



**Committee on Transportation and Infrastructure**  
**U.S. House of Representatives**  
**Washington DC 20515**

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September 12, 2022

**SUMMARY OF SUBJECT MATTER**

**TO:** Members, Subcommittee on Economic Development, Public Buildings, and Emergency Management  
**FROM:** Subcommittee Staff  
**RE:** Subcommittee Hearing on “Recovery Update: Status of FEMA Recovery Efforts in Puerto Rico and U.S. Virgin Islands 5 Years After Hurricanes Irma & Maria”

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**PURPOSE**

The Subcommittee on Economic Development, Public Buildings, and Emergency Management will meet on Thursday, September 15, 2022, at 10:00 a.m. EDT in 2167 Rayburn House Office Building and via Zoom for a hearing titled, “Recovery Update: Status of FEMA Recovery Efforts in Puerto Rico and U.S. Virgin Islands 5 Years After Hurricanes Irma & Maria.”, The subcommittee will hear testimony from two panels. The first panel will feature Anne Bink, Associate Administrator of the Federal Emergency Management Agency (FEMA) Office of Response and Recovery. The second panel will include Chris Currie, Director of the Government Accountability Office (GAO) Office of Homeland Security and Justice; Adrienne Williams, Director of the U.S. Virgin Islands (USVI) Office of Disaster Recovery (ODR); Manuel Laboy, Executive Director of the Puerto Rico Central Office for Recovery, Reconstruction, and Resiliency (COR3); Shay Bahramirad, Senior Vice President of LUMA Energy; and Josué Colón, Executive Director of the Puerto Rico Electric Power Authority (PREPA).

**BACKGROUND**

The Commonwealth of Puerto Rico and the USVI were devastated by Hurricanes Irma and Maria on September 6, 2017, and September 20, 2017, respectively. In Puerto Rico the storms damaged the entire power grid and triggered the longest blackout in U.S. history (11 months), left 43 percent of wastewater treatment plants inoperable, 97 percent of roads impassable, and 95 percent of Puerto Ricans without drinking water, damaged 28 percent of health centers, required 90 percent

of households to apply for individual assistance, and tragically caused 3,000 fatalities.<sup>1</sup> In the USVI the storms destroyed 70 percent of the buildings on the main island of St. Croix, damaged the entire power grid and communication networks, and damaged or destroyed large swaths of critical infrastructure such as roads.<sup>2</sup>

Given the extraordinary level of infrastructure damage caused by Hurricane Maria, and the territories' difficult financial position, the use of alternative procedures, authorized by Section 428 of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, P.L. 93-288, as amended)*, was added to the presidential disaster declarations made for the territories.<sup>3</sup> The alternative procedures authority was considered the best option for the territories since it enables recipients more flexibility to rebuild facilities to meet current needs and build in mitigation; thus, outdated infrastructure could be updated and designed for long-term resiliency.<sup>4</sup> When utilizing alternative procedures, a fixed cost estimate for each project must be agreed upon by the recipient and FEMA before work begins.<sup>5</sup> If the actual cost of a project exceeds the fixed cost estimate the recipient is responsible for the overrun.<sup>6</sup>

Additionally, Congress included Section 20601 in the *Bipartisan Budget Act of 2018 (BBA 2018)* to provide additional assistance for the recovery efforts in Puerto Rico and the USVI. *BBA 2018* authorized FEMA to restore disaster damaged facilities or systems that provide critical services to industry standard without regard for pre-disaster condition.<sup>7</sup> Officials in both Puerto Rico and the USVI have reported to the committee that the implementation of *BBA* has significantly aided the recovery process.

### *Liquidity Constraints and Funding Procedures in Puerto Rico and the USVI*

Liquidity constraints have persistently hampered hurricane recovery efforts in Puerto Rico.<sup>8</sup> FEMA Public Assistance (PA) is a reimbursement-based program.<sup>9</sup> In general, only after applicants pay eligible costs may they request reimbursement from PA funds obligated by FEMA.<sup>10</sup> For this reason, applicants need to have initial, non-FEMA funds available to cover the costs of project

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<sup>1</sup> RAND. *Hurricanes Irma and Maria: Impact and Aftermath*. 2020. Available at: <https://www.rand.org/hsrd/hsoac/projects/puerto-rico-recovery/hurricanes-irma-and-maria.html>

<sup>2</sup> USDA. *USDA Tracks Recovery Following Hurricanes Irma & Maria*. 2022. Available at: <https://recovery.fema.gov/funding-in-action/mariaPR7#:~:text=Maria%20damaged%20or%20destroyed%2070,hit%20Puerto%20Rico%20since%201928>.

<sup>3</sup> GAO. *FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*, GAO-21-264. May 2021. Available at: <https://www.gao.gov/assets/gao-21-264.pdf>. & FEMA. *2017 Hurricane Season FEMA After-Action Report*. July 12, 2017, Available at: [https://www.fema.gov/sites/default/files/2020-08/fema\\_hurricane-season-after-action-report\\_2017.pdf](https://www.fema.gov/sites/default/files/2020-08/fema_hurricane-season-after-action-report_2017.pdf)

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> FEMA. *Implementing Section 20601 of the 2018 Bipartisan Budget Act through the Public Assistance Program*. September 2018. Available at: [https://www.fema.gov/sites/default/files/2020-05/Section\\_20601\\_BBA\\_FP-104-009-5.pdf](https://www.fema.gov/sites/default/files/2020-05/Section_20601_BBA_FP-104-009-5.pdf).

<sup>8</sup> GAO. *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*, GAO-21-264. May 19, 2021. Available at: <https://www.gao.gov/products/gao-21-264> & NPR. *How Puerto Rico's Debt Created A Perfect Storm Before The Storm*. May 2, 2018. Available at: <https://www.npr.org/2018/05/02/607032585/how-puerto-ricos-debt-created-a-perfect-storm-before-the-storm>.

<sup>9</sup> CRS. *The Status of Puerto Rico's Recovery and Ongoing Challenges Following Hurricanes Irma and Maria: FEMA, SBA, and HUD Assistance*. November 13, 2020. Available at: <https://www.crs.gov/Reports/R46609>.

<sup>10</sup> Id.

application and management, architecture and engineering services, and construction contracting before they can receive reimbursement.<sup>11</sup>

COR3 currently manages reimbursement in Puerto Rico.<sup>12</sup> However, Commonwealth agencies, municipalities, and private nonprofits often do not have financial reserves and access to initial capital to launch projects.<sup>13</sup> The Commonwealth's fiscal crisis has exacerbated these liquidity constraints.<sup>14</sup>

FEMA and COR3 have implemented several measures to address this issue, including a Working Capital Advance program for municipalities and selected FEMA Accelerated Awards Strategy (FAAST) Applicants,<sup>15</sup> and making available limited cash advances for immediate cash needs.<sup>16</sup> Despite these efforts, some stakeholders and COR3 acknowledge that liquidity constraints and reimbursement delays continue to burden applicants and delay project implementation.<sup>17</sup>

Hurricanes Irma and Maria also hit the USVI amid ongoing fiscal instability.<sup>18</sup> The demands of response and decline in tourism and related industries exacerbated the USVI's fiscal challenges; some estimates show that public revenues were halved following the hurricanes.<sup>19</sup> Pre and post-disaster fiscal challenges have delayed PA project progress since applicants have struggled to access initial funding before receiving reimbursement.<sup>20</sup> Additionally, applicants report struggling with reimbursement delays that jeopardize project advancement after initial launch, "tremendously impact[ing] timely payment to vendors."<sup>21</sup> Delays in payments to contractors may also jeopardize an applicants' credibility.<sup>22</sup> This, in turn, may lead to price increases as vendors mitigate the risk of payment delays and inconsistent revenue by increasing the price of project bids.<sup>23</sup>

To alleviate these liquidity constraints, FEMA and ODR have launched several initiatives, including the following:

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<sup>11</sup> Id.

<sup>12</sup> COR3. *COR3 Disaster Recovery Federal Funds Management Guide*. June 2022. Available at: [https://recovery.pr.gov/documents/CH7 Payment and Cash Management V3 Final Version 6 13 2022 signed.pdf](https://recovery.pr.gov/documents/CH7%20Payment%20and%20Cash%20Management%20V3%20Final%20Version%206%2013%202022%20signed.pdf).

<sup>13</sup> Id., and COR3. *Seventh Congressional Status Report*. January 31, 2022. Available at: [Microsoft Word - Seventh Congressional Report \(2-1-2022\) Rev PRP- Clean.docx](#).

<sup>14</sup> GAO. *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*, GAO-21-264. May 19, 2021. Available at: <https://www.gao.gov/products/gao-21-264>.

<sup>15</sup> Id. and COR3. *Seventh Congressional Status Report*. January 31, 2022. Available at: [Microsoft Word - Seventh Congressional Report \(2-1-2022\) Rev PRP- Clean.docx](#).

<sup>16</sup> COR3. *COR3 Disaster Recovery Federal Funds Management Guide*. June 2022. Available at: [https://recovery.pr.gov/documents/CH7 Payment and Cash Management V3 Final Version 6 13 2022 signed.pdf](https://recovery.pr.gov/documents/CH7%20Payment%20and%20Cash%20Management%20V3%20Final%20Version%206%2013%202022%20signed.pdf).

<sup>17</sup> Center for Investigative Journalism. *Municipal Response to Disasters in Puerto Rico Cost Candidates Their Re-elections*. February 22, 2021. Available at: <https://periodismoinvestigativo.com/2021/02/municipal-response-to-disasters-in-puerto-rico-cost-candidates-their-re-elections/>.

<sup>18</sup> CRS. *Economic and Fiscal Conditions in the U.S. Virgin Islands*. February 13, 2020. Available at: <https://www.crs.gov/Reports/R45235>.

<sup>19</sup> Id.

<sup>20</sup> ODR. *USVI Recovery Leaders: Summit Report*. 2021. Available at: <https://www.usviodr.com/wp-content/uploads/2022/05/FINAL-2021-USVI-Recovery-Leaders-Summit-Report-RS-1.pdf>.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id.

- In February 2021, FEMA lifted certain restrictions placed upon ODR’s management of the PA reimbursement process that sometimes delay disbursement, including FEMA approval of reimbursement requests.<sup>24</sup>
- On August 16, 2022, ODR announced the launch of the Public Assistance Advance Funding program, which is to provide up to \$50,000 to private nonprofit organizations to ensure the launch and progress of stalled recovery projects funded through FEMA PA.<sup>25</sup>
- In October 2021, ODR reported that FEMA modified policies to enable applicants to draw down funds upon receiving an invoice, as opposed to once they have already paid for the invoiced costs.<sup>26</sup>

*The Bipartisan Budget Act of 2018, Building Code Compliance, and Modernization*

*BBA 2018* authorized the reconstruction of critical disaster-damaged facilities to industry standards, regardless of pre-disaster condition, using PA Alternative Procedures, which limits applicants to awards determined using fixed cost estimates.<sup>27</sup> PA was additionally authorized for components or facilities unaffected by the hurricanes that required upgrade or repair so the broader facility or system improvements could comply with industry standards.<sup>28</sup> These provisions addressed *Stafford Act* limitations on the use of PA to rebuild to a more resilient standard, given the declining, unmaintained condition of some facilities in the territories.<sup>29</sup>

The Government Accountability Office (GAO) found that both COR3 and FEMA officials reported challenges and confusion in implementing Section 20601 of *BBA 2018* through early 2019.<sup>30</sup> Different views between COR3 and FEMA on the application and scope of this provision has repeatedly raised congressional and stakeholder concern.<sup>31</sup> In April 2019, then-COR3 Secretary Omar Marrero testified before Congress that FEMA’s “efforts to limit the applicability of *BBA*”

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<sup>24</sup> ODR. *FEMA Lifts Manual Drawdown Restriction for Reimbursement of Recovery Project Spending*. February 3, 2021. Available at: <https://www.usviodr.com/fema-lifts-manual-drawdown-restriction-for-reimbursement-of-recovery-project-spending/>.

<sup>25</sup> ODR. *ODR Announces New Program Giving Non-Profits Access to Funding for Stalled Recovery Projects*. August 16, 2022. Available at: <https://www.usviodr.com/odr-announces-new-program-giving-non-profits-access-to-funding-for-stalled-recovery-projects/>.

<sup>26</sup> ODR. *USVI Recovery Leaders: Summit Report*. 2021. Available at: <https://www.usviodr.com/wp-content/uploads/2022/05/FINAL-2021-USVI-Recovery-Leaders-Summit-Report-RS-1.pdf>.

<sup>27</sup> CRS. *The Status of Puerto Rico’s Recovery and Ongoing Challenges Following Hurricanes Irma and Maria: FEMA, SBA, and HUD Assistance*. November 13, 2020. Available At: <https://www.crs.gov/Reports/R46609>.

<sup>28</sup> Section 20601(2) of the *BBA* of 2018 (P.L. 115-123).

<sup>29</sup> *Disaster Recovery Reform Act of 2018* (DRRA; Division D of P.L. 115-254).

<sup>30</sup> GAO. *Emergency Management: FEMA Has Made Progress, but Challenges and Future Risks Highlight Imperative for Future Improvements*, GAO-19-594T. June 12, 2019. Available at: <https://www.gao.gov/products/gao-19-617t> and GAO. *Puerto Rico Disaster Recovery: FEMA Actions Needed to Strengthen Project Cost Estimation and Awareness of Program Guidance*, GAO 20-221. February 2020. <https://www.gao.gov/assets/710/704282.pdf>.

<sup>31</sup> Testimony by Rep. Lucille Roybal-Allard, U.S. Congress, House Appropriations Subcommittee on Homeland Security, *Hearing on Disaster Recoveries for 2017 and 2018*, hearings, 116<sup>th</sup> Congress, March 12, 2019. And testimony by GAO Representative Chris Currie, House Homeland Security Committee, U.S. Congress, House Committee on Homeland Security, Subcommittee on Emergency Preparedness, Response, and Recovery, *Road to Recovery: Puerto Rico and the U.S. Virgin Islands After Hurricanes Irma And Maria*, 116<sup>th</sup> Congress, July 11, 2019.

delayed recovery and reduced the awards available to critical facilities.<sup>32</sup> In September 2019, FEMA released guidance clarifying the implementation of *BBA 2018*, which addressed some confusion.<sup>33</sup>

### Implementation of the FAAS<sub>t</sub> Program in Puerto Rico

FEMA and COR3 have demonstrated significant progress in PA obligations over the past three years.<sup>34</sup> FEMA recently announced that it had approved 10,000, or 95 percent, of PA projects for Puerto Rico’s hurricane recovery.<sup>35</sup> However, COR3 and FEMA data reflect that much of the reconstruction has yet to be completed, and in many cases, has not begun.

In early 2020, FEMA and COR3 launched a new variation of PA called the FEMA Accelerated Awards Strategy (FAAS<sub>t</sub>) to expedite obligations for four Commonwealth agencies in Puerto Rico.<sup>36</sup> These agencies are the Puerto Rico Electric Power Authority (PREPA), the Puerto Rico Aqueduct and Sewer Authority (PRASA), the Puerto Rico Department of Education (PRDE), and Puerto Rico Public Housing Administration (PRPHA). Under the FAAS<sub>t</sub> structure FEMA and COR3 obligated aggregated awards for each agency based on samples of damaged sites and estimated costs. These obligations serve as a total “recovery budget” for each agency’s hurricane recovery costs across the territory, but do not represent FEMA approval of the individual projects that need to be completed by those agencies with the obligations. Since FAAS<sub>t</sub> awards represent most PA obligated funds for hurricane recovery (\$15.6 billion of approximately \$21.3 billion in permanent work obligations for hurricane recovery),<sup>37</sup> the process of approving individual projects entails significant work for FEMA, COR3, and FAAS<sub>t</sub> applicants.

According to COR3, the FAAS<sub>t</sub> program was designed in part to mitigate the applicants’ “lack of technical expertise to make decisions when designing their projects and the need to balance the assumption of risk” and to “allo[w] critical infrastructure projects to be grouped together in order to expedite recovery work” thereby moving the recovery forward.<sup>38</sup> The program also enables applicants to access funds to contract for architecture and engineering services for individual projects.<sup>39</sup>

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<sup>32</sup> Testimony by Omar Marrero, Executive Director of COR3, U.S. Congress, House Natural Resources Committee, *The Status of the “Rebuilding and Privatization of the Puerto Rico Electric Power Authority*, hearing, 116th Congress, April 9, 2019.

<sup>33</sup> GAO. *Puerto Rico Disaster Recovery: FEMA Actions Needed to Strengthen Project Cost Estimation and Awareness of Program Guidance*, GAO-20-221. February 2020. Available at: <https://www.gao.gov/products/gao-20-221>.

<sup>34</sup> GAO. *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, But Should Identify and Assess Risks to the Recovery*, GAO-21-264. Available at: <https://www.gao.gov/products/gao-21-264> and CRS. *The Status of Puerto Rico’s Recovery and Ongoing Challenges Following Hurricanes Irma and Maria: FEMA, SBA, and HUD Assistance*. November 13, 2020. Available at: <https://www.crs.gov/Reports/R46609>.

<sup>35</sup> FEMA. *FEMA Approves its 10,000th Projects Hurricane Maria Recovery Project*. August 3, 2022. Available at:

<https://www.fema.gov/press-release/20220803/fema-approves-its-10000th-projects-hurricane-maria-recovery-project>.

<sup>36</sup> FEMA. *FEMA Accelerated Awards Strategy (FAAS<sub>t</sub>)*. June 2, 2022. Available at: <https://www.fema.gov/about/reports-and-data/faast>.

<sup>37</sup> Id.

<sup>38</sup> COR3. *Seventh Congressional Status Report*. January 31, 2022. Available at: [Microsoft Word - Seventh Congressional Report \(2-1-2022\) Rev PRP- Clean.docx](#) and COR3. *FEMA Accelerated Awards Strategy (FAAS<sub>t</sub>) Projects Execution*. 2022. Available at: <https://recovery.pr.gov/en/road-to-recovery/pa-faast>.

<sup>39</sup> Id.



News media reports indicate that many individual PA projects may exceed cost estimates.<sup>40</sup> If individual FAASSt projects incur such cost overruns, the overall FAASSt obligations could prove insufficient to support the work of reconstructing territory-wide critical services (utilities, water/wastewater, education system, and public housing).

### PA Alternative Procedures and Cost Estimates in the USVI

The USVI opted not to group their alternative procedure projects into agency-wide obligations like Puerto Rico has done with the FAASSt program. Therefore, each permanent work project using alternative procedures authorities receives an individual obligation.

*BBA 2018* authorized applicants in the USVI to receive PA to cover the costs of reconstructing eligible facilities to industry standards “without regard to the pre-disaster condition of the facility or system.” However, in its most recent annual recovery status report, ODR raised repeated concerns that FEMA’s interpretation of *BBA 2018* does not capture congressional intent “to repair all eligible damages both pre- and post-disaster, to remedy pre-disaster conditions and even to replace undamaged building components to achieve industry standards.”<sup>41</sup> ODR reports that FEMA’s narrow interpretation of *BBA 2018* has impeded the territory’s ability to receive assistance sufficient to reconstruct eligible facilities to industry standards.<sup>42</sup>

Additionally, ODR has raised concerns that FEMA’s Building Cost Index does not accurately estimate the high cost of construction in the USVI, nor the rising costs of construction attributed to inflation.<sup>43</sup> ODR reports that this oversight “could cost the Territory many hundreds of millions of dollars if not corrected and will cause longer term major construction projects to have inadequate funding.”<sup>44</sup>

### Contracting and Subcontracting in Puerto Rico and the USVI

It is anticipated that Puerto Rico will encounter a shortage of local contractors when completing reconstruction work.<sup>45</sup> To complete recovery projects costing \$10 billion per year, Puerto Rico may need up to 32,000 additional workers and shortfalls among licensed engineers and other building industry professionals, as well as grant writers and managers are expected.<sup>46</sup> It has been reported that the scale of federal funds delivered to Puerto Rico is “likely to fundamentally

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<sup>40</sup> Center for Investigative Journalism. *Major recovery projects to be paid for with recovery funds moving at snail’s pace*. September 16, 2021. <https://periodismoinvestigativo.com/2021/09/major-recovery-projects-to-be-paid-for-with-recovery-funds-moving-at-snails-pace/> and Center for Investigative Journalism. *Retrasado y con alza en los costos de construcción el centro de salud de Vieques*. January 21, 2022. Available at: <https://periodismoinvestigativo.com/2022/01/retrasado-y-con-alza-en-los-costos-de-construccion-el-centro-de-salud-de-vieques/>.

<sup>41</sup> ODR. *Annual Progress Report*. September 2021. Available at: <https://www.usviodr.com/wp-content/uploads/2021/12/DisasterRecovery2021.pdf>.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> RAND. *Building Back Locally: Supporting Puerto Rico’s Municipalities in Post-Hurricane Reconstruction*. 2020. Available at: [https://www.rand.org/pubs/research\\_reports/RR3041.html](https://www.rand.org/pubs/research_reports/RR3041.html).

<sup>46</sup> RAND. *Building Back Locally: Supporting Puerto Rico’s Municipalities in Post-Hurricane Reconstruction*. 2020. Available at: [https://www.rand.org/pubs/research\\_reports/RR3041.html](https://www.rand.org/pubs/research_reports/RR3041.html).

change the economy in terms of labor, materials, and equipment,”<sup>47</sup> and it is estimated that approximately 75 percent of the workers required for recovery will come from outside of Puerto Rico.<sup>48</sup>

In 2019 the GAO found that shortages among local and territory government personnel in the USVI exacerbated the difficulties of hurricane recovery.<sup>49</sup> Both FEMA and USVI staff have additionally reported shortfalls among several key industries critical to executing recovery projects, including architecture and engineering firms.<sup>50</sup>

## CONCLUSION

Five years after the devastation Hurricanes Irma and Maria brought to Puerto Rico and the USVI progress has been made in the recovery efforts. However, many challenges remain. This hearing will provide the subcommittee an opportunity to hear directly from federal and territory officials on the remaining challenges in Puerto Rico and the USVI and lessons Congress might learn from the disaster recoveries.

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<sup>47</sup> RAND. *Forecasting Public Recovery Expenditures’ Effect on Construction Prices and the Demand for Construction Labor*. 2022. Available at: [https://www.rand.org/pubs/research\\_reports/RRA1116-4.html](https://www.rand.org/pubs/research_reports/RRA1116-4.html).

<sup>48</sup> Id.

<sup>49</sup> GAO. *U.S. Virgin Islands Recovery: Additional Actions Could Strengthen FEMA’s Key Disaster Recovery Efforts*, GAO-20-54. November 2019. Available at: <https://www.gao.gov/assets/gao-20-54.pdf>.

<sup>50</sup> ODR. *USVI Recovery Leaders: Summit Report*. 2021. Available at: <https://www.usviodr.com/wp-content/uploads/2022/05/FINAL-2021-USVI-Recovery-Leaders-Summit-Report-RS-1.pdf>.

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