

March 21, 2019

Memorandum

To: Members of the Committee on Financial Services
From: FSC Majority Staff
Subject: March 26, 2019, Subcommittee on Oversight and Investigations hearing entitled “The Administration of Disaster Recovery Funds in the Wake of Hurricanes Harvey, Irma, and Maria”

The Subcommittee on Oversight and Investigations will hold a hearing entitled, “The Administration of Disaster Recovery Funds in the Wake of Hurricanes Harvey, Irma, and Maria” on Tuesday, March 26, 2019, at 10:00 a.m. in room 2128 of the Rayburn House Office Building.

Witness List

- **Fernando Gil Enseñat**, Secretary of Housing, Puerto Rico
- **Jeremy Kirkland**, Counsel to the Inspector General, U.S. Department of Housing and Urban Development
- **Daphne Lemelle**, Executive Director, Harris County Community Services Department
- **Marion Mollegen-McFadden**, Senior Vice President, Enterprise Community Partners

Background

In 1974, Congress authorized the Community Development Block Grant (CDBG) program under Title I of the Housing and Community Development Act.¹ The CDBG program is administered by the U.S. Department of Housing and Urban Development (HUD), and is the federal government’s largest and most widely available source of financial assistance for state and local government-directed neighborhood revitalization, housing rehabilitation, and economic development activities. One of the national objectives of the CDBG program allows communities and states to use program funds to address a serious and immediate public health and safety threats.² Accordingly, Congress has used the CDBG program’s framework

¹ 42 U.S.C. 5301, et seq.

² 42 U.S.C. 5301(b)(3).

to provide additional assistance (called, “CDBG Disaster Recovery” or “CDBG-DR”) for state and local recovery activities in the wake of presidentially-declared disasters.

Eligible uses of CDBG-DR funds generally fall into the categories of housing, economic revitalization, and infrastructure, and include, but are not limited to, construction or rehabilitation projects; future disaster mitigation activities; interim financial assistance to homeowners; and recovery planning and administration. Importantly, there is no automatic trigger for when and how much CDBG-DR funding is available in response to a disaster. Congress must debate and pass each supplemental CDBG-DR appropriation on a case-by-case basis. In 1993, Congress passed its first supplemental CDBG-DR appropriation for community development activities in areas affected by Hurricane Andrew, Hurricane Iniki, and Typhoon Omar.³ To date, Congress has appropriated \$87 billion in CDBG-DR assistance.

CDBG-DR grants are governed by the underlying CDBG statute and rules and the language of the relevant supplemental appropriation act. The supplemental appropriation act typically identifies the amount appropriated, the period covered, the eligible uses of funds, and the certifications required for assistance. Congress generally affords the HUD Secretary broad discretion to allocate funds to states or local governments using information from the Federal Emergency Management Agency (FEMA) to calculate allocations to the most affected areas. The CDBG-DR program is intentionally flexible to allow grantees to address a broad range of challenges in disaster-impacted areas. The HUD Secretary is authorized to waive program requirements, except for those related to fair housing, nondiscrimination, labor standards, and the environment.⁴ For each supplemental appropriation, HUD publishes a corresponding *Federal Register* notice establishing the allocation of funds to eligible grantees and describing the rules, statutes, waivers, and alternative requirements that apply to allocations under the notice.

Administrative Challenges Relating to CDBG-DR Assistance

As of February 1, 2019, there are 57 grantees with 106 active CDBG-DR grants totaling \$54.6 billion. These funds are operating under requirements contained in 78 different Federal Register notices. In July 2018, the HUD Office of Inspector General (HUD OIG) found that HUD’s use of multiple *Federal Register* notices to administer CDBG-DR assistance created challenges for grantees. Specifically, HUD OIG found, among other challenges, that grantees had to navigate confusing and sometimes duplicative requirements contained in multiple notices.⁵

HUD OIG recommended that HUD codify the CDBG-DR program to: (1) establish a permanent framework for future disasters; (2) reduce the existing volume of *Federal Register* notices; (3) provide a standardized set of rules for all grantees;

³ P.L. 103-50.

⁴ P.L. 115-56.

⁵ HUD Office of Inspector General, *HUD’s Office of Block Grant Assistance Had Not Codified the Community Development Block Grant Disaster Recovery Program*, Audit Report 2018-FW-0002 (July 23, 2018).

and (4) ensure that grants are closed in a timely manner. HUD has not acted on this recommendation in part because Congress has not directed HUD to conduct a rulemaking. Congress has also not established CDBG-DR assistance as a permanent program with its own authorizing statute.

Recent Disasters

According to the National Oceanographic and Atmospheric Administration (NOAA), 2017 was “a historic year of weather and climate disasters” for the United States.⁶ A combination of devastating hurricanes and wildfires, among other events, caused \$306.2 billion in cumulative damage and made 2017 the costliest year for weather and climate disasters in U.S. history.⁷ In response, Congress appropriated \$35.4 billion in CDBG-DR assistance to disaster-impacted states and territories including Texas, Puerto Rico, and California.⁸

In August 2017, Hurricane Harvey brought deadly and destructive winds and flooding to south and southeast Texas, particularly in Harris County, which includes the Houston metropolitan area. Harvey caused at least 103 confirmed deaths in the United States and an estimated \$125 billion in damage.⁹ In 2018, HUD allocated \$9.8 billion in CDBG-DR funds to Texas in response to Hurricane Harvey.¹⁰ Approximately \$4.4 billion of the funds are currently unavailable to Texas because HUD has yet to publish guidance governing the allocation.¹¹

In September 2017, Hurricane Maria made landfall on Puerto Rico two weeks after Hurricane Irma passed the island. Maria killed nearly 3,000 people¹² and caused about \$90 billion of damage on Puerto Rico.¹³ In 2018, HUD allocated \$18.4 billion to Puerto Rico in response to damage caused by Hurricanes Irma and Maria.¹⁴ In February 2019, HUD released the first of three tranches of Puerto Rico’s CDBG-DR funding in the amount of \$1.5 billion. HUD’s release of funds followed reporting in January 2019 that the Trump Administration allegedly intended to withhold funds appropriated for Puerto Rico.¹⁵ Puerto Rico has only spent approximately \$42,000 of this initial tranche due to multiple delays in HUD’s release of the funds.

⁶ Adam B. Smith, *2017 U.S. billion-dollar weather and climate disasters: a historic year in context* (Jan. 8, 2018).

⁷ *Id.*

⁸ P.L. 115-56; P.L. 115-123.

⁹ Eric S. Blake and David A. Zelinsky, *National Hurricane Center Tropical Cyclone Report: Hurricane Harvey* 8-9, NOAA Report No. AL092017 (Jan. 23, 2018).

¹⁰ P.L. 115-31; P.L. 115-56; P.L. 115-123.

¹¹ Letter from Cmr. George P. Bush, Texas General Land Office, to President Donald J. Trump (Jan. 29, 2019).

¹² See Milken Institute School of Public Health, the George Washington University, *Ascertainment of the Estimated Excess Mortality from Hurricane Maria in Puerto Rico* (2018).

¹³ Richard J. Pasch, Andrew B. Penny, and Robbie Berg, *National Hurricane Center Tropical Cyclone Report: Hurricane Maria*, NOAA Report No. AL152017 (Apr. 5, 2018).

¹⁴ P.L. 115-56; P.L. 115-123.

¹⁵ Wash. Post, *After butting heads with Trump administration, top HUD official departs agency* (Jan. 16, 2019).

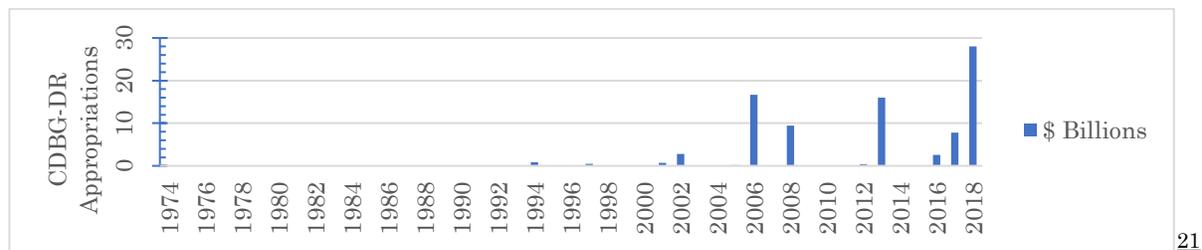
On March 1, 2019, HUD approved the second \$8.2 billion tranche of CDBG-DR funding for Puerto Rico. HUD will require financial controls on this new tranche of funding that it did not require for the initial \$1.5 billion allocation. According to HUD Secretary Ben Carson, new controls are needed because “[t]his is an unprecedented investment, and . . . Puerto Rico has a history of fiscal malfeasance.”¹⁶ However, others have argued that the prolonged delay is unwarranted, resulting from, in part, personal animosity between President Trump and Puerto Rican politicians.¹⁷

In addition to hurricanes, the United States experienced a historic wildfire season in 2017 that burned 9.8 million acres across western and northwestern states and resulted in nearly \$18 billion in cumulative costs.¹⁸ In 2018, HUD allocated \$212.3 million to California in response to the 2017 wildfire season.¹⁹ California has yet to spend any of these funds. The state’s action plan is pending HUD approval.

Other Issues

Increasing Severity and Frequency of Disasters

The data suggests that in the coming years, disaster recovery needs will likely grow substantially. In 2017, natural disasters combined to cause over \$300 billion in direct damages, a new U.S. annual record. All but four U.S. counties experienced substantial damage from some type of natural hazard between 1999 and 2013.²⁰



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In March 2019, melting snow inundated the Missouri River, resulting in torrential flooding that has caused an estimated \$1 billion in damage and caused Missouri, Nebraska, and Iowa to declare states of emergency.²² From historic wildfires in California to catastrophic flooding in the Midwest to hurricane damage along the Gulf Coast and Eastern Seaboard, every part of the United States has been impacted by the increasing severity of natural disasters.²³

¹⁶ Caribbean News, *HUD approves \$8.22 billion plan for Puerto Rico disaster recovery plan* (Mar. 1, 2019).

¹⁷ Associated Press, *Puerto Rico Gov: Trump refuses meeting over hurricane relief* (Feb. 22, 2019).

¹⁸ Smith, *Supra* n. 6.

¹⁹ P.L. 115-123.

²⁰ Preston, Benjamin L., *Local Path Dependence of U.S. Socioeconomic Exposure to Climate Extremes and the Vulnerability Commitment*, *Global Environmental Change* 23(4): 719-32 (Aug. 2013).

²¹ HUD Office of Community Planning and Development, *Community Development Block Grant Disaster Recovery: CDBG-DR Overview* (June 2018).

²² Reuters, *Deadly Midwestern U.S. floods threaten to spill south as Nebraska cleans up*, March 20, 2019.

²³ Smith, *supra* n. 6.

Fair Housing Concerns

Disaster relief has been inequitably distributed amongst people of different races and ethnicities, economic classes, and homeownership status. Research has shown that, all else being equal, the more federal disaster relief that flows to a county, the more whites' wealth tends to grow and the more blacks' wealth tends to decrease due to unequal access to recovery capital.²⁴ In a study of the use of funds administered for Hurricanes Katrina and Rita, the Government Accountability Office (GAO) found that while 62 percent of damaged homeowner units received relief funds, only 18 percent of damaged rental units received similar assistance.²⁵ In addition, CDBG-DR funds may be further skewed towards wealthier residents because federal cost-benefit analysis requirements focus on the monetary value of damaged properties without considering other factors (e.g., a neighborhood with 10 families each living in properties worth \$1 million is weighted the same as a neighborhood with 100 families each living in properties worth \$100,000).²⁶ As a result, some of the largest HUD fair housing settlements have come after major disasters, as states and localities receiving disaster recovery grants often did not serve affected families equitably.

Reforming Disaster Recovery Act of 2019

Bill Summary: The Reforming Disaster Recovery Act of 2019 would permanently authorize the CDBG-DR program as well as address concerns that have been raised about the administration of the program.²⁷ Among other requirements, the discussion draft would mandate that: (1) HUD disburse one-third of CDBG-DR funds within 60 days and the other two-thirds within 180 days of a Congressional appropriation; (2) HUD, FEMA, and the Small Business Administration (SBA) work together to better improve data sharing and to reduce duplication of benefits between agencies; and (3) any CDBG-DR-funded new construction, repair, or rehabilitation utilize minimum federal standards for flood risk mitigation and storm water protection. Additionally, the discussion draft would allow cities and counties with well-developed disaster relief resources to become pre-certified to receive funding more quickly.

Past Congressional Action: In 2017, Reps. Al Green (D-TX) and Ann Wagner (R-MO) introduced a version of the bill as H.R.4557 - Reforming Disaster Recovery Act of 2017. H.R. 4557 passed the Committee with a broadly bipartisan vote of 53-3.

Appendix A – [Discussion Draft] Reforming Disaster Recovery Act of 2019
Appendix B – 2018 HUD OIG Report

²⁴ Howell, Junia and James R. Elliot. *As Disaster Costs Rise, So Does Inequality*, Socius: Sociological Research for a Dynamic World, Vol. 4 1-3. (Dec. 4, 2018).

²⁵ GAO, *Disaster Assistance: Federal Assistance for Permanent Housing Primarily Benefited Homeowners; Opportunities Exist to Better Target Rental Housing Needs* (Jan. 14, 2010).

²⁶ National Public Radio, *How Federal Disaster Money Favors the Rich* (Mar. 5, 2019).

²⁷ Reforming Disaster Recovery Act of 2019.