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ADOPTED

Public Notice of Certification and Adoption of Regulations
Amendments to Temporary Occupancy Rules
Department of Public Lands 048893

Notice of Certification and Adoption of Rule
Adoption of Rule: “Community Development Block Grant
Mitigation (CDBG-MIT) Program Policies & Procedures”
Northern Marianas Housing Corporation 048895

PROPOSED

Notice of Amendment to the
Sick Leave Bank Regulations (NMIAC §10-10-50)
Civil Service Commission
Office of Personnel Management 49004

Public Notice of Proposed New Fees to the
CHCC Chargemaster for Various Services
Commonwealth Healthcare Corporation 049019

DOL/PUA/CAC/DUA ORDERS

PUA Case No. 21-0148
Subject: Administrative Order
In the Matter of: Joseph Camacho Borja v. CNMI Department of Labor,
Division of Employment Services – PUA.
Department of Labor 049026

PUA Case No. 21-0149
Subject: Administrative Order
In the Matter of: Tommy Joe K. Cangco v. CNMI Department of Labor,
Division of Employment Services-PUA.
Department of Labor 049035

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Commonwealth of the Northern Mariana Islands
Office of the Governor
DEPARTMENT OF PUBLIC LANDS



DAG-CIVIL DIV
2022 SEP 29 AM 10:46

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF THE
DEPARTMENT OF PUBLIC LANDS**

AMENDMENTS TO TEMPORARY OCCUPANCY RULES

ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands, Office of the Governor, Department of Public Lands (DPL) HEREBY ADOPTS AS PERMANENT amendments to the DPL Temporary Occupancy Rules and Regulations pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC § 9101 et seq. These amendments change the Temporary Occupancy Rules and Regulations to:

- Clarify the general requirements for agreements authorizing temporary occupancy of public lands or properties;
- Allow agreements authorizing temporary occupancy of public lands or properties to be for a term less than one year;
- Clarify the procedures, terms, and requirements for concession agreements, including renewals and insurance requirements;
- Clarify the terms and requirements that differ for non-exclusive concession agreements versus the exclusive Managaha Island Master Concession, including RFP and auction requirements, subconcessions, term, and applications for renewal.
- Extend the permitted term of the exclusive Managaha Island Master Concession agreements from five years to ten years with an option to extend an additional five years at DPL's discretion.

I 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.

PRIOR PUBLICATION: These regulations were published as proposed regulations in Volume 44, Number 08, pp 048842-048850 of the Commonwealth Register dated August 28, 2022.

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).

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

AUTHORITY: These amendments are promulgated under the authority of DPL pursuant to 1 CMC § 2806 to develop administrative policies, procedures, and controls related to public land.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted amendments 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 publication in the Commonwealth Register.

P.O. Box 500380, Saipan, MP 96950 • 2nd Floor, Joeten Dandan Commercial Building
Website: www.dpl.gov.mp • E-mail: dpl@dpl.gov.mp • Facebook: www.facebook.com/DPLCNMI
Tel: (670) 234-3751/52/53/54 • Fax: (670) 234-3755

COMMENTS AND AGENCY CONCISE STATEMENT: No written comments regarding the proposed regulations were submitted during the 30-day comment period. DPL will, if requested to do so by any interested person within 30 days of this adoption of the amendments, issue a concise statement of the principal reasons for and against its adoption.

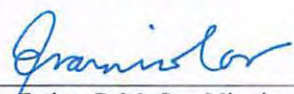
I declare under penalty of perjury that the foregoing is true and correct and this declaration was executed on the date indicated below at Saipan, Commonwealth of the Northern Mariana Islands.

Submitted by:


Sixto K. Igisomar
Secretary, Department of Public Lands

09/28/2022
Date

Filed and Recorded by:


Ms. Esther R.M. San Nicolas
Commonwealth Registrar

9.28.22
Date



NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514, Saipan, MP 96950-0514

Email: nmhc@nmhc.gov.mp

Website: <http://www.nmhc.gov.net>

Tels: (670) 234-9447

234-6866

Fax: (670) 234-9021

NOTICE OF CERTIFICATION AND ADOPTION OF RULE

ADOPTION OF RULE: "COMMUNITY DEVELOPMENT BLOCK GRANT MITIGATION (CDBG-MIT) PROGRAM POLICIES & PROCEDURES"

Action to Adopt Rule: The Northern Marianas Housing Corporation HEREBY ADOPTS AS A RULE the attached "Community Development Block Grant – Mitigation (CDBG-MIT) Program Policies & Procedures" pursuant 2 CMC Section 4433(j). The Northern Marianas Housing Corporation Board of Directors approved and adopted such rules at its meeting on August 11, 2022.

Authority: The CDBG-MIT policies and procedures are promulgated under the authority of the Board of Directors, through its Chairperson, to promulgate rules and regulations pursuant to 2 CMC § 4433(j).

Purpose and Objective of Rule: This Rule provides policies and procedures for the Northern Marianas Housing Corporation's new program, the Community Development Block Grant – Mitigation (CDBG-MIT) Program.

Directions for Filing and Publication: This Rule will become effective ten (10) calendar days after publication of a Notice of Adoption in the Commonwealth Register after compliance with 1 CMC §§ 9102, 9104(a), and 9105(b).

Effective Date: Pursuant to the APA, 1 CMC § 9105(b) and applicable regulations, this adopted Rule is effective 10 days after compliance with 1 CMC § 9102, 9105 and publication in the Commonwealth Register

Submitted by:

Jesse S. Palacios
NMHC Corporate Director

9/19/2022

Date

Merced "Marcie" M. Tomokane
Chairperson
NMHC Board of Directors

09/19/2022

Date

Received by:


Mathilda A. Rosario
Special Assistant for Administration

09/29/22
Date

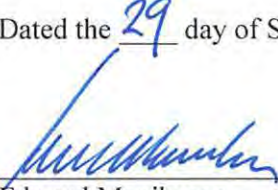
Filed and
Recorded by:


Esther R.M. San Nicolas
Commonwealth Registrar

9.29.22
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9105, the CDBG-MIT Policies & Procedures attached hereto 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 29 day of September, 2022.


Edward Manibusan
Attorney General

NORTHERN MARIANAS HOUSING CORPORATION

COMMUNITY DEVELOPMENT BLOCK GRANT – MITIGATION (CDBG-MIT) INFRASTRUCTURE PROGRAM POLICIES AND PROCEDURES

VERSION: 1.0

August 11, 2022

Prepared by:

Northern Marianas Housing Corporation – CDBG-MIT Program Division



The policies stated in this manual are current as of August 11, 2022. This Manual represents the current version of the Northern Marianas Housing Corporation's (NMHC) policies which provide general guidance for the operation of its CDBG-MIT Infrastructure Program. All manuals will be reviewed periodically and updated. Therefore, users are strongly encouraged to visit our website: <https://www.cnmi-cdbgdr.com/cdbg-mitigation-program/> to access the latest version.

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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.

Table 1. *Version History*

Date	Version Number	Comments
August 11, 2022	1.0	Original Document

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.

1.0 INTRODUCTION

This Manual is provided to assist Commonwealth of the Northern Mariana Islands Government (CNMI), through the Northern Marianas Housing Corporation (NMHC), to implement activities funded with Community Development Block Grant – Mitigation (CDBG-MIT) funds, including infrastructure projects. It provides guidance to subrecipients regarding the general requirements for activities using CDBG-MIT funds. It is the responsibility of both NMHC and its subrecipients to ensure compliance with all provisions of this manual, federal rules and regulations, and grant award. All parties must also carry out proper and efficient grant administrative practices. Should questions arise, subrecipients should immediately contact NMHC's CDBG-MIT Division.

1.1 Definitions

CDBG-MIT: A grant to fund mitigation activities guided by Title I of the Housing and Community Development Act of 1974, as amended and those regulations set forth in 24 CFR Part 570, Subpart I, as may be amended from time to time and all other applicable Federal and State regulations, laws, assurances and Federal Register waivers, notices, and alternative requirements governed by the Appropriations Act. Funding received has been authorized and allocated pursuant to P.L. 115-123 and the August 30, 2019 CDBG-MIT Federal Register Notice (84 FR 45383).

Cost Sharing: Cost sharing or matching means the portion of the costs of a federally assisted project or program not borne by the federal agency initiating the funding and is expected to be paid from State and or local government funds.

Covered Project: For purposes of this notice, a Covered Project is defined as an infrastructure project having a total project cost of \$100 million or more, with at least \$50 million of CDBG funds (regardless of source (CDBG-DR, CDBG-National Disaster Resilience (NDR), CDBG-MIT, or CDBG)). For grantees that are considered by HUD to have “unmitigated high risks” that impact their ability to implement large scale projects, HUD may impose special grant conditions, including but not limited to a lower dollar threshold for the definition of a Covered Project. Based on the amount of awarded CDBG-DR and CDBG-MIT funds, the CNMI does not have any identified Covered Projects at the current point in time. See 2.2.7 below.

Documentation: All projects funded with CDBG-MIT funds must obtain and maintain adequate documentation of eligibility and cost reasonableness.

Duplication of Benefits: Defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974 (42 U.S.C. 5121 et seq.) (Stafford Act), a duplication of benefits occurs when: 1) a beneficiary receives assistance for a particular recovery purpose, and 2) the assistance is from multiple sources (i.e., FEMA, FHWA, insurance, and local funds), and 3) the assistance amount exceeds the need for the particular recovery purpose thus “duplicating benefits” for the same purpose. The DOB prohibition applies to federally funded programs providing financial assistance “as a result of a major disaster or emergency.”

Eligible Activity: Each funded activity must meet the HUD definition of an eligible activity as defined at 24 CFR 570.201-207. Additionally, to be an eligible activity under CDBG-MIT, each

program activity must meet the definition of a mitigation activity as defined in the CDBG-MIT FRN (84 FR 45838) and meet at least one of the HUD National Objectives defined at 24 CFR 570.208.

Eligible Costs: Costs for the activities specified in the subrecipient agreement for which grant funds are budgeted, provided that such costs (i) are incurred in connection with any activity which is eligible under P.L. 115-123, Federal Register Notice 6109_n_02 and Title I of the Housing and Community Development Act of 1974, and (ii) conform to the requirements of 2 CFR Part 200.

Environmental Review: A comprehensive analysis of the environmental issues, impacts, and performance related to activities for a project undertaken using CDBG-MIT funds. The National Environmental Policy Act of 1969 (NEPA) is the basic national charter for the protection of the environment. Per the CDBG-MIT FRN (84 FR 45838), HUD will allow the adoption of another federal agencies environmental review so long as the scope of work has not changed significantly from the original agencies review. When there is not another federal agency environmental review that can be adopted, NMHC will complete the environmental review in compliance with 24 CFR Part 58.

Federal Emergency Management Agency (FEMA): The Federal Emergency Management Agency ("FEMA") coordinates the federal government's role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters, whether natural or man-made.

Grant: An award of financial assistance, in the form of money, by the federal government to an eligible grantee with no expectation that the funds will be paid back.

Green Infrastructure: Per the August 30, 2019 FRN (84 FR 45838) 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, vegetation, sand dunes, and forests, while contributing to the health and quality of life of those in recovering communities."

Low-and Moderate-Income Area ("LMA") Benefit: Per CDBG regulations, an area benefit is an activity which is available to benefit all the residents of an area which is primarily residential. In order to qualify as addressing the national objective of benefit to L/M income persons on an area basis, an activity must meet the identified needs of L/M income persons residing in an area where at least 51% of the residents are L/M income persons. The benefits of this type of activity are available to all residents in the area regardless of income. *Low-and moderate-income person ("LMI"):* Per CDBG regulations, a person is considered to be of low income only if he or she is a member of a household whose income would qualify as "low-to- moderate income" under the Section 8 Housing Assistance Payments program. CDBG moderate income relies on Section 8 "lower income" limits, which are tied to 80% or less of area median.

National Objective: Each activity must meet one of the following national objectives for the program: 1) benefit low-and moderate-income persons, 2) prevention or elimination of slums or

blight, or 3) address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available.

Project File: HUD requires that each funded project activity with CDBG-MIT funds maintain a project file with sufficient documentation to support determining the project to be an eligible mitigation activity that meets a HUD national objective and that all costs are necessary, reasonable, and allocable to the program in accordance with 2 CFR 200 Uniform Administrative Requirements. Project files can be hard copy, electronic, or a combination of both if they are readily accessible during a monitoring visit. **Stafford Act:** The Robert T. Stafford Disaster Relief and Emergency Act (“Stafford Act”) (42 U.S.C. §5121 et seq.) as amended, authorizes financial and other forms of assistance to the State and local governments and certain Private Nonprofit organizations to support response, recovery, and mitigation efforts following major disasters and emergencies declared by the President of the United States. The Stafford Act describes the declaration process, the types and extent of assistance that may be provided, and fundamental eligibility requirements.

Subrecipient: Entities that are provided CDBG-MIT funds by a grantee for their use in carrying out agreed-upon, eligible activities. Subrecipients may be units of government or nonprofit organizations

U.S. Department of Housing and Urban Development (“HUD”): HUD is the federal agency responsible for obligating and disbursing the CDBG-MIT funds as well as monitoring grantees. HUD’s stated mission is “to create strong, sustainable, inclusive communities and quality affordable homes for all”.

1.2 CDBG-MIT Funding

HUD published its Federal Register Notice 86 FR 561 on January 6, 2021, with an effective date of January 11, 2021, for allocation of over \$186 million in CDBG-MIT funds to grantees recovering from qualifying 2018 disasters. Funds allocated by this notice were made available by the *Additional Supplemental Appropriations for Disaster Relief Act of 2019*. Super Typhoon Yutu and Typhoon Mangkhut, which ravaged the CNMI (DR-4404 and DR-4396), were qualifying events for the Commonwealth, with over \$16,000,000 in CDBG-MIT funds being allocated through 86 FR 561.

Per 84 FR 45838, HUD differentiates between the purpose of CDBG-MIT funds and CDBG-DR funds, in that CDBG-MIT funds are to be used for mitigation activities that “increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters”. CDBG-MIT allocations to CNMI for these mitigation-specific goals are listed in Figures 1-1 and 1-2.

Figure 1-1: Total Allocation for Mitigation Activities under U.S. Public Law

Disaster No.	Grantee	Total Allocation for CDBG-MIT for 2018 disasters under Public Law 116-20	Minimum amount that must be expended in the HUD-identified MID Areas	HUD-identified “most impacted and distressed” (MID) areas
4396 and 4404	Commonwealth of the Northern Mariana Islands	\$16,225,000	\$8,112,500	Saipan and Tinian Municipalities

Figure 1-2: Programmatic Allocation by Activity

Program	Allocation	Percentage
Infrastructure Mitigation Program and Activities	\$14,602,500	90%
Administration	\$811,250	5%
Planning	\$811,250	5%
<i>Total:</i>	\$16,225,000	100%

1.3 Overview of CDBG-MIT Infrastructure Program

The CNMI received \$16,225,000 from HUD for mitigation activities to be funded in accordance with Community Development Block Grant-Mitigation (CDBG-MIT) funds. In the CDBG-MIT Federal Register Notice [FRN] (85 FR 45838), HUD defines mitigation as “those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to or loss of property, and suffering and hardship, by lessening the impact of future disasters.”

The CNMI, through NMHC, intends to utilize CDBG-MIT funding to take additional action to make the CNMI more resilient. NMHC acknowledges the high probability that these extreme weather conditions will continue to affect CNMI residents and services and may become more severe or more frequent in occurrence. Proposed projects for funding in the CDBG-MIT Action Plan for infrastructure include are listed in **Table 1-1** below.

Table 1-1. List of Potential CDBG-MIT Projects

Municipality	Project	Project Description	Estimated Cost	Duration
Saipan	Beach Road Improvement Project	Flood control and drainage project.	10,626,457	36 mos.
Saipan	Lower Base Road and Drainage Improvement	Improve the drainage system at Lower Base area.	2,152,000	19 mos.

Tinian	Replacement of the Tinian Carolinas Village 0.50 MG Water Tank	To improve the water capacity for the island, and replace existing welded tank with more resilient concrete structure	5,180,000	27 mos.
Saipan	Kagman Community Shelter Project	Provide safe, secure and habitable long term-shelters for displaced residents during future typhoons and other natural disasters.	1,258,705	24 mos.
Saipan	Assessment of Risk, Vulnerability and Disaster Bonding/Insurance Feasibility to Support Comprehensive Sustainable Development Planning and Disaster Risk Reduction	This project will support the Office of Planning and Development (OPD) in its mission to provide data-driven analysis, tools, and policies that support comprehensive sustainable development plan (Comprehensive Plan) for CNMI that ensures smart, safe development occurs to support socio-economic growth goals of the community.	807,380	24 mos.
Saipan	Replacement of the Dandan Water Tank	There is a current risk of catastrophic failure of the water tank if another typhoon will hit area. Therefore, the objective of this Hazard Mitigation Grant application will be to replace the current tank	7,048,000	24 mos.
Saipan	Replacement of the Kagman Water Tank	There is a current risk of catastrophic failure of the water tank if another typhoon will hit area. Therefore, the objective of this Hazard Mitigation Grant application will be to replace the current tank	7,141,000	24 mos.
Saipan	Power Plant #1 Facility Repair and Mitigation	To Harden Power Plant #1	4,987,427	18 mos.

1.4 Administrative Requirements

1.4.1 Conflict of Interest

The following governing regulations shall apply to conflicts of interest: 24 CFR §570.611, and 2 CFR 200.317 through 2 CFR 200.326, as well as the CNMI's and NMHC's Conflict of Interest and NMHC's Procurement policies, as applicable. Those stated regulations affect subrecipients and the subrecipient's designees, agents, members, officers, employees, consultants or members of its governing body; as well as anyone who is in a position to participate in a decision-making process or gain inside information with regard to the project, or has or shall have any interest, whether direct or indirect, or in any contract or subcontract or the proceeds thereof for work performed in connection with the project, or benefit there from. The CNMI government's departments will be governed by the applicable written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts that abide by those referenced regulations and laws. No employee, officer or agent of the city department or subrecipient shall participate in selection, or in the award or administration of a contract supported

by federal funds if a conflict of interest, whether real or apparent, would be involved. Such a conflict would arise when:

- The employee, officer or agent, or
- Any member of his immediate family, or
- His or her partner, or
- An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The subrecipient's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub agreements. subrecipients may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the subrecipient's officers, employees, or agents, or by contractors or their agents. The NMHC may impose or enforce additional prohibitions relative to real, apparent, or potential conflicts of interest.

1.4.2 The Hatch Act

The subrecipient shall not use any CDBG-MIT funds to finance the use of facilities or equipment for political purposes or engage in other partisan activities (e.g., candidate forums, voter transportation, or voter registration). Sub grantees and subrecipients will comply with the provisions of the Hatch Act that limit the political activity of employees and the Housing and Urban Development (HUD) regulations governing political activity at 24 CFR §570.207.

1.4.3 Authorized Employees

A business entity or employer is prohibited from knowingly employing, hiring, or continuing to employ an unauthorized alien to perform work, either directly or indirectly, for the NMHC. Subrecipients and Contractors and their Subcontractors, as applicable, shall therefore covenant that it is not knowingly in violation of this requirement, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the project, and that its employees are lawfully to work in the CNMI.

1.5 Record Keeping

The general CDBG-MIT standard for record keeping is that records must be accurate, complete and orderly. The sub grantee or subrecipient shall maintain all records required by 24 CFR 570.506 and 2 CFR 200.333 through 2 CFR 200.337, as applicable. Therefore, a subrecipient shall maintain records that will include the following:

1.5.1 Administrative records

These are files and records that apply to the overall administration of the subrecipient's CDBG-MIT activities. They include the following:

- Personnel files.
- Property management files.
- General program files: files relating to the subrecipient's application to the grantee, the subrecipient agreement, program policies and guidelines, correspondence with grantee and reports, etc.
- Legal files: articles of incorporation, bylaws of the organization, tax status, board minutes, contracts and other agreements.

1.5.2 Financial records

These include the chart of accounts, a manual on accounting procedures, accounting journals and ledgers, source documentation (purchase orders, invoices, canceled checks, etc.), procurement files, bank account records, financial reports, audit files, etc.

1.5.3 Project/Case files

These files document the activities undertaken with respect to specific contracts, individual beneficiaries, property owners, and/or properties.

1.5.4 Record Retention Requirements

Grantee and Subrecipients shall maintain all Project records required by 24 CFR 570.506 for three years from the date of submission of the final expenditure report (2 CFR 200.333).

If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

2.0 Mitigation Infrastructure Project Implementation

2.1 Infrastructure Project Overview

A HUD compliant infrastructure project will go through many phases and must document compliance at each phase of the process. An overview of the different phases or steps in the

infrastructure process (including project description, procurements, implementation, and close out) include:

- **Project Description:** Develop a CDBG-MIT infrastructure project description and document file to support project description
- **Eligibility and National Objective:** Verify project is an eligible CDBG-MIT infrastructure project per HUD CDBG-MIT Federal Register Notices and 24 CFR 570.201 (c) Public Facilities & Improvements and meets a National Objective
- **Duplication of Benefits Analysis:** 1) Identify all assistance received for the project; 2) Determine if other assistance received duplicates benefits of the CDBG-MIT funds; and 3) Include supporting documentation for duplication of benefits (DOB) analysis
- **Environmental Review and Clearance:** 1) Identify all assistance received for the project; 2) Determine if other assistance received duplicates benefits of the CDBG-MIT funds; and 3) Include supporting documentation for duplication of benefits (DOB) analysis
- **Procurement of Construction Services:** 1) Procure Engineering or Architectural Services for project design; 2) Procure Construction Services after environmental clearance and full scope of work known; and 3) Procure contractors for construction (ensure Davis Bacon/Section 3/MBE/WBE)
- **Property Acquisition and URA:** 1) If project requires acquisition of Real Property, begin acquisition process per HUD Handbook 1378; 2) If property will be acquired through eminent domain or has tenants, document all URA notices and requirements are met
- **Construction, Construction Management, and Close-out:** 1) Once property is acquired, begin construction and implement construction oversight; 2) Document inspections, progress reports/photos, and invoice approvals and payments to contractors; 3) Document final inspections, obtain permits and as-builts, and complete final file review

2.2 Project Development

2.2.1 Developing Project Description

The key first step in implementing an eligible CDBG-MIT infrastructure project is to develop a “project description” that meets HUD’s criteria for a CDBG-MIT infrastructure project. Each CDBG-MIT project must have a project file of record which when monitored by the NMHC or HUD will clearly “tell the story” of why the project was determined to be an eligible CDBG-MIT infrastructure activity and how the project was implemented in compliance with HUD and other cross-cutting Federal requirements.

HUD issued its Federal Register Notice (FRN) for CDBG-MIT on August 30, 2019 (84 FR 45838). The FRN provides the HUD criteria for an eligible mitigation activity. The project description will need to address all the FRN requirements. These requirements are described below.

2.2.2 Eligible Mitigation Activities

A CDBG-MIT infrastructure project must document that the activity will meet HUD’s definition of mitigation. The CDBG-MIT FRN describes mitigation activities as “those activities that increase resilience to disaster and reduce or eliminate the long-term risk of loss of life, injury, damage to loss of property, and suffering and hardship, by lessening the impact of future disasters”. Based on this guidance, each project file must include a description of how the infrastructure activity will:

- Increase resilience to disaster
- Reduce or eliminate the long-term risk of life, injury, damage to loss of property, suffering and hardship
- Lessen impact of future disasters

2.2.2.1 Reimbursements on NMHC CDBG-MIT Planning and Administrative Pre-Award Costs

(a) Planning

The eligible activity is planning, urban environmental design, and policy-planning-management-capacity building activities as listed in 24 CFR 570.205 or 570.483(b)(5) and (c)(3).

The eligible activity is planning, urban environmental design, and policy-planning-management-capacity building activities that include.

- (1)** Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to:
 - (i)** Comprehensive plans;
 - (ii)** Community development plans;
 - (iii)** Functional plans, in areas such as: Housing, including the development of a consolidated plan; Energy use and conservation; Utilities;
 - (iv)** Other plans and studies such as:

Plans or studies to demonstrate HUD’s “Most Impacted and Distressed” (MID) Areas for Saipan and Tinian and for selection of activities that are appropriate for MID areas. Small area and neighborhood plans;

Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under §§570.201-570.204);

The reasonable costs of general environmental, urban environmental design and historic preservation studies; and general environmental assessment- and remediation-oriented planning related to properties with known or suspected environmental contamination. However, costs necessary to comply with 24 CFR Part 58, including project-specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such activities under §§ 570.201-570.204. Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of § 570.200(g);

Strategies and action programs to implement plans, including the development of codes, ordinances, and regulations; Assessment of Fair Housing.

- (2) *24 CFR 570.489(b): Reimbursement of pre-agreement costs.* The State may permit, in accordance with such procedures as the State may establish, a unit of general local government to incur costs for CDBG activities before the establishment of a formal grant relationship between the State and the unit of general local government and to charge these pre-agreement costs to the grant, provided that the activities are eligible and undertaken in accordance with the requirements of this part and 24 CFR part 58. A State may incur costs prior to entering into a grant agreement with HUD and charge those pre-agreement costs to the grant, provided that the activities are eligible and are undertaken in accordance with the requirements of this part, part 58 of this title, and the citizen participation requirements of part 91 of this title.

[53 FR 34439, Sept. 6, 1988, as amended at 56 FR 56127, Oct. 31, 1991; 60 FR 1915, Jan. 5, 1995; 71 FR 30035, May 24, 2006; 80 FR 42366, July 16, 2015]

(b) Administration

The eligible activity is program administration as listed in 24 CFR 570.204 as defined by applicable Federal Register for the 12-yr. duration of the CDBG-MIT Program. The activity pays for administration costs such as compliance, monitoring, and audit related functions and supports the overall administration of the projects, programs, and activities funded with the CDBG-MIT dollars.

- (i) *24CFR 570.489(b): Reimbursement of pre-agreement costs.* The State may permit, in accordance with such procedures as the State may establish, a unit of general local government to incur costs for CDBG activities before the establishment of a formal grant relationship between the State and the unit of general local government and to charge these pre-agreement costs to the grant, provided that the activities are eligible and undertaken in accordance with the requirements of this part and 24 CFR part 58. A State may incur costs prior to entering into a grant agreement with HUD and charge those pre-agreement costs to the grant, provided that the activities are eligible and are undertaken

in accordance with the requirements of this part, part 58 of this title, and the citizen participation requirements of part 91 of this title.

2.2.3 Eligible Infrastructure Projects

A CDBG-MIT infrastructure project must document that the activity will meet HUD's definition of an infrastructure project. The CDBG-MIT FRN provides the following definition for an infrastructure program:

Infrastructure mitigation programs may include regional investments in risk reduction for flood, fire, wind and other hazards to develop disaster-resistant infrastructure; upgrading of water, sewer, solid waste, communications, energy, transportation, health and medical, and other public infrastructure to address specific, identified risks; financing multi-use infrastructure; and green or natural mitigation infrastructure development.

2.2.4 Green Infrastructure

The NMHC will develop a process to incorporate nature-based solutions and natural or green infrastructure in the design of CDBG-MIT projects. Each project file will need to document that natural or green infrastructure was considered for the project and included when feasible. If infeasible to incorporate natural or green infrastructure, then NMHC must explain why.

2.2.5 Construction Standards

All CDBG-MIT infrastructure projects must meet the HUD construction standards for mitigation. The CDBG-MIT FRN requires each project file to include a description of how it will meet the following construction standards:

- Emphasize quality, durability, energy efficiency, sustainability, and mold resistance, as applicable;
- Consider application of the Green Infrastructure; and
- Adhere to the advanced elevation requirements of the notice, if applicable.

2.2.6 Cost Verification

Each project file must describe its controls for assuring that construction costs are reasonable and consistent with market costs at the time and place of construction. NMHC and its subrecipients will use an independent, qualified third-party architect, construction manager, or other professional (e.g., a cost estimator) to verify the planned project costs and cost changes to the contract (e.g., change orders) during implementation are reasonable.

The method and degree of analysis may vary dependent upon the circumstances surrounding a particular project (e.g., project type, risk, costs), but the description, at a minimum, must address

controls for CDBG–MIT infrastructure projects above a certain total project cost threshold identified by the grantee and for Covered Projects as defined for CDBG–MIT funds.

2.2.7 Covered Projects

The CNMI does not have a CDBG-MIT infrastructure project that meets the definition of a Covered Project in the CDBG-MIT FRN (85 FR 45383). HUD defines a mitigation Covered Project as an infrastructure project having a total project cost of \$100 million or more, with at least \$50 million of CDBG funds (regardless of source (CDBG–DR, CDBG-National Disaster Resilience (NDR), CDBG– MIT, or CDBG)).

2.3 Verifying Project Eligibility and National Objective

NMHC must demonstrate that CDBG–MIT activities:

- Meet the definition of mitigation activities;
- Address the current and future risks as identified in the grantee’s Mitigation Needs Assessment;
- Are CDBG-eligible activities under title I of the HCDA or otherwise eligible pursuant to a waiver or alternative requirement; and
- Meet a national objective, including additional criteria for mitigation activities and Covered Projects.

NMHC can use CDBG–MIT funds for activities that meet these criteria even when it also responds to a remaining unmet recovery need arising from a qualified disaster that served as the basis for the NMHC’s CDBG–MIT allocation.

2.3.1 Eligible Activities

All activities to be funded by the Mitigation Infrastructure Program must be an eligible CDBG-MIT activity that meets a HUD national objective. Programs must qualify as an eligible activity as defined by HUD. The eligible activities for this program are:

- **HCDA Section 105(a)(8) – Public Services:** Provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government.
- **HCDA Section 105(a)(12) – Planning and Capacity Building:** Activities necessary to develop a comprehensive community development plan, and develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the

progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation

In furtherance, eligible HUD infrastructure activities are listed in 24 CFR 570.201 (c) and further defined for the CDBG-MIT funds in the FRN (84 FR 45838). Below are the specific eligibility requirements for infrastructure which is considered a “public facility” under the regulations.

24 CFR 570.201 (c) Public Facilities and Improvements

Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in §570.207(a), carried out by the recipient or other public or private nonprofit entities. (However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to public facilities and improvements, including those provided for in §570.207(a)(1).) In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in §570.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in §570.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in §570.200(b).

2.3.2 National Objectives

All eligible activities using CDBG-MIT funds must meet at least one National Objective as defined by HUD. The three HUD National Objectives are:

- Benefiting Low- and Moderate-Income persons
- Prevent or eliminate Slums and Blight
- Meet an Urgent Need

The CNMI will use the Low-and-Moderate Income Area (LMA) benefit approach to meet the LMI national objective for its mitigation infrastructure projects. In the unlikely event that the project cannot meet LMA, the Urgent Need national objective may be used in accordance with the CDBG-MIT FRN’s additional Urgent Need Mitigation (UNM) criteria discussed in Table 2-1 below. NMHC will ensure that at least fifty percent of CDBG-MIT funds (not including planning and

administrative funds) will be spent on projects that provide benefits to low- to moderate-income individuals, i.e., will meet the LMI national objective.

Table 2-1. Qualifying National Objective

OBJECTIVE	QUALIFIES IF:	RECORDS TO BE MAINTAINED
Low-and-Moderate Income Area	The public service is available to all the residents in a, primarily residential area, and at least 51% of those residents are LMI persons.	Boundaries of the service area and the basis for determining those boundaries; and The percentage of LMI persons in the service area and the data used for determining that percentage.
Urgent Need	The public service is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, and the grantee is unable to find other available funds to support the activity.	A description of the condition that was addressed, showing the nature and degree of seriousness of the threat it posed. Evidence confirming that other financial resources to alleviate the need were not available. **See additional criteria below

2.3.2.1 Additional criteria applicable to all mitigation activities funded with CDBG-MIT

The provisions of 24 CFR 570.483(e) and 570.208(d) are modified by an alternative requirement in the CDBG-MIT FRN to add the following additional criteria for all mitigation activities funded with CDBG–MIT funds.

To meet a national objective, all CDBG–MIT activities must:

- Demonstrate the ability to operate for the useful life of the project. Each grantee must plan for the long-term operation and maintenance of infrastructure and public facility projects funded with CDBG–MIT funds. The grantee must have a plan to fund the long-term operation and maintenance for CDBG–MIT projects. Funding options might include State or local resources, borrowing authority, or retargeting of existing financial resources.
- Be consistent with other mitigation activities. The CDBG–MIT activity must be consistent with the other mitigation activities that the grantee will carry out with CDBG–

MIT funds. To be consistent, the CDBG–MIT activity must not increase the risk of loss of life or property in a way that undermines the benefits from other uses of CDBG–MIT funds.

2.3.2.2 Additional urgent need national objective criteria for CDBG–MIT Activities

In the context of mitigation and the allocation of CDBG–DR funds, the department has historically provided waivers and established an alternative requirement to the urgent need national objective of the CDBG program as one means of helping communities to recover quickly. Specifically, the department has waived the certification requirements for the documentation of urgent need, located at 24 CFR 570.208(c) and 24 CFR 570.483(d), recognizing that in the context of mitigation those requirements have proven burdensome and redundant.

The Appropriations Act directs the department to allocate CDBG–MIT funds to grantees that received CDBG–DR funds to assist in recovery from major federally declared disasters occurring in 2015, 2016 and 2017. To reflect the direction of the Appropriations Act to allocate funds to grantees recovering from recent disasters and to address the demonstrable need for significant mitigation improvements by those grantees, the department is waiving the criteria for the urgent need national objective as provided at 24 CFR 570.208(c) and 24 CFR 570.483(d) and is establishing an alternative requirement to include new urgent need national objective criteria for CDBG–MIT activities.

To meet the alternative criteria for the urgent need mitigation (UNM) national objective, each grantee must document that the activity:

- Addresses the current and future risks as identified in the grantee’s Mitigation Needs;
- Assessment of most impacted and distressed areas; and
- Will result in a measurable and verifiable reduction in the risk of loss of life and property.

To meet the UNM national objective criteria, grantees must reference in their action plan the risk identified in the Mitigation Needs Assessment that is addressed by the activity. Grantees must maintain documentation of the measurable and verifiable reduction in risk that will be achieved upon completion of the activity. Action plans must be amended, as necessary, to ensure that this information is included for each activity undertaken with CDBG–MIT funds.

Unless a grantee has received prior approval from HUD, CDBG–MIT activities cannot meet the CDBG national objective for the elimination of slum and blight as provided at 24 CFR 570.208(b) and 24 CFR 570.483(c). Grantees shall not rely on the national objective criteria for elimination of slum and blighting conditions without approval from HUD because this national objective generally is not appropriate in the context of mitigation activities.

2.4 Duplication of Benefits Analysis

The CNMI, in compliance with the CDBG-MIT FRN and the Robert T. Stafford Disaster Relief and Emergency Act will complete a duplication of benefit analysis for all infrastructure projects to ensure that CDBG-MIT funds do not duplicate other sources of funding for the same activity.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) requires that recipients of federal mitigation funding make certain that no "person, business concern or other entity" will receive duplicative assistance'. Because disaster assistance to each person/entity varies widely based on their insurance coverage and eligibility for federal funding, grantees cannot comply with the Stafford Act without first completing a duplication of benefits (DOB) analysis specific to each applicant.

A Duplication of Benefit occurs when:

- A beneficiary receives assistance, and
- The assistance is from multiple sources, and
- The assistance amount exceeds the need for a recovery purpose.

In order to ensure that CDBG-MIT funding is spent on eligible activities, NMHC is responsible to verify that each program provides assistance to a person or entity only to the extent that the person or entity has a mitigation need that has not been fully met by funds that have already been, or will be paid, from another source.

The purpose of this section is to outline the process by which the NMHC will verify that all applications for assistance from the programs funded by the CNMI, as well as all projects implemented by NMHC's contractors and sub-recipients, will be reviewed for possible duplication of benefits. The procedures described below are also applicable to all sub-recipients and must be incorporated in the design and administration of programs/projects undertaken by them.

2.4.1 Duplication of Benefits Requirement

The NMHC requires any sources of funding assistance provided for the same purpose as the scope of work to be assisted with CDBG-MIT funds to be considered a duplication of benefits ("DOB") and must be deducted from the CDBG-MIT assistance to be provided.

2.4.2 Potential DOB Sources

The following are a list of sources of funding assistance to be considered in a duplication of benefits review:

- FEMA National Flood Insurance Program ("NFIP")
- U.S. Army Corps of Engineers ("USACE")

- U.S. Department of Transportation, including the Federal Highway Administration (“FHWA”) and the Federal Transit Administration (“FTA”)
- Federal Economic Development Agency (“FEDA”)
- Federal Emergency Management Agency (“FEMA”)
- Private Insurance
- Any other funding source that may duplicate assistance

NMHC staff must perform and complete a DOB Analysis worksheet for every project funded by CDBG-MIT. See “**Appendix-A: DOB Worksheet.**”

2.4.3 Subrogation Agreement

A subrogation agreement will be used to ensure recapture if a Duplication of Benefit (DOB) occurs. This agreement must be signed prior to disbursement of financial assistance. A subrecipient must complete subrogation agreement for every project covered by CDBG-MIT funds. See “**Appendix-B: Subrogation Agreement.**”

3.0 Environmental Review

3.1 Environmental Review

The CNMI, through NMHC, will comply to the following environmental regulations when implementing CDBG-MIT infrastructure activities:

- 40 CFR Part 1500-1508 (Regulations for Implementing the National Environmental Policy Act)
- 24 CFR Part 58 (Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities)
- 24 CFR Part 51 (Environmental Criteria and Standards)
- 24 CFR Part 55 (Floodplain Management) • 24 CFR Part 35 (Lead Based Paint Rule)
- 36 CFR Part 800 (Protection of Historic Properties)

3.2 Environmental Review Process (24 CFR 58.30)

- (a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes

all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with Sec. 58.32.

- (b) The environmental review process should begin as soon as a NMHC determines the projected use of HUD assistance and its approval of a subrecipient's project application.

3.3 Levels of Environmental Review

The NMHC will undertake the environmental review for the CDBG-MIT activities in accordance with the appropriate levels of review as defined under 24 CFR Part 58

4.0 Procurement

CDBG-MIT funds shall be subject to NMHC procurement regulations, as authorized by CNMI Law (P.L. 20-87 codified at 2 CMC § 4433), federal general procurement standards at 2 CFR Part 200.318, HUD Cross-cutting Requirements, and HUD Rider. See **Appendix C: NMHC's Procurement Regulations**.

In addition to compliance with NMHC's procurement regulations at NMIAC § 100-60, all NMHC procurement activities for with CDBG-MIT funds are to be performed in accordance with appropriate federal and state statutes, rules, and regulations, whichever is stricter. Copies of federal and local statutes, rules, and regulations covering the use of federal funds shall be maintained by the CDBG-DR procurement office.

The CNMI, through NMHC, is currently following its established procurement regulations and has developed procedures related to procurement for the expenditures of CDBG-DR and CDBG-MIT funds to ensure these standards are equally or more restrictive as the federal requirements. However, where the local procurement standards are less restrictive, the more stringent federal requirements will be followed for CDBG-DR and CDBG-MIT programs.

5.0 Program Requirements and Implementation

5.1 Eligibility Criteria

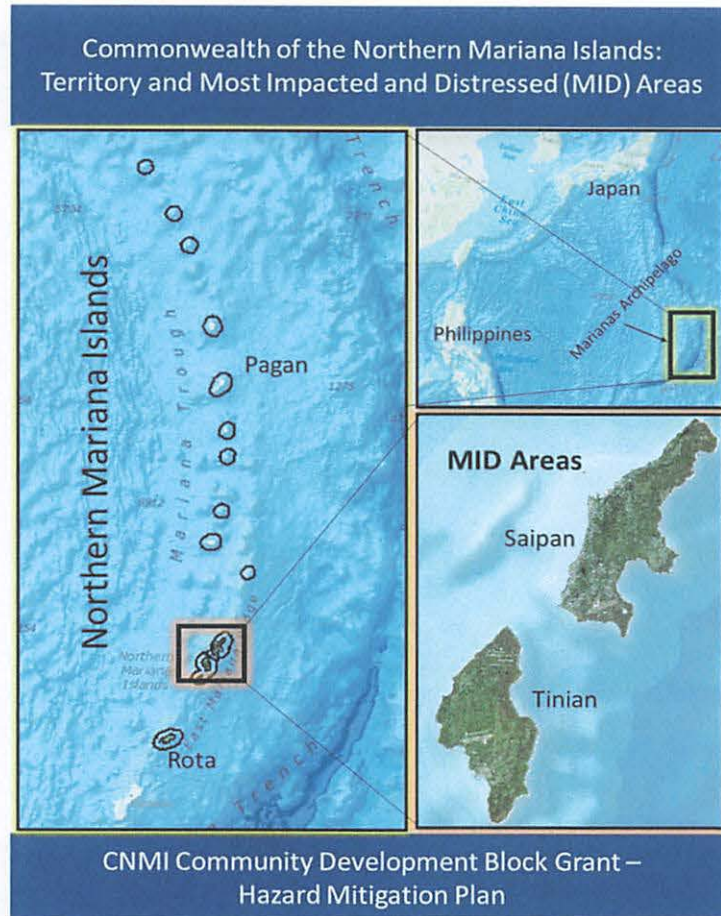
5.1.1 Geographic Eligibility

Projects must benefit the area designated by HUD as the most impacted and distressed areas. For the CNMI, HUD has designated the Municipalities of Saipan and Tinian as MID areas. *See* 86 FR 561.

5.1.2 Allocation to HUD-identified MID areas

NMHC is required to expend at least 50% or \$8,112,500 of the total CDBG-MIT allocation (\$16,225,000) on eligible CDBG-MIT projects and activities on the aforementioned HUD-designated MID areas: Municipalities of Saipan and Tinian. See Fig. 5

Figure 5. *CNMI's MID Areas*



5.1.3 Application Criteria

Application criteria include:

- Application Summary to include:
 - Purpose of the project
 - Expected outcomes
 - Threshold Requirements
 - See **Appendix D:** Project Application
- Project objectives and priority considerations: how the project and proposed planning and public services activities advance communities' efforts to effectively recover and/or avoid

loss from the effects of wildfire, earthquake, or flood and build resilience to anticipated impacts from future climate events through:

- Recovery activities – activities to rebuild from impacts of disaster events including rebuilding housing, infrastructure, and economy
- Building resilience – preventing and bouncing back from shocks and stressors
- Meaningful engagement – active participation for community members including low- and moderate-income individuals
- Intentional resilient design – design of buildings, landscapes, communities, and regions in order to respond to natural and manmade disasters and disturbances—as well as long-term changes resulting from climate change—including sea level rise, increased frequency of heat waves, and regional drought.

5.1.4 Application Process and Scoring

Upon launching of the CDBG-MIT Program, NMHC will release a Request for Project Applications. Subsequent Request for Project Applications may be released depending on the level of unobligated balances after the first Request for Applications. The process will be repeated in the subsequent years. Funding will be dispersed annually, until all funds are exhausted. NMHC will look to distribute as much money as possible during this first year for projects that are considered ready-to-proceed. Technical Assistance will be provided for projects close to ready-to-proceed in order to increase viability and develop a pipeline of projects. This approach will be duplicated each year to expedite the development of projects and timely obligation and expenditure of funds. Eligible applicants will be invited to submit applications that propose funding Infrastructure Mitigation projects by the CDBG-MIT Program. Responses will be evaluated to ensure the proposed projects meet the minimum criteria as outlined in the Program Guidelines and application materials. Responses that meet minimum threshold requirements will then be evaluated according to the scoring criteria outlined below.

For subrecipients considered to be in a project-design phase, NMHC will provide planning and technical assistance to help the applicants further develop their projects and get them into the pipeline. NMHC will ensure that there is appropriate tracking and enforcement language included in the Intergovernmental Agreement to meet expenditure deadlines. Considering time constraints for dealing with environmental review, and oversight and monitoring issues, each submitted project is assumed to take up to three (3) years to complete. Applications must, at a high level, describe their infrastructure project and address how it will serve to mitigate risks attributable to hazards identified in the NMHC CDBG-MIT Action Plan, Risk-Based Mitigation Needs Assessment, and benefit low-to-moderate income populations. Applicants must also include a proposed budget with a detailed description of anticipated costs by category, including support services and program management and administration. Applications will be evaluated to determine the mitigation value and cost effectiveness of the proposed project. An applicant's planning strategy and management capacity must be evident.

Each scored element of the applications is included in a Criteria Evaluation Rubric and has a value associated with it. A total of 100 points are available. If eligible applications exceed available funding, applicants will be funded in rank order based on evaluation scores. NMHC reserves the

option to fund all, a portion of, or none of each application submitted by an applicant. The scoring criteria is listed below in its order of importance.

Scoring Criteria			Max Points
1	*All priority needs must support housing* Priority Need: Meets one of the priority needs identified in the CDBG-MIT 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-MIT funds with additional funding to address unmet needs. The budget narrative reflects research, quotes and/or contracted pricing.		20
Total Maximum Points			100

PLANNING ACTIVITIES.

The CDBG-MIT Planning allocation is \$811,250 (representing 5% of the total CDBG-MIT grant allocation) and will be used to support local, regional and statewide mitigation planning efforts. Planning funding can be used for: land use planning, hazard mitigation planning, modernization and resiliency planning, upgrading mapping capabilities, and other plans. For Local Planning and Hazard Mitigation Planning, NMHC intends to accept applications year-round subject to funding availability. Spending through these programs is expected to continue for most of the life expectancy of the grant. Additional information and details about the application process as it pertains to these can be found in the NMHC's CDBG-MIT Action Plan. Leftover funds from this allocation, if any, will be reprogrammed to fund existing infrastructure mitigation projects through a non-substantial amendment or new infrastructure mitigation projects not identified in the CDBG-MIT Action Plan by way of a substantial amendment to the program's Action Plan.

INFORMING APPLICANTS OF APPLICATION STATUS.

NMHC is responsible for the implementation of the CDBG-MIT programs and projects, including strategic means of communicating with program applicants. NMHC is determined at implementing an Infrastructure Mitigation Program that will provide assistance to eligible applicants. For applicant communication under this program, NMHC and its contractors are committed to sharing timely and accurate information throughout the lifecycle of the program. NMHC plans to procure the professional services of an A&E firm that will be responsible for providing necessary inspection and scope of work especially for structural work for each applicant alongside the CDBG-DR Project Manager and CDBG-DR Compliance Manager. NMHC will include standard communication requirements in the solicitation for program implementation services.

To ensure effective and systematic communication, NMHC will host and maintain a website or web-based portal for applicants to access their application status at any time in the process. Additionally, NMHC will gather information from each applicant during the critical intake process that will be used for communication purposes. These communication methods include:

- Personal interface meetings with applicants;
- Mailings to the most current and valid mailing address(es);
- Emails to primary and secondary email addresses; and
- Phone calls to primary and secondary phone numbers.

Furthermore, NMHC utilizes its CDBG-MITIGATION website to share overall grant updates, publication of action plan amendments, and other critical grant information.

Furthermore, NMHC will make the Action Plan available online at the CNMI CDBG-MIT program's website (<https://www.cnmi-cdbgdr.com/CDBG-MIT/>). The website will include the following:

- Summarizes the CDBG-MIT program
 - Includes the Action Plan, Action Plan Amendments, and DR Action Plan
- List of all programs and projects funded by the CDBG-MIT program

- Lists all procurement policies and activities
 - Includes notice of active procurements
 - Includes a list and summary of all contracts procured with CDBG-MIT funds
- Citizen Participation Plan
- List of CDBG-MIT policies and procedures, including:
 - Anti-Fraud, Waste, and Abuse Policy
 - Complaint and Appeals policy
- Public Meeting Notes
- Program Guidelines, including applications, required forms, and contact information

Updates to the website will be made regularly in alignment with any activity associated with the CDBG-MIT program and Action Plan. Any document created in support of the CDBG-MIT program will be added to the public website within 5 days of the final approval date.

ACCESSIBILITY AND PRIVACY OF APPLICANT INFORMATION

The Privacy Act of 1974 (5 U.S.C. § 552a) requires US federal assistance grantees like NMHC to “establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience or unfairness to any individual on whom information is maintained.”

NMHC adheres to established procedures for the protection of Personally Identifiable Information (PII), through its Standard CDBG-DR Personally Identifiable Information Policies & Procedures (Attachment A), and as outlined in 24 CFR Subpart B, et seq., and NMHC requires that inter-government recipients and contractors comply with these requirements and protocols where necessary to safeguard an applicant’s privacy. PII includes names, addresses, income-related documents, disability status, employment status, and other information from applicants and beneficiaries. The owner-occupied rehabilitation and reconstruction program will collect only basic, necessary PII from applicants. NMHC will limit the collection of extraneous personal information, gathering only what is minimally required by regulatory and program guidelines. NMHC will be subject to § 5.238 Criminal and civil penalties, among others, in which persons who violate the provisions of 42 U.S.C. 3544 or 26 U.S.C. 6103(l)(7) with respect to the use and disclosure of income information may be subject to civil or criminal penalties under 42 U.S.C. 3544(c)(3), 26 U.S.C. 7213(a), or 18 U.S.C. 1905.

NMHC releases records containing PII upon request to federal and state auditors in accordance with the auditors’ requirements and to other federal or state agencies if coordination with these entities is necessary to process an application for assistance. The provision & protection of all PII will be conducted in accordance with US HUD’s regulations and NMHC’s established PII policies and procedures. If records containing PII are subject to Freedom of Information Act or CNMI Open Government Act requests, such records shall only be released in accordance to laws, respectively. Representatives of HUD, HUD’s Inspector General, and the Comptroller General of the United States will have the right to access any document, paper, or other record pertinent to a CDBG-DR award to complete audits, examinations, excerpts, and transcripts. This information also includes access to PII.

RESPONSIBLE SECTIONS/PERSONNEL

For all CDBG mitigation activities and communications, the CDBG-DR Project Manager oversees the program and contractors and is responsible for ensuring communication is accurate and sent in a timely manner. Moreover, the CDBG-DR Project Manager and CDBG-DR Compliance Manager will ensure that projects are compliant with NMHC and HUD requirements. The CDBG-DR procurement officer shall be responsible for all matters involving procurement prior to contract award unless otherwise designated or directed by the Corporate Director.

5.1.5 Award Acknowledgement Process

Once the application has been determined to be complete and all documentation has been provided, the applicant has been determined to be eligible for the program, the duplication of benefits analysis has been performed and verified, and the award amount has been calculated, HCD issues an award letter and contacts the applicant to discuss next steps.

5.1.6 Pre-Award Review and Final Approval

Prior to approving an application and issuing an award letter, a review is completed to ensure all program requirements have been met and all required processes have been completed, including, but not limited to, eligibility verification, and duplication of benefits calculation.

5.2 Subrecipient and Intergovernmental Agreements

NMHC enters into a Standard Agreement (SA) with the Subrecipient constituting a conditional commitment of funds. These agreements define financial and development management requirements as well as remedies to correct deficient or non-compliant projects. The agreement also contains CDBG-MIT recapture provisions for non-performance or breach of Subrecipient responsibility on any requirements, including adherence with CDBG-MIT rules and regulations. The SA contains, but not be limited to, the following:

- A description of the Subrecipient's program implementation responsibilities;
- The amount and terms of the funding;
- The amount of Activity Delivery Costs per project;
- Provisions governing the project work;
- Terms and conditions required by federal or state law;
- The approved schedule of the program;
- The approved program budget;
- Manner, timing and conditions for disbursement of project funds;
- Reporting and recordkeeping requirements, defining the specific reports and the reporting dates, along with the particular records and the timeline for maintaining them in order to assist NMHC in meeting HUD's recordkeeping and reporting requirements.
- Attribution of the project to NMHC and HUD in materials and publications;
- Terms and conditions for the monitoring of the project in order to verify compliance with the requirements of the program;

- Provisions regarding the recapture of funds; and
- Other provisions necessary to ensure compliance with the requirements of CDBG-MIT Program.

See **Appendix-E: Intergovernmental Agreement**

5.2.1 Reporting Requirements

NMHC and Subrecipients establishes program targets and benchmarks and the Subrecipient is required to report data on a monthly basis to NMHC. Subrecipients must submit the information electronically. Subrecipients are required to submit reports at times indicated in the agreement, in accordance with NHHC and HUD reporting requirements.

At a minimum, during the term of the agreement, on a monthly basis the Subrecipient submits to NMHC a monthly progress report which addresses the following topics:

- A description of the current status of the project activity;
- A description of activities to be undertaken in the next reporting period;
- A description of problems or delays encountered in project implementation and course of action taken to address them;
- A description of actions taken to achieve project expenditure deadlines; and
- A summary of project fiscal status, including:
 - Award amount;
 - Funds drawn;
 - Remaining balance.
 - At any time during the term of the agreement, NMHC may perform or cause to be performed an independent financial audit of any and all phases of the Subrecipient's project(s). At NMHC's request, the Subrecipient provides, at its own expense, a financial audit prepared by a certified public accountant.

On a Quarterly basis, NMHC will collect and review information on program accomplishments and progress narratives. This information will be largely based off of the materials a Subrecipient provides in the monthly progress reports. The compiled information will be provided to HUD in the Quarterly Performance Report (QPR), which shall be posted to the CDBG-MIT website and submitted to HUD no later than the 30th day of the month following the end of a given Quarter.

5.2.2 Monitoring and Compliance

Subrecipients are responsible for carrying out approved activities in a compliant manner, per the program policies and procedures and all applicable state and federal regulations. See **Appendix-F: HUD's Cross-Cutting Requirements** and **Appendix-G: HUD Rider**.

NMHC monitors Subrecipients for compliance with program guidelines and all applicable state and federal regulations. NMHC's Compliance and Project Managers shall make scheduled visits to the Subrecipients to ensure program compliance and accuracy of information sent to NMHC.

Subrecipients maintain comprehensive and accurate program records, including, but not necessarily limited to, the following:

- Financial records (budget, general ledger, bank statements, cancelled checks, supporting invoices, financial statements, procurement documentation, etc.).
- Programmatic records for approved activities carried out, which shall include, but not be limited to, salaries and benefits payroll documentation; equipment tracking log; and, training attendance logs.
- Where applicable, monitoring reports of Subrecipients' monitoring of program contractors and/or subgrantees;
- Any other documents that the Subrecipient considers material to a potential audit; Subrecipient agrees to the completion of an annual audit or financial report (at the Subrecipient's expense), the level of which is determined by the total funding awarded to the Subrecipient by all state and/or federal resources, as required by state and federal regulations. Subrecipient also agrees to provide copies of requisite audits or financial reports to NMHC.

Failure to do so may place the Subrecipient on the NMHC's non-compliance list, which may result in the inability to fund the Subrecipient. Subrecipient agrees to maintain all books and records for three (3) years following the final closeout of the grant from HUD to NMHC.

Subrecipients are encouraged to convert all paper files to electronic files. However, if any litigation, claim, negotiation audit or other action involving the records has been started before the expiration of the three-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period, whichever is later. In addition, the Subrecipient allows NMHC, HUD, NMHC's internal and external auditors and any other state or federal agency seeking to monitor the Subrecipient access to all books, accounts, records, reports, files, and other electronic or paper documentation pertaining to the administration, receipt and use of federal funds necessary to facilitate such reviews and audits.

5.2.3 Subrecipient Monitoring Responsibilities

Subrecipients must develop their own monitoring plan for CDBG-MIT funded projects. Subrecipients are responsible for monitoring entities it selects or procures to support project delivery. It is the responsibility of the Subrecipient to monitor projects to ensure compliance with terms of the Agreement and applicable regulations and grant requirements. Subrecipient monitoring includes but is not limited to:

- Ensuring project scopes of work are consistent with the scope of work described in the Project Applications;
- Contractors are following all labor standards (DBRA, Section 3, etc.), as applicable
- All procurement was completed in compliance with NMHC's procurement regulations, 2 CFR §200 and other federal requirements;
- Project milestones are being met; and
- Environmental reviews are completed and documented properly.

5.2.4 Record Keeping

NMHC's Standard Agreement is the contractual document that details the financial and recordkeeping requirements and standards for Subrecipients allocated funds to carry out specific eligible CDBG-MIT activities. Such reports and recordkeeping requirements, defining the specific reports and the reporting dates, along with the particular record and the timeline for maintaining them are to assist NMHC in meeting HUD's recordkeeping and reporting requirements per Section 104(e); (a)(2)(D) and (a)(3)(b), §570.506 (records to be maintained), and §570.508 (public access to records). Further record keeping requirements as detailed in 85 FR 4681 and per NMHC's agreement with HUD include, but are not limited to:

- Executed agreement(s)
- Description, geographic location and budget of each activity
- Eligibility and national objective determinations for each activity • Evidence of having met a national objective
- Evidence of having met the MID criteria
- Evidence of having met the LMI criteria • Subrecipient agreement
- Any bids or contracts
- Characteristics and location of the beneficiaries
- Compliance with special program requirements
- Personnel files
- HUD monitoring correspondence
- Citizen participation compliance documentation
- Fair Housing and Equal Opportunity records
- Environmental review records
- Documentation of compliance with crosscutting requirements • Budget and expenditure information
- Accounting procedures
- Accounting journals and ledgers
- Source documentation (purchase orders, invoices, canceled checks)
- Procurement files (including bids, contracts, etc.)
- Real property inventory
- Draw down requests
- Payroll records and reports
- Financial reports
- Audit files
- Relevant financial correspondence
- The status of the project and/or activity

Further, Subrecipients are required to maintain financial records and submit the financial reports sufficient to ensure compliance with all recordkeeping and reporting requirements.

Per the Standards for Financial Management Systems, accounting records must be supported by source documentation such as canceled checks, invoices and demands, payrolls, time and attendance records, contract and sub-grant award documents, etc.

Please see NMHC's CDBG-DR Financial Policy Manual for additional recordkeeping, retention, and file management procedures and requirements.

5.3 Closeout

5.3.1 Grant Closeout

The closeout of a grant is a process through which HUD determines that all applicable administrative and program requirements of the grant were completed. In general, a grant is ready for closeout when the following conditions are met:

- All eligible activities were completed and met a national objective;
- All grant funds were expended in full or all remaining funds are planned to be returned to HUD;
- All reporting requirements were completed and submitted (except for the final report that is submitted during the closeout process, if applicable);
- Any special conditions of the grant were met; and
- All audit and monitoring issues affecting the grant were resolved. NMHC closes out each project after completion of the project and/or grant expiration.

Each Subrecipient receives a closeout packet to complete and provide back to NMHC within the specified timeframe. Please see the NMHC's CDBG-DR Grant Administration Manual for additional audit procedures and requirements.

5.3.2 Complete Closeout Checklist

Individual elements of the CDBG-MIT grant may be closed out as a course of program completion. Completion of the Closeout Checklist is coordinated between NMHC and the Subrecipients. Upon completion of the activity, DRGR must be updated with the project status.

As individual activities of the grant are closed, HCD reviews and updates the following in DRGR:

- The total amount of funds drawn down for the activity
- The activity type
- The national objective
- The grant activity accomplishments

Individual activity completion is also reflected in the Quarterly Performance Report.

5.3.3 Closeout of a Contract

CDBG-MIT Subrecipients are required to submit the following to NMHC for each contract to complete closeout:

- Final request for funds;
- Evidence of a public hearing or governing body meeting reporting the grant accomplishments and expenditures of each project to the residents of the jurisdiction; and
- If applicable, the final projects of the grant funding (planning studies, environmental review records, etc.)

NMHC reviews the documentation and processes the final funds requests if all provided documentation and the circumstances of the project warrant contract closeout.

NMHC disencumbers any remaining funds, if applicable, and enters all needed information in DRGR to show the activities and projects are “completed.” Once all documentation has been processed and DRGR has been updated, NMHC sends a Closeout Letter to the Subrecipient, outlining all closeout requirements.

NMHC Subrecipients are required to retain CDBG-MIT records for a period of not less than three years after the fiscal year of their grant in accordance with CDBG-MIT record retention requirements. HCD notifies Subrecipients when the HUD grant has been closed.

Once all activities under the CDBG-MIT Grant are completed, NMHC completes the closeout procedures as documented in the CDBG-DR Grants Administration Manual.

Note that grants cannot be closed out if there are open monitoring reports associated with the contract; all monitoring findings, concerns and requirements must be received and approved by NMHC, and NMHC must also receive a Clearance Letter stating the monitoring has been complete.

Appendices

- 1. Appendix A: CDBG-MIT DOB Analysis Worksheet**
- 2. Appendix B: CDBG-MIT Subrogation Agreement**
- 3. Appendix C: NMHC's Procurement Regulation**
- 4. Appendix D: Project Application**
- 5. Appendix E: CDBG-MIT Intergovernmental Agreement**
- 6. Appendix F: HUD Cross-cutting Requirements**
- 7. Appendix G: HUD Rider**

APPENDIX A
CDBG-MIT DOB Analysis Worksheet

CDBG-MIT Duplication of Benefits (DOB) Calculation Worksheet

This form is to be completed by NMHC Staff

Program Description:

Subrecipient Name	_____	Infrastructure Program :	☐ Public Facilities	☐ Roads
Program Name	_____		☐ Port Facilities	☐ Utilities
Project Location/Address:	_____	Total Program Need:	_____	
City/State/ZIP Code:	_____	Is the Total Program Need above a FEMA PW Project Amount?		
		☐ No ☒ Yes		

What is a Duplication of Benefits (DOB) review? DOB can arise when assistance from more than one source of funding is received or available for the same purpose or activity. A DOB review ensures that for all disaster recovery assistance received or expected by an applicant, there is no waste of government resources through the receipt of excess benefits. The Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act) prohibits any person, business concern or other entity from receiving recovery funds if financial assistance has already been provided for the same purpose(s). The following worksheet identifies several of the most common sources of funds that may pose a Duplication of Benefits.

All Assistance Received

Source of Funding***	Total Assistance Received	Description of Use	Support Docs Collected? (Yes/No)	Is the Assistance Duplicative? (Yes/No)	Duplicative Assistance Received (Enter Amount)
1) FEMA Disaster Assistance					
2) SBA Assistance					
3) Local State Assistance					
4) Other Disaster Assistance					
5) Private Funds/Loans					
6) Other Funds/Assistance (Please Specify)					
7) Total Duplicative Assistance Received					\$0.00

*** DOB is not limited to the sources listed above. Please tailor the list to fully capture total assistance received from all funding sources.

Award Calculation

Step 1: Total Project Need	\$ -
Step 2: Total Duplicative Assistance (Identified in Line 7 above)	\$0.00
Step 3: Maximum Eligible Award (Total Project Need minus Total Duplicative Assistance)	\$ -

TOTAL ELIGIBLE CDBG-MIT AWARD \$ -

DOB Verified By:

Reviewer's Signature

Date

DOB Worksheets will be reviewed and updated on an annual basis to capture additional assistance received.

APPENDIX B
CDBG-MIT Subrogation Agreement



NORTHERN MARIANAS HOUSING CORPORATION

P.O. BOX 500514, Saipan, MP 96950-0514

Email: nmhc@nmhc.gov.mp

Website: <http://www.nmhc.gov.net>

Tels: (670) 234-9447

234-6866

234-9448

Fax: (670) 234-9451

Appendix-B

SUBROGATION AGREEMENT

I agree and acknowledge that any over payment or duplication of benefits will be subject to recapture. I am required to notify NMHC if additional funds are received and to assist NMHC in collecting any amounts owed to them from these sources.

Duplication of Benefits (DOB) is a component of the Stafford Act, which governs disaster recovery. The requirements of the Stafford Act prohibit any person, business concern, or other entity from receiving federal funds for any part of an activity for which they have already received financial assistance under any other program, private insurance, charitable assistance, or any other source. A DOB occurs when a recipient of a federal disaster fund receives funding from more than one source for the SAME activity.

A DOB may occur at any point, including after receipt of CDBG-MIT funds. Any additional funds paid to contractor(s), subcontractor(s), vendors, suppliers, et. al, for construction costs prior to (pre-grant incurred costs), during, and after services are completed must be returned to NMHC at point in time where a DOB is discovered.

Recapture may be required to repay a portion or all of CDBG-MIT funds received. Reasons for recapture may include, but are not limited to:

- *False or misleading information to the program;*
- *Withdraws from the program prior to completion;*
- *Found to have used funds for an ineligible activity; or*
- *Fails to report the receipt of additional funds or benefits received that create a DOB.*

Subrecipient:

Name of Agency or Organization

Date: _____

Print Name and Title of Agency Authorized Official

Signature of Agency Authorized Official



"NMHC is an equal employment and fair housing public agency"

APPENDIX C
NMHC's Procurement Regulation

SUBCHAPTER 100-60

NMHC Procurement Regulations

<https://www.cnmi-cdbgdr.com/about/nmhc-procurement-regulations/>

APPENDIX D
Project Application



Northern Marianas Housing Corporation Community Development Block Grant – Mitigation (CDBG-MIT) Program



CDBG-MIT 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 applicable, 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-MIT 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-MIT 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, (2) correlation to Housing; and (3) 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:

☐ Infrastructure ☐ 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. 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-MIT 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. Describe how people will benefit from the project and indicate whether the benefits will be direct and/or indirect.

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. 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: <i>Attach record indicating year of construction and proof of exemption.</i>
m. For rehabilitation projects, has there been an evaluation of asbestos hazards? Does the property need Asbestos remediation? Note: <i>Provide a copy of the reports.</i>
7. 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" and Housing:
8. National Objectives to be addressed (check one). To be eligible for the CDBG-MIT 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.

☒ Urgent Need

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.

- ☐ Public Facilities and Improvements 201I
- ☐ Clearance and remediations 201(d)
- ☐ Public Services 201I

- ☐ Rehabilitation and Preservation 202(a), (b), (c), (d), I, (f)
- ☐ General management, oversight and coordination 206(a)
- ☐ Public information 206(b)
- ☐ Fair Housing Activities 206I
- ☐ Indirect Costs 206I
- ☐ 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, if applicable. Program income is defined as ...

PROJECT BUDGET INSTRUCTIONS

Section I – Project Information

- a. Please enter the perspective applicant name.
- b. Please enter the Intergovernment Agreement Number (Leave blank until the number has been assigned and communicated upon executed intergovernment agreement.)
- c. Please enter the Project Number (Leave blank until the number has been assigned and communicated upon an executed Project Addendum)
- d. 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. It may include personnel cost for employees directly related to the day to day specific oversight and implementation of CDBG-MIT 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 been 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: CDBGMIT-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 <i>(At the discretion of the grantee)</i>					
Administrative and Legal Expenses					
Subtotal Program Administration					
Project Costs (Direct)					
A&E Fee					
Other A&E Fee					
Site Work					
Demolition and Removal					
Construction					
Subtotal Program Administration					
Project Costs (Activity Delivery Cost)					
Project Inspection Fee					
Subtotal Project Cost (Activity Delivery Cost)					
TOTAL PROJECT COST					
Indirect Cost					
TOTAL PLANNING COST					
GRAND TOTAL IN COST	Amount Being Applied For				

Organizational Head Initials _____

NMHC Initial _____

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

Organizational Head Initials _____

NMHC Initial _____

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 Agreement Number (*Leave blank until the number has been assigned and communicated upon an executed intergovernment 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 CDBG-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	2021											
		Quarter			X Quarter			Quarter			Quarter		
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
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											

Milestone	Amount	2022											
		Quarter			Quarter			Quarter			Quarter		
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Environmental Clearance													\$0.00
Execution of Agreement or Memorandum of Understanding and the Issuance of the Notice to Proceed													\$0.00
Solicitation and Selection of Architect													\$0.00
Design or Development of Scope of Work in progress													\$0.00
Solicitation and Selection of Contractor													\$0.00
Construction work in progress													\$1,000,000.00
Final Inspection and Close Out													\$0.00
Cumulative Drawdown													

+

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	2023											
		Quarter			Quarter			Quarter			Quarter		
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
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													

ACTIVITY BENEFICIARY FORM INSTRUCTIONS

Objective: The Activity Beneficiary Form reports information for actual beneficiaries of intended CDBG-MIT 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-MIT.
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, if 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 Mitigation 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 E
CDBG-MIT Intergovernmental Agreement

NORTHERN MARIANAS HOUSING CORPORATION ("NMHC")

INTERGOVERNMENTAL AGENCY AGREEMENT

BETWEEN

NMHC (GRANTEE)

AND

[IMPLEMENTING PARTNER]

This INTERGOVERNMENTAL AGENCY AGREEMENT, hereinafter called "Agreement", made this _____ day of _____, 2022, 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 **[IMPLEMENTING PARTNER]** hereinafter called the "Agency", whose address is **[ADDRESS CITY, STATE, ZIP]** concerning the "**[Name of Project]**"

WITNESSETH

WHEREAS, the Grantee has received Community Development Block Grant Disaster Mitigation ("CDBG-MIT") 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-MIT regulations in 24 CFR § 570 apply to CDBG-MIT 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-MIT Funds

The CDBG-MIT program will fund the completion of the _____

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 _____
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-MIT 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-MIT 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-MIT 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(s) for the construction of the _____. 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-MIT funds allocated to the Project.

2. National Objectives

All activities funded with CDBG-MIT 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-MIT funds or other CDBG-MIT 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 _____. 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:

Northern Marianas Housing Corporation (NMHC)
Jesse S. Palacios

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.

NMHC Corporate Director
P.O. Box 500514
Saipan, MP 96950
Phone: (670) 234-7670 Fax: (670) 234-9021
jspalacios@nmhcgov.net

Intergovernmental Agency:

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-MIT 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-MIT 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-MIT 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-MIT National Objectives pursuant to 24 CFR § 570.208. If the Agency fails to use CDBG-MIT-assisted real property in a manner that meets a CDBG-MIT 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-MIT 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-MIT 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-MIT 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 inclusive of the **HUD Rider and Crosscutting Requirements (attached)** constitute 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

Name of Agency

By: _____
Marcie M. Tomokane
Chairwoman
NMHC Board of Directors

By: _____

By: _____
Jesse S. Palacios
NMHC Corporate Director

By: _____

By: _____
Jeffrey Deleon Guerrero
NMHC Chief Financial Officer

By: _____

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

NMHC Legal Counsel

CUC Legal Counsel

APPENDIX F
HUD Cross-cutting Requirements

Appendix-F

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-MIT Programs. CDBG-MIT 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 NMHC's environmental reviews are in compliance with NEPA and HUD environmental regulations.

Federal Register Notice **84 FR-45862** authorizes recipients of CDBG-MIT 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-MIT, including FEMA or FHWA match programs. In matched projects, only the scope of the CDBG-MIT portion of the project are subject to crosscutting requirements DBRA requires all workers employed by contractors or subcontractors on CDBG-MIT 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-MIT 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.

NMHC will implement the requirements set forth by the Copeland Act, known as the “anti-kickback” prohibition which provides that all laborers and mechanics shall be paid unconditionally and not less often than once a week and without subsequent deduction or rebate except “permissible” salary deductions. Contractors and sub-contractors are required to submit appropriate weekly compliance statements and payrolls to the contractors, subcontractors, borrower, and/or sub-recipients.

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-MIT 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-MIT 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-MIT 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-MIT 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-MIT 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 \$200,000 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 \$200,000, including those not funded with CDBG-MIT 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 and labor 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-MIT funds to other governmental departments, nonprofit organizations, subrecipients or other funded entities, NMHC will require they document how

reasonable attempts were made to reach Section 3 safe harbor set forth at 24 CFR Part 75.23. 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.

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-MIT 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. NMHC will utilize the SAM system to verify vendor eligibility prior to entering into contractual agreements.

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-MIT 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-MIT 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 CDBG-MIT 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 Territory (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-MIT 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 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-MIT Capacity Assessment is to proactively identify the capacity and management practices of the potential Implementing Partners of CDBG-MIT 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 mitigation
- ☐ 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-MIT 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-MIT funds from NMHC (or another subrecipient) to undertake CDBG-MIT 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-MIT 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-MIT Programs will likely be implemented by partner Territory 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-MIT 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-MIT 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-MIT 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 Territory and federal rules, regulations, policies, and related statutes; 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, 2019 (P.L. 116-20)**, funds must be disbursed by **TO BE DETERMINED** – twelve (12) 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-MIT regulations and any NMHC policies, as well as to build capacity, CDBG-MIT 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-MIT 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-MIT 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 E: 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-MIT 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' projects will be advertised as the Invitation for Bids (IFBs) through NMHC's Procurement Division only and after the following requirements are completed:

- ☐ 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-MIT compliance. During this phase, specific pre-construction and construction phase TA is provided to keep agency projects HUD CDBG-MIT 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 beginning 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-MIT 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, NMHC will be responsible for:

- o Review of weekly Davis Bacon payrolls (or Territory 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 NMHC continues to utilize the system of record to report on Section 3, Davis-Bacon, M/WBE, and other NMHC and HUD 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 CDBG-MIT 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 Territory and federal agencies (such as substantiated investigative findings and audit reports). The Program has established regular channels of communication with local government agencies who are contracting with various entities for services relating to mitigation 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-MIT 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-MIT Division requires all program staff to disclose any relationship with an Implementing Partner or contractor. NMHC 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-MIT 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 NMHC procurement guidelines. The scope of the procurement may also include future services for design, surveying, and construction inspection/representation services. The

CDBG-MIT 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.

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.

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 Mitigation (CDBG-MIT) 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-MIT 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 Policies and Procedures.

APPENDIX G

HUD Rider

Appendix-G

HUD GENERAL PROVISIONS (“HUD RIDER”)

This CDBG Rider contains supplementary general conditions for use with procurement contracts and intergovernmental agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended. For all procurement contracts and intergovernmental agreements funded by the Community Development Block Grant Mitigation (“CDBG-MIT”) Program, *except those funded by the regular CDBG (“CDBG”) Program*, this CDBG-MIT Rider (Hereinafter referred to as “Agreement” between the Northern Marianas Housing Corporation “NMHC” and its Contractor) must be included as an attachment, expressly made a part of, and incorporated by reference.

If this Rider is attached to a Intergovernmental Agreement, the NMHC must ensure that the Intergovernmental Agreement includes the information specific to the subaward required in 2 CFR § 200.331.

The following terms and conditions apply to any contract awarded by the Grantee (“NMHC”) for which any portion of the funding is derived from a grant made by the United States Department of Housing and Urban Development (“HUD”). In addition, the Contractor and its Subcontractors shall comply with the Federal Labor Standards Provisions set forth in Form HUD-4010, available at <https://www.hud.gov/sites/documents/4010.PDF>

FEDERAL REGISTER NOTICES

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Register Notices applicable to the use of CDBG-MIT funds are available on the HUD Website at: <https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/>

1. DEFINITIONS

As used in this CDBG-MIT HUD Rider:

- (a) “Act” means Title 1 of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended.
- (b) “Agency” means the Northern Marianas Housing Corporation, the entity executing this Agreement on behalf of the CNMI government.
- (c) “Agreement” means either the “contract” (as defined by 2 CFR § 200.22) between the NMHC and the Contractor and the agreement between the NMHC and Subrecipient (“Place Name of Subrecipient” Here) as defined by 2 CFR § 200.93 as the context requires.
- (d) “Construction” means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.
- (e) “Contractor” and/or “Subrecipient” (“Place Name of Subrecipient Here”) means the entity or entities executing this Agreement, other than the Agency.

(f) "Equipment" means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds \$5,000.

(g) "Grant" means Community Development Block Grant Mitigation Program funds provided to the CNMI by the Federal Department of Housing and Urban Development or a pass-through entity.

(h) "HUD" means the Secretary of Housing and Urban Development or a person authorized to act on his or her behalf.

(i) "Program" means the CDBG-DR Program approved by HUD as the same may from time to time be amended.

(j) "Subcontractor" means any person, firm or corporation, other than employees of the Contractor or the Subrecipient, or another Subcontractor who is engaged by the Contractor or the Subrecipient to furnish (i) services, (ii) labor or (iii) services and/or labor and materials at the site of the work performed under this Agreement.

2. HOUSING AND COMMUNITY DEVELOPMENT ACT AND NATIONAL ENVIRONMENTAL POLICY ACT

[Applicable to Contractor and Subrecipient]

This Agreement is subject to Title 1 of the Housing and Community Development Act of 1974 (P.L. 93-383) as amended (The Act) and all rules, regulations and requirements now issued or hereafter issued pursuant to the Act; the Agreement may be suspended and/or terminated without liability to the NMHC if the Grant to the CNMI pursuant to the Act is suspended or terminated, and unless and until the NMHC receives Community Development Disaster Mitigation funds in an amount that is deemed sufficient to enable it to fund this Agreement, the NMHC is under no obligation to make any payments to the Contractor or "Subrecipient." In this regard, NMHC is under no obligation to make any payments to the Contractor or "Subrecipient", and shall not make any such payment, and the Contractor or DPW shall not commence performance, until:

- (a) the "Subrecipient" has received from NMHC clear instructions to proceed, evidencing compliance with the National Environmental Policy Act, as amended, and with regulations of the U.S. Department of Housing and Urban Development, related thereto, found at 24 CFR Part 58, and
- (b) the Contractor and "Subrecipient" have been notified of such instructions by the NMHC. Furthermore, the Contractor or "Subrecipient" and the NMHC mutually agree that the Contractor or "Subrecipient" shall not advance any funds, from any source without limitation, to pay for costs intended to be paid for under this Agreement prior to the receipt and notification described in this paragraph (a), and the NMHC shall not reimburse the Contractor or "Subrecipient" for any costs incurred in violation of this provision.

3. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then, upon the application of either Party, the Agreement shall forthwith be amended in writing to make such insertion or correction.

4. STATUTORY AND REGULATORY COMPLIANCE
[Applicable to Contractor and its Subcontractor(s)]

The Contractor and its Subcontractor(s) shall comply with all laws and regulations applicable to the Community Development Block Grant-Disaster Recovery funds appropriated by “Appropriations for Disaster Relief Act, 2018” (Pub. L. 115-254) and “Appropriations for Disaster Relief Act, 2019” (Pub. L. 116-20), and including 85 FR 4681 but not limited to the applicable Office of Management and Budget Circulars, which may impact the administration of funds and/or set forth certain cost principles, including the allowability of certain expenses.

5. BREACH OF CONTRACT TERMS
[Applicable to Contractor]

The CNMI CDBG-MIT Program reserves its right to all administrative, contractual, or legal remedies, including but not limited to suspension or termination of this Agreement, in instances where the Contractor or any of its Subcontractor(s) violate or breach any contract term. If the Contractor or any of its Subcontractor(s) violate or breach any contract terms and conditions, the Contractor shall be subject to such sanctions and penalties as may be appropriate. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

6. REPORTING REQUIREMENTS
[Applicable to Contractor and its Subcontractor(s)]

The Contractor shall complete and submit all reports, including reports from its Subcontractor(s), as applicable, in such form and according to such schedule, as may be required by the CNMI CDBG-MIT program. The Contractor/Subcontractor shall cooperate with all CNMI CDBG-MIT program efforts to comply with HUD requirements and regulations pertaining to reporting, including but not limited to 24 C.F.R. §§ 85.40-41 (or 84.50-52, if applicable) and 570.507.

The Contractor agrees to submit, and cause its Subcontractor(s) to submit periodic (e.g., monthly or quarterly as prescribed by the NMHC Construction Contract) reports to NMHC, as required by the CDBG-MIT program and contractual terms and conditions, detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low- and very low-income persons.

7. ACCESS TO RECORDS
[Applicable to Contractor and its Subcontractor(s)]

The State, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have, at any time and from time to time during normal business hours, access to any work product, books, documents, papers, and records of the Contractor and its Subcontractor(s) which are related to this contract, for the purpose of inspection, audits, examinations, and making excerpts, copies and transcriptions.

The Contractor shall cause its Subcontractor(s) to make these documents available for inspection.

8. MAINTENANCE/RETENTION OF RECORDS
[Applicable to NMHC and Subrecipient]

All records connected with this Agreement will be maintained in a central location and will be maintained for a period of at least three (3) years following the date of final payment and close-out of all pending matters related to this contract.

9. SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS
[Applicable to Contractor and its Subcontractor(s)]

The Contractor and its Subcontractor(s) will take necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used in subcontracting when possible. Steps include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

10. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 C.F.R. Part 401, "Rights to Inventions Made by Non-profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by HUD.

11. ENERGY EFFICIENCY
[Applicable to Contractor and its Subcontractor(s)]

The Contractor and its Subcontractors shall comply with mandatory standards and policies relating to energy efficiency issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

12. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
[Applicable to Contractors and its Subcontractor(s)]

The Contractor and its Subcontractor(s) shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or

activity receiving federal financial assistance.

13. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974
[Applicable to Contractors and its Subcontractor(s)]

The Contractor and its Subcontractor(s) shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

14. SECTION 504 OF THE REHABILITATION ACT OF 1973
[Applicable to Contractor and its Subcontractor(s)]

The Contractor and its Subcontractor(s) shall comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 94), as amended, and any applicable regulations.

The Contractor and its Subcontractor(s) agree that no qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from HUD.

15. AGE DISCRIMINATION ACT OF 1975
[Applicable to Contractor and its Subcontractor(s)]

The Contractor and its Subcontractor(s) shall comply with the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), as amended, and any applicable regulations. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

16. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Contractor and its Subcontractor(s) represent and warrant that they are not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs subject to 2 C.F.R. part 2424.

17. CONFLICTS OF INTEREST
[Applicable to Contractor and its Subcontractor(s)]

The Contractor shall notify the CNMI CDBG-DR program as soon as possible if this contract or subcontract(s) the Contractor awards to Subcontractor(s) or any aspect related to the anticipated work under this contract raises an actual or potential conflict of interest (as defined at 2 C.F.R. Part 215 and 24 C.F.R. § 85.36 (or 84.42, if applicable)). The Contractor/Subcontractor shall explain the actual or potential conflict in writing in sufficient detail so that the State is able to assess such actual or potential conflict. The Contractor/Subcontractor shall provide the CNMI CDBG-MIT program any additional information necessary for the CNMI CDBG-MIT program to fully assess and address such actual or potential conflict of interest. The Contractor shall accept any reasonable conflict mitigation strategy employed by the CNMI CDBG-MIT program, including but not limited to the use of an independent subcontractor(s) to perform the portion of work that gives rise to the actual or potential conflict.

18. SUBCONTRACTING

[Applicable to Contractor and his Subcontractor(s)]

When subcontracting, the Contractor shall solicit for and contract with Subcontractor(s) in a manner providing for fair competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Non-competitive pricing practices between firms or between affiliated companies,
- (iv) Non-competitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a *brand name* product instead of allowing an *equal* product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

The Contractor and its Subcontractor(s) represent to the CNMI CDBG-MIT program that all work shall be performed by personnel experienced in the appropriate and applicable profession and areas of expertise, taking into account the nature of the work to be performed under this contract.

The Contractor will include these HUD General Provisions in every subcontract issued by it so that such provisions will be binding upon each of its subcontractors as well as the requirement to flow down such terms to all lower-tiered subcontractors.

19. ASSIGNABILITY

[Applicable to Contractor and Subrecipient "DPW"]

The Contractor and/or Subrecipient shall not assign any interest in this contract and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the CNMI CDBG-DR Program.

20. INDEMNIFICATION

[Applicable to Contractor and its Subcontractor(s)]

The Contractor and its Subcontractor(s) shall indemnify, defend, and hold harmless the CNMI CDBG-MIT program and its agents and employees from and against any and all claims, actions, suits, charges, and judgments arising from or related to the negligence or willful misconduct of the Contractor/Subcontractor in the performance of the services called for in this contract.

21. COPELAND "ANTI-KICKBACK" ACT

(Applicable to all construction or repair contracts)

Salaries of personnel performing work under this contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll

deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the Copeland "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. § 874; and Title 40 U.S.C. § 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by subcontractors with such regulations and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

22. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT
[Applicable to Contractor and its Subcontractor(s)]

(Applicable to construction contracts exceeding \$2,000 and contracts exceeding \$2,500 that involve the employment of mechanics or laborers)

The Contractor and its Subcontractor(s) shall comply 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 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors shall receive overtime compensation in accordance with and subject to the provisions of the Contract Work Hours and Safety Standards Act, and the contractors and subcontractors shall comply with all regulations issued pursuant to that act and with other applicable Federal laws and regulations pertaining to labor standards.

23. DAVIS-BACON ACT
[Applicable to Contractor and its Subcontractor(s)]

(Applicable to construction contracts exceeding \$2,000 when required by Federal program legislation)

The Contractor and its Subcontractor(s) shall comply with the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 C.F.R. part 5).

All laborers and mechanics employed by contractors or subcontractors, including employees of other governments, on construction work assisted under this contract, and subject to the provisions of the federal acts and regulations listed in this paragraph, shall 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 the Davis-Bacon Act.

24. SECTION 503 OF THE REHABILITATION ACT OF 1973 (Applicable to contracts exceeding \$10,000)
[Applicable to Contractor and its Subcontractor(s)]

The Contractor and its Subcontractor(s) shall comply with section 503 of the Rehabilitation Act of 1973 (29 U.S.C. § 793), as amended, and any applicable regulations.

Equal Opportunity for Workers with Disabilities

- A. The Contractor and its Subcontractor(s) will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor and its Subcontractor(s) agree to take affirmative action to employ, advance in employment

and otherwise treat qualified individuals with disabilities without discrimination based on their physical or mental disability in all employment practices, including the following:

- i. Recruitment, advertising, and job application procedures;
 - ii. Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - iii. Rates of pay or any other form of compensation and changes in compensation;
 - iv. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - v. Leaves of absence, sick leave, or any other leave;
 - vi. Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
 - vii. Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - viii. Activities sponsored by the contractor including social or recreational programs; and
 - ix. Any other term, condition, or privilege of employment.
- B.** The Contractor and its Subcontractor(s) agree to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- C.** In the event of the Contractor and its Subcontractor(s)' noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- D.** The Contractor and its Subcontractor(s) agree to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, provided by or through the contracting officer. Such notices shall state the rights of applicants and employees as well as the Contractor's/Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The Contractor and its Subcontractor(s) must ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Contractor and its Subcontractor(s) may have the notice read to a visually disabled individual or may lower the posted notice so that it might be read by a person in a wheelchair).
- E.** The Contractor and its Subcontractor(s) will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor and its Subcontractor(s) is bound by the terms of section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment individuals with physical or mental disabilities.
- F.** The Contractor and its Subcontractor(s) will include the provisions of this clause in

every subcontract or purchase order in excess of \$10,000, unless exempted by the rules regulations, or orders of the Secretary issued pursuant to section 503 of the Act, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor and its Subcontractor(s) will take such action with respect to any subcontract or purchase order as the Deputy Assistant Secretary for Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

25. EXECUTIVE ORDER 11246
(Applicable to construction contracts and subcontracts exceeding \$10,000)

The Contractor and its Subcontractor(s) shall comply 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 C.F.R. chapter 60).

During the performance of this contract, the Contractor and its Subcontractor(s) agree as follows:

- A. The Contractor and its Subcontractor(s) shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor/Subcontractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. The Contractor and its Subcontractor(s) shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor/Subcontractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. The Contractor and its Subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor/Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- D. The Contractor and its Subcontractor(s) will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers representative of the contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The Contractor and its Subcontractor(s) will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- F. The Contractor and its Subcontractor(s) will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to books, records, and accounts by the NMHC and the Secretary of Labor for purposes of

investigation to ascertain compliance with such rules, regulations and orders.

- G. In the event of the Contractor's/Subcontractor's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the Contractor and its Subcontractor(s) may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- H. Contractor and its Subcontractor(s) shall incorporate the provisions of A through G above in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor so that such provisions shall be binding on such contractor/subcontractor. The Contractor and its Subcontractor(s) will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the NMHC, the Contractor and its Subcontractor(s) may request the United States to enter into such litigation to protect the interests of the United States.

26. CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to construction contracts exceeding \$10,000)

[Applicable to Contractor and its Subcontractor(s)]

The Contractor and its Subcontractor(s) certify that it does not maintain or provide for its establishments, and that it does not permit employees to perform their services at any location, under its control, where segregated facilities are maintained. It certifies further that it will not maintain or provide for employees any segregated facilities at any of its establishments, and it will not permit employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor and its Subcontractor(s) agree that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

The Contractor further agrees that (except where it has obtained for specific time periods) it will obtain identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that it will retain such certifications in its files; and that it will forward the preceding notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

27. CERTIFICATION OF COMPLIANCE WITH CLEAN AIR AND WATER ACTS
(Applicable to contracts exceeding \$100,000)

The Contractor and all its Subcontractor(s) shall comply with the requirements of the Clean Air Act, as amended, 42 U.S.C. § 1857 et seq., the Federal Water Pollution Control Act, as

amended, 33 U.S.C. § 1251 et seq., and the regulations of the Environmental Protection Agency (EPA) with respect thereto, at 40 C.F.R. Part 15 and 32, as amended, Section 508 of the Clean Water Act (33 U.S.C. § 1368) and Executive Order 11738.

In addition to the foregoing requirements, all non-exempt contractors and subcontractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor and its Subcontractor(s), that any facility to be utilized in the performance of any non-exempt contract or subcontract, is not listed on the Excluded Party Listing System pursuant to 40 C.F.R. 32 or on the List of Violating Facilities issued by the EPA pursuant to 40 C.F.R. Part 15, as amended.
- B. Agreement by the Subcontractor(s) to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. § 1857 c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. § 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the Excluded Party Listing System or the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (A) through (D) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

28. **LOBBYING** (Applicable to contracts exceeding \$100,000)
[Applicable to Contractor and its Subcontractor(s)]

The Contractor and its Subcontractor(s) certify, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor and its Subcontractor(s), to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Contractor and its Subcontractor(s) shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts

under grants, loans, and cooperative agreements) and that all its Subcontractor(s) shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

29. BONDING REQUIREMENTS

(Applicable to construction and facility improvement contracts exceeding \$100,000)

The Contractor and its Subcontractor(s) shall comply with THE CNMI CDBG-MIT Program bonding requirements, unless they have not been approved by HUD, in which case the Contractor and its Subcontractor(s) shall comply with the following minimum bonding requirements:

- (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 and its Subcontractor(s) 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 and its Subcontractor(s) 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.

30. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968
(As required by applicable thresholds)

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R. part 75, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 75 regulations.
- C. The Subrecipient, Contractor and its Subcontractor(s) agree to send to each labor organization or representative of workers with which “Subrecipient,” Contractor and/or its Subcontractor(s) has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers’ representative of “Subrecipient” and Contractor’s commitments under this Section 3 clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice.

The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- D. The Subrecipient and the Contractor agree to include this section 3 clause in every subcontract subject to compliance with regulations in 24 C.F.R. part 75, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 C.F.R. part 75. The Contractor will not subcontract with any subcontractor where the subcontractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 75.
- E. The Subrecipient, Contractor and its Subcontractor(s) will certify that any vacant employment positions, including training positions, that are filled: (1) after the Subrecipient is selected for CDBG-MIT funding and before the contract is executed with Contractor, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 75 require employment opportunities to be directed, were not filled to circumvent the Subrecipient, Contractor and its Subcontractor(s)' obligations under 24 C.F.R. part 75.
- F. Noncompliance with HUD's regulations in 24 C.F.R. part 75 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

31. FAIR HOUSING ACT

[Applicable to Contractor and its Subcontractor(s)]

The Contractor and its Subcontractor(s) shall comply with the provisions of the Fair Housing Act of 1968 as amended. The act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. The Equal Opportunity in Housing Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds. Please visit http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_11868.pdf for more information.

32. Federal Funding Accountability and Transparency Act (FFATA)

The Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended, was signed with the intent of reducing wasteful government spending and providing citizens with the ability to hold the government accountable for spending decisions. 2 C.F.R. Part 170 outlines the requirements of recipients in reporting information on subawards and executive total

compensation under FFATA legislation. Any non-Federal entity that receives or administers Federal financial assistance in the form of: grants, loans, loan guarantees, subsidies, insurance, food commodities, direct appropriations, assessed and voluntary contributions; and/or other financial assistance transactions that authorize the non-Federal entities' expenditure of Federal fund, is subject to these requirements

Prime contract awardees and prime grant awardees are required to report against subcontracts and subgrants awarded in the FFATA Subaward Reporting System (FSRS), the reporting tool for Federal prime awardees. This information reported will then be displayed on a public and searchable website: www.USASpending.gov.

33. Procurement

The Uniform Guidance procurement requirements (2 C.F.R. Part 200, Subpart D) went into effect on July 1, 2018. These requirements are applicable to CDBG-DR funded projects, or as provided by 83 Federal Register 5844 VI A(1)(b)(2) permits a state grantee to elect to follow its own procurement policy. These policies and procedures ensure that Federal dollars are spent fairly and encourage open competition at the best level of service and price. Standards for procurement of supplies, equipment, construction, engineering, architectural, consulting, and other professional services are outlined in the Commonwealth of the Northern Marianas Islands Procurement Regulations at NMIAC 100-60.

34. Change Orders to Contracts

Change orders are issued when the initial agreed upon pricing or work to be completed requires modification. First, the contractor must complete a Change Order Request Form. This form and supporting documentation must be delivered to the Project Manager for review. Each change order must have a cost analysis. Once the Project Manager approves the change order, it is returned to the contractor for execution. Change orders are only invoiced on the final draw and categorized as "change order." The amount listed on the invoice must match the previously approved amount and must be cost reasonable. The Project Manager is responsible for verifying cost reasonableness. Verification documentation for cost reasonableness becomes an attachment to the change order.

35. Environmental Review

Every project undertaken with Federal funds, and all activities related to that project, is subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), as well as to the HUD environmental review regulations at 24 C.F.R. Part 58- ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES. The primary purpose of this Act is to protect and enhance the quality of our natural environment. The HUD environmental review process must be completed before any Federal funds can be accessed for program-eligible activities.

The primary objectives of the HUD environmental review are to identify specific environmental factors that may be encountered at potential project sites, and to develop procedures to ensure compliance with regulations pertaining to these factors. The HUD environmental review is designed to produce program-specific environmental review procedures in a program that can vary greatly in terms of scope of work.

36. Lead Based Paint

All housing units assisted using CDBG-DR funds must comply with the regulations regarding lead-based paint found at 24 C.F.R. Part 35- LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES.

37. Environmental Review Record

The Environmental Officer is responsible for maintaining a written record of the environmental review process. The ERR for all programs contains all the governmental review documents, public notices and written determinations or environmental findings required by 24 C.F.R. Part 58- ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES as evidence of review, decision making and actions pertaining to a project of a recipient.

38. Flood Insurance Requirements

Grantees and subrecipients of Federal funding must ensure that procedures and mechanisms are put into place to monitor compliance with all flood insurance requirements as found in the Flood Disaster Protection Act of 1973, 24 C.F.R. § 570.605- NATIONAL FLOOD INSURANCE PROGRAM and 24 C.F.R. § 570.202- ELIGIBLE REHABILITATION AND PRESERVATION ACTIVITIES.

39. Duplication of Benefits

CDBG-MIT funding intends to address the unmet needs of a community. The funds are supplemental to primary forms of assistance, including private insurance and FEMA funds. The Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. § 5121 et seq., established the requirements for Duplication of Benefits (DOB) analysis.

40. Anti-Fraud, Waste and Abuse Checks

The Anti-Fraud, Waste and Abuse (AFWA) check is designed to identify discrepancies and risk- relevant issues in Applicant-provided information that may be indicative of fraud, waste, and/or abuse.

41. Affirmatively Furthering Fair Housing

The Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601, et seq., dictates that grantees are required to administer all programs and activities related to housing and urban development in a manner to affirmatively further the policies of the Fair Housing Act. Per the regulations of 24 C.F.R. § 570.601 and in accordance with Section 104(b)(2) of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301 et seq., for each community receiving a grant under Subpart D of this part, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to take meaningful actions to further the goals identified in the grantee's Assessment of Fair Housing (AFH) plan, conducted in accordance with the requirements of 24 C.F.R. § §§ 5.150-5.180 (Affirmatively Furthering Fair Housing) and take no action that is materially inconsistent with its obligation to affirmatively further fair housing.

42. Drug Free Workplace

The Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. § 81, as implemented by 24 C.F.R. § Part 24, Subpart F, §§ 983.251-983.262, requires that any grantee other than an individual must certify that it will provide a drug-free workplace. Any grantee found in violation of the requirements of this act may be subject to suspension of payments under the grant, suspension or termination of the grant or suspension or debarment of the grantee.

43. Timely Distribution of Funds

The Supplemental Appropriations for Disaster Relief Requirements, 2017 (Pub. L. 115-56), approved September 8, 2017 (Appropriations Act), as amended, requires that funds provided under the Act be expended within two (2) years of the date that HUD obligates funds to a grantee unless otherwise authorized via waiver of this requirement by the Office of Management and Budget (OMB). The OMB waived the two (2) year expenditure requirement under 83 Fed. Reg. 40314 (Aug. 14, 2018); however, the provision to expend one hundred percent (100%) of the total allocation of CDBG-DR funds on eligible activities within six (6) years of HUD's initial obligation of funds remains in effect. The six (6) year expenditure period commences with the initial obligation of funds provided under 83 Fed. Reg. 5844 (Feb. 14, 2018). Additionally, per 83 Fed. Reg. 5844, the provisions at 24 C.F.R. §§ 570.494 and 570.902, regarding timely distribution and expenditure of funds, are waived and an alternative requirement was established.

Furthermore, consistent with 31 U.S.C § 1555 and OMB Circular No. A-11 (2017), if the Secretary of HUD or the President of the United States determines that the purposes for which the appropriation was made have been carried out and no disbursement has been made against the appropriation for two (2) consecutive fiscal years, any remaining unobligated balance shall be cancelled and will be made unavailable for obligation or expenditure for any purpose.

44. Property Management and Distribution

Regulations governing property management and distribution of real property, equipment, financial obligations and return of un-obligated cash post program closeout can be found in 24 C.F.R. § 570.506, 2 C.F.R. § 200.310, 2 C.F.R. § 200.343 and 2 C.F.R. § 200.344(b). The standards of 24 C.F.R. § 570.506 apply to any real property under a CDBG award recipient's control acquired in whole or in part with CDBG funds in excess of \$25,000.00. The recipient may not change the use or planned use of the property without proper notification to affected citizens and allowable time for comment by them. If the property is not a building for general government conduct, the use of the property may be changed with citizen approval if it either meets one of the national objectives as defined in 24 C.F.R. § 570.208 or if not, the recipient may either retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following such reimbursement, the property will no longer be subject to any CDBG requirements.

45. Limited English Proficiency

Executive Order No. 13166, signed on August 11, 2000, requires programs, subrecipients, contractors, subcontractors, and/or developers funded in 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. Fair access is ensured through the implementation of a Language Assistance Plan (LAP), which includes non-English-based outreach, translation services of vital documents, free language assistance services, and staff training. Vital documents are defined as depending on the importance of the program,

information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.

46. Personally Identifiable Information

In accordance with 2 C.F.R. § 200.303, regarding internal controls of a non-Federal entity, a grantee must guarantee the protection of all Personally Identifiable Information (PII) obtained. The program will enact necessary measures to ensure PII of all applicants is safeguarded as to avoid release of private information. If a contractor or employee should experience any loss or potential loss of PII, the program shall be notified immediately of the breach or potential breach.

47. Uniform Relocation Act

CDBG-DR funds are subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA or Uniform Act), as amended. 49 C.F.R. § Part 24 requires relocation assistance for lower-income individuals displaced as a result of the demolition or conversion of a lower-income dwelling and requires one-for-one replacement of lower-income units demolished or converted to other uses.

48. Residential anti-displacement and relocation assistance plan. Per Section 104(d) of the Housing and Community Development Act of 1974 § 42.325

(a) Certification.

(1) As part of its consolidated plan under 24 CFR Part 91, the recipient must certify that it has in effect and is following a residential anti-displacement and relocation assistance plan.

(2) A unit of general local government receiving funds from the State must certify to the State that it has in effect and is following a residential anti-displacement and relocation assistance plan, and that it will minimize displacement of persons as a result of assisted activities. The State may require the unit of general local government to follow the State's plan or permit it to develop its own plan. A unit of general local government that develops its own plan must adopt the plan and make it public.

(b) Plan contents.

(1) The plan shall indicate the steps that will be taken consistent with other goals and objectives of the program, as provided in Parts 92 and 570 of this title, to minimize the displacement of families and individuals from their homes and neighborhoods as a result of any assisted activities.

(2) The plan shall provide for relocation assistance in accordance with § 42.350.

49. Complaints and Appeals

Citizen comments on the CNMI CDBG-MIT program published Action Plan, any substantial amendments to the Action Plan, performance reports and/or other issues related to the general administration of CDBG-MIT funds are welcomed throughout the duration of the grant. The Citizen Participation Plan is posted as a stand-alone document at <https://www.cnmi-cdbgdr.com/CDBG-MIT/> Complaints regarding fraud, waste, or abuse of government funds shall be addressed to the HUD Office of Inspector General Fraud Hotline by phone: 1-800-347-3735 or email: hotline@hudoig.gov.

50. Monitoring

As per CDBG regulation, 24 C.F.R. § 570.501(b), grantees of CDBG-DR funds are responsible

for carrying out their programs to meet compliance with CDBG Program, statutory and regulatory requirements, including monitoring their project administrators, contractors and subcontractors. As such, throughout the application, planning, design, and implementation phase of the program, The CNMI CDBG-MIT PROGRAM will conduct internal monitoring of processes, procedures, policy, applications, planning, design, construction, and other applicable phases.

51. Procurement of Recovered Materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.



JAKE MARATITA
Chairperson, CSC

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CIVIL SERVICE COMMISSION
OFFICE OF PERSONNEL MANAGEMENT

P.O. BOX 5153 CHRB, SAIPAN, MP 96950-5153
CSC TEL NO: (670) 233-1606 | FAX NO: (670) 233-4096
OPM TEL. NO: (670) 234-6925 / 6958 / 8036 | FAX NO. (670) 234-1013
CSC website: <http://www.cnmicsc.net> | OPM website: <http://www.cnmiopm.net>



FRANCES TORRES-SALAS
Director of Personnel

**NOTICE OF AMENDMENT TO
THE SICK LEAVE BANK REGULATIONS
(NMIAC § 10-10-50)**

NOTICE OF INTENDED ACTION: The Commonwealth of the Northern Mariana Islands, Civil Service Commission ("Commission") intends to amend the Sick Leave Bank Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104 (a). The amendment will become effective 10 days after compliance with 1 CMC § § 9102 and 9104 (a) as stipulated by 1 CMC § 9105 (b).

AUTHORITY: The Civil Service Commission has statutory authority to promulgate and effect personnel regulations pursuant to 1 CMC § 8117, as amended by Public Law No. 17-80, and specifically the Sick Leave Bank Regulations, as authorized by Public Law No. 8-25.

TERMS AND SUBSTANCE: The Civil Service Commission proposes to adopt changes to the Sick Leave Bank Regulations codified as NMIAC § 10-10-50.

SUBJECTS AND ISSUES INVOLVED: These amendments to the regulations will increase the sick leave bank withdrawal limit to 240 hours on the general account, during the employee's employment lifetime or 1,040 hours maximum withdrawal on designated account, with a withdrawal limit of 480 hours during any one-year usage period. An employee shall not exceed a combined maximum amount of 1,040 hours from the designated account and general account. Additionally, the amendments update the title Director of Personnel Management to the current title of Director of Personnel and include other minor supportive changes.

DIRECTIONS FOR FILING AND PUBLICATION: The Civil Service Commission is soliciting comments regarding this proposed regulation which must be received by the Commission within thirty (30) days of first publication of this notice in the Commonwealth Register, 1 CMC § 9104(a)(2). Interested parties may submit comments on the proposed amendments to Teresa Borja, Executive Assistant, Civil Service Commission, to the following address, or email address, with the subject line "Amendments to the Sick Leave Bank."

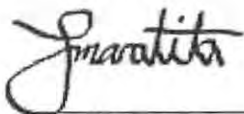
CIVIL SERVICE COMMISSION
P.O. BOX 5153 CHRB
SAIPAN, MP 96950
Email address: staff@cnmicsc.net



OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
RECEIVED
BY: QU DATE: 9/27/22

Notice of Amendment - Sick Leave Bank
Page 2

Submitted by:



Jake Maratita
Chairperson, Civil Service Commission

July 20, 2022

Date

Received by:



Matilda A. Rosario
Special Assistant for Administration

09/26/22

Date

File and Recorded by:



Esther SN. Nesbitt R.M. - SAN NICOLAS
Commonwealth Registrar

9.28.22

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.



Edward Manibusan
Attorney General

9/28/2022

Date



JAKE MARATITA
Chairperson, CSC

COMMONWEALTH TÉÉL FALÚW KKA EFÁNG LLÓL
MARIANAS
CIVIL SERVICE COMMISSION
OFFICE OF PERSONNEL MANAGEMENT

P.O. BOX 5153 CHRB, SAIPAN, MP 96950-5153
CSC TEL NO: (670) 233-1606 | FAX NO: (670) 233-4096
OPM TEL. NO: (670) 234-6925 / 6958 / 8036 | FAX NO. (670) 234-1013
CSC website: <http://www.cnmicsc.net> | OPM website: <http://www.cnmiopm.net>



FRANCES TORRES-SALAS
Director of Personnel

ARONGORONGOL LIIWEL NGÁLI
“SICK LEAVE BANK REGULATIONS”
(NMIAC § 10-10-50)

ARONGORONGOL MÁNGEMÁNGIL MWÓGHUT: Commonwealth Téél Falúw kka Efáng llól Marianas (“Commission”) re mángemángil rebwe liiweli “Sick Leave Bank Regulations”, sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104 (a). Ebwe bwunguló liiwel kkal seigh ráál mwiril aal angúungú sáangi 1 CMC § § 9102 me 9104 (a) iye e ffat sáangi § 9105 (b).

BWÁNGIL: Eyoor bwángil “Civil Sevice Commission” reel rebwe arongawow me ayoorai mwóghutughutúl sáangi 1 CMC § 8117, iye re liiweli sáangi Alléghúl Toulap No. 17-80, me e ffat “Sick Leave Bank Regulations”, iye eyoor bwángil sáangi Alléghúl Toulap No. 8-25.

KKAPASAL ME WEEWEL: Civil Service Commission re ppwomw rebwe adóptááli liiwel ngáli Mwóghutughutúl Sick Leave Bank iye e lo bwe NMIAC § 10-10-50.

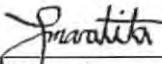
KKAPASAL ME AUTOL: Liiwel kkal ngáli mwóghutughut nge ebwe lapaló mille “sick leave bank withdrawal limit” ngáli ruwangaras me fááigh oora wóól mille “general account”, atol aal schóól angaang “employment lifetime” ngáre sangaras me fááigh oora “maximum withdrawa;” wóól “designated account”, fengál me “withdrawal limit” faabwúghúw me waliigh orra atol eew ráágh aal yááyá. Schóól angaang essóbw aluuló mille schuu bwe “maximum amount” reel sangaras me fááigh oora sáangi “designated account” me “general account”. Me, ffél liiwel ngáli mille “Director of Personnel Manganement” ngáli mille ighila bwe “Director of Personnel” ebwe schuulong liiwel ikka e tepang.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Civil Service Commission re tingór kkapas ngáli ppwomol mwóghutughut ikka rebwe bwughi sáangi Commission llól eliigh ráál mwiril aal ghommwal akkatééwow arongorong yeel me llól Commonwealth Register, 1 CMC § 9104(a)(2). Schóó kka re tipáli rebwe isiisilong kkapas wóól ppwomol liiwel kkal rebwe isiis ngáli Teresa Borja, Executive Assistant, Civil Service Commission, ngáli féléfél, ngáre email address, ebwe lo wóól subject line bwe “Amendments to the Sick Leave Bank.”

CIVIL SERVICE COMMISSION
P.O. BOX 5153 CHRB
SAIPAN, MP 96950
Email address: staff@cnmicsc.net

Arongorongol Liiwel – “Sick Leave Bank”
Peigh 2

Isáliyalong:



Jake Maratita
Chairperson, Civil Service Commission

July 22, 2022

Ráál

Bwughiyal:



Matilda A. Rosario
Special Assistant ngáli Administration

07/26/22

Ráál

Ammwelil:



Esther SN. Nesbitt R.M. SAN NICOLAS
Commowearth Registrar

9.28.22

Ráál

I alúghúlúgh, sáangi 1 CMC § 2153 (e) me 1 CMC § 9104 (a)(3), bwe I ya takkal amwuri fischiiy me átirowa mwóghutughut kkal bwe aa lléghló reel fféérúl me legal sufficiency.

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.



Edward Manibusan
Soulemelemil Allégh Lapalap

9/28/2022

Ráál



JAKE MARATITA
Kabesiyu, CSC

COMMONWEALTH GI SANGKATTAN NA ISLAS MARIÑAS
CIVIL SERVICE COMMISSION
UFISINAN MANEHANTIN MANIMPLEHA

P.O. BOX 5153 CHR, SAIPAN, MP 96950-5153
CSC TEL NO: (670) 233-1606 | FAX NO: (670) 233-4096
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FRANCES TORRES-SALAS
Direktot Personnel

NUTISIA PUT I MANMATULAIKA GI REGULASIÓ I
“SICK LEAVE BANK” (NMIAC § 10-10-50)

I AKSIÓN NI MA’INTENSIONA: I Commonwealth gi Sangkattan na Islas Mariñas, i “Civil Service Commission” (i Kumisió) ha intensiona para u amenda i Regulasió i “Sick Leave Bank,” sigun gi maneran i Ákton Administrative Procedure, 1 CMC § 9104 (a). I amenda siempre umifektibu gi dies (10) dihas dispues di manatátiyi yan i 1 CMC § § 9102 yan 9104 (a) komu madimánda ni 1 CMC § 9105 (b).

ÁTURIDÁT: I “Civil Service Commission” gai aturidát para u kátga huyung i ubligasió-ña yan para u na ifektibu i regulasió manimpleha siha sigun para i 1 CMC § 8117, komu ma’amenda ni Lai Pupbliku No. 17-80, yan espesifiku i Regulasió “Sick Leave Bank,” komu ma’aturisa ni Lai Pupbliku No. 8-25.

I TEMA YAN SUSTANSIAN I PALÁBRA SIHA: I “Civil Service Commission” ha propoponi para u adápta i tinilaika siha gi Regulasió “Sick Leave Bank” ni mapo’lu komu NMIAC § 10-10-50.

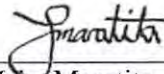
I SUHETU YAN ASUNTU SIHA NI TINEKKA: Esti siha na tinilaika gi regulasió siha siempre inaomenta i “sick leave bank withdrawal limit” para 240 oras gi hinirát na “account,” gi durántin i impli’áo implehan-ña na chu’cho’-ña osino 1,040 oras na “maximum withdrawal” gi madesikna na “account,” yan i “withdrawal limit” gi 480 oras durántin kuatkuet na un áñu na tiempun sinetbi. I impli’áo ti debi na u upus i dinanña na “maximum amount” nu 1,040 oras ginen i madesikna na “account” yan i hinirát na “account.” Yan más, i amenda ha na más nuebu i titulu “Director of Personal Management” para i presentí na titulu nu “Director of Personnel” yan ingklusu ottru menót na supottan tinilaika siha.

DIREKSIÓN PARA U MAPO’LU YAN PUPBLIKASIÓN: I “Civil Service Commission” manmamamaisin upiñon put esti i manmaproponi na regulasió ni debi u marisibi ginen i Kumisió gi halum trenta (30) dihas ginen i fine’na na pupublikasió nu esti na nutisia gi halum Rehistran Commonwealth, 1 CMC § 9104(a)(2). I manintiresáo na pattida siña ma’intrega hálum i upiñon siha gi manmaproponi na amenda para as Teresa Borja, Ayudántin Eksakatibun, “Civil Service Commission,” gi mantinátiyi na address, osino email address, ya i suhetu na ráya “Amenda para i “Sick Leave Bank.””

CIVIL SERVICE COMMISSION
P.O. BOX 5153 CHRB
SAIPAN, MP 96950
Email address: staff@cnmicsc.net

Nutisia Put I Tinilaika - Sick Leave Bank
Páhina 2

Nina'hålum as:


Jake Maratita
Kabesiyu, Civil Service Commission

July 20, 2022
Fetcha

Rinisibi as:


Matilda A. Rosario
Ispisiât na Ayudânti para i Atministrasiôn

09/26/22
Fetcha

Pine'lu yan Ninota as:


Esther S.N. Neshin R.M. SAN NICOLAS
Rehistran Commonwealth

9.28.22
Fetcha

Hu settifika, sigun gi 1 CMC § 2153(e) yan 1 CMC § 9104(a)(3), na hu ribisa yan aprueba esti siha na regulasiôn komu fotma yan ligât sufisienti.


Edward Manibusan
Abugâdu Hinirât

9/28/2022
Fetcha

TITLE 10: CIVIL SERVICE COMMISSION

CHAPTER 10-50 SICK LEAVE BANK REGULATIONS

Part 001	General Provisions	Part 300	Returning Hours Used from the Sick Leave Bank
§ 10-50-001	Authority	§ 10-50-301	General Account
§ 10-50-005	Purpose	§ 10-50-305	Designated Account
§ 10-50-010	Applicability	§ 10-50-310	Hours Previously Withdrawn from the Sick Leave Bank <u>Transitions</u>
Part 100	Contributions to the Sick Leave Bank	Part 400	Accommodation and Disability
§ 10-50-101	Eligibility	§ 10-50-401	Physician's Statement
§ 10-50-105	Procedure	§ 10-50-405	Alternative Position
Part 200	Withdrawals from the Sick Leave Bank	§ 10-50-410	Disability
§ 10-50-201	Limitation on Number of Hours	Part 500	Miscellaneous
§ 10-50-205	Eligibility	§ 10-50-501	Appeal
§ 10-50-210	Procedure	§ 10-50-505	Records
§ 10-50-215	Disposition of Request	§ 10-50-510	Effect on Family Medical Leave Act
		<u>§ 10-50-515</u>	<u>Maintenance of the General Account</u>

Chapter Authority: 1 CMC § 8275.

Chapter History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997); Emergency and Proposed 15 Com. Reg. 11077 (Nov. 15, 1993) (effective for 120 days from October 18, 1993).*

*A notice of permanent adoption for the 1993 proposed regulations was never published.

Commission Comment: PL 8-25 (effective July 23, 1993), the "Northern Mariana Islands Government Employees Sick Leave Bank Act," is codified at 1 CMC §§ 8271-8275. 1 CMC § 8274 provides that the sick leave bank shall be administered by the Civil Service Commission. 1 CMC § 8275 authorizes the Civil Service Commission to prescribe rules and regulations necessary to administer the act.

Regarding the history of the Civil Service Commission in the Commonwealth, see the general commission comment to chapter 10 of this title.

The text of the 1993 emergency regulations was not published with the public notice of emergency and proposed regulations. The emergency regulations were in effect for 120 days from October 18, 1993.

After the 1993 emergency regulations expired, the Civil Service Commission promulgated regulations governing the government employees sick leave bank as part III of the Excepted Service Personnel Regulations. For the history of part III, see 17 Com. Reg. 13398 (May 15, 1995) (adopted); 16 Com. Reg. 11771 (Mar. 15, 1994) (proposed), as amended by 17 Com. Reg. 13918 (Dec. 15, 1995) (adopted); 17 Com. Reg. 13631 (Aug. 16, 1995) (emergency and proposed).

The sick leave bank regulations in part III were repealed in 1997 when the Civil Service Commission promulgated

TITLE 10: CIVIL SERVICE COMMISSION

separate sick leave bank regulations, codified in this chapter. See 19 Com. Reg. 15748, 15756 (Nov. 15, 1997); 19 Com. Reg. 15638 (Sept. 15, 1997); see also the general history and comment sections to NMIAC, title 10, chapter Public Law 15-69 (effective June 5, 2007), codified at 1 CMC § 8276, authorized government employees to apply for sick leave to attend to an immediate family member who is sick. Public Law 15-116 (effective Nov. 29, 2007), codified at 1 CMC §§ 8265-8267, which repealed and reenacted PL 15-69, requires that sick leave requests to attend to immediate family members in excess of two days must be supported by a certified medical statement. The provisions of PL 15-116 supersede any conflicting provisions of this chapter.

10, part 300 and NMIAC title 120, chapter 10, part 300.

TITLE 10: CIVIL SERVICE COMMISSION

Part 001 - General Provisions

§ 10-50-001 Authority

This chapter, promulgated by the Civil Service Commission under the authority of 1 CMC § 8275, implements the sick leave bank created by Public Law 8-25 and codified at 1 CMC §§ 8271, et seq.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

§ 10-50-005 Purpose

This chapter is intended to provide additional job and financial protection for employees experiencing prolonged absence from the workplace due to catastrophic illness or major injury.

Modified, 1 CMC § 3806(d).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

§ 10-50-010 Applicability

Except as otherwise provided, this chapter applies to all employees of the government of the Northern Mariana Islands, whether or not they are members of the Civil Service System.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

Part 100 - Contributions to the Sick Leave Bank

§ 10-50-101 Eligibility

Any person employed by the Commonwealth government ~~under a civil service or excepted service status~~ may contribute sick leave hours to the sick leave bank, provided that, after such contribution, he or she retains at least eighty (80) hours of accrued sick leave. Unlimited donations may also be made to designated accounts, but donations to each designated account must comply with the limits established under this regulation. Employees separating from service with the Commonwealth government for whatever reason, at the time of their separation, may contribute any or all of their accrued sick leave hours to the sick leave bank.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997)

§ 10-50-105 Procedure

TITLE 10: CIVIL SERVICE COMMISSION

All contributions shall be made on forms prescribed by the Director of Personnel-~~Management~~. The contributor may elect to contribute sick leave hours to either or both:

- (a) The general account, available to any eligible employee, or
- (b) A designated account, available only to the eligible employee designated by the contributor. If the designated employee does not use the hours contributed to his or her designated account within four pay periods of the contribution, the remaining hours will be deposited into the general account, at the decision of the contributor, one (1) year from the date of initial use.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

Part 200 - Withdrawals from the Sick Leave Bank

§ 10-50-201 Limitation on Number of Hours

Withdrawal of sick leave bank hours for extended sick leave is a privilege, not a right. An employee shall not exceed a combined maximum amount of one-thousand and forty (1,040) from the designated account and the general account:

(a) General Account: Two-hundred and forty (240) hours maximum, during the employee's employment lifetime with the government full period of employment; No employee may withdraw any hours from the sick leave bank from the general account if he or she has already withdrawn a maximum of two-hundred and forty (240) hours from that account. However, if the employee has returned to the general account some or all of those hours, as provided in Part 300, he or she may withdraw additional hours up to the amount returned. An employee is required to repay the amount borrowed as per § 10-50-301.

(b) Designated Account: One-thousand and forty (1,040) hours maximum, during the employee's full period of employment with the CNMI Government. However, the employee is limited to four hundred and eighty (480) hours during any one-year usage period. These donated hours do not require repayment, but non-repayment will limit the employee's ability to withdraw additional hours.

Examples:

1. An employee has withdrawn 240 hours from the general account and has not returned any hours. The employee has maximized the sick leave bank withdrawal from the general account; however, the employee may still receive up to 800 from the designated account.
2. An employee has withdrawn 240 hours from the general account and has not returned any hours and received 800 hours from the designated account. The employee has maximized both the general account and the designated account. The employee cannot withdraw or receive any more sick leave from the respective accounts.
3. An employee has withdrawn 240 hours from the general account and has returned 40 hours. The employee is allowed to withdraw up to 40 hours from the general account; plus, the employee may still receive up to 800 from the designated account.

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~~Withdrawal of sick leave bank hours for extended sick leave is a privilege, not a right. No employee may withdraw any hours from the sick leave bank, whether from the general account or from his or her designated account, if he or she has already withdrawn one hundred sixty hours. However, if the employee has returned to the bank some or all of these hours, as provided in part 300, he or she may withdraw additional hours up to the amount returned. Examples:~~

~~(a) — An employee has withdrawn 70 hours and has not returned any hours. That employee can withdraw up to an additional 90 hours.~~

~~(b) — An employee has withdrawn 160 hours and has not returned any hours. That employee cannot withdraw additional hours.~~

~~(c) — An employee has withdrawn 160 hours and has returned 160 hours. That employee can withdraw up to an additional 160 hours.~~

~~(d) — An employee has withdrawn 160 hours and has returned 50 hours. That employee can withdraw up to an additional 50 hours.~~

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

§ 10-50-205 Eligibility

Any person employed by the Commonwealth government, its agencies, or instrumentalities, may apply for withdrawal of hours first from ~~an account~~the designated account for his or her use, if any, and then from the general account of the sick leave bank provided that:

(a) The employee's need to be absent from work is due to the catastrophic injury or illness of the employee, or the quarantine of the employee, the employee's family, or the employee's residence;

(b) The employee is not qualified for workers' compensation because the injury or illness is not work related;

(c) The employee ~~is expected to have~~must exhaust all personal accrued sick leave, annual leave, ~~and allowable~~ advance sick leave, advance annual leave, and accumulated compensatory time, prior to the usage of the sick leave bank hours requested; recovery from the illness or injury for which the additional sick leave hours are requested;

(d) The additional hours requested by the employee will not cause the employee to exceed the withdrawal limit established in § 10-50-201;

(e) The employee is expected to return to government service

(1) In the same position, or

(2) If the injury or illness prevents the employee from performing the essential job functions of the same position even with reasonable accommodation to some other position with the

TITLE 10: CIVIL SERVICE COMMISSION

Commonwealth government;

- (f) The request for sick leave does not extend beyond the term of the employee's employment;
- (g) The ~~sick leave bank~~general account of the sick leave bank has sufficient hours to accommodate the employee's request; and
- (h) The employee's appointing authority, as defined in the Personnel Service System Rules and Regulations, NMIAC § 10-20.2-257(a), recommends approval of the employee's withdrawal request. An appointing authority can refuse to recommend approval only if:
 - (1) The employee's additional absence will significantly interfere with the agency's ability to perform its responsibilities; or
 - (2) The employee is seeking ~~the~~ additional sick leave for recuperation from a work-related injury or illness that is otherwise compensable under the Workers' Compensation Act.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

Commission Comment: In the original section, subsection (e) appeared twice. The Commission deleted the repeated section and redesignated subsections (f) through (h). The Commission changed "to recommend refusal" to "to recommend approval" in subsection (h) to correct a manifest error.

In subsection (h), the Commission corrected the spelling of "recommend." The Commission inserted a comma after the word "agencies" in the initial paragraph pursuant to 1 CMC § 3806(g)

§ 10-50-210 Procedure

An employee shall request a withdrawal of hours from the sick leave bank from the Office of Personnel Management, whether from a designated account or the general account, as needed, in increments of up to eighty hours, on a form prescribed by the Director of Personnel ~~Management~~.

- (a) The request must be received at the Office of Personnel Management at least five (5) working days before the proposed effective date, with all required approvals and supporting documents.
- (b) The request must be supported by a statement of an attending physician which includes:
 - (1) An estimate of the time the employee must be absent from work;
 - (2) A confirmation of the employee's injury or illness, or the quarantine of the employee, the employee's family, or the employee's residence; and
 - (3) A confirmation that the illness or injury will not constitute a permanent disability that, even with a reasonable accommodation that can be made without undue hardship to the government employer, will prevent the employee from performing the essential job functions of his or her position.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

TITLE 10: CIVIL SERVICE COMMISSION

The Commission inserted a comma after the word "family" in subsection (b)(2) pursuant to 1 CMC § 3806(g).

§ 10-50-215 Disposition of Request

The Director of Personnel-~~Management~~ shall grant or deny the request promptly in writing. No properly supported request from a qualified employee shall be denied unless:

- (a) There are insufficient hours in the sick leave bank to grant the request; or
- (b) The employee's appointing authority, with adequate justification, has not approved the request; or
- (c) The employee is expected to be compensated for any lost work time through workers' compensation; or
- (d) Based on the employee's physician's statement, the Director of ~~the Office of~~ Personnel ~~Management~~ determines that the employee will not be able to return to work in the same position or any other government position due to a residual disability; or
- (e) The employee already has a withdrawal balance of the maximum amount authorized by §10-50-201 of this regulation;
- (f) The Director of Personnel finds that there is sufficient evidence to believe the employee is misusing the benefit.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

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Part 300 - Returning Hours Used from the Sick Leave Bank

§ 10-50-301 General Account

Withdrawal of sick leave hours from the sick leave bank's general account will be treated as a debt owed by the employee to the sick leave bank.

- (a) After recuperation and return to active service, an employee is required to return the hours he or she used from the sick leave bank's general account. The Department of Finance shall automatically deduct two sick leave hours per pay period from the employee's regularly accruing sick leave until all of the hours the employee used from the general account of the sick leave bank have been returned.
- (b) An employee may choose to pay for the hours used from the general account, rather than have a deduction of sick leave hours. In that case, the employee must arrange with the Department of Finance for an allotment.
- (c) If an employee leaves government service while he or she still owes hours to the general account, the government shall
 - (1) Assume any accrued unused sick leave or annual leave; or
 - (2) Deduct the value of the hours from the employee's final pay check; or
 - (3) Reduce credited service time; or
 - (4) Seek other redress from the courts, except the government shall not seek recovery of any unrecovered hours against a decedent's estate.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

§ 10-50-305 Designated Account

Hours withdrawn from a designated account are counted in determining whether the employee has reached the 160-hour limit established by § 10-50-201. Employees are therefore encouraged to return hours to the sick leave bank withdrawn from a designated account. If an employee elects to return the hours withdrawn from a designated account, he or she shall arrange with the Department of Finance to deduct the hours from his or her accruing sick leave or arrange for an allotment from their pay checks, as provided in § 10-50-301(b).

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

TITLE 10: CIVIL SERVICE COMMISSION

§ 10-50-310 ~~Hours Previously Withdrawn from the Sick Leave Bank~~Transition

(a) Any person who, on the effective date of this ~~chapter amendment~~, has a balance of unused sick leave bank hours will have those hours deducted from the total hours allowed by this regulation, thereby decreasing the future amount available for the employee to borrow. ~~owed more than 160 hours to the sick leave bank will have the hours in excess of 160 forgiven. The person's records will be amended to show that only 160 hours had been withdrawn from the bank.~~

(b) ~~Persons will not be required to return hours withdrawn from the sick leave bank prior to the effective date of this chapter because those hours shall be presumed to have been withdrawn from a designated account. However, persons are encouraged to voluntarily return the hours because they will be counted against the 160-hour limit established by § 10-50-201.~~

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

Commission Comment: The "effective date" referred to in this section is November 25, 1997, the effective date of the 1997 regulations.

Part 400 - Accommodation and Disability

§ 10-50-401 Physician's Statement

If the attending physician determines that the illness or injury for which the employee seeks extended sick leave will constitute a permanent disability preventing the employee from being able to perform the essential job functions of his or her previous position, the physician will issue a statement to that effect and describe the physical or mental limitations the employee is expected to experience.

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

§ 10-50-405 Alternative Position

In a case where an employee is not expected to be able to perform the essential job functions of his or her previous position, even with reasonable accommodation, the Director of Personnel ~~Management~~ must determine, based on the physician's statement, whether the disability precludes the employee from being reasonably accommodated in another equivalent government position that can be performed by a person with that particular disability.

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).



Commonwealth Healthcare Corporation

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



PUBLIC NOTICE OF PROPOSED NEW FEES TO THE CHCC CHARGEMASTER FOR VARIOUS SERVICES

INTENDED ACTION TO ADOPT THESE PROPOSED REVISIONS TO THE RULES AND REGULATIONS:

The Commonwealth Healthcare Corporation (CHCC) intends to adopt as permanent the attached additional Chargemaster pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The additional Chargemaster will become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The Board of Trustees may prepare and adopt rules and regulations to assure delivery of quality health care and medical services and the financial viability of the Corporation that will best promote and serve its purposes. 3 CMC Section 2826(c).

THE TERMS AND SUBSTANCE: These are new fees.

THE SUBJECTS AND ISSUES INVOLVED: New fees.

DIRECTIONS FOR FILING AND PUBLICATION: This Notice of Proposed New Fees to the Chargemaster 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 (1CMC § 9104(A)(1)) codified at NMIAC Sections 140-10.8-101. Copies are available upon request from Tiffany Sablan, Director of Revenue.

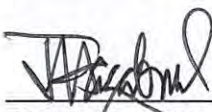
TO PROVIDE COMMENTS: Send or deliver your comments to Tiffany Sablan, Director of Revenue, tiffany.sablan@chcc.health, Attn: *New Fees to the Chargemaster, for Various Services* at the above address, fax or email address, with the subject line "New Fees to the Chargemaster, for Various Services." Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2)).

P.O. Box 500409 CK, Saipan, MP 96950
Telephone: (670) 236-8201/2 FAX: (670) 233-8756

OFFICE OF THE ATTORNEY GENERAL
CIVIL DIVISION
RECEIVED
BY: SW DATE: 9/27/22

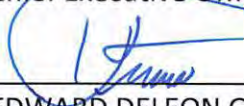
These proposed New Fees to the Chargemaster, for Various Services were approved by the CHCC Board of Trustees and the CHCC CEO.

Submitted by:


ESTHER L. MINNA
Chief Executive Officer

9/27/22

Date


EDWARD DELEON GUERRERO
Chairman, CHCC Board of Trustees

9/27/22

Date

Filed and
Recorded by:


ESTHER M. SAN NICOLAS
Commonwealth Registrar

9.28.22

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 proposed regulations attached hereto 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 28th day of September, 2022.


EDWARD E. MANIBUSAN
Attorney General

FEE EDITS

CPT	MOD	Description	COVID Related?	Reason for change	Previous Price	New Price
35221	26	RPR BLOOD VESSEL DIRECT INTRA-ABDOMINAL	N	NEW	N/A	\$5,144.37
99417	26	PROLONGED OFFICE/OUTPATIENT E/M SVC EA 15 MIN	N	NEW	N/A	\$114.45
81234		DMPK GENE ANALYSIS EVAL DETECT ABNORMAL ALLELES	N	NEW	N/A	\$411.00
0240U		INFCT DS RNA 3 TARGETS UPPER RESP SPECIMEN XPRT	Y	NEW	N/A	\$427.89
0241U		INFCT DS RNA 4 TARGETS UPPER RESP SPECIMEN XPRT	Y	NEW	N/A	\$427.89
87505		NFCT AGENT DNA/RNA GASTROINTESTINAL PATHOGEN	N	NEW	N/A	\$384.87
87506		IADNA-DNA/RNA GI PTHGN MULTIPLEX PROBE TQ 6-11	N	NEW	N/A	\$788.97
87507		IADNA-DNA/RNA GI PTHGN MULTIPLEX PROBE TQ 12-25	N	NEW	N/A	\$1,250.34
87483		CNS DNA/RNA AMP PROBE MULTIPLE SUBTYPES 12-25 TARGETS	N	NEW	N/A	\$1,250.34
87154		CULTURE TYPING ID BLD PTHGN&RESIST TYPING 6+TRGT	N	NEW	N/A	\$654.18
87636		IADAN SARSCOV2& INF A&B MUT AOMPLIFIED PROBE TQ	Y	NEW	N/A	\$427.89
87637		IADNA SARSCOV2 & INF A&B & RSV MULT AMP PROBE TQ	Y	NEW	N/A	\$427.89
33285	26	INSERTION SUBQ CARDIAC RHYTHM MONITOR INCLUDING PROGRAMNING	N	NEW	N/A	\$268.50
33285	TC	INSERTION SUBQ CARDIAC RHYTHM MONITOR INCLUDING PROGRAMNING	N	NEW	N/A	\$24,997.11
33286	26	REMOVAL SUBQ CARDIAC RYTHYM MONITOR	N	NEW	N/A	\$265.35
33286	TC	REMOVAL SUBQ CARDIAC RYTHYM MONITOR	N	NEW	N/A	\$1,906.62
93285	26	PRGRMG DEV EVAL SCRMS IN PERSON	N	NEW	N/A	\$80.85
93285	TC	PRGRMG DEV EVAL SCRMS IN PERSON	N	NEW	N/A	\$114.09
93291	26	INTERROG DEV EVAL SCRMS IN PERSON	N	NEW	N/A	\$57.30
93291	TC	INTERROG DEV EVAL SCRMS IN PERSON	N	NEW	N/A	\$75.69
93298	26	REMOTE INTEROG DEV EVAL SCRMS	N	NEW	N/A	\$82.26
G2066	TC	REMOTE INTEROG DEVC 30D TECHNICAL SUPPORT	N	NEW	N/A	\$114.09
0650T		REMOTE PRGRMG DEV EVAL SCRMS	N	NEW	N/A	\$114.09
00214	26	ANESTHESIA FOR INTRACRANIAL PROCEDURES BURR HOLES	N	NEW	N/A	\$588.06



Commonwealth Healthcare Corporation

Commonwealth gi Sangkattan na Islas Mariãnas
1 Lower Navy Hill Road Navy Hill, Saipan, MP 96950



NUTISIAN PUPBLIKU PUT I MANMAPROPONI NA MANNUEBU NA ÂPAS SIHA GI CHARGEMASTER PARA OTRU SIHA NA KLÂSIN SETBISIU GI CHCC

I AKSION NI MA'INTENSIONA PARA U ADÂPTA ESTI I MANMAPROPONI NA TINILAIKA GI AREKLAMENTU YAN REGULASION SIHA: I Commonwealth Healthcare Corporation (i CHCC) ha intensiona para u adâpta komu petmanienti i mañechettun na hina'halum Chargemaster sigun gi maneran i Âkton Administrative Procedure, 1 CMC § 9104(a). I hina'halum Chargemaster siempri umifektibu gi halum dies (10) dihas dispues di adâptasion yan publikasion gi halum Rehistran Commonwealth. (1 CMC § 9105(b))

ATURIDÂT: I Board of Trustees siña mapripâra yan adâpta i areklamentu yan regulasion siha para u mana'garantiha na manmannâna' i kuâlidât na inadahin hinemlu' yan setbisiun mediku yan i macho'cho'chu' na fainansiât nu i Corporation ni mäs ha na'adilantão yan sietbi i rason-ñiha siha. 3 CMC Seksiona 2826(c).

I TEMA YAN SUSTÂNSIAN I PALÂBRA SIHA: Mannuebu na âpas siha.

I SUHETU NI MASUMÂRIA YAN ASUNTU NI TINEKKA: Nuebu na âpas siha.

DIREKSION PARA U MAPO'LU YAN PARA U MAPUPBLIKA: Esti na nutisia put i Manmaproponi na Mannuebu na Âpas siha gi Chargemaster siempri mapupblika gi halum Rehistran Commonwealth halum i seksiona gi maproponi yan nuebu na manma'adâpta na regulasion siha (1 CMC § 9102(a)(1)) yan mapega gi halum kumbinienti na lugât halum i civic center yan halum i ufisinan gubietnamentu gi kada distritun senadot, parehu gi finu' Inglis yan i prinsipât na linguãhi natibu (1 CMC § 9104(A)(1)) codified gi NMIAC na Seksiona 140-10.8-101. Managuaha kopia yanggin marikuesta ginen as Tiffany Sablan, i Direktot Reditu.

PARA U MAPRIBENIYI UPIÑON SIHA: Na'hânão pat intrega hălum i upiñom-mu guatu as Tiffany Sablan, i Direktot Reditu, tiffany.sablan@chcc.health, Attn: Mannuebu na Âpas siha gi Chargemaster, para Otru Siha na Klâsin Setbisiu" gi sanhilu' na address, fax osino email address, yan i suhetu na rãya "Mannuebu na Âpas siha gi Chargemaster, para Otru Siha na Klâsin Setbisiu." I upiñon siha debi na u fanhălum gi halum trenta (30) dihas ginen i fetchan publikasiön esti na nutisia. Put fabot na'hălum i infotmasion, upiñon pat testimonion kinentrãm-mu siha. (1 CMC § 9104(a)(2)).

P.O. Box 500409 CK, Saipan, MP 96950
Telephone: (670) 236-8201/2 FAX: (670) 233-8756

Esti i manmaproponi na Mannuebu na Āpas siha gi Chargemaster, para Otru Siha na Klāsin Āpas ginen maninapueba ni i Kuetpun CHCC Trustees yan i CHCC CEO.

Nina'hålum as:


ESTHER L. MUNA
Chief Executive Officer

9/27/22
Fetcha


EDWARD DELEON GUERRERO
Kabesiyun Kuetpu

9/27/22
Fetcha

Pine'lu yan
Ninota as:

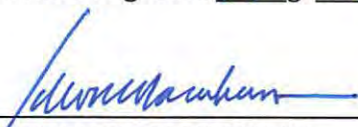

ESTHER S. NESBITT R.M. SANNICOLAS
Rehistran Commonwealth

9.28.22

Fetcha

Sigun i 1 CMC § 2153 (e), (Inapruedian Abugādu Hinirāt i regulasion siha ni para u macho'gui kumu fotma) yan i 1 CMC § 9104 (a) (3) (hentan inapruedian Abugādu Hinirāt) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'apueba kumu fotma yan sufisient i ligāt ginin i CNMI Abugādu Henerāt yan debi na u mapupblika, 1 CMC § 2153 (f) (pupplikasion areklamentu yan regulasion siha).

Mafetcha gi diha 28th gi September, 2022.


EDWARD E. MANIBUSAN
Abugādu Hinirāt



Commonwealth Healthcare Corporation

Commonwealth me Téel Falúw Ikka Efáng
1 Lower Navy Hill Road Navy Hill, Saipan, MP 96950



ARONGORONGOL TOULAP REL PPWOMWOL FFÉL ÓBWÓSS NGÁLI CHCC CHARGEMASTER NGÁLI AKKÁÁW ALILLIS

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI PPWOMWOL SIIWEL NGÁLI ALLÉGH ME MWÓGHUTUGHUT: Commonwealth Healthcare Corporation (CHCC) re pwomwol bwe rebwe adóptááli bwe ebwe llégh ló mille e schuulong llól Chargemaster sáangi angaangil Administrative Procedure Act, 1CMC § 9104(a). Aschuuwal Chargemaster ebwe llól seigh ráál sáangi adóptáál me akkatééwowul me llól Commonwealth Register. (1 CMC § 9105(b))

BWANGIL: Board of Trustees ebwe ammwela me adóptááli mwóghutughut me allégh iye ebwe alúghúúw ghatchúw amwaleer ilighil toulap, amwaleer toulap rel semwaay, me sabweillóól selaapi rel Corporation iye ebwe ghatch me féérú mwóghutughutúl. 3 CMC Tálil 2826(c).

KKAPASAL ME WEEWEL: Ikkaal ffél óbwóss.

KKAPASAL ME AUTOL: Ffél óbwóss.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Arongorongol ppwomwol ffél óbwós ngáli Chargemaster ebwe akkatééwow me llól Commonwealth Register llól tálil ppwomwol me ffél mwóghutughut ikka re adóptááli (1 CMC § 9102(a)(1)) me ebwe appaschetá arongorongol toulap llól bwulei ikka eghatch ngali toulap ngáre civic center me llól bwulasiyol gobetno llól senatorial district llól kkasal Americano me mwaliyaasch (1CMC § 9104(A)(1)) ebwe ppwolló sáangi NMIAC tálil 140-10.8-101. Arongorong yeel nge emmwel ubwe tingór merel Tiffany Sablan, Direkktoodil Revenue.

REEL ISIISILONGOL KKPAS: Afanga ngáre bwughiló yóómw ischil kkapas ngáli Tiffany Sablan, Direkktoodil Revenue, tiffany.sablan@chcc.health, Attn: Ffél óbwós ngáli Chargemaster merel amwaleer toulap reel féféfé iye e lo weiláng, “fax” ngáre “email”, ebwe lo wóól “subject line” bwe “Amendments to the Chargemaster, for Various Fees.” Ebwe toolong kkapas llól eliigh ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw “data”, “views” ngáre angiingi. (1 CMC § 9104(a)(2)).

P.O. Box 500409 CK, Saipan, MP 96950
Telephone: (670) 236-8201/2 FAX: (670) 233-8756

Ikkaal ppwomwol ffél selaapi ngáli Chargemaster, ngáli amwaleer toulap bwe átirow sangiir
CHCC Board of Trustees me CHCC CEO.

Isáliyalong:


ESTHER L. MUNA
Chief Executive Officer

9/27/22

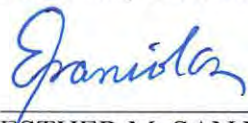
Ráál


EDWARD DELEON GUERRERO
Chairman, CHCC Board of Trustees

9/27/22

Ráál

Ammwelil:


ESTHER M. SAN NICOLAS
Commonwealth Registrar

9.28.22

Ráál

Sángi 1 CMC § 2153(e) (sángi átirowal AG reel mwóghutughut kkal bwe aa ffil reel fféerúl) me
1 CMC § 9104(a)(3) (sángi átirowal AG) reel ppwomwol mwóghutughut kka e appasch bwe ra
takka amwuri fischiiy me aa lléghló reel fféerúl me “legal sufficiency” sángi Soulemelemil Allégh
Lapalapal CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (akkatééwowul allégh me
mwóghutughut).

Aghikilla wóol 28th ráálil September, 2022.


EDWARD E. MANIBUSAN
Soulemelemeil Allégh Lapalap

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 21-0148
)
Joseph Camacho Borja,)
)
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 January 6, 2022 at 9:00 AM, January 10, 2022 at approximately 1:00 PM, and January 14, 2022 at approximately 9:00 a.m., all held at the Administrative Hearing Office, Saipan. Appellant Joseph Camacho Borja ("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 Tiyani Camacho and Benefit Payment Control Unit Supervisor Vincent Sablan. There were no other witnesses that provided testimony at the hearing. The following documents were admitted into evidence:

1. Exhibit 1: Copy of the Appellant's Application Snapshot, filed June 30, 2020;
2. Exhibit 2: Copy of Department's Disqualifying Determination, dated June 23, 2021, effective March 15, 2020 to March 28, 2020;
3. Exhibit 3: Copy of Department's Disqualifying Determination, dated June 23, 2021, effective June 7, 2020 to September 4, 2021;
4. Exhibit 4: Copy of Department's Notice of Overpayment, dated June 23, 2021;
5. Exhibit 5: Copy of Appellant's Request to file an Appeal, filed August 13, 2021;
6. Exhibit 6: Copy of the Notice of Hearing, issued August 13, 2021;
7. Exhibit 7: Copy of Order Continuing Hearing, issued December 6, 2021;
8. Exhibit 8: Copy of Amended Notice of Hearing, issued January 4, 2022;
9. Exhibit 9: Copy of Order Continuing Hearing, issued January 5, 2022;
10. Exhibit 10: Copy of Second Order Continuing Hearing, issued January 7, 2022;

11. Exhibit 11: Copy of Appellant's Employment Certification, dated June 5, 2020;
12. Exhibit 12: Copy of Appellant's Employment Certification, dated March 9, 2021;
13. Exhibit 13: Copies of Appellant's seven Pay Stubs, dated March 20, 2020, April 17, 2020, May 1, 2020, May 15, 2020, May 29, 2020, and June 12, 2020.
14. Exhibit 14: Copies of Department's Case Notes, dated April 19, 2021, June 8, 2021, and June 9, 2021;
15. Exhibit 15: Copy of Email Communication between Department and Employer, dated April 17, 2020;
16. Exhibit 16: Copies of Email Communications between Department and Employer, dated May 13, 2021;
17. Exhibit 17: Copy of Department's Case Notes, dated June 14, 2021;
18. Exhibit 18: Copy of Department's Benefit Payment Control Unit ("BPC") Audit Sheet;
19. Exhibit 19: Copies of Appellant's Weekly Certifications from the week beginning March 15, 2020 through and including week ending March 13, 2021;
20. Exhibit 20: Copy of Email Communications between Appellant and Employer, dated March 30, 2020, April 3, 2020, April 6, 2020, April 17, 2020, April 21, 2020, March 8, 2021, and January 5, 2022;
21. Exhibit 21: Copy of Order Continuing Hearing, issued January 13, 2022; and
22. Exhibit 22: Copy of Claim History from Appellant's PUA Portal.

For the reasons stated below, the Department's two Determinations, both dated June 23, 2021, are **AFFIRMED**. Claimant is not eligible for benefits from March 15, 2020 to March 28, 2020 and from June 7, 2020 to September 4, 2021. Further, the Department's Notice of Overpayment, dated June 23, 2021 is **AFFIRMED**. Appellant is overpaid in the amount of \$14,700.92.

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

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.

1 March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) extended
2 the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility
3 in administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
4 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
5 appeals of agency decisions.

6 Upon review of the records, Appellant’s appeal of the two Determinations and the Notice of
7 Overpayment is not timely filed. Accordingly, jurisdiction is not established.

8 **III. PROCEDURAL BACKGROUND & ISSUES**

9 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
10 June 23, 2021, the Department issued the following to the Appellant: (1) Disqualifying Determination,
11 effective March 15, 2020 to March 28, 2020; (2) Disqualifying Determination, effective June 7, 2020
12 to September 4, 2021; and (3) Notice of Overpayment for weeks ending March 21, 2020 through
13 March 28, 2020 and weeks ending June 13, 2020 through December 12, 2020.

14 On August 13, 2021, Appellant filed the present appeal and the matter was scheduled for a
15 hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the appeal is timely
16 filed; (2) whether Appellant is eligible for PUA; and (3) whether an overpayment occurred and funds
17 should be returned.

18 **IV. FINDINGS OF FACT**

19 In consideration of the evidence provided and credibility of witnesses’ testimony, the undersigned
20 issues the following findings of fact:

- 21 1. Prior to the COVID-19 pandemic, Appellant, a U.S. citizen, was employed as a Heavy
22 Equipment Operator at AIC Marianas, Inc. (“Employer”), located in Saipan, CNMI.⁵
23 Appellant began working at Employer on July 22, 2019.⁶ As a Heavy Equipment Operator,
24 Appellant was paid \$8.75 hourly.⁷
- 25 2. On April 17, 2020, Employer informed Appellant via email that his employment was being
26 terminated effective June 8, 2020 because Employer’s waterline project would be completed

27 ³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A (“Continued Assistance for Unemployed
28 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 Exhibits 1; 11-12.

⁶ Exhibits 11-12.

⁷ Exhibit 13.

1 at that time and his services would no longer be needed by Employer after the project was
2 completed.⁸ Appellant's employment with Employer concluded around June 8, 2020.⁹

- 3 3. On June 30, 2020, Appellant submitted an initial application for unemployment benefits under
4 the PUA and FPUC programs administered by the Department.¹⁰ In his initial application,¹¹
5 Appellant self-certified under penalty of perjury that:

- 6 a. Appellant's employment was directly affected by COVID-19 when a child or other
7 person in his household for which he has primary caregiving responsibility was unable
8 to attend school or another facility that was closed as a direct result of the COVID-19
9 public health emergency and such school or facility care has required for him to work;
10 b. Due to COVID-19 pandemic, Appellant's daughter's school closed, there were no
11 other care available, and his daughter had her education continue online; and
12 c. Appellant's employment was affected since March 15, 2020.

- 13 4. Subsequently, Appellant submitted weekly certifications to claim continued benefits.¹² In
14 Appellant's weekly certifications for weeks beginning March 15, 2020 through March 28,
15 2020, Appellant self-certified that:

- 16 a. A child or other person in his household for which he has primary caregiving
17 responsibility was unable to attend school or another facility that was closed as a direct
18 result of COVID-19 public health emergency and such school or facility care is
19 required for him to work; and
20 b. He reported that he worked and earned \$350.00 in wages during each of the claimed
21 week.¹³

- 22 5. For the weeks beginning June 14, 2020 through December 12, 2020, Appellant reported in all
23 but two of the weekly certifications that:

- 24 a. His employment was still affected by COVID-19 because his place of employment
25 was closed as a direct result of COVID-19 public health emergency;
26 b. That he is able and available for work during the claimed week; and
27 c. That he earned zero in gross income of during the claimed week.¹⁴

28 ⁸ See Exhibits 14-15, and 20.

⁹ See Exhibit 13.

¹⁰ Exhibit 1.

¹¹ *Id.*

¹² Exhibit 19.

¹³ *Id.*

¹⁴ See *id.*

1 6. By submitting his application and weekly certifications, Appellant certified and
2 acknowledged to certain responsibilities. First, the answers Appellant provided in his initial
3 application and weekly certifications were submitted under penalty of perjury.¹⁵ This meant
4 it is Appellant's responsibility to provide true, accurate, and complete answers. Second, it was
5 Appellant's responsibility to be informed about the program by reading the PUA Benefit
Rights Information Handbook and other official written materials regarding PUA.¹⁶

6 a. On his weekly certifications for weeks beginning March 15, 2020 through
7 March 28, 2020, Appellant correctly and truthfully reported that he worked and
8 earned wages during each of the claimed week¹⁷ because he took paid leave to take
9 care of his minor child for whom he has primary caregiving responsibility and who
10 was unable to attend school or another facility because such facilities were closed as
11 a direct result of COVID-19 public health emergency.¹⁸ Appellant also provided to
the Department copies of his paystubs.¹⁹

12 b. However, on his weekly certifications from June 14, 2020 to December 12, 2020,
13 Appellant falsely certified that his Employer was closed as a direct result of COVID-
14 19 public health emergency when in fact he knew that his Employer was not closed
15 and the reason for his termination from employment was due to Employer's waterline
16 project ending and his services were no longer needed after the project.²⁰

17 c. On his weekly certification from October 25, 2020 to October 31, 2020, Appellant
18 truthfully and accurately reported "Other reasons not listed here" on how COVID-19
19 public health emergency caused his unemployment, and Appellant explained that he
20 was "let go by the company AIC MARIANAS since June 8, 2020 was [his] last
day.cuc water line project was done they will be calling me back."²¹

21 7. Based on the answers on Appellant's initial application and weekly certifications, Appellant's
22 claims were processed for payment. As demonstrated by an internal audit,²² Appellant
23 received a total amount of \$23,723.00 in unemployment benefits for weeks ending
24

25 ¹⁵ See Exhibits I and 19.

26 ¹⁶ See *id.*

27 ¹⁷ See Exhibit 19.

28 ¹⁸ See Exhibit 20.

¹⁹ Exhibit 13.

²⁰ See Exhibit 20.

²¹ Exhibit 14.

²² Exhibit 18.

March 21, 2020 to December 12, 2020.²³

8. On April 19, 2021, a PUA Coordinator reviewed Appellant's claim and supporting documents, including employment certifications and email communications from Employer regarding Appellant's termination.²⁴ On the same date, the PUA Coordinator also contacted Employer and confirmed that Appellant was terminated after the waterline project ended and Appellant's termination was not COVID-19 related.²⁵
9. In May and June of 2021, another PUA Coordinator audited Appellant's claims and benefits²⁶ to determine if Appellant made customary wages during claimed weeks.²⁷ On June 14, 2021, former BPC Supervisor Sharon Palacios and witness PUA Coordinator Rikki Camacho met with Appellant to discuss the results of the Department's investigation and audit.²⁸ During this meeting, Department cited to staff error and inadequate review as reasons for the overpayment.²⁹
10. Subsequently, on June 23, 2021, the Department issued two Disqualifying Determinations to Appellant. In one Disqualifying Determination, Appellant was found ineligible for benefits effective March 15, 2020 to March 28, 2020 because Appellant made his customary wages; therefore, Appellant's employment was not affected and he does not qualify for benefits for those stated weeks.³⁰ In the other Disqualifying Determination, Appellant was disqualified effective June 7, 2020 to September 4, 2021 because the Department found that on June 18, 2020, Appellant's contract was scheduled to end as the waterline project completed and this was not a direct result of the COVID-19 pandemic.³¹
11. Also on June 23, 2021, the Department's Benefit Payment Control Unit ("BPC") issued a Notice of Overpayment for the total amount of \$14,700.92 in federal unemployment benefits for weeks ending March 21, 2020 through March 28, 2020 and weeks ending June 13, 2020

²³ See Exhibit 18.

²⁴ Exhibit 14.

²⁵ *Id.*

²⁶ See Exhibits 14-16.

²⁷ See Exhibits 14 and 16.

²⁸ See Exhibit 17.

²⁹ See Exhibit 14. In his weekly certification for week beginning August 16, 2020 and ending August 22, 2020, Appellant self-certified that a child or other person in his household for which he has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19 public health emergency and such school or facility care is required for him to work.

³⁰ Exhibit 2.

³¹ Exhibit 3.

1 through December 12, 2020.³² Specifically, this overpayment amounted to \$9,600.92 in PUA
2 benefits, \$4,200.00 in FPUC benefits, and \$900.00 in Lost Wages Assistance.³³ The
3 Department's stated reasons for the overpayment were that: (a) Appellant made his customary
4 wages for weeks ending March 21, 2020 through March 28, 2020; and (b) On June 18, 2020,
5 Appellant's contract was scheduled to end as the waterline project for which he was hired was
6 completed, and therefore, his employment was not directly affected by COVID-19.³⁴

7 12. Appellant received and signed a second copy of the Notice of Overpayment on July 2, 2021.³⁵

8 13. The Determinations and the Notice of Overpayment provided Appellant ten calendar days to
9 file an appeal and instructions on how to file an appeal.³⁶ Specifically, the Determinations
10 stated that the appeal "**must be received or postmarked by 07/03/2021**. If you do not make
11 the deadline, you lose the right to appeal this determination." (Emphasis in original).³⁷

12 14. On August 13, 2021, Appellant filed the present appeal³⁸ and the matter was scheduled for
13 an Administrative Hearing.³⁹ Appellant filed his appeal after the 10-day deadline⁴⁰ because
14 he was keeping appointments for job interviews for the week of July 29, 2021, a family
15 member passed on July 31, 2021, and he attended the funeral on August 7, 2021.⁴¹

16 15. As discussed during the Administrative Hearing, Appellant was appealing the Department's
17 Determinations and Notice of Overpayment. Appellant also requested a waiver from repaying
18 the overpayment amount claiming that the overpayment occurred without his fault. Although
19 Appellant has returned to work, his necessary household expenses currently exceed his
20 household income. Appellant has spent all of his benefits to repay his loan arrearages, car
21 insurance, his minor child's tuition, and other basic necessities. Appellant is unable to repay
22 the overpayment without incurring a financial hardship.

23 V. CONCLUSIONS OF LAW

24 In consideration of the above-stated findings and applicable law, the undersigned issues the
25 following conclusions of law:
26
27
28

³² Exhibit 4.

³³ *Id.*

³⁴ *Id.*

³⁵ Exhibit 4; *see also* Exhibit 5.

³⁶ Exhibits 2-4.

³⁷ Exhibit 5.

³⁸ *Id.*

³⁹ *See* Exhibits 6-10.

⁴⁰ *See* Exhibit 5.

⁴¹ *Id.*

1 **1. For good cause shown, the deadline for filing the appeal is extended to thirty days;**
2 **however, Appellant's appeal is not timely filed.**

3 Generally, an appeal should be filed within ten days after the Notice of Determination was issued
4 or served to the claimant. However, the Department may extend the period to thirty days by a showing
5 of good cause.⁴² Good cause means: (1) illness or disability; (2) keeping an appointment for a job
6 interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent
7 a reasonable person from complying as directed.⁴³

8 In this case, Appellant was provided with instructions on how to file his appeal through multiple
9 avenues.⁴⁴ Appellant received and signed a second copy of the Notice of Overpayment on July 2,
10 2021.⁴⁵ The Determinations and the Notice of Overpayment provided Appellant ten calendar days to
11 file an appeal and instructions on how to file an appeal.⁴⁶ Specifically, the Determinations stated that
12 the appeal **"must be received or postmarked by 07/03/2021.** If you do not make the deadline, you
13 lose the right to appeal this determination." (emphasis in original).⁴⁷ It was Appellant's responsibility
14 to be informed about the program by reading the PUA Benefit Rights Information Handbook and
15 other official written materials regarding the program, including the appeals process.⁴⁸

16 The Department issued the two Determinations and the Notice of Overpayment on June 23,
17 2021.⁴⁹ Prior to issuing these Determinations and Notice of Overpayment, the Department also met
18 with Appellant on June 14, 2021 and discussed the BPC's audit summary and the reasons for the
19 overpayment.⁵⁰ By July 2, 2021, Appellant received and signed a second copy of the Notice of
20 Overpayment.⁵¹ However, Appellant did not file his Request for Appeal until August 13, 2021,
21 approximately 60 days after the June 14, 2021 meeting and more than 50 days after the Department
22 issued the Determinations and Notices of Overpayment on June 23, 2021.

23 In his Request for Appeal and in his testimony, Appellant stated that he missed the 10-day
24 deadline because he was keeping appointments for job interviews for the week of July 29, 2021, a
25 family member passed on July 31, 2021, and he attended the funeral on August 7, 2021.⁵² Based on

26

⁴² HI. Rev. Statute § 383-38(a).

27 ⁴³ HAR § 12-5-81(j).

28 ⁴⁴ Exhibits 2-4.

⁴⁵ Exhibit 4; *see also* Exhibit 5.

⁴⁶ Exhibits 2-4.

⁴⁷ Exhibits 2-3.

⁴⁸ Exhibits 1 and 19.

⁴⁹ *See* Exhibits 2-4.

⁵⁰ *See* Exhibit 17.

⁵¹ *See* Exhibits 4-5.

⁵² Exhibit 5.

1 these reasons, the undersigned finds there is good cause to extend the filing period to 30 days.
2 However, the undersigned also finds that even with the 30-day extension for good cause, Appellant's
3 appeal is not timely filed because Appellant filed his appeal on August 13, 2021, more than 30 days
4 after the issuance of the Determinations and Notice of Overpayment. Ultimately, Appellant's appeal
5 is untimely. Considering that Appellant's appeal is untimely, the Department's Determinations and
6 Notice of Overpayment are final and the latter issues are moot.

7 VI. DECISION

8 For the reasons stated above, it is ORDERED that:

- 9 1. The CNMI Department of Labor's two Disqualifying Determinations, both dated June 23,
10 2021, is **AFFIRMED**;
- 11 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the two time period of
12 March 15, 2020 to March 28, 2020 and June 7, 2020 to September 4, 2021;
- 13 3. The CNMI Department of Labor's Notice of Overpayment, dated June 23, 2021, is also
14 **AFFIRMED**;
- 15 4. Appellant was overpaid in the total amount of **\$14,700.92**; and
- 16 5. Appellant is **ORDERED** to report to the Department's Benefit Payment Control Unit to
17 discuss options for repayment or offsetting the overpayment, in accordance with applicable
18 rules.

19 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
20 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
21 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
22 written request must be submitted to the Administrative Hearing Office, either in person at Building
23 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

24 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
25 subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant still
26 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior
27 Court under the local Administrative Procedures Act within 30 days. *See* 1 CMC § 9112. All forms,
28 filings fees, and filing deadlines for judicial review will be as established by the applicable law and
court rule.

So ordered this **2nd** day of September, 2022.

/s/

CATHERINE J. CACHERO
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 21-0149
)
Tommy Joe K. Cangco,)
)
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 February 1, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held online via Zoom. Appellant Tommy Joe K. Cangco (“Appellant”) was not present or represented. Appellee CNMI Department of Labor Division of Employment Services–Pandemic Unemployment Assistance program (“Department”) was present and represented by the Department’s Labor Certification Worker Dennis Cabrera and PUA Coordinators Hensley Litulumar and Jenny Lee (collectively, “PUA Coordinators”). No other witnesses provided testimony at the hearing. The following were admitted into evidence:

1. Exhibit 1: Copy of Appellant’s Application Snapshot, filed January 1, 2021;
2. Exhibit 2: Copy of Appellant’s Weekly Certifications for March 15, 2020 to November 28, 2020;
3. Exhibit 3: Copy of the Disqualifying Determination (“Redetermination”), dated August 3, 2021;
4. Exhibit 4: Copy of Benefit Rights Information Handbook;
5. Exhibit 5: Copies of Press Releases regarding ways to appeal PUA denials, posted in the *Saipan Tribune* and *Marianas Variety* on October 16, 2020;
6. Exhibit 6: Copies of Department Communications to Appellant regarding Updates on Appeal Rights, dated July 8, 2021;
7. Exhibit 7: Copy of Appellant’s Letter of Appeal and Reconsideration, dated July 27, 2021;

8. Exhibit 8: Copy of Appellant's Request to file an Appeal, filed on August 18, 2021;
9. Exhibit 9: Copy of the Notice of Hearing, issued on August 18, 2021;
10. Exhibit 10: Copy of Order Continuing Hearing, issued on December 9, 2021;
11. Exhibit 11: Copy of Appellant's Employment Certification, dated April 22, 2020;
12. Exhibit 12: Copies of Department's Case Notes, contact dates July 13, 2021, July 19, 2021, August 3, 2021, October 25, 2021, November 1, 2021, and November 12, 2021;
13. Exhibit 13: Copy of Appellant's Employment Certification, dated November 17, 2020;
14. Exhibit 14: Copy of Email Communications between the Department and Employer, dated October 25-27, 2021;
15. Exhibit 15: Copy of Appellant's Timesheets from Employer, dated February 24, 2020 to September 6, 2020;
16. Exhibit 16: Copy of Department's Case Note, contact date November 19, 2021;
17. Exhibit 17: Copy of Department's Initial Notice of Overpayment, dated November 19, 2021, and signed by Appellant on November 19, 2021;
18. Exhibit 18: Copy of Payment Plan Agreement, signed by Appellant on November 19, 2021;
19. Exhibit 19: Copy of Department's Amended Notice of Overpayment, dated January 25, 2022;
20. Exhibit 20: Copy of Benefit Payment Control Unit ("BPC") Audit Summary;
21. Exhibit 21: Copy of Email Communications between Department and BPC, dated January 20-25, 2022;
22. Exhibit 22: Copy of Email Communication between CNMI Department of Finance and the Department, dated May 5, 2021;
23. Exhibit 23: Copy of Department's Case Notes, contact date January 6, 2022; and
24. Exhibit 23: Copy of Department's Case Notes, contact date January 11, 2022.

For the reasons stated below, the Department's Disqualifying Determination (Redetermination), dated August 3, 2021 is **AFFIRMED**. Appellant is not eligible for benefits from March 15, 2020 to September 4, 2021. Further, the Department's Amended Notice of Overpayment, dated January 25, 2022 is **AFFIRMED**. Appellant is overpaid in the amount of \$15,057.90.

//
//
//

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 is not timely filed. Accordingly, jurisdiction is not established.

III. PROCEDURAL BACKGROUND & ISSUES

Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On August 3, 2021, the Department issued a Disqualifying Determination. On August 18, 2021, Appellant filed the present appeal and the matter was scheduled for a hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the appeal was timely filed; (2) whether Appellant was 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 COVID-19 pandemic, Appellant, a citizen of the U.S. or U.S. territory, was employed as a full-time Groundskeeping Worker for C Pacific Corporation (“Employer”),

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.

1 located in San Antonio, Saipan Island, CNMI.⁵ As Groundskeeping Worker, Appellant was
2 paid \$7.38 per hour.⁶

3 2. On January 1, 2021, Appellant submitted an initial application⁷ for unemployment assistance
4 under the PUA and FPUC programs. In this application,⁸ Appellant self-certified under
5 penalty of perjury that: (a) he had to quit his job as a direct result of COVID-19; and (2) he
6 last performed work for Employer on March 16, 2020.

7 3. Appellant submitted weekly certifications to claim continued benefits for March 15, 2020 to
8 November 28, 2020. In each of these weekly certifications,⁹ Appellant self-certified that:

- 9 a. He is still unemployed as a direct result of COVID-19 public health emergency; and
10 b. Other than this reason, he is able and available for work during the claimed weeks.

11 4. Contrary to his self-certifications in his application and his weekly certifications, Appellant
12 failed to report to work for Employer from March 16, 2020 to May 31, 2020 because of his
13 fear of COVID-19 pandemic.¹⁰ Appellant returned to work for Employer on June 1, 2020 to
14 July 23, 2020.¹¹ Appellant failed to show for work and abandoned his Employer after
15 July 23, 2020.¹²

16 5. Based on answers on Appellant's application and weekly certifications, Appellant's claim was
17 processed for payment. As demonstrated by an internal audit¹³ and confirmation with the
18 Department of Finance,¹⁴ Appellant received a total of \$19,071.90 in benefits.¹⁵

19 6. On August 3, 2021, the Department forwarded Appellant's claims to the Benefit Payment
20 Control Unit because an overpayment was discovered.¹⁶

21 7. On July 19, 2021, the Department issued a Disqualifying Determination, effective
22 March 15, 2020 to September 4, 2021.¹⁷ On or about July 27, 2021, Appellant wrote to the

23 ⁵ Exhibits 11-13.

24 ⁶ Exhibits 11-13.

25 ⁷ Exhibit 1.

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ Exhibit 11-13.

¹¹ Exhibits 14-15.

¹² *Id.*

¹³ Exhibit 20.

¹⁴ Exhibit 22.

¹⁵ Exhibit 20.

¹⁶ Exhibit 7.

¹⁷ The Department did not file a copy of this July 19, 2021 Determination, but based on the Department's sworn testimony at the Administrative Hearing, the undersigned finds that the Department issued a Disqualifying Determination on July 19, 2021.

1 Department and signed a “Letter of Appeal and Reconsideration” in which he wrote stating
2 that on March 16, 2020 he did not report to work because of fear of COVID-19 and fear of
3 putting himself and his family at risk, particularly his father who has diabetes.¹⁸

4 8. On August 3, 2021, upon review of his Letter of Appeal and Reconsideration, the Department
5 issued a Disqualifying Determination (Redetermination), effective from March 15, 2020 to
6 September 4, 2021¹⁹ because Title 20 CFR Section 625.4(g) provides that to be eligible for
7 PUA, an individual must be able to work and be available for work unless the inability to
8 work or engage in self-employment was due to an injury caused by the major disaster. The
9 Department found that Appellant was not eligible because he was not available to work due
10 to fear of the pandemic.

11 9. The Department provided Appellant with instructions on how to file his appeal. Appeal
12 instructions could be found in the Redetermination,²⁰ the PUA Benefits Rights Information
13 Handbook,²¹ the Request to File an Appeal Form,²² by direct communications to Appellant,²³
14 and through press releases posted through newspaper publications.²⁴ Specifically, the
15 Redetermination stated that the appeal “must be received or postmarked by 08/13/2021.”²⁵

16 10. On August 18, 2021, Appellant filed his Appeal of the Redetermination.²⁶ As stated in his
17 Request to Appeal form,²⁷ Appellant is appealing the Determination because he was “denied
18 due to [his] eligibility applying for second batch PUA [sic].”²⁸

19 11. On August 18, 2021, upon receiving the Request for Appeal, the Administrative Hearing
20 Office scheduled the matter for an Administrative Hearing.²⁹

21 12. On November 19, 2021, Department issued an Initial Notice of Overpayment for the total
22 amount of \$15,867.90.³⁰ Specifically, the overpayment was for \$8,577.90 in PUA benefits,
23 \$6,480.00 in FPUC benefits, and \$810.00 in Lost Wages Assistance (“LWA”).³¹ BPC found

24 ¹⁸ Exhibit 7.

25 ¹⁹ Exhibit 3.

26 ²⁰ Exhibit 4.

27 ²¹ *Id.*

28 ²² *See* Exhibit 8.

29 ²³ Exhibit 6.

30 ²⁴ Exhibit 5.

31 ²⁵ *Id.*

²⁶ Exhibit 8.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Exhibit 9.

³⁰ Exhibit 17.

³¹ Exhibit 17.

1 that for weeks ending March 21, 2020 to May 30, 2020, June 13, 2020, July 4, 2020, July 18,
2 2020, and August 1, 2020 to November 21, 2020, Appellant was not able and available due to
3 general fear of exposure to COVID-19 which is not a COVID-19 qualifying reason for PUA
4 and FPUC benefits.³² Further, the Department found that Appellant was overpaid for weeks
5 ending June 20, 2020, June 27, 2020, July 11, 2020, and July 25, 2020 because Appellant
6 misfiled his earnings.³³

7 13. On November 19, 2021, at a meeting with the PUA Coordinators,³⁴ Appellant received the
8 Initial Notice of Overpayment and after explaining the determination and audit summary, the
9 Department explained to the Appellant his rights to request an appeal or reconsideration.³⁵
10 Appellant signed the Initial Notice of Overpayment and he indicated that “received this
11 determination and agreed to its findings. I am willing to submit to a repayment plan in an
12 amount to be determined.”³⁶ Appellant selected “Bi-weekly” payment option.³⁷

13 14. After further review and audit, on January 25, 2022, BPC issued an Amended Notice of
14 Overpayment for the total amount of \$15,057.90.³⁸ The dates of overpayment and BPC’s
15 stated reasons were the same as in the Initial Notice of Overpayment, but the total
16 overpayment was reduced because the overpayment was only for \$8,577.90 in PUA benefits,
17 \$6,480.00 in FPUC benefits, and zero (\$0.00) in LWA.³⁹

18 15. Appellant did not submit any record or evidence of his filing an Appeal of the Amended
19 Notice of Overpayment.

20 V. CONCLUSIONS OF LAW

21 In consideration of the above-stated findings and applicable law, the undersigned issues the
22 following conclusions of law:

23 1. Appellant’s appeal of the Redetermination was not timely filed.

24 Generally, an appeal should be filed within ten days after the Disqualifying Determination was
25 issued or served to the claimant. However, the Department may extend the period to thirty days by a
26 showing of good cause.⁴⁰ Good cause means: (1) illness or disability; (2) keeping an appointment for
27

28 ³² *Id.*

³³ *Id.*

³⁴ Exhibit 16.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Exhibits 16-17.

³⁸ Exhibit 19.

³⁹ Exhibit 17.

⁴⁰ HI. Rev. Statute § 383-38(a).

1 a job interview; (3) attending a funeral of a family member; and (4) any other reason which would
2 prevent a reasonable person from complying as directed.⁴¹

3 Here, Appellant failed to file his appeal of the Redetermination within the 10-day deadline.
4 Specifically, the Department issued a Disqualifying Determination (Redetermination) on August 3,
5 2021.⁴² The Determination clearly stated that Appellant had 10 days to file an appeal: "This means
6 your appeal **must be received or postmarked by 08/13/2021.**"⁴³ Although the Redetermination,
7 direct communications from the Department to the Appellant, the Benefit Rights Information
8 Handbook, and other available published materials included appeal instructions and a 10-day deadline
9 to file an Appeal, Appellant did not file his Request to Appeal the Redetermination until August 18,
10 2021.⁴⁴ In his Request to Appeal, Appellant's only explanation for why he filed his Appeal late was
11 that he applied for reconsideration, but he was supposed to apply for an appeal.⁴⁵ Appellant's failure
12 to follow the instructions on submitting Request to Appeal form by the deadline and using the correct
13 form are not reasons for which good cause extension may be granted because it is not a cause for
14 which a reasonable person would have been prevented from complying as instructed. Additionally,
15 based on Appellant's failure to appear and participate in the Administrative Hearing, there is no
16 showing of good cause for an extension of the filing deadline. Accordingly, Appellant's appeal is not
17 timely filed and jurisdiction is not established. Since the Administrative Hearing Office does not have
18 jurisdiction to review the Department's Redetermination, the Redetermination shall be deemed final.

19 **2. Appellant failed to timely appeal the Amended Notice of Overpayment.**

20 Similarly, appeals of a notice of overpayment should be filed within 10 days after receiving the
21 Notice.⁴⁶ The Department issued an Initial Notice of Overpayment on November 19, 2021.⁴⁷ On
22 November 19, 2021, Appellant signed the Initial Notice of Overpayment and indicated that he
23 received the Notice of Overpayment and agreed to its findings. Appellant also indicated and signed a
24 willingness to submit to a repayment plan in an amount to be determined."⁴⁸

25 Upon further review and audit, BPC issued an Amended Notice of Overpayment on
26 January 25, 2022.⁴⁹ Appellant failed to timely appeal the Amended Notice of Overpayment. Appellant

27 ⁴¹ HAR § 12-5-81(j).

28 ⁴² Exhibit 3.

⁴³ *Id.*

⁴⁴ Exhibit 8.

⁴⁵ *Id.*

⁴⁶ HI. Rev. Statute § 383-38(a).

⁴⁷ Exhibit 17.

⁴⁸ *Id.*

⁴⁹ Exhibit 19.

1 did not submit any record or evidence of his filing a Request to Appeal the Amended Notice of
2 Overpayment. Additionally, based on Appellant's failure to appear and participate in the
3 Administrative Hearing, there is no showing of good cause for an extension of the 10-day appeal filing
4 deadline. Accordingly, the January 25, 2022 Amended Notice of Overpayment is final.

5 **VI. DECISION**

6 For the reasons stated above, it is ORDERED that:

- 7 1. The CNMI Department of Labor's Disqualifying Determination, dated August 3, 2021, is
8 **AFFIRMED**;
9 2. Appellant is **NOT ELIGIBLE** to receive PUA benefits from March 15, 2020 to
10 September 4, 2021;
11 3. The Amended Notice of Overpayment, dated January 25, 2022, is **AFFIRMED**;
12 4. Appellant was overpaid in the total amount of **\$15,057.90**; and
13 5. Appellant is **ORDERED** to report to the Department's Benefit Payment Control Unit to
14 discuss options for repayment and/or offsetting the overpayment, in accordance with the
15 applicable rules and law.

16 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
17 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
18 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
19 written request must be submitted to the Administrative Hearing Office, either in person at Building
20 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

21 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
22 subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant still
23 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior
24 Court under the local Administrative Procedures Act within 30 days. See 1 CMC § 9112. All forms,
25 filings fees, and filing deadlines for judicial review will be as established by the applicable law and
26 court rule.

27 So ordered this **9th** day of September, 2022.

28 /s/

CATHERINE J. CACHERO
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 21-0163
)
Maryann Borja Arriola,)
)
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 9, 2022 at approximately 10:00 a.m. at the Administrative Hearing Office. Appellant Maryann Borja Arriola (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Department”) was present and represented by PUA Coordinator/Adjudicator Brenda Rideb. The following Exhibits were admitted into evidence:

1. Exhibit 1: Copy of Appellant’s Application Snapshot (new), dated June 18, 2020;
2. Exhibit 2: Copy of Appellant’s Application Snapshot (reopen), dated April 16, 2021;
3. Exhibit 3: Copy of the Disqualifying Determination, dated August 3, 2021;
4. Exhibit 4: Copy of Appellant’s Request to File for Reconsideration, dated August 26, 2021;
5. Exhibit 5: Copy of Department’s Redetermination, dated September 17, 2021;
6. Exhibit 6: Copy of Appellant’s Request to File an Appeal and supporting documents, filed October 1, 2021;
7. Exhibit 7: Copies of the Notice of Hearing and subsequent Orders Continuing Hearing, issued on October 1, 2021, February 14, 2022, and June 8, 2022;
8. Exhibit 8: Copy of Benefit Payment Control Unit’s Email Communication, dated February 7, 2022;
9. Exhibit 9: Copies of Appellant’s Passport and Social Security Card;

II. JURISDICTION

Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

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.

1 issued a Disqualifying Determination, effective from March 14, 2021 to September 4, 2021.⁵

2 On August 26, 2021, Appellant filed a Request for Reconsideration of the Disqualifying
3 Determination.⁶ On September 17, 2021, the Department issued a Redetermination, still effective
4 from March 14, 2021 to September 4, 2021 for the same reason as stated in the initial Determination.⁷

5 On October 1, 2021, Appellant filed the present appeal and the matter was scheduled for a hearing.⁸

6 As stated in the Notice of Hearing and Orders Continuing Hearing, the issues on appeal are:
7 (1) whether the appeal is timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an
8 overpayment occurred and funds should be returned.⁹

9 IV. FINDINGS OF FACT

10 In consideration of the evidence provided and credibility of witnesses' testimony during the
11 Administrative Hearing, the undersigned issues the following findings of fact:

- 12 1. Prior to the COVID-19 pandemic, Appellant was employed as the Director of the Office of
13 Vocational Rehabilitation ("OVR"), located in Navy Hill, Saipan, CNMI.¹⁰ Appellant was
14 appointed to the position of Director of OVR by the CNMI Governor (the "Governor" or
15 "Employer").¹¹ As Director of OVR, Appellant served at the pleasure of the Governor.¹²
16 Appellant was paid \$25.00 per hour as Director of OVR.
- 17 2. On or about March 18, 2021, Appellant was terminated by the Governor, effective
18 immediately.¹³ Employer terminated Appellant in the interest of the Commonwealth.¹⁴
- 19 3. Appellant admitted that she was terminated by Employer pursuant to Employer's discretion
20 to terminate Appellant's appointment, with or without cause, because of allegations of staff
21 complaints.¹⁵ Appellant also testified and admitted that she was terminated due to political
22 reasons and the Governor's decision.¹⁶
- 23 4. Subsequently, on April 16, 2021, Appellant submitted an application to reopen her claim for

24 ⁵ Exhibit 3.

25 ⁶ Exhibit 4.

⁷ Exhibit 5.

⁸ Exhibit 6.

⁹ See Exhibit 7.

¹⁰ See Exhibits 2 and 10.

¹¹ Exhibit 10.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Exhibit 6.

¹⁶ See *id.*

1 unemployment benefits.¹⁷ In her application to reopen,¹⁸ Appellant self-certified under penalty
2 of perjury that:

- 3 a. She recently received a notice of termination, layoff or military separation;
- 4 b. The date of Layoff, Termination or Military Separation was March 12, 2021; and
- 5 c. Her employment was affected as a direct result of COVID-19 because “[a] child or
6 other person in her household for which I have primary caregiving responsibility is
7 unable to attend school or another facility that is closed as a direct result of COVID-
8 19 public health emergency and such school or facility care is required for me to
9 work,” effective March 18, 2021.¹⁹

10 5. The answers provided in Appellant’s application to reopen were submitted under penalty of
11 perjury.²⁰ It is Appellant’s responsibility to provide true, accurate, and complete answers.
12 Moreover, it is Appellant’s responsibility to be informed about the program by reading the
13 PUA Benefit Rights Information Handbook and other official written material regarding the
14 programs.²¹

15 6. The answers that Appellant provided in her application to reopen were inaccurate and
16 incomplete.

- 17 a. First, Appellant was terminated by her Employer effective March 18, 2021 (not on
18 March 12, 2021).²²
- 19 b. Second, Appellant did not report the circumstances of her termination.²³
- 20 c. Finally, while Appellant is a primary caregiver of a child whose school closed due to
21 the COVID-19 pandemic, the school closure did not prevent Appellant from
22 continuing to work as Director of OVR during the pandemic, from March 2020 until
23 she was terminated in March 2021, because family members and the child’s father
24 helped her with the child’s caregiving needs.

25 7. On or about August 3, 2021, Department’s PUA Coordinator/Adjudicator investigated
Appellant’s claims and contacted Employer’s representative, Mathilda A. Rosario,²⁴ who

¹⁷ Exhibit 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See id.*

²¹ *See* Exhibit 12.

²² Exhibit 10.

²³ *See* Exhibit 2.

²⁴ *See* Exhibits 10 and 11.

1 confirmed that Appellant was appointed to the Director of OVR position by the Governor and
2 Appellant was terminated and not reappointed by Employer due to her contract ending and
the Governor's discretion to not reappoint Appellant to the position.²⁵

3 8. On the same day, August 3, 2021, the Department issued a Disqualifying Determination,
4 effective March 14, 2021 to September 4, 2021.²⁶ The Department based the disqualification
5 on information provided from the Employer's representative that the reason for
6 unemployment is due to Appellant being terminated, Appellant's contract ending, and
7 Appellant not being reappointed to her Director position with OVR; therefore, Appellant's
employment was not interrupted due to the COVID-19 pandemic.²⁷

8 9. On August 26, 2021, Appellant filed a Request for Reconsideration.²⁸

9 10. On September 17, 2021, the Department issued a Redetermination, for the same effective
period and for the same stated reasons.²⁹

10 11. The Redetermination clearly stated that Appellant had 10 calendar days to file an appeal and
11 that the appeal "**must be received or postmarked by 09/27/2022.**" (Emphasis in original.)³⁰

12 12. Appellant was provided with instructions on how to file her appeal. Appeal instructions could
13 be found in the PUA Benefits Rights Information Handbook, the Disqualifying
14 Determination, the Redetermination, the Request for an Appeal Form, and various
15 publications of the Department including *Saipan Tribune* Article (dated October 16, 2020),
Marianas Variety Article (dated October 15, 2020), and NMI Portal - Preview Message (dated
16 July 8, 2021).³¹

17 13. However, it is unclear from witnesses' testimony when Appellant was first served with the
18 Redetermination. In her application to reopen Appellant selected "Email" as the method in
19 which she preferred to receive notifications from the Department, but the email address that
20 Appellant provided was her email address as the Director of OVR. Department's PUA
21 Coordinator/Adjudicator was uncertain when she testified that Appellant was served a copy
of the Redetermination by email. Appellant testified that she received the Redetermination by
mail, but she was unreliable as to the date that she received the Redetermination.

22 ²⁵ See *id.*

23 ²⁶ Exhibit 3.

24 ²⁷ *Id.*

25 ²⁸ Exhibit 4.

²⁹ Exhibit 5.

³⁰ *Id.*

³¹ See Exhibits 12.

1 14. Prior to September 27, 2021, Appellant had not yet received a copy of the Redetermination
2 and she was following up with the Department regarding her Request for Reconsideration.³²
3 Appellant received a copy of the Redetermination after following up on or about
4 September 27, 2021.³³

5 15. On October 1, 2021, Appellant correctly filed the present appeal³⁴ and the matter was
6 scheduled for an Administrative Hearing.³⁵

7 16. On February 7, 2022, while this Appeal was pending, the Department confirmed with the
8 Benefit Payment Control Unit that Appellant has not been paid any benefits and there was no
9 overpayment issue in this case.³⁶ Accordingly, the overpayment issue is not discussed further.

10 V. CONCLUSIONS OF LAW

11 In consideration of the above-stated findings and applicable law, the undersigned issues the
12 following conclusions of law:

13 1. Appellant's appeal is timely filed.

14 Generally, an appeal should be filed within ten days after the Determination was issued or served
15 to the claimant. However, the Department may extend the period to thirty days by a showing of good
16 cause.³⁷ Good cause means: (1) illness or disability; (2) keeping an appointment for a job interview;
17 (3) attending a funeral of a family member; and (4) any other reason which would prevent a reasonable
18 person from complying as directed.³⁸

19 Here, on September 17, 2021, the Department issued the Redetermination Disqualifying
20 Appellant, effective March 14, 2021 to September 4, 2021. The Redetermination clearly stated that
21 Appellant had 10 calendar days to file an appeal and that the appeal "**must be received or**
22 **postmarked by 09/27/2022.**"³⁹ Appellant did not correctly file her Appeal of the Redetermination
23 until October 1, 2021.⁴⁰ However, witnesses' testimony are unclear and unreliable as to how and when
24 Appellant was first served with a copy of the Redetermination. Department's PUA
25 Coordinator/Adjudicator was uncertain on when Appellant was served with a copy of the

32 See Exhibit 13.

33 See *id.*

34 Exhibit 6.

35 Exhibit 7.

36 Exhibit 8.

37 HI. Rev. Statute § 383-38(a).

38 HAR § 12-5-81(j).

39 Exhibit 3 (emphasis in original).

40 Exhibit 6.

1 Redetermination and whether she was served by email. Appellant's recollection is that she received a
2 copy of the Redetermination by mail, but she was inexact and tentative as to the date. In her
3 application to reopen, Appellant selected "Email" as the method in which she preferred to receive
4 notifications from the Department,⁴¹ but the email address that Appellant provided was her email
5 address as the Director of OVR.⁴² For the Department, they had reason to assume that Appellant no
longer used the OVR email address because Appellant separated from employment.

6 Based on the record, prior to September 27, 2021, Appellant had not yet received a copy of the
7 Redetermination and she was following up with the Department regarding her Request for
8 Reconsideration.⁴³ Appellant received a copy of the Redetermination after following-up with the
9 Department on or about September 27, 2021.⁴⁴ Accordingly, the undersigned finds that Appellant
10 had good cause to file her appeal late because she had not received a copy of the Redetermination
11 until September 27, 2021. In addition, Appellant took steps to follow-up on her Request for
12 Reconsideration, and she filed her Appeal within 10 days of receiving the Redetermination.
Ultimately, based on the foregoing and the available records, the undersigned finds that Appellant
should be provided a 30-day extension for good cause, and Appellant timely submitted her Request
for Appeal on October 1, 2021, within the 30-day good cause extension.

13 **2. Appellant's employment was not affected as a direct result of COVID-19.**

14 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and FPUC
15 benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not
16 eligible for regular compensation or extended benefits under State or Federal law or pandemic
17 emergency unemployment compensation under Section 2107 of the CARES Act, including an
18 individual who has exhausted all rights to regular unemployment or extended benefits under State or
19 Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;⁴⁵ (2) self-
certifies⁴⁶ that the individual is unemployed, partially unemployed, or unable or unavailable to work⁴⁷

20
21 ⁴¹ See Exhibit 2.

⁴² See *id.*

⁴³ See Exhibit 13.

⁴⁴ See *id.*

⁴⁵ 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.

⁴⁶ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of
perjury.

⁴⁷ 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.

1 as a direct result⁴⁸ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and
2 (3) provides required documentation of employment/self-employment within the applicable period of
3 time.⁴⁹

4 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
5 specifically identifies the COVID-19 qualifying reasons⁵⁰ as:

- 6 (aa) The individual has been diagnosed with COVID-19 or is experiencing
7 symptoms of COVID-19 and is seeking a medical diagnosis;
- 8 (bb) A member of the individual's household has been diagnosed with
9 COVID-19;
- 10 (cc) The individual is providing care for a family member or a member of the
11 individual's household who has been diagnosed with COVID-19;
- 12 (dd) A child or other person in the household for which the individual has
13 primary caregiving responsibility is unable to attend school or another
14 facility that is closed as a direct result of the COVID-19 public health
15 emergency and such school or facility care is required for the individual
16 to work;
- 17 (ee) The individual is unable to reach the place of employment because of a
18 quarantine imposed as a direct result of the COVID-19 public health
19 emergency;
- 20 (ff) The individual is unable to reach the place of employment because the
21 individual has been advised by a health care provider to quarantine due
22 to concerns related to COVID-19;
- 23 (gg) The individual was scheduled to commence employment and does not
24 have a job or is unable to reach the job as a direct result of the COVID-
25 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)⁵¹, above, includes:

⁴⁸ 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.

⁴⁹ 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. Failure to supply said documents, and any other relevant, requested documents is a justifiable basis to deny benefits under HAR § 12-5-81(j).

⁵⁰ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

⁵¹ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

- (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 an application to reopen her claim for PUA and FPUC benefits in which she self-certified under penalty of perjury that: (1) she recently received a notice of termination, layoff or military separation on March 12, 2021;⁵² and (2) her employment was affected as a direct result of COVID-19 because “[a] child or other person in her household for which I have primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of COVID-19 public health emergency and such school or facility care is required for me to work,” effective March 18, 2021.⁵³

Appellant’s self-certifications are inaccurate and incomplete, and her arguments are not persuasive. First, with respect to Appellant’s termination, sworn testimony from witnesses and written records demonstrate that Appellant was terminated and her contract was not renewed by Employer pursuant to Employer’s discretion to terminate Appellant’s appointment, with or without cause.⁵⁴ Department’s PUA Coordinator/Adjudicator testified that she investigated Appellant’s claims and contacted Employer’s representative, who confirmed that Appellant was terminated due to her contract ending and not being reappointed by Employer.⁵⁵ According to Appellant’s testimony, there

⁵² See Exhibit 2.

⁵³ See *id.*

⁵⁴ See Exhibits 6, 10, and 11.

⁵⁵ See Exhibit 11.

1 were allegations of staff complaints. In addition, Appellant admitted in her sworn testimony and in
2 written signed documents that she was terminated because of political reasons and because of the
Governor's discretion to hire and fire an appointed employee like herself, with or without cause.⁵⁶

3 Second, with respect to Appellant's self-certification that a child or other person in her household
4 for which she was the primary caregiving responsibility was unable to attend school or another facility
5 that is closed as a direct result of COVID-19 public health emergency and such school or other facility
6 care is required for her to work, Appellant testified that she was not prevented from working due to
7 the closure of her child's school or other care facility. For example, Appellant admitted that she was
8 able to continue working as Director of OVR during the pandemic in March 2020 until she was
terminated in March 2021 because family members and her child's father assisted her with her child
caregiving needs.

9 Finally, when asked about each of the above-listed COVID-19 qualifying reasons during the
10 Administrative Hearing, Appellant confirmed that she did not qualify under any of the reasons listed
11 during the time frame in question. Accordingly, based on the testimony and evidence provided,
12 Appellant is not eligible to receive benefits from March 14, 2021 to September 4, 2021 because she
13 does not meet any of the COVID-19 qualifying reasons and her employment was not affected as a
direct result of COVID-19.

14 VI. DECISION

15 For the reasons stated above, it is ORDERED that:

- 16 1. The CNMI Department of Labor's Disqualifying Determination, dated September 17, 2021,
is **AFFIRMED**; and
- 17 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 14, 2021
18 to September 4, 2021.

19 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
20 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
21 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
22 written request to reopen must be submitted to the Administrative Hearing Office, either in person at
Building #1357, Mednilla Avenue, Capitol Hill, Saipan, MP 96950 or via email at
hearing@dol.gov.mp.

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25 ⁵⁶ See Exhibit 6.

1 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
2 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still
3 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior
4 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.

5 So ordered this 25th day of August, 2022.

6 /s/
CATHERINE J. CACHERO
Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 22-0192
)
Remedios J. Nimes,)
)
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 September 6, 2022 at 1:00 p.m. at the Administrative Hearing Office, Saipan. Appellant Remedios Nimes (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services–Pandemic Unemployment Assistance program (“Department”) was present and represented by PUA Coordinator Rosalinda Ulloa. There were no other witnesses that provided testimony. Interpreter Arlene Rafanan assisted with the hearing. The following were admitted into evidence:

1. Exhibit 1: Copy of Appellant’s Application Snapshot (initial), filed August 13, 2020;
2. Exhibit 2: Copy of Appellant’s Application Snapshot (reopen), filed April 4, 2021;
3. Exhibit 3: Copy of Weekly Certification (online), for February 28, 2021 to March 06, 2021;
4. Exhibit 4: Copy of Weekly Certification (online), for March 7, 2021 to March 13, 2021;
5. Exhibit 5: Copy of Department’s Disqualifying Determination, dated February 7, 2022;
6. Exhibit 6: Copy of Appellant’s Request to file an Appeal, filed February 9, 2022;
7. Exhibit 7: Copy of the Notice of Hearing, issued on February 09, 2022;
8. Exhibit 8: Copies of Orders Continuing Hearing, issued on May 27, 2022, June 10, 2022, July 15, 2022, August 4, 2022, and September 1, 2022;
9. Exhibit 9: Copy of the PUA Benefit Rights Information Handbook;
10. Exhibit 10: Copy of Employer’s Workforce Reduction Notice, dated March 13, 2020;
11. Exhibit 11: Copy of Employer’s Certification of Employment, dated March 03, 2021;

12. Exhibit 12: Copy of Appellant's Schedule/Timesheets, from February 14, 2021 to March 13, 2021;
13. Exhibit 13: Copy of Department's Case Note, dated February 7, 2022;
14. Exhibit 14: Copies of Appellant's Immigration Documents:
- a. Form I-94, Parole, valid from October 29, 2019 to June 29, 2020;
 - b. Form I-797C, Receipt Notice, C11 category, dated January 14, 2020;
 - c. Employment Authorization Document ("EAD" Card), C11 category, valid from January 14, 2020 to June 29, 2020;
 - d. Form I-797C, Receipt Notice, category C37, dated May 21, 2020; and
 - e. EAD Card, C37 category, valid from March 2, 2021 to March 2, 2026.
15. Exhibit 15: Copy of Department's SAVE verification results, initiated January 12, 2022;
16. Exhibit 16: Copies of the Department's Notice of Overpayment (dated May 11, 2022, signed and agreed to by the Appellant on May 13, 2022), BPC Payment Plan Agreement (signed by Appellant on May 13, 2022), and BPC Email Communication (dated September 6, 2022); and
17. Exhibit 17: Copy of BPC's Audit Summary.

For the reasons stated below, the Department's Determination dated February 7, 2022 is **AFFIRMED**. Appellant is not eligible for benefits from February 28, 2021 to September 4, 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

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

1 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
2 appeals of agency decisions.

3 Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

4 III. PROCEDURAL BACKGROUND & ISSUES

5 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
6 review of Appellant's application and supporting documents, the Department issued a Disqualifying
7 Determination on February 7, 2022. On February 9, 2022, Appellant filed the present appeal and the
8 matter was scheduled for a hearing. As stated in the Notice of Hearing, the issues on appeal are: (1)
9 whether Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds should
10 be returned.

11 IV. FINDINGS OF FACT

12 In consideration of the evidence provided and credibility of witness testimony, the undersigned
13 issues the following findings of fact:

- 14 1. Prior to the COVID-19 pandemic, Appellant was employed as a Food Assembler at LSG
15 Lufthansa Service Saipan, Inc. ("Employer"), located in Saipan International Airport, CNMI.⁵
16 As a Food Assembler, Appellant was paid \$7.25 per hour.⁶
- 17 2. Due to the economic impact of the pandemic, Employer implemented cost-cutting measures
18 that affected Appellant's employment. Specifically, effective March 13, 2020, Appellant's
19 hours were reduced.⁷
- 20 3. On August 13, 2020, Appellant submitted an initial application⁸ for unemployment assistance
21 under the PUA and FPUC programs administered by the Department. Subsequently,
22 Appellant submitted an application to reopen her claims on April 4, 2021.⁹ In her initial
23 application and application to reopen,¹⁰ Appellant self-certified under penalty of perjury that:
 - 24 a. Appellant is an Alien/Refugee Lawfully Admitted to U.S.;
 - 25 b. Appellant's employment was directly affected by COVID-19 when her place of
26 employment closed as a direct result of COVID-19 public health emergency; and

27 Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
28 law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

⁵ Exhibit 11.

⁶ *Id.*

⁷ Exhibits 10-11.

⁸ Exhibit 1.

⁹ Exhibit 2.

¹⁰ *Id.*

- 1 c. Appellant's employment was affected since March 16, 2020.¹¹
- 2 4. Appellant submitted weekly certifications to claim continued benefits from February 28, 2021
- 3 to March 13, 2021.¹²
- 4 5. With respect to Appellant's immigration status and employment authorization, Appellant
- 5 provided testimony and substantiating evidence to demonstrate that:
- 6 a. Prior to COVID-19 pandemic, from January 14, 2020 to June 29, 2020, Appellant had
- 7 parole status and her employment authorization was approved under C11 category
- 8 because she had a minor -aged U.S. citizen child.¹³
- 9 b. On or about May 13, 2020, Appellant applied for the CNMI long-term resident status
- 10 (Form I-955) and corresponding employment authorization under C37 category
- 11 (Form I-765).¹⁴
- 12 c. While Appellant's Forms I-955 and I-765 were pending adjudication with USCIS,
- 13 Appellant's parole status and EAD, C11 category, were automatically extended by
- 14 USCIS, through June 30, 2021.¹⁵
- 15 d. Appellant's CNMI long-term resident status and corresponding employment
- 16 authorization to work in the CNMI under an EAD, C37 category were approved, valid
- 17 from March 2, 2021 to March 2, 2026.¹⁶
- 18 6. On January 12, 2022, the Department entered Appellant's information into the Systematic
- 19 Alien Verification for Entitlements (SAVE) database maintained by USCIS, Verification
- 20 Division.¹⁷ This database is used to determine the immigration status of PUA applicants so
- 21 only those entitled to benefits receive them. The SAVE results confirmed that Appellant was
- 22 an EAD holder, C37 category, valid from March 2, 2021 to March 2, 2026. The results further
- 23 confirmed that Appellant's employment authorization was previously approved under C11
- 24 category, valid from January 14, 2020 to June 29, 2020.
- 25 7. Appellant has no other documents or evidence to demonstrate that she is a qualified alien
- 26 during the relevant time period that she is claiming benefits.

27 ¹¹ Exhibits 1-2.

28 ¹² Exhibits 3-4

¹³ See Exhibit 14.

¹⁴ *Id.*

¹⁵ See USCIS Notice titled "USCIS Extends Transitional Prole for CNMI Long-Term Resident Status Applicants", dated December 30, 2020, available online at <https://www.uscis.gov/news/alerts/uscis-extends-transitional-parole-for-cnmi-long-term-resident-status-applicants-0> (last accessed on Sept. 9, 2022).

¹⁶ *Id.*

¹⁷ See Exhibit 15.

- 1 8. On February 7, 2022, the Department issued a Disqualifying Determination effective
2 February 28, 2021 to September 4, 2021 because the Department found that Appellant's
3 current status as CNMI long-term resident with EAD of C37 category, valid from
4 March 2, 2021 to March 2, 2026, is not included in the definition of qualified aliens.
5 9. On February 9, 2022, Appellant filed the present appeal and the matter was scheduled for an
6 Administrative Hearing.
7 10. While the Appeal was pending, on May 11, 2022, BPC issued a Notice of Overpayment for
8 the total amount of \$19.00 in federal unemployment benefits for weeks ending May 23, 2020,
9 September 19, 2020, October 3, 2020, October 10, 2020, October 24, 2020, October 31, 2020,
10 November 21, 2020, and December 5, 2020.¹⁸ Specifically, BPC found that Appellant did not
11 factor in her night differential earnings for these weeks.
12 11. As stated in her Request to Appeal¹⁹ and discussed during the Administrative Hearing,
13 Appellant is appealing only the Department's Disqualifying Determination. Appellant is
14 appealing the Determination because she believes that she is a qualified worker whose work
15 was affected by COVID-19 when her hours were reduced.²⁰
16 12. As discussed during the Administrative Hearing, Appellant is not appealing the Notice of
17 Overpayment and she agrees as to the findings and as to the payment plan.²¹
18 13. BPC confirmed that as of September 6, 2022 Appellant has repaid the overpaid total amount
19 of \$19.00.²² Therefore, there is no overpayment issue in this Appeal.

20 V. CONCLUSIONS OF LAW

21 In consideration of the above-stated findings and applicable law, the undersigned issues the
22 following conclusions of law:

23 1. Appellant is not a qualified alien.

24 PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of
25 eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time relevant
26 to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

- 27 1. An alien admitted for permanent residence under the Immigration and Nationality
28 Act (INA);
2. An alien granted asylum under § 208 of the INA;

¹⁸ *Id.*

¹⁹ Exhibit 6.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

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. As provided in UIPL 16-20, change 4, page I-16, "CW-1 workers may receive PUA and FPUC if they meet all PUA eligibility requirements beginning with claims filed after December 27, 2020 (*i.e.*, claim effective dates beginning on or after January 3, 2021)."

Here, the Department's Determination disqualified Appellant from benefits from February 28, 2021 to September 4, 2021 because Appellant was a CNMI long-term resident with an EAD, C37 category during these claimed weeks, and as such Appellant is not considered a U.S. citizen, non-citizen national, or qualified alien.²³ Based on the evidence and testimony provided, the undersigned finds that the Department's Determination is correct. Appellant is currently a CNMI long-term resident with an EAD under category C37,²⁴ which is valid from March 2, 2021 to March 2, 2026. As a CNMI long-term resident with an EAD, category C37, Appellant does not qualify for unemployment benefits because her status and EAD do not correspond with any of the qualified alien definitions listed under applicable law, as stated above.

VI. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated February 7, 2022, is **AFFIRMED**; and
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February 28, 2021 to September 4, 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

²³ Exhibit 5.

²⁴ See Exhibit 14.

1 written request must be submitted to the Administrative Hearing Office, either in person at Building
2 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

3 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
4 subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant still
5 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior
6 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.

7 So ordered this 12th day of September, 2022.

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9 /s/

10 **CATHERINE J. CACHERO**
11 Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 22-0199
)
Clare E. Moses,)
)
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 April 26, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office. Appellant Clare E. Moses (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services–Pandemic Unemployment Assistance program (“Department”) was present and represented by the Department’s Benefit Payment Control Unit (“BPC”) Coordinator Kimberly Degracia. No other witnesses provided testimony at the hearing. The following were admitted into evidence:

1. Exhibit 1: Copy of the Appellant’s Application Snapshot, filed August 3, 2020;
2. Exhibit 2: Copy of the Appellant’s Application Snapshot (reopen), filed February 22, 2021;
3. Exhibit 3: Copies of Appellant’s Weekly Certifications, for August 2, 2020 to August 29, 2020, September 6, 2020 to September 12, 2020, September 20, 2020 to September 26, 2020, and November 29, 2020 to December 5, 2020;
4. Exhibit 4: Copy of Benefit Rights Information Handbook;
5. Exhibit 5: Copy of Appellant’s U.S. passport, valid from February 26, 2019 to February 25, 2029;
6. Exhibit 6: Copy of Appellant’s Employment Certification, dated July 13, 2020;
7. Exhibit 7: Copy of BPC’s Audit Sheet (first draft);
8. Exhibit 8: Copy of Department’s Initial Notice of Overpayment, dated January 21, 2021;

9. Exhibit 9: Copy of BPC's Audit Sheet (first draft) and Department's BPC Audit Sheet (amended and final);
10. Exhibit 10: Copy of Amended Notice of Overpayment, dated February 3, 2022 and signed by Appellant on February 7, 2022 asking for Reconsideration;
11. Exhibit 11: Copy of Amended Notice of Overpayment, dated February 8, 2022;
12. Exhibit 12: Copy of Appellant's Request to file an Appeal, including supporting documents, filed via e-mail on February 24, 2022;
13. Exhibit 13: Copy of the Notice of Hearing, issued on February 25, 2022;
14. Exhibit 14: Copy of the Second Notice of Hearing, issued on March 4, 2022;
15. Exhibit 15: Copies of Department's Email Communications with Appellant, dated January 21, 2022 to February 17, 2022.
16. Exhibit 16: Copy of Appellant's Paystub from Employer for the following pay period: December 1, 2020 to December 14, 2020; and
17. Exhibit 17: Copy of Appellant's three Paystubs from CNMI Treasurer/CNMI Government: (i) pay period of August 2-15, 2020; (ii) pay period of August 16-29, 2020; and (iii) check dated August 21, 2020 (no pay period noted).

For the reasons stated below, the Department's Amended Notice of Overpayment, dated February 8, 2022 is **AFFIRMED**. Appellant is not eligible for benefits for weeks ending August 8, 2020, August 22, 2020, August 29, 2020 and December 5, 2020. Appellant is overpaid in the amount of \$519.00.

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

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").

1 to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in
2 administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
3 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
4 appeals of agency decisions.

5 Upon review of the records, the appeal is not timely filed. Accordingly, jurisdiction is not
6 established.

7 III. PROCEDURAL BACKGROUND & ISSUES

8 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
9 January 21, 2021, the Department issued an Initial Notice of Overpayment. On February 3, 2022,
10 upon review of Appellant's application and supporting documents, the Department issued an
11 Amended Notice of Overpayment. On February 7, 2022, Appellant requested reconsideration.
12 Subsequently, upon Appellant's request for reconsideration, on February 8, 2022, the Department
13 issued an Amended Notice of Overpayment. On February 24, 2022, Appellant filed the present appeal
14 of the Amended Notice of Overpayment via e-mail. On February 25, 2022, the appeal was received
and the appeal was scheduled for a hearing.

15 As stated in the Notice of Hearing and discussed during the Administrative Hearing, the issues on
16 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.

17 IV. FINDINGS OF FACT

18 In consideration of the evidence provided and credibility of witness testimony, the undersigned
19 issues the following findings of fact:

- 20 1. Prior to the COVID-19 pandemic, Appellant was employed as Station Manager for Pacific
21 Airport Services Inc. ("Employer"), located in Saipan, CNMI.⁵ As Station Manager, Appellant
22 was paid \$1,200.00 biweekly.⁶ Due to the economic impact of the pandemic, Employer
23 implemented cost-cutting measures that affected Appellant's employment. Specifically,
24 effective July 14, 2020, Appellant's hours were reduced from 40 hours per week to 20 hours
per week, and her salary was reduced to \$600.00 biweekly.⁷

25
26 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
27 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.

28 ⁵ Exhibit 6.

⁶ *Id.*

⁷ *Id.*

- 1 2. On August 3, 2020, Appellant submitted an application⁸ for unemployment assistance under
2 the PUA and FPUC programs. In her initial application,⁹ Appellant self-certified under penalty
3 of perjury that: (a) Appellant's employment was directly affected by COVID-19 when her
4 primary full-time salary and hours were reduced to part-time status; and (b) Appellant's
5 employment was affected since August 2, 2020.
- 6 3. Appellant found a second employment, as an Enumerator for CNMI 2020 Census Office
7 ("CNMI Census"), from January 1, 2020 to July 31, 2020. On August 1, 2020, Appellant
8 helped CNMI Census with a clean-up of the Tanapag Youth Center, Saipan. Appellant's
9 employment with CNMI Census ended when her assignments were completed. Appellant's
10 last pay check from the CNMI Census for bonus pay was dated September 21, 2020.¹⁰
- 11 4. Appellant submitted weekly certifications to claim continued benefits for August 2, 2020 to
12 August 29, 2020, September 6, 2020 to September 12, 2020, September 20, 2020 to
13 September 26, 2020, and November 29, 2020 to December 5, 2020.¹¹ In each of these weekly
14 certifications,¹² Appellant self-certified that: (a) her employment was still affected by COVID-
15 19 because her hours and salary were reduced by Employer; (b) she is able and available for
16 work during the claimed week; and (c) she earned wages during the claimed weeks.
- 17 5. Appellant's reported earnings on her weekly certifications were inaccurate. Based on
18 Appellant's paystubs and Department's audit,¹³ Appellant earned the following wages during
19 the following relevant pay periods:

Week Ending	Appellant's Reported Earning	Appellant's Actual Earning
August 8, 2020	\$300.00	\$334.34
August 15, 2020	\$351.51	\$334.34
August 22, 2020	\$300.00	\$2,532.10
August 29, 2020	\$300.00	\$2,532.10
September 12, 2020	\$4,764.20	\$590.70
September 26, 2020	\$590.70	\$300.00
December 5, 2020	\$0.00	\$300.00

26 ⁸ Exhibit 1.

27 ⁹ *Id.*

28 ¹⁰ Exhibit 17.

¹¹ Exhibit 3.

¹² *Id.*

¹³ See Exhibits 3; 9; 16-17.

- 1 6. Based on Appellant's application and weekly certifications, the Department processed
2 Appellant's claim for payment. As demonstrated by the Department's internal audit,¹⁴ the
3 following payments for the above-claimed weeks were made to Appellant by direct deposit:
4 a. For week ending August 8, 2020, Appellant received \$195.00;
5 b. For week ending August 15, 2020, Appellant received \$143.00;
6 c. For week ending August 22, 2020, Appellant received \$175.00;
7 d. For week ending August 29, 2020, Appellant received \$175.00;
8 e. For week ending September 12, 2020, Appellant did not receive any payout;
9 f. For week ending September 26, 2020 Appellant did not receive any payout; and
10 g. For week ending December 5, 2020, Appellant received \$310.00.
11 7. On February 3, 2022, BPC issued an Amended Notice of Overpayment for the total amount
12 of \$519.00 in PUA benefits for weeks ending August 8, 2020, August 22, 2020, August 29,
13 2020, and December 5, 2020.¹⁵ The stated reasons for overpayment were: (1) Appellant
14 misfiled her claims for weeks ending August 8, 2020 and December 5, 2020; and (2) Appellant
15 exceeded her customary wages for weeks ending August 22, 2020 and August 29, 2020.¹⁶
16 8. On February 7, 2022, Appellant requested reconsideration of the Amended Notice of
17 Overpayment.¹⁷
18 9. On February 8, 2022, after a review of Appellant's Request for Reconsideration, the
19 Department's BPC issued an Amended Notice of Overpayment in which the Department
20 affirmed the overpayment for the same weeks, the same total amount of \$519.00 in PUA
21 benefits, and for the same reasons.¹⁸
22 10. On that same day, February 8, 2022, Appellant emailed the Coordinator seeking clarification
23 and reconsideration of the Amended Notice of Overpayment. Appellant continued to
24 communicate with the Coordinator by email until February 17, 2022, but she did not file a
25 Request for Reconsideration or Request for Appeal form during that time.¹⁹
26 11. Although the Amended Notices of Overpayment, Initial Notice of Overpayment, and other
27 available materials included appeal instructions and a 10-day deadline to file,²⁰ Appellant did
28

¹⁴ Exhibit 9.

¹⁵ Exhibit 8.

¹⁶ *Id.*

¹⁷ Exhibit 10.

¹⁸ *Id.*

¹⁹ Exhibit 15.

²⁰ *See* Exhibit 10.

1 not correctly file her Appeal until she emailed the Request to Appeal form to the
2 Administrative Hearing Office at 5:56 p.m., on February 24, 2022.²¹ Specifically, the
3 Amended Notice of Overpayment provided that Appellant had ten (10) calendar days to file
4 an appeal, which is February 18, 2022.²²

5 12. On February 25, 2022, upon receiving the Request for Appeal, the Administrative Hearing
6 Office scheduled the matter for an Administrative Hearing.²³

7 13. As stated in her Request to Appeal form²⁴ and discussed during the hearing, Appellant is
8 appealing the overpayment for only the weeks ending August 22, 2020 and August 29, 2020.

9 V. CONCLUSIONS OF LAW

10 In consideration of the above-stated findings and applicable law, the undersigned issues the
11 following conclusions of law:

12 1. Appellant's appeal is not timely filed.

13 Generally, an appeal should be filed within ten days after the Notice of Determination was issued
14 or served to the claimant. However, the Department may extend the period to thirty days by a showing
15 of good cause.²⁵ Good cause means: (1) illness or disability; (2) keeping an appointment for a job
16 interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent
17 a reasonable person from complying as directed.²⁶

18 Here, the Department issued the Amended Notice of Overpayment on February 8, 2022, after the
19 Department reviewed Appellant's Request for Reconsideration. On the same day, Appellant emailed
20 the PUA Coordinator asking her to reconsider.²⁷ Subsequently, from February 8, 2022 to
21 February 17, 2022, Appellant continued to communicate with the Department regarding the Amended
22 Notice of Overpayment, but she did not file a Request to Appeal form during this time. Although the
23 Amended Notice of Overpayment, Initial Notice of Overpayment, Benefit Rights Information
24 Handbook, and other available materials included appeal instructions and a 10-day deadline to file an
25 Appeal, Appellant submitted her application via e-mail on February 24, 2022 at 5:56 p.m. Since the
26 Administrative Hearing Office was closed until the following day, Appellant's Appeal was stamped
27 received on the following business day, February 25, 2022. The Amended Notice of Overpayment

28 ²¹ Exhibit 12.

²² *Id.*

²³ Exhibit 13.

²⁴ Exhibit 12.

²⁵ HI. Rev. Statute § 383-38(a).

²⁶ HAR § 12-5-81(j).

²⁷ Exhibit 15.

1 stated that an appeal must be submitted to the Administrative Hearing Office or postmarked "within
2 ten (10) calendar days after the determination or redetermination was mailed to the Appellant."
3 Accordingly, Appellant had to file her Appeal by February 18, 2022. When asked why she filed the
4 Appeal late, Appellant's only explanation was that she communicated with the Coordinator asking
5 for reconsideration because she did not understand that the Amended Notice of Overpayment was
6 final. While the undersigned recognizes that Appellant asked in her email for the Department asking
7 for clarification and further reconsideration,²⁸ Appellant failed to follow the instructions on submitting
8 Request to Appeal form by the deadline, using the correct form, and this is not reason for which good
9 cause extension may be granted because it is not a cause for which a reasonable person would have
10 been prevented from complying as instructed.

11 Accordingly, based on the evidence presented and applicable law, this appeal is untimely.
12 Moreover, because the appeal is untimely, the Administrative Hearing Office does not have
13 jurisdiction to review the Amended Notice of Overpayment and the latter issues on Appeal are moot.

14 VI. DECISION

15 For the reasons stated above, it is ORDERED that:

- 16 1. The CNMI Department of Labor's Amended Notice of Overpayment, dated February 8, 2022,
17 is **AFFIRMED**;
- 18 2. Appellant was overpaid in the total amount of **\$519.00** and she is not entitled to a waiver for
19 repayment; and
- 20 3. Appellant is **ORDERED** to report to the Department's Benefit Payment Control Unit to
21 discuss options for repayment and/or offsetting the overpayment, in accordance with the
22 applicable rules and law.

23 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
24 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
25 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
26 written request must be submitted to the Administrative Hearing Office, either in person at Building
27 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

28 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, and if the Appellant still
disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior

²⁸ See Exhibit 15.

1 Court under the local Administrative Procedures Act within 30 days. *See* 1 CMC § 9112. All forms,
2 filings fees, and filing deadlines for judicial review will be as established by the applicable law and
3 court rule.

4 So ordered this 8th day of September, 2022.

5 /s/

6 **CATHERINE J. CACHERO**
7 Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 22-0200
)
Thomas Sablan Demapan)
)
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 30, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office, Saipan. Appellant Thomas Sablan Demapan (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Department”) was present and represented by PUA Coordinator Esco Francene Kileleman. The following documents were admitted into evidence:

1. Exhibit 1: Copy of Appellant’s Application Snapshot, filed October 1, 2020;
2. Exhibit 2: Copy of Appellant’s Application Snapshot (reopen), filed February 16, 2021;
3. Exhibit 3: Copies of Appellant’s Weekly Certifications for August 1, 2021 to September 4, 2021;
4. Exhibit 4: Copy of Department’s Disqualifying Determination, dated January 28, 2022;
5. Exhibit 5: Copy of Appellant’s Reconsideration Request, submitted January 31, 2022;
6. Exhibit 6: Copy of Department’s Disqualifying Determination (Redetermination), dated February 22, 2022;
7. Exhibit 7: Copy of Appellant’s Request to file an Appeal, filed March 4, 2022;
8. Exhibit 8: Copy of the Notice of Hearing, issued on March 4, 2022;
9. Exhibit 9: Copy of Email Communication from Department’s Benefit Payment Control Unit, dated June 17, 2022;

1 10. Exhibit 10: Copy of Appellant's Record of Contacts Made for Work for the period of
2 August 1, 2021 to August 28, 2021;

3 11. Exhibit 11: Copy of Appellant's Work Search History for the period of August 7, 2021 to
4 September 4, 2021;

5 12. Exhibit 12: Copies of Department's Press Release (FAQ: PUA Work Search Requirement
6 and newspaper articles (*Marianas Variety* and *Saipan Tribune*), posted July 22, 2021; and

7 13. Exhibit 13: Copies of Department's Case Notes, dated January 28, 2022 and
8 February 22, 2022.

9 For the reasons stated below, the Department's Determination dated February 22, 2022 is
10 **REVERSED IN PART**. Claimant is eligible for benefits from August 1, 2021 to August 28, 2021.
11 However, Appellant remains ineligible for benefits from August 29, 2021 to September 4, 2021.

12 II. JURISDICTION

13 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020
14 was signed into law creating new temporary federal programs for unemployment benefits called
15 Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation
16 ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020
17 ("Continued Assistance Act") amended and created new provisions of said federal unemployment
18 insurance programs, which, among other things, extended the PUA and FPUC programs to March 13,
19 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs
20 to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in
21 administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
22 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
23 appeals of agency decisions.

24 Upon review of the records, the appeal is timely filed. Accordingly, jurisdiction is established.

25 III. PROCEDURAL BACKGROUND & ISSUES

26 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
27 review of Appellant's application and supporting documents, the Department issued a Disqualifying
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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.

1 Determination on February 22, 2022. On March 4, 2022, Appellant filed the present appeal and the
2 matter was scheduled for an Administrative Hearing. As stated in the Notice of Hearing, the issues on
3 appeal are: (1) whether Appellant is eligible for PUA; and (2) whether an overpayment occurred and
4 funds should be returned.

5 IV. FINDINGS OF FACT

6 In consideration of the evidence provided and credibility of witness testimony, the undersigned
7 issues the following findings of fact:

- 8 1. Prior to the COVID-19 pandemic, Appellant, a U.S. citizen, was self-employed as a laborer
9 and/or landscaper.⁵ Appellant owned X&T Landscaping Company (the "Company"), located
10 in Saipan, and he provided landscaping services.⁶
- 11 2. It is uncontested that, Appellant's Company had fewer clients and business opportunities
12 which affected Appellant's business income and employment because of the economic impact
13 of the COVID-19 pandemic.
- 14 3. On or around October 1, 2020, Appellant submitted an application for unemployment
15 assistance under the PUA and FPUC programs administered by the Department.⁷ In his initial
16 application, Appellant self-certified under penalty of perjury that: (a) Appellant's employment
17 was directly affected by COVID-19 when his place of employment was closed as a direct
18 result of the COVID-19 public health emergency; and (b) Appellant's employment was
19 affected since October 1, 2020.⁸
- 20 4. Subsequently, on February 16, 2021, Appellant submitted an application to reopen⁹ and he
21 submitted weekly certifications¹⁰ to claim continued benefits from August 1, 2021 to
22 September 4, 2021. In each weekly certification, Appellant reported that: (a) he is self-
23 employed and experienced a significant reduction of services because of the COVID-19
24 public health emergency; (b) he is able and available for work during the claimed week; (c)
25 and (c) he earned zero income during the claimed week.¹¹
- 26 5. The answers provided in Appellant's applications and weekly certifications were submitted

27 ⁵ See Exhibits 1-2.

28 ⁶ *Id.*

⁷ Exhibit 1.

⁸ *Id.*

⁹ See Exhibit 2.

¹⁰ See Exhibit 3.

¹¹ *Id.*

1 under penalty of perjury.¹² It is Appellant's responsibility to provide true, accurate, and
2 complete answers.¹³ Moreover, it is Appellant's responsibility to be informed about the
3 program by reading the PUA Benefit Rights Information Handbook and other official written
4 material regarding PUA.¹⁴

5 6. The Department provided Appellant and the general public with information and instructions
6 on the requirement for work search contacts, including keeping accurate records of the work
7 search contacts for the weeks claimed, through press releases and newspaper articles.¹⁵

8 7. Appellant submitted to the Department a Record of Contacts Made for Work for the weeks of
9 August 1, 2021 to August 28, 2021 ("Record of Contacts") and Work Search History for
10 August 7, 2021 to September 4, 2021 ("Work Search History").¹⁶

11 a. From August 1-28, 2021, Appellant went in-person to businesses, either by car or by
12 walking, and he enquired with each potential employer if there was a job opening for
13 which he might be qualified.¹⁷ In instances where he was told that there was a job
14 opening, Appellant submitted a job application with the potential employer.¹⁸ Where
15 there was no job opening, the potential employer did not give a job application and/or
16 Appellant did not submit an application.¹⁹

17 b. Appellant did not log any work search contact or activity from August 29, 2021 to
18 September 4, 2021.²⁰

19 8. PUA Coordinator Esco Francene Kileleman contacted each of the businesses listed on
20 Appellant's Record of Contact and Work Search History.²¹ Ms. Kileleman confirmed that
21 Appellant went in-person to the businesses listed in his Record of Contacts and Work Search
22 History, Appellant spoke with each potential employer, and Appellant conducted the activities
23 Appellant listed in Appellant's Record of Contacts and Work Search History.²²

24 9. Based on the answers on Appellant's applications, weekly certifications, and supporting
25 documents including Record of Contacts and Work Search History, Appellant's claim was
26

27 ¹² See Exhibits 1-3.

28 ¹³ *Id.*

¹⁴ *Id.*

¹⁵ Exhibit 12.

¹⁶ Exhibits 10-11.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* (PUA Coordinator/Adjudicator handwritten notes).

²² *Id.*

1 reviewed and on January 28, 2022, the Department issued a Disqualifying Determination,
2 effective from August 1, 2021 to September 4, 2021.²³ The Department disqualified Appellant
3 because it found that Appellant failed to meet the minimum job search requirement.²⁴

4 10. On January 31, 2022, Appellant submitted a Reconsideration Letter.²⁵

5 11. On February 22, 2022, the Department issued a Disqualifying Determination
6 (“Redetermination”), effective for the period of August 1, 2021 to September 4, 2021, and
7 still finding that Appellant is ineligible to receive PUA and FPUC benefits for this period
8 because Appellant failed to meet the minimum job search requirement.²⁶

9 12. On March 4, 2022, Appellant filed the present appeal of the Redetermination.²⁷ As stated in
10 his Request to Appeal and as discussed during the Administrative Hearing, Appellant is
11 appealing because he conducted the work search contacts required for the claimed weeks.²⁸

12 13. On March 4, 2022, Appellant’s Appeal was scheduled for an Administrative Hearing.²⁹ While
13 the appeal was pending, the Department’s Benefit Payment Control Unit confirmed there was
14 no overpayment issue in this matter because Appellant did not receive any unemployment
15 benefits for the claim period of August 1, 2021 to September 4, 2021.³⁰

16 V. CONCLUSIONS OF LAW

17 In consideration of the above-stated findings and applicable law, the undersigned issues the
18 following conclusions of law:

19 **1. Appellant is able and available to work in the CNMI from August 1, 2021 to August 28,**
20 **2021 because Appellant conducted the work search requirement.**

21 In accordance with the CARES Act, an individual must be able and available to work in the CNMI
22 during the week that benefits are claimed. “An individual shall be deemed able and available for work
23 . . . if the individual is able and available for suitable work during the customary work week of the
24 individual's customary occupation which falls within the week for which a claim is filed.”³¹ “An
25 individual shall be deemed *able* to work if the individual has the physical and mental ability to perform

26 ²³ Exhibit 4; *see also* Exhibit 13.

27 ²⁴ *See* Exhibits 4; 13.

28 ²⁵ *See* Exhibits 5-6.

²⁶ Exhibit 6; *see also* Exhibit 13.

²⁷ Exhibit 7.

²⁸ *Id.*

²⁹ Exhibit 8.

³⁰ Exhibit 9.

³¹ HAR § 12-5-35(a)

1 the usual duties of the individual's customary occupation or other work for which is the individual is
2 reasonably fitted by training and experience."³² "An individual shall be deemed *available* for work
3 only if the individual is ready and willing to accept employment for which the individual is reasonably
4 fitted by training and experience. The individual must intend and wish to work, and there must be no
5 undue restrictions either self-imposed or created by force of circumstances which prevent the
individual from accepting employment."³³

6 Effective June 13, 2021, Hawaii reinstated the work search requirement for all PUA claimants.
7 Because the CNMI follows Hawaii state law with respect to unemployment benefits, CNMI claimants
8 must "make a minimum of three work search contacts each week, unless³⁴ otherwise provided" to
9 demonstrate availability.³⁵ With respect to work search contacts, "the [claimant] shall maintain a
10 record of all work search contacts and may be required to submit such records upon request by the
11 Department."³⁶ Activities that are considered "work search contacts" include: (1) registering for work
12 at the Department, other employment agency, or work placement program; (2) applying for work,
13 submitting resumes, or interviewing with potential employers; (3) attending job fairs, seminars, or
14 other workshops; (4) using other employment resources to identify potential job openings; or (5)
15 conducting other work search activities that other individuals in the same or similar occupation would
engage in. Ultimately, a claimant who fails to make a minimum of three work search contacts each
16 week is not available for work and may be held ineligible for benefits.³⁷

17 Here, as testified to by the witnesses and demonstrated by Appellant's Record of Contacts and
18 Work Search History,³⁸ Appellant in fact conducted the required three work search contacts for the
19 period of August 1-28, 2021, but Appellant failed to make the minimum of three work search contacts
for the final week of August 29, 2021 to September 4, 2021.

20 For the period of August 1-28, 2021, Appellant went in-person to various businesses, either by
21 car or by walking, and he asked whether there were any job opening for which he may be qualified.³⁹
22 Where there was a job opening, Appellant submitted a job application with the potential employer.⁴⁰
23 In instances where there was no job opening, Appellant was not required to submit an application or

24 ³² HAR § 12-5-35(a)(1) (emphasis added).

25 ³³ HAR § 12-5-35(a)(2) and (b) (emphasis added).

26 ³⁴ See HAR § 12-5-35(c)(4).

27 ³⁵ HAR § 12-5-35(c)(1).

28 ³⁶ HAR § 12-5-35(c)(2).

³⁷ HAR § 12-5-35(c)(5).

³⁸ Exhibits 10-11.

³⁹ *Id.*

⁴⁰ *Id.*

1 resume with the potential employer because the potential employer did not give him a job application
2 and/or accept his application. A PUA Coordinator contacted the potential employers listed on
3 Appellant's Record of Contacts and Work Search History, and she confirmed the information
4 provided by the Appellant.⁴¹ Appellant's conduct is sufficient as conducting other work search
5 activities that other individuals in the same or similar occupation would engage in.

6 For the remaining week of disqualification, August 29, 2021 to September 4, 2021, Appellant's
7 Record of Contacts and Work Search History did *not* include any activities for that claimed week. In
8 addition, when asked during the Administrative Hearing, Appellant could not recall exactly what he
9 did to conduct any work search contacts for that week. For example, Appellant was asked and could
10 not name any businesses that he visited, called, or contacted and those potential employers that he
11 might have applied for work. The undersigned finds that the Department demonstrated that Appellant
12 was provided with information and instructions on the requirement for work search contacts, including
13 keeping accurate records of the work search contacts for the weeks claimed.⁴² It is Appellant's
14 responsibility to provide true, accurate, and complete answers in his applications and weekly
15 certifications, including in his Record of Contacts and Work Search History.⁴³ Moreover, it is
16 Appellant's responsibility to be informed about the program by reading the PUA Benefit Rights
17 Information Handbook and other official written material regarding PUA, including press releases
18 and newspaper articles regarding the work search requirements.⁴⁴ Ultimately, based on the evidence
19 and testimony available, the undersigned finds that Appellant failed to make a minimum of three work
20 search contacts for the week of August 29, 2021 to September 4, 2021.

21 Based on applicable law and available evidence, the undersigned finds that Appellant is able and
22 available to work for the period of August 1, 2021 to August 28, 2021 because he conducted the
23 required three work search contacts for these claimed weeks. Accordingly, Appellant is eligible for
24 PUA and FPUC benefits for the period of August 1, 2021 to August 28, 2021.

25 VI. DECISION

26 For the reasons stated above, it is ORDERED that:

- 27 1. The CNMI Department of Labor's Disqualifying Determination, dated February 22, 2022, is
28 **REVERSED IN PART;**

⁴¹ See *id.* (hand written notes of PUA Coordinator/Adjudicator).

⁴² Exhibit 12.

⁴³ *Id.*

⁴⁴ *Id.*



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 22-0217
)
Neinarin Siech,)
)
Appellant,) ADMINISTRATIVE ORDER GRANTING
) PARTIES' REQUEST FOR DISMISSAL
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's Request to Appeal, this matter was scheduled for an Administrative Hearing for October 13, 2022 at 9:00 a.m. On August 11, 2022, Appellant filed a written request to withdraw her appeal, stating that she would like to withdraw her appeal and pay off the overpayment. Subsequently, on September 8, 2022, the Department filed a Motion to Dismiss stating that the parties have resolved the issues on appeal, and that upon further discussion with the Appellant, the Appellant has agreed to the Notice of Overpayment, dated June 24, 2022. The Department included the Notice of Overpayment and Payment Plan Agreement that Appellant signed on August 26, 2022. On September 12, 2022, Appellant confirmed in writing that she agreed with the Department's Motion to Dismiss.

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 October 13, 2022 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 **12th** day of September, 2022.

/s/

Catherine J. Cachero
Administrative Hearing Officer



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:) Labor Case No. 22-001(T)
)
Joelie D. San Nicolas,)
)
Complainant,) **ORDER OF DISMISSAL**
)
v.)
)
Tinian Fuel Services, Inc.,)
)
Respondent.)

This matter came for a Status Conference on September 8, 2022 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Due to the ongoing COVID-19 public health emergency, the hearing was held online. Complainant Joelie D. San Nicolas (“Complainant”) was present and self-represented. Respondent Tinian Fuel Services, Inc. (“Respondent”) was present and represented by Sales Manager Julianita Quimson and Attorney Joe W. McDoulett. Enforcement was also present and represented by Ramona P. Cabrera – Viches.

Pursuant to NMIAC § 80-20.1-485 (b), “[a] complaint may be dismissed upon its abandonment or settlement by the parties.” During the Status Conference, Complainant indicated that she wanted to voluntarily dismiss the above-captioned case. On September 12, 2022, Complainant filed a written request to voluntarily dismiss her complaint. Respondent did not contest or object to 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 **12th** day of September, 2022.

/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.



In Re the Matter of:

Labor Case No. 22-002

Vincent R. Agulto,

Complainant,

ORDER OF DISMISSAL

V.

Pacific Rainbow CNMI, Inc.,

Respondent.

Pursuant to 3 CMC § 4947(a), “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.” Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim upon which relief can be granted. *See also* NMIAC § 80-20.10485(b).

Here, Complainant alleges a violation of discrimination and harassment at the workplace. However, upon referral to Enforcement for further investigation, Enforcement filed a written determination recommending dismissal based on a lack of jurisdiction and no applicable CNMI labor law and regulation. Accordingly, the matter was scheduled for an Order to Show Cause Hearing to determine whether dismissal was appropriate. During the Order to Show Cause

1 Hearing, both parties stated they received Enforcement's written determination. Further, the
2 parties indicated that they had no objection to dismissal.

3 Based on a review of the filings and applicable law, the undersigned finds that dismissal
4 is appropriate. Accordingly, pursuant to 3 CMC § 4947, this matter is hereby **DISMISSED**. Any
5 person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing
6 fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.¹

7 So ordered this **9th** day of September, 2022.

8 /s/

9 **JACQUELINE A. NICOLAS**
10 Administrative Hearing Officer
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28 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.