

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

July 12, 2021

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: July 15, Subcommittee on Oversight & Investigations Hearing entitled, “CDBG Disaster Recovery: States, Cities, and Denials of Funding”

The Subcommittee on Oversight & Investigations will hold a hearing entitled “CDBG Disaster Recovery: States, Cities, and Denials of Funding” on Thursday, July 15 at 12:00 pm via Cisco Webex. There will be one panel with the following witnesses:

- Carol Haddock, Director, Houston Department of Public Works and Engineering
- Judge Lina Hidalgo, County Judge, Harris County
- Heather Lagrone, Deputy Director for Community Development and Revitalization, Texas General Land Office
- Sarah Saadian, VP of Public Policy, National Low Income Housing Coalition
- Stephen Begg, Deputy Inspector General, Office of the Inspector General, Department of Housing and Urban Development

Overview

In 1974, Congress authorized the Community Development Block Grant program under Title I of the Housing and Community Development Act.¹ For nearly two decades, the Department of Housing and Urban Development (HUD) has provided recovery funds to areas affected by disaster recovery through the Community Development Block Grant-Disaster Recovery (CDBG-DR) program.² CDBG-DR appropriations provide funding to communities for longer-term disaster recovery needs that are generally not addressed by emergency relief programs administered by the Federal Emergency Management Agency (FEMA) and the Small Business Administration (SBA).³ More recently, Congress has utilized a similar approach to expressly fund disaster mitigation investments, termed Community Development Block Grant-Mitigation (CDBG-MIT). CDBG-DR and CDBG-MIT are both governed by the CDBG program’s statutory authority and administered by HUD. Funding from these programs ultimately flow to state governments (grantees), which in turn deploy the funds to their localities pursuant to a plan developed in coordination between HUD and the state grantees.⁴

The Bipartisan Budget Act of 2018, enacted on February 9, 2018 appropriated \$4.3 billion in CDBG-MIT funding for the state of Texas after Hurricane Harvey struck Texas and Louisiana, causing at

¹ 42 U.S.C. § 5301, *et seq.*

² Michael H. Cecire and Joseph V. Jaroscak, [The Community Development Block Grant’s Disaster Recovery Component: Background and Issues](#), Congressional Research Service (Aug. 3, 2020) (R46475).

³ *Id.*

⁴ *Id.*; see also HUD, [Community Development Block Grant Disaster Recovery Program](#) (accessed on Jul. 6, 2021).

least 68 deaths and unprecedented flooding.⁵ Texas Governor Greg Abbot designated the General Land Office (GLO) to administer CDBG-MIT funds on behalf of the state.⁶ In May 2020, GLO announced an application process for Texas counties to compete for mitigation funds.⁷ Applications for the competition closed October 2020, and GLO announced awards for the first round of more than \$2.3 billion in CDBG-MIT funding May 2021.⁸ GLO's proposed allocation of CDBG-MIT funding has not yet been finalized.⁹

GLO's awards rely upon an allocation formula it created that did not award any mitigation funds to Houston, the largest city in Texas, which suffered severe damage during Hurricane Harvey.¹⁰ The formula favored less densely populated areas with less damage over the most impacted and distressed areas (MIDs) with greater population density.¹¹ These developments have raised questions about whether GLO's actions in handling this substantial federal appropriation are consistent with Congressional intent, federal fair housing requirements, the terms of the grantee agreement, and the applicable regulations that prioritize funding expenditure within most impacted and distressed areas.

Program Background

Since fiscal year 2001, HUD has appropriated \$89.8 billion in CDBG disaster assistance and mitigation funding.¹² Between 2017 and 2019 alone, Congress appropriated over \$39.5 billion in CDBG disaster assistance and mitigation funding.¹³ One of the national objectives of CDBG is to allow communities and states to use program funds to address serious and immediate public health and safety threats.¹⁴ Accordingly, Congress has used the CDBG framework to provide additional assistance for state and local recovery activities in the wake of presidentially declared disasters through CDBG-DR and CDBG-MIT.¹⁵

In addition to the CDBG statute and rules, CDBG-DR grants are governed by the language of the relevant supplemental appropriation act, which typically identifies the amount appropriated, the period covered, the eligible uses of funds, and the certifications required for assistance.¹⁶ There is no automatic trigger for when and how much CDBG-DR funding is available in response to a disaster; instead, Congress separately passes each supplemental CDBG-DR appropriation on a case-by-case basis, and as a result,

⁵ The Texas General Land Office, [*81 Mitigation Competition Awards Granted by Texas GLO for Historic Disaster Mitigation Projects in Texas Counties*](#) (May 21, 2021).

⁶ The Texas General Land Office, [*CDBG-MIT Competition Application Guide*](#) (last acc. July 9, 2021).

⁷ *Id.*

⁸ The Texas General Land Office, [*81 Mitigation Competition Awards Granted by Texas GLO for Historic Disaster Mitigation Projects in Texas Counties*](#) (May 21, 2021).

⁹ The Texas General Land Office, [*Harris County Receiving \\$1.1 Billion in Infrastructure and Mitigation Projects: At least \\$500 million more to be distributed through Regional Mitigation Program*](#) (June 16, 2021).

¹⁰ Zach Despart, [*Texas said inland counties had lower disaster risk, yet awarded them huge share of \\$1B in Harvey aid*](#), Houston Chronicle (Jun. 18, 2021); Houston has experienced seven federally declared disasters in six years, impacting hundreds of thousands of citizens. Harris County, which includes the City of Houston, is the only county in Texas to experience consecutive flooding disasters in 2015, 2016, and 2017. Nearly four years ago, in August 2017, Hurricane Harvey paralyzed the region, dumping nearly 60 inches of rain, claiming 68 lives, and causing an estimated \$125 billion in damage. Houston and Harris County experienced the highest number of Harvey related deaths and flooded homes in the state.

¹¹ Zach Despart, [*Texas said inland counties had lower disaster risk, yet awarded them huge share of \\$1B in Harvey aid*](#), Houston Chronicle (Jun. 18, 2021).

¹² HUD Office of Inspector General, Office of Investigation, [*Semiannual Report to Congress*](#) (Jun. 2021).

¹³ GAO, [*Disaster Recovery: HUD Should Take Additional Action to Assess Community Development Block Grant Fraud Risks*](#) (May 05, 2021) (GAO-21-177).

¹⁴ 42 U.S.C. § 5301(b)(3).

¹⁵ *Id.*

¹⁶ Michael H. Cecire and Joseph V. Jaroscak, [*The Community Development Block Grant's Disaster Recovery Component: Background and Issues*](#), Congressional Research Service (Aug. 3, 2020) (R46475).

“the program’s availability and timing are unpredictable.”¹⁷ HUD publishes a corresponding Federal Register notice for each supplemental appropriation, establishing the allocation of funds to eligible grantees and describing the rules, statutes, waivers, and alternative requirements that apply to allocations under the notice.¹⁸

Delays and Denials with CDBG-DR and CDBG-MIT Programs

Past CDGB-DR grantees and subgrantees have experienced long delays in receiving federal funds from HUD.¹⁹ The substantial lags in disbursement routinely experienced by grantees reflect the lack of any statutory framework that would facilitate the deployment of funds in a more timely manner.²⁰ The absence of an authorizing statute for CDBG-DR or CDBG-MIT effectively requires new legislation and regulations to provide disaster recovery funding after each disaster.²¹ Each disaster appropriation launches a new rulemaking process before any funds can be deployed. Before CDBG-DR or CDBG-MIT funds may be distributed, HUD issues a Federal Register notice “allocating” or announcing the funds available, each state then must submit an action plan outlining how it intends to spend the funds, and HUD must approve the action plan and enter into a grant agreement with each state grantee. The HUD Office of Inspector General has recommended codifying the CDBG-DR and CDBG-MIT programs to help expedite this process.²² In 2019, Rep. Al Green of Texas and Rep. Ann Wagner of Missouri introduced the Reforming Disaster Recovery Act to codify these disaster recovery programs.²³ The Disaster Recovery Act passed the House on a bipartisan basis in the 116th Congress.²⁴

After two hurricanes in 2017 disabled Puerto Rico’s electricity grid causing an 11-month blackout, the longest in U.S. history, Congress appropriated approximately \$20 billion in CDBG-DR and CDBG-MIT funding, but those funds took years to be disbursed to the U.S. territory.²⁵ According to a 2020 report by the Government Accountability Office, two years after funds for grants were appropriated, Trump Administration political appointees at HUD had not outlined eligibility or application information for grants to Puerto Rico.²⁶ A subsequent investigation by HUD’s Inspector General found unprecedented

¹⁷ HUD Office of Policy Development and Research, [Housing Recovery and CDBG-DR: A Review of the Timing and Factors Associated with Housing Activities in HUD’s Community Development Block Grant for Disaster Recovery](#) (April 2019).

¹⁸ *Id.*

¹⁹ See, e.g., Michael H. Cecire and Joseph V. Jaroscak, [The Community Development Block Grant’s Disaster Recovery Component: Background and Issues](#), Congressional Research Service, at 15-16 (Aug. 3, 2020) (R46475).

²⁰ Michael H. Cecire and Joseph V. Jaroscak, [The Community Development Block Grant’s Disaster Recovery Component: Background and Issues](#), Congressional Research Service (Aug. 3, 2020) (R46475).

²¹ *Id.*

²² HUD Office of Inspector General, Office of Investigation, [Final Audit Report – HUD’s Office of Block Grant Assistance Had Not Codified the Community Development Block Grant Disaster Recovery Program](#) (Jul. 23, 2018).

²³ Specifically, [H.R. 3702](#), the Reforming Disaster Recovery Act (RDRA), would codify the CDBG-DR program and implement the HUD OIG’s key recommendations for: (1) Creation of a permanent framework for future disasters; (2) Reduction of the existing volume of Federal Register notices; (3) Standardization of the rules for all grantees; and (4) Timely disbursement and closing of grants. The result will be an agency in the strongest possible position to administer this vital recovery program optimally, more effectively serve victims of disasters and the local and state governments that partner with HUD through delivery of timely and efficient recovery and mitigation resources, and avoid the needless bureaucratic delays that visit further harm upon disaster survivors. A discussion draft of the RDRA of 2021 has been considered at multiple hearings of this Committee this year. At this time, the legislation does not contain provisions that would have prevented the current putative stalemate between HUD and a state grantee.

²⁴ *Id.*

²⁵ Umair Irfan, [Puerto Rico’s blackout, the largest in American history, explained](#), Vox (May 8, 2018); Arelis R. Hernández, [Puerto Ricans still waiting on disaster funds as Hurricane Maria’s aftermath, earthquakes continue to affect life on the island](#) (Jan. 19, 2020).

²⁶ U.S. Government Accountability Office, [PUERTO RICO ELECTRICITY: FEMA and HUD Have Not Approved Long-Term Projects and Need to Implement Recommendations to Address Uncertainties and Enhance Resilience](#), at 22 (Nov. 2020).

delays in the application and approval process for Puerto Rico’s disaster recovery funds, and the HUD Inspector General faced challenges in seeking to interview political appointees about the funding delays.²⁷ Senior officials at the Office of Management and Budget (OMB) repeatedly blocked HUD from issuing the Federal Register notices required to begin the allocation process that ultimately leads to disbursement of CDBG-DR and CDBG-MIT funds.²⁸ Issuance of the required notices occurred only after Congress passed a new law requiring publication of these particular notices by a specific date.²⁹

Inequitable Allocation of Funding for Hurricane Harvey Mitigation under CDBG-MIT

In August 2019, HUD published a federal notice that allocated the \$4.3 billion in mitigation funding which had been appropriated to the State of Texas by Congress the year before.³⁰ Thereafter, Trump appointees at HUD approved GLO’s “Action Plan” to conduct a “competition” to determine the recipients of the \$4.3 billion in mitigation grant funding.³¹ HUD’s approval did not include the allocation formula that GLO used, but as a condition of plan approval, HUD required GLO to submit the results of its competition in the form of an Action Plan amendment detailing the results of its competition, including data to identify protected classes, racially and ethnically concentrated areas, and areas of poverty within the most impacted and distressed areas that were eligible for the competition.³²

In a June 14, 2021 letter to Mr. Bush, HUD further noted that the information required under the grant agreement includes “provid[ing] a meaningful analysis that describes how those identified populations and areas may be impacted” by implementation of GLO’s proposed allocations.³³ According to a recent investigation which analyzed the allocation formula that GLO included in its plan amendment, the plan would result in potentially inequitable and exclusionary outcomes that are at odds with program objectives and requirements broadly, the grant agreement between HUD and GLO specifically, and federal fair housing and civil rights laws.³⁴

Following public outcry over the exclusion of Houston and Harris County from any CDBG-MIT allocation from GLO, Commissioner Bush wrote to HUD, requesting approval for a direct allocation to Harris County for \$750 million.³⁵ The Bipartisan Budget Act of 2018, the specific appropriations act responding to Hurricane Harvey, authorizes direct allocations of CDBG-MIT funds only to entities that received direct allocations of CDBG-DR funds in 2015-2017, which Harris County did not.³⁶

²⁷ HUD Office of Inspector General, Office of Investigation, [Review of HUD’s Disbursement of Grant Funds Appropriated for Disaster Recovery and Mitigation Activities in Puerto Rico](#) (April 20, 2021).

²⁸ Tracy Jan and Lisa Rein, [Investigation suppressed by Trump administration reveals obstacles to hurricane aid for Puerto Rico](#), Washington Post (Apr. 22, 2021).

²⁹ Staff briefing provided by Mr. Jemison at HUD to FSC in June 2021 (material on file with HFSC).

³⁰ Pub. Law No. 115-123 (2018); Eric S. Blake and David A. Zellinsky, [National Hurricane Center Tropical Cyclone Report Hurricane Harvey](#), National Hurricane Center and Central Pacific Hurricane Center (May 09, 2018); This figure is the total of all CDBG-MIT funding allocated to Texas for disasters in 2015, 2016, and 2017. Of the \$4.29 billion, at least \$2.1 billion must be expended in the listed “most impacted and distressed” counties and zip codes. *See* 85 FR 45838 (2019).

³¹ Staff briefing provided by Mr. Jemison at HUD to FSC in June 2021 (material on file with HFSC); The Texas General Land Office, [Cmr. George P. Bush releases plan for more than \\$4 billion in mitigation funds for Texas](#) (Nov. 21, 2019).

³²*Id.*; *See generally*, 86 FR 32681 (2021).

³³ Letter of 6/14/21 to G. Bush, Texas Land Commissioner, from S. Brundage, HUD General Deputy Assistant Secretary, at 2 (on file with HFSC).

³⁴ Zach Despart, [Texas said inland counties had lower disaster risk, yet awarded them huge share of \\$1B in Harvey aid](#), Houston Chronicle (June 18, 2021); Complaints filed in June 2021 with HUD’s Office of Fair Housing and Equal Opportunity allege that GLO’s administration of the CDBG-MIT program discriminates on the basis of race and national origin in violation of the Fair Housing Act, the Civil Rights Act of 1964, and other laws.

³⁵ Jasper Scherer, [Bush says he will ask HUD to send \\$750M in flood aid to Harris County following backlash](#) (May 26, 2021).

³⁶ Pub. Law No. 115-123 (2018).

Commissioner Bush thereafter claimed that HUD had “denied” his request for direct allocation, despite the fact that he had asked HUD to take action that is unlawful under the statute.³⁷

An investigation by the Houston Chronicle found that GLO disproportionately awarded funds to inland counties with less damage from Harvey than coastal communities that were the hardest hit by Hurricane Harvey.³⁸ Under GLO’s approach, CDBG-MIT funds would go to counties that had less damage from past floods and to counties at lower risk of flooding by the state’s own risk metrics. Yet, these funds are authorized by Congress for mitigation activities that will “increase resilience to disasters and reduce or eliminate the long term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disaster.”³⁹

The Houston Chronicle also found that GLO’s approach resulted in funding being awarded to counties with a lower risk of a variety of natural disasters such as flooding, hurricanes, and drought according to the Composite Disaster Index – a measure created by the State of Texas to measure such risk — and sometimes to projects that help fewer residents per dollar spent than unfunded projects in more vulnerable counties.⁴⁰ For example, Port Arthur, Texas, in Jefferson County, which the state considered to be high risk, applied for \$97 million to replace storm water pipes for the benefit of 42,000 residents. The project was denied funding. In contrast, Iola, TX, in Grimes County, which was considered a lower risk by the state, sought \$11 million for a wastewater system that would serve 379 residents. GLO thereafter awarded Grimes County \$14.9 million dollars in CDBG-MIT assistance for drainage and wastewater infrastructure.⁴¹

According to the Houston Chronicle’s analysis, most coastal counties, which are ranked by the state as having the highest risk, were only awarded 60% of funds notwithstanding the fact that these counties include 92% of the population eligible for GLO aid. The other 40% of funds were awarded to what the state considers to be medium- and low-risk counties, most of which are inland, despite accounting for just 8% of the eligible population.⁴² Furthermore, counties considered lowest-risk that received awards, like Grimes County, were eligible only because GLO elected to add them. In some cases, the GLO approved funding for projects in these counties even though they scored lower than applicants in the highest-risk counties under the GLO formula.⁴³ GLO disregarded warnings from Houston in January 2020 that GLO’s approach would penalize urban areas with large populations. Two metrics account for nearly half of the available points in GLO’s formula: (1) cost per person helped and (2) the share of a jurisdiction’s total residents who would benefit.⁴⁴ Several scoring metrics in the GLO formula drew criticism from engineers as poor indicia of the merits of a particular flood protection project.⁴⁵

³⁷ See GLO Commissioner George P. Bush letter to Reps. Al Green and Sylvia Garcia, at 1 (Jun. 10, 2021) (on file with HFSC); P. L. 115-123, 132 Stat. 104.

³⁸ Zach Despart, [Texas said inland counties had lower disaster risk, yet awarded them huge share of \\$1B in Harvey aid](#), Houston Chronicle (Jun. 18, 2021).

³⁹ HUD, [Community Development Block Grant Mitigation Program](#) (last updated Jan. 6, 2021); 86 FR 561 (Jan. 6, 2021).

⁴⁰ Zach Despart, [Texas said inland counties had lower disaster risk, yet awarded them huge share of \\$1B in Harvey aid](#), Houston Chronicle (Jun. 18, 2021).

⁴¹ Texas General Land Office, [PRESS RELEASE: \\$14.9 million granted by Texas GLO for historic disaster mitigation projects in Grimes County](#) (May 21, 2021).

⁴² Zach Despart, [Texas said inland counties had lower disaster risk, yet awarded them huge share of \\$1B in Harvey aid](#), Houston Chronicle (Jun. 18, 2021).

⁴³ *Id.*

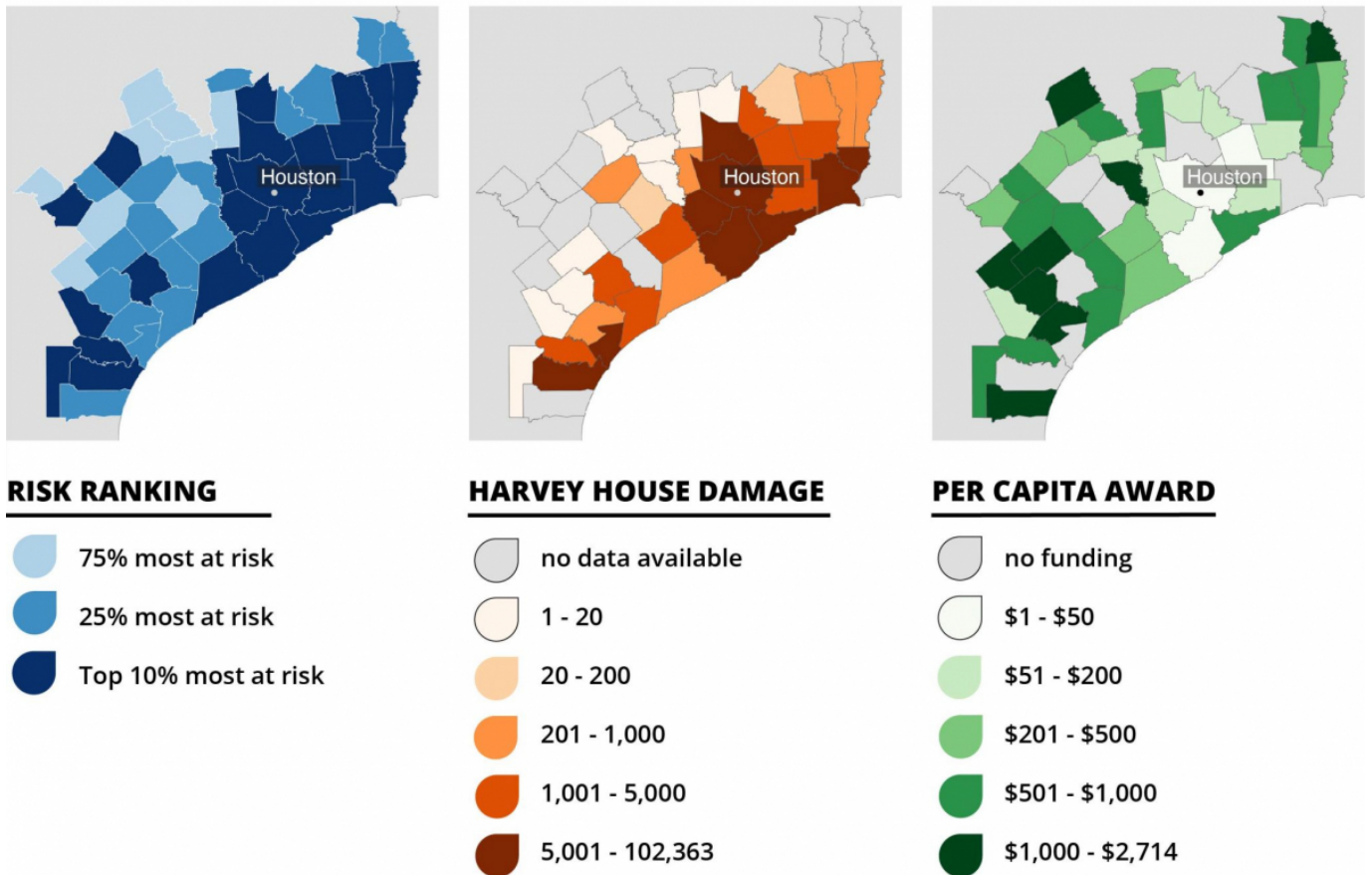
⁴⁴ *Id.*

⁴⁵ Zach Despart and Jasper Scherer, [Bush blamed federal rules for Harris County's lack of flood aid. Our analysis shows that's false](#), Houston Chronicle (Jun. 1, 2021).

Appendix A:

Figure 1: Disaster aid funding awarded to counties at lower risk, less damage from past flooding ⁴⁶

Disaster aid funding awarded to counties at lower risk, less damage from past flooding

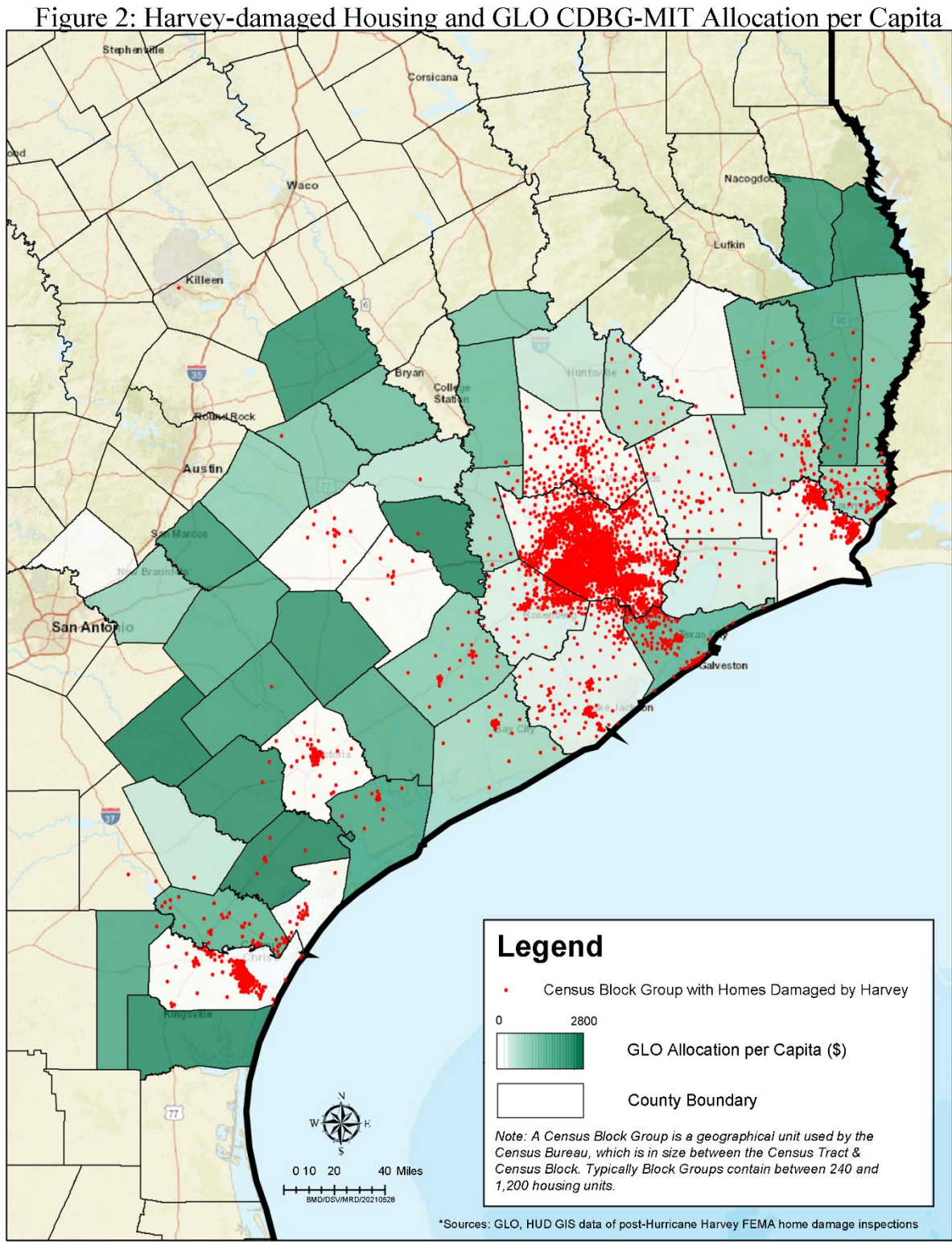


Notes: Only counties eligible for federal flood aid funding are shown. CDI, or Composite Disaster Index, is how Texas measures each county's risk of natural disasters. House damage data include houses that were damaged by Hurricane Harvey and inspected by FEMA. Damaged houses with enough insurance to cover damages might not be included in this data.

Sources: Texas General Land Office; Federal Emergency Management Agency

⁴⁶ Zach Despart, [Texas said inland counties had lower disaster risk, yet awarded them huge share of \\$1B in Harvey aid](#), Houston Chronicle (Jun. 18, 2021).

Figure 2: Harvey-damaged Housing and GLO-MIT Allocation per Capita ⁴⁷



⁴⁷ Provided to FSC by Zach Despart from Houston Chronicle (on file with HFSC) .