

Response of the Federal Government to Puerto Rico Since Hurricane Maria

INTRODUCTION

It has been more than five years since Hurricane Maria impacted Puerto Rico. It was an unprecedented emergency that left death and destruction in its wake. Reconstruction is still a far way off. The more than 3,000 deaths, the displacement of hundreds of thousands of residents, the blue tarps on rooftops that make daily life challenging, the months of lost schooling, the long, anxious wait for expected help to arrive, and night after night, month after month of darkness, resulting from this tragedy. [3.2 million](#) U.S. citizens struggled to live through the [longest blackout in U.S. history](#) (11 months) and one of the [largest disruption to energy customers in U.S. history](#). [One third of the deaths](#) were attributed to delayed or interrupted health care. There is no doubt that both U.S. federal, and Puerto Rico central governments failed to manage the crisis and protect the people.

Immediate Aftermath/Response

The federal governments response was determined to be [inefficient](#), [ineffective](#), and [unequitable](#). It was hampered from the outset by a lack of familiarity and insensitivity to cultural norms, local government and institution structures, a unique legal framework, and language barriers. The lack of cultural and language competence coupled with [poor contracting](#) processes, political interference alternating with the [complete indifference of the Trump administration](#), and unprecedented [bureaucratic barriers](#) imposed on Puerto Rico, has undermined and severely hampered recovery and rebuilding efforts on the archipelago.

A [2020 investigation of FEMA](#) by the Department of Homeland Security Office of Inspector General (OIG) found that "Commodities successfully delivered to Puerto Rico took an average of 69 days to reach their final destinations." The same OIG report found that "FEMA lost visibility of about 38% of its commodity shipments to Puerto Rico, worth an estimated \$257 million. Inadequate FEMA contractor oversight contributed to [problems] and delayed commodity shipments. FEMA did not use its Global Positioning System transponders to track commodity shipments, allowed the contractor to break inventory seals, and did not ensure documented proof of commodity deliveries." Given the lost visibility and delayed shipments, "FEMA cannot ensure it provided commodities to Puerto Rico disaster survivors as needed to sustain life and alleviate suffering as part of its response and recovery mission"

The U.S. government response was slow and underwhelming, [especially when compared](#) to the assistance offered by the [Trump administration](#) after Hurricane Harvey, which ravaged Texas and the southeast just weeks before Irma and Maria. [Numerous analyses](#) show that the [disaster response to the three areas](#) - Texas, Florida, and Puerto Rico - impacted by hurricanes within weeks of each other did not align with storm severity and likely affected deaths and recovery rates.

Response of the Federal Government to Puerto Rico Following Earthquakes 2019/2020

From December 2019 through December 2020, while the island was still waiting for federal aid for Maria, Puerto Rico experienced over 9,000 earthquakes and aftershocks, including the strongest series of earthquakes felt in Puerto Rico in over a century. Hundreds of buildings and thousands of homes were destroyed, resulting in an [estimated \\$3.1 billion in damage](#). Many people slept outside with their families for months out of fear that their homes would collapse. Although the U.S. House of Representatives [passed a disaster aid bill](#) intended to help Puerto Rico recover from the earthquakes, the bill was never passed in the [Republican-controlled](#) U.S. Senate and faced a [veto threat from President Trump](#). **To date, Congress has not appropriated any disaster funds to help Puerto Rico address the resulting damage from the 2020 earthquakes. Finally in 2021, the Biden Administration allocated \$3 billion for earthquake repairs.**

From 2018 - 2020 most of the money Congress appropriated to support recovery and rebuilding following Maria was withheld by the Trump Administration.

Five Years of Ongoing Crises

For the past five years Puerto Rico has experienced an ongoing state of crisis. Continued [energy insecurity](#), electricity [rate increases](#), devastating tropical storms and hurricanes (like [Isaias](#) in July 2020 during the Covid-19 pandemic), repeated [droughts](#) leading to water restrictions, damaging [flooding](#) on a regular basis, [earthquakes](#) and severe [austerity](#) in public services imposed to repay debt, plus [widespread unemployment](#) and overburdened healthcare system as a result of the pandemic, growing food insecurity, have left the island and its residents battered and exhausted.

RESPONSE OF THE FEDERAL GOVERNMENT TO PR SINCE HURRICANE MARIA

Response of the Federal Government to Hurricane Maria - Where Does It Stand?

During its first year, the Biden administration took important steps to aid Puerto Rico's recovery including amending FEMA guidelines so that property owners in a crisis situation can present alternative documentation to establish ownership interest. Under President Biden, HUD also reached an agreement with the government of Puerto Rico to [eliminate unique restrictions](#) imposed on the CDBG \$8.2 billion dollars in CDBG-DR funds.

“\$62 billion has been allocated by Congress for rebuilding post-Maria - however, damage estimates are between \$100 to \$139 billion.”

Since 2018, approximately "\$62 billion has been Congressionally appropriated to Puerto Rico in federal disaster funding for rebuilding post-Maria. However, damage estimates range between [\\$100 billion](#) and [\\$139 billion](#)" leaving a significant gap between the money appropriated by Congress and the damage estimates.

As of August 2022, of the [\\$62 billion](#) "appropriated" to Puerto Rico for hurricane disaster relief, only \$19.8 billion, or 32% of the federal funds have been "disbursed."¹ (*Puerto Rico Disaster Recovery Transparency Portal [COR3 Financial Analysis and Summary](#) updated 8/25/22.*) Nearly 82% of the \$62 billion appropriated by Congress in 2018 following Maria are allocated through two federal agencies: FEMA programs (more than \$30 billion), and HUD-CDBG-DR programs (\$20.2 billion).

FEMA is the lead federal agency responsible for assisting Puerto Rico to recover from disasters. Locally, FEMA collaborates with the [Puerto Rico Central Office of Recovery, Reconstruction, and Resiliency](#) ("COR3"), and HUD works with the Puerto Rico Housing Department, [Departamento de Vivienda](#). The Community Development Block Grant Disaster Recovery (CDBG-DR) Programs provide grants to states, territories, cities, municipalities, and non-profits to develop viable urban communities by providing decent housing and a suitable living environment, and by expanding economic opportunities, principally for low and moderate-income persons.

As of August 2022, only 4% (\$823 million) of the \$20 billion CDBG funds allocated for Puerto Rico's recovery have been disbursed by FEMA.

¹ The Federal Appropriations Process and Disaster Assistance | Congress makes decisions about spending specific funds through a complicated "appropriations process."

The key concepts to understand in this process are:

- First, Congressional committees of jurisdiction draft and negotiate appropriation bills, which provide the legal authority to obligate and spend money from the U.S. Treasury.
- Second, funds are then allocated, sometimes by legislation, but most often by the Office of Management and Budget ("OMB"), which authorizes the transfer of funds from a global appropriation account to fund a specific program run by a government agency.
- Third, funds are then obligated, this occurs when a government agency makes a definite commitment that generates a legal liability of the federal government for the payment of goods and/or services.
- Finally, an expenditure or outlay occurs when a specific amount is paid by a federal agency. In plain language, this is when the U.S. Treasury writes [disburses] a check to pay for the program.

Source: Center for a New Economy CNE "[Taking Stock of Puerto Rico's Reconstruction Process](#)," Sergio M. Marxuach (May 27, 2020)

Challenges Getting FEMA and CDBG Disaster Aid to the Island

FEMA - HOME REPAIRS/REPLACEMENT ASSISTANCE

The Individuals and Households Program IHP Home Repairs/Replacement Assistance are intended to provide financial assistance to homeowners whose primary residence was damaged or destroyed when the damage is not covered by insurance. In addition to many findings in the Government Accountability Office report on 2017-2018 Hurricanes and Wildfires ([GAO-18-472](#)), the assistance program was riddled with obstacles for survivors including:

- an online application for assistance, even though only half of Puerto Rico has broadband access and at the time telecommunications systems were not functioning ([GAO report](#), p. 37)
- limited regional assistance centers for in-person support ([GAO report](#), p. 50)
- inspectors who did not understand Puerto Rico's home addresses or housing realities and left homes uninspected ([GAO report](#), p. 37)
- FEMA did not have enough bilingual employees to communicate with local residents or translate documents ([GAO report](#), p. 37)
- FEMA reliance on land-based emergency communications ([GAO report](#), p. 38)
- long waits for inspections, and lack of meaningful language access ([GAO report](#), p. 37)
- shortage of debris removal contractors ([GAO report](#), p. 39-40)
- deployment of FEMA personnel not physically able to handle the extreme or austere environment of the territories, which detracted from mission needs ([GAO report](#), p. 36)

According to [FEMA's Region II Hurricane Annex](#), information in Puerto Rico must be conveyed in Spanish—which is the main spoken and written language. Yet FEMA inspectors who could not communicate in Spanish were still deployed to inspect homes, which unsurprisingly resulted in incomplete inspections, misunderstandings, under-estimates for financial assistance, and denials.

FEMA - DENIALS OF ASSISTANCE

Perhaps the most egregious problem that prevented survivors from participating in the assistance program was FEMA's decision to apply an arbitrary title documentation requirement for proof of ownership, which resulted in [broad denials](#) based on "ownership not verified." In Puerto Rico, local housing law does not require homeowners to hold a title unless they have a mortgage. At the time, up to [55%](#) of homeowners did not hold a "title" in the commonly used sense of the word in the United States. However, in Puerto Rico home ownership is officially recognized in different ways. Thousands of homes were built informally, some communities share a collective ownership through land trusts, and family property has been passed down and divided by family members over generations. Despite being informed by local government and advocates about Puerto Rico's legal anomalies that do not require many homeowners to hold formal title, FEMA chose to continue requiring a formal title for almost a year using that as an excuse to deny homeowners desperately seeking assistance. In August 2018, after nearly 80% of applications had been denied mainly for title issues, FEMA [finally conceded](#) that the [Stafford Act](#) does not require a title to prove ownership and agreed to accept a sworn affidavit. FEMA [made no meaningful effort](#) to inform the public and those individuals previously denied that they could appeal the denial by FEMA and provide alternative proof of ownership.

- This remained a problem for disaster victims following the 2020 earthquakes even after FEMA updated its guidelines ([2019](#) and [2021](#)).

CHALLENGES GETTING FEMA AND CDBG DISASTER AID TO THE ISLAND

FEMA PUBLIC ASSISTANCE BARRIERS

Although Congress appropriated \$62 billion in federal funds for disaster relief and reconstruction of Puerto Rico after Hurricanes Irma and Maria, the Trump Administration placed restrictions such as [Section 428 of the Stafford Act](#) that made it more difficult for the government of Puerto Rico and recovery partners to access the FEMA funds. See [GAO's report Puerto Rico Disaster Recovery: FEMA Actions Needed to Strengthen Project Cost Estimation and Awareness of Program Guidance](#) that recommends FEMA revises its cost estimating guidance for Public Assistance funding for Puerto Rico and make information more accessible and easier to follow for recovery partners.²

In addition, the [reimbursement requirement](#) of the PA program represents a huge barrier for the disbursement of the funds, since most of the 78 municipalities do not have enough money in their budgets to start the infrastructure projects. At the same time, the fact that the application process is in English created a language access barrier for municipalities because most of their staff mainly speak Spanish. The same could be said for nonprofits interested in participating in the program.

With regards to FEMA's matching funds/cost share requirements, on September 25, 2017, eight members of Congress [wrote to Elaine Duke](#), then Acting Secretary of U.S. Department of Homeland Security, and requested a waiver of FEMA matching requirements for Puerto Rico. They rightly explained that "Puerto Rico's current economic conditions have already pushed the local government's financial resources to the breaking point. Requiring cost-sharing during this critical time could take local resources away from providing the essential services many citizens need."

CDBG-DR BARRIERS TO ASSISTANCE

In January 2020, the Trump Administration imposed a [Federal Financial Monitor](#) to oversee the grant administration and disbursement process of disaster recovery funds to Puerto Rico. This was a requirement unique to Puerto Rico and created unnecessary bureaucratic oversight that slowed down the recovery process. Also, allocation of the CDBG Mitigation (\$8.2 billion) and energy funds (\$1.9 billion), among other federal funds [were unfairly and deliberately delayed](#) by the Trump administration.

Serious recovery efforts have commenced under the Biden administration, and Puerto Rico has also benefited from historic legislation in the wake of the pandemic such as the [Infrastructure Investment and Jobs Act](#) and the [American Rescue Plan \(ARPA\)](#). However, Puerto Rico continues to experience the effects of inequitable access and unique barriers to federal programs.

URGENT, UNMET NEEDS

The Puerto Rico Housing Department (PRHD) *Vivienda*, has not moved quickly enough to repair roofs. These numbers show how slow progress has been and how much assistance is still needed.

- In 2021, four years after Maria, PRHD reported that 18,000 homes were still under blue tarps.
- As of [August 2022](#), PRHD reports that they have only completed 3,958 requests for assistance out of approximately 27,000 applications received under the Repair, Reconstruction, and Relocation (R3) program.

DISPLACEMENT BEFORE MITIGATION

The PR Department of Housing (*Departamento de la Vivienda, or Vivienda*) estimates that more than 200,000 homes in Puerto Rico are located within 100-year flood plains. [Numerous complaints](#) have been filed with HUD's Office of the Inspector General, complaining that the Puerto Rico Action Plan for CDBG-DR funds [failed to address any disaster mitigation strategies](#), focusing instead on the relocation of families in flood plains. Individuals and communities should know all their potential mitigation alternatives before having to relocate. Single-home mitigation alternatives are not enough. *Vivienda* should provide technical assistance to communities and engage in participatory planning to evaluate and implement community level mitigation alternatives prioritizing safety and the right to decide where people want to live *prior* to relocating and disrupting communities.

PROPERTY OWNERSHIP IN PUERTO RICO

The same challenge to access FEMA assistance because of mismanagement of property title issues also provides a barrier to accessing CDBG funds. Puerto Rico property laws are different from those in the United States. There is a historic issue of informal housing, especially in the most vulnerable communities. Many people lack a title or formal deed for their homes, yet this presents no problem for the recognition of ownership under Puerto Rico laws. During the first four years after the disaster, this was consistently one of the main barriers for people to access much-needed federal emergency and recovery funds. When pushed to make these requirements more flexible, *Vivienda* often cited federal policy as the reason they could not. After four years of denials based on inability to meet this requirement (which was not required by federal disaster guidelines), the flexibility was announced by FEMA and the Puerto Rico Housing Department. However, no provision for addressing the hundreds of thousands of denials based on this have been announced.

²U.S. Government Accountability Office. (Feb. 5, 2020). [Puerto Rico Disaster Recovery: FEMA Actions Needed to Strengthen Project Cost Estimation and Awareness of Program Guidance](#).

REIMBURSEMENT AND MATCHING FUNDS

Most non-profits in Puerto Rico are small by U.S. standards and lack the financial capacity and cash flow required to participate in CDBG-DR or CDBG-MIT programs, like the [Whole Community Resilience Planning Program](#), with reimbursement mechanisms and or matching fund requirements in order to access federal assistance funds. HUD and PR Housing Department should waive reimbursement and matching funds requirements for local nonprofit organizations to facilitate maximum participation and get money to important stakeholders.

LACK OF TRANSPARENCY

The lack of transparency to ensure accountability is another issue. In July 2020, Hispanic Federation [advocated](#) for the creation of a R3 Program Dashboard in order to make data publicly available and shed much needed light on the federal contracting process and expenditures. In February 2021, the [R3 Transparency Portal](#) was created. Despite this tremendous step forward, more data and information should be readily available, such as: (1) the demographic impacts of the programs; (2) the number of houses with blue tarps that have been repaired or are still waiting to be repaired by municipality; and (3) the correlation between awarded contracts, subcontracts and the impacts of each program and investment by municipality and vulnerable community.

LACK OF EFFECTIVE PUBLIC PARTICIPATION

Lack of effective public participation and community engagement from HUD and the PR Housing Department negatively impacts the sustainable recovery of the island. For example, the CDBG [Citizen Advisory Committee](#) (CAC) - one of the few spaces created for community groups, philanthropy, and other stakeholders to participate and provide input about community needs - is not yet fully active nor effective. Although it was reportedly reactivated on May 26, 2021, it took the Puerto Rico Housing Department over one year to even begin the nomination process for the committee's official members. Meanwhile, the [first substantial amendment](#) to the CDBG-MIT action plan is under review, with no opportunity to be evaluated by the CAC as required by HUD. The committee needs to be convened by *Vivienda* to start working immediately to comply with requirements for meaningful public participation in the reconstruction plans for Puerto Rico.

In addition, for no specific reason, the PR Housing Department or *Vivienda* is now limiting the CAC's jurisdiction to the CDBG-MIT action plan, leaving the CDBG-DR (\$8.2 billion) and the CDBG-DR Energy (\$1.9 billion) action plans without effective transparency and public participation mechanisms. This lack of effective participation in programs and guidelines has contributed to public controversies and even [legislative investigations](#) to [address the ineffectiveness of programs](#), such as the R3 Program and the [Regrow](#) program intended to promote and increase food security. Communities know their needs best and are the first to come to the aid of their members after a natural disaster. HUD should ensure *Vivienda* complies with robust public participation best practices in all the CDBG-DR and CDBG-MIT action plans.

“Recovery has been hampered in Puerto Rico by the previous federal administration’s politicized response and suffering has been compounded. The federal government has an obligation to assess what harms were caused by the federal response and work to mitigate them.”

2021 - The Biden Administration Charts a New Course for Reconstruction

Under President Biden's leadership, the federal government has eliminated many of the intentional bureaucratic barriers to access funds that were arbitrarily imposed by the previous administration and facilitated disbursement of needed funds. Nevertheless, more intentional efforts must be taken to effectively eliminate persistent systemic barriers. Current federal regulations, systems, and protocols create an undue burden for people that live in Puerto Rico to access federal aid. This makes it difficult for a long-lasting reconstruction process to actually happen. Still, it is important to recognize the following positive changes:

- On September 2, 2021, FEMA [relaxed the ownership documentation requirements](#) to increase access to assistance by disaster survivors across the country including in Puerto Rico. (This change was based on an executive order issued in January 2021, [Executive Order 13985](#), Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.)
- On July 22, 2021, the long-awaited reactivation of the [White House Puerto Rico Working Group](#) was welcomed as an important step to ensure interagency coordination of resources and technical assistance. However, the Working Group [must immediately engage](#) with Congress and Puerto Rico stakeholders, including community-based organizations that work directly with people most impacted to ensure disaster relief and other federal funds, including those intended for rebuilding the energy grid, are distributed in a timely, effective, and equitable manner.
- On April 19, 2021, HUD approved the current [CDBG-MIT Action Plan](#) to begin the development of guidelines to implement the programs under the \$8.2 billion CDBG-MIT funding.
- On April 19, 2021, the Department of Housing and Urban Development (HUD) removed the requirement of a [federal financial monitor](#) as well as other barriers to accessing \$8.2 billion in CDBG-DR funds.
- On February 2, 2021, the Department of Housing and Urban Development (HUD) finally began the process [of final approvals](#) of the Puerto Rico Housing Department's CDBG-MIT Action Plan, required prior to allocation of disaster funds, including the release of [\\$1.3 billion in CDBG-MIT funds](#) to Puerto Rico for critical disaster and recovery funds.
- On June 22, 2021, HUD published [Federal Register Vol. 86, No. 117](#) (June 22, 2021), 86 FR 32681, which governs the use of the \$1,932,347,000 allocated to Puerto Rico to enhance the electrical power system.
- On February 2, 2022, an [MOU](#) to achieve the reconstruction of the energy grid was signed between HUD, DOE, FEMA, and the local government. Within the MOU, the federal government recognizes [Puerto Rico's legislatively mandated public energy policy](#), to reach its ambitious climate goals, and promotes greater inclusion of Puerto Rico energy stakeholders in federal energy initiatives. The MOU also requires the development of the ["PR 100: Puerto Rico Grid Resilience and Transitions to 100% Renewable Energy Study,"](#) a multi-lab effort by the Dept. of Energy. This study is intended to perform a comprehensive analysis of stakeholder-driven pathways to Puerto Rico's renewable energy future. Unfortunately, the projected timeframe for the study is two years, during which time plans and approvals for projects to rebuild the energy grid will move forward without the benefit of the results of the study or the input of critical stakeholders in decision making.