



May 4, 2021

United States House of Representatives
Committee of Financial Services
Subcommittee on Housing, Community
Development, and Insurance
2129 Rayburn House Office Building
Washington DC 20515

Re: Testimony of Ariadna Godreau Aubert, Founder and Director of Ayuda Legal Puerto Rico

Chairwoman Maxine Waters, ranking member Patrick McHenry and members of the House Financial Services Subcommittee on Housing, Community Development, and Insurance, thank you for your invitation to present this testimony. My name is Ariadna Godreau Aubert, founder and executive director of Ayuda Legal Puerto Rico (ALPR), a nonprofit organization that provides free legal support to low-income families in Puerto Rico. Since hurricane María made landfall on September 20, 2017, ALPR has led legal support and advocacy efforts around disaster assistance and recovery funds in Puerto Rico. We provide support to thousands of disaster survivors each year and nurture this work with policy analysis and recommendations to transform housing and recovery processes that are fundamentally unequal.

Three years of disasters have brought us violently closer to a climate, housing, and infrastructure crisis that threatens the possibility of life in Puerto Rico. As the most recent Census data shows, nearly 12% of our population has left in the last decade.¹ The impact of a global climate crisis in our geography means more severe weather events, sea-level rise, severe flooding, and droughts. With 24% of our population living in high to high/medium risk zones² and at least 245,586 houses located on flood plains³, addressing the need for effective disaster planning, response, and recovery, as well as the urgent demand for

¹ Census Bureau, Preliminary Results (2020).

² CDBG-MIT Action Plan, p. 332.

³ PRDOH estimates, based on FEMA applicants located in the 100-year flood plain. CDBG-DR Action Plan, p. 34.

affordable and resilient housing infrastructure is crucial. Most of all, the government has an outstanding debt to ensure safe dwelling and resilient communities to survivors of multiple disasters.

Addressing the consequences of multilayered crises require deep structural changes to how we plan, prepare and mitigate for disasters, including disaster aid and recovery assistance. Within the United States, jurisdictions like Texas, New Orleans, California and New Jersey share this reality. We need disaster assistance to arrive quickly, with clear guidelines and standards of use, accessibility, assessment and compliance. We need flexibility to address regional challenges. We need accountability to ensure coherent planning, equitable access to funds, displacement minimization, and real and effective public participation throughout the entire process. FEMA, CDBG-DR, CDBG-MIT, and other recovery funding programs should never be a blind bet on possible outcomes, but a strategized road towards long-term sustainable just recovery.

Federal and local governments share the responsibility to lead survivors to resiliency. We join others who support drastic revisions to federal disaster policies that include a CDBG-DR permanent authorization and the standardization of minimum guidelines to ensure a just, agile, and adequate use of recovery funds. Also, we demand accountability and action from both the federal agencies and the government of Puerto Rico, for the obstacles that have impeded recovery to start.

Puerto Rico Post-Disaster

The need for affordable resilient housing infrastructure has exponentially grown as the consequences of disasters remain unattended. Hurricane María destroyed 786,000 houses in Puerto Rico. According to local government estimates, the infrastructure costs related to the impact of this major disaster ascend to nearly \$100 billion. More than 1.1 million requests for assistance were submitted to FEMA. Nearly 58% of applications and 75% of the appeals were denied. Two thirds of the families that received assistance to repair their homes received awards of less than \$3,000. In February 2020, it was estimated that 15,000 to 18,000 families were still living under blue tarps.⁴ According to FEMA assessments, the seismic events that started in December 2019 and that continued throughout the first half of 2020, affected 52,370 houses. At least 630 of those were severely damaged or destroyed. These events mostly impacted the Southern

⁴ CDBG-MIT Action Plan, p. 333

coast of Puerto Rico. Some of the municipalities in this zone are part of coastal and mountainous geographies besieged by high poverty rates, some of the highest unemployment rates, housing insecurities, and environmental harms.

Hurricanes, earthquakes, and pandemics do not occur in a vacuum. Puerto Rico has been affected by an unsustainable public debt and austerity since 2006. Socioeconomic fragility has a direct impact on the plausibility of resilience amidst disasters. High poverty rates (+43%), together with a low labor force participation rate (<40%) mean that families have no reserves to prepare, mitigate, and address housing insecurity in the aftermath of a catastrophic event. Added to the shutdown of schools, health services and the privatization of essential services, the looming housing insecurity is a backdrop to disasters. Nearly half of those who rent or have a mortgage use at least 30% of their income to afford their house⁵. Between 2017 and 2020 - throughout three catastrophic events- 12,800 houses were foreclosed⁶. According to the PRDOH, nearly 16,000 people are waitlisted to access public housing and another 10,000 families await a Section 8 voucher. At least 2,535 people are homeless⁷. As per the American Community Survey, 388,523 houses remain vacant⁸.

In recent years, the PR administration has shown a commitment to addressing climate change through the approval of legislation and the creation of a climate change expert committee⁹. This commitment has proven to be questionable, as executive orders, declaring states of emergency regarding infrastructure¹⁰ and waiving permit and environmental analysis¹¹, can only bring forth increased environmental harm. Additionally, the continued investment in the visitor's economy schemes, which promotes tourist developments in coastal zones, is worrisome.

CDBG-DR & CDBG-MIT Recovery as of today

⁵ American Community Survey, 1 year estimates (2019)

⁶ Puerto Rico Office Financial Institutions Commissioner., 2018-2020 Mortgage Delinquency Report / (2018-2020)

⁷ Puerto Rico Department of Family, Homeless People Census (2019)

⁸ American Community Survey, 1 year estimates (2019)

⁹ PR Law 33-2019, "Ley de Mitigación, Adaptación y Resiliencia al Cambio Climático de Puerto Rico"

¹⁰ PR Executive Order 2021-24 (2021)

¹¹ The Fiscal Oversight and Management Board, imposed by the Puerto Rico Oversight, Management, and Economic Stability Act of 2016 has also advocated to waive environmental protection.

On February 23, the government of Puerto Rico appointed the PRDOH to manage almost \$20 billion in CDBG-DR funds. Several organizations, entities, and public officials, including ALPR, reacted to this decision by pointing out the agency's incapacity to manage these funds and the need to incorporate municipal governments as decision makers and fund managers in the recovery process, among other concerns. The first version of the Draft Action Plan¹² as well as a faulty participation process forebode a complicated recovery process.

Families who were not able to access FEMA repair assistance, who were turned down or neglected by Tu Hogar Renace - FEMA Sheltering and Temporary Essential Power (STEP) Program in Puerto Rico - were brought into the Repair, Rebuild and Relocate (R3) CDBG-DR program as a last resort to secure housing assistance. With an allocation of \$3,289 billion, it is the biggest and probably most significant program within the CDBG-DR Action Plan. Between its opening date in July 2019 and the closing of the application process, 27,070 families requested R3 assistance. As of today, the outcomes of this program are disheartening and expose bigger systemic federal and local flaws. A small portion of the applicants have received a written determination on their cases. Only 904 homes have been repaired and 45 houses have been rebuilt.¹³

Through this testimony, I would emphasize on the following:

1. Lack of permanent authorization of CDBG-DR programs slows down recovery and enables politics of exclusion.
2. Clear CDBG-DR guidelines regarding the eligibility of owners, displacement, climate migration, contractors' accountability, and public participation are essential to guarantee equitable access, agility, and effectiveness of recovery funds put towards resilience housing infrastructure.
3. Codification of CDBG-DR and the minimum requirements for the elements listed above should respect the flexibility and agency of the local government and stakeholders - particularly at community levels- to adapt and influence the use of recovery funds based on their needs, wants, and human rights. The local government must never act to restrict the accessibility of recovery funds.
4. The local government shares a responsibility to remove self-imposed policy obstacles that impede and hinder the best use of CDBG-DR, CDBG-MIT, and other recovery funds. These

¹² Puerto Rico Disaster Recovery Action Plan, Draft for Public Comment (May 10, 2018)

¹³ Ayuda Legal Puerto Rico, Request for Public Information (20 April, 2021)

boundaries have a disparate impact on historically marginalized populations and must be addressed on current and future allocations of recovery funds .

I. Lack of permanent authorization of CDBG-DR programs slows down recovery and opens the door for politics of exclusion

Proposed legislation and OIG reports have stressed the need for a permanent authorization of CDBG-DR funds¹⁴ . We endorse this position.

The wait for allocation notices, published guidances, and waivers is excruciating for grantees and survivors on the ground. The NLIHC has estimated that the timeline for Congress to approve disaster-recovery funding may range from weeks to eight months¹⁵ . The time to adopt allocation notices also adds up. In the case of Puerto Rico, as the most recent OIG report states, the allocation notice was made available, “23 months and 19 days after the corresponding appropriation and 146 days after the statutory deadline”¹⁶ .

The obstacles imposed on Puerto Rico by the former presidential administration are grounded on colonialism, racism, and a complete disregard for the lives and well-being of the three million people living on the Island. This adds up to previous OIG findings on FEMA’s mismanagement of the commodity distribution process in response to hurricanes Irma and Maria, as well as to many concerns voiced in federal fair housing complaints on how the recovery processes left behind low income and black communities, disabled mothers of minors, and other groups. Questions on how and if these findings will lead to specific actions to remedy the impact of unjust recovery processes in the population of Puerto Rico still remain.

As Enterprise Community Partners have advised before “[t]his ad hoc system results in different requirements and waivers for different grantees, confusion and frustration among grantees, and

¹⁴ HR 3702, S. 2301

¹⁵ National Low Income Housing Coalition and Fair Share Housing Center. Fixing America’s Broken Disaster Recovery System Report: Part One Barriers to a Complete and Equitable Recovery

¹⁶ Office of the Inspector General. Review of HUD’s Disbursement of Grant Funds Appropriated for Disaster Recovery and Mitigation Activities in Puerto Rico (April 20, 2021), p. 21.

inconsistent and unfair disaster recovery outcomes across grantees”¹⁷. The permanent authorization of CDBG-DR could pave the way for model policies to guide programs, policies, and systems. It could provide a core minimum of guidelines regarding ownership, displacement, climate migration, contractors and accountability, and public participation. Absent these guidelines, it is only through lengthy advocacy and complaint processes at PRDOH, OIG and FHEO levels that we can push for adjustments that usually arrive too late and fail to provide adequate and agile recovery assistance to a survivor. Model guidelines could provide a best practices catalogue for grantees, presenting a uniform yet flexible manner to address the needs of their LMI communities.

II. The local government needs to act now and HUD can facilitate this process

The findings of the OIG are important, but they do not overshadow the unmet responsibility of local government. In ALPR’s experience leading disaster legal response and advocacy since 2017, the majority of the restrictions come from local officials and local public policy decision makers.

Title clearance should never condition disaster assistance

As we have reiterated on several occasions, a title deed cannot be a condition to safe housing and recovery. Requiring a deed or other formal legal documents as sole proof of ownership penalizes and disparately impacts impoverished and historically vulnerable survivors.

Around 69% of the inhabitants of Puerto Rico are homeowners.¹⁸ This proportion is higher than other jurisdictions. Yet, ownership does not mean having a formal title. According to PRDOH estimates, half of the population of Puerto Rico lacks a formal title. Nothing in Puerto Rico’s laws and regulations require homeowners to register their properties. Lack of formal documentation also responds to socioeconomic elements such as lack of access to justice, insecurity of tenure, and land rescues grounded on the unmet need for housing. In the aftermath of hurricanes Irma and María, nearly 77,000 families were excluded from receiving assistance because of their inability to prove ownership. This exclusion was possible due

¹⁷ Enterprise Community Partners. Senate Legislation Introduced to Permanently Authorize the Community Development Block Grant- Disaster Recovery Program (July 30, 2019).

¹⁸ American Community Survey, 1-year estimates (2019)

to FEMA's incorrect and restrictive interpretation of its own regulations, which support a flexible interpretation of who is recognized as a homeowner.¹⁹

ALPR researched and drafted a sworn statement form to allow owners without title to prove their ownership through alternate documentation. This form did not require notarization, since, in Puerto Rico, a notary is a specialized attorney and thus, notarization translates into a costly process for low income individuals. In June 2018, almost 8 months after hurricane María, a group of advocates were able to finally move FEMA to accept the sworn statement. It was too late. FEMA's reluctance to notify applicants about their right to appeal and use the sworn statement, placed on the backs of nonprofits the responsibility to let applicants know and provide them with the tools. Thousands of families might have lost the possibility of receiving immediate and much needed assistance for their homes.

We soon realized that the CDBG-DR Action Plan included exactly the same requirement: repair, rebuild, and relocation assistance was conditioned to formal ownership. Thousands of applications were put on hold and transferred to a title clearance program, delaying eligibility evaluations for months and years. The Action Plan assigned \$44 million to the Title Clearance Program (TCP). This program was never made available to public comment. After the public participation process, PRDOH added to the Draft Action Plan, which HUD finally approved on July 29, 2018. The program prioritizes title clearance for properties built on PRDOH lands and has no clear guidelines on how to address the complex title issues, such as inheritances and informal tenure, which form the majority of cases.²⁰ To date, after almost 18 months since the TC program started and more than \$1.1 million disbursed, only 2 titles have been registered at the Property Registry. The position of ALPR then and reiterated now by the failure of this program, is that this initiative will not solve the "title issue" but delay urgently needed assistance.

The PRDOH needed to strike down a major barrier that everyone knew was going to stop assistance. Instead, they reinforce barriers by refusing to accept a version of the sworn statement and demanding people provide several notarized statements before sending them to the TCP. Early in the process, officials of the companies hired by the PRDOH asked ALPR for pro bono help to complete these notarizations. We refused.

¹⁹ 44 FR 206.111

²⁰ CDBG-DR Program Guidelines Title Clearance Program May 27, 2020 (V.2) Pp. 22-32

It was not till mid 2020, by the approval of an Executive Order, that the title requirement started eroding. While repairs and rebuilding are now exempt of formal title requirements, program participants still are required to through the title clearance program. Further, PRDOH is yet to remove the condition clears title condition from relocation awards. Ironically, those with a clear title, but whose home is still mortgaged, may not access relocation assistance either, because PRDOH requires them to pay off the mortgage debt before they receive relocation for assistance.

We have presented several alternatives to the PRDOH, including access to temporary rental assistance to families eligible for relocation, endorsing purchase option agreements conditioned on eventual title clearance, and adopting a standard of proof in accordance to our legal framework, accountability needs and social reality.

“Formal” ownership should not be an added obstacle for a low income family trying to survive the aftermath of a disaster. It must be noted that lack of clear ownership eligibility criteria has also been an obstacle for disaster survivors in New Orleans, California and North Carolina.²¹ CDBG-DR and MIT and every other federal disaster aid needs clear guidelines on proof of ownership based on flexible criteria, such as those stated on 44 FR 206. Doing so would speed up assistance and allow for local careful consideration of public policy options that could address informal tenure in a definitive and just manner.

It is our position that individual legal strategies do not offer an effective solution to this issue. It can take years to solve a title through the courts. We must also warn against attempts to condition federal funds to Puerto Rico to changes on the property management systems, real property assessments, and title clearance, as proposed by the Office of Management and Budget as per the recent OIG report. We agree with those who consider these requirements to be out of HUD’s legal authority. HUD’s role is not to regulate or assess the property systems of state jurisdictions. Clearing titles in Puerto Rico requires structural policy changes and it is the role of the local legislature to act to identify real solutions.

III. Climate justice, climate migration and the need for a comprehensive anti-displacement policy

²¹ Fixing America;s Broken Disaster Housing Recovery System, p. 9.

Flooding is the most frequent and costly natural hazard in the United States. Identifying diverse, sustainable, and cost-effective mitigation alternatives is essential for communities' resilience in the face of future disasters, achieve economic development, and ensure a just recovery. Within a climate-crisis and as experience in the geography of an island in the Caribbean, mitigation of flood zones needs to be a transversal. As stated above, the CDBG-MIT Plan states that 24% of the population lives in high or high-medium risk zones. While several communities and groups have challenged the adequacy of FEMA flood Maps, relocation or no assistance cannot be the only options for families living in these geographic areas.

Puerto Rico CDBG-DR Action Plan still has an across-the-board prohibition to rebuild in flood zones. The CDBG-DR Plan states that people living in flood zones would not receive assistance to substantially repair or rebuild their homes. Their only option would be relocation. This without further consideration to the possibility to **mitigate**. While under no circumstances we would like to have people living in risk zones, absent a mitigation assessment, a sensible relocation plan, an adequate, affordable housing inventory, and a participatory process, relocation should always be the last option.

Nevertheless, the 4th Amendment of the CDBG-DR Action Plan included an important advocacy win: "Participants who are awarded relocation, but who do not wish to relocate immediately, may defer accepting the R3 Program award to allow for the participative development of a housing mitigation program under the CDBG-MIT Program."²² While relocation moratoriums are crucial, it is equally important to ensure coherence between single housing and community mitigation initiatives within the CDBG-MIT Plan. This will depend on the adoption of a clear displacement minimization policy.

We differ from the PRDOH position stating that relocations are always voluntary. Almost four years after the disaster, a low-income family without a safe dwelling would have no choice but to relocate if the only alternative is to receive no aid at all. We should also keep in mind that relocation would only be an option if the family has a "perfect" title. If that is not the case, and most times it is for low-income families in coastal flood-prone areas, there is no alternative for them.

While the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (URA)²³ may protect displaced individuals, the limited scope of its protection demands actions. ALPR reiterated the need to

²² CDBG-DR Action Plan, 6th version, p. 132

²³ 42 USC 5301, et seq.

adopt internationally acknowledged standards to mitigate displacements. These criteria include access to information, consultation and participation. We also demand a sensible and human rights-based relocation policy that accounts for the needs of individuals and families, as well as to the threat posed by checker-boarding, the lack of essential services in different municipalities, and destruction of already fragile social tissues. While prohibiting rebuilding in flood prone areas would leave thousands of low income families in insecure dwellings or forcibly displaced, other measures such as new construction moratoriums on coastal and flood zones could be a measure of adaptation and mitigation sensible to housing needs and climate change.

We agree with HUD when the agency recognizes that the first time appropriation of mitigation only CDBG funds may pose challenges to grantees in aligning their mitigation strategies and activities with their obligation to use most of their CDBG-MIT funds to benefit low-moderate income people and to use the funds in the most impacted and distress areas resulting from a disaster.²⁴ Mitigation strategies are effective, save recovery funds²⁵, and provide a unique opportunity to be in a better position to face climate change. Wrongly applied, these initiatives may worsen the impact of an already inequitable recovery on low income, black, and other historically vulnerable communities. Transparency and participation in planning may lead the way to integrate mitigation plans at community, municipal and local levels, as well as to ensure a coherent use of diverse sources of mitigation funds, such as US Army Corps of Engineers and FEMA's Hazard Mitigation Assistance Grants.

IV. Accountability is key

Since the summer of 2019, we have voiced concerns about the lack of accountability of contractors hired to manage the R3 program. ALPR receives constant legal assistance requests from people who have never received a single written notification on their cases. Instances of project managers being constantly replaced, of non-responsive officers, of people made to sign English-language and/or complicated contracts in 24 hours or less without having a chance to read them carefully or seek legal advice, are constant for applicants served by all of the companies contracted by the PRDOH. When we recommended adopting best practices for contractors, and to make them visible and available for the general public's consultation, we were answered with a social media post mandating "values." **See figure 1, attached.** As

²⁴ 84 FR 45839

²⁵ National Institute of Building Science. Mitigation Saves.

legal responders who attest to the multiple harms committed by negligent disaster assistance services providers and aware of the millions of dollars invested on this endeavor, we were appalled.

Clear HUD guidelines dictating best practices, contractor monitoring procedures, and the publication of reports that include information of the work completed and in progress, as well as data on complaints, is important. Most of all, a clear guidance requiring clear timelines on when should the grantee answer, process and adjudicate applications should be incorporated. While we understand that recovery processes must remain flexible and may have a degree of uncertainty, it is not possible to demand accountability from contractors who lack basic timeframes to act upon applications.

V. Participation, coherent planning, and the respect of local decision-making capacity

Public participation is essential for the success of mitigation and resilient housing infrastructure efforts. Ensuring local and regional solutions requires acknowledging the agency to local stakeholders - particularly community-based organizations- to influence the recovery process. Because it is a long-term process that extends well beyond the grant's timeline, capacity development and engagement of local actors such as community-based organizations and nonprofits is necessary.

ALPR, together with other groups, advocated for Regional Civilian Oversight Committees able to ensure participation throughout the planning, approval and implementation of CDBG-DR and CDBG-MIT funds. One year and a half after the allocation of funds, a version of this Committee was acknowledged by the PRDOH, one lacking actual engagement, guidelines or participatory standards. Moreover, the Committee is facilitated by a PRDOH official who also assesses contractors compliance. We celebrate the inclusion of Citizen Advisory Committees in the CDBG-MIT Allocation Notice. Yet, it is our position, in accordance to HUD and Enterprise Community Partners recommendations, that the Committee must be facilitated by an independent person able to communicate with impartiality. **The impartial facilitator, the acknowledgement of the capacity of this Committee to serve as watchdogs of the recovery process, and the need to produce periodic reports could be part of the model guidelines produced by HUD.**

We also warn against the approval of measures that hinder the recovery process and that erode the limited political power acknowledged to the people of Puerto Rico in the federal arenas. The recovery czar should have never been an option.

Lastly, participation is intimately related to planning and data. Coherent, participatory and transparent planning is essential. One of the biggest obstacles for needs assessment and housing infrastructure is the fact that planning programs within CDBG-DR have barely started. The PRDOH handpicked a private subrecipient for the Whole Community Resilience Program that had no previous experience or capacity to lead a critical planning. Although this program initiated at the end of 2019, assessments or data on the impact of this program remain unavailable. Yet, planning should be the basis of other critical decisions such as the coherence of programs, the evaluation of housing plans on historically vulnerable communities, relocation plans, the need for temporary measures to protect survivors throughout rental assistance, and budget and compliance assessment. Similarly, open data is needed segregated to include race, gender, disability, age, and other demographic information that could help develop a real profile of who is benefiting from recovery and who is left behind. HUD core guidelines should instruct grantees to publish timelines, progress reports, and to prioritize participatory planning as a basis for recovery.

Just recovery is possible.

Thank you again for the opportunity to participate in this hearing.