

United States Senate

WASHINGTON, DC 20510

The Honorable Mick Mulvaney
Director
Office of Management
And Budget
725 17th Street, NW
Washington, D.C. 20502

The Honorable Peter Gaynor
Acting Administrator
Federal Emergency Management
Agency
500 C Street, SW
Washington, D.C. 20024

The Honorable Ben Carson
Secretary
Department of Housing
and Urban Development
451 7th Street, SW
Washington, D.C. 20410

March 25, 2019

Dear Director Mulvaney, Honorable Gaynor, and Honorable Carson,

Last November, we wrote to express our concern about the significant and unsupported delays related to the immediate and long-term recovery needs of Puerto Rico in the aftermath of catastrophic Hurricanes Irma and Maria. Specifically, we highlighted the lack of effective Federal interagency coordination under the leadership of the Office of Management and Budget (OMB), which has and continues to impede on the Commonwealth's ability to finalize emergency repairs through FEMA's Public Assistance categories A and B programs, and subsequently its efforts to move toward permanent reconstruction. These delays are not unique to FEMA, as the Department of Housing and Urban Development (HUD) has also been affected by OMB's micromanagement and excessive bureaucracy as they attempt to administer and oversee Puerto Rico's Community Development Block Grant – Disaster Recovery (CDBG-DR) funding. The lack of leadership and coordination, combined with delays in meeting the basic needs of the island, more than eighteen months after receiving a presidential disaster declaration, has left far too many children and elderly citizens in unhealthy and unsafe conditions, families in severely damaged homes, and communities without adequate infrastructure to sustain a decent quality of life.

The response that we received, several months later, was wholly inadequate and contained no information to respond to our concerns. Specifically, we raised concerns about OMB's failure to work expeditiously with HUD to finalize and issue a Federal Register Notice for nearly \$16 billion in CDBG-DR mitigation funding that Congress appropriated in February 2018, of which \$8.3 billion has been allocated to Puerto Rico. As a result, this critical source of funding remains unavailable for obligation more than a year after it was appropriated, and nearly a year and half after the historic hurricanes made landfall. The purpose of the mitigation allocation was to provide not only Puerto Rico, but more than 15 other cities, states and territories the resources necessary to rebuild their homes, businesses, and critical infrastructure to updated construction standards in order to prevent the same level of destruction in future disaster events. As you are probably aware, some reconstruction has started to take place, but without the availability of the mitigation funding, Puerto Rico is unable to strategically adopt these improved standards, or leverage this critical resource toward a comprehensive island-wide rebuild strategy.

Further delays in the availability of funding is unacceptable. We insist that you finalize the mitigation notice in the next 30 days.

It has also come to our attention that several issues have reached a critical point with FEMA that are hindering the recovery efforts in Puerto Rico and the US Virgin Islands as well. FEMA needs to work with the territories to develop ways to expedite approvals and obligations of funding, especially for priority projects. In addition, FEMA needs to develop clear policies with regard to the issues laid out below, share them openly with Puerto Rico, the US Virgin Islands, and Congress, and ensure that they are being implemented in a consistent way.

First, finalizing the consistent implementation of the “pre-disaster condition” language from section 20601 of the Bipartisan Budget Act of 2018 is paramount. The intent of this provision was to facilitate the rebuilding of infrastructure, including the electric grid, in a way that is resilient to future weather events, reduces the need for future federal disaster assistance, and makes use of technology and modern standards when rebuilding. Congress specifically wished to avoid a situation where the islands would be forced to simply plug new pieces into antiquated infrastructure, which would only lead to more frequent failures in the future. It has come to our attention that there is a lack of consistency and transparency in the way that FEMA is implementing this language, and that FEMA’s interpretation of this language may be contrary to congressional intent. For example, recent news reports indicate that FEMA has reduced its cost estimate for a Project Worksheet covering rebuilding of a number of schools because upgrades to meet industry standards were removed from the scope of work, after previously being discussed by the stakeholders involved. FEMA must immediately rectify this situation and issue clear guidance and expectations on its approach to implementing both the “pre-disaster condition” and the “industry standards” portion of the Bipartisan Budget Act. If FEMA needs additional guidance from Congress, we must be informed of this need immediately.

Second, we are also concerned about changing FEMA guidance and approaches leading to substantial replication of efforts and excessive delays in approving and obligating funding for priority projects in the territories. For example, according to representatives of the Commonwealth, in March of 2018 FEMA determined that the level of damage to the Vieques Hospital justified replacement of the building, instead of repair. Accordingly, in August of 2018, a scope of work was agreed upon by the stakeholders involved, and coordination between FEMA, COR3, and the municipality began on the cost estimate of the replacement project. However, two months later, FEMA representatives informed COR3 and the municipality that they intended to review the validity of the replacement decision that FEMA had previously made, sending the agreed upon decision to the Expert Panel for their review. A year after the initial decision to replace the building was made, the fate of the Vieques Hospital project remains in question, and it appears that no real progress has been made in addressing the long-term health care needs of the people of Vieques, who continue to rely on a mobile clinic.

Last, when FEMA provides disaster assistance, the receiving State or Territory is responsible for implementing financial controls to ensure that funds obligated for a project by FEMA are drawn down by the grantee for the approved purpose. Currently, FEMA applies additional fiscal oversight requirements specifically to Puerto Rico, which require the Commonwealth to provide detailed documentation to validate that any costs incurred with

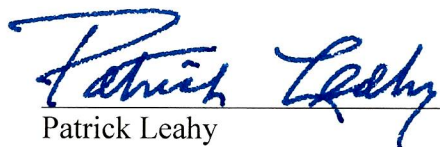
disaster assistance funding are for allowable expenses. FEMA manually validates a percentage of those actions. Negotiations to end these additional oversight measures and expedite the processing of recovery funding have been ongoing; however, it's unclear what remaining steps Puerto Rico must take to assume full responsibility of their recovery assistance. Until FEMA approves the transition of fiscal oversight to Puerto Rico, these extraordinary measures will stay in place. FEMA must be clear about the changes Puerto Rico needs to make in order to properly manage its own recovery expenses and eliminate any unnecessary bureaucratic steps.

As the territories continue to recover, it is crucial that FEMA address these issues and move forward with a stronger sense of urgency and consideration for the unique issues that they face. A recovery of this scale requires consistency, transparency, and constant coordination with territory officials.

Puerto Rico and the U.S. Virgin Islands were hit by back-to-back Category 5 hurricanes, and the damage to the islands was catastrophic. An estimated 2,975 people lost their lives, homes were demolished, and communities destroyed. This extraordinary disaster requires a commensurate extraordinary response. We have a responsibility to come to the aid of fellow U.S. citizens in times of need, and this is certainly one of those times.

We ask for a detailed response providing an update on the status of these issues and the projected timeframe for their final resolution be provided without delay. Please respond by April 5, 2019.

Sincerely,

A handwritten signature in blue ink, reading "Patrick Leahy".

Patrick Leahy
United States Senator

A handwritten signature in blue ink, reading "Charles E. Schumer".

Charles E. Schumer
United States Senator