

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

June 11, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: June 16, 2021, HCDI hearing entitled “Flexible Federal Funding: Examining the Community Development Block Grant Program and Its Impact on Addressing Local Challenges”

The Subcommittee on Housing, Community Development, and Insurance will hold a virtual hearing entitled “Flexible Federal Funding: Examining the Community Development Block Grant Program and Its Impact on Addressing Local Challenges” on Wednesday, June 16, 2021, at 10:00 AM ET, on the virtual meeting platform Cisco Webex. There will be one panel with the following witnesses:

- Joseph Jaroscak, Analyst in Economic Development Policy, Congressional Research Service
- George Mensah, Director, Department of Housing and Community Development of the City of Miami, Florida
- London Breed, Mayor, Mayor of the City and County of San Francisco, California
- Kimberly Robinson, Executive Director, Pioneer Valley Planning Commission
- Salim Furth, Ph.D., Senior Research Fellow, Mercatus Center at George Mason University

Overview

Originally authorized under Title I of the Housing and Community Development Act of 1974¹ and administered by the Department of Housing and Urban Development (HUD), the Community Development Block Grant Program (CDBG) was primarily created to invest in and develop viable communities that provide suitable living environments and economic opportunities for persons of low and moderate incomes. CDBG gives eligible grantees, which include states, cities, territories, and counties, the discretion to make locally informed and place-based decisions, and to use funds towards development projects and programs within specific activity categories. CDBG has been a reliable funding source for many grantees to ensure that individuals and families receive access to safe housing and services to support their growth and personal goals.

As a condition of receiving funding, CDBG’s authorizing statute requires state and local governments to certify that the proposed CDBG activities meet one of the program’s three national objectives.² Eligible activities must: 1) benefit low- and moderate-income (LMI) persons; 2) aid in the prevention or elimination of slums or blight; or 3) meet a need having a particular urgency.³ The objective to deploy funds for the benefit of LMI persons is often considered the “primary” national objective because statute requires that recipients of CDBG funds expend 70% of their funds to meet this objective.⁴

¹ [42 U.S.C. 5301 et seq.](#)

² *Id.*

³ HUD, [Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities](#) (Feb. 2001).

⁴ *Id.*

Recipients of CDBG funds must develop a consolidated plan, which includes the needs, resources, priorities, and proposed activities to be undertaken with CDBG funds.⁵ The consolidated plan process is designed to assist states and local jurisdictions in assessing market conditions and community development, and housing needs and to promote data-driven, place-based investment decisions.⁶ A grantee’s consolidated plan process must include a citizen participation plan, a housing needs assessment, and a community development plan. In addition, grant recipients must also submit an annual performance report detailing progress toward consolidated plan goals and activities in the prior year.⁷

CDBG received its largest appropriation, \$5.06 billion, in fiscal year (FY) 2002, but Congress has cut the program funding in subsequent years; specifically, the program’s overall funding level was reduced by almost 39% between 2010 and 2017.⁸ Since 2018, Congress has increased or level-funded the program, and in FY2021, Congress provided \$3.44 billion for the program.⁹

CDBG Program Design

The CDBG statute requires HUD to target funds to community development need, which it identifies as “poverty, neighborhood blight, deteriorated housing, physical and economic distress, decline, suitability of one’s living environment, and isolation of income groups,” among other factor.¹⁰ CDBG uses two separate formula processes to allocate funding to grantees. After setting aside funds for special purposes and projects specified by Congress, 70% of the total funds are allocated to entitlement communities, including insular areas.¹¹ The eligible entitlement community grantees of the CDBG program include: principal cities of Metropolitan statistical Areas (MSAs); other metropolitan cities with populations of at least 50,000; and qualified urban counties with populations of at least 200,000 (excluding the population of entitled cities)¹². The remaining 30% of funds are allocated to States and Puerto Rico.¹³ States disburse their allocations to units of local government that are not eligible to receive funds directly from HUD in accordance with methods developed by the state. Hawaii is the only state to have elected not to participate in the administration of the State CDBG Program and HUD administers non-entitlement CDBG grants in Hawaii.¹⁴

Program flexibility

One of CDBG’s most attractive features is its flexibility in how grantees can use their funding.¹⁵ Examples of eligible activities include, but are not limited to: acquisition of real property; gap financing for affordable housing development; relocation and demolition; rehabilitation of residential and non-residential structures; constructions of public facilities and improvements, such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes; public services, within certain limits; activities relating to energy conservation and renewable energy resources; and provision of assistance to profit-motivated businesses to carry out economic development and job creation/retention activities.¹⁶ Of the funding provided by Congress in FY2020, nearly a quarter (23%) was expended on housing activities, while the majority of funds were used for public

⁵ *Id.*

⁶ HUD, [Consolidated Plan Process, Grant Programs, and Related HUD Programs](#) (June 11 2021).

⁷ *Id.*

⁸ Patrick Sisson, [With U.S. Affordable Housing in Crisis, Trump Admin Wants to Cut Aid](#), Curbed (March 2018).

⁹ Congressional Research Service, [Community Development Block Grants: Funding and Allocation Processes](#) (March 24, 2021).

¹⁰ [42 U.S.C. 5301 et seq.](#)

¹¹ *Id.*

¹² HUD, [CDBG Entitlement Program Eligibility Requirements](#) (accessed June 11, 2021).

¹³ *Id.*

¹⁴ HUD, [Community Development Block Grant HUD Administered Non-Entitled Counties in Hawaii Program](#) (June 11, 2021).

¹⁵ [42 U.S.C. 5305\(c\)](#)

¹⁶ [42 U.S.C. 5305\(a\)](#)

improvements.¹⁷ Although the CDBG program permits a wide range of activities, there are some parameters that prevent grantees from expending funding on certain activities beyond the statutory limitations. For instance, the provision of public services, included but not limited to employment efforts, crime prevention, childcare, health, drug abuse, education, energy conservation, welfare or recreation needs, limits grantees to use at most 15% of its grant towards such activities.¹⁸

The flexible nature of the CDBG program is one of the reasons Congress has elected to use the program's framework to enact supplemental appropriations often in areas with federal emergency or disaster declarations through what has come to be known as the CDBG Disaster Recovery (CDBG-DR) program.¹⁹ 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 passes each supplemental CDBG-DR appropriation on a case-by-case basis. As of April 2021, Congress has provided \$89.8 billion to disaster grantees through CDBG-DR.²⁰

Congress has also elected to leverage the flexibility of CDBG to respond to the COVID-19 pandemic (CDBG-CV). The Coronavirus Aid, Relief, and Economic Security (CARES) Act included \$5 billion for the Community Development Fund, enabling additional support for CDBG grantees "to prevent, prepare for, and respond to coronavirus."²¹ Of that amount, \$2 billion was allocated to supplement the conventional CDBG program proportional to grantees' FY2020 CDBG allocations.²² Of the remaining \$3 billion, the CARES Act directed \$1 billion to be allocated to states and insular areas based on public health needs, risk of transmission of coronavirus, number of coronavirus cases compared to the national average, and economic and housing market disruptions," and \$2 billion to be distributed directly to states and units of local government at the discretion of the Secretary.²³ HUD issued guidance permitting grantees to use CDBG-CV funds to cover emergency payments towards mortgages or rents on behalf of an individual or family,²⁴ which some grantees used to stand up emergency rental programs.²⁵

Obligation to Affirmatively Further Fair Housing

As a condition of receiving funds, CDBG grantees are required to fulfill their Fair Housing Act obligation to affirmatively further fair housing (AFFH).²⁶ Currently, as part of their AFFH obligation, grantees must certify their compliance with AFFH through the Consolidated Planning process and may draw from their CDBG allocation to conduct fair housing planning and provide fair housing services, such

¹⁷ HUD, [CDBG Activity Expenditure Reports](#) (accessed June 11, 2021).

¹⁸ [42 U.S.C. 5305\(a\)\(8\)](#). Currently, because of the coronavirus pandemic, HUD has suspended these limitations as long as each activity prepares, prevents, and responds to the pandemic. Under this suspension, grantees can use more of its funding allocation to carry out job training in communities, increase the capacity and availability of daycare or after-school services, provide testing, diagnosis, vaccination or other health services, and provide up to six consecutive months of emergency subsistence (e.g. rent, mortgage, or utilities). HUD, [Using CDBG and CDBG-CV to support Pandemic Recovery](#). (April 30, 2021).

¹⁹ Congressional Research Service, [Community Development Block Grant Funds in Disaster Relief and Recovery](#) (Sept. 21 2011).

²⁰ HUD, [CDBG Disaster Recovery Grant History 1992-2021](#) (April 13, 2021).

²¹ CARES Act, [P.L. 116-136](#).

²² *Id.*

²³ *Id.*

²⁴ HUD, [Using Annual Formula CDBG, FY 2019 and 2020 CDBG to prevent, prepare for, and respond to coronavirus, and CDBG-CV Funds for Rent or Mortgage and Arrearages Subsistence-Type Payments](#) (March 30, 2021).

²⁵ National Low Income Housing Coalition, [NLIHC Research Note: Emergency Rental Assistance Programs in Response to COVID-19](#) (Oct. 27, 2020).

²⁶ Libby Perl, [The Fair Housing Act: HUD Oversight, Programs, and Activities](#), Congressional Research Service (Apr. 7, 2021).

as counseling.²⁷ This planning process, whether through an Analysis of Impediments (AI) or Assessment of Fair Housing (AFH), is intended to allow jurisdictions to identify barriers to fair housing and ensure CDBG funds are used to affirmatively undo patterns of residential segregation, increase access to housing opportunities, address systemic disinvestment, and deploy projects equitably across communities. The fair housing planning requirement was strengthened under the Obama administration's 2015 AFFH final rule,²⁸ which replaced an ineffective AI process with a more robust AFH requirement.²⁹ The planning requirement was eliminated altogether by the Trump administration's final AFFH rule in August 2020,³⁰ which the Biden administration has recently moved to begin restoring through an interim final AFFH rule and a forthcoming final rule.³¹

Formula allocation

As noted, HUD uses two basic formulas, known as Formula A and Formula B, to allocate CDBG funds to entitlement communities.³² Formula A allocates funds to a community based on its metropolitan shares of: (1) population, weighted at 25%; (2) poverty, weighted at 50%; and (3) overcrowding, weighted at 25%, multiplied by the appropriated amount.³³ Formula B allocates funds to a community based on: (1) its share of growth lag, weighted at 20%; (2) its metropolitan shares of poverty, weighted at 30%; and (3) pre-1940 housing weighted at 50%, multiplied by the appropriated amount.³⁴ The dual formula system was passed by Congress as part of the 1977 Housing and Community Development Act.³⁵ Allocations are based on the higher yield of the two formulas and disbursed, less a pro rata reduction.

Some studies have argued that the CDBG formulas no longer target resources to community development need as well as they once did, in particular because their allocation variables may no longer be as closely correlated with underlying need as when CDBG was last reauthorized.³⁶ For example, some grantees have argued that struggling communities have demolished their pre-1940s housing units, while more affluent communities have renovated them, leading to formula B being unhelpful or misleading.³⁷ Researchers have suggested that Congress consider lowering the weight of housing stock and population variables for wealthy communities or create a single formula that better matches funding to community needs.³⁸ Both the Bush and Obama Administrations proposed making changes to the CDBG allocation formula.³⁹ President Trump proposed eliminating the CDBG program.⁴⁰

Program Limitations and Challenges

Funding Challenges

Eligible communities have the discretion to receive or decline CDBG funding, which affects the number of grantees from year to year. HUD estimates that the number of entitlement communities seeking

²⁷ HUD, [Fair Housing Agencies Eligible for Community Development Block Grant \(CDBG\) and Other HUD Funding](#) (Jan. 11, 2008).

²⁸ [80 FR 42271](#) (Jul. 16, 2015)

²⁹ GAO, [HUD Needs to Enhance Its Requirements and Oversight of Jurisdictions' Fair Housing Plans](#) (Sep. 2010).

³⁰ [85 FR 47899](#) (Aug. 7, 2020)

³¹ [86 FR 30779](#) (Jun. 10, 2021)

³² HUD, [CDBG Formula Targeting to Community Development Need](#) (Feb. 2005).

³³ *Id.*

³⁴ *Id.*

³⁵ P.L. 95-128.

³⁶ HUD, [CDBG Formula Targeting to Community Development Need](#) (Feb. 2005); See also Brett Theodos et al., [Taking Stock of the Community Development Block Grant](#), Urban Institute (Apr. 2017).

³⁷ Kyle Koyce, [Is a Formula Cheating Memphis out of Millions of Federal Dollars?](#), Memphis Business Journal (Aug. 2020).

³⁸ Robert Collinson, [Assessing the Allocation of CDBG to Community Development Need](#), Housing Policy Debate 24 (1):91-118 (2014).

³⁹ Congressional Research Service *supra* note 10.

⁴⁰ Diana Olick, [Trump's HUD Budget Cuts 42-Year-Old Community Assistance Program](#), CNBC (March 16, 2017).

participation in the CDBG program tends to increase between five to ten additional communities annually, affecting the amount of individual grant allocations.⁴¹ However, the funding allocations of CDBG funding has not grown in consideration of the rise in the number of entitlement grantees. Indeed, since the program was first authorized in 1974, the number of entitlement communities participating in the program has increased substantially. In 1974, the CDBG allocation was \$2.4 billion for 594 grantees, while in 2021, the total allocation was \$3.44 billion for 1,236 entitlement communities.⁴² Furthermore, according to the CDBG Coalition, comprised of 32 national organizations representing local elected officials, housing and community development professionals, and various non-profits, CDBG funding not only declined over the years and is not sufficient to meet the demands of the current number of eligible grantees, but the program has never been adjusted for inflation. In their 2019 report, the coalition estimates that if adjusted for inflation, the CDBG program's 1974 allocation of \$2.4 billion would amount to \$11.2 billion in 2019.⁴³ In comparison to 1974, more entitlement jurisdictions are competing for less inflation-adjusted funding.⁴⁴

CDBG-DR Authorization

Unlike other disaster assistance programs, CDBG-DR lacks permanent authority and regulations.⁴⁵ In July 2018, the HUD Office of Inspector General (HUD OIG) found HUD's use of multiple *Federal Register* notices to administer 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.⁴⁶ HUD OIG recommended codifying the program to: "(1) ensure that a permanent framework is in place for future disasters, (2) reduce the existing volume of Federal Register notices; (3) standardize of the rules for all grantees; and (4) ensure grants are closed in a timely manner."⁴⁷ HUD has not acted on this recommendation in part because Congress has not directed HUD to conduct rulemaking through legislation. Last Congress, the House passed the bipartisan *Reforming Disaster Recovery Act of 2019* (H.R. 3702) to codify and reform the CDBG-DR program. In April 2021, HUD OIG reiterated its recommendation to codify the program in a report on its investigation of the Trump Administration for delaying the disbursement of recovery and mitigation funds appropriated for Puerto Rico following Hurricanes Irma and Maria.⁴⁸

⁴¹ Congressional Research Service, *supra* note 10.

⁴² CDBG Coalition, [Community Development Block Grants Impact and Funding Need: A Report of the CDBG Coalition](#) (July 2019); See also HUD, [Awards and Allocations: 2021](#) (2021).

⁴³ CDBG Coalition *supra* note 36.

⁴⁴ *Id.*

⁴⁵ GAO, [Disaster Block Grants: Factors to Consider in Authorizing a Permanent Program](#) (May, 2021).

⁴⁶ 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).

⁴⁷ *Id.*

⁴⁸ HUD Office of Inspector General, [Review of HUD's Disbursement of Grant Funds Appropriated for Disaster Recovery and Mitigation Activities in Puerto Rico](#) (April 20, 2021).