

Congress of the United States

Washington, DC 20515

February 22, 2019

Mr. Peter T. Gaynor, Acting Administrator
Federal Emergency Management Agency
500 C Street, SW
Washington, DC 20024

Dear Mr. Gaynor,

We write to express serious concern about alleged actions occurring at the Federal Emergency Management Agency (FEMA) that contravene Congressional intent. As such, we expect immediate action to correct any deficiencies so as to expedite the post-hurricane recovery in Puerto Rico. Two examples of inadequacies in mandated FEMA assistance are the hospital in Vieques and public schools throughout Puerto Rico. We remind you that the lives of U.S. citizens residing in Puerto Rico are impacted by these essential services.

As you are aware, on September 20, 2017, Puerto Rico was devastated by Hurricane Maria. Yet, 17 months later we still see roadblocks in the recovery process that need to be remediated immediately. To be sure, we do not negate the tremendous amount of work that was done by workers on the ground to respond to the immediate emergency. We are gravely concerned, however, that the required assessments for Puerto Rico's critical projects are being unjustifiably delayed, and when completed, provide cost estimates that undermine the ability to construct to industry standards in contravention of the Bipartisan Budget Act of 2018.

Bipartisan Budget Act Amended the Stafford Act to Build Back Better

On February 9, 2018, the Bipartisan Budget Act of 2018 (BBA) addressed the then statutory limitations to re-build damaged structures to better standards than their pre-disaster condition. Section 20601 of the BBA authorized "the Administrator of the Federal Emergency Management Agency to provide assistance, pursuant to section 428 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) ("Stafford Act"), for critical services as defined in section 406 of the Stafford Act for the duration of the recovery of [certain disasters, including the 2017 Puerto Rico hurricanes] to –

- (1) Replace or restore the function of a facility or system to industry standards without regard to the pre-disaster condition of the facility or system; and
- (2) Replace or restore components of the facility or system not damaged by the disaster where necessary to fully effectuate the replacement or restoration of disaster-damaged components to restore the function of the facility or system to industry standards."

In relevant part, the Congressional Quarterly summarized the BBA as follows.

“Homeland Security Department

The agreement provides \$24.7 billion to the Homeland Security Department, of which \$23.5 billion is for FEMA's disaster relief fund to support ongoing disaster response and recovery efforts — including assistance to families and individuals, emergency protective measures, the removal of debris, and activities performed by other federal agencies as assigned by FEMA.”

“Within the amounts provided for disaster aid, certain amounts are designated for Puerto Rico....

The measure authorizes FEMA to waive the pre-disaster condition limitation for critical systems in Puerto Rico and the U.S. Virgin Islands....”¹

The 18-Month Time-Frame for FEMA Assessments

On April 3, 2018, FEMA published the “Guide for Permanent Work in Puerto Rico Public Assistance Alternative Procedures (Section 428).” The Guide provides that FEMA will work with [the Government of Puerto Rico] to develop and reach agreement on fixed-cost estimates for all eligible work under [the relevant disasters] within 18 months of the date of publication of the Guide (“October 2019”).²

The Guide further provides that during this timeframe, the parties are expected to: (1) identify damaged facilities; (2) capture undamaged elements for hazard mitigation considerations; (3) complete site inspections and assessments; (4) develop and agree to damage descriptions and dimensions (DDD); and (5) develop and agree to scopes of work (SOW) and cost estimates to repair, restore, or replace eligible facilities including Section 406 hazard mitigation.

The timeframe between the on-site assessment, which identifies the damages, and the initial cost estimate from FEMA is not provided in the Guide. It simply states that the 18-month timeframe for the entire process. This deficiency appears to have resulted in unreasonable delays.

¹ Peak, Daniel, *Congressional Quarterly*, “Fact Sheet No. 115-15, H.R.1892, Budget Agreement. Section IV Disaster Aid” February 8, 2018. Available at <https://plus.cq.com/doc/har-5262332?4&searchId=GWM1PpJg>.

² https://www.fema.gov/media-library-data/1523467277868-423e60bf78e15a875fce365dbcd69389/PR_PAAP_Guide_4-6-2018_508_FINAL.pdf (last visited on February 8, 2019)

FEMA Recovery Policy

On September 14, 2018, FEMA issued Recovery Policy FP-104-009-5,³ which provided that: “FEMA will maximize the supplemental assistance made available through this special authority to improve recovery outcomes for Puerto Rico....” The Recovery Policy describes the applicable parameters for the implementation of the BBA as follows:

- “1. This policy applies to facilities or systems when:
 - a. The facility or system provides power, water, sewer, wastewater treatment, communications, education, emergency medical care, emergency services, or is an administrative or support building essential to the provision of the critical service (see Table 1 of the PAPPG for specific examples of critical versus non-critical services, facilities, and systems);
 - b. The facility or system is part of a PA Alternative Procedures Permanent Work Pilot Project (Section 428);
 - c. The cost to repair only the disaster damage at the site equals or exceeds \$123,1005 prior to any insurance reductions; and
 - d. The disaster damage adversely impacts the function of the facility or system as it relates to the critical service [e.g., if a pump station is located in a building and the only disaster damage was to the building’s roof (no disaster damage to the pump station), then the building is eligible for the BBA (provided it meets the criteria in A.1.b. and c., whereas the pump station is not eligible for any PA funding].”

For the reasons set forth below, there are at least two disappointing examples where FEMA’s assessments and cost estimates of at least one emergency medical care facility and educational facilities appear to violate FEMA’s own Recovery Policy as well as the Congressional intent of the BBA.

The Vieques Hospital

The Vieques Hospital, also known as the Centro de Diagnóstico y Tratamiento (“CDT”), is the only hospital on Vieques serving as the main location for the provision of health services related to urgent care, dialysis, immunizations, infectious disease, veterans affairs, psychiatry, minor trauma, surgery, dentistry, obstetrics and gynecology, pediatrics, and radiology for the residents.

³ https://www.fema.gov/media-library-data/1537374589131-e5048390675525d0bc84812759eba5fe/BBA_Policy_9-14-2018_508_FINAL.pdf (last visited on February 8, 2019)

We understand that the hospital is a single level, reinforced concrete medical center that was built in 1996 and experienced damage from Hurricane Maria's high winds, flying debris, and heavy rains. The facility was without power for several weeks and did not have climate control at the time of the FEMA site visit in February 2018. According to FEMA's preliminary report issued on January 22, 2019, most of the structural damage is related to water infiltration and mold contamination. As a result of the extensive damage sustained, dialysis patients were forced to travel to the main island several times a week to receive dialysis treatment, causing a health crisis. Five dialysis patients died waiting for services to be restored in Vieques.⁴

We have been informed that based on comprehensive site surveys and cost-estimates, FEMA agreed to replace the structure of the hospital in a meeting with the Mayor of Vieques and Secretary of the Puerto Rico Department of Health on March 16, 2018. Replacements with upgrades were approved because the existing facility does not appear to meet health care facility standards and codes. On January 22, 2019 – almost a year after the meeting– FEMA issued its preliminary report reneging on its initial commitment to provide sufficient funds to effectively replace the existing hospital. FEMA's report alarmingly provides that funding is expected to be reduced from \$70 million to \$3-\$6 million, and require the use of the existing sub-standard structure. However, the Government of Puerto Rico has informed us that significant mold contamination in that structure cannot be adequately remediated for the building to continue to serve as a health care facility. This is simply unacceptable.

Puerto Rico Public Schools

When Hurricane Maria devastated Puerto Rico, there were 1,131 public schools on the Island and since the Hurricane, the Department of Education has closed 255 due to various factors. While some schools were permanently closed for reasons other than the Hurricane's impact, one of the factors considered in closing some of these schools was the damage to their infrastructure. The 876 public schools that remain open must be able to meet the Island's educational needs.

FEMA has assessed 856 public schools for permanent work. Subsequent to the on-site assessments, 64 of these schools were selected by the Department of Education as high priority. FEMA and the Government of Puerto Rico estimated a total of \$1.4 billion to rebuild the 64 schools (approximately \$22M per school). Since most public schools were constructed prior to the Haiti earthquake, and do not meet current seismic code requirements, the cost-estimates were intended to address this critical deficiency as well as meet other industry standards.

However, after providing the original estimate, FEMA has since appeared to have drastically reduced the cost estimates for the 64 high priority schools to \$250 million in total or approximately \$4 million per school. Contrary to the BBA's mandate, FEMA purports to significantly reduce the cost of the entire work by eliminating those costs associated with

⁴ https://www.huffingtonpost.com/entry/puerto-rico-patients-dialysis-clinic-hurricane-maria_us_5bc11ddde4b0bd9ed55a4cbb.

rebuilding the schools to industry and seismic code standards. This course of action by FEMA would violate Congressional intent as well as FEMA's own Recovery Policy with respect to educational facilities.

Furthermore, during natural disasters, some schools are used as refuge centers. Refusing to build to withstand a future disaster is not only irresponsible and negligent, it potentially and unnecessarily exposes those most vulnerable to harm. This is not an issue of insufficient appropriations. Congress has appropriated sufficient funds to cover such work. This is an issue of unlawful agency action to undermine the intent to provide robust resources for recovery efforts in Puerto Rico.

Questions

To help us clarify FEMA's actions, please provide the following responses:

1. After initially agreeing to replace the Vieques Hospital as well as provide substantial funds to rebuild public schools, why were the estimates drastically reduced?
2. What is causing the delays so that out of thousands⁵ of outstanding permanent work projects only 65 large permanent work projects have been approved? What resources must be employed to expedite this process?
3. Does FEMA expect to complete the assessments of all the permanent works in Puerto Rico by October 2019?
4. Please provide a list of upcoming on-site assessments with the project name and municipality, and the expected timeframe for completion. Please identify how these projects were decided upon, the cost estimates per project, and who was consulted at the local and agency level.
5. What is FEMA's policy on the timeframe between on-site assessments and the issuance of preliminary and final reports?
6. Since the FEMA 428 process appears to require an extraordinary amount of time to complete permanent works projects, do you recommend an alternate course of action?

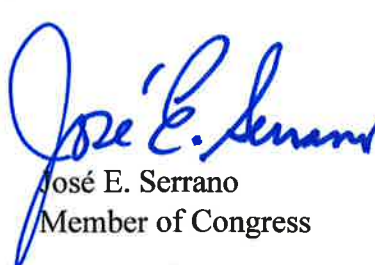
⁵ <https://caribbeanbusiness.com/fema-yet-to-assess-cost-of-90000-puerto-rico-sites-damaged-by-damaged-by-2017-hurricanes/>

We believe that your responses to these questions will help move forward the recovery process in Puerto Rico. Given the gravity of this situation, please provide responses to the above questions by **COB March 6, 2019.**

Sincerely,



Nydia M. Velázquez
Member of Congress



José E. Serrano
Member of Congress



Darren Soto
Member of Congress