



Edificio Julio Bogoricin
1606 Ave. Ponce de León, Oficina 1002
San Juan, P.R. 00909
787-296-9333
ayudalegalhuracanmaria@gmail.com

May 24, 2018

Mr. Fernando Gil Enseñat, Esq.
Secretary
Department of Housing
PO Box 21365
San Juan, PR 00928-1365

RE: Comments on the PRDOH CDBG-DR Draft Action Plan

Dear Secretary Gil Enseñat:

Best regards. Attached you will find our comments on the Draft Action Plan (DAP) regarding the use of Community Development Block Grant - Disaster Recovery funds (CDBG-DR) .

Ayuda Legal Huracán María (ALHM) is an initiative that offers free legal aid. It was launched on September 21, 2017, with the objective of promoting access to justice in the communities affected by the hurricane. This initiative is supported by the Access to Justice Working Table, a coalition that brings together entities that offer free legal services in Puerto Rico as well as entities based in the United States.

As part of our work, we support communities and community-based groups around Puerto Rico to ensure the effective and sensitive use of CDBG-DR funds. These comments respond to a thorough analysis of the DAP, the proposals presented by the municipalities prior to the publication of the DAP and the input of groups and people who have collaborated with our “Community Participation Project regarding CDBG-DR Funds”¹. They also respond to our commitment to access to justice, community participation and the full enjoyment of the civil rights of those communities which have historically been made the most vulnerable in our

¹ "Jornada de Participación Comunitaria alrededor de los Fondos CDBG-DR". Educational and citizenship participation toolkit created for the project can be found at: www.ayudalegalhuracanmaria.org.

society². Once again, we reaffirm our desire and interest in joining the necessary efforts to open the channels of participation and transparency, so that the use of these funds is done in an adequate, equitable and fair way for our communities. Puerto Rico, starting with the people most affected, has the right to a dignified recovery.

Sincerely,

Lcda. Ariadna M. Godreau Aubert
Coordinator

Danishia Santiago Figueroa
Community Impact Coordinator

Lcda. Mariel Quiñones Mundo
Attorney

Lcda. Sandra Negrón Zayas
Attorney

Francés Collazo Cáceres
Educational Coordinator

Lcda. Mayté Rivera Rodríguez
Attorney

² Our comments are also based on the need to comply with the criteria established in the Allocation Notice from February 9th, 2018 as well as “Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964” issued on August 16th, 2016 by several federal agencies, including the Department of Housing and Urban Development. They are intended to assist recipients of federal funds dedicated to emergency management to ensure that individuals and communities affected by a disaster are not unlawfully discriminated against based on race, color, national origin, sex, religion or disability, in violation of Title VI of the Civil Rights Act of 1964.



AHLM Comments on the PRDOH CDBG-DR Draft Action Plan

Our comments are organized in three parts:

- I. Recommendations on the rights of the people affected by the Hurricanes Irma and María that should be included in the final Action Plan (AP)
- II. Detailed commentary on the Draft Action Plan (DAP)
- III. Final recommendations

The actions we require to be included in the final AP are identified in this document in [blue](#).

I. Recommendations on the rights of the people affected by the hurricanes Irma and María that should be included in the final Action Plan.

→ **Requested Action: Include the rights listed below in the AP and use them as guiding principles for the plans that the Government of Puerto Rico proposes for the CDBG-DR funds.**

1. Right to decide

The right of the people affected by Hurricanes Irma and María to decide where they want to live must be respected. This includes the government's and its contractors' responsibility to make all necessary efforts to obtain greater community participation and informed consent prior to proposals of relocation and evictions.

2. Right to stay

- a. The right of the people to remain or return to their communities must be guaranteed, as long as these are safe and habitable. We define “safe and habitable” as those homes and communities which have been given a real, participatory and reasonable opportunity to

mitigate the damages suffered by the disaster. Mitigation should always be considered as the first alternative to relocation.

- b. In cases in which relocation is necessary, the government and its contractors must give priority to maintaining the integrity of the community, respecting geographic proximity and special needs that may exist.

3. Right to equal treatment and to not suffer discrimination.

- a. The government of Puerto Rico must guarantee fair, equal and non-discriminatory treatment to the affected people by providing adequate assistance throughout the recovery process. This includes the long-term recovery of their communities.
- b. Through a dignified and just recovery, each community and person must be treated fairly and equitably, without discrimination based on race, sex, sexual orientation, gender identity, age, functional diversity, social condition, national origin or other classification. Equal treatment must be guaranteed in the attainment of projects aimed at flood protection and, equally, fair treatment in the implementation of housing, infrastructure or economic revitalization projects.
- c. The government of Puerto Rico must assume a proactive role in the protection and defense of the rights of historically vulnerable groups and identities such as the elderly, women, impoverished communities, people with functional diversity, people from LGBTTIQ communities, the homeless , immigrants and others.

4. Right to real and effective participation

- a. This right is related to the opportunity for persons, groups and communities to participate directly, and effectively. This includes a real possibility of obtaining information, commenting, attending public hearings, being heard and being part of the processes related to CDBG-DR and other post-disaster recovery processes.
- b. The highest standard of accessibility must be considered for the population with functional diversity that participates, meaning complying with the provisions of local and federal regulations.
- c. In terms of real and effective participation, one must also consider the reality of the thousands of people who, eight (8) months after the hurricane, have no electric power electric service, transportation or means of communication necessary to learn about the plan and participate.

II. Detailed commentary to the DAP

1. Lack of real and effective citizen participation

→ **Requested Action: Make available an official translation of the Allocation Notice (AN) into Spanish as well as information on other matters related to CDBG-DR funds to ensure effective communication to communities about the program, as well as broad notice of availability and eligibility of these funds.**

→ **Requested Action: Conduct public hearings distributed in an equitable manner between geographical areas, at feasible times for the working population of the country. Notice of these public hearings should be done in an appropriate manner to ensure community participation.**

→ **Requested Action: Extend the period to submit comments to the DAP so that communities have enough time to consider the draft, effectively assess the needs in terms of infrastructure and housing, and submit comments on the Plan.**

→ **Requested Action: Draft a readable and accessible action plan for the general population.**

The AN establishes the requirements for citizen participation and the publication of the action plan. However, it was not translated into Spanish, so its content - particularly regarding the criteria with which the Department of Housing (DoH) must comply in its plan - has not been published in an accessible format and language for the general population. Thus, any attempt to convene participation in the CDBG-DR funds is ineffective. It should be noted that, to this date, there are no educational materials on the AN in Spanish and that the material available on the CDBG-DR page of the DoH, translated from English, is extremely brief and inadequate.

The AN requires notification to the affected citizens prior to the publication of the DAP. In Puerto Rico, eight (8) months since the hurricane, a large part of the population does not have stable telecommunications or electric services, -multiple communities do not even have any electricity service at all- so platforms or methods of online notification are not an effective method of notifying the general citizenry.

On the other hand, announcements about the public hearings held from March 5 to 10, were published in some of the country's newspapers, in small print and did not refer to the participatory process of these funds. At the moment, ALHM has not found that the notification complies with the AN notice requirements in compliance with the ADA Act and the Rehabilitation Act³. It was not until after the DAP was published, and within the limited term of fourteen (14) days for commentary, that citizens were informed that they could comment on it,

³ 42 U.S.C. § 12101 et seq y 29 U.S.C. § 701 et seq respectivamente

and guidance to citizens through meetings held at Boys and Girls Club centers started to take place.

In regards to the public hearings convened by the DoH, these did not reflect a broad community participation since there was no timely or adequate notification. As members of our team witnessed, the public hearings ended before the announced time and the majority of participants were mayors or their representatives. The established register of present persons was ignored giving priority to mayors or their representatives, and relegating community leaders, members of civil society and representatives of non-governmental organizations to later turns.

Shortly before the publication of the DAP, the DoH posted on its website the presentations submitted by participating entities, as well as those submitted outside the term established. However, beyond the publication of these proposals, there is no data in this electronic platform of how the unmet needs evaluation for the implementation of the plan's programs was carried out.

It should be kept in mind that, according to applicable regulations, the general population should have the opportunity to understand the plan and have access to the data used to support it⁴. For these purposes, we point out some irregularities that are obvious on this point. First, the Spanish language of the DAP is deficient, to the point that complete sections cannot be understood. After comparing the language and content of the DAP with action plans from other jurisdictions, the PR DAP appears to contain fragments or sections directly translated -without context- from English to Spanish, which makes comprehension almost impossible⁵. Secondly, technical problems often cause the DoH page on CDBG-DR to crash.

2. Accessibility Criteria

The government of Puerto Rico, as the recipient of the funds, must ensure that communications and information about the plan are accessible to people with functional diversity. This includes applicants, beneficiaries and members of the public. This responsibility extends even to the post-publication process of the DAP. Blind people, as well as those with hearing disabilities must have the necessary resources to comment, participate and serve as part of the recovery process. These criteria are not onerous nor result in a fundamental alteration of the nature of the different programs or activities.

⁴ AN §VI.A.2.d

⁵ See the Florida Draft Action Plan (FDAP) published on April 20, 2018. The text in English appears to be translated to the present DAP, for example, page 109 from the FDAP corresponds to pages 88-89 from DAP and pages 106-108 from the FDAP to pages 141-143 of the DAP. El texto en inglés de este Plan se "tradujo" en el presente B-PA en, por ejemplo, las siguientes instancias: corresponden la página 109 del BPAF con las páginas 88-89 del B-PA y las páginas 106-108 del B-PAF con las 141-143 del B-PA.

Mentions of people with functional diversity in the DAP are generic, limited to the construction of five hundred (500) housing units for "special needs" and a housing counseling system for people with functional diversity, all of which falls under the social interest housing program. The DAP includes commitments regarding Title VI of the Civil Rights Act and the Fair Housing Act, but no mention of the law or of the requirements to guarantee equal access to these federal funds is made⁶.

3. Information used by the DoH to assess unmet needs and its link with CDBG-DR funding allocation.

→ Requested Action: Identification of unmet needs through census data collected by community leaders

The sources used to support the identification and assessment of unmet needs in the DAP are inadequate and insufficient. Some of the main sources of the DAP are FEMA, SBA and the Build Back Better Report from the office of the Governor of Puerto Rico. Predictably, the most emphasized data is that provided by FEMA. Although the general norm is to use this information, we are not convinced that it is the "best available data" in accordance with HUD regulations⁷.

ALHM served as the first initiative to provide legal assistance after the disaster in Puerto Rico. To this end, over sixty (60) communities have been visited around the Island. During the first few months after the hurricane, much of the work was directed to assistance completing FEMA applications and later, appeals. We have been able to verify that the FEMA evaluations of the damages suffered by individuals and families are inadequate.

Statistics revealed to the media indicate that FEMA has denied or has not answered around 62% of the applications submitted⁸. The ineligibility determination for FEMA assistance is allegedly triggered by the following five (5) reasons: (1) the house is safe or insufficient damage; (2) the person did not accept relocation; (3) the person could not prove ownership; (4) lack of documents required by FEMA officials; and (5) the person could not be contacted. As witnessed in our experiences as legal community representatives, the manner in which FEMA makes its determinations is arbitrary and does not adjust to the reality of the disaster's impact in the country, particularly in the case of the most vulnerable communities. This, mostly because

⁶ Civil Rights Act of 1964 (42 U.S.C. 2000d) y Fair Housing Act (42 U.S.C. 3601– 3619), 29 U.S.C. § 701 et seq
⁷ 83 FR 5844

⁸ Rebecca Banuchi, "Llueven las denegatorias de asistencia por parte de FEMA en Puerto Rico." *Centro de Periodismo Investigativo*. (5 de febrero de 2018). Available at: <http://periodismoinvestigativo.com/2018/02/llueven-las-denegatorias-de-asistencia-por-parte-de-fema-en-puerto-rico/>.

FEMA relies on the inspection carried out by subcontractors who do not have the proper training and who, in most cases, fail to comply with the processes established by FEMA. That is why, even in cases where assistance is granted, it is not sufficient to cover the replacement of personal property, much less the damage to structural property. To this end, both the local and international press have highlighted the gross inefficiencies in FEMA practices in the island, as well as the lack of transparency and accountability in its management post disaster.⁹

It should also be noted that during the past months, ALHM and other entities have faced the lack of access to information about damages identified by FEMA. It is for this reason that they have had to submit several requests for access to information before federal court, including one promoted by ALHM along with Latino Justice (PRLDEF) and Democracy Forward. For these reasons, the serious accusations against FEMA, as well as the lack of transparency of the agency, encourage that we take their data as inadequate to calculate the unmet needs.

3. Vulnerable populations: Promoting housing, economic revitalization and infrastructure necessities within these groups.

→ **Requested Action: Update poverty, inequality and other indicators of social mobility using information collected after the hurricanes.**

→ **Requested Action: Ensure that the rehabilitation, reconstruction, replacement and construction of new housing and shelters are aimed primarily at low-income populations, rather than distributing assistance equitably or preferentially to the population with moderate incomes.**

→ **Requested Action: Include other strategies, beyond social interest housing, to meet the needs of impoverished communities and other groups with particular needs, such as people with disabilities, the elderly or others. Strategies for economic revitalization and infrastructure must meet the needs and development of these groups.**

⁹ Nicole Acevedo and Isra Pacheco. "No deeds No aids to rebuild homes: Puerto Rico' reconstruction challenge". NBC News. May 8th, 2018. Available at: <https://www.nbcnews.com/storyline/puerto-rico-crisis/no-deeds-no-aid-rebuild-homes-puerto-rico-s-reconstruction-n868396>; Laura Sullivan. "How FEMA Failed To Help Victims Of Hurricanes in Puerto Rico Recover". National Public Radio. May 1st, 2018. Available at: <https://www.npr.org/2018/05/01/607483473/how-fema-failed-to-help-victims-of-hurricanes-in-puerto-rico-recover>; Héctor Sánchez Barba. "Inadequate Federal Response To Maria Threatens Puerto Rico's Long-Term Recovery". *Huffington Post*. November 21st, 2017. Available on: https://www.huffingtonpost.com/entry/inadequate-federal-response-to-maria-threatens-puerto_us_5a1346dde4b010527d677f80.

→ **Requested Action: Define in detail what are vulnerable populations for the purposes of this plan, beyond general enumeration of populations or the statement about "people of low or moderate income".**

→ **Requested Action: Open to public participation and comment period the substantial amendment that would be the subsequent publication of the eligibility criteria for the Whole Community Resilience Planning Program.**

→ **Requested Action: Require subrecipients of funds for economic, housing and infrastructure developments to hire people living in Puerto Rico, with an emphasis on vulnerable communities and groups.**

A. Analysis of vulnerable populations

Although the DAP includes an analysis of the level of poverty in Puerto Rico and indicators of social mobility, it does not include an analysis of the impact the hurricanes had on these rates. That is, given that the data is not up to date, it is not the best data available. Currently, it is estimated that the poverty level in Puerto Rico increased from 44.3% to 52.3%¹⁰. This increase in poverty undoubtedly alters illustrative maps of people with low to moderate incomes, transforming the area and scope of where CDBG-DR funds should impact.

We are concerned about the vagueness with which the issue of vulnerable populations is addressed in the DAP. Besides enumerating existing programs or mentioning social interest housing projects, the evaluation on how planning decisions will affect protected groups of people, racial, ethnic areas of concentration, poverty areas; how it will promote the availability of affordable housing in low-poverty areas; or how it will respond to impacts related to natural hazards is limited to organizing the available data.

No proposed program meets the requirements of the AN, in relation to eligibility determinations for benefits of the programs proposed in the DAP¹¹. How the programs will promote housing for vulnerable populations is not addressed in the plan. Nor is there a description of the activities that they intend to promote for the benefit of these populations. The plan must include an assessment of how planning decisions will affect members of protected classes, areas of racial and ethnic concentration, as well as concentrated areas of poverty¹². In addition to this evaluation, the plan must include a description of how the plan will be geared toward these vulnerable populations, protected classes, and areas of concentrated poverty.

¹⁰ Census Information Center of the University of Puerto Rico in Cayey. "Proportion of Income with respect to level of poverty". University of Puerto Rico at Cayey, number 25 Available at: <http://online.pubhtml5.com/cbpt/jzur/>.

¹¹ This includes programs that begin on p.84 of the DAP, as well as all the housing programs.

¹² AN §§ 849-50.

Although the Social Vulnerability Index (SOVI) methodology can be of great help, it cannot on its own answer questions about dignified and sustainable recovery for these groups. It is necessary to include reliable and updated statistics and data to develop an effective action plan. It should not be forgotten that the AN itself requires the use of the most recent information to estimate these needs, as well as a clear definition of what is considered a "vulnerable population".

The B-PA mentions that the programs are oriented towards LMI (people with low or moderate incomes). That is not enough and does not meet the requirements of the AN¹³. As an example of the lack of eligibility criteria or description of program benefits, in the "Homeowner Repair, Reconstruction or Relocation Program", "priority for the elderly" is mentioned. This mere mention, in a program that aspires to be implemented through the direct distribution model, does not meet the requirements of the AN on assessment and description of the resources available for vulnerable populations.

B. Housing and Resilient Housing Needs and the use of funds for mortgage payments

B .. Housing needs, resilient housing and the use of funds for the payment of mortgages

As previously indicated, vagueness is one of the greatest ills of the DAP. Beyond the mention of key concepts such as "housing needs", "resilient housing" or the allocation of these funds towards people of "low or moderate income", the correlation between unmet needs and how different strategies will satisfy these needs must be made explicit in accordance with to the AN. For example, B-PA lacks a definition for resilient housing. The "Whole Community Resiliency Planning Program" states that eligibility criteria will be published at a future date during the fourth quarter of 2018. Prior to submitting the final Action Plan, such criteria should be published in draft form. We affirm that this should be considered a substantial amendment to the plan and thus subject to public comment and participation. Likewise, the so-called "comprehensive community recovery plans", which will be revealed in the future, should also be considered as a substantive amendment and should be subject to the same public comment and participation process.

On the other hand, it is indicated that \$45,000,000 will be allocated to the payment of backlogged mortgages due to the impact of hurricanes Irma and María. While we recognize the existence of a mortgage foreclosure crisis in the island, that affects more than one hundred thousand (100,000) families currently at risk of entering an foreclosure process, we are

¹³

concerned that such money is destined to these purposes under the umbrella of "low to moderate income" without further definition. We cannot lose sight of the fact that most people with mortgages are people with moderate incomes, so we would be allocating a large portion of the resources to a group of people who, although affected by disasters, are not the most vulnerable.

C. Needs of the vulnerable population beyond housing: infrastructure and economic revitalization

i. Economic measures

Although social interest housing can be crucial to the people, families and communities in need of relocation - after real, participatory and reasonable mitigation efforts - or those who are homeless, it can not be the only strategy for these funds. An intersectional analysis to relate how infrastructure and economic revitalization projects will promote real opportunities for economic development and protections for populations with special needs, such as homeless persons or people with functional diversity is urgent and needed.

On one hand , we are not convinced that employment measures, aimed at contracting services, are sufficient to promote the labor and economic security of these groups, especially when deep analyzes have been made on how the contracting of services does not serve to promote their mobility or social security. On the other hand, it is important to demand that the hiring be directed precisely to people from the local communities and vulnerable groups of Puerto Rico, promoting both the construction of houses and the economic recovery of these areas.

We can not lose sight of the fact that the DoH is waiting for a new allocation of funds, and so this B-PA should focus on giving priority to the most emergent needs and to establish programs that can continue to benefit from the next allocation of CDBG-DR funds. To this end, housing, infrastructure and economic revitalization programs should prioritize serving these populations considering emergent needs.

4. Minimization of people or community displacement and assistance that will be offered to displaced people or communities.

→ Requested Action: Establish a clear non-displacement policy in cases in which real, reasonable and participatory mitigation is possible. Displacement can not be the first alternative.

→ Requested Action: Adopt a definition of informal housing that does not include legal title as a condition for "formality". Lack of documents that accredit ownership should not be an obstacle in receiving assistance for housing after disasters.

→ Requested Action: Include and detail the strategies for participation to address the issue of lack of formal title. Considering it to be an important amendment to the plan, it should be open to public comment.

a. Absence of a clear public policy against displacement

The DAP affirms a public policy to minimize displacements and provide for those displaced. However, there is no anti-displacement plan, as required by the AN. Briefly, in two paragraphs, the DoH attempts to address the AN requirement on minimizing displacement. In a single line its mentioned that "he plans to minimize the displacement of persons or entities and assist displaced persons or entities as a result of the implementation of a project with CDBG-DR funds." The B-PA does not provide details about that plan.

Likewise, we are concerned about the DoH's assertion that this policy "is not intended to limit DoH's' ability to carry out purchases or acquisitions of units or units destroyed and extensively damaged after a flood." According to the B-PA, the possibility of participation in voluntary acquisitions and optional relocation activities is recognized in order to "avoid repeated damage due to flooding". These possibilities, in accordance with the exemptions to applicable federal legislation, would be tied to people proving to be eligible (through the concept of demonstrable difficulties) whenever they experience circumstances such as "excessive amounts of debt due to a natural disaster, prolonged loss of work, substantial reduction of family income, death of a family member, unexpected and extraordinary medical bills, disability. "

Absent a clear and effective mitigation plan, displacement - be it called reubication or relocation - may become the undeclared policy for the management of these funds. This would be consistent with findings made after reading and summarizing the proposals submitted by different municipalities. We are concerned over vague references to mitigating "risk conditions" limiting the possibility of using CDBG-DR funds to match FEMA funds and thus make mitigation feasible. In this same line, the elevation standards set forth in §VI.B.32.e of the AN, are taken care of in a general way and there is no description of how it is planned to comply with it, contravening requirements of the AN.

b. Stigmatization and displacement of people and communities without "formal" titles

We ask ourselves what will happen to people who lack documents accrediting ownership (or "informal owners") regarding developments and relocation plans to be implemented with proposals for these funds. When the B-PA mentions informal housing, it is equated to housing in risk areas, built without permits, on public land. Then, there is an allusion to the problem of lack of ownership, noting that some of these homes lack an adequate title deed. On more than one occasion, reference is made to the fact that, in Puerto Rico, between 45-50% of the dwelling is

informal. We are concerned that, outside the "Planning Initiative Program", which would allow the identification of informal housing and a reference to "reforms to the registry of plots for the restructuring of the real estate market," there is no clear information on the plans regarding these communities and housing. after the update of such registration. We want to emphasize that it is not correct to argue that dwellings that lack formal title are unsafe, are in risk areas or lack of sanitary or electrical services. The lack of accessibility to assistance such as that of FEMA, as well as the alleged "illegality" of the occupation, responds to historical, social and economic factors that can be addressed by regulating their permanence, without the need for displacement or relocation.

6. Accountability and transparency criteria

→ **Requested Action: Require contractors, municipalities and other legal or natural persons to carry out the work required by the plan detailing the costs -line by line- of the works, in order to promote the adequate and efficient use of public funds.**

→ **Requested Action: Establish an appeals process that complies with federal and local regulations. As this is a substantial amendment to the plan, it should be open to public comments once it is incorporated.**

→ **Requested Action: Establish guarantee and claim mechanisms against contractors who do not comply with the necessary standards in construction.**

A. Allocation of funds and transparency

It is required that the DAP give a detailed description of the distribution method it will use to distribute funds to municipalities, subrecipients or the description of the project that will be directly carried out by the government as a recipient. The interest is to promote greater transparency and the highest level of accountability regarding the management of these funds. For this, it is important that the DAP detail those eligibility criteria, objectives, the criteria and method of distribution of funds and the specific impact of these and other elements in the disaster recovery process.

Likewise, it is extremely important that the plan requires that each participant in the programs - be it a natural person or legal entity - receive a detailed cost estimate of the destination given to the assistance, signed and dated by a person legally authorized to represent the DV. This will prevent unreasonable and inflated items or expenses, promoting greater anti-corruption protection and favor transparency.

B. Appeal process for the programs to the Department of Housing

The DAP indicates that an appeals process will be established for participants and applicants of the CDBG-DR programs. This is not enough. The final plan should describe the appeals process in greater detail and clearly indicate that any applicant for the programs, as well as participants of any subsidized program with CDBG-DR funds, shall have the right to claim any action or omission of the DoH, recipient, subrecipient or contractor that they understand is detrimental to them. The final plan must include that the appellant, among other things, is entitled to copies of his file and that at the time of the request, he is notified in writing of the reason for the adverse decision or the reason for the inaction; including the corresponding sections of law, regulation, program policy or other rule on which the denial was based.

In turn, the final plan must establish that affected persons will be entitled to due process of law and other protections recognized by Puerto Rican administrative law, such as the exhaustion of remedies and the holding of hearings. It is imperative that the due process of law be guaranteed in these processes with CDBG-DR funds.

C. Standards for construction contractors and mechanisms in case of non-compliance

The Plan should be emphatic in establishing detailed standards for construction, as well as mechanisms for homeowners and small businesses to challenge construction work that does not meet these criteria. HUD suggests a period of six (6) months for claims on construction. It should also be taken into account that the Civil Code of Puerto Rico establishes that people affected by construction defects have an action against the contractor and that it can be exercised within ten (10) years from the end of the building.

7. Comments on economic revitalization

→ **Requested Action: Re-evaluate and detail the programs aimed at economic recovery, from the perspective of needs disclosed by the communities themselves and including their participation as a priority. This, as a central axis when designing or elaborating a plan related to jobs, services and investments.**

The proposed programs for economic recovery, as well as housing and infrastructure, must include a detailed description of the beneficiaries, noting that they are aimed at people with low or moderate incomes and to meet unmet needs. In the DAP there is no indicator, program description, action, or goal that demonstrates how or how they will meet the requirement that seventy percent (70%) of these funds be earmarked to benefit LMI persons. For example, it does not explain how small business loans meet the objective of benefiting people with low or

moderate incomes. Nor does it show how tourism plans, which are not included in the document, will promote the economic development of the low and middle income sectors.

In turn, the DPA establishes that the economic development plan - in the words of the plan itself - is anchored in three pillars: a) reinvent and revitalize established industries; b) develop high-impact emblematic projects and c) use innovative strategies to advance in Puerto Rico. Descriptions of the "high impact emblematic programs" and the "innovative strategies" to be used should be included in the final plan. Since such strategies can be substantial amendments to the plan, they should be subject to public comment once they are detailed. If not, the communities will not be able to give their input on such proposals.

Once again, we note great concern about the lack of community participation in this DAP. The content on economic revitalization would have benefited greatly from the input of community leaders and grassroots organizations with experience and need for support in the development of microenterprises, small businesses and other types of local industries. Furthermore, if the community had direct participation here it would promote the recovery and sustainable revitalization of its environment, ensuring that it responds to their particular needs.

For example, the small business loan must define, explain and clarify which small emerging companies will be prioritized as a result of their assistance link with the small business incubator program. Likewise, it must be specified what type of emerging companies it will consider for the incubator program taking into account an equitable perspective and having first evaluated the particular needs of the community to which said company would be serving. The risk of supporting emerging companies without an evaluation of previous community needs constitutes a misuse of the funds, and does not promote the recovery or sustainable revitalization of the community.

It is also necessary to clarify the specific criteria for applying for these loans and the particular conditions that the cancellation of the loan entails. Regarding the latter, it is necessary to expand the criteria that a company would need to meet in order to be considered for loan forgiveness. In any case, we suggest evaluating assistance that does not involve a loan if it is directed to emerging community-based companies and community collectives that have arisen as a result of the disaster in their respective communities, and that thus possess limited resources for their subsistence. This requires a study that identifies community groups and grassroots organizations that have been responsible for assisting people in their community in areas of health, nutrition, psychological and social support, among others.

Finally, we note that in the workforce training program, the work focus categories should be re-evaluated. To determine what type of recovery work is needed in a community, it is

necessary to meet with community leaders and have an open dialogue. Recovery work does not always involve construction labor. For example, in ALHM we have witnessed the need for work of a psycho-social nature, health and nutrition. It is essential that these job categories respond to the needs of each community and that the leading role that can be played by the communities and grassroots organizations in their management is recognized.

III. Final Recommendations

Many of the observations and deficiencies that we have pointed out regarding the DAP should and can be corrected through the real, effective and adequate participation of various sectors of civil society, in particular of the most affected communities by the hurricane. In many cases, these communities have a long history of organization and self-management. They were also the ones who developed their own internal action plans before, during and after the scourge of the hurricanes, fighting to guarantee the survival of its most vulnerable members. It is the communities that know first hand the needs left uncovered after the disaster and it is urgent they are part of this plan. The road to a sustainable, just and equitable recovery will require open participation channels so that the people and communities most affected by the disasters can point out their unmet housing, infrastructure and economic revitalization needs.

We must not lose sight of the fact that these funds should be directed towards a plan for recovery from the hurricanes to serve in future occasions and that will serve the long-term reconstruction. Instead of displacing communities, developing more houses and structures or directing these important funds to aspects that are not urgent at the moment or that do not respond to the needs of the most impoverished populations, it is urgent to adopt comprehensive mitigation plans with entities base, non-profit and community groups. Similarly, the development of comprehensive community plans, including the development of housing, infrastructure, and economic revitalization in response to the social and economic needs of the diversity of people and families that coexist in community, should be a priority.

Once again, and in the interest of promoting access to justice, a dignified and just recovery, as well as community participation, Ayuda Legal Huracan Maria is available to join efforts towards this direction.

Thank you for considering these comments,

