



March 17, 2022

Secretary Marcia L. Fudge
U.S. Department of Housing and Urban Development

Secretary William O. Rodríguez
Puerto Rico Department of Housing

Via email

Re: Ayuda Legal Puerto Rico's stance on PRDOH Citizen Advisory Committee

In 2018, Ayuda Legal Puerto Rico convened advocacy efforts from organizations and communities to seek equitable access, zero displacements, and genuine participation concerning CDBG-DR funds. The appointment of a civilian oversight committee was one of our first demands; one grounded on acknowledging effective and consistent participation as a pillar of just recovery. The Puerto Rico Department of Housing (PRDOH) refused to establish regional councils with the power to present recommendations, influence and oversee recovery, disregarding stakeholder demands.

Eventually, PRDOH created what is now called the Citizen Advisory Committee (CAC). As regulated in its Operational Guide, the CAC does not meet the public participation objectives set forth in the HUD CDBG-MIT allocation notice.¹ In spite of multiple attempts to engage with PRDOH on this issue, as it currently stands, the CAC divests possibilities of real civic engagement by barely complying with minimum outreach standards.

¹ 48 FR 45853

Our position is that the PRDOH has failed to convene a public engagement committee compliant to the applicable allocation notices and to stakeholder demands. At this moment and under current conditions, **Ayuda Legal Puerto Rico cannot accept membership or take part in the CAC as it stands.**

We believe the success of recovery processes is directly related to the power people and communities have to influence and engage in resilience building. The recently published Citizen Participation & Equitable Engagement Toolkit (CPEE), created by HUD, supports our opposition. The toolkit materials recognize that grantees "advance equity in disaster recovery by actively involving people who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality in their own recovery, and prioritizing their needs throughout planning and implementation."² HUD also included in the allocation notice an obligation to promote public participation based on the acknowledgement that those recovering from disasters are best suited to ensure grantees are informed of missed opportunities and additional risks that need to be addressed.³ Ayuda Legal Puerto Rico and several other stakeholders in Puerto Rico and abroad, have consistently advocated for equitable access to recovery funds, displacement minimization and real participation. The experiences, knowledge, and active input of communities are essential to these goals.

The state of recovery in Puerto Rico is painstakingly precarious. Only 2,090 homes have been repaired and 548 rebuilt. As of February 15, 2022, out of 873 relocation vouchers granted, only 43 individuals have been able to obtain a house. Advocacy demands in regards to title, the rights of informal owners who need and want to be relocated, the rights of families with mortgages, the urgency to establish priority groups and to answer determinations according to a coherent and clear procedure, as well as the demand to establish a regional advisory committees, were rejected by the PRDOH for months and sometimes years. Without a system that holds the PRDOH accountable, PRDOH has had space to neglect, arbitrarily refuse to adopt, and disregard serious and documented concerns about the progress of programs, the role of contractors, and the need to comply with non-discrimination federal policy.

² HUD, Citizen Participation & Equitable Engagement Toolkit, available at <https://www.hudexchange.info/programs/cdbg-dr/cpee-toolkit/introduction/>

³ 84 FR 45852 del 30 de agosto del 2019.

People, actual families that are awaiting assistance almost five years after Hurricane María, have suffered the consequences directly.

As we have stated on several occasions, acknowledging the role of a community oversight committee, with regional branches, is feasible and necessary to achieve “increased transparency”, as intended by HUD⁴. This letter gathers and updates some of the main recommendations we have presented to the PRDOH since June 2018.

I. We need guidelines that define the agency of the CAC

While only the grantee has decision making authority over recovery funds, the particular situation of Puerto Rico demands effective and broad public engagement to guarantee principles of equity and efficiency in the management of recovery funds. Challenges and even misuse in the management of funds, by local and federal authorities, as well as the political status of Puerto Rico, require nurturing the oversight and accountability structure of recovery with real and effective participation.⁵

The Hurricanes Irma and Maria recovery process has already been marked by a lack of oversight. Just this February, the Department of Homeland Security’s Office Of Inspector General (OIG) published a report of their investigation into the FEMA Sheltering and Temporary Essential Power (STEP) Pilot Program following Hurricanes Irma and Maria in September 2017. The OIG found that “FEMA did not ensure Puerto Rico implemented the STEP Pilot Program on time or met initial or extended deadlines to access homes and start repairs”.⁶ Oversight is essential to ensure effective and fair recovery processes. The public should be part of that process.

⁴ 48 FR 45853

⁵ See generally HUD-OIG, *Review of HUD’s Disbursement of Grant Funds Appropriated for Disaster Recovery and Mitigation Activities in Puerto Rico*, available at https://www.hudoig.gov/sites/default/files/2021-04/HUD%20OIG%20Final%20Report_2019SU0089451.pdf; DHS-OIG, *FEMA Should Apply Lessons Learned from the STEP Pilot Program Implementation in Puerto Rico to Future Programs*, OIG-22-25, available at: <https://www.oig.dhs.gov/sites/default/files/assets/2022-02/OIG-22-25-Feb22.pdf>; DHS-OIG, *Hurricane Maria*, <https://www.oig.dhs.gov/taxonomy/term/813> (compiling DHS-OIG reports)

⁶ DHS-OIG, OIG-22-25, *supra* note 5.

Further, the PRDOH must allow for direct influence in the planning and implementation of programs subsidized with CDBG-DR and MIT funds.

It has never been the prerogative of the organizations on the CAC to assume the power to make decisions regarding hiring, determining the eligibility of applicants, or other elements. However, nothing prevents PRDOH from involving, collaborating with, or delegating certain aspects of the decision-making process to the CAC.

CAC guidelines should recognize the ability of this committee to inform, recommend and monitor decisions related to recovery. The PRDOH must acknowledge the CAC capacity to:

- Select at least half of the Board of Directors by direct vote, ensuring regional representation of local stakeholders, instead of leaving the selection of all members of the Board to the PRDOH Secretary's sole discretion.
- Request and participate in preparing guides and other documentation related to the management of recovery funds, including program guidelines, and not just submit comments without an official comment and response period.
- Request and participate in the monitoring and auditing of contracted companies and sub-recipients, which should be made public and accessible.
- Influence and participate in designing and implementing community outreach strategies from the earliest stages of the process.
- Obtain responses to comments, suggestions, and proposals, as well as the basis for the determinations, especially when the PRDOH does not adopt the Committee's proposals

On the other hand, we are concerned about the limited role the PRDOH has assigned to organizations in the CAC, such as: outreach for CDBG programs, data collection, and participation in promotional campaigns. Moreover, the CAC is required to report all their recovery-related activities to the PRDOH, regardless of whether they were CAC activities, in spite of the fact that the vast majority of the CAC organizations do not receive and - like Ayuda Legal Puerto Rico - have not requested CDBG funding. The PRDOH has a non-delegable duty to conduct community outreach related to programs as well as to sustain data collection efforts. The general public and agencies concerned with the oversight of these funds must not be misled into thinking that PRDOH promotes independent activities that local stakeholders carry out.

The Puerto Rico Mitigation Plan for the Mitigation Community Development Block Grant Program (CDBG-MIT) seems to assign the Committee specific functions that

exceed those in PRDOH guidelines. For example, the CDBG-MIT Plan provides that “CAC and eligible R3 applicants will be engaged through a participative planning process to identify these projects and discuss potential options to minimize the displacement of housing applicants under both CDBG-DR and CDBG-MIT”.⁷ This fundamental work of minimizing displacement cannot be done with an ineffective CAC.

According to the Citizen Participation and Equitable Engagement Toolkit, HUD calls for every grantee’s public participation team to have a fundamental understanding of the following participation principles: Opportunity for influence, commitment to input, inclusiveness, relationship-building and transparency.⁸ This understanding can and should be aligned with leadership training on diversity, equity and inclusion principles to ensure that they are at the core of the planning and implementation of the project.

II. The PRDOH should enable regional councils with real participation and community input

On January 20, 2021, President Joseph Biden issued an Executive Order with the intention to “advance equity for all including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” What’s more, the Executive Order defines “underserved communities” as populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to **participate in aspects of economic, social, and civic life.**

Under Section 8 of the measure, President Biden orders the agencies to consult with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination in, Federal policies and programs and pushes for the coordination, communication, and engagement with community-based organizations and civil rights organizations.⁹

⁷ PRDOH, Puerto Rico Mitigation Plan, Community Development Block Grant - Mitigation (CDBG-MIT), April 19, 2021, at p. 329.

⁸ HUD Citizen Participation & Equitable Engagement Toolkit, Public Participation Foundational Skills Capacity Matrix, at p. 2, available at: <https://files.hudexchange.info/resources/documents/CPEE-Toolkit-Public-Participation-Foundational-Skills-Capacity-Matrix.pdf>

⁹ E.O. 13985 of Jan 20, 2021, available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

The Order echoes the Federal Register's notice on CDBG-MIT grantees to form one or more citizen advisory committees in order to provide increased transparency in the implementation of CDBG-MIT funds, to solicit and respond to public comment and input regarding the grantee's mitigation activities and to serve as an on-going public forum to continuously inform the grantee's CDBG-MIT projects and programs.¹⁰

Due to the nature of Puerto Rico's topography, lack of access to transportation, and high volume of elderly adults, and people with disabilities, the PRDOH must enable the creation of regional councils that address the community's specific needs through community consensus and effective participation. Because disasters don't impact everyone equally, thus affecting underrepresented communities disproportionately, such as women, immigrants, BIPOC, and the elderly, HUD can oversee the PRDOH's take on public participation so that the language included in the allocation fund as well as in the Executive Order translates into effective policy changes and actionable demands.

III. The CAC needs an impartial facilitator

The structure of the CAC must include an independent facilitator. HUD has identified this as a good practice in training on citizen participation and CDBG-MIT.¹¹ As one of the foundational skills under HUD's criteria of Public Participation, a neutral facilitator should work cooperatively with the managers and leaders to design and implement credible processes.¹²

On several occasions, Ayuda Legal Puerto Rico has raised concerns regarding the capacity of the PRDOH, through its staff, to be the sole facilitator of CAC meetings. Participation and feedback, particularly negative feedback, may be limited by the fact that PRDOH staff is controlling the discussion, interrupting community stakeholders, and interrupting the discussion to clarify, promote or emphasize on the PRDOH's agenda. Accountability, oversight and real input are difficult under these

¹⁰ 48 FR 45853

¹¹ HUD Office of Block Grant Assistance (OBGA) Disaster Recovery and Special Issues Division (DRSI), in partnership with Enterprise Community Partners, *CDBG-MIT Webinar - Public Participation & Citizen Advisory Groups - Requirements & Best Practices*, <https://www.hudexchange.info/trainings/courses/cdbg-mit-webinar-public-participation-citizen-action-group-requirements-best-practices/>

¹² HUD Citizen Participation & Equitable Engagement Toolkit, Public Participation Foundational Skills Capacity Matrix, *supra* note 8.f

conditions. Any community advisory committee needs the ability to hold these relationships accountable and request an independent facilitator.

Regardless of their capacity or good intentions, PRDOH employees comply with their job duty to represent their employers. Employees are or can be perceived to be biased in favor of PRDOH. This bias creates a lack of trust in the process and may have a chilling effect on participation. An independent facilitator will have more tools to coordinate the agenda and manage the space for discussion equitably. For obvious reasons, the involvement of the PRDOH is essential in this space. However, the agency must just be a participant, not a facilitator, in the group.

As it stands, the CAC is not an appropriate tool to channel participation and oversight and we must decline to be part of it. Nevertheless, we are still confident that a better advisory committee and real participation are possible.

Cordially,

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