



RLC
Resiliency Law Center



February 21st, 2023

To: Office of the Assistant Secretary for Community Planning and Development, HUD.

Re: Request for Information to strengthen and improve the Community Development Block Grant Disaster Recovery (CDBG-DR) program.

The Resiliency Law Center (RLC) is an initiative aimed at shifting the balance of power to local communities in order to ensure that disaster recovery and rebuilding in Puerto Rico is effective, fair, and resilient, and that climate change issues are taken into account. To achieve this, we established an advocacy center for disaster recovery and climate change awareness; created a capacity building program that train students, lawyers, and other professionals in legal techniques for a resilient recovery and to fight climate change, and learn about federal contracting and grants, and, also, provide counseling, legal representation, and education to individuals, organizations, and communities affected by natural disasters and climate change and that desire to participate in the process of getting grants and contracts for the recovery of Puerto Rico.

On December 20, 2022, the Housing and Urban Development Department (HUD) published a notice on the Federal Register seeking public input to strengthen and improve requirements for entities receiving and implementing Community Development Block Grant Disaster Recovery (CDBG-DR) funding.

The networks and relations we have built with leaders in different organizations allow us to present a clear picture of the challenges faced in the recovery process in Puerto Rico. In the RLC we have identified challenges and barriers with CDBG-DR rules and requirements at a federal and local level, and in its administration by the Puerto Rico Housing Department (PRHD). Also, it is important to indicate that several collaborators including *FURIA Inc.* and *Sembrando Sentido* contributed to the preparation of these comments. We believe that our feedback could be helpful to further improve the program and make the recovery process in Puerto Rico equitable and beneficial to the people that need it the most.

I. Reducing administrative burden and accelerating recovery

➤ Removal of bureaucratic barriers and layers in processes

1. Ownership issues as a layer over layers problem - Ownership proof requirements are still an obstacle for many to receive disaster aid, even CDBG-DR. Even after FEMA revised its guidelines to flexibilize the proof

needed to establish ownership in the program, we are seeing cases of survivors being denied aid to rebuild their homes due to lack of sufficient formality of title. Here some important examples of related programmatic failures:

- a) In the PRHD's R3 program, we've seen intolerable treatment to very vulnerable persons who are treated without regard to their health conditions, including mental health. Despite the fact that the PRHD established that its priority was people with disabilities and the elderly, we have experienced that these vulnerable populations do not have the necessary support from the agency. This lack of assistance to these vulnerable populations imposed unnecessary burdens on the participants. Today there are vulnerable persons who have been waiting for months for PRHD to contact them or inform them of the status of their application for assistance. While waiting for communication from the department, they continue to live in the affected residences, as the PRHD does not offer them relocation alternatives, exposing them to inclement weather and deteriorating their health conditions. Part of the inefficiency of the process with the R3 program is the lack of guidelines to the PRHD regarding deadlines to be met with participants. PRHD has total freedom in the length of time they must assist a survivor which leaves them in a position of vulnerability. In some cases, three years have passed since a person applied and still the process of rebuilding or acquiring their new property has not been initiated. R3 can be an effective program, if the provisions of the Uniform Relocation Act are applied in cases of owners in need of relocation or rehabilitation.
- b) The Re-Grow program for small farmers has failed to meet its goal - The Re-Grow Program was supposed to provide direct support to the thousands of farmers and fishermen who suffered immeasurable losses during Hurricanes Irma and Maria, serving as a jumpstart for those who suffered severe economic losses. As recently confirmed, just over 300 farmers have been impacted by the program, even though most farmers on average have an income between 10,000 and 12,000 dollars a year, demonstrating the importance of this program. The waiting time is so long that farmers must submit the same document several times since the validity of the documents expires in the hands of the Puerto Rico Housing Department, as administrator of the funds. This causes small farmers to incur in extraordinary expenses such as hiring accountants, engineers, on several occasions to produce the same document again and again. If a small farmer is lucky enough to have their application evaluated by an employee before the documents expire, then they are faced with a request from the Puerto Rico Housing Department to change their application for assistance. We have encountered cases where farmers apply for all-terrain vehicles following the specifications of the program, but then the PRHD

changes the specifications of the vehicles, and requests the farmers to change their application to another vehicle that will not meet the farmer's needs. This shows that the program has not focused its efforts on facilitating the application process for those who have not had access. Finally, we learned recently that the latest amendment presents a reduction from 70% to 50% of the national objective of serving LMI (Low and Moderate Income) families, which means that the obligation to serve them would decrease, perhaps favoring those in a better position.

- c) The Title Ownership Program, which was the tool created by the PRHD to attend issues of informality of title in Puerto Rico, has been completely ineffective in its management and has not promoted effective participation. In an attempt to help move the title program, the RLC presented a proposal to the PRHD that included participatory policy advocacy for the identification of obstacles and fashioning proposals to change restrictive local laws. Instead, the PRHD continued working by themselves with local politicians, resulting in a new special law applicable only to CDBG-DR applicants. The new law has proved problematic because it does not contemplate the needed rules and structure for title processing between agencies and other stakeholders, and other issues such as not permitting individual legal representation to survivors. We also think it can be very dangerous to hand out titles and relocate people without proper planning, as it will end up promoting displacement of communities.

➤ **We insist that the lack of effective participation of civil society, knowledgeable in these processes and issues, would have produced advancement and better results for survivors and the program as a whole. HUD should ensure that localities have methods to promote the agility of programs and effectively address the needs of survivors. To do so, we propose that HUD requires localities to have mechanisms to integrate local knowledge in the fashioning and implementation of programs. Also, to measure compliance, HUD should revise its deliverables to include qualitative measures of effectiveness or success, and not only quantitative deliverables that merely show production or check-list items.**

➤ **More flexibility and removal of onerous requirements**

1. **Insert more decentralized, inclusive, and equitable CDBG-DR governance models** - We have proposed in many instances the creation of civil society working groups in order to move efficient problem identification and resolution in CDBG-DR programs. Yet, pushback to our proposals include those who insist that the insertion of working groups would be adding another layer of bureaucracy. We want to emphasize that many of the problems faced by the CDBG-DR

programs would have been identified from the beginning and fixed if civil society groups would have been consulted and heard. Yet, we continue seeing the following:

- a) The over/centralization of decision making, with outside firms being the biggest contracts, results in decision making being very slow and inefficient. We see cases delayed in which case managers are not able to make determinations and depend on central PRHD to move on cases. Also, we see many case managers and public officials applying requirements inconsistently, or that are not clearly expressed on guidelines.
 - b) Furthermore, there is lack of agility in solving controversies when questioned in their processes, and administrative challenges or appeals are extremely slow. Without specialized or expeditious procedures, filing a claim makes it even more difficult and onerous for survivors or other claimants to get the solutions they need.
 - c) Also, local subcontractors have complained of being limited by stringent guidelines with requirements that are supposedly established by HUD. Examples include construction standards and reimbursement requirements.
2. As of now, there is no real efficiency in communicating these and other obstacles or fashioning effective solutions, and the people who keep suffering are the survivors who are not getting the help needed. Giving space to civil society to identify problems and solutions will not make the process more cumbersome or delayed than it already is. **HUD needs to add functional and effective mechanisms for direct civil society participation in the governance of CDBG-DR funds that would accelerate the creation of solutions and promote creative visions into the program.**
 3. Also, **HUD should include an open mapping system of all funding streams, including their eligibility criteria borders and overlapping areas, which could help drive recovery more coherently and congruently. This could be in the form of a dashboard that lays out program planning, budgets and contracting decisions, and that can be used by local stakeholders, community leaders and non-profits to identify misuse of funds, problems with policies and even raise red flags on illegal or inefficient uses. Ideally, it would be made public and organized from the moment of funding authorization, and it would help federal and local governments to perform planning exercises (economic, urban, and financial) based on a balance between needs and resources.**

➤ **Administrative costs budget is being spent faster than other programmatic aspects, yet the administration of the funds is not effective**

1. In the 5th year after hurricanes Irma and María hit Puerto Rico the PRHD had spent 20% of its CDBG-DR Administrative costs budget. Yet, other reconstruction programs have spent a smaller fraction of the budget, taking too long to operate and not attending to the needs of the survivors. For example, the R3 housing reconstruction program had just spent 12% of its budget, while the planning program had not spent more than 5%. The net result is overspending in administration while there is marked inefficiency in the execution of the programs.
2. To ensure a proper governance of the funds, **HUD should require that localities demonstrate how their administration of funds are producing results and insert civil society working groups for efficiency and prioritizing local needs. Administrative costs and resources should be regulated in ways that promote efficiency with evidenced results, such as requiring the disclosure of a detailed list of administration expenses and using indicators that measure quality (*quality over quantity*).**
 - a) For example, the RLC and many other groups have repeatedly argued that planning programs should be prioritized and executed first, as reconstruction without planning is resulting in displacement of residents from their communities. This is why we insist that fast use of administration funds compared to planning funds, is an example of lack of clear priorities and efficiency.

- **The reimbursement requirement seriously limits the capacity of local entrepreneurs and other entities to participate in the reconstruction process - HUD should clarify which are regulatory impositions of the reimbursement method, and inform localities how to apply for exemptions. If the regulatory requirements by HUD are too onerous, it should eliminate them** considering the difficulties of Puerto Rico where there is very little capital available to small businesses and organizations. This could be applicable to other jurisdictions where there is a high poverty level and fiscal crisis of local government.
- **HUD should have more direct channels of communication and collaboration with FEMA, especially as disaster recovery and mitigation programs overlap.** It is very important, as established repeatedly in reports by the General Accountability Office, that programs of disaster recovery and mitigation should be streamlined across agencies to avoid the increasing levels of bureaucratic requirements, overlapping and even programs that cancel each other out while not solving the situation for survivors. But as that legislation to that effect will take time, HUD could begin by promoting more direct lines of communication and collaboration and support proposals for the creation of civil society task forces that can operate outside agency frameworks to help

coordinate efficiency between agencies.

II. Establishing priorities

➤ **HUD should require the creation of action plans that prioritize planning, mitigation, and promotes resiliency in a participatory way. The discretion currently afforded to local governments cannot go against the purpose of the programs.** The absolute priority should be the effective recovery of disaster survivors of low to medium income populations and promote their resiliency in future disasters. To achieve this:

1. The Plan should prioritize community planning and mitigation before relocation, in order to avoid the displacement of the community. One of the problems identified with R3 was that even though the relocation was supposed to be a completely voluntary process, the way programs worked could push many people to relocate as their only option. Many of the residents affected by the hurricanes and potential beneficiaries of this program currently live in a flood zone, according to flood maps. For said reason the program would not allow them to take the option of reconstruction or rehabilitation in said spaces, because of prohibitions established in the Action Plan. Therefore, affected residents would have to resort to moving without first having considered the mitigation and community planning, as these programs started years after R3 did. Additionally, even with planning programs, there is no budget assigned to develop those plans, making these tools insufficient to ensure community integrity and avoid displacement.
2. The program should encourage and require the grantee to invest in whole community recovery in proportion to its unmet recovery needs.
 - a) The program should not approve any project that does not comply with congressional climate change and environmental mandates, President's climate change and environmental policies, the Executive Order 14008, the NEPA, and state and territorial statutes regarding climate change and environmental protection.
 - b) The program should prioritize comprehensive planning for climate adaptation at state, regional, and local levels of government without leaving those most vulnerable behind. Climate justice should be a framework for establishing success metrics.
 - c) The program should prioritize projects in the Action Plan that at least 70% percent specifically benefit the low-and moderate-income people in localities with high poverty levels such as Puerto Rico.

III. Understanding requirements for the most impacted and distressed (MID) areas.

- **HUD should implement a local-knowledge based process to identify the proper indicators that can be used to evaluate geographical needs according to socio-economic, political and cultural characteristics.** In Puerto Rico, for example, we have plenty of academic institutions and scientific knowledge to develop useful to understand which are the most impacted and distressed areas. It is incredibly important that such work is not commissioned to outside firms who develop these indicators exclusively for private gains.
- **If useful indicators are developed, HUD will be able to better supervise the proposed action plans, its frequent changes, and that priorities in MID areas are actually addressed.**

IV. Developing the action plan

- **Establish higher minimum requirements for Action Plans**
 1. Our experience in Puerto Rico has demonstrated that the development of the CDBG-DR Action Plan is a crucial step that should have higher standards of civil society involvement and the use of local knowledge. For this reason, **we propose that HUD increases the number of public hearings required and establish minimum thresholds to show effective participation of community members.** For example, require local hearings according to population and/or geographical needs. Also, **HUD should increase the public commenting period, ensuring that a variety of processes might be used to submit them.** It should help increase localities' capacity in undertaking proper scrutiny and attention to the comments submitted. Furthermore, HUD itself should be an example to attending comments and making these efforts to gather local knowledge useful.
 2. Many groups have commented about negative aspects of the Action Plan in Puerto Rico, including projects that do not meet HUD criteria and/or requirements. Some concerns were addressed by HUD, such as not approving the PRHD proposal to use funds for the matching requirement in the reconstruction of the power grid. But most concerns go unheard, such as the concern about proposals to build roads in environmentally sensitive areas, concerns about the elimination of community resiliency centers as a stand alone program, and the approved proposal of the economic development district in Puerta de Tierra. All of these projects are creating unfair displacement and go against environmental and low-income community priorities. **HUD should actively address the comments presented by civil society groups to localities about the Actions Plans, as a way to**

assess their adequacy of the programs proposed. With the integration of civil society working groups, this could also be addressed.

➤ **Increase active and meaningful public participation**

1. As mentioned above, the impossibility of effective implementation of plans and guidelines, which were created without real or significant local civil society input, have become the crux of the stalled recovery in Puerto Rico.

2. **We therefore insist on proposing that HUD:**

a) **Requires the participation of civil society working groups in the creation of the Action Plans, and also as a mechanism through which participation is guaranteed throughout the process.**

b) **Public hearings should be celebrated both virtually and in-person.** This will increase overall participation by allowing the participation of people (many thousands in Puerto Rico) that have no real access or capabilities to use technology platforms. In addition, the public hearings should be live and should not require the filing of a pre-recorded video or a written document to be able to participate in the hearings.

V. **Advancing equity**

➤ **It is important to differentiate regional needs** - As the Action Plan was fashioned in a centralized, non-participatory way, and written mainly by outside consultants, its application started revealing important differences between the regions in populations in Puerto Rico that need to be addressed differently in order to promote effective recovery. For example:

1. Among the needs of several farmers in the eastern region of Puerto Rico is the lack of ownership. The lack of ownership limits their opportunity to participate in recovery processes. With good community planning, it is possible to identify this type of regional need in advance by tailoring program resources to local needs.

2. **A community planning process needs to be established prior to the recovery process so that the agency can ensure that the needs of survivors are effectively addressed.** In the case of programs such as Re-Grow, each agricultural region in Puerto Rico has different needs.

➤ **Create meaningful and empowering community engagement to secure an equitable distribution of funds**

1. **CAC and its limited requirements** - Citizen participation is key in disaster recovery processes and promoting resilience of communities.

Community leaders and communities must play a leading role in what concerns and affects them. Involving them in every step of the development and implementation of actions and projects that affect those spaces will ensure the success of these efforts, and will deal with lack of transparency and communication between the agency and communities. After a lot of advocacy efforts, the Citizen Advisory Committee (CAC), became a requirement established in the notice regarding CDBG-MIT funds. This was a fundamental step as the Committee will be in charge of making sure that the recovery process is efficient, fair and transparent. Unfortunately, it took almost two years for it to be activated, a time in which a lot of programs continued running without proper participation of the citizens and their communities. Even though it started working recently, we need to point out that it is insufficient for it to only work with the Mitigation Plan as de CDBG-DR programs are fundamental for the whole recovery and it is necessary for the communities to speak up about the challenges they are seeing happening with these programs and offer solutions that work for them.

2. **As a recommendation, the federal notice should expand the citizens' advisory committee requirement to all CDBG programs, and assure that it has binding nature regarding their recommendations. By doing this we can guarantee effective and diligent insertion of the communities in the process of utilization and distribution of recovery funds under the PRDH.** Considering that the recovery process is also led by other entities, such as COR3 and other federal agencies that play a leading role in the process, we need to make sure that these other funds complement each other and respond adequately to the needs of the communities and the population that it is supposed to serve. For that to happen, we must implement a mechanism that allows feedback of the communities, but also of other voices that have participated and advocate for a recovery process that guarantees safe housing, permanence, and justice for their residents. Therefore, it is important to create a representative committee of the civil society with voices of community leadership to supervise and oversee the use of the recovery funds in its entirety, and ensure they are used for the benefit of the communities.

- **Require effective mechanisms for transparency with the help of civil society organizations.** This would include changes to the transparency portal should promote further disclosure of project information, that includes location of these projects/programs (when applicable), impact, responsible entities, progress, participation opportunities, and inclusion of impacted communities. This data is best disclosed in proactive digital formats, easily accessible and understood, and updated regularly. Disclosure should be

designed in a participatory manner, and aim to answer key questions of relevant stakeholders and beneficiaries. The centralization of information disclosure should also apply to all contracting and procurement processes with CDBG-DR Funds, and disclosing end-to-end contracting information using open data standards. This action will allow systematic analysis and monitoring of processes, to evaluate deficiencies and their underlying causes, allowing for timely corrections and preventing the misuse of public funds. It will also allow bidders to learn about all CDBG-DR procurement opportunities in time to compete.

VI. Incorporating mitigation and resilience planning

- **HUD should review if every project has an environmental analysis from FEMA, complies with executive and congressional climate change and environmental mandates**, including the President's climate change and environmental policies, the Executive Order 14008, the National Environmental Policy Act (NEPA), and state and territorial statutes about climate change and environmental protection. HUD should not finance any project that does not comply with congressional climate change and environmental mandates, President's climate change and environmental policies, the Executive Order 14008, the NEPA, and state and territorial statutes regarding climate change and environmental protection, even if said project has FEMA's Finding of No Significant Impact.
- **HUD must support projects of a varying nature to serve Puerto Rico's most important climate adaptation needs**, which are many and range from mitigating urban and coastal flooding, improving water storage and management capacities, relocating critical infrastructure and communities at risk, developing affordable housing for vulnerable populations, protecting our natural and cultural resources, advancing the economic resilience of local small and medium businesses, and many others. Consequently, it is fundamental to have comprehensive planning for climate adaptation at state, regional, and local levels of government and to invest in projects that advance resilience and sustainability without leaving those most vulnerable behind.
- **PDI's as a model to follow** - A lot of communities around the archipelago of Puerto Rico were part of a community planning process at the beginning of the 2000's as part of the Special Communities program. As a result they developed Comprehensive Development Plans, or as we call them PDIs, in which they decided and imagined how their communities would look like with proper mitigation methods. These plans could be a great guidance for a lot of places that will be impacted directly by the planning currently happening under the CDBG-DR programs. **HUD can require that existing local**

knowledge, such as existing community plans, is incorporated into the Action Plans.

VII. Replacing disaster-damaged housing units, minimizing displacements, and incentivizing affordable housing development

- **A participatory planning process should be required prior to initiating recovery programs** - In order to minimize displacements and incentivize the development of affordable housing, a planning and community participation process is essential to the recovery process from the beginning. By establishing a planning program, housing needs or possible dangers of displacement can be identified in advance. With an adequate planning procedure, it is possible to initiate mitigation processes in the communities prior to relocation. This would allow flood zones to be evaluated, mitigated and cataloged as safe zones for housing construction, and for the rehabilitation and housing sites, avoiding unnecessary displacement. Also, existing abandoned housing could be effectively identified, used and recovered within the communities and regions where people live and want to relocate to.

- **Problems of exclusively relying on the existing housing market for the relocation of survivors:** Currently in Puerto Rico, the PRHD has assigned vouchers to survivors so that they can purchase homes, but due to the lack of mitigation and planning in advance and the inflation caused by major influx of outside investors and Airbnb tourism, there are little to no homes available for people to relocate to. Available homes are frequently found not to comply with “federal standards” of construction quality, or are located in flood zones or may be flood prone, which requires people to have flood insurance that they cannot afford. Likewise, we have seen no real production of affordable housing and lack of regulations that could stem the high cost of housing due to real estate speculation. **HUD should require that recipients of CDBG-DR funds come up with creative solutions in conjunction with civil society actors. In the comments to the Action Plans and its changes, and in our advocacy efforts, many great options have been presented to the PRHD to really make the CDBG-DR investment work to increase the amount of affordable housing, make communities safe and sustainable.** It does not cease to be surprising to us when public officials finally meet with these organizations and seem to realize that effective options do exist. It is a matter of listening to and changing the programs.

- Furthermore, **HUD should require compliance with the Uniform Relocation Assistance Act as part of the recovery relocation processes.** In this way, the local government has a time frame in which to relocate the families, combined with processes of community participation, ensuring the well-being of survivors and respect of their civil and human rights.

VIII. HUD should insert civil society participation mechanisms into all CDBG programs to ensure effective, equitable, transparent, and resilient disaster recovery processes.

As exposed in our comments above, many of the obstacles we are facing with the recovery programs could be resolved with real civil society consultation to ensure an effective use of federal funds. It is essential to create multisector engagement and empower local civil society through mechanisms where community, civic, nonprofit, and small business leaders become an integral part of the oversight and coordination of recovery efforts. Governance of disaster recovery must actively integrate local knowledge in order to respond to the humanitarian needs of communities and effectively mitigate and adapt to further effects of climate change.

This integration of effective civil society participation can be done through legislation and regulatory mandates. We are willing to offer support on the promotion of models and proposals that can assist the creation of civil society participation mechanisms.

Any notification regarding these public comments can be sent to the email of the Director of Operations, Adi Martínez-Román, Esq.: adi.martinez@upr.edu; and copied to the email address of her advocacy assistant, Naudelis Fernández, naudelis.fernandez@upr.edu.¹ Thank you for your consideration and the opportunity to comment to achieve a stronger and equitable CDBG-DR program.

¹ For more information about our work visit: <https://linktr.ee/resiliencylawcenter.derecho>.