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The Community Development Block Grant's Disaster Recovery (CDBG-DR) Component: Background and Issues

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SUMMARY

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The Community Development Block Grant's Disaster Recovery (CDBG-DR) Component: Background and Issues

CDBG-DR is an abbreviation used to refer to supplemental appropriations for disaster recovery administered through the Department of Housing and Urban Development's (HUD's) Community Development Block Grant (CDBG) program. Conventional CDBG funds can be used for disaster recovery purposes. However, CDBG-DR appropriations were developed to provide significant additional funding to communities for long-term disaster recovery needs unmet by other federal sources, such as the Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA).

CDBG-DR appropriations are broadly governed by the CDBG program's statutory authority and program administration. However, they differ in allocation, design, and implementation based on the statutory direction provided in the supplemental appropriations act. They can also differ according to the types of disaster events, their severity, the characteristics of the areas affected, and the unmet needs as determined by HUD.

Although CDBG-DR has been provided repeatedly over the past fifteen years, congressional and public scrutiny has recently focused on HUD's pace of delivering recovery aid, the potential burdens the mechanism places on grantees, and CDBG-DR's overall administration. This report considers the typical characteristics of CDBG-DR processes, reviews CDBG-DR appropriations case examples, and raises policy considerations as they pertain to congressional interest in disaster recovery issues.

Policy issues include (1) the timeliness of CDBG-DR processes; (2) the risk analysis process as it pertains to CDBG-DR rulemaking and allocations; and (3) the potential administrative burden posed by CDBG-DR. In response, Congress may consider increasing oversight over the CDBG-DR process; developing a common framework for CDBG-DR appropriations; or permanently authorizing CDBG-DR in statute.

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Introduction

Following major disasters or emergencies, Congress may appropriate disaster relief and recovery funds under preexisting authorities. A common vehicle for such actions is the Community Development Block Grant (CDBG), a community and economic development program administered by the Department of Housing and Urban Development (HUD).

The standing CDBG program is a flexible community development grant awarded to eligible "entitlement communities" and states, which can be employed to respond to and/or recover from emergencies or other extraordinary situations. However, conventional CDBG funds may be insufficient to address long-term recovery from some disasters.

In such instances, Congress has enacted supplemental appropriations to be used under CDBG authorities to provide additional resources for the unmet needs of affected communities. These communities are typically, but not exclusively, in areas with federal emergency or disaster declarations under the Stafford Act (P.L. 93-288, as amended). These supplemental disaster appropriations have come to be known as CDBG Disaster Recovery, or CDBG-DR.

CDBG has been employed as a vehicle for disaster relief and recovery as early as the 1990s, such as when Congress appropriated $45 million using CDBG authorities in response to Hurricane Andrew, Hurricane Iniki, and Typhoon Omar.[1] However, CDBG-DR was not used as a common designation for this purpose until the 2010s, and particularly following Hurricane Sandy.

CDBG-DR is not a standing program, but a series of temporary expansions of the CDBG program, tailored to specific situations and authorized through appropriations acts. Because each CDBG-DR supplemental appropriation tends to include different directive language, according to congressional intent and the circumstances of the disaster, HUD will often develop new rules to administer and allocate CDBG-DR appropriations.

This programmatic ambiguity provides a certain amount of flexibility, and allows Congress, the federal government, and HUD to adapt program requirements to the specific needs as dictated by the circumstances facing communities at the time. For this reason, each CDBG-DR appropriation essentially creates one or more new individual programs.

Following each CDBG-DR appropriation HUD engages in what can be an extended rulemaking process, so it may take months or even years before disaster-affected areas learn how much CDBG-DR funding is allocated to them, plans for using it are drawn up and approved, and actual funding is provided.

Although CDBG-DR has been provided regularly in recent years, congressional and public scrutiny has recently focused on HUD's pace of delivering recovery aid, the potential burdens the mechanism places on grantees, and CDBG-DR's overall administration. This report considers the typical characteristics of CDBG-DR processes, reviews examples of CDBG-DR appropriations, and raises policy considerations as they pertain to congressional interest in disaster recovery issues.

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CDBG-DR: A "Term of Art"

Because it is not a permanently authorized program, "CDBG-DR" is a term of art, employed at the discretion of Congress and the executive branch. In some cases, disaster supplemental appropriations that utilize CDBG authorities are provided alternative naming conventions even if they follow otherwise typical CDBG-DR processes, such as CDBG-MIT for mitigation or CDBG-CV in response to the coronavirus 2019 disease (COVID) pandemic. For the purposes of this report, all disaster supplemental appropriations utilizing CDBG authorities are considered to be CDBG-DR actions.

Background

The Community Development Block Grant (CDBG) is a flagship community and economic development program administered by the Department of Housing and Urban Development (HUD). CDBG was developed primarily to assist urban areas' housing, infrastructure, and community development needs, with a special emphasis on addressing the needs of low- and moderate-income persons.[2]

CDBG is administered in two sub-programs: an entitlement cities program for cities with populations of 50,000 or greater (or urban counties of 200,000 or greater); and a state program, which allows states to sub-award CDBG funds (usually competitively) to non-entitlement communities.[3] The entitlement cities program receives approximately 70% of CDBG funds.[4]

Because it is a block grant program, CDBG funds are relatively flexible, and may be utilized for a variety of purposes provided that the activities meet one of three national objectives, which are:

1. to principally benefit low- and moderate-income (LMI) persons;[5]
2. to aid in the prevention or elimination of slums or blight; or
3. to provide an urgent need for the purposes of health or safety.[6]

The flexibility of the CDBG program provides grantees with the ability to use those funds to deal with emergencies and disasters. Existing CDBG funds can be adapted to disaster recovery and mitigation through:

- planning for and obligating future funds in service of these objectives; or
- reprogramming existing funds by amending their consolidated plans in coordination with HUD.

CDBG funds may be allocated or reprogrammed to meet any eligible need, including post-disaster recovery. However, although this is a feasible use of CDBG funds, CDBG grantees will have often already planned or obligated preexisting CDBG allocations when a disaster occurs, limiting the use of those funds in response to a disaster. HUD does allow CDBG grantees to reprogram existing funds for other eligible uses, including disaster recovery, but this may be an

[2] For more information on CDBG, see CRS Report R43520, *Community Development Block Grants and Related Programs: A Primer*, by Eugene Boyd.

[3] See HUD, *State Community Development Block Grant Program*, accessed January 24, 2020, at https://www.hudexchange.info/programs/cdbg-state/.

[4] There are other CDBG components for insular and tribal entities that are beyond the scope of this report.

[5] The LMI benefit national objective is required to total 70% of a grantee's projects under the conventional CDBG program, although waivers may be obtained in extenuating circumstances.

[6] See 42 U.S.C. §§5301 et seq. as interpreted by HUD at 24 C.F.R. §570.200 and the HUD Guide to National Objectives and Eligible Activities for CDBG Entitlement Communities.

insufficient or impractical option for various localities, depending on the circumstances and scale of the disaster.

In extraordinary circumstances, Congress has provided emergency supplemental appropriations specifically for disaster recovery through CDBG authorities. This process has come to be known as CDBG-DR.[7] When appropriating CDBG-DR funds, Congress utilizes CDBG authorities to create one or more temporary programs to flexibly respond to the unique circumstances, geographies, and policy issues of the disaster.

Despite being an extension of CDBG, a single CDBG-DR appropriation or allocation can sometimes represent significantly greater funding compared to the conventional CDBG program as a whole, which received $3.4 billion for FY2020.[8]

While CDBG-DR appropriations may address a variety of purposes, certain processes and norms have become routine. For example:

- Typically, CDBG-DR provides significant additional funding to communities for long-term disaster recovery needs, as opposed to immediate uses;
- CDBG-DR allocations are often tied to major disaster declarations, but this is not an absolute requirement, and recovery funds for non-declared disasters may be included in a CDBG-DR supplemental;
- CDBG-DR funds are regularly employed to cover grantees' Federal Emergency Management Agency (FEMA) cost share requirements,[9] particularly in cases of severe fiscal strain;
- Often, CDBG-DR is meant to cover "unmet needs" not already addressed by FEMA and Small Business Administration (SBA) disbursements; and
- Because of these considerations, CDBG-DR funds are usually the last to be appropriated, allocated, and disbursed in response to the disaster.

CDBG-DR appropriations are broadly governed by the CDBG program's statutory authority and program administration. However, CDBG-DR activities differ in allocation, design, and implementation based on the statutory direction provided in the supplemental appropriation act, as well as the types of the disaster events in question, their severity, the characteristics of the areas affected, and the unmet needs as determined by HUD.

[7] Although CDBD authorities for disaster relief have been used since the early 1990s, the term "CDBG-DR" has only come into common usage over the past decade. Prior to that, CDBG-DR actions were broadly referred to as a variation of the CDBG program, described as being for the purposes of disaster relief or recovery, with no single common term.

[8] This is inclusive of appropriations made as part of the normal budget cycle, and not in response to the Coronavirus Disease 2019 (COVID-19) emergency. In contrast, CDBG-DR appropriations to Puerto Rico and the U.S. Virgin Islands under P.L. 115-123, for example, totaled approximately $18.4 billion.

[9] FEMA cost shares are based on language in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; 42 U.S.C. §§5121 et seq.), which defines the federal cost share to be 75%. The remaining 25% must be matched with nonfederal funds. However, depending on the program and allocation, the exact cost share amount may differ. See CRS Report R41101, *FEMA Disaster Cost-Shares: Evolution and Analysis*, by Natalie Keegan and Elizabeth M. Webster.

CDBG-DR: What's in a Name?

In recent disaster supplemental appropriations acts, Congress has utilized other terms to describe CDBG-DR-type packages to emphasize unique or special purposes. For example:

- "CDBG-MIT" funds, developed as part of CDBG-DR appropriations for Puerto Rico and the U.S. Virgin Islands, encompasses supplemental funding designated to increase broader infrastructure resiliency and mitigate the risk of future hazards.
- During the COVID-19 pandemic, the CARES Act (P.L. 116-136) provided supplemental CDBG appropriations organized into three tranches as part of the pandemic response. These appropriations are sometimes referred to as "CDBG-CV."

Despite these separate funding designations, all supplemental emergency appropriations that make use of CDBG authorities could be considered CDBG-DR actions.

CDBG-DR Funding and Disbursement Process

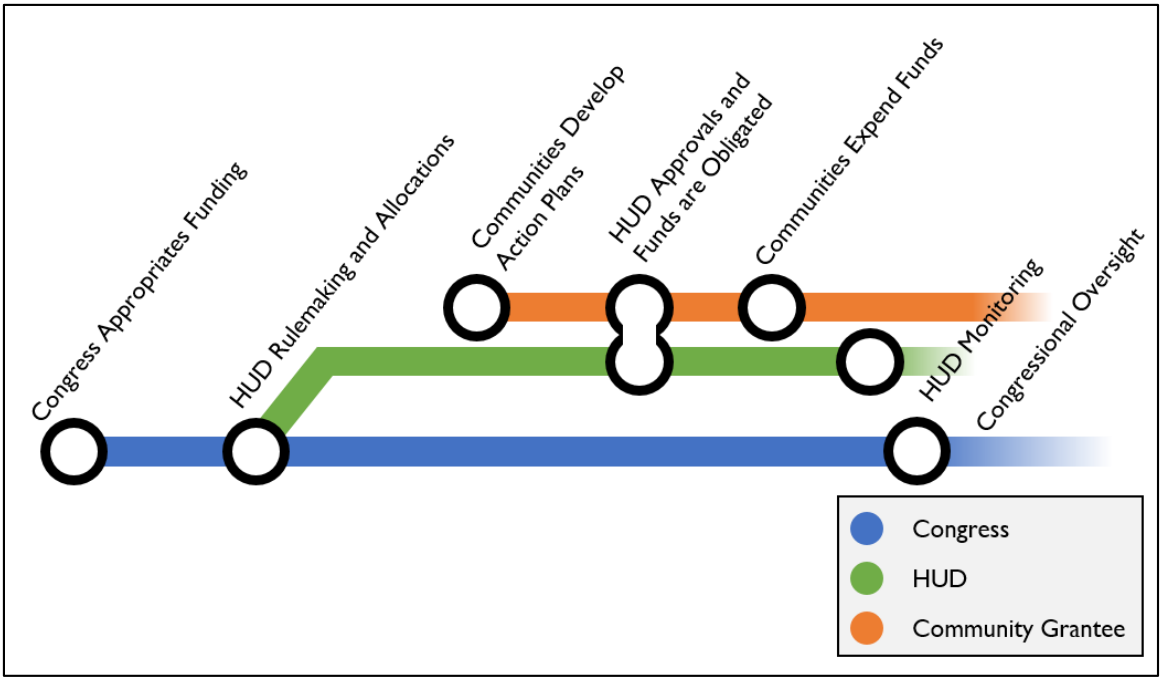
Funding Cycle

Although CDBG-DR appropriations and implementation can vary, common processes inform the CDBD-DR funding and disbursement cycle which are tied to congressional requirements and overarching HUD regulations and administration.

The basic steps in the CDBG-DR funding and disbursement process are listed below:

1. Congress appropriates funds through supplemental appropriations, which also may include specific guidelines for how the funds may be used;
2. HUD sets rules and allocations for the use of funds provided in each CDBG-DR supplemental appropriations act;
3. Communities develop CDBG-DR action plans and engage public participation;
4. HUD approves action plans, negotiates grant agreements, and obligates funds;
5. Communities implement action plans and expend funds; and
6. HUD monitors program activities and expenditures of grantees.

Figure 1. CDBG-DR Funding Cycle



Source: Developed by CRS.

Notes: This figure is meant to provide a generalized view of the CDBG-DR funding and disbursement process. However, because CDBG-DR is not a permanently authorized program, the specifics of any given CDBG-DR process may include certain novelties or tailored requirements.

The timing of a CDBG-DR supplemental appropriations act is at the discretion of Congress, and may be enacted shortly after the disaster event, or after a longer period. CDBG-DR appropriations may also be prompted by a request from the Administration. Although CDBG authorities and HUD program administration generally govern use of CDBG-DR appropriations, each enacted CBGD-DR supplemental appropriation essentially establishes a new CDBG-DR program.

In addition, the supplemental act may appropriate funds as part of an omnibus bill, such as the Bipartisan Budget Act of 2018 (P.L. 115-123), in which CDBG-DR as well as other disaster supplemental funding were appropriated as a separate division, or in a dedicated disaster supplemental, such as the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20).

The CDBG-DR supplemental appropriations are to be utilized based on CDBG authorities and HUD program administration, but each CDBG-DR appropriations act may differ significantly in funding levels, purpose, geographic coverage, and the types and numbers of disasters it addresses.

For example, the CDBG-DR supplemental appropriations in response to the Louisiana floods of 2016 do not name the affected geographies specifically, but instead direct funds to be made available for "disasters from a major disaster declared in 2016," prior to enactment (P.L. 114-223). By contrast, P.L. 115-123 appropriated funding for 2017 major disasters, but directed $11 billion more specifically to "States and units of local government affected by Hurricane Maria."

Supplemental appropriations are generally geared to the unique unmet needs that spark them, including the characteristics of disaster event(s) that they may be responding to. The unique unmet needs may be reflected in a CDBG-DR supplemental appropriation structure, including the variance between the intent, purpose, and the scope between any two CDBG-DR appropriations.

Accordingly, every CDBG-DR supplemental appropriation triggers a separate HUD rulemaking process to determine eligibility, govern allocations, establish waiver criteria, and the like. This information is published in *Federal Register* notices.[10] In general, HUD determines how CDBG-DR funds are allocated across eligible entities, unless otherwise stated in the relevant appropriations bill. HUD's allocation determination is made through a process of verifying grantees' calculations of their unmet needs.[11]

Following the publication of the relevant *Federal Register* notices announcing allocations, grantees develop individual CDBG-DR action plans and publish them for public comment. Upon approval of the action plans, HUD negotiates and signs grant agreements with the eligible grantee, which allows for allocated funds to be obligated and spent.

Risk Analysis Process

Pursuant to the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities guidance—commonly known as Uniform Grant Guidance (UGG)[12]—HUD engages in a risk assessment process to ensure that the grantee is able to successfully administer the allocated funds with minimal waste, fraud, and abuse.

As a result of this process, HUD may attach certain conditions and/or technical oversight mechanisms. These factors and conditions will be described in the relevant *Federal Register* notices and agreed upon in the subsequent grant agreement(s).

Under Section §200.205 of the UGG, "Federal Awarding Agency Review of Risk Posed by Applicants,"[13] the federal agency is required to review OMB-designated repositories of government-wide data to determine the applicant's suitability and, as necessary, to include provisions to correct potential shortcomings, or find the proposed applicant ineligible. The agency must also have a risk framework in place for evaluating applicant's risks.

Potential risks may include:

- financial stability;
- quality of management systems;
- history of performance;
- reports and findings from relevant federal and other audits; and
- the applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on nonfederal entities.

The federal agency must also comply with government-wide suspension and disbarment rules, and must require that the applicants do so as well. These provisions restrict federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal programs or activities.[14]

[10] HUD Exchange, "CDBG-DR Laws, Regulations, and *Federal Register* Notices," at https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/.

[11] U.S. Government Accountability Office, *Disaster Recovery: Better Monitoring of Block Grant Funds Is Needed*, March, 2019, at https://www.gao.gov/assets/700/697827.pdf.

[12] 2 C.F.R. §200.

[13] 2 C.F.R. §200.205.

[14] 2 C.F.R. §180.

UGG requirements are not unique to CDBG-DR, and inform all federal grantmaking activities. However, the UGG requirements may be more significant in the context of CDBG-DR because it is not a permanently authorized program, and because each CDBG-DR appropriation essentially creates one or more new program and concomitant allocations. In situations where a grantee receives multiple CDBG-DR appropriations—and, subsequently, must administer multiple differing allocations and programs from each one—the UGG risk process may be made more complicated.

CDBG-DR is also notable in that the grantee under scrutiny is the same that is contending with the effects of the disaster that triggered the CDBG-DR action in the first place. A government facing a disaster situation that would compel a need for CDBG-DR assistance may, as a result of the disaster, have less capacity to administer complex grant programs, particularly those like CDBG-DR with non-standard, unique requirements and multiple overlapping allocations. For example, in the case of Puerto Rico, the effects of successive hurricanes further weakened the Commonwealth's capacity for administration, after it had already experienced extended fiscal distress and political unrest.

CDBG-DR Case Studies

This section presents case studies to illustrate aspects of the CDBG-DR process in practice, including various topics such as supplemental appropriations, allocations, rulemaking, project planning, and oversight. The case studies focus on individual grantees that received allocations for major disasters under a particular set of supplemental appropriations.

Each of the supplemental appropriations mentioned below applied to additional grantees as well.

Hurricanes Irma and Maria: Puerto Rico

Following Hurricanes Irma and Maria, Congress passed three supplemental appropriations acts that included a total of $35.4 billion in CDBG-DR assistance pursuant to 42 U.S.C. §§5301 et seq.:

1. Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017, P.L. 115-56, on September 8, 2017;
2. Bipartisan Budget Act of 2018, P.L. 115-123 on February 9, 2018; and
3. Additional Supplemental Appropriations for Disaster Relief Act, 2019, P.L. 116-20, on April 9, 2019.

HUD has issued several *Federal Register* notices related to these supplemental appropriations:

- On February 9, 2018, HUD published a notice in the *Federal Register* announcing the allocation of funds, rules, and alternative requirements governing $7.4 billion in CDBG-DR funds appropriated under P.L. 115-56.[15]
- On August 14, 2018, HUD published another *Federal Register* notice allocating funds and announcing rules and alternative arrangements governing $10.03 billion of the $28 billion in funds appropriated under P.L. 115-123. These funds

[15] U.S. Department of Housing and Urban Development, "Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees," 83 *Federal Register* 5844, February 9, 2018.

are to be used principally for the restoration of housing, infrastructure, and economic revitalization.[16]

- As of July 30, 2020, *Federal Register* notices addressing rules for upgrading the electrical grids of Puerto Rico and the USVI have not yet been released, although allocation amounts have been announced.

Table 1 is a breakdown of the allocation of CDBG-DR directed to Puerto Rico under P.L. 115-56, P.L. 115-123, and P.L. 116-20 to address unmet needs and mitigation activities.[17]

Table 1. Allocation of CDBG-DR Funds Awarded to Puerto Rico to Address Unmet Needs and Mitigation Activities Related to Hurricanes Irma and Maria

	P.L. 115-56	P.L. 115-123	P.L. 116-20	Total
Puerto Rico				
Unmet Needs Total	$1,507,179,000	$10,153,130,000[a]	$277,853,230	$11,938,162,230
Mitigation	$0	$8,285,284,000	$0	$8,285,284,000
Total	**$1,507,179,000**	**$18,438,414,000**	**$277,853,230**	**$20,223,446,230**

Sources: HUD *Federal Register* Notice of February 9, 2018, and April 10, 2018, HUD Press Release.

a. This amount includes $1.9 billion for upgrades to Puerto Rico's electrical grid.

Of the total amount provided in these three supplemental appropriations acts (i.e., $35.4 billion), Puerto Rico's allocation was $20.2 billion.[18] Puerto Rico's original action plan was approved by HUD in July 2018, and subsequent amendments have been approved. Puerto Rico's planned activities seek to address needs related to planning, housing, the economy, infrastructure, and multi-sector coordination.[19]

At the end of 2019, Puerto Rico's CDBG-DR allocation of approximately $8.3 billion for disaster mitigation activities (referred to as CDBG-MIT)[20] was subject to a publicized delay pending risk assessment activities.[21] Prior to the release of funds and publication of rules by HUD in January 2020, HUD officials pointed to concerns about financial irregularities, corruption, and capacity in Puerto Rico.[22] However, some members of Congress questioned HUD's ability to process

[16] U.S. Department of Housing and Urban Development, "Allocations, Common Application, Waivers and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees," 83 *Federal Register* 40314, August 14, 2018.

[17] The U.S. Department of Housing and Urban Development (HUD) defines unmet needs as the financial resources necessary to recover from a disaster that are not likely to be addressed by other public or private sources of funds, including but not limited to private insurance, FEMA's Stafford Act assistance programs, Federal Highway Administration's Emergency Relief Program, and Small Business Administration Disaster Loans.

[18] Puerto Rico Department of Housing, *Federal Register*, accessed June 20, 2020, at https://www.cdbg-dr.pr.gov/en/resources/federal-register.

[19] Puerto Rico Department of Housing, Action Plan Amendment 3, 2020, at https://www.cdbg-dr.pr.gov/en/download/action-plan-amendment-3-nonsubstantial-amendment-effective-on-february-24-2020/.

[20] U.S. Department of Housing and Urban Development, *Community Development Block Grant Mitigation Program*, accessed July 6, 2020, at https://www.hudexchange.info/programs/cdbg-mit/.

[21] Jessica Wehrman, "Report: Puerto Rico's Infrastructure Failing as Federal Aid Remains on Hold," *Roll Call*, November 12, 2019, at https://www.rollcall.com/2019/11/12/report-puerto-ricos-infrastructure-failing-as-federal-aid-remains-on-hold/.

[22] U.S. Congress, House Committee on Appropriations, Subcommittee on the Departments of Transportation, and Housing and Urban Development, and Related Agencies, *The Department of Housing and Urban Development's Community Development Block Grant-Disaster Recovery program*, 116th Cong., 1st sess., October 17, 2019, at

allocations and publish rules in a timely manner.[23] On January 27, 2020, HUD published rules governing mitigation funds allocated to Puerto Rico.[24]

In March 2020, the Department of Housing and Urban Development's (HUD's) Office of the Inspector General (OIG) released a report of findings from its audit of the Puerto Rico Department of Housing's (PRDOH; also known as *Departamento de la Vivienda*, or Vivienda) capacity to administer funds under CDBG-DR.[25]

The audit assessed (1) PRDOH's compliance with HUD regulations and requirements in administering CDBG-DR funds, and (2) the existence of financial and procurement policies and procedures consistent with federal requirements. Overall, the OIG report made several recommendations regarding PRDOH's administration of CDBG-DR funds during the audit period of August 2014 through August 2019.

The recommendations included:

- improving PRDOH's financial controls;
- improving its processes for the prevention of duplication of benefits;[26]
- improving its procurement controls; and
- continuing to increase staffing levels.

More specifically, the OIG report recommends that PRDOH:

1. "develop adequate procedures outlining steps for tracking monthly grant expenditures and reprogramming funds and program income and develop and implement a financial management system for its 2008 CDBG-DR grant";
2. "review and update its policies and procedures to prevent duplication of benefits";
3. "review and update its procurement policies and procedures"; and
4. "continue to fill its [job] vacancies."

Additionally, the OIG recommended that PRDOH be required to submit documentation of compliance with procurement requirements pertaining to a nonstatistical sample of the $416,511 in expended program funds. In light of its findings, the OIG recommended that PRDOH return $55,010 and cancel existing obligations on $361,501 of CDBG-DR funds.[27]

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https://appropriations.house.gov/events/hearings/oversight-hearing-the-department-of-housing-and-urban-development-s-community.

[23] House Committee on Appropriations, "Lowey, Price Statement on Long Overdue Disaster Funding for Puerto Rico," press release, January 15, 2020, at https://appropriations.house.gov/news/press-releases/lowey-price-statement-on-long-overdue-disaster-funding-for-puerto-rico.

[24] U.S. Department of Housing and Urban Development, "Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees; Commonwealth of Puerto Rico Allocation," 85 *Federal Register* 4676, January 27, 2020.

[25] HUD Office of Inspector General, *The Puerto Rico Department of Housing, San Juan, PR, Should Strengthen Its Capacity To Administer Its Disaster Grants*, March 16, 2020, at https://www.hudoig.gov/reports-publications/report/puerto-rico-department-housing-san-juan-pr-should-strengthen-its.

[26] Disaster victims may mistakenly be provided "duplicative" disaster relief for the same issue, which would be potentially subject to clawbacks. For more information on duplication of benefits, see CRS Report R44553, *SBA and CDBG-DR Duplication of Benefits in the Administration of Disaster Assistance: Background, Policy Issues, and Options for Congress*, by Bruce R. Lindsay and Eugene Boyd.

[27] Ibid.

Although the $55,010 represented misspent funds, the $361,501 of CDBG-DR obligations could potentially be reissued in accordance with revised and proper procedures.

Major Disasters in Tribal Lands: Hurricane Irma

On September 8, 2017, Congress passed and the President signed the Continuing Appropriations Act and Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (P.L. 115-56). The act included $7.4 billion in CDBG-DR funds for states and local governments impacted by a major disaster declared in 2017. Hurricane Irma made landfall in Florida on September 10, 2017,[28] causing damage in parts of the state including Seminole tribal lands.

In response to the impacts of Hurricane Irma, the Trump Administration declared major disasters for the Seminole Tribe of Florida and ordered federal aid on September 27, 2017.[29] Due to their sovereign status, federally-recognized tribal nations may be direct grantees for CDBG-DR funding. However, because CDBG-DR has not been permanently authorized by legislation, appropriations or individual allocations under CDBG-DR may differ in how funds may flow to a tribal nation. Indian tribal authorities may receive CDBG-DR allocations comparably to that of states or territories, or may receive funds in a separate process informed by the Indian CDBG program process,[30] or as otherwise dictated by the disaster and CDBG-DR appropriation.

Congress passed and the President signed the Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2017 (P.L. 115-72) on October 26, 2017. Section 306 of the act amended P.L. 115-56 to expand eligibility for tribal governments.

HUD published a *Federal Register* notice on February 9, 2018, pertaining to CDBG-DR funds appropriated under P.L. 115-56.[31] Regarding allocation of funds for tribal governments, the notice states, "Any award of funds provided pursuant to the Appropriations Act to Indian tribes will be provided pursuant to the requirements of the Indian Community Development Block Grant program (ICDBG)." HUD issued a separate *Federal Register* notice on October 6, 2017, which included information on waivers and alternative requirements in areas affected by 2017 natural disasters, for programs administered by the Office of the Assistant Secretary for Public and Indian Housing, including ICDBG.[32]

Hurricane Sandy: New York, NY

In response to damage caused by Hurricane Sandy in the fall of 2012, Congress and the President enacted the Disaster Relief Appropriations Act of 2013 (P.L. 113-2), pursuant to 42 U.S.C. §§5301 et seq. Signed into law on January 29, 2013, the act appropriated $16 billion for CDBG-DR funds in response to Hurricane Sandy and other disasters.

In a *Federal Register* notice on March 5, 2013, HUD allocated an initial round of CDBG-DR funds for states and local governments affected by Hurricane Sandy, including the state of New York, New York City, New Jersey, Connecticut, Rhode Island, and Maryland. The notice also

[28] Florida Department of Economic Opportunity, at http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/disaster-recovery-initiative/hurricane-irma.

[29] White House, "President Donald J. Trump Approves Disaster Declaration for the Seminole Tribe of Florida," press release, September 27, 2017, at https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-approves-disaster-declaration-seminole-tribe-florida/.

[30] For more information about the Indian CDBG program, see HUD, *Indian CDBG Program*, accessed June 26, 2020, at https://www.hud.gov/program_offices/public_indian_housing/ih/grants/icdbg.

[31] U.S. Department of Housing and Urban Development, "Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Disaster Recovery Grantees," 83 *Federal Register* 5844, February 9, 2018, at https://www.govinfo.gov/content/pkg/FR-2018-02-09/pdf/2018-02693.pdf.

[32] U.S. Department of Housing and Urban Development, "Relief From HUD Requirements Available to PHAs to Assist with Recovery and Relief Efforts on Behalf of Families Affected by Hurricanes Harvey, Irma, Maria and Future Natural Disasters Where Major Disaster Declarations Might Be Issued in 2017," 82 *Federal Register* 46821, October 6, 2017, at https://www.govinfo.gov/content/pkg/FR-2017-10-06/pdf/2017-21600.pdf.

established rules, identified waivers, and outlined alternative requirements.[33] As of July 2020, HUD has published 25 *Federal Register* notices regarding the CDBG-DR funds appropriated under P.L. 113-2, the most recent being in February 2020.[34]

The City of New York, NY, received a total CDBG-DR allocation of $4,213,876,000 to address unmet needs from other federal sources for disaster recovery and response related to Hurricane Sandy.[35]

Table 2 provides a breakdown of New York City's CDBG-DR allocations by funding round, under P.L. 113-2.

Table 2. Allocation of CDBG-DR Funds Awarded to New York City under P.L. 113-2 Related to Hurricane Sandy by Round of Allocation

	First Allocation	Second Allocation	Third Allocation	Rebuild by Design	Total
New York City					
Allocation	$1,772,820,000	$1,447,000,000	$639,056,000	$355,000,000	$4,213,876,000

Source: HUD *Federal Register* Notice of October 16, 2014.

New York City's CDBG-DR funds are administered by the mayor's Office of Management and Budget in partnership with the Office of Recovery and Resiliency and the Office of Housing Recovery Operations.[36] The city published its action plan in 2013. Subsequently, HUD has approved 21 amendments to the plan as of July 2020.

The plan identifies five categories of activities for use of CDBG-DR funds to address recovery needs from Hurricane Sandy:

1. Housing;
2. Business;
3. Infrastructure and Other City Services;
4. Resiliency; and
5. Planning and Administration.[37]

As of March 1, 2020, New York City has a remaining balance of $711,945,181, and is considered to be on pace to expend the funds by its target closeout date.

A 2016 audit by the HUD Office of Inspector General (OIG) found that New York City administered its Temporary Disaster Assistance Program with CDBG-DR funds in a manner that

[33] Subsequent *Federal Register* notices related to CDBG-DR and Hurricane Sandy were published on April 19, 2013, at https://www.govinfo.gov/content/pkg/FR-2013-04-19/pdf/2013-09228.pdf; November 18, 2013, at https://www.govinfo.gov/content/pkg/FR-2013-11-18/pdf/2013-27506.pdf; and October 16, 2014, at https://www.govinfo.gov/content/pkg/FR-2014-10-16/pdf/2014-24662.pdf.

[34] HUD Exchange, *CDBG-DR Laws, Regulations, and Federal Register Notices*, July 30, 2020, at https://www.hudexchange.info/programs/cdbg-dr/cdbg-dr-laws-regulations-and-federal-register-notices/.

[35] This amount includes $355,000,000 allocated for New York City's participation in the Rebuild by Design Program. For more information on Rebuild by Design, please refer to the text box in this section of the report.

[36] New York City, Mayor's Office of Management and Budget, at https://www1.nyc.gov/site/cdbgdr/about/about.page.

[37] New York City, 2020, *The City of New York Action Plan Incorporating Amendments 1-21*, at https://www1.nyc.gov/assets/cdbgdr/documents/amendments/CDBG-DR_Action_Plan_Amendments_1-21_Final_v2.pdf.

complied with federal requirements and the guidelines in its action plan and action plan amendments, as approved by HUD. The OIG also concluded that the New York City government put a plan in place to maintain housing affordability and residential stability at the end of a two-year housing subsidy period.[38]

A subsequent OIG audit examined HUD's enforcement of a provision in P.L. 113-2, requiring grantees to expend funds within a 24-month period. The study found inadequacies in HUD's enforcement and financial controls. The report, published in May 2019, noted that for one round of funding, New York City budgeted more than the amount obligated for the round, but did not spend more than the budgeted amount for the round or any individual activity.[39]

Rebuild by Design: A Competitive CDBG-DR Set-Aside Program

Rebuild by Design was a competitive grant program that drew on set-aside CDBG-DR funds to promote innovation in disaster response and recovery.[40] In response to the impacts of Hurricane Sandy, the Obama Administration issued an Executive Order to establish the Hurricane Sandy Rebuilding Task Force, which was to coordinate with affected communities in rebuilding and recovering from the disaster.[41] The Task Force, led by the HUD Secretary published a comprehensive strategy for incorporating resiliency in the long-term recovery from Hurricane Sandy's impacts.

As part of its efforts, the Task Force administered Rebuild by Design, under authority of the America COMPETES Reauthorization Act of 2010 (15 U.S.C. §3719).[42] Rebuild by Design was a multi-staged resiliency planning and design competition focused on areas affected by Hurricane Sandy. The competition had two stated goals:

- "to promote innovation by developing regionally-scalable but locally contextual solutions that increase resilience in the region," and
- "to implement selected proposals with both public and private funding dedicated to this effort."

In a July 29, 2013 *Federal Register* notice, HUD outlined competition objectives, design categories, competition stages, eligibility rules, registration processes, selection processes, and evaluation criteria.[43] Ten design teams were identified as finalists and in June, 2014, six proposals were accepted. On October 16, 2014, HUD announced allocation amounts for the winning Rebuild by Design Proposals. Of the six accepted proposals, two served New York City. A proposal titled the *Big U* was based in the lower East Side of Manhattan, and received an allocation of $335 million. Another proposal, *Hunts Point Lifelines,* for a project in Hunts Point of the South Bronx received an allocation of $20 million.[44]

[38] U.S. Department of Housing and Urban Development, Office of the Inspector General, "The City of New York, NY, Generally Disbursed Community Development Block Grant Disaster Recovery Funds for Its Temporary Disaster Assistance Program in Accordance with Federal Regulations," 2016, at https://www.hudoig.gov/reports-publications/report/city-new-york-ny-generally-disbursed-community-development-block-0.

[39] U.S. Department of Housing and Urban Development, Office of the Inspector General, "CPD Did Not Enforce the Disaster Appropriations Act, 2013, 24-Month Grantee Expenditure Requirement," 2019, at https://www.hudoig.gov/sites/default/files/2019-06/2019-FW-0001.pdf.

[40] U.S. Department of Housing and Urban Development, *Rebuild by Design*, accessed July 12, 2020, at https://www.hudexchange.info/programs/cdbg-dr/rebuild-by-design/.

[41] The White House, Office of the Press Secretary, "Executive Order—Establishing the Hurricane Sandy Rebuilding Task Force," at https://obamawhitehouse.archives.gov/the-press-office/2012/12/07/executive-order-establishing-hurricane-sandy-rebuilding-task-force.

[42] U.S. Department of Housing and Urban Development, "Third Allocation, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy," 79 *Federal Register* 62182, October 16, 2014, at https://www.govinfo.gov/content/pkg/FR-2014-10-16/pdf/2014-24662.pdf.

[43] U.S. Department of Housing and Urban Development, "Rebuild by Design—Competition and Registration," 78 *Federal Register* 45551, July 29, 2013, at https://www.govinfo.gov/content/pkg/FR-2013-07-29/pdf/2013-18163.pdf.

[44] Ibid.

2008 Mississippi Disasters

In 2008, the President declared three disasters in the State of Mississippi due to flooding, tornado damage, and Hurricane Gustav. Congress passed and the President signed two supplemental appropriations bills in the subsequent months, responding to major natural disasters, including CDBG-DR provisions pursuant to 42 U.S.C. §§5301 et seq.:

1. Supplemental Appropriations Act, 2008 P.L. 110-252, on June 30, 2008; and
2. Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, P.L. 110-329) on June 8, 2007.

On September 11, 2008, HUD published its first *Federal Register* notice related to these supplemental appropriations, announcing allocation amounts and outlining rules and waiver authority. Subsequent notices were published on December 19, 2008, February 13, 2009, September 14, 2009, and October 22, 2010.[45] Under P.L. 110-252, Mississippi received an allocation of $2,281,287, and under P.L. 110-329, a total of $11,722,116. The Mississippi Development Authority led the state's administration of CDBG-DR funds in response to the 2008 disasters. **Table 3** provides an overview of CDBG-DR allocations in response to 2008 disasters in Mississippi, by supplemental appropriation act.

Table 3. Allocation of Mississippi CDBG-DR Funds Related to 2008 Disasters

	P.L. 110-252	P.L. 110-329[a]	Total
Mississippi			
Allocation	$2,281,287	$11,722,116	$14,003,403

Sources: HUD *Federal Register* Notice of December 19, 2008; and HUD Exchange, *Total Allocation Under Pub. L. 110-329*, at https://files.hudexchange.info/resources/documents/Total-Allocation-under-PL-110-329.pdf.

Notes:

a. The State of Mississippi received two rounds of allocation under P.L. 110-329.

In its administration of CDBG-DR funds, the State of Mississippi identified four areas of need for recovery:

1. homeowner assistance;
2. rebuilding public infrastructure;
3. economic support for affected businesses; and
4. debris removal.[46]

The state has administered more than 20 grants with CDBG-DR funds, to address these needs. As of March 1, 2020, Mississippi's CDBG-DR accounts for disasters occurring in 2008 are marked as ready for closeout. The state's corresponding CDBG-DR account balance is $1,156,815.

[45] *Federal Register* notices included, September 11, 2008, at https://www.govinfo.gov/content/pkg/FR-2008-09-11/pdf/E8-21092.pdf; December 19, 2008, at https://www.govinfo.gov/content/pkg/FR-2008-12-19/pdf/E8-30185.pdf; February 13, 2009, at https://www.govinfo.gov/content/pkg/FR-2009-02-13/pdf/E9-3216.pdf; September 14, 2009, at https://www.govinfo.gov/content/pkg/FR-2009-08-14/pdf/E9-19488.pdf; and October 22, 2010, at https://www.govinfo.gov/content/pkg/FR-2010-10-22/pdf/2010-26777.pdf

[46] See U.S. Department of Housing and Urban Development, *Action Plan*, accessed June 30, 2020, at https://drgr.hud.gov/public/downloads/action-plans/B-08-DI-28-0001-AP.pdf.

CDBG-DR and COVID-19

In March 2020, responding to the fiscal and economic effects of the COVID-19 pandemic, HUD published guidance in the form of a *CDBG-DR COVID-19 Fact Sheet* for current grantees. The fact sheet addressed several frequently asked questions about the effect of the COVID-19 on existing CDBG-DR grant agreements. Among other items, the fact sheet indicated that existing CDBG-DR grant agreements could not be reprogrammed to address COVID-19 impacts. The fact sheet did indicate that HUD would suspend its publication of monthly financial reporting of grantee expenditure status, recognizing the potential effects of COVID-19 on administration of CDBG-DR projects.

On March 27, 2020, Congress passed and the President signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). The CARES Act was the third emergency legislative package enacted to provide a variety of public health, fiscal, and economic development countermeasures to the COVID-19 pandemic. Among other provisions, the CARES Act provided supplemental appropriations to HUD through the CDBG program, and issued expanded guidance for existing CDBG-DR and conventional CDBG grantees.

The CARES Act built on features of the conventional CDBG program as well as precedents set by CDBG-DR supplemental appropriations in response to disasters. It appropriated $5 billion for HUD's Community Development Fund. The act directs HUD to allocate the funds in various ways. Of the total, $2 billion is to supplement the conventional CDBG program. The act directs HUD to administer these funds pursuant to Section 106 of the Housing and Community Development Act of 1974 (42 U.S.C. §5306),[47] which calls for HUD to allocate the supplemental funds to CDBG grantees—including eligible local governments,[48] states,[49] and insular areas[50]—proportional to their conventional FY2020 CDBG allocation,[51] as published by HUD on April 2, 2020.

The act also directed HUD to allocate $1 billion of the total appropriation to states and insular areas outside of the standard formula. This funding is intended "to prevent, prepare for, and respond to coronavirus … including activities within entitlement and nonentitlement communities, 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."

[47] U.S. Department of Housing and Urban Development, *CPD Program Formula Allocations and CARES Act Supplemental Funding for FY2020*, June 9, 2020, at https://www.hud.gov/program_offices/comm_planning/budget/fy20.

[48] U.S. Department of Housing and Urban Development, *CDBG Entitlement Program Eligibility Requirements*, accessed June 17, 2020, at https://www.hudexchange.info/programs/cdbg-entitlement/cdbg-entitlement-program-eligibility-requirements.

[49] U.S. Department of Housing and Urban Development, *State Community Development Block Grant Program*, accessed June 20, 2020, at https://www.hudexchange.info/programs/cdbg-state.

[50] U.S. Department of Housing and Urban Development, *Community Development Block Grant Insular Areas Program*, accessed June 20, 2020, at https://www.hudexchange.info/programs/cdbg-insular-areas.

[51] U.S. Department of Housing and Urban Development, *CPD Program Formula Allocations and CARES Act Supplemental Funding for FY2020*, June 9, 2020, at https://www.hud.gov/program_offices/comm_planning/budget/fy20.

HUD announced allocation amounts for this second tranche of funds on May 11, 2020,[52] based on these factors and others identified by the Secretary.[53] The remaining $2 billion is to be distributed to states and units of local government on a rolling basis, at the discretion of the Secretary, with formula factors to be defined by HUD. Up to $10 million of these funds may be used to supplement existing awards or to provide additional technical assistance to current CDBG grantees.

The CARES Act grants authority to the Secretary to waive or specify alternative requirements for the CDBG funds provided in the act and two other recent appropriations acts—P.L. 116-6 and P.L. 116-94. This waiver authority provided in the CARES Act is similar to that generally granted under CDBG-DR supplemental appropriations. The provision does not authorize waivers or modifications from requirements related to fair housing, nondiscrimination, labor standards, or environmental considerations. Additionally, the act sets forth expedited procedures for grantees to prepare, propose, modify, or amend their planned activities for appropriated CDBG funds in the act and those in the same heading in P.L. 116-94 and P.L. 116-6. The act also waives program limits on public service activities that relate to COVID-19.

Although the CDBG appropriations in the CARES Act have not been generally described as CDBG-DR appropriations—it is sometimes referred to as CDBG-COVID, or CDBG-CV—it is a supplemental disaster appropriation in response to a major disaster declaration. Its most evident distinction from other "routine" CDBG-DR actions is that CDBG-CV makes more explicit use of conventional CDBG processes largely as a means of providing more immediate financial relief to grantees. While some CDBG-DR appropriations may take months or years before funds are obligated, the initial tranche of CARES Act CDBG-CV funding was awarded to grantees, on April 2, 2020, within a week of the act's enactment.

Issues for Congress

CDBG-DR has attracted attention in Congress, and more broadly, for perceived inefficiencies that can be broadly characterized in three main areas:

- The timeliness of CDBG-DR allocations;
- HUD's allocation and risk analysis process; and
- Administrative burdens.

These issues may be of interest to Congress as it considers future legislation or oversight over CDBG-DR programming.

Timeliness of CDBG-DR Allocations

It may take months or even years in some cases before CDBG-DR appropriations rules are published, allocations are made, and funds are obligated. To some extent, this is by design, as CDBG-DR is generally utilized to (1) address unmet needs not already addressed by other

[52] U.S. Department of Housing and Urban Development, "HUD Allocates Third Wave of CARES Act Funding Providing $1 Billion for Communities to Bolster Coronavirus Response and Relief Efforts," press release, May 11, 2020, at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_20_062; and U.S. Department of Housing and Urban Development, *CPD Program Formula Allocations and CARES Act Supplemental Funding for FY2020*, June 9, 2020, at https://www.hud.gov/program_offices/comm_planning/budget/fy20.

[53] U.S. Department of Housing and Urban Development, *Methodology for Round 2 Allocations of CDBG CARES Act Funds – revised 5/15/2020*, May 15, 2020, at https://www.hud.gov/sites/dfiles/CPD/documents/Revised_CDBG-CV2_Methodology.pdf.

private, local, state, and federal interventions; and (2) to provide a basis for long-term recovery, as opposed to immediate relief. As such, various CDBG-DR appropriations are often enacted well after the disaster event. For example, the Bipartisan Budget Act of 2018 (P.L. 115-123), enacted in February 2018, provided CDBG-DR funding in response to Hurricane Maria approximately five months after the storm's September 2017 impact. A *Federal Register* notice with HUD advisories governing those funds was not published until August 2018. As of July 2020, the vast majority of CDBG-DR funding connected with Hurricanes Irma and Maria has yet to be obligated or expended.

Although CDBG-DR's longer-term perspective may be intentional, an extremely extended timeline may impair long-term recovery plans, and potentially disrupt a grantee's (and possibly subgrantees') administrative capacity. This may be particularly evident when, years after the disaster event, only a very small proportion of funds have been obligated or spent—such as in the case of CDBG-DR funds for Puerto Rico. In such situations, neither administrative due diligence nor long-term disaster recovery appears particularly well served.

HUD's Allocation and Risk Analysis Process

As described above, HUD engages in a rulemaking process after a CDBG-DR appropriation is made to create a structure for the allocation and implementation of funds. However, given that each CDBG-DR supplemental appropriation differs in its scope and activities—and at times significantly so—the length and complexity of that process may vary widely. In addition to allocating the funds, HUD is required to assess risk to grantees and to structure its allocations in such a way to minimize waste, fraud, and abuse of federal grant funds under the Office of Management and Budget's Uniform Grant Guidance (UGG).[54] To that end, HUD and the Administration may respond to UGG directives by delaying the release of CDBG-DR funds, as they have suggested in previous statements.[55] These statements indicate that HUD may have indeed designated Puerto Rico as a high risk grantee, although there is no public declaration to that effect other than the Commonwealth's designation as a "slow spender" of CDBG-DR funds, which is a common grantee designation.

As discussed earlier, the Commonwealth of Puerto Rico faced significant issues over the timely disbursement of CDBG-DR funds. This may have been at least partially attributable to the Commonwealth's complicated financial and political situation. HUD may have assessed Puerto Rico's risk profile as significant, given its extended fiscal and budgetary difficulties, the existence of a Financial Oversight and Management Board, elongated political uncertainty, and its designation as a "slow spender" by HUD in past disasters.[56] This risk could have been further compounded by the succession of natural disasters that struck the island.

[54] 2 C.F.R. §200.

[55] U.S. Congress, House Committee on Appropriations, Transportation, and Housing and Urban Development, and Related Agencies, *Oversight Hearing: The Department of Housing and Urban Development's Community Development Block Grant-Disaster Recovery Program*, 116th Cong., 1st sess., October 17, 2019.

[56] The Commonwealth of Puerto Rico was allocated approximately $30 million in funding for recovery from 2008 disasters, of which approximately $6.5 million remains unspent. As such, Puerto Rico is designated a "slow spender" by HUD for this grant, which is defined by HUD as "spending 10% less than the monthly pace required to fully use the grant by target closeout date." See HUD, *Monthly CDBG-DR Grant Financial Report*, December 31, 2019, at https://files.hudexchange.info/resources/documents/CDBG-DR-Financial-Report-2020-01-01.pdf.

It is also unclear whether congressional deadlines can influence the implementation of UGG directives. Congress may wish to introduce additional clarity in future legislation mandating deadlines, or any other mandate that may potentially conflict with UGG directives.

Administrative Burdens

Because CDBG-DR lacks permanent authorization and a common framework to govern each instance of use, it is subject to a time-consuming rulemaking process for every *Federal Register* notice.[57] Moreover, because each *Federal Register* notice is distinctive—with potentially varying rules, conditions, and timelines—each allocation introduces additional administrative complexity. This could slow or otherwise inhibit the effective management of CDBG-DR funds for grantees with limited administrative capacity or less experience with such processes in a post-disaster context. The difficulties are potentially compounded in cases where a single entity receives multiple allocations. A single allocation may contain several major subprograms with differing rules and guidance, and several successive allocations may compound the administrative complexities—including even for otherwise high-capacity grantees.

Policy Considerations

Congress may consider both increased oversight and legislative policy options to address aspects of the above issues. These alternatives may be considered independently, or in coordination with one another.

Increased Oversight

Given congressional demand for operational clarity with regard to HUD's allocation and rulemaking process, Congress may exercise its oversight power in soliciting greater transparency. In particular, Congress may solicit additional input from HUD on its allocation and risk analysis processes. More detailed knowledge of exactly how HUD undertakes these processes with regard to CDBG-DR—how they may differ or remain consistent between various appropriations, for example—could provide greater insight into HUD's execution of its administrative responsibilities, and allow Congress to provide additional direction to the executive agency with regard to its intent. Congressional oversight could reveal additional details on the risk analysis process and justifications that provide insight into the manner by which HUD is undertaking its due diligence responsibilities.

Although HUD may be able to report on aspects of its risk analysis and rulemaking processes, congressional oversight actions may not be adequate to address all aspects of issues prioritized by Congress.

- Information gathering undertaken as part of oversight activities may provide a snapshot of HUD's practices and intentions, but they may not be generalizable to all HUD actions, particularly regarding future CDBG-DR actions.
- Although Congress may use the oversight process to signal its intent, it would not have force of law except through legislation.

As such, Congress may also consider additional legislative remedies to address potential issues with CDBG-DR.

[57] U.S. Government Accountability Office, *Better Monitoring of Block Grant Funds is Needed*, 19-232, March 2019, at https://www.gao.gov/assets/700/697827.pdf.

Common Framework for CDBG-DR Appropriations

In appropriating funds for future CDBG-DR actions, Congress may consider adhering to a regularized framework as a means of standardizing the HUD rulemaking and allocations processes. For example, the relevant congressional committees could develop a common rubric by which future CDBG-DR funding could be appropriated. Although Congress may informally employ common language or policy principles when undertaking a new CDBG-DR appropriation, this is not always the case, and approaches often change depending on Congress and the circumstances of the situation.

Similarly, while HUD may adhere to certain common processes when undertaking the rulemaking and allocations processes, HUD's specific actions will reflect the appropriation language in question, and may reflect the priorities of a given Administration. By contrast, a common rubric could be more directly prescriptive on the various aspects of HUD's risk analysis and allocations process, while still allowing for significant flexibility with regard to the circumstances of the disaster. The relevant committees may choose to establish such a common rubric through a bipartisan process at the committee level, which could serve as a basis for future CDBG-DR disaster appropriations in most if not all anticipated uses.

This approach could allow for a certain baseline of standardization in CDBG-DR appropriations which would potentially, in time, allow for expediting of internal HUD processes and potentially provide future grantees with greater predictability over what to expect from CDBG-DR administration and reporting requirements. Meanwhile, Congress would still retain a significant degree of legislative flexibility.

Permanent Authorization of CDBG-DR

Congress may seek to permanently authorize CDBG-DR as a standing program, and prescribe certain principles and policy features to inform its programmatic contours. This would likely provide the greatest degree of consistency in the delivery of CDBG-DR funds in the future, though it may also potentially come at some expense to programmatic flexibility. Several bills have been introduced that would permanently authorize CDBG-DR, with varying degrees of detail and policy scope.

In the 116th Congress, several bills have been introduced that would permanently authorize the CDBG-DR program, and address some of the previously identified issues. H.R. 3702, the *Reforming Disaster Recovery Act of 2019*, includes a number of provisions to codify and define the CDBG-DR program.

These features include:

- Requiring that CDBG-DR funds are spent on both infrastructure and housing rehabilitation, and that federal funds be used to replace damaged or destroyed public or federally subsidized affordable housing;
- Emphasizing housing, and particularly affordable housing and housing for low-income persons, by requiring broader terms of relief for renters and the homeless in addition to homeowners;
- Requiring that HUD allocate funds within 60 days of appropriation, and that the public is provided opportunities for comment;
- Expanding data-sharing provisions to make HUD and state processes more defined and publicly available; and

- Encouraging newly rebuilt infrastructure with CDBG-DR funds to include minimum resiliency and disaster mitigation standards.

H.R. 3702 was passed by the House under suspension of the rules by a vote of 290-118 on November 18, 2019. A companion bill was introduced in the Senate (S. 2301). The Senate bill included the reforms in the House version, along with some additional provisions: (1) creating an office at HUD to coordinate CDBG-DR administration; (2) requiring a common disaster assistance application between FEMA, the SBA, and HUD;[58] and (3) broadening homelessness assistance. S. 2301 was referred to the Committee on Banking, Housing, and Urban Affairs, and to date has not seen further action.

Another bill, S. 2796, *The Ensuring Disaster Recovery for Local Communities Act*, was introduced in the Senate but has also seen no further action. It took a significantly different approach compared to H.R. 3702 and its Senate companion bill.

S. 2796 would:

- Direct HUD to set spending goal thresholds for state grantees to facilitate a more rapid disbursement of CDBG-DR relief funds;
- Provide local communities with the ability to receive CDBG-DR funds as subgrantees, and provide technical assistance to localities with limited capacity to administer CDBG-DR funds;[59] and
- Require FEMA to adjudicate property acquisition ("buyout") applications within 60 days, and require that the Government Accountability Office (GAO) undertake a review of property acquisition programs.

On a broader level, permanently authorizing CDBG-DR would designate HUD as a principal disaster management agency. Although the conventional CDBG program may be used to respond to disasters, that is not its primary or preferred purpose. In fact, CDBG's limitations in this regard gave rise to the CDBG-DR disaster supplemental process, as CDBG grantees typically will have already obligated existing CDBG allocations and would need to reprogram those more limited funds.

While HUD does have significant disaster management responsibilities as a result of its role in administering CDBG-DR actions, permanent authorization could formally broaden the scope of HUD's responsibilities to include a more directed and official role in disaster management. This may be consistent with congressional intent, but the policy need that CDBG-DR fulfills could also be administered successfully by other agencies with more central disaster management and preparedness portfolios.

[58] In addition to improving administrative efficiency, this common application process was intended to provide a means to avoid "duplication of benefits" issues.

[59] Localities currently are able to receive funds as subgrantees in the non-codified version of CDBG-DR, although the exact mechanisms by which they may do so are dependent on the circumstances of the disaster supplemental appropriation.

Past congressional hearings on CDBG-DR have addressed HUD's role in the disaster recovery process. Topics have included the efficacy of the CDBG-DR program, the viability of its place in HUD, and whether it would be better administered elsewhere.[60] Although HUD may in fact be an optimal administering agency for CDBG-DR in the current circumstances, the way by which CDBG-DR is permanently authorized and reformed—were that to happen—may lead to it being better administered by an agency with more regular disaster management responsibilities. Conversely, if CDBG-DR is permanently authorized with more significant housing, infrastructure development, or economic development attributes, HUD or another federal agency with economic development responsibilities may be a more appropriate administering agency.

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[60] U.S. Congress, House Committee on Financial Services, Subcommittee on Oversight and Investigations, *Community Development Block Grant—Disaster Recovery Program-Stakeholder perspectives*, hearings, 115th Cong., 2nd sess., May 17, 2018 (Washington, DC: GPO, 2018).