

February 6, 2020

The Honorable Nancy Pelosi  
Speaker  
House of Representatives  
Washington, DC 20515

The Honorable Kevin McCarthy  
Minority Leader  
House of Representatives  
Washington, DC 20515

The Honorable Nita Lowey  
Appropriations Committee  
House of Representatives  
Washington, DC 20515

The Honorable Kay Granger  
Appropriations Committee  
House of Representatives  
Washington, DC 20515

Dear Speaker Pelosi, Minority Leader McCarthy, Chairwoman Lowey, and Ranking Member Granger,

We, the undersigned members of the Disaster Housing Recovery Coalition, wish to express our appreciation for the quick action taken by House leaders to advance the Puerto Rico Earthquake supplemental bill, including its allocation of over \$3 billion Community Development Block Grant - Disaster Recovery (CDBG-DR) funding. This disaster supplemental presents an important opportunity to address the unprecedented restrictions HUD has placed on \$16 billion in mitigation and disaster recovery funding previously approved by Congress and allocated for Puerto Rico. We have serious concerns that these restrictions could create significant barriers to the goals of a quick and equitable recovery, requiring substantial changes in local law and effort above that which has been required for any other grantee within the continental United States. Currently, the disaster supplemental bill does not include language to lift these harmful restrictions. For this reason, we urge you to amend the disaster supplemental bill to include legislative language to prevent the Trump administration from imposing harmful restrictions on recovery and mitigation funds.

The Disaster Housing Recovery Coalition, led by the National Low Income Housing Coalition, includes over 850 national, state, and local organizations, including many organizations working directly with disaster-impacted low-income communities and with first-hand experience recovering after disasters. The Disaster Housing Recovery Coalition works to ensure that federal disaster recovery efforts reach all impacted households, including those with the lowest incomes who are often the hardest hit by disasters and have the fewest resources to recover afterwards.

While we acknowledge that disaster recovery and mitigation funding must be handled with transparency and accountability, nothing in the government of Puerto Rico's recent history as grantee and administrator of Federal disaster and recovery funds would indicate the need for such steep oversight restrictions as the ones required in the Federal Register Notice. In approving this funding almost two years ago, Congress did not impose any additional restrictions on these funds, nor did it intend to create such barriers to disaster recovery. These restrictions run contrary to the purpose of enabling impacted communities to easily access disaster recovery funding, subvert the will of Congress, and unjustifiably penalize the people of Puerto Rico. They must be addressed by congressional leadership.

Below are three of the most concerning restrictions found in the recently released Federal Register Notice allocating over \$8.2 billion in HUD Community Development Block Grant - Mitigation (CDBG-MIT) funding and the grant agreement for over \$8.3 billion in Community Development Block Grant - Disaster Recovery (CDBG-DR) funding:

**1. Requiring that the Financial Oversight and Management Board (FOMB) Recommend Changes to CDBG-MIT and CDBG-DR Action Plans**

*The Federal Register Notice states, "... as a condition to HUD's obligation of CDBG-MIT funds the grantee shall request and submit to HUD any certification, observations, and recommendations by the Financial Oversight and Management Board (FOMB) established by the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), that the action plan and any related program budgets are consistent with any reasonably related provisions of the applicable FOMB certified budgets and fiscal plans. This condition shall not be interpreted to require a review and certification that is outside of the FOMB's authority."*

This restriction requires that Puerto Rico ask the FOMB - created in 2016 by Congress to address Puerto Rico's debt and budget crises – to recommend changes to the Territorial Mitigation and Recovery Action Plans., which lay out how the territory will utilize critical mitigation and disaster recovery funding for Puerto Rico.

This restriction is inconsistent with and in violation of the intent of Congress in enacting PROMESA. The FOMB has no disaster recovery or mitigation experience and is unaccountable to the people of Puerto Rico. It works to address the needs of investors, not Puerto Ricans. Only Congress can expand the jurisdiction of the FOMB; it cannot be expanded through federal regulation. Allowing the Trump administration - not Congress - to expand the role of the FOMB extend to disaster recovery is inappropriate, could substantially circumvent Puerto Rico's autonomy, and could value the needs of investors over the expense of the Puerto Rican disaster survivors.

A critical aspect of the CDBG-DR program is the requirement for public input on any grantee action plan for how it intends to use the funds to address recovery and rebuilding. The FOMB, on the other hand, is an unelected body. The people of Puerto Rico will not be provided with an opportunity to comment on recommendations issued by the FOMB that could directly impact how CDBG-DR funds are spent on the island.

We accept that additional steps may be necessary to ensure that mitigation funding is integrated with the territory's present and future budgets. However, this should be addressed by working directly with Puerto Rico's civil society to review funding plans and objectives, ensuring stakeholder participation and oversight. Doing so would ensure that the Puerto Rican people themselves have oversight and input over the use of the funds through their representatives in civil society - a sector widely respected in Puerto Rico for its effectiveness and integrity.

## **2. Requiring that Recovery and Mitigation Workers be Paid Less Than \$15 an Hour.**

*The Federal Register Notice states, “Based upon applicable regulations and guidance related to the construction labor costs resulting from the minimum wage established by Commonwealth of Puerto Rico Executive Order 2018–033, the grantee shall not take into account the minimum wage rate established by Executive Order 2018–033 for construction contracts entered by the Commonwealth when determining whether a wage cost is reasonable under the factors at 2 CFR 200.404. Before charging wage costs to this grant, the Grantee must make an independent determination that wages to be paid with grant funds are reasonable, using factors such as the prevailing wage established by the Department of Labor or other indicators of market wage rates for comparable labor in the geographic area, and the restraints or requirements imposed by such factors as sound business practices and arm’s-length bargaining.”*

This restriction requires that workers on mitigation and recovery projects be exempted from Puerto Rico Executive Order 2018-033, which established a minimum wage of \$15 an hour for government construction projects. Not only does this restriction attack the right of workers to earn a decent wage, contribute to aggregate consumption, and assist in the island’s economic recovery, but it also directly negates an executive order from Puerto Rico’s executive branch. The federal government sets a floor when it comes to minimum wage, not a ceiling. HUD should not interfere with higher minimum wage standards in Puerto Rico.

The objective of the CDBG-MIT and CDBG-DR funding is not to directly shape territorial or local law, but to ensure that the grantee is recovering from past disasters and preparing for the future. Recovery and mitigation workers often are exposed to hazardous chemicals and other workplace dangers. If the duly elected government of Puerto Rico saw fit to pay these valuable workers a certain amount, it is not within the powers of HUD to ensure that they are paid less. Higher wages are often needed after a disaster when materials and labor can be scarce.

Should there be concerns that paying higher wages than those typically offered in Puerto Rico would mean that employment opportunities would go towards workers from the continental United States, HUD and Puerto Rico’s Department of Housing should establish local hiring targets for recovery workers. This would ensure that the benefits of these higher wages circulate amongst the Puerto Rican economy.

## **3. Requiring the Development of a Uniform Parcel Registry**

*The Federal Register Notice states, “To address the risk of fraudulent application information and reflect a connection to on-going efforts of the Commonwealth to update its 911 database, property tax records, and GIS maps to include all housing units and to help housing rehabilitation applicants clear title issues that have arisen in the course of federal disaster assistance efforts following Hurricane Maria, the Department is adding to the requirement in section V.A.I.a.(6)(v) of the CDBG– MIT Notice. Accordingly, the*

*grantee's procedures to detect and prevent fraud, waste, and abuse must include how the grantee will verify the accuracy of information provided by applicants. The policies must address how the Commonwealth's CDBG-DR-funded planning activity to develop a uniform parcel registry and GIS database that contains ownership and parcel registry data is to be used to assist HUD, other third parties, and the public to verify the legal and physical address associated with CDBG-MIT activities. Additionally, so that the uniform parcel registry and GIS database are available to support the detection and prevention of waste, fraud, and abuse in its CDBG-MIT grant, the grantee must adhere to its quarterly performance projections for the use of CDBG-DR funds related to the uniform parcel registry and GIS database activity, beginning with the quarter funds are available to the grantee and continuing each quarter until all funds are expended, unless HUD approves an amendment to the projections via the Quarterly Performance Report (QPR). If the grantee does not complete the uniform parcel registry project, HUD may impose an additional condition to mitigate the risk of fraud within the Grantee's programs."*

While we understand that the Puerto Rico government included a uniform parcel registry project in its CDBG-DR action plan, we have serious concerns about how this project will be implemented and how it will impact the thousands of people who live in informal housing who may be harmed in the process. To date, neither the Puerto Rican government nor HUD have outlined clear details about the process for creating the registry, the requirements for title, and whether access to recovery funding would be conditioned on inclusion in the registry. Without clarification, we are concerned that this could lead to many survivors being denied the assistance they need to get back on their feet, as seen during the application process for FEMA's Individual Assistance program after Hurricane Maria.

Moreover, title clearing is a lengthy and cumbersome process. Requiring that Puerto Rico "complete" the parcel project or risk additional HUD conditions could lead to even further unnecessary delays in much-needed disaster recovery and mitigation funding. It has already been more than two years since Congress approved the mitigation funds. Delay continues to put the lives of Puerto Ricans at risk.

Finally, Puerto Rican law does not require formal title in order to prove ownership over real property. As a result, many Puerto Rican households have never attempted to create title. Requiring properties to have clear title in order to access recovery funding could put these households at risk of losing their home.

Congress should not allow this restriction without greater clarification about the process for creating such a registry.

Although oversight of recovery and mitigation funding is necessary, the arbitrary, intrusive, and unprecedented nature of these restrictions would alter Puerto Rico's society and its relationship to the federal government, infringing on its ability to self-govern. These unprecedented restrictions go beyond the goal of ensuring an equitable and transparent recovery and mitigation process and must be addressed by congressional leadership. We call upon House leaders and the

House Appropriations Committee to hold HUD accountable and include legislative language in the Puerto Rico Earthquake supplemental to lift these harmful restrictions.

We thank you for your continued attention to the concerns of Puerto Rico and hope that you will work quickly to resolve this issue.

Sincerely,

Asociacion Puertorriquenos En Marcha, Inc  
Disaster Law Project  
Fair Share Housing Center of New Jersey  
Hispanic Federation  
LatinoJustice PRLDEF  
Lower 9th Ward Homeownership Association  
National Low Income Housing Coalition  
National Puerto Rican Agenda  
Oxfam America  
Planners for Puerto Rico

CC:

The Honorable David Price and Mario Diaz-Balart  
Subcommittee on Transportation, Housing and Urban Development  
Appropriations Committee  
House of Representatives  
Washington, DC 20515