

December 17, 2016

The Honorable Mitch McConnell
U.S. Senate
Washington DC 20510

The Honorable Paul Ryan
U.S. House of Representatives
Washington, DC 20515

The Honorable Chuck Schumer
U.S. Senate
Washington, DC 20510

The Honorable Nancy Pelosi
U.S. House of Representatives
Washington, DC 20515

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Ryan, and Minority Leader Pelosi:

We, the undersigned members of the Disaster Housing Recovery Coalition (DHRC), write to call your attention to the ongoing crisis in Puerto Rico, where FEMA has denied thousands of homeowners the federal help they are entitled to receive, and to urge Congress to address this critical issue in its next disaster supplemental package or any other must-pass legislation.

Led by the National Low Income Housing Coalition, the DHRC includes more than 800 local, state, and national organizations focused on ensuring that federal disaster recovery efforts reach all survivors, including those with the lowest incomes who are often hardest hit by disasters and have the fewest resources to recover.

We are deeply concerned that FEMA has wrongly denied property repair and replacement assistance to qualified homeowners under its Individuals and Households Program [IHP], which helps low-income survivors meet their basic needs. FEMA has refused to notify individual applicants of the Agency's error and to clarify the process it will use to review resubmitted benefit applications going forward. Without explanation, FEMA maintains that it will not notify individual homeowners wrongly denied benefits following Hurricane Maria, even though it did notify nearly twice as many individual homeowners wrongly denied insurance payouts following Superstorm Sandy. These groups are similarly situated, and FEMA has no compelling justification for treating them differently. In doing so, FEMA has failed to administer IHP benefits in accordance with federal regulations, and to date, it has not provided an effective remedy. We therefore urge Congress to include language in the next disaster supplemental package to require FEMA to take immediate remedial action, including measures the Agency voluntarily followed after Superstorm Sandy.

Specifically, we urge Congress to require that FEMA:

- Provide individualized written notice to affected homeowners in both Spanish and English that repair and replacement benefits may have been wrongly denied because of FEMA's error;
- Include a "Sworn Declaration" form with written notice, along with instructions on how to assert ownership, and post the Sworn Declaration on the Agency's website;

- Extend applicable filing deadlines, allowing homeowners 90 days from the date of individual notice to re-file their application and submit the Sworn Declaration;
- Clarify the process FEMA will use to evaluate IHP claims going forward;
- Track and report applicant data to the Committee, including but not limited to the number of potentially affected homeowners, the method by which FEMA will provide individual notice and the content of that notice, the number of homeowners who have reapplied for benefits using the Sworn Declaration, FEMA's disposition of those applications, and any other information the Committee requests pursuant to its oversight responsibility.

FEMA Failed to Properly Administer the IHP Program

IHP benefits help low-income survivors recover from disaster and include financial assistance to off-set some of the costs to repair or replace damaged homes. The program is a critical lifeline to residents of Puerto Rico, where nearly half a million homes were either damaged or destroyed by Hurricane Maria.

According to figures FEMA released in May 2018, more than 77,000 applicants were denied home repair or replacement assistance because they did not produce a certificate of title verifying ownership of the damaged property. That conclusion, however, contradicted the laws of Puerto Rico, which does not require homeowners to record a certificate of title when property is acquired through Heirship or Prescription, also known as Adverse Possession. Lawful homeowners were therefore denied benefits they should have received, because FEMA did not understand the legal parameters of homeownership on the island.

Following negotiations with local advocates, FEMA now acknowledges that applicants who own a home in Puerto Rico, even without a certificate of title, qualify for benefits. Rejected applicants can now re-apply, and “verify” ownership with a “Sworn Declaration” that conforms with local law and is executed under the penalty of perjury.

What FEMA Must Do Now

We appreciate FEMA coming to realize that recorded title is not required to establish homeownership in Puerto Rico. The agency nonetheless declined to notify individual homeowners of the Agency’s misrepresentation and has not adequately explained the process it will use to evaluate applications going forward. FEMA must take these steps, along with others, in order to provide affected homeowners with an adequate remedy, and to enable this Committee to exercise proper oversight.

The Content of FEMA’s Notice Must Be Clear and Effective.

FEMA indicated in a correspondence dated October 2018, that it was “contacting all affected applicants” to provide information on how to reapply for benefits using the Sworn Declaration. In prior communications, however, FEMA has stated that it would *not* make individual contact but would instead rely on a press release and other public disclosures posted

on its website, even though much of the population lacks internet access. The agency has also maintained that further outreach will be the responsibility of local legal organizations and stakeholders.

To our knowledge, the only written notice individual applicants have received was FEMA's response to their initial benefits application. That Determination Letter lists "ownership not verified" as the reason repair or replacement benefits were denied but does not inform homeowners that their application was rejected because of *the Agency's own error* in failing to recognize valid forms of ownership.

Homeowners who received such a letter might reasonably conclude that they were rejected for lack of sufficient documentation, such as recorded title, and therefore might decide to "give up" on FEMA knowing that they cannot in fact produce a written record of title. This is especially true for homeowners who applied for benefits at a Disaster Recovery Center, where they were told by FEMA representatives that recorded title was required. The Determination Letter would have served as written confirmation that recorded title is required, even though that is not true.

Homeowners will be left with this false impression until FEMA acknowledges its own mistake through individual notice.

Notice Must Be Delivered to Individual Applicants.

FEMA presumably has the capacity to individually notify affected applicants in Puerto Rico. Following Superstorm Sandy, the Agency notified 144,000 individual homeowners of an opportunity to reopen their flood insurance claims, after payouts were wrongly denied due to inspection fraud. FEMA managed that task by mailing batches of letters by zip code, over a period of days. There is no compelling reason why FEMA would now withhold individual notice from just over 77,000 similarly situated homeowners in Puerto Rico.

Curiously, FEMA has suggested that if legal aid organizations insist that individual notice is required, they should be the ones to provide it. Not only would this shift FEMA's legal obligation onto private entities, it ignores that FEMA alone maintains the data that is necessary to identify and contact affected applicants.

Moreover, FEMA has not explained how a press release posted on its website substantially furthers effective notice when internet access is limited across large parts of the island, or why it refuses to link to the Sworn Declaration, when the Agency itself drafted that document in collaboration with legal advocates and is the only entity that can authorize its use.

FEMA Must Clarify Its Process for Re-evaluating Applications.

FEMA has agreed to review re-submitted applications and is promoting the use of a Sworn Declaration to "verify" ownership. According to a press release dated August 17, 2018, the

Sworn Declaration is a helpful tool for individuals seeking to “verify their home ownership status,” but “will not automatically qualify a survivor for housing assistance.”

This information does not explain how FEMA will confirm home ownership once a Sworn Declaration is submitted. For example, using the Sworn Declaration as a basis for searching property records for registered proof of ownership would defeat the purpose of “verifying” ownership in cases involving Heirship or Prescription, where the property is not “registered” or “certified” by recorded title. Whatever process FEMA adopts going forward, it must ensure that eligible applicants are approved for benefits, and not unfairly denied for a second time.

FEMA Must Disclose Relevant Data.

Finally, FEMA must clarify discrepancies in relevant application data. In May 2018, it reported that 77,235 applications were denied due to lack of verified ownership. By November, that number, inexplicably, fell to 1,007. The public therefore does not know how many applicants were affected by FEMA’s mistake, or have had an opportunity to reapply for benefits.

Full transparency from FEMA is necessary for Congress to exercise effective oversight. It is also required for advocates in Puerto Rico to understand whether FEMA is meeting the needs of the people most affected by Hurricane Maria.

Thank you for your attention to this critical issue. For more information, please feel free to contact Sarah Mickelson, Senior Policy Director at the National Low Income Housing Coalition at smickelson@nlihc.org or 202-834-5178.

Sincerely,

National Organizations

American Academy of Housing and Communities
Association of Pro Bono Counsel
Catholic Charities USA
Disaster Housing Recovery Coalition
Disaster Law Project
Habitat for Humanity International
Hispanic Federation
Latino Action Network
Latino Action Network Foundation
LatinoJustice PRLDEF
National Low Income Housing Coalition
Paralyzed Veterans of America
Partnership for Inclusive Disaster Strategies

Puerto Rico Organizations

Ayuda Legal Puerto Rico
Coalición de Coaliciones
Envejecer en Armonía, Inc.
Fundación Fondo de Acceso a la Justicia
Instituto de Educación Práctica del Colegio de
Abogados y Abogados de Puerto Rico
Servicios Legales Comunitarios, Inc.

State and Local Organizations

Fair Share Housing Center of New Jersey
Greater New Orleans Housing Alliance
HousingLOUISIANA
HousingNOLA
Lower 9th Ward Homeownership Association