appellant alleges that he was furloughed from his father's company, the primary reason he was unable or unavailable to work was because he was off-island.

Here, Appellant was denied benefits because the Department found that he was not "able" and "available" to work in the CNMI, in accordance to state law. In his initial application, Appellant misrepresented that he was able and available to work. Logically, Appellant cannot go to work because he was not physically in Saipan from February 22, 2020 to February 15, 2021. During the Administrative Hearing, Appellant argued that he was able and available because he could work from home, if requested. Ultimately, Appellant's arguments are not persuasive considering: (1) Appellant certified that he could not telework on his application; and (2) the customary duties of a Range Safety Officer require Appellant to be present on the jobsite to ensure that the guns are handled and stored properly. Accordingly, Appellant is not "able" and "available" to work in the CNMI, for reasons unrelated to the qualifying COVID-19 reasons listed under the CARES Act. Since Appellant does not meet the "able" and "available" requirements, Appellant is not eligible for PUA benefits.

VI. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated May 4, 2021, is **AFFIRMED**; and
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February 16, 2020 to December 26, 2020.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this **1st** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	**PUA Case No. 21-0108**
Wayne James Aldan,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
v.	)	
CNMI Department of Labor, Division of Employment Services-PUA,	)	
Appellee.	)	

On June 2, 2021, Appellant filed a request to withdraw the above-captioned Appeal – stating he no longer contest the overpayment and agree to enter into a reasonable payment plan to return the overpayment. Additionally, the Department filed a Motion to Dismiss the appeal confirming that the parties have agreed to and entered into a reasonable payment plan.

In consideration of above, the undersigned finds that there are no issues on appeal. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for June 3, 2021 at 9:00 a.m. is hereby **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **2nd** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of: Ella Stephanson, Appellant, v. CNMI Department of Labor, Division of Employment Services-PUA, Appellee.	)	**PUA Case No. 21-0109** **ADMINISTRATIVE ORDER**

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on June 15, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Ella Stephanson ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by PUA Supervisor Sharon Palacios, PUA Coordinator Vanessa Fitial, PUA Coordinator Zachary Taitano, and Labor Certification Worker Dennis Cabrera.

Witnesses:

1. Sidney Stephanson[1]

Exhibits:

1. Exhibit 1: Copy of the Appellant's Application Snapshot filed August 24, 2020;
2. Exhibit 2: Copy of DFS Employment Certification;
3. Exhibit 3: Copy of DFS Notice of Layoff;
4. Exhibit 4: Copy of Appellant's EAD Cards;
    a. Category C09, Valid from May 6, 2019 to May 5, 2020;
    b. Category C09, Valid from June 22, 2020 to June 21, 2021;
5. Exhibit 5: Copy of USCIS Save Response, initiated September 9, 2020;

[1] Mr. Stephanson, Appellant's father was named as a witnesses and present during the hearing. However, Mr. Stephanson did not provide any sworn testimony during the hearing.

6. Exhibit 6: Copy of Appellant's Payment Summary;
7. Exhibit 7: Copy of Appellant's First Hawaiian Bank Statement;
8. Exhibit 8: Copy of Department's Disqualifying Determination dated September 15, 2020;
9. Exhibit 9: Copy of USCIS Save Response, initiated April 16, 2021;
10. Exhibit 10: Copy of Department's Notice of Overpayment, dated April 22, 2021;
11. Exhibit 11: Copy of Appellant's Request to Filed an Appeal, filed April 23, 2021; and
12. Exhibit 12: Copy of Notice of Hearing, issued April 23, 2021.

For the reasons stated below, the Department's Disqualifying Determination dated September 15, 2020 is **AFFIRMED**. Appellant is not eligible for benefits for the period of April 26, 2020 to December 26, 2020. Also, the Department's Notice of Overpayment dated April 22, 2021 is **AFFIRMED**. Appellant is overpaid in the total amount of $12,600 for weeks ending May 2, 2020 through August 29, 2020. Due to Appellant's fault in providing a false material statement on her application, Appellant is not entitled to a waiver and is required to repay the total amount of $12,600.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")[2] and Federal Pandemic Unemployment Compensation ("FPUC").[3] On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.[4] On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law.[5] The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

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[2] *See* Section 2102 of the CARES Act of 2020, Public Law 116-136.
[3] *See* Section 2104 of the CARES Act of 2020, Public Law 116-136.
[4] *See* Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").
[5] Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI

Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is established.

III. PROCEDURAL HISTORY & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs and was paid unemployment benefits based on the answers provided in her application. Upon further review of Appellant's application and supporting documents, the Department issued a Disqualifying Determination on September 15, 2020. On April 22, 2021 the Department issued a Notice of Overpayment in the amount of $12,600 for the weeks ending May 2, 2020 through August 29, 2020. On April 23, 2021, Appellant filed a request to appeal the Notice of Overpayment. The matter was scheduled for an Administrative Hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds should be returned.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the COVID-19 pandemic, Appellant was employed as a part-time sales associate for DFS Saipan Limited ("Employer"). Generally, Appellant worked 20 hours per week at $8.69 per week. Because of the impact of the COVID-19 pandemic, Employer placed Appellant on 50% furlough from April 21, 2020 through May 20, 2020. Beginning May 21, 2020, Appellant was placed on 100% furlough.[6]
2. Except for a handful of days, Employer has remained closed to the public. Appellant has not been recalled back to work.
3. Employer began layoffs on July 31, 2020.[7]
4. On or around August 24, 2020, Appellant submitted an application[8] for unemployment assistance under the PUA and FPUC programs administered by the Department. In her application, Appellant self-certified under penalty of perjury that:
    a. She is a U.S. Permanent Resident;

Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

[6] Exhibit 2.
[7] Exhibit 3.
[8] Exhibit 1.

b. That her employment was affected as a direct result of a COVID-19 because her place of employment was closed; and

c. Her employment was affected since April 30, 2020.

5. With respect to Appellant's immigration status and employment authorization, Appellant provided testimony and substantiating evidence to demonstrate the following:

a. Appellant applied for permanent residency but her application has yet to be granted;

b. The answer she submitted on her application was false; and

c. Appellant has employment authorization to work in the CNMI under EAD Code C09, valid from May 6, 2019 to May 5, 2020 and June 22, 2020 to June 21, 2021.[9]

6. Appellant has no other documents or evidence to demonstrate that she is a qualified alien during the time period she is claiming benefits.

7. On September 9, 2020, the Department entered Appellant's information into the Systematic Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification Division. This database is used to determine the immigration status of PUA applicants so only those entitled to benefits receive them. The SAVE results indicate that Appellant is a non-national of the U.S. with temporary employment authorization. The results further confirm that Appellant's employment authorization is under Category C09.[10]

8. Based on the answers submitted on Appellant's online application, Appellant's claim was auto-adjudicated and processed for payment. On September 15, 2020, Appellant received $12,600 lump sum payment of PUA and FPUC benefits by direct deposit.[11] Specifically, Appellant received $5,580 in PUA benefits and $7,020 in FPUC benefits for weeks ending May 2, 2020 through August 29, 2020.[12]

9. On September 15, 2020, the Department issued a determination disqualifying Appellant from PUA and FPUC benefits from April 26, 2020 to December 26, 2020 because they found that Appellant was not a US Citizen, Non-citizen National, or Qualified Alien eligible for federal public benefits.[13]

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[9] Exhibit 4.
[10] Exhibit 5.
[11] Exhibit 7.
[12] Exhibit 6.
[13] Exhibit 8.

10. On April 16, 2021, the Department initiated another SAVE verification to determine if there were any changes to Appellant's status. The results were unchanged.[14]
11. On April 22, 2021, the Department issued a Notice of Overpayment for the total amount of $12,600 for the paid weeks ending May 2, 2020 through August 29, 2020.[15]
12. On April 23, 2021, Appellant filed an appeal to contest the Notice of Overpayment.[16] That same day, the Administrative Hearing Office issued a Notice of Hearing scheduling the matter for a hearing on June 15, 2021.[17]

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's employment was affected as a direct result of COVID-19.

In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;[18] (2) self-certifies[19] that the individual is unemployed, partially unemployed, or unable or unavailable to work[20] as a direct result[21] of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides required documentation of employment/self-employment within the applicable period of time.[22]

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[14] Exhibit 9.
[15] Exhibit 10.
[16] Exhibit 11.
[17] Exhibit 12.
[18] This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.
[19] The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of perjury.
[20] A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible for benefits. *See* HAR § 12-5-35.
[21] Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.
[22] Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020.

With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act specifically identifies the COVID-19 qualifying reasons[23] as:

(aa) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
(bb) A member of the individual's household has been diagnosed with COVID-19;
(cc) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
(dd) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
(ee) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
(ff) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
(gg) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
(hh) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
(ii) The individual has to quit his or her job as a direct result of COVID-19;
(jj) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
(kk) The individual meets any additional criteria established by the US Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (kk)[24], above, includes:

(1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
(2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly

[23] These reasons are further defined or illustrated in UIPL 16-20, Change 4.
[24] *See* Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;

(3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and

(4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Here, Appellant submitted a claim for PUA and FPUC Benefits self-certifying, under penalty of perjury, that her employment was affected as a direct result of COVID-19 because her Employer was closed. Appellant began experiencing a reduction of hours and shortly thereafter laid off. With the exception of a few sporadic sale events, Employer has been closed to the public since its closure in 2020. Based on the applicable law and evidence provided, Appellant's employment was affected under item (kk)(1) and (jj), listed above. Accordingly, Appellant's employment was affected as a direct result of COVID-19.

2. Appellant is not a qualified alien.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

Further, Section 265 of the Continued Assistance Act provides that a Commonwealth Only Transitional Worker (CW-1) shall be considered a qualified alien for purposes of eligibility under the PUA and FPUC programs.

Based on the evidence provided, the undersigned finds that Appellant does not meet the qualified alien definition above. First, Appellant was unable to provide any documentary evidence to substantiate her status under any of the qualified alien provisions, listed above. When asked about each provision, Appellant responded in the negative. Second, Appellant's pending application for permanent residency is not the equivalent of being admitted or granted permanent residency. While the undersigned recognizes the delays with her applications, the pending application does not satisfy or demonstrate qualified alien status. Third, Appellant's argument that she has employment authorization is not persuasive. Specifically, Appellant was granted employment authorization under EAD Code C09 from May 6, 2019 to May 5, 2020 and June 22, 2020 to June 21, 2021. Upon review, Appellant's EAD Code C09 does not correspond to any provision within the Qualified Alien definition. Instead, Category C09 is a code that USCIS utilizes for applicants pending an adjustment in status. Notably, the EAD granted Appellant certain rights and privileges to live and work in the CNMI, but it does not grant rights to federal public benefits, such as PUA or FPUC. Accordingly, based on the applicable law and evidence provided, Appellant was not a qualified alien at the time she claimed unemployment benefits.

3. Appellant was overpaid but not entitled to a waiver from repaying the overpayment.

An overpayment occurs when an individual received a benefit payment, or a portion of a payment, to which the individual is not entitled. However, "[a]ny individual who has received any amount as benefits . . . to which the individual was not entitled shall be liable for the amount unless the overpayment was received without fault on the part of the recipient ***and*** its recovery would be against equity and good conscience."[25] Fault[26] is defined as:

> (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
> (B) Failure to furnish information which the individual knew or should have known to be material; or

[25] HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the payment was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the part of any such individual and such repayment would be contrary to equity and good conscience. This waiver authority applies to overpayments that meet this criterion at any time since the PUA program began.
[26] HRS 12-5-83.

> (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

Based on federal guidance, "contrary to equity and good conscience" is tantamount to placing an individual below the poverty line and taking away basic necessities to live. In evaluating equity and good conscience,[27] the factors to consider include, but are not limited to:

> (A) Whether notice of a redetermination was given to the claimant, as required ...
> (B) Hardship to the claimant that the repayment may impose; and
> (C) The effect, if any, that the repayment will have upon the fulfillment of the objectives of the program.[28]

Considering that Appellant is not a qualified alien, Appellant should not have been paid benefits under PUA or FPUC. Moreover, considering Appellant's bank statement, it is clear that Appellant received the benefits in the amount $12,600 on September 15, 2020.

In determining whether Appellant is entitled to a waiver, the undersigned must review how the overpayment occurred and whether Appellant meets the legal standard, as stated above. Upon review of this claim, it appears that Appellant was paid benefits based on the answers she provided on her online application. Specifically, with respect to the question of citizenship, Appellant stated she was a U.S. permanent resident. Then, Appellant submitted the application: (1) certifying that all the information she provided was true and complete; (2) confirming that she understood it was her responsibility to read the PUA handbook; and (3) acknowledging that any false statements are punishable under local and federal law. Because of her response, Appellant's online application was automatically adjudicated and processed for payment. However, during the Administrative Hearing, Appellant admitted that she was not yet a permanent resident and she made a mistake. Moreover, even though Appellant was served a disqualifying determination the same day she received the money, Appellant proceeded to spend the money on tuition, a new iphone, and other non-necessities. Notably, Appellant does not pay for her basic necessities and receives family support for necessary expenses like rent, utilities, and food.

Based on the false information provided on her application, the undersigned finds that Appellant provided a material statement which she knew or should have known to be incorrect. Moreover, considering Appellant continued to spend the money after receiving the disqualifying determination,

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[27] *Id.*

[28] PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

Appellant accepted payment for benefits she knew or reasonably could have expected to know was incorrect. Accordingly, the overpayment occurred, in part, due to Appellant's fault. Moreover, since Appellant is at fault, Appellant is not entitled to a waiver.

VI. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated September 15, 2020, is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of April 26, 2020 to December 26, 2020;
3. The CNMI Department of Labor's Notice of Overpayment, dated April 22, 2021, is **AFFIRMED**;
4. The Appellant is **OVERPAID** in the total amount of $12,600 for PUA and FPUC benefits she is not entitled to and must repay the amount; and
5. Appellant is **ORDERED** to report to the Department's Benefit Payment Control Unit to enter into a reasonable payment plan.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this **21st** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	**PUA Case No. 21-0110**
Alex S. Aldan, Jr.,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
v.	)	
CNMI Department of Labor, Division of Employment Services-PUA,	)	
Appellee.	)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on June 16, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Alex S. Aldan, Jr. ("Appellant") was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program ("Appellee" or "Department") was present and represented by Labor Certification Worker Dennis Cabrera and PUA Coordinator Ana Marie Teregeyo.

Exhibits:

1. Exhibit 1: Copy of Appellant's Application Snapshot, filed November 24, 2020;
2. Exhibit 2: Copy of Appellant's Weekly Certification;
3. Exhibit 3: Copy of Appellant's Employment Certifications;
4. Exhibit 4: Copy of Appellant's Timesheets;
5. Exhibit 5: Copy of Appellant's Check Stubs;
6. Exhibit 6: Copy of Department's Disqualifying Determination, dated March 31, 2021;
7. Exhibit 7: Copy of Appellant's Request to Appeal, filed April 23, 2021;
8. Exhibit 8: Copy of Notice of Hearing, issued April 23, 2021;
9. Exhibit 9: Copy of the Benefit Rights Information Handbook;
10. Exhibit 10: Copy of Department's Press Releases;

11. Exhibit 11: Copy of News Articles; and

12. Exhibit 12: Copy of Benefit Payment Control Unit Email, dated June 11, 2021

For the reasons stated below, the Department's Determination dated March 31, 2021 is **AFFIRMED**. Claimant is not eligible for benefits for the period of February 2, 2020 to December 26, 2020.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")[1] and Federal Pandemic Unemployment Compensation ("FPUC").[2] On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.[3] On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law.[4] The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

Upon review of the records, the appeal was not timely filed. Accordingly, jurisdiction is not established.

III. PROCEDURAL HISTORY & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon review of Appellant's application and supporting documents, the Department issued a Disqualifying Determination on March 31, 2021. On April 23, 2021, Appellant filed a request to

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[1] *See* Section 2102 of the CARES Act of 2020, Public Law 116-136.
[2] *See* Section 2104 of the CARES Act of 2020, Public Law 116-136.
[3] *See* Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").
[4] Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

appeal the determination. As stated in the Notice of Hearing issued that same day, the issues on appeal are: (1) whether the appeal is timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an overpayment occurred and funds should be returned.

IV. FINDINGS OF FACT

In consideration of the evidence provided and credibility of witness testimony, the undersigned issues the following findings of fact:

1. Prior to the pandemic, Appellant worked as a Steward Supervisor for Micronesia Resort Inc. dba Kensington Hotel Saipan ("Employer"). However, due to the pandemic, Employer implemented cost-cutting measures and reduced Appellant's hours.[5] Appellant continued to work reduced hours during the year 2020.[6]
2. On June 17, 2020, the Department launched the Pandemic Unemployment Assistance ("PUA") and Federal Pandemic Unemployment Compensation ("FPUC") programs. The Department published information regarding program requirements, processes, and deadlines in the Benefit Rights Information handbook,[7] a number of press releases,[8] and news articles.[9]
3. On or around November 24, 2020, Appellant submitted an application[10] for unemployment assistance under the PUA and FPUC programs administered by the Department. In his application, Appellant self-certified under penalty of perjury that:
    a. That his employment was affected as a direct result of a COVID-19 because his place of employment was closed;
    b. His employment was affected since February 2, 2020; and
    c. He understood it was his responsibility to read the Benefit Rights Information Handbook.
4. Appellant admitted that he did not read the Benefit Rights Information Handbook.

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[5] Exhibit 3.
[6] Exhibits 4-5.
[7] Exhibit 9.
[8] Exhibit 10.
[9] Exhibit 11.
[10] Exhibit 1.

5. For week beginning February 2, 2020 through February 8, 2020, Appellant reported $512.96 in income.[11] Since he did not file a weekly certification within 2 weeks, his claims lapsed. There is no showing that Appellant filed any other weekly claims.
6. On March 31, 2021, the Department issued a Disqualifying Determination. The Department disqualified Appellant for February 2, 2020 through February 8, 2020 for excessive earnings or reporting earnings in excess of the PUA Weekly Benefit Amount ("WBA"). The Department disqualified Appellant till December 26, 2020 because Appellant did not file any other weekly certifications and the deadline to file for benefits for PUA Round 1 was December 26, 2020.
7. Although the Determination and other available materials included appeal instructions and a deadline to file, Appellant did not correctly file his appeal with the Administrative Hearing Office until April 23, 2021.[12] When asked why he did not file within the ten-day deadline, Appellant stated he did not open his email or portal to receive the Disqualifying Determination until after the deadline. Further, Appellant stated he did not know how to correctly file his appeal until he received verbal instructions from DOL staff on April 19, 2021. However, even after receiving verbal instructions, Appellant did not file until after a few more days.
8. Upon filing his Appeal, the Administrative Hearing Office issued a Notice of Hearing, scheduling the matter for a hearing on June 16, 2021 as to: (1) whether the appeal was timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an overpayment occurred.[13]
9. On June 11, 2021, the Department's Benefit Payment Control Unit confirmed that no overpayment occurred in this case.[14]

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[11] Exhibit 2.
[12] Exhibit 7.
[13] Exhibit 8.
[14] Exhibit 12.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's appeal is not timely filed.

Generally, an appeal should be filed within ten days after the Notice of Determination was issued or served to the claimant. However, the Department may extend the period to thirty days by a showing of good cause.[15] Good cause means: (1) illness or disability; (2) keeping an appointment for a job interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent a reasonable person from complying as directed.[16]

Here, the Disqualifying Determination was issued and transmitted to Appellant on March 31, 2021. Therein, Appellant was advised that he was disqualified but had the right to appeal the determination within 10 days. Specifically, the Determination stated, "This means your appeal **must be received or postmarked** by **4/10/2021.** If you do not make that deadline, you lose the right to appeal this determination." The second page of the determination goes on with instructions on how to file an Appeal.

As demonstrated by the Department, Appellant was provided with instructions on how to file his appeal through multiple avenues. Specifically, Appeal instructions could be found on the Benefit Rights Information Handbook, Appellant's Determination, the Appeal Form, and multiple press releases and news articles. However, Appellant did not correctly file his appeal because he did not read the published material, did not timely review his emails, and did not submit his appeal form to the correct office. Notably, as acknowledged on the online application, it is the claimant's responsibility to read the Benefit Rights Information handbook and all other published materials. Appellant failed to do that.

Ultimately, the undersigned finds that Appellant failed to act within the 10-day deadline. Moreover, the undersigned finds that Appellant failed to justify good cause for an extension of the 10-day deadline. Accordingly, Appellant's appeal is untimely filed. Because Appellant's Appeal is untimely, the Department's Determination is final and the latter issues are moot.

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[15] HI. Rev. Statute § 383-38(a).
[16] HAR § 12-5-81(j).

VI. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated March 31, 2021, is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February 2, 2020 to December 26, 2020.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this **21st** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of: Elvie C. Palomares, Appellant, v. CNMI Department of Labor, Division of Employment Services-PUA, Appellee.	)	**PUA Case No. 21-0121** **ADMINISTRATIVE ORDER**

Pursuant to Appellant's Request to Appeal, the matter was scheduled for an Administrative Hearing on July 21, 2021 at 9:00 a.m. On June 17, 2021, the Department filed a Motion to Dismiss the appeal. Therein, the Department states that Appellant is appealing a system-generated Notice of Overpayment that was issued in error. The Department also confirmed that, upon further review, Appellant was not paid unemployment benefits and there is no overpayment issue in this case.

In consideration of above, the undersigned finds that there are no issues on appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for July 21, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **21st** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:	)	**PUA Case No. 21-0125**
Arnold Romolor,	)	
Appellant,	)	**ADMINISTRATIVE ORDER**
v.	)	
CNMI Department of Labor, Division of Employment Services-PUA,	)	
Appellee.	)	

Pursuant to Appellant's Request to Appeal, the matter was scheduled for an Administrative Hearing on August 4, 2021 at 9:00 a.m. Subsequently, Appellant clarified that he would like to pursue a Request for Reconsideration instead of Appeal. On June 15, 2021, Appellant filed a written request to withdraw his appeal.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for August 4, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **15th** day of June, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer