

Update on Status of CDBG-DR Funds

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PRACTICE AREAS

- Federal Funding Programs

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As discussed in our September 14, 2018 Alert, **A Quick Guide to the CDBG-DR Funds**, in response to Hurricanes Irma and María, the U.S. Congress awarded \$1.5 billion and \$18.5 billion to support long-term disaster recovery for Puerto Rico through the Department of Housing and Urban Development's ("HUD") Community Development Block Grant – Disaster Recovery ("CDBG-DR") Program.

This federal assistance is intended to address unmet hurricane disaster recovery needs in housing, economic development and revitalization, and infrastructure. The approximately \$20 billion total allocation of CDBG-DR funds were divided in three tranches: \$1.5 billion mostly for housing initiatives (the "First Tranche"), \$8.22 billion for housing, economic development and infrastructure initiatives (the "Second Tranche"), and \$10.185 billion for mitigation initiatives as well as investment in the energy grid (the "Third Tranche"). The Puerto Rico Housing Department ("PRDoH" or "Vivienda" as is commonly referred to in Puerto Rico) is the entity selected by the Governor of Puerto Rico to receive the funds as grantee.

Where Are We?

As of today:

- HUD and PRDoH executed the grant agreement for the use of the *First Tranche* and projects are underway. The emphasis of this tranche is in housing initiatives.
- For the *Second Tranche* we understand a grant agreement has been signed by the Government of Puerto Rico and HUD that is expected to be published shortly. This tranche included funds for economic development and other initiatives for private businesses.
- In regards to the *Third Tranche*, mostly for mitigation projects, a notice was issued by HUD imposing upon PRDoH additional conditions for its use. We understand that the Government of Puerto Rico and HUD are currently discussing those additional conditions. As with all tranches, an Action Plan will have to be prepared and approved by HUD and a grant agreement will need to be signed prior to the use of the funds.

Status of Allocations of CDBG-DR funds to Puerto Rico

For the *First Tranche* (i.e., the initial \$1.5 billion), an Action Plan was prepared by the Government of Puerto Rico and approved by HUD, and a grant agreement was signed by HUD and PRDoH. Implementation of the programs included in the Action Plan are underway. The largest program being implemented is the one known as the “housing vouchers” (“Home Repair, Reconstruction or Relocation Program”) which will provide assistance for the repair or reconstruction of single-family homes damaged by Hurricanes Irma and/or María. Those eligible homeowners with substantial damage who are located in hazard zones (situated in a flood plain, floodway, or areas vulnerable to landslide) will be offered relocation assistance to a safe area.

For the *Second Tranche*, an amended Action Plan was also prepared by the Government of Puerto Rico and approved by HUD, amending the initial Action Plan to include the \$8.22 billion of said tranche. On January 16, 2020, HUD’s Secretary Hon. Ben Carson announced a grant agreement with Puerto Rico, to make the \$8.22 billion *Second Tranche* available to Puerto Rico. In the announcement Secretary Carson further stated:

“Now that proper financial controls are in place, implementing the second phase of Puerto Rico’s disaster recovery program can move forward with an extension to its line of credit,” [...]. “Additional oversight was needed before we could proceed with confidence that these critical disaster recovery funds will reach those who need them the most. HUD looks forward to working with Vivienda as they continue their recovery process. With this unprecedented amount of capital, it is our firm hope and expectation that Puerto Rico will become the jewel of the Caribbean.”

As of today, the grant agreement related to the *Second Tranche* has been signed and is expected to be published shortly.

On January 16, 2020, Secretary Carson also announced the appointment of Robert M. Couch as the Federal Financial Monitor to oversee the grant administration and disbursement process of the CDBG-DR funds to Puerto Rico and the U.S. Virgin Islands. Mr. Couch has an extensive background with decades of private and public sector experience dealing with financial reporting, risk management, and executing the law. Mr. Couch previously served as HUD’s General Counsel from December 2006 to November 2008 and as President of the Government National Mortgage Association (Ginnie Mae), Commissioner on the Bipartisan Policy Center’s Housing Commission, and as a member of President George W. Bush’s Task Force on the Status of Puerto Rico.

Update on Status of CDBG-DR Funds

The \$10.185 billion *Third Tranche* will be divided in \$1.9 billion to be used for enhanced or improved electrical power systems and \$8.285 billion for mitigation initiatives, the latter also known as “CDBG-MIT” funds. On January 16, 2020, HUD issued a notice to be published in the Federal Register regarding the CDBG-MIT funds (the “CDBG-MIT Notice”). The CDBG-MIT Notice “recognizes that CDBG-MIT funds are to be used for distinctly different purposes than CDBG-DR funds and that the level of funding and nature of programs and projects that are likely to be funded requires all CDBG-MIT grantees and their subrecipients to strengthen their program management capacity, financial management, and internal controls.”

To be able to access the CDBG-MIT funds, the CDBG-MIT Notice imposes certain conditions and requirements upon the Government of Puerto Rico, which “aim to provide additional assurances that mitigation programs are implemented in a manner that prevents waste, fraud, and abuse and that mitigation projects are effectively operated and maintained.” The conditions include, among others, that the PRDoH, as grantee, requests and submits to HUD “any certification, observations, and recommendations by the Financial Oversight and Management Board (“FOMB”) established by the Puerto Rico Oversight, Management, and Economic Stability Act (“PROMESA”), that the action plan and any related program budgets are consistent with any reasonably related provisions of the applicable FOMB-certified budgets and fiscal plans.”

In addition, the PRDoH’s procedures to detect and prevent fraud, waste, and abuse must include how the PRDoH will verify the accuracy of information provided by applicants. The polices “must address how the Commonwealth’s CDBG-DR-funded planning activity to develop a uniform parcel registry and GIS database that contains ownership and parcel registry data is to be used to assist HUD, other third parties, and the public to verify the legal and physical address associated with CDBG-MIT activities.”

We understand that negotiations are underway between the Government of Puerto Rico and HUD in relation to the conditions imposed in the CDBG-MIT Notice.

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