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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-6109-N-03]

Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees; U.S. Virgin Islands Allocation

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

ACTION: Notice.

SUMMARY: This notice allocates \$774,188,000 of Community Development Block Grant mitigation (CDBG-MIT) funds to the U.S. Virgin Islands 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, Room 7282, 451 7th Street, SW, Room 10166, 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 Community Development Block Grant disaster recovery (CDBG-DR) funds and that the level of funding and nature of programs and projects that are likely to be

funded require 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 activities 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.

The CDBG-MIT Notice also acknowledges on-going capacity considerations associated with the U.S. Virgin Islands' implementation of CDBG-DR funds allocated by HUD in response to 2017 disasters. Accordingly, to further reduce the specific potential risks associated with these 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 U.S. Virgin Islands. 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 an additional \$774,188,000 in CDBG-MIT funds to the U.S. Virgin Islands for mitigation activities consistent 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
4335, 4340	U.S. Virgin Islands	\$774,188,000	\$774,188,000	All components of the U.S. Virgin Islands

In accordance with the Appropriations Act, the CDBG-MIT funds 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 U.S. Virgin Islands must submit the financial certification documentation required by section V.A.1.a of the CDBG-MIT Notice 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 April 6, 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 outlined 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 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. The U.S. Virgin Islands 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 U.S. Virgin Islands.

II.A. Waiver and alternative requirement for the U.S. Virgin Islands to administer CDBG-MIT funds pursuant to the requirements of the State CDBG program.

The Appropriations Act authorizes the Secretary to waive or specify alternative requirements for any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary, or use by the recipient, of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. HUD also has regulatory waiver authority under 24 CFR 5.110, 91.600, and 570.5.

For each waiver and alternative requirement, the Secretary has determined that good cause exists, and the waiver or alternative requirement is not inconsistent with the overall purpose of title I of the Housing and Community Development Act of 1974. The provisions of 24 CFR part 570 subpart F are waived to authorize the U.S. Virgin Islands to administer its CDBG-MIT allocation in accordance with the regulatory and statutory provisions governing the State CDBG program, as modified by rules, statutes, waivers and alternative requirements made applicable by Federal Register notices. This includes the requirement that the aggregate total for administrative and technical assistance expenditures by the U.S. Virgin Islands must not exceed 5 percent of any CDBG-MIT grant made pursuant to the Appropriations Act, plus 5 percent of program income generated by the grant.

II.B. 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 disaster recovery (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 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.C. *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 mitigation activities 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 U.S. Virgin Islands which shall include, but not be limited to, the following requirements:

II.C.1. *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 U.S. Virgin Islands has been determined by HUD to have unmitigated high risks with regard to its capacity, a Covered Project for the U.S. Virgin Islands 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.C.2. 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 U.S. Virgin Islands 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 that the grantee must include as part of its implementation and capacity assessment submission. In the CDBG-MIT grant agreement, HUD will establish a special condition related to staffing requirements for specific positions critical to the grantee's implementation of CDBG-MIT funded programs and projects, as identified by HUD during its review of the Staff Analysis Worksheet submission. The grant terms shall require the grantee to advertise and fill such positions within 90 days of HUD's execution of the CDBG-MIT grant agreement. To ensure that the capacity risk is reduced and the staffing requirement is met, a portion of CDBG-MIT funds shall remain in a restricted balance in the Disaster Recovery and Grants Reporting (DRGR) system until HUD receives evidence that the identified positions have been advertised and filled. The amount of the restricted balance will be imposed in a special condition after HUD reviews the Staff Analysis Worksheet submission, based on HUD's determination of the amount that will allow initial grant operations to launch while ensuring that the capacity risk will be addressed before major implementing activities are underway.

II.C.3. Citizen engagement. In response to the limited experience of the grantee in engaging the community in an assessment of mitigation needs following a major disaster, within

90 days of execution of the CDBG-MIT grant agreement, the grantee shall have in place public affairs staff with community engagement expertise; and, within 120 days of execution of the grant agreement, shall update 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.C.4. 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 U.S. Virgin Islands shall submit to HUD and the HUD's Office of the 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 U.S. Virgin Islands shall also post final audit reports issued by HUD's OIG on the grantee's website, along with any other relevant reports that HUD requests that the grantee posts on its website.

II.C.5. Additional requirements for policies and procedures. The U.S. Virgin Islands 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 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 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.C.6. Additional requirements for financial management.

II.C.6.a. Enhanced DRGR voucher review. In order for HUD to monitor the grantee's financial management capacity, the U.S. Virgin Islands shall provide, via upload in DRGR, support documentation for each voucher drawdown request made in DRGR for its CDBG-MIT grant. The U.S. Virgin Islands 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.C.6.b. Drawdown milestones. At the time the grantee submits a draw request in DRGR that achieves 10, 25, and 50 percent of grant disbursement, the Grantee must update its DRGR administration module to include: (i) 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) a summary of each open single audit recommendation for the grantee or subrecipient, along with the resolution or planned resolution of the audit recommendation; (iii) a summary of each open recommendation by the HUD's Office of the Inspector General (OIG) recommendation related to this grant, together with its resolution or planned resolution; and (iv) a summary of each HUD monitoring recommendation related to this grant together with the resolution or planned resolution of the recommendation. At each of the above draw request milestones, the grantee shall also 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 at each milestone to determine whether the

grantee demonstrates sufficient capacity to make timely and effective corrective actions on identified deficiencies and compliance issues. If HUD determines that the grantee does not demonstrate such sufficient 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 the conditions required at each milestone, HUD will block access to CDBG-MIT funds pending on-site review and HUD's acceptance of the grantee's management controls.

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: _____

_____/s/
Benjamin Carson, Sr.
Secretary

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[FR-6074-N-01]