



October 10, 2020

Hon. Luis Carlos Fernández Trinchet  
Secretary  
Puerto Rico Department of Housing  
PO Box 363188  
San Juan, PR 00936-3188  
[infoCDBG@vivienda.pr.gov](mailto:infoCDBG@vivienda.pr.gov)

**Re: Hispanic Federation's Comments on the Fifth Substantial Amendment to the Action Plan for the use of CDBG-DR funds**

Dear Secretary Fernández Trinchet:

On September 10, 2020, the Puerto Rico Department of Housing (Department of Housing) published the Action Plan Amendment Five (Substantial Amendment) for the use of CDBG-DR funds in response to Hurricanes Irma and María, hereinafter referred to as "Action Plan."<sup>1</sup> The Hispanic Federation is hereby submitting its timely comments on the amendment.

**Hispanic Federation**<sup>2</sup> is a non-profit organization founded in 1990 in the State of New York, 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 the 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 that were established after Hurricane María.

---

<sup>1</sup> See, "Action Plan Amendment Five (Substantial Amendment) for the use of CDBG-DR funds in response to Hurricanes Irma and María," Puerto Rico Department of Housing, [https://www.cdbg-dr.pr.gov/en/download/action-plan-amendment-5-substantial-amendment/?ind=1599767012369&filename=Action%20Plan%20Amendment%205\\_Substantial\\_EN%20\(DRAFT%20FOR%20PUBLIC%20COMMENT\).pdf&wpdmdl=13941&refresh=5f7b109846f001601900696](https://www.cdbg-dr.pr.gov/en/download/action-plan-amendment-5-substantial-amendment/?ind=1599767012369&filename=Action%20Plan%20Amendment%205_Substantial_EN%20(DRAFT%20FOR%20PUBLIC%20COMMENT).pdf&wpdmdl=13941&refresh=5f7b109846f001601900696)

<sup>2</sup>Hispanic Federation, [https://hispanicfederation.org/about/mission\\_and\\_history/](https://hispanicfederation.org/about/mission_and_history/)

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. In the area of housing, it has allocated a budget of over \$4 million for initiatives including, but not limited to, reconstruction, community legal services, and advocacy. We are also members of **Movimiento de Vivienda Digna (MVD)**. This group of over twenty non-profit and community organizations has developed different work groups to address punctual housing issues, including the topic of CDBG-DR funds.

The third sector and the communities are hoping to play an important role in developing and designing the future of Puerto Rico under the guidance of its people, especially during the process of economic planning and development that will make recovery possible. With respect to housing, Hispanic Federation promotes a holistic public policy that recognizes and protects the fundamental right to safe, decent, and affordable housing of communities in Puerto Rico. Specifically, the right to dignified housing requires access to basic services such as shelter, water, electric power, education, and health, among others. Hispanic Federation is also committed to defending the basic principles of justice, transparency, genuine citizen participation, sustainability, and the protection of fundamental rights.

#### I- **Summary of the Hispanic Federation's comments to the Action Plan in 2018.**

On October 19, 2018, Hispanic Federation submitted its first comments on the Action Plan. Among other things, HF explained that, in the absence of a comprehensive public policy with respect to housing in Puerto Rico, it is imperative to not only elaborate policy for this effort, but also to develop legislative strategies that will address issues at the root. These issues include: disparities in the need for affordable housing vs. market supply, gentrification, urban sprawl, the real estate bubble, inequality, and the proliferation of abandoned properties. Temporary or mitigation measures taken as part of this plan will thus be supplemented by comprehensive long-term measures.

Hispanic Federation recommended then, and reiterates today, the following:

1. To clearly motivate—through the appropriate programs—the re-development of housing in urban centers, using the large inventory of currently vacant, abandoned, and unused units;
2. To value the real need over factors such as profitability analyses, cost-effectiveness, or the presence of leveraged funds in projects designed before the disasters;
3. To create a more aggressive agenda with respect to affordable housing, going beyond the distribution of Section 8 vouchers to include public housing

initiatives, rent control, use of public land for affordable housing, and introducing affordability requirements in new construction or rehabilitation projects in urban contexts, among other measures that have already been identified by research institutions and expert groups in urban design.

4. To clearly demonstrate in accessible, transparent ways and with the use of the best data available, the response to populations most impacted by the disasters, as required by the Stafford Disaster Relief and Emergency Assistance Act (hereinafter, "the Stafford Act");
5. To ensure the inclusion of the general public at all levels and in all decision-making processes.

- II- **Summary of the Hispanic Federation's comments on the Fourth Substantial amendment to the Action Plan; summary of the Department of Housing's response to said comments; and update of the Hispanic Federation's comments to be considered for the Fifth Substantial Amendment.**

## RECOMMENDATIONS FOR SPECIFIC PROGRAMS

### HOUSING

#### Title Clearance Program

1. It was incorrect to condition access to available aid through a local (not federal) property title requirement.
  - o **DEPARTMENT OF HOUSING RESPONSE:** *In its guidelines, the Homeowner Repair, Reconstruction or Relocation Program (R3) has established alternative methods for people who do not have a clear title. The Department of Housing understands that many people do not have formal ownership documentation. To ensure that the lack of such documentation does not affect assistance under the R3 Program, the program has been designed with flexibility in terms of evaluating ownership documents. In no way is an applicant required to submit formal ownership documents to be declared eligible. However, in order to accommodate and assist applicants who do not possess formal ownership documents, the Department has created the Title Clearance Program. Each R3 applicant who submits informal documents as proof of ownership is automatically referred to the Title Clearance Program, once it is determined that they are initially eligible for R3. Title clearance services are provided without cost in the majority of cases. The Title Clearance Program Guidelines are available at [www.cdbg-dr.pr.gov](http://www.cdbg-dr.pr.gov) in both English and Spanish. These Guidelines provide a detailed description of the services available to applicants. **The Title Clearance Program is necessary in order to properly authorize and receive permits***

*for the homes constructed by R3, in compliance with the Joint Regulation for the Evaluation and Issuance of Permits Related to Development, Land Use, and Business Operations (Regulation No. 9081 of June 7, 2019)."* (Emphasis added).<sup>3</sup>

- UPDATE ON THE COMMENT BY HISPANIC FEDERATION: Executive Order 2020-063,<sup>4</sup> among other things, establishes that "it is imperative to increase the flexibility of the requirements established under the Joint Regulation in order to expedite reconstruction processes in the R3 Program." Consequently, the executive order recognizes that "to comply with the active authentication requirement, it is sufficient to submit an Ownership Certification including the length of time the applicant lived in the property impacted by the disaster and an explanation of the circumstances preventing a standard verification of ownership. The Ownership Certification shall certify that one of the following circumstances applies: (1) there are no other natural or legal persons who have the right to claim ownership; (2) any additional natural or legal persons who have the right to claim ownership have also agreed to participate jointly as co-applicants in the R3 Program; or (3) any additional natural or legal persons who have the right to claim ownership could not be located after reasonable attempts to contact them. The Ownership Certification will release the Department of Housing and the OGPe from any claim arising with respect to the property."<sup>5</sup>

On December 17, 2020, the Department of Housing adopted the eighth version of the Homeowner Repair, Reconstruction or Relocation Program (R3) Guidelines<sup>6</sup> to acknowledge the **Ownership Certification** created under the executive order. **However, Section 6.2.1 of the Guidelines requires that the certification be accompanied by additional documents, which are not required by the executive order.** Specifically, the section establishes that "... the Ownership Certifications must be accompanied

---

<sup>3</sup> APA4 Public Comments, page 163.

[https://www.cdbg-dr.pr.gov/download/borrador-revisado-sometido-a-hud-para-evaluacion-y-aprobacion-final/?ind=1594482527315&filename=1-A\\_Public%20Comments%20and%20Responses\\_ES.pdf&wpdmdl=12322&refresh=5f7b96bfafcf21601935039](https://www.cdbg-dr.pr.gov/download/borrador-revisado-sometido-a-hud-para-evaluacion-y-aprobacion-final/?ind=1594482527315&filename=1-A_Public%20Comments%20and%20Responses_ES.pdf&wpdmdl=12322&refresh=5f7b96bfafcf21601935039)

<sup>4</sup> EO-2020-063 of August 20, 2020,

<https://noticiasmicrojuris.files.wordpress.com/2020/08/oe-2020-063.pdf>

<sup>5</sup> *Id.*

<sup>6</sup> R3 Program Guidelines (V.8), page 20,

[https://cdbg-dr.pr.gov/download/programa-de-reparacion-reconstruccion-o-reubicacion/?ind=1600963463286&filename=HSN\\_R3\\_Guidelines\\_Program%20Guidelines\\_v8.pdf&wpdmdl=6380&refresh=5f7b98689e0951601935464](https://cdbg-dr.pr.gov/download/programa-de-reparacion-reconstruccion-o-reubicacion/?ind=1600963463286&filename=HSN_R3_Guidelines_Program%20Guidelines_v8.pdf&wpdmdl=6380&refresh=5f7b98689e0951601935464)

by alternative forms of ownership documentation. Documents that will be considered include, but are not limited to:

- Probated Will or a Will accompanied by a Certificate of Validity;
- Proof of inheritance;
- Declaratory resolution of heirs;
- Court Order or Judgment granting title or any ownership interest in the property;
- Divorce decree granting an ownership interest in the property;
- Private Contract for Sale: If the applicant purchased the property in a private owner sale the contract must be confirmed as satisfied with additional supporting documentation;
- Evidence of usufruct contract;
- Evidence of 99-year lease;
- Proof of “right of use or enjoyment” and/or “right of construction” in accordance with applicable laws and regulations;
- Death Certificate of the homeowner or birth certificate (to prove that Applicant is an offspring of a deceased homeowner);
- Marriage certificate;
- If the owner of the hurricane-impacted structure died after September 20, 2017, the owner’s heir/s may meet ownership requirements provided that the heir/s can provide proof of heirship and a Death Certificate for the deceased owner;
- FEMA correspondence to the applicant demonstrating the applicant applied for and received FEMA Individual Assistance for damaged property;
- Mortgage payment book or other mortgage documents;
- Real property/Home insurance policy indicating damaged property’s address;
- Account statement issued by the Municipal Revenue Collection Center (CRIM, for its Spanish acronym); and/or
- Any other documents will be considered on a case-by-case basis.”<sup>7</sup>

Hispanic Federation requests that, at the very least, the Department of Housing amend the Action Plan and the guidelines of the Homeowner Repair, Reconstruction or Relocation Program (R3) in order to comply with the provisions of the Executive Order, without adding other requirements that would void the purpose of making the active authentication requirements of the Joint Regulation more flexible. This is what the emergency situation calls for, given the thousands of people who, over three years after the disaster, are still deprived of a dignified place to live.

---

<sup>7</sup> *Id.*

The R3 Program Guidelines also specify that the Ownership Certification will only be used to “is to satisfy the referred Standing requirement, during permit transactions, in order for construction permits to move forward.”<sup>8</sup> They add that “those applicants that proceed to permitting by signing an Ownership Certification **must continue the process to clear their title through the Title Clearance Program**. The applicant must make all reasonable efforts to cooperate in the process of obtaining a clear title.”<sup>9</sup> Also, the **Department of Housing fails to clarify if access to assistance will always be conditioned to having a property title when it admits the following:** “In those cases where applicants signed an Ownership Certification and evidenced an ownership interest in the property during the permit process, but were nevertheless unable to obtain a clear title due to circumstances beyond their control, they will be considered by the Department on a case-by-case basis.” **For the above reasons, the Hispanic Federation reiterates its original comment.**

2. In those cases where they do obtain property titles, **the government should expressly commit to refraining from expropriating property or displacing the community.**
  - **DEPARTMENT OF HOUSING RESPONSE:** *“The Department of Housing has adopted policies to minimize displacement, in accordance with the goals and objectives of aid activities under the HCDA Act. These policies are included and published in the “Guía sobre Asistencia Uniforme de Reubicación & Plan de Relocalización y Antidesplazamiento Residencial del Departamento de la Vivienda de Puerto Rico” (Guidelines on the Residential Anti-displacement and Relocation Assistance Plan of the Puerto Rico Department of Housing).*<sup>10</sup>
  - **UPDATE ON THE COMMENT BY HISPANIC FEDERATION:** After reviewing the Guidelines on the Residential Anti-displacement and Relocation Assistance Plan of the Puerto Rico Department of Housing,<sup>11</sup>

---

<sup>8</sup> *Id.*, page. 66.

<sup>9</sup> *Id.*

<sup>10</sup> APA4 Public Comments, page 163.

[https://www.cdbg-dr.pr.gov/download/borrador-revisado-sometido-a-hud-para-evaluacion-y-aprobacion-final/?ind=1594482527315&filename=1-A\\_Public%20Comments%20and%20Responses\\_ES.pdf&wpdmdl=12322&refresh=5f7b96bfafcf21601935039](https://www.cdbg-dr.pr.gov/download/borrador-revisado-sometido-a-hud-para-evaluacion-y-aprobacion-final/?ind=1594482527315&filename=1-A_Public%20Comments%20and%20Responses_ES.pdf&wpdmdl=12322&refresh=5f7b96bfafcf21601935039)

<sup>11</sup> “Guía sobre Asistencia Uniforme de Reubicación & Plan de Relocalización y Antidesplazamiento Residencial del Departamento de la Vivienda de Puerto Rico,

we found no express commitment on the part of the government to refrain from expropriating in those cases where property titles are obtained through the Title Clearance Program; therefore, Hispanic Federation is reiterating its original comment.

### Homeowner Repair, Reconstruction or Relocation Program (R3)

3. We are concerned about the uncertainties applicants in this program are exposed to.<sup>12</sup>
  - DEPARTMENT OF HOUSING RESPONSE: Not addressed in the APA4 Public Comments.
  - UPDATE ON THE COMMENT BY HISPANIC FEDERATION: On June 18, 2020, the governor of Puerto Rico, Hon. Wanda Vázquez Garced, presented her state of the country and budget public message. With respect to the R3 Program, the governor committed to working with 300 to 400 housing units per month. Subsequently, on July 20, 2020, the Hispanic Federation and twenty-four (24) signing organizations sent a letter to the Department of Housing requesting the monthly publication of specific information about the number of housing units addressed under the program.

On August 11, 2020, we received a response from the Department of Housing stating, among other information, that there were 313 homes in the process of construction and 43 completed homes. Additionally, the Department of Housing confirmed that it would join efforts to create a dashboard to publish more precise and clear information about the implementation of the R3 Program. However, to date, said platform does not exist.

For this reason, Hispanic Federation reiterates its original comment and once again requests the Department of Housing to create a dashboard in order to publish the following information on a monthly basis:

#### APPLICATIONS IN GENERAL

- Number of **applications submitted**, by municipality.
- Number of **applications approved**, by municipality.

---

<https://www.cdbg-dr.pr.gov/download/guias-ura-adp/?wpdmdl=9454&refresh=5f7bc741ee3c51601947457>

<sup>12</sup> NotiCel.com - [En el limbo programa que atendería las viviendas afectadas por María \[In limbo: program meant to address housing impacted by María\]](#)

- Number of **applications rejected**, by municipality.
- Number of **applications referred to the Title Clearance Program** before being able to obtain aid through the R3 Program, by municipality.
- Number of homes where repair, reconstruction, or relocation has **been initiated**, by municipality.
- Number of homes where repair, reconstruction, or relocation has **been completed**, by municipality.
- Number of homes **repaired**, by municipality.
- Number of homes **reconstructed**, by municipality.
- Number of **families relocated**, by municipality.
- Number of **families with homes in high-risk zones that have been relocated**, by municipality.
- **Mitigation plans considered** for high-risk zones, by municipality.

#### APPLICATIONS FOR HOMES WITH BLUE TARPS

- Number of homes with blue tarps, per municipality.
- Number of homes with blue tarps with **applications** for assistance under the R3 Program, by municipality.
- Number of applications **approved** for homes with blue tarps.
- Number of applications **rejected** for homes with blue tarps.
- Number of homes with blue tarps **referred to the Title Clearance Program** before being able to obtain aid through the R3 Program, by municipality.
- Number of homes with blue tarps where repair, reconstruction, or relocation has **been initiated**, by municipality.
- Number of homes with blue tarps where repair, reconstruction, or relocation has **been completed**, by municipality.

#### APPLICATIONS FOR HOMES WITH VULNERABLE OR HIGH-RISK RESIDENTS

- Number of applications for homes with vulnerable or high-risk residents with **applications** for assistance under the R3 program, by municipality.
- Number of applications **approved** for homes with vulnerable or high-risk residents.
- Number of applications **rejected** for homes with vulnerable or high-risk residents.
- Number of homes with vulnerable or high-risk residents **referred to the Title Clearance Program** before being able to obtain aid through the R3 Program, by municipality.



- Number of homes with vulnerable or high-risk residents where repair, reconstruction, or relocation has **been initiated**, by municipality.
  - Number of homes with vulnerable or high-risk residents where repair, reconstruction, or relocation has **been completed**, by municipality.
4. Similarly, the great number of contracts issued for the promotion of a program that filled up just a few days after being announced due to urgent need for services has yet to be justified.
- **DEPARTMENT OF HOUSING RESPONSE:** Not addressed in the APA4 Public Comments.
  - **HISPANIC FEDERATION REITERATES ITS ORIGINAL COMMENT**
5. Communities should not be experiencing any kind of pressure of displacement, either real or perceived. The way in which the R3 Program has defined requirements to access resources (i.e., estimated damage, property appraisal, risk zone designation) substantially limits the options for many people who are still living under unacceptable housing conditions. These limitations should not be confused with voluntary decisions to relocate.

For example, the program establishes that if the estimated damage to the property exceeds \$60,000, or 50% of the property value, and it is located in a flood zone, the only option is to relocate. This general rule threatens families whose homes have the least market value, since the lower the value of the home, the greater the chance that the damages exceed 50% of the value. Furthermore, the only alternative offered by the program for these individuals or families will be relocation, which is evidently **not a voluntary decision** if the individual or family does not have the money to reconstruct and remain in their home and/or community.

- **DEPARTMENT OF HOUSING RESPONSE:** *“The Department of Housing has adopted policies to minimize displacement, in accordance with the goals and objectives of aid activities under the HCDA Act. These policies are included and published in “Guía sobre Asistencia Uniforme de Reubicación & Plan de Relocalización y Antidesplazamiento Residencial del Departamento de la Vivienda de Puerto Rico.” (Guidelines on the Residential Anti-displacement and Relocation Assistance Plan of the Puerto Rico Department of Housing).<sup>13</sup>*

---

<sup>13</sup> APA4 Public Comments, page 163.

<https://www.cdbg-dr.pr.gov/download/borrador-revisado-sometido-a-hud-para-evaluacion-y-aprobacion-final/?ind=1594482527315&filename=1->

- HISPANIC FEDERATION REITERATES ITS ORIGINAL COMMENT

6. The alternative of reconstructing in high-risk zones should be responsibly evaluated on a case-by-case basis at the community level. The families' safety is fundamental; but relocation is not always the only alternative in order to have safety. Survivors and their communities should be familiar with the mitigation alternatives developed in the Municipal Mitigation Plans, the State Mitigation Plan, and/or the mitigation projects included in these plans. In fact, communities should be encouraged to participate in the process of design, evaluation, and implementation of such plans. In addition, the **Whole Community Resilience Planning Program** should consider such mitigation plans and allow communities to directly participate in their development and implementation.

Once survivors learn about the mitigation alternatives in their communities, they will have the complete and objective information needed to **voluntarily** decide whether to stay (rehabilitate or reconstruct) or relocate. Until such mitigation alternatives can be responsibly evaluated, the Department of Housing cannot impose home relocation as the only alternative in high-risk zones.

- **DEPARTMENT OF HOUSING RESPONSE:** *"Future programs, including those to be financed through the allocation of mitigation funds (CDBG-MIT), will be able to consider additional approaches to the issue of reconstruction in risk zones. The Department of Housing acknowledges that planning mitigation activities is a collective effort. The Action Plan for CDBG-MIT funds will be part of the citizen participation processes to ensure that communities and the public at large have the opportunity to evaluate and propose mitigation measures."*<sup>14</sup>
- **UPDATE ON THE COMMENT BY HISPANIC FEDERATION:** The Department of Housing has made certain public commitments related to considering mitigation alternatives in risk zones. Besides its response to this comment, the eighth version of the R3 Program Guidelines establishes the following: "Participants who are awarded relocation, but who do not wish to relocate immediately, may defer accepting the R3

---

[A\\_Public%20Comments%20and%20Responses\\_ES.pdf&wpdmdl=12322&refresh=5f7b96bfafcf21601935039](#)

<sup>14</sup> APA4 Public Comments, page 164.

<https://www.cdbg-dr.pr.gov/download/borrador-revisado-sometido-a-hud-para-evaluacion-y-aprobacion-final/?ind=1594482527315&filename=1->

[A\\_Public%20Comments%20and%20Responses\\_ES.pdf&wpdmdl=12322&refresh=5f7b96bfafcf21601935039](#)

Program award to allow for the participative development of a housing mitigation program under the CDBG-Mitigation (CDBG-MIT) Program. Applicants who opt to defer acceptance of a relocation award from the CDBG-DR R3 Program to participate in a forthcoming housing mitigation program will remain on hold in the CDBG-DR R3 Program until such time as the Housing Mitigation Program is established under CDBG-MIT.”<sup>15</sup>

However, this amendment to the guidelines does not clarify how the applicant's need for temporary housing will be addressed while their R3 Program grant is kept on hold in order to evaluate mitigation alternatives. Nor is the reconstruction ban in these zones eliminated once risk mitigation measures are developed. For these reasons, **Hispanic Federation requests that the Department of Housing address the need for temporary housing of those applicants who wish to remain in their communities while mitigation alternatives are evaluated. Furthermore, the Department of Housing should expressly clarify if, in cases where risk zones are successfully mitigated, reconstruction will be allowed instead of relocation.**

7. Moreover, this program does not effectively address the reality of people who lack a property title. **It is not clear whether it will finally be necessary to obtain the property title in order to access program benefits.** As we have expressed, it is incorrect to condition the receipt of available aid to having a property title.
  - DEPARTMENT OF HOUSING RESPONSE: Please refer to the discussion on comment number one (1) by Hispanic Federation in this section, pages 3-6 of this document.
  - UPDATE ON THE COMMENT BY HISPANIC FEDERATION: Please refer to the discussion on comment number one (1) by Hispanic Federation in this section, pages 3-6 of this document.

## **NEW COMMENTS BY HISPANIC FEDERATION ON HOUSING PROGRAMS FOR THE FIFTH SUBSTANTIAL AMENDMENT**

### **Resilient Community Energy and Water Facilities Program**

8. We agree that the negative effects caused by Hurricanes Irma and María were catastrophic for communities in Puerto Rico and that the situation has not

---

<sup>15</sup> R3 Program Guidelines (V.8), pages 71-72.

[https://cdbg-dr.pr.gov/download/programa-de-reparacion-reconstruccion-o-reubicacion/?ind=1600963463286&filename=HSN\\_R3\\_Guidelines\\_Program%20Guidelines\\_v8.pdf&wpdmdl=6380&refresh=5f7b98689e0951601935464](https://cdbg-dr.pr.gov/download/programa-de-reparacion-reconstruccion-o-reubicacion/?ind=1600963463286&filename=HSN_R3_Guidelines_Program%20Guidelines_v8.pdf&wpdmdl=6380&refresh=5f7b98689e0951601935464)

improved in the subsequent three years. However, we need to emphasize that not everyone in Puerto Rico felt the same effects. For this reason, it is extremely important that the resilience programs created take into consideration the most vulnerable populations in order to attain social justice. Consequently, **Hispanic Federation recommends:**

- To begin implementing the program as soon as possible and to do so in the areas where the electric power system is most vulnerable—**especially those that were the last to be reconnected after Hurricane María.**
- 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 mechanisms to cover the **total cost** of solar systems for households of **low to moderate socioeconomic status.**
- Giving priority to people whose life depends on machines such as ventilators or similar equipment.

## PLANNING

### Whole Community Resilience Planning Program

9. This program offers an opportunity for communities located in high-risk zones, **if they so wish**, to remain in their communities instead of relocating, as we have already explained in the comments on the R3 Program. However, **program guidelines should be revised to include the recommendations for citizen participation** discussed further on in this document and a consideration of the mitigation projects contained in the Municipal Mitigation Plans and the State Mitigation Plan. Furthermore, the Department of Housing should **reallocate funds to implement, in addition to plan, specific community resilience projects developed by the communities themselves under this program.**
  - **DEPARTMENT OF HOUSING RESPONSE:** Not addressed in the APA4 Public Comments.
  - **UPDATE ON THE COMMENT BY HISPANIC FEDERATION:** On July 27, 2020, Hispanic Federation and a group of organizations asked the Department of Housing the following question: How do the mitigation projects under CDBG-MIT relate to the mitigation projects that should be planned with the communities under the Whole Community Resilience Planning Program of the CDBG-DR Action Plan? The Department of Housing responded: “We agree that planning efforts such as the Whole Community Resilience Planning Program (WCRP) and the Municipal

Recovery Planning Program (MRP) are valuable tools for communities and for identifying potential mitigation projects and activities. To the extent allowed by the timeline for CDBG-DR programs, the development of the CDBG-MIT Action Plan and its programs will include the valuable work that is presently carried out under CDBG-DR assisting in the alignment and identification of potential mitigation projects and activities. Although MRP and WCRP will continue to provide results in the course of the mitigation funds cycle, the Department will continue to align its CDBG-DR and CDBG-MIT-funded programs and projects, increasing the cooperative nature of those two grants.” However, there is no specific fund allocation to implement the projects developed with the communities under the Whole Community Resilience Planning Program. Therefore, the Hispanic Federation reiterates its original comment.

## ECONOMY

### Economic Development Investment Portfolio for Growth Program

10. In our October 2018 comments, we recommended establishing limits or **maximum allocations for projects and initiatives**, and this is one of the programs that move us to insist on that recommendation. This program has been allocated **\$880 million**—the greatest amount of money allocated to an economic program within the Action Plan. We reiterate that the program **should include maximum allocations for each project and initiative and should establish clear and equitable guidelines for the distribution of funds to respond to unmet needs in the communities, as required by the Stafford Act**. At the same time, we recommend a moratorium on the implementation of this program until such guidelines are established with the transparency and public participation they warrant.

- DEPARTMENT OF HOUSING RESPONSE: *“Once the Economic Development Investment Portfolio for Growth Program begins, additional information will be posted at <http://www.cdbg-dr.pr.gov>. Program details, including objectives and results, will also be published on the webpage.”*<sup>16</sup>
- HISPANIC FEDERATION REITERATES ITS ORIGINAL COMMENT

---

<sup>16</sup> APA4 Public Comments, page 164.

[https://www.cdbg-dr.pr.gov/download/borrador-revisado-sometido-a-hud-para-evaluacion-y-aprobacion-final/?ind=1594482527315&filename=1-A\\_Public%20Comments%20and%20Responses\\_ES.pdf&wpdmdl=12322&refresh=5f7b96bfafcf21601935039](https://www.cdbg-dr.pr.gov/download/borrador-revisado-sometido-a-hud-para-evaluacion-y-aprobacion-final/?ind=1594482527315&filename=1-A_Public%20Comments%20and%20Responses_ES.pdf&wpdmdl=12322&refresh=5f7b96bfafcf21601935039)

## Tourism and Business Marketing Program

11. In terms of the Tourism and Business Marketing Program, we recognize as a step in the right direction that its allocation has been reduced from \$100 to \$25 million. We request that the funds be invested in the quality, restoration, enhancement, and development of our local destinations, especially those that help preserve the environment, encourage endogenous development, and promote internal tourism.

- DEPARTMENT OF HOUSING RESPONSE: Not addressed in the APA4 Public Comments.
- HISPANIC FEDERATION REITERATES ITS ORIGINAL COMMENT

## NEW COMMENTS BY HISPANIC FEDERATION ON ECONOMIC PROGRAMS FOR THE FIFTH SUBSTANTIAL AMENDMENT

### Re-Grow PR Urban-Rural Agriculture Program

12. On August 14, 2020, the Department of Housing published the guidelines for the Re-Grow PR Urban-Rural Agriculture Program without a citizen participation process and only two weeks before the program was to begin accepting applications. For this reason, Hispanic Federation submits its recommendations in an effort to improve and facilitate **fair access** of these funds by the agricultural sector.

- The guidelines acknowledge that 75% of Puerto Rican farmers have annual sales of under \$10,000, so approximately 80% of our farmers are in grant TIER 1, which includes awards of \$25,000 to \$50,000. Thus, to ensure a fair distribution of funds that obeys the national objective of benefitting people with low to moderate income, **75% of the funds from this program should be assigned to small farm owners, who represent the majority of the agricultural sector.**
- A definition of small family farm in the context of Puerto Rico is needed, and those with a crucial need for these grants should be identified in a timely manner. 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.
- We recommend that the term “agricultural business” be replaced with farmer, producer, or fisherman. Specific instructions should also be issued for the fishing sector.

- **Provide and maximize technical assistance** to ensure that each farmer can complete the application process, including the business plan and the requirements to be met after the grant is issued.
- Increase flexibility in terms of the required documentation so that farmers can prove ownership or tenure of the land where they maintain production. This is similar to what has been requested for the R3 Program. In addition, amend the 15-year lease contract requirement and reduce such term so that it responds to the use of the grant and/or the harvest, if allowed under the regulatory framework.
- Increase flexibility in terms of the indicators for proving agricultural managerial experience or ability requirements, since there are farmers with vast experience who have never had an employer or formal studies. The following are possible indicators of agricultural experience:
  - An affidavit from the farmer explaining how he or she has gained their experience.
  - Certifications from customers who have consumed the applicant's product and can attest to the length of time they have consumed it.
  - Certifications from agricultural centers or other markets where the farmer buys equipment and supplies for farm operations. The certification could specify the length of time the farmer has been a customer.
  - Vouchers issued by the Department of Agriculture for the purchase of equipment and supplies.
  - Incentives received from other agencies or NGOs.
  - Farm registration with the Farm Service Agency
  - Registration as a bona fide farmer
  - Merchant registration as farmer or producer, or any other category related to agricultural activities
  - Certification of labor force or workers who have been involved in the farm's production
  - Certification of equipment and of the accounting and administration systems used at the farm
  - Inventory and equipment maintenance records
  - Records of sales and purchases
  - Proof of any marketing tool used to promote the sale of the farm's production
  - Certification from other farmers who know and can attest to the applicant's experience

- Membership in farmer associations and organizations who can attest to the farmer's work as an agricultural producer

The combination of two or more of these or other indicators can serve as proof of the applicant's agricultural managerial experience or ability.

- Eliminate the credit score requirement, since the island is experiencing an economic crisis intensified by hurricanes, earthquakes and the pandemic.
- Guarantee the inclusion of interested parties from the agricultural and fishing sector in amending the Program Guidelines, especially farmers and fishermen, thus ensuring that the program responds to the real needs of the sector.

## GENERAL RECOMMENDATIONS REITERATED BY HISPANIC FEDERATION IN THE FIFTH SUBSTANTIAL AMENDMENT

### Maximum allocations in all programs

We recommend maximum fund allocations for all programs by project or initiative in order to safeguard the responsible use of funds and the competitiveness of the local community organizations or entities when funds are assigned. This should apply even if funds are distributed through other agencies or entities. At a minimum, there should be guidelines or measures established to safeguard the best use of the funds when they are managed by other agencies, entities, or organizations.

### Recovery funds should stimulate the local economy

The Department of Housing should prioritize the selection of local organizations and institutions when allocating recovery funds so that investments remain in communities in Puerto Rico. Another priority is to find alternatives to the **reimbursement requirements** imposed by the programs, since local organizations or companies do not have the money to make up-front investments.

### Unmet Needs

The Department of Housing is under the obligation of identifying and using "the best information available" in the design and implementation of the various programs and the public policy contained in this plan. The identification of all of Puerto Rico as a "Most impacted and distressed area" subtracts visibility from sectors that were disproportionately impacted and in many cases are not even listed by the



Small Business Administration because their needs were not being addressed by a loan. The **real, effective identification of the most impacted areas and unmet needs** is the primary responsibility of the Department of Housing before developing and implementing this plan.

The assessment presented in the Action Plan still lacks the spatial component needed to responsibly characterize the most impacted population and unmet needs. Data provided by FEMA is public information that should be accessible to the public. However, the aggregate data published is organized by zip code, and such scale is not specific enough for this type of analysis.

In this context, more local, community data scales are needed for a fair distribution of available resources. Data on needs not covered should be superimposed in comparison with the Demographic Impact analysis using the Social Vulnerability Index. Therefore, **we request that the Department of Housing require from FEMA, and publish local, community scales that will allow an effective identification of the most impacted areas and the unmet needs as a result of Hurricanes Irma and María in Puerto Rico. This is the only way to achieve a fair distribution of recovery funds.**

### **Reject the unfair implementation of Opportunity 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."<sup>17</sup>

---

<sup>17</sup> 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.

“The opportunity zones legislation does not establish mechanisms for 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).”<sup>18</sup>

“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.”<sup>19</sup>

In spite of these deficiencies, in the Executive Summary of the Action Plan, page xviii, the Department of Housing admits it supports the implementation of the Opportunity Zones. Specifically, it states:

*“The Opportunity Zones legislation aims to attract investment capital through a unique tax-advantaged opportunity to invest “recognized capital gains” in Qualified Opportunity Zones. Under the Opportunity Zone Program, states nominate low-income communities to be designated as Qualified Opportunity Zones, which are then eligible for the tax benefit. In the case of Puerto Rico, virtually 95% of the Island has been designated a Qualified Opportunity Zone.*

*Opportunity Zones are designated by the U.S. Department of the Treasury and the Internal Revenue Service and represent a critical opportunity in the rebirth and revitalization of the Island. **In alignment with this emphasis in the economic and disaster recovery plan, the first substantial amendment includes support for facilitating the successful deployment of these essential zones to effectively leverage private capital and federal funding to stimulate economic recovery. In accordance with applicable requirements, such support could range from discrete, “stand-alone” projects to broader facilitation of economic development initiatives, including job creation, blight removal, and infrastructure initiatives.**”*

(Emphasis added).<sup>20</sup>

---

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> See, “Action Plan Amendment Five (Substantial Amendment) for the use of CDBG-DR funds in response to Hurricanes Irma and María,” Puerto Rico Department of Housing,” **pages xv-xvi.**

[https://www.cdbg-dr.pr.gov/en/download/action-plan-amendment-5-substantial-amendment/?ind=1599767012369&filename=Action%20Plan%20Amendment%205%20Substantial%20EN%20\(DRAFT%20FOR%20PUBLIC%20COMMENT\).pdf&wpdmdl=13941&refresh=5f7b109846f001601900696](https://www.cdbg-dr.pr.gov/en/download/action-plan-amendment-5-substantial-amendment/?ind=1599767012369&filename=Action%20Plan%20Amendment%205%20Substantial%20EN%20(DRAFT%20FOR%20PUBLIC%20COMMENT).pdf&wpdmdl=13941&refresh=5f7b109846f001601900696)

Therefore, 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.

#### Transparency and Access to Information:

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 mechanisms tailored to the reality and diversity of each community.

The transparency practices we recommended in 2018 included the following:

- a. Publishing each contract, with any information that the Comptroller's Office does not include, in categories such as description of use, justification, and results of the funds. This should include a link to the contractor's web page, if available.
- b. Publishing each subcontract, providing the same information as the contractor.
- c. Publishing all technical and public policy documents and guidelines used for the selection of partners as well as proposals and projects. The same should apply for each decision that may impact processes.
- d. Publishing a list of eligibility guidelines for participation in each program or initiative.
- e. Maintaining a website with all the information used in the decision-making process, including reports, studies, tables, geographic information layers, inventories, etc. The source of this information should be identified.
- f. When the program's distribution operates with a Partnership Model, providing details of the expectations and preliminary examples of the types of contracts that will be offered and of the relationship that will exist among contractors, partners, and government agencies.
- g. Creating a virtual platform for accessing and commenting on the progress made by the projects.
- h. Developing videos and/or educational bulletins to answer frequently asked questions.

We acknowledge the progress made by the Department of Housing in maintaining a webpage to publish contracts and approved program guidelines, among other information. We also recognize recent efforts related to informative

webinars and meetings with organizations and communities. However, we urge the Department to continue expanding its transparency efforts as recommended in these comments.

Based on the experience of recent years, we would like to add the following recommendations in relation to this topic:

- a. To establish a list of unit cost by category to cap limit costs in change orders.
- b. To regulate percentage caps for change orders. These caps must be included at all regulatory levels (i.e., plan, program definition, guidelines, regulations, etc.).
- c. To establish percentage caps on the funds allocated to each program for expenses not related to the direct services offered by the program itself, including design, promotion, and management costs.

## Public Engagement

Communities are groups of people that know their needs best and are the first to come to the aid of their residents after a natural disaster. Consequently, their knowledge is crucial for establishing priorities, objectives, and guidelines in developing a recovery plan, such as Action Plans, Community Resilience Plans, programs, and implementation guidelines. At the same time, **it is imperative to empower and integrate communities in the program planning and development processes from the beginning**, so that the investment of public funds can have long-term sustainability.

Each community has a **unique composition of interested parties**, among them residents, merchants, non-profit organizations, municipalities, etc. The people who will be affected by government decisions should effectively participate in the decision-making process. Each interested party has a perspective to share in the solution of problems.

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

The government must provide the **technical resources and assistance needed for the communities to issue informed opinions** in the planning processes. When we talk about **objective information**, we are referring to information that helps people **understand the problem and learn about all the alternatives and challenges to consider for solving it**. This can involve mechanisms such as direct meetings,

workshops, site visits, or any other remote method needed to achieve the goal of informing the community.

Once people understand the problem and alternatives and have expressed their choice, the agency should **disseminate the results and explain how it is analyzing and structuring the information obtained**. Communication channels should be consistent and transparent. The community should know they are really part of the process.

After learning and analyzing the data, it is the agencies' responsibility to **apply their expertise and translate those choices into technical proposals based on their specialized knowledge and on the democratic discussions obtained through participatory processes**. The agency's proposal should be presented to the community once more in order to validate that people's needs and concerns were adequately addressed. **The agency's final decision should respond to the community's final validation and the agency's expertise.**

On October 1, 2020, the Department of Housing published the fourth version of the **Public Engagement Plan**,<sup>21</sup> which for the first time included a description of the **Citizen Advisory Committee for CDBG-DR and CDBG-MIT**. 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 as simple as unilaterally establishing a structure for the committee by means of 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 communities.

---

<sup>21</sup> CDBG-DR Public Engagement Plan,  
<https://cdbg-dr.pr.gov/?wpdmdl=9455&ind=1601569002589>

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 island wide. 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 on the island.

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.

Therefore, Hispanic Federation requests that the Department of Housing amend the Public Engagement Plan to include all the recommendations for transparency and citizen participation presented in these comments. We also request amending said Plan to allow any person to propose substantial and non-substantial amendments to the Action Plan.

The same transparency and 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.

During the entire recovery process, the Department of Housing should be willing to be in direct contact with the people. The Action Plan should not be oblivious to the reality experienced by people who, more than three years after Hurricanes Irma and María, have yet to receive much needed aid and have had to face earthquakes and a pandemic in a state of vulnerability.

### **Non-Discrimination Public Policy**

Emergencies and recovery processes should not serve as a pretext for discrimination. In its Action Plan, the Department of Housing must establish a clear public policy of zero tolerance with respect to discrimination of any kind, and adopt the mechanisms to implement such policy. Specifically, no agency, organization

and/or institution receiving and managing public funds used for recovery should be allowed to discriminate against any person in any way.

## Conclusion

The process of amending the Action Plan offers the Department of Housing the opportunity improve the public policies adopted in said plan. We hope that the above comments are helpful in this respect.

Sincerely,

f/Charlotte Gossett Navarro  
Senior Director, Puerto Rico  
[cgossett@hispanicfederation.org](mailto:cgossett@hispanicfederation.org)

f/Atty. Maritere Padilla Rodríguez  
Director, Public Policy and Advocacy  
[mpadilla@hispanicfederation.org](mailto:mpadilla@hispanicfederation.org)

f/Plan. David J. Carrasquillo Medrano, PPL  
Manager, Community Planning and Development  
[dcarrasquillo@hispanicfederation.org](mailto:dcarrasquillo@hispanicfederation.org)

f/Warys M. Zayas Camacho  
Manager, Sustainable Agriculture and Food Security  
[wzayas@hispanicfederation.org](mailto:wzayas@hispanicfederation.org)

f/Jonathan Castillo Polanco  
Manager, Green Energy and Environment  
[jcastillo@hispanicfederation.org](mailto:jcastillo@hispanicfederation.org)