



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6109-N-04]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees; Commonwealth of Puerto Rico Allocation

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice allocates \$8.285 billion of Community Development Block Grant mitigation (CDBG-MIT) funds to the Commonwealth of Puerto Rico pursuant to the requirements of the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018 (Pub. L. 115-123)).

DATES: Applicability Date: [INSERT DATE FIVE DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Acting Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 7th Street, SW, Room 7282, Washington, DC 20410, telephone number 202-708-3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339. Facsimile inquiries may be sent to Ms. Kome at 202-401-2044. (Except for the "800" number, these telephone numbers are not toll-free.) Email inquiries may be sent to disaster_recovery@hud.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Allocations

- A. Background
- B. Use of Funds
- C. Grant Process
- II. Applicable Rules, Statutes, Waivers, Alternative Requirements, and Grant Conditions
- III. Catalog of Federal Domestic Assistance
- IV. Finding of No Significant Impact

I. CDBG-MIT Allocations

I.A. Background

The Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018 (Division B, Subdivision 1 of the Bipartisan Budget Act of 2018, Pub. L. 115-123, approved February 9, 2018) (the “Appropriations Act”), made available \$28 billion in Community Development Block Grant disaster recovery (CDBG-DR) funds, and directed HUD to allocate not less than \$12 billion for mitigation activities proportional to the amounts that CDBG-DR grantees received for qualifying disasters in 2015, 2016, and 2017. A **Federal Register** Notice published by the Department on August 30, 2019 (84 FR 45838), allocated \$6.875 billion of CDBG-MIT funds to 14 state and local governments and described the grant requirements and procedures, including waivers and alternative requirements applicable to 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.

Under the CDBG-MIT Notice, each grantee is required to strengthen its internal audit function, specify the criteria for subrecipient selection, increase subrecipient monitoring, and establish a process for promptly identifying and addressing conflicts under the grantee's conflict of interest policy. The CDBG-MIT Notice also states the Department's intent to establish special grant conditions for individual CDBG-MIT grants based upon the risks posed by the grantee, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions are designed to provide additional assurances that mitigation programs are implemented in a manner to prevent waste, fraud, and abuse and that mitigation projects are effectively operated and maintained.

The CDBG-MIT Notice acknowledges the governance and financial management challenges of the Commonwealth of Puerto Rico. For all CDBG-MIT grantees, the CDBG-MIT Notice references the Department's expectation that grantees will take steps to set in place substantial governmental policies and organizational structure to enhance the impact of HUD-funded investments. For the Commonwealth of Puerto Rico, this goal may be achieved through reforms in land ownership records and addressing the occurrence of informal housing, while enhancing the safety of the Commonwealth's residents. The CDBG-MIT Notice also notes that it is imperative that all CDBG-MIT grantees collect and supply sufficient revenues for future operation and maintenance costs of programs and projects funded with this CDBG-MIT grant. Additionally, prior to 2017, the Department of Housing of Puerto Rico (PRDOH), who has been designated as the entity responsible for administering the CDBG-DR allocations in response to Hurricanes Irma and Maria, had not previously administered CDBG-DR funds. Because PRDOH does not have previous experience managing CDBG-DR funds, HUD has reviewed the Commonwealth's Staffing Analysis Worksheet and determined that PRDOH must continue to

secure staff and contractors to build its capacity and knowledge of federal requirements, including civil rights related program requirements. These considerations emerge as particular unmitigated risks for the Commonwealth of Puerto Rico, in light of the substantial amount of CDBG-MIT funding allocated under this notice and the general fiscal condition of the Commonwealth.

Accordingly, to further reduce the specific potential risks associated with the above challenges, this notice builds upon the requirements of the CDBG-MIT Notice and establishes additional grant conditions to reduce risk and support the successful implementation of this CDBG-MIT allocation by the Commonwealth of Puerto Rico. These measures are designed to augment and support HUD’s continual technical assistance and monitoring efforts, undertaken in partnership with the grantee.

This notice allocates \$8.285 billion in CDBG-MIT funds to the Commonwealth of Puerto Rico for mitigation activities in accordance with the Appropriations Act and the CDBG-MIT Notice. The grantee receiving an allocation of funds under this notice is subject to the requirements of the CDBG-MIT Notice, including waivers and alternative requirements, and any additional requirements imposed by this or future **Federal Register** notices.

Table 1 – Allocation for Mitigation Activities

Disaster No.	Grantee	CDBG-MIT Allocation	Minimum amount to be expended in the HUD-identified “most impacted and distressed” areas listed herein	HUD-identified “most impacted and distressed” areas
4336, 4339	Commonwealth of Puerto Rico	\$8,285,284,000	\$8,285,284,000	All components of the Commonwealth of Puerto Rico

In accordance with the Appropriations Act, the CDBG-MIT allocation is based on the

grantee's proportional share of total CDBG-DR funds allocated for all eligible disasters in 2015, 2016, and 2017.

I.B. Use of Funds

The Appropriations Act requires that prior to the obligation of CDBG-MIT funds by the Secretary, a grantee shall submit a plan to HUD for approval detailing the proposed use of all funds. The plan must include the criteria for eligibility, and how the use of these funds will address risks identified through a mitigation needs assessment of the most impacted and distressed areas. The definition of mitigation activities and the requirements for the submission of an action plan are identified in section II of the CDBG-MIT Notice.

I.C. Grant Process

The Commonwealth of Puerto Rico must submit the financial certification documentation required by section V.A.1.a of the CDBG-MIT Notice, as amended herein, and the implementation plan and capacity assessment required by section V.A.1.b. of the CDBG-MIT Notice. All deadlines for the submissions necessary for the Secretary's certification of financial controls, procurement processes and adequate procedures, and the implementation plan and capacity assessment referenced in the CDBG-MIT Notice, are determined by the applicability date of this notice.

The grantee must submit an action plan per the requirements of section V.A.2 of the CDBG-MIT Notice no later than September 4, 2020, unless the grantee requests, and HUD approves, an extension of the submission deadline as provided for in the CDBG-MIT Notice.

To begin expending CDBG-MIT funds, the grantee must follow the grant process in the CDBG-MIT Notice in section IV, with all timelines for grantee submissions to commence on the applicability date of this notice.

II. Applicable Rules, Statutes, Waivers, Alternative Requirements, and Grant Conditions

CDBG-MIT grants are subject to the requirements of the CDBG-MIT Notice, which include requirements of the Appropriations Act and waivers and alternative requirements. The waivers and alternative requirements provide additional flexibility in program design and implementation to eligible mitigation activities to lessen the impact of future disasters, while also ensuring that statutory requirements are met. All references to states and State grantees in the CDBG-MIT Notice and this notice shall include the Commonwealth of Puerto Rico. The Commonwealth may request additional waivers and alternative requirements from the Department as needed to address specific needs related to its mitigation activities. Waivers and alternative requirements are effective five days after they are published in the **Federal Register**.

This section of the notice establishes additional rules, waivers and alternative requirements, and grant conditions specific to the allocation of CDBG-MIT funds for the Commonwealth of Puerto Rico.

II.A. Limitation on use of CDBG-MIT funds for electrical power system enhancements.

In addition to the appropriation of CDBG-MIT funds, the Appropriations Act requires HUD to allocate \$2 billion of CDBG-DR funds to provide enhanced or improved electrical power systems in response to Hurricane Maria. HUD announced the allocation of these funds to the U.S. Virgin Islands and the Commonwealth of Puerto Rico and provided that the electrical power system allocation shall be governed by a subsequent notice. To enhance the use of the \$2 billion allocated to enhance or improve electrical power systems, the grantee may wish to use CDBG-MIT funds to lessen the risks of disaster-related damage to electric power systems. However, successful efforts to restore, enhance, and improve electrical power systems, and guard this infrastructure

against future disasters, will require coordination across multiple sources of Federal financial assistance provided for this purpose.

Therefore, the grantee is prohibited from using CDBG-MIT funds for mitigation activities to reduce the risk of disaster related damage to electric power systems until after HUD publishes the **Federal Register** notice governing the use of the \$2 billion for enhanced or improved electrical power systems. This limitation includes a prohibition on the use of CDBG-MIT funds for mitigation activities carried out to meet the matching requirement, share, or contribution for any Federally-funded project that is providing funds for electrical power systems improvements until HUD publishes the **Federal Register** notice governing the use of CDBG-DR funds to provide enhanced or improved electrical power systems. After publication of HUD's electrical power systems notice, use of CDBG-MIT funds to mitigate risks to electric power systems, including the provision of non-Federal cost share for any Federally-funded activity related to electrical power systems, shall be limited to activities that meet the requirements for CDBG-MIT funds and that are not inconsistent with the requirements of HUD's electrical power systems notice and any additional requirements on the use of CDBG-MIT funds published in that notice.

II.B. Grant Conditions

The *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (2 CFR part 200) direct HUD to assess risks posed by the grantee and authorize HUD to impose special grant conditions that correspond to the assessed degree of risk. As described in the CDBG-MIT Notice, HUD will establish special grant conditions for individual CDBG-MIT grants based upon assessed risks, including risks related to the grantee's capacity to carry out the specific programs and projects proposed in its action plan. These conditions are designed to provide additional assurances that actions are carried out to address grantee-specific

risks, such as the potential for waste, fraud, and abuse, or the potential that failure to effectively operate and maintain infrastructure will interfere with anticipated risk mitigation value of CDBG-MIT activities. At any time, if HUD determines that an identified risk has been mitigated and the grantee has met the required grant terms and conditions, HUD can modify or remove those terms and conditions. To address identified risks, the Department will establish grant conditions for the Commonwealth of Puerto Rico which shall include, but not be limited to, the following requirements:

II.B.1. Special Condition related to program risk.

In response to the scale and complexity of the Grantee's mitigation activities and implementation, as a condition to HUD's obligation of CDBG-MIT funds the grantee shall request and submit 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. This condition shall not be interpreted to require a review and certification that is outside of the FOMB's authority.

The Secretary of HUD retains authority to permit the Grantee to access funds notwithstanding the certification requirement upon making a finding that doing so is necessary to effectuate the efficient administration of this grant award at his discretion. In exercising this authority, the Secretary of HUD may require conditions to address FOMB recommendations. The following conditions are imposed on each obligation of grant funds:

- HUD's Federal Financial Monitor shall review any obligation. HUD shall approve the obligation if the grantee satisfactorily resolves all findings of substantial noncompliance

related to the use of grant funds and complies with all grant conditions in its grant agreement.

- The Grantee may not draw down funds for an activity in its action plan for mitigation until the Grantee submits to disaster_recovery@hud.gov final policies and procedures for implementation of the activity.
- The Grantee shall enter into a Memorandum of Agreement with HUD for technical assistance to support compliant program launch within 90 days.

II.B.2. Additional requirements for financial management.

II.B.2.a. Enhanced DRGR voucher review. Based on the risk posed by the Grantee's limited financial management staff capacity and to ensure compliant implementation of the Grantee's internal control framework, the Grantee must maintain and adhere to the policies and procedures for its established Financial Management System and internal control framework, or submit to HUD a new plan with a schedule for otherwise obtaining and maintaining the necessary financial management capacity. In order for HUD to monitor the grantee's financial management capacity, the Commonwealth of Puerto Rico shall provide, via upload in DRGR, support documentation for each voucher drawdown request made in DRGR for its CDBG-MIT grant. The Commonwealth shall continue to upload support documentation for its voucher drawdown requests in DRGR until completion of HUD's first two on-site monitoring reviews and the grantee's resolution of any significant findings that result from those reviews.

II.B.2.b. Drawdown milestones. To reduce risk, HUD will establish a grant condition that will require the grantee to take certain steps prior to drawing over a certain percentage of available funds, such as:

- i. Update its DRGR administration module to include a list of all grant-related internal audit issues (i.e. findings or concerns) and recommendations along with the resolution or planned resolution of these issues;
- ii. Update its DRGR administration module to include a summary of each open Single Audit recommendation for (1) the Grantee and/or (2) subrecipient along with the resolution or planned resolution of the audit recommendation;
- iii. Update its DRGR administration module to include a summary of each open HUD OIG recommendation related to this grant together with its resolution or planned resolution;
- iv. Update DRGR administration module to include a summary of each HUD monitoring recommendation related to this grant along with the resolution or planned resolution of the OIG recommendation; and,
- v. Review its management and capacity plan and inform HUD of all updates, including an explanation for each missed milestone, if any.

HUD will review the information submitted by the grantee to determine whether the Grantee demonstrates capacity to make timely and effective corrective actions on identified deficiencies and compliance issues. If HUD determines the Grantee does not demonstrate such capacity, HUD may take additional corrective actions, such as restricting access to grant funds pending resolution of identified issues. If the Grantee fails to comply with this condition, HUD will block access to all or a portion of the grant funds, pending HUD on-site review of the Grantee's management controls.

II.B.3. Special condition related to detection and prevention of fraud, waste, and abuse.

Section V.A.1.a of the CDBG-MIT Notice establishes the submission requirements that are required for HUD's certification of the proficiency of a CDBG-MIT grantees' financial controls

and procurement processes, and adequate procedures for grants management. Among the required submissions are grantee procedures to detect and prevent fraud, waste, and abuse, including a requirement that each grantee indicate how it will “verify the accuracy of information provided by (CDBG-MIT) applicants.” To address the risk of fraudulent application information and reflect a connection to on-going efforts of the Commonwealth to update its 911 database, property tax records, and GIS maps to include all housing units and to help housing rehabilitation applicants clear title issues that have arisen in the course of federal disaster assistance efforts following Hurricane Maria, the Department is adding to the requirement in section V.A.1.a.(6)(v) of the CDBG-MIT Notice. Accordingly, the grantee’s procedures to detect and prevent fraud, waste, and abuse must include how the grantee will verify the accuracy of information provided by applicants. The policies 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.

Additionally, so that the uniform parcel registry and GIS database are available to support the detection and prevention of waste, fraud, and abuse in its CDBG-MIT grant, the grantee must adhere to its quarterly performance projections for the use of CDBG-DR funds related to the uniform parcel registry and GIS database activity, beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended, unless HUD approves an amendment to the projections via the Quarterly Performance Report (QPR). If the grantee does not complete the uniform parcel registry project, HUD may impose an additional condition to mitigate the risk of fraud within the Grantee’s programs.

II.B.4. Special conditions related to operation and maintenance of mitigation projects.

Section V.A.2.a of the CDBG-MIT Notice establishes the requirements for a grantee's CDBG-MIT action plan and section V.A.2.a (10) of that notice requires the grantee to describe how it will fund long-term operation and maintenance of certain CDBG-MIT projects. In addition to the requirement of the CDBG-MIT Notice, this notice requires the grantee to include additional information in its action plan in recognition of the fiscal and financial management challenges of the Commonwealth of Puerto Rico, and the impact of these challenges on the ability of the Commonwealth to ensure continued operation and maintenance of CDBG-MIT projects to achieve the intended risk reduction.

In its action plan, the grantee must describe all resources, including user fees or Commonwealth or local resources, that have been identified for the operation and maintenance costs of projects assisted with CDBG-MIT funds. The action plan shall indicate that, within one year of approval of the action plan and annually thereafter, the Commonwealth shall submit an operation and maintenance plan to HUD which shall identify the sources(s) and amount(s) of revenue that will be sufficient to operate and maintain infrastructure and public facility projects funded with CDBG-MIT funds and which shall identify the entity or entities responsible for the operation and maintenance of those projects.

II.B.5. *Special Condition Related to Covered Projects.* As described in the CDBG-MIT Notice, for grantees that are considered by HUD to have "unmitigated high risks" that impact their ability to implement large scale projects, HUD may impose special grant conditions, including but not limited to a lower dollar threshold for the large-scale infrastructure projects that meet the definition of a Covered Project. Covered Projects are subject to the additional action plan requirements described in section V.A.2.h. of the CDBG-MIT notice. As the Commonwealth of Puerto Rico has been determined by HUD to have unmitigated high risks with

regard to its capacity, a Covered Project for the grantee will alternatively be defined as an infrastructure project having a total project cost of \$50 million or more, with at least \$25 million of CDBG funds (regardless of source (e.g., CDBG-DR, CDBG-MIT, or CDBG)).

II.B.6. *Additional implementation plan capacity assessment requirements.* In addition to the submission requirements established for the implementation plan and capacity assessment provided in section V.A.1.b. of the CDBG-MIT Notice, the Commonwealth of Puerto Rico shall submit evidence that it has secured or is in the process of securing staff and contractors necessary to effectively implement CDBG-MIT funded programs and projects. Staff and contractors must be identified by the grantee in a Staff Analysis Worksheet. The Staff Analysis Worksheet must be submitted within 90 days of the CDBG-MIT grant agreement as a supplement to the Grantee's pre-grant implementation and capacity assessment submission. The Worksheet must show the staff that are in place and all of their responsibilities, including the staff that have responsibilities for program-related civil rights compliance and staff and contracted support for implementation of the funds and programs associated with the obligation. The Grantee also shall identify staff responsible for fraud prevention and their specific responsibilities. After receiving the Staff Analysis Worksheet, HUD may establish a special condition requiring the Grantee to hire specific staff positions that HUD determines are critical to the Grantee's implementation of CDBG-MIT funded programs and projects. Any specific position required by HUD must be advertised within 90 days of HUD's inclusion of a specific position in a grant condition and filled within 90 days following advertisement. To reduce the risk of noncompliance within a particular program or project due to lack of staff capacity, when HUD requires the Grantee to hire a specific position, a portion of CDBG-MIT funds the Grantee designated at risk of noncompliance shall remain in a restricted balance in the Disaster Recovery and Grants Reporting (DRGR) system until HUD

receives evidence that the Grantee has advertised and filled the required staff positions. The amount of the restricted balance will be identified in the grant condition, and will be based on HUD's determination of the amount that will allow the Grantee to undertake initial work to support the launch of the at-risk activity, but will reduce the risk by adding staff capacity before incurring significant activity implementation costs.

II.B.7. *Enhanced subrecipient monitoring and oversight.* Sections V.A.1.a.(6)(i) and (ii) of the CDBG-MIT Notice require grantees, as part of the implementation plan and capacity assessment, to submit criteria to be used to evaluate the capacity of potential subrecipients and certain details about subrecipient monitoring. In addition to these requirements, the Commonwealth of Puerto Rico shall submit a monitoring plan for its subrecipients to HUD within 90 days of the approval of the CDBG-MIT action plan.

II.B.8. *Financial Management Related to Indirect Cost Risk.* Based on applicable requirements and risks related to charges to grants for indirect costs, the Grantee must: (1) Prepare an indirect cost proposal prior to charging indirect costs to the Grant. The indirect cost proposal and related documentation to support the costs must be submitted to its cognizant agency for indirect costs if required pursuant to Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost. (2) Require each subrecipient receiving a subaward under the Grant to prepare an indirect cost proposal prior to charging indirect costs to the subaward. The indirect cost proposal and related documentation to support the costs must be submitted to its cognizant agency for indirect costs if required pursuant to Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations or Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, or if the subrecipient is an Institution of Higher Education (IHE),

pursuant to Appendix III to Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for IHEs. If a subrecipient does not have a cognizant agency, the Grantee is responsible for reviewing the indirect cost proposal if submission to a cognizant agency would otherwise be required.

All costs charged to the Grant or a subaward must comply with the cost principles specified at 2 CFR Part 200, Subpart E – Cost Principles. Neither the Grantee nor any subrecipient may charge a fee to the Grant or a subaward for the purpose of defraying costs of work performed by the Grantee or subrecipient that would otherwise be subject to such cost principles or would include an increment above allowable costs.

II.B.9. Staff and subrecipient fraud prevention and other federal requirements training.

Section V.A.18 of the CDBG-MIT Notice requires each CDBG-MIT grantee and its subrecipients to attend fraud related training provided by HUD OIG to assist in the proper management of CDBG-MIT grant funds. Additionally, in order to prevent discriminatory practices in the administration of CDBG-MIT funds and to reduce the risk of having new staff who are not familiar with federal requirements, the Commonwealth's CDBG-MIT staff and CDBG-MIT subrecipients must attend program-related civil rights and fair housing requirements training. Within 90 days of execution of the CDBG-MIT grant agreement, the Commonwealth shall submit documentation to HUD that CDBG-MIT staff and CDBG-MIT subrecipients have completed such training. The Grantee shall maintain documentation that staff hired and subrecipients selected after the CDBG-MIT grant agreement attended required training. The grantee shall also identify staff responsible for fraud prevention and their specific responsibilities.

II.B.10. Citizen engagement. In response to the limited experience of the grantee in administering a CDBG-MIT grant, particularly experience in engaging the community after a

major disaster, the Commonwealth shall indicate in its implementation plan for CDBG-MIT that it has in place public affairs staff with community engagement experience and that it has updated its citizen participation plan to include specific outreach actions designed to mitigate risks arising from public pressure and a lack of broad community input in the identification of mitigation needs.

II.B.11. *Submission of internal audit reports and posting of reports.* Section V.A.1.a. (6)(iii) of the CDBG-MIT Notice provides that HUD may establish a grant condition to require grantees to submit copies of the reports of its internal auditor directly to HUD. Accordingly, the Commonwealth of Puerto Rico shall submit to HUD and HUD's Office of Inspector General (OIG) a copy of all reports issued by its internal auditor, and if the internal auditor does not issue formal reports then the grantee will instead submit a regular summary of findings and assessments made by the auditor. Additionally, while all CDBG-MIT grantees are required to post certain information on the grantee's website pursuant to section V.A.3.d of the CDBG-MIT Notice, the Commonwealth shall also post final audit reports issued by HUD's OIG on the grantee's website, (including any translations of such reports, as available), along with any other relevant reports that HUD requests that the grantee posts on its website.

II.B.12. *Additional requirements for policies and procedures.* The Commonwealth of Puerto Rico shall develop and maintain policies and procedures and shall describe for each program (or project, as applicable): the eligible activities; the required records management practices; procurement requirements; subrecipient oversight; providing technical assistance; monitoring practices; policies for assigning direct costs to the correct program or project; and timely expenditure of funds. The policies and procedures shall include a plan for training all subrecipients on all federal and state CDBG-MIT requirements (e.g. program-related civil rights

requirements training). The grantee's policies and procedures shall provide that the grantee shall comply with federal accessibility requirements to the extent that they apply to activities funded with CDBG-MIT funds. The grantee shall submit the policies and procedures to HUD within 30 days of HUD's execution of the grant agreement or before the grantee awards funds to subrecipients, whichever is later.

II.B.13. *Additional requirements for Cost Allowability.* The Federal government can only share in a cost to the extent it is necessary and reasonable. To reduce risks related to a lack of financial management capacity, the following condition applies:

II.B.13.a. Based upon applicable regulations and guidance related to the construction labor costs resulting from the minimum wage established by Commonwealth of Puerto Rico Executive Order 2018-033, the grantee shall not take into account the minimum wage rate established by Executive Order 2018-033 for construction contracts entered by the Commonwealth when determining whether a wage cost is reasonable under the factors at 2 CFR 200.404. Before charging wage costs to this grant, the Grantee must make an independent determination that wages to be paid with grant funds are reasonable, using factors such as the prevailing wage established by the Department of Labor or other indicators of market wage rates for comparable labor in the geographic area, and the restraints or requirements imposed by such factors as sound business practices and arm's-length bargaining.

II.B.14. *Additional requirements for Grant Method of Distribution Risk.* Based on the risk of using another partner agency/agencies or subrecipients without CDBG-DR or CDBG-MIT grant experience that are budgeted for activities equal to or exceeding \$500 million, within 90 days of the execution of the grant agreement:

- (1) The Grantee must provide a monitoring plan for overseeing the performance of other

agencies, existing subrecipients, and subrecipients that will receive subawards (used here to mean grant funds provided to another agency of the Grantee or to a subrecipient) under the approved action plan for mitigation with dates and areas of review. The monitoring plan shall include:

- (a) An evaluation of each agency or subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate agency or subrecipient monitoring. The evaluation must include consideration of the following factors:
 - i. The agency or subrecipient's prior experience with the same or similar grant;
 - ii. The results of previous audits including whether the agency or subrecipient receives a Single Audit in accordance with 2 CFR Part 200, Subpart F—Audit Requirements, and the extent to which the same or similar grant has been audited as a major program;
 - iii. Whether the agency or subrecipient has new personnel or new or substantially changed systems; and,
 - iv. The extent and results of HUD monitoring, if the agency or subrecipient also receives Federal awards directly from HUD.
- (b) A plan to monitor the activities of the agency or subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved, including:
 - i. Review of financial and performance reports required by the Grantee;

- ii. Review of expenditures to determine that charges to the subaward by another agency or subrecipient conform to the cost principles at 2 CFR Part 200, Subpart E – Cost Principles, and are net of all applicable credits.
- iii. Follow-up and ensuring that the agency or subrecipient takes timely and appropriate action on all deficiencies pertaining to the subaward as detected through audits, on-site reviews, and other means;
- iv. Issuance of a management decision for audit findings pertaining to the subaward as required by § 200.521 Management decision; and,
- v. A schedule of follow-up actions to be taken to resolve a finding of non-compliance and identify the official responsible for such actions.

(2) The Grantee must provide copies of agency memoranda of agreement and subrecipient agreements for subawards above \$200 million or those evaluated by HUD to be the highest risk as well as a certification by the parties to each agreement that the agreement for CDBG-MIT funds is legally-binding.

(3) The Grantee must impose specific subaward conditions upon an agency or subrecipient as described in §200.207 Specific conditions.

(4) The Grantee, based on the evaluation of risk posed by the agency or subrecipient, must ensure proper accountability and compliance with program requirements and achievement of performance goals by:

- (a) Providing agencies or subrecipients with training and technical assistance on program-related matters;
- (b) Performing on-site reviews of the agency's or subrecipient's program operations; and,

(c) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.

(5) The Grantee must verify that every agency (where not included in the audit of the grantee) or subrecipient is audited as required by Subpart F—Audit Requirements of 2 CFR part 200 when it is expected that the agency or subrecipient's subaward expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

(6) The Grantee must consider whether the results of the agency or subrecipient's audits, on-site reviews, or other monitoring indicate conditions that necessitate adjustments to the Grantee's own records.

(7) The Grantee must take enforcement action against noncompliant agencies or subrecipients as described in §200.338 Remedies for noncompliance of this part and in program regulations.

II.B.15. *Additional requirements for Fiscal Distress Risk.* Based on the financial risk posed by the Grantee's fiscal distress (as evidenced by ongoing debt restructuring pursuant to the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), 48 U.S.C. §§ 2101-2241) the Grantee must comply with the requirements of the October 26, 2017 "ORDER GRANTING URGENT JOINT MOTION OF THE COMMONWEALTH OF PUERTO RICO, PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY, PUERTO RICO ELECTRIC POWER AUTHORITY, AND THE PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY FOR ORDER CONCERNING RECEIPT AND USE OF ANTICIPATED FEDERAL DISASTER RELIEF FUNDS AND PRESERVING RIGHTS OF PARTIES," as may be amended from time to time by the United States District Court for the District of Puerto Rico or

other court with jurisdiction (the Order). As required by the Order, grant funds received by the Commonwealth or other Non-Federal entity (as defined by 2 CFR 200.69) shall be deposited solely into a Disaster Relief Account, meaning a new, segregated, non-co-mingled, unencumbered account held in the name of the Commonwealth or of the Non-Federal entity to whom the funds have been provided, and shall be used solely for eligible activities. Evidence of the Disaster Relief Account held by the Commonwealth must be provided to HUD within 60 days of the date of the CDBG-MIT grant agreement with the submission of a completed SF-1199 (direct deposit form) or other similar form specified by HUD. The Grantee must maintain documentation of the Disaster Relief Accounts held by other Non-Federal entities that receive grant funds from the Grantee.

III. Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this notice are as follows: 14.218 and 14.228.

IV. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for inspection at HUD's Funding Opportunities web page at:

https://www.hud.gov/program_offices/spm/gmomgmt/grantsinfo/fundingopps. The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW,

Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Dated: January 16, 2020

Benjamin Carson, Sr.
Secretary

Billing Code: 4210-67

[FR Doc. 2020-01334 Filed: 1/24/2020 8:45 am; Publication Date: 1/27/2020]