



Friday, November 20, 2020

Hon. Luis Carlos Fernández Trinchet
Secretary
Puerto Rico Department of Housing
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Re: Hispanic Federation's Comments on the Puerto Rico Mitigation Plan for the Community Development Block Grant Mitigation Program (CDBG-MIT)

Dear Secretary Fernández Trinchet,

On January 27, 2020, the Puerto Rico Department of Housing (Department of Housing) became the recipient of \$8,285 million in federal mitigation funds. These funds require an action plan that will guide and develop effective strategies to build a more resilient Puerto Rico. On September 21, 2020, the Department of Housing published its Puerto Rico Mitigation Plan for the Community Development Block Grant Mitigation Program (CDBG-MIT Action Plan). The Hispanic Federation is hereby timely submitting its comments on said plan.

Hispanic Federation¹ is a non-profit organization founded in 1990 in the State of New York of the United States, with the goal of supporting and empowering Hispanic communities and institutions through initiatives in the areas of education, health, immigration, public engagement, economic development, and environment, among others. For years, the organization has advocated for the rights of Puerto Ricans and other Hispanic communities at the federal, state, and local levels. Currently, Hispanic Federation has offices in five states and Washington D.C., as well as permanent operations in Puerto Rico established after Hurricane María.²

¹Hispanic Federation, https://hispanicfederation.org/about/mission_and_history/

²Hispanic Federation, Puerto Rico, <https://hispanicfederationpuertorico.org/>

To date, the organization has committed over \$39 million to 130 local initiatives and non-profit groups across the island focusing on recovery, housing, agriculture, mental health, and energy, among other issues. For this, it promotes a holistic public policy whereby mitigation efforts can be effective in said areas. Hispanic Federation is committed to defending the basic principles of justice, transparency, genuine citizen participation, sustainability, and the protection of fundamental rights.

I- GENERAL RECOMMENDATIONS FOR THE CDBG-MIT ACTION PLAN

a. Public engagement

The government is responsible for identifying and using the best outreach and communication mechanisms to involve people in decision-making processes in a timely manner. These outreach methods should facilitate community feedback.

We recognize the efforts and progress made by the Department of Housing to extend its public participation processes. We welcome the requests for participation and the new formats used by the agency. However, there is still a lot of room for opportunities to continue expanding the efforts towards inclusion and democracy that should govern these processes.

- **Public Hearings**

In the CDBG-MIT Action Plan public hearings, the vast majority of appearances and reports focused on presenting specific projects. The identification of potential mitigation projects certainly helps assess needs. However, **we recommend that before these public hearings are held, the agency clearly explains to the public that, besides proposing projects, they can also comment substantively on the public programs and policies that will be responsible for qualifying, evaluating, prioritizing, and assigning funds to such projects.** This will help obtain effective feedback from the public on the programs and promote a fair implementation of the plan.

- **Citizen Advisory Committee**

On October 1, 2020, the Department of Housing published the fourth version of its Public Engagement Plan, which for the first time includes a description of the Citizen Advisory Committee for CDBG-DR and CDBG-MIT. As with our

comments on the Fifth Substantial Amendment to the CDBG-DR Action Plan, Hispanic Federation advises the Department of Housing that a great number of serious concerns have surfaced during the meetings held by the agency to put together said committee—concerns presented by different interested parties with respect to the purpose, structure, powers, and functioning of the group. It is not enough for the agency to unilaterally establish a structure for the committee through an amendment to the Public Engagement Plan. For this reason, **Hispanic Federation asks the Department of Housing to immediately address the complaints presented by the organizations, institutions, and individuals who have participated in the committee's meetings.**

We also ask the Department of Housing to recognize that committee members are not substitutes for the voices of all the communities across the island. Although the voices of each of the committee members represent certain groups, it is important for the Department of Housing to work directly and hand in hand with communities. **Hispanic Federation believes that the committee should have the authority to demand that the agency provide processes or ways to achieve direct, effective work with the communities.**

At the same time, **we recommend that a mechanism be established whereby the committee can request the publication of information, data, and/or assessments for the benefit of all communities, organizations, and institutions in Puerto Rico.** The agency recently published several guides or policies to regulate the requests for information or public documents made by any person or entity. However, there is public information that the people have the right to know and that should not be subject to the request of any one person, organization, or entity. True transparency allows for equal access to public information by all. Access to this information facilitates assessment and recovery processes in the country.

We additionally **recommend setting up an accountability method for those cases in which the agency does not adopt or approve the committee's proposals, requests, and requirements.** It should not be limited to a pro forma committee lacking any real impact on the decisions affecting the country.

Furthermore, **we ask that the same public engagement requirements adopted by the Department of Housing be imposed on all the agencies, organizations, or institutions that administer or are involved with federal mitigation funds.** Specifically, the requirements must be included in the memorandums of understanding, agreements, and/or contracts that may exist between the department and such institutions.

b. Transparency

The Department of Housing has the responsibility to inform and educate people about the resources available for mitigation, the alternatives that have been evaluated, and the decisions made by the agency. Additionally, the agency should identify effective communication methods tailored to the reality and diversity of each community.

We recommend the consistent publication of information, data, and/or assessments for the benefit of all the communities, organizations, and institutions on the island. As already mentioned, there is public information that people have the right to know and that should not be subject to the request of any one person, organization, or entity. True transparency allows for equal access to public information by all.

For this reason, **we recommend prioritizing the implementation of the Risk and Resource Information Collection Program.** Likewise, **we recommend that this program be assigned the task of including the FEMA databases on damage assessments and needs not covered in the information catalogue to be published.** The program must ensure that the information generated is accessible to the public. This accessibility should go beyond one viewer. **The information should be available—in its entirety—for use at all required levels and formats for analysis without filters, registration, or costs.**

The same public engagement requirements adopted by the Department of Housing must be imposed on all the agencies, organizations, or institutions that administer or are involved with federal mitigation funds. Specifically, the requirements must be included in the memorandums of understanding, agreements, and/or contracts that may exist between the department and such institutions.

c. Technical Assistance

The Department of Housing must provide the technical resources and assistance needed for the communities to issue informed opinions about the planning processes and mitigation projects. Furthermore, it is imperative that the Department of Housing **establishes the technical assistance and training mechanisms needed in order for the communities to develop and implement their mitigation projects, as well as any maintenance plans required for energy projects under this plan.**

d. Responsible assessment to identify the populations and areas most impacted

Section 1.B of the “Allocation Notice” published on January 27, 2020, regulates the use of the \$8,285,284,000 allocated and, among other things, states: “...*The plan must include the criteria for eligibility, and how the use of these funds will address risks identified through mitigation needs assessment of **THE MOST IMPACTED AND DISTRESSED AREAS**...*”³ (emphasis added). According to the Department of Housing, “Puerto Rico is a unique grantee, as the entire territory of the island has been designated a Most Impacted and Distressed Area (MID).”⁴ The identification of all of Puerto Rico as an MID subtracts visibility from the sectors that were disproportionately and greatly impacted.

Both the CDBG-DR Action Plan and the present plan lack an effective assessment in order to identify the populations and areas most impacted and distressed. **We urge the Department of Housing to complete this assessment using, among other things, databases compiled by FEMA**, such as: allocations through the individual assistance program, the public assistance program, the tables (at disaggregated levels) of needs not covered, and damage assessments. Similarly, data from insurance agencies is necessary for this assessment.

e. Every project financed under this Action Plan must mitigate risk and promote community development.

We recognize the appropriateness of requiring that the projects financed by this grant “result in a measurable and verifiable reduction in the risk of loss of life and property due to future disasters, and that they provide benefits to promote community development”.⁵ We also consider it very appropriate for the Department of Housing to abstain from promoting the objective of eliminating slums in the context of mitigation efforts.

However, Appendix D reveals that several agencies submitted projects that do not clearly establish what risk they will be mitigating. For example, some projects initially submitted by Public-Private Partnerships (PPPs) are characterized by a lack of leverage funds and the absence of a clear relationship with mitigation efforts or risk reduction. **We recommend that the projects submitted by the PPPs be subjected to the same scrutiny as the rest of the projects, without any type of prioritization or preferential treatment.**

³ [Federal Register / Vol.85, No. 17 / Allocations, Common Application, Waivers, and Alternative Requirements for CDBG MIT Grantees; Commonwealth of Puerto Rico Allocation](#)

⁴ CDBG-MIT Action Plan, page 231.

⁵ CDBG-MIT Action Plan, page 232.

These funds should not be seen as a capital investment fund for projects that do not intend to mitigate risk. For example, the strategy known as “alignment with capital investment” increases the chances of financing projects whose purpose is far from addressing risks. The fact that a project is included in a list of capital improvement projects does not mean that it is critical for achieving resilience. For this reason, **we recommend that any project proposed under this plan be submitted to the same scrutiny—to establish measurable and verifiable risk reduction in future disasters as well as to ensure that they will promote community development.**

- f. **Seventy-five (75%) of the funds should benefit Low and Middle Income (LMI) populations.**

To ensure that only 50% of CDBG-MIT funds go to people of low and middle income is not sufficient. Considering that over 65% of the country's population is below the poverty line, **we recommend ensuring that 75% of the funds benefit the LMI population.**

- g. **Every entity or institution hired by the Department of Housing to manage a program under this plan must be selected through competitive processes.**

As proposed, the CDBG-MIT Action Plan considers the alternative of hiring external entities or institutions to manage programs. For example, the Mitigation and Adaptation Policy Support Program indicates that the Department of Housing will designate an entity as leading partner to manage program activities for Puerto Rico and for the benefit of all of its citizens. Another example is the Program for Enhancing Planning and Capacity.

Therefore, Hispanic Federation recommends that each entity or institution contracted to manage programs be selected through a competitive public process. In this manner, the scope of authority delegated, as well as the funds allocated for its administration, will be transparently established. Similarly, robust metrics should be used to evidence compliance.

- h. **Public Policy of Non-Discrimination**

The Department of Housing should **implement a public policy of zero tolerance with respect to any type of discrimination based on race, color, sex, national origin, social background or condition, political or religious ideas, disability, family composition, sexual orientation, gender identity, including other reasons beyond the traditionally protected classes.** Specifically, no agency, organization and/or institution

receiving and managing public funds used for mitigation should be allowed to discriminate against any person in any way.

II- SPECIFIC RECOMMENDATIONS FOR SECTIONS OR PROGRAMS IN THE CDBG-MIT PLAN OF ACTION

a. Vulnerability Assessment

This analysis is crucial for prioritizing mitigation projects. The assessment made by the Department of Housing proposes the following three (3) indicators for measuring vulnerability:

1. Assets in the infrastructure of essential basic services
2. Social vulnerability
3. Population density

An analysis such as this favors and focuses on the investment of federal funds in high-density areas and in greater assets in the infrastructure of basic services, which may subtract visibility from the urgent need for investment in suburban and rural projects. At the same time, it may inhibit access to funds by communities across the island facing risks that can be mitigated. As developed, this assessment places social vulnerability in second place. Therefore, **Hispanic Federation requests that the vulnerability assessment be adjusted to draw attention to mitigation needs in suburban and rural areas, as well as the social vulnerability indicator.**

b. Vital, Critical, and Secondary Needs–Vital Energy Needs Assessment

The analysis of vital energy needs takes into consideration the Integrated Resource Plan (IRP) presented by the Puerto Rico Electric Power Authority (PREPA) to the Puerto Rico Energy Bureau (Energy Bureau) in 2019. **We recommend that the assessment be updated according to the Modified Action Plan approved by the Energy Bureau on August 24, 2020⁶, which is still under revision.**

Among other things, the Energy Bureau ordered PREPA to integrate a minimum of 3,500 MW of solar photovoltaic energy by the year 2025. In addition, it recognized the inherent value of small-scale distribution of energy sources through microgrids, battery storage, and solar photovoltaic sources at individual or added sites as a critical part to ensure resilience in Puerto Rico. Although the Modified Action Plan

⁶ Puerto Rico Energy Bureau, "Final Resolution and Order on the Puerto Rico Electric Power Authority's Integrated Resource Plan".

<https://energia.pr.gov/wp-content/uploads/sites/8/2020/08/AP20180001-IRP-Final-Resolution-and-Order.pdf>

approved by the Energy Bureau has room for improvement and is not yet final, the truth is that it promotes energy resilience in Puerto Rico more than PREPA intended in its original IRP.

c. Secondary Vital Needs Sectors—Food, Water, and Shelter

In this section, the Department of Housing recognizes that agriculture is a component of the vital need for food and that it is an essential part of the resource chain required to adequately meet the basic needs of all Puerto Ricans. In addition, it states that the majority of Puerto Rican households depend on complex supply chains for their basic food needs, as they do not usually have access to local agricultural products. The agency recognizes that the situation described causes a “critical state of vulnerability of local families in obtaining food after a catastrophic event.”⁷ However, agriculture projects represent a mere **0.004%** of the total vital needs projects submitted by interested parties.⁸

The guidelines for CDBG-DR funds in the Re-Grow PR Urban-Rural Agriculture Program acknowledge that 75% of Puerto Rican farmers have annual sales of under \$10,000. According to the 2012 agricultural census, there are approximately 13,159 farms in Puerto Rico. Of these, 40% are composed of less than 10 acres of land and 20% are only 10-20 acres. For this reason, **Hispanic Federation recommends that the Department of Housing work with these farmers to promote the integration of sustainable agricultural projects for mitigating vulnerability in the areas of production, distribution, and acquirement of food on the island after a disaster. In addition, we request that small-scale technical assistance and training be provided to farmers (including fishermen) so that they may submit mitigation project proposals to increase resilience in their communities.**

d. Cost-Benefit Analysis for Covered Projects

Hispanic Federation recognizes the relevance and importance of requiring a cost-benefit analysis to evaluate Covered Projects. However, we are concerned that the elements required to create a qualitative description of benefits for populations of low to moderate resources that cannot be quantified could be limited to: 1) potential for economic development, 2) improving public health, and 3) expanding recreational opportunities. This would leave out the environmental and social components needed for a fair evaluation of a mitigation project. Therefore, **we recommend a revision of the methodology to follow for making these assessments in order to include economic,**

⁷ CDBG-MIT Action Plan, page 191.

⁸ CDBG-MIT Action Plan, page 225.

social, and environmental factors that would be impacted if the project is not completed.

e. Infrastructure Mitigation Program

In this program, the Department of Housing establishes a reserve to cover the matching funds required by FEMA mitigation programs. In the event that the allocated amount of \$1,000 million does not cover the matching of funds for all the proposed projects, Hispanic Federation **recommends setting up citizen participation processes in order to attain a fair prioritization in the distribution of these funds.**

f. Housing Mitigation Program

This program should be expanded at the **collective-community level** to meet needs not covered. Specifically, this program allows eligible persons under the CDBG-DR Home Repair, Reconstruction, or Relocation Program (R3 Program) to consider mitigation alternatives for their individual homes before having to relocate from their communities. However, **we recommend that the proposed CDBG-MIT Action Plan also allow these persons to consider mitigation alternatives at the community level in order to have access to aid under the R3 Program or any other funds.**

For example, the construction of storm ditches or drainage infrastructure is substantially more accessible, less expensive, and has potentially better risk mitigation results for an entire community than elevating individual homes. This type of community construction should be implemented **in addition** to the individual type already included.

It is important to point out that the CDBG-DR Action Plan programs do not provide affordable housing options in urban areas, as has been recommended through the rehabilitation of the large inventory of vacant, unused, and abandoned properties, which exceeds 100,000 housing units in the five major urban centers: San Juan, Bayamón, Carolina, Mayagüez, and Ponce. Given the lack of options for these populations, mitigation projects should contribute to the safe and dignified permanence of existing communities.

For all of the above reasons, **we recommend that the development of guidelines and stages of implementation of this program be subject to wide citizen participation, including, but not limited to, the members of the Citizen Advisory Committee.** Specifically, **we recommend that mitigation alternatives at the community level be assessed by each community interested in their evaluation, since each one has a unique composition of stakeholders, among them residents, business owners,**

non-profit organizations, municipalities, etc. Communities should be familiar with their mitigation alternatives before having to relocate.

As we also recommended with respect to the CDBG-DR Action Plan, **Hispanic Federation recommends that access to this aid not be conditioned by a local (not federal) property title requirement.**

g. Economic Development Investment Portfolio for Growth Program

In this program, the Department of Housing mentions that one of its objectives is “maximizing and obtaining private development for projects by creating **Opportunity Zones**”⁹ (emphasis added). It cites Act No. 60-2019, which created the zones.

In February 2020, Hispanic Federation endorsed the public comments made by **Movimiento de Vivienda Digna** (Dignified Housing Movement) on the implementation of Opportunity Zones in Puerto Rico and the Regulation to implement the provisions of Sections 6070.54-6070.69 of Act No. 60-2019, known as the “Puerto Rico Incentive Code Act;” these comments were presented before the Department of Economic Development and Commerce. Among other things, the comments discuss the following deficiencies with respect to the implementation of the Opportunity Zones:

“Ninety-five percent (95%) of Puerto Rico is designated an Opportunity Zone according to federal criteria. This designation evidently fails to prioritize the allocation of investments to where they are most needed in the country. On the contrary, this designation guarantees the distribution of incentives to places that are presently not experiencing economic depression at all.”¹⁰

“The opportunity zones legislation does not establish mechanisms of transparency and participation that respect the rights and interests of impacted communities. Quite the opposite, as legislated, the list of priority projects is determined behind closed doors by the Committee for Priority Projects appointed by the Office of the Governor, which does not have to comply with the Administrative Procedure Act (LPAU).”¹¹

⁹ CDBG-MIT Action Plan, to page 311.

¹⁰ See the public comments made by **Movimiento de Vivienda Digna** on the implementation of Opportunity Zones in Puerto Rico and the Regulation to implement the provisions of Sections 6070.54-6070.69 of Act No. 60-2019, known as the “Puerto Rico Incentive Code Act,” presented before the Department of Economic Development and Commerce in February, 2020.

¹¹ Id.

“Additionally, the law stipulates a fast track mechanism for approving permits for these projects with the PR Permit Management Office (OGPe). Again, this inhibits transparency and public engagement.”¹²

For this reason, we request that the Department of Housing recognize the deficiencies of the Opportunity Zones and that it refrains from supporting their implementation until said deficiencies are corrected by the legislature through a transparent, participatory process.

h. Resilient Community Energy and Water Facilities Program

We endorse prioritizing this program, as long as it focuses on strengthening resilience in low to moderate income communities that are facing major difficulties with electric energy service, such as, for example, those that were the last to have their service restored after Hurricane María, as well as the communities with Non-PRASA water systems needing improvement or compliance.

Additionally, Hispanic Federation recommends:

- Using the funds for implementing decentralized rooftop solar energy systems with batteries that can operate during emergencies to provide the minimum energy needed to preserve life.
- Using equipment certified by PREPA for net metering, but leaving it at the discretion of the beneficiary.
- Creating ways or alternatives to cover all solar system costs in cases where: (1) the applicant is from a low to moderate socioeconomic level; (2) truly needs the energy system; and (3) shows proof that they cannot pay or finance the 25% matching funds required by the agency. For this, a fair and objective evaluation process must be established to adequately prioritize the cases that merit total coverage of the cost. For example, cases in which ventilators are needed to sustain life and it is not economically possible to cover the required 25% of the cost.
- Giving priority to people whose life depends on machines such as ventilators or similar equipment.
- The Department of Housing must offer the **technical assistance and training** needed for communities to develop and implement the maintenance plans required for these projects. Such assistance will promote the sustainability of the investment long-term, and will comply with the effective use of public funds.
- In addition, support funds should be allocated for long-term maintenance of equipment, as required by project maintenance plans.

¹² Id.

Conclusion

The process of developing the CDBG-MIT Action Plan offers the Department of Housing an opportunity to improve the public policies adopted by said plan. We hope that the above comments are helpful in this respect.

Sincerely,

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