

Policy Asks: How the Federal Government and Congress Can and Must Help Puerto Rico

WHAT YOU NEED TO KNOW

On September 20, 2017, Hurricane Maria - a Category 5 hurricane - hit the island of Puerto Rico causing thousands of deaths and billions of dollars in damage. 1.1 million people lost electricity in the longest blackout in U.S. history. Some communities lacked electricity for up to eleven months creating a situation that devastated the economy, resulted in thousands of deaths, and left many people homeless, jobless, without access to life-saving medical care, clean water to drink, and living under plastic sheeting. Four years later, many of the conditions continue - including 18,000 families still living under blue tarps. One [death toll](#) calculates the number of deaths related to the aftermath of the hurricanes to be at least 3,000, Hurricane Maria is the [deadliest hurricane](#) in modern American history.

Our federal government has a moral and legal responsibility to help the people in Puerto Rico recover from this tragedy just as it would help any other group of American citizens. The U.S. government [has discriminated against](#) Puerto Rico with respect to federal benefits and programs, such as [Medicaid](#), [SNAP](#) (food stamps), [SSI](#) for the blind, disabled, and elderly, the [Child Tax Credit](#) (until 2021, only available to Puerto Rican families with at least three children), among others, since it forcibly acquired the island as a "territory" in 1898. (For a basic history of Puerto Rico go [here](#).)

The lack of parity and discrimination in funding for federal benefit programs, especially those designed to alleviate poverty, have worsened the economic, social, and environmental vulnerabilities in the island. This [unconstitutional treatment](#) is one of the main causes of Puerto Rico's current economic crisis and contributed to the island's high poverty levels.

POVERTY IN PUERTO RICO

In 2019, [44 percent of the 3.2 million](#) people in Puerto Rico lived in poverty. For comparison, the U.S. national poverty rate was drastically lower at 10.9 percent according to the [Congressional Research Service](#). [57 percent of children](#) in Puerto Rico live in poverty compared to [16 percent of children](#) in the U.S. Puerto Rico widely outpaces even the [poorest US states](#) in this terrible measure.

ROOTS OF DISCRIMINATION IN FEDERAL FUNDING

The widely criticized [Insular Cases](#), decided by the Supreme Court in 1901, held that the "half-civilized," "savage" "alien races" living in Puerto Rico, Guam, and other U.S. territories were not entitled to the same constitutional rights and protections afforded to other Americans because they could not understand "Anglo-Saxon principles." Much like the infamous *Plessy v. Ferguson*, which justified "separate but equal" racial segregation, and *Korematsu v. United States*, which upheld the mass internment of Japanese Americans during World War II, the Insular Cases represent a shameful legacy our nation would do well to move past.

This type of systemic discrimination by the federal government towards Puerto Rico is evident in the inequitable delivery of federal benefits including disaster funding and program implementation. This discrimination can be seen clearly in the *Response of the Federal Government to Maria*.

“ The only way Puerto Rico can build a sustainable future is by ending nearly 125 years of systemic discrimination by the federal government against Puerto Rico and its residents. ”

4 YEARS LATER - WHERE ARE WE NOW?

Four years after Hurricanes Irma and Maria devastated Puerto Rico, the reconstruction of the island has barely started. Two years after Maria, [30,000](#) homes still had blue tarps instead of roofs. Four years later 18,000 families are still living with plastic sheeting instead of a ceiling. Of the tens of thousands in need, as of September 15, 2021 only a total of [1,649 houses](#) had been repaired or reconstructed by the Puerto Rico Housing Department's CDBG-DR Repair, Reconstruction or Relocation Program (R3 Program). Additional rebuilding has been financed through private and non-profit funds out of necessity.

Only a small fraction of the money Congress appropriated to support recovery and building was released by the Trump Administration. Although the Biden administration has recently begun removing some of those barriers to the money allocated, the process for approving projects and spending remains challenging. Roads, schools, traffic lights, have mostly received band-aids instead of long-term fixes and plans for many other basic elements of the island's infrastructure - especially its fragile energy grid - are not yet on the road to serious rebuilding for a lifesaving, sustainable grid. For an explanation of the barriers the federal government has created for Puerto Rico's recovery, see TA4PR section *Response of the Federal Government to Puerto Rico Since Maria*.

The island has continued to fight to receive federal dollars to rebuild following Maria and historic earthquakes while experiencing an ongoing state of crisis. Battered and exhausted residents have continued to experience [energy insecurity](#), devastating tropical storms and hurricanes (like [Isaias](#) in July 2020 during the Covid-19 pandemic), repeated [droughts](#) leading to water restrictions, damaging [flooding](#) on a regular basis, and severe [austerity](#) in public services imposed to repay debt, plus unemployment, growing food insecurity, and a severe public health care burden as [a result of the pandemic](#).

To date, Congress has still not appropriated any disaster funds to help Puerto Rico address the resulting damage from the 2020 earthquakes.

Four years later, the Puerto Ricans on and off the island, are still waiting for Congress and the federal government to end the discrimination that has impeded Puerto Rico's economic development and disaster recovery, and contributed to high poverty rates.

Both the U.S. Congress and the Biden Administration have a moral responsibility to end the systemic discrimination that unconstitutionally treats Puerto Ricans as second-class citizens.

Below you will find solutions to end discrimination by Congress and the federal government and promote a sustainable recovery for Puerto Rico's future. Recommendations range from legislative action, reform in bureaucratic processes by federal agencies, and Executive Action by the Biden Administration. These actions are not to "help" Puerto Ricans; there is no room for discretion. Doing any less is a violation of the inherent human and legal rights of Puerto Ricans.

Policy Asks: Equity And Discrimination

The federal government must stop discriminating against Puerto Rico, not just in disaster relief, but in all federal programs.

WHAT CONGRESS MUST DO

I. Pass legislation that brings PR into line with federal safety-net programs equitably, including Medicaid, EITC, CTC, Food Stamps, Supplemental Security Income (SSI), among others. Congress must pass the [Territorial Equity Act of 2021 \(H.R. 2713 & S. 1228\)](#), which would most comprehensively address inequities in federal benefits. *For a full list of legislation we support, see [TA4PR Legislation We Support to Move Puerto Rico Forward](#).*

The Territorial Equity Act of 2021 would:

- Provide the territories with the same need-based, open-ended Medicaid funding that is currently available to the fifty states and the District of Columbia by eliminating the arbitrary cap on annual federal Medicaid funding and increasing the federal matching rate for the territories' Medicaid expenditures.
- Address Medicare disparities by updating hospital reimbursements and increasing funding for the territories to provide prescription drug coverage to low-income seniors.
- Extend the Supplemental Security Income (SSI) program to all U.S. territories
- Provide equitable treatment for Puerto Rico and the Virgin Islands with respect to the Earned Income Tax Credit (EITC) and the Child Tax Credit (CTC).
- Allow Puerto Rico, American Samoa and the Northern Mariana Islands to transition to the Supplemental Nutrition Assistance Program (SNAP).
- Provide equity for Puerto Rico on labor issues, specifically regarding the minimum wage for young employees in Puerto Rico and parity for overtime laws.

WHAT THE BIDEN ADMINISTRATION MUST DO

- I. The Biden administration must actively work with Congress to provide families in Puerto Rico "equal access to nutrition assistance" through inclusion in SNAP, ensure Puerto Ricans receive SSI, work to ensure that Puerto Rico participates equitably in Medicaid, including receiving increased FMAP payments by directing the HHS Secretary to develop and recommend payment reforms. These are just some of the things that the president laid out in his plan for "[recovery, renewal, and respect for Puerto Rico](#)."
- II. The Biden administration must also [stop fighting](#) two 1st U.S. Circuit Court of Appeals decisions that found that denying residents of Puerto Rico equal access to federal safety-net programs like SSI, Supplemental Nutrition Assistance Program (SNAP), and the Medicare Part D Low-Income Subsidy (LIS) was both discriminatory and [unconstitutional](#). In [U.S. v. Vaello-Madero](#) and [Peña Martinez v. United States Health and Human Services](#), the courts determined that the government's true purpose in denying SSI benefits to Puerto Ricans was "to impose inequality," and, further, suggested that this exclusion amounted to a "de facto classification based on Hispanic origin" that should be subject to a more stringent "heightened scrutiny standard."

WHAT THE US SUPREME COURT MUST DO

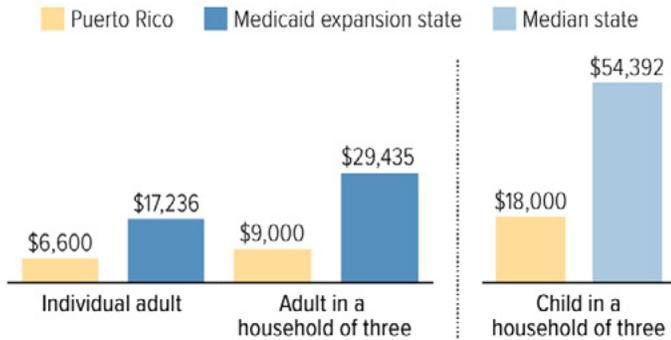
Recognize the unconstitutionality of the systemic discrimination by the federal government towards Puerto Rico by confirming the lower court decision in the Vaello-Madero case.

WHY

Healthcare: Puerto Rico is facing a dire healthcare crisis. Inequities in [federal health care](#) funding are a major driver of this crisis. Approximately [60% of the island's population](#) is enrolled in Medicaid or Medicare, both of which face a tenuous future due in part to an archaic and [unfair capping of federal contributions](#) imposed upon Puerto Rico, because of its status as a territory. Among other things, the funding structure means that Puerto Rico [can't afford to cover seven of Medicaid's 17 mandatory services](#), including nursing home care and nurse practitioner services. To make the limited federal grant dollars cover as many people as possible, only the poorest of Puerto Rico residents qualify for Medicaid (see chart below). The healthcare funding for Puerto Rico is [set to expire in October, 2021](#), facing a medical cliff.

Medicaid Eligibility Limits Much Lower in Puerto Rico Than in States

Annual income caps for program eligibility



Note: Under the Affordable Care Act, states can expand Medicaid to adults with income up to 138 percent of the poverty line. Puerto Rico expanded eligibility for adults, but at a much lower poverty level. For Medicaid and the Children’s Health Insurance Program, states and Puerto Rico both cover children at higher income levels than adults. But, states cover children up to much higher income levels than Puerto Rico does.

Source: Centers for Medicare and Medicaid Services

CENTER ON BUDGET AND POLICY PRIORITIES | CBPP.ORG

Source: Center on Budget and Policy Priorities <https://www.cbpp.org/research/health/puerto-ricos-medicaid-program-needs-an-ongoing-commitment-of-federal-funds>

Child Poverty: In 2014, 58 percent of children in Puerto Rico lived in poverty compared to 22 percent of children in the fifty U.S. states. Growing up in poverty is one of the greatest threats to healthy child development. It increases the likelihood that a child will be exposed to factors that can impair their brain development and lead to poor academic, cognitive and health outcomes. The risks posed by economic hardship are greatest among children who experience poverty when they are young and among those who experience persistent and deep poverty. The child poverty rate in Puerto Rico has remained constant for at least 10 years. Permanent access to the full [Child Tax Credit](#) (CTC) and enabling low-income households and individuals to claim the expanded [Earned Income Tax Credit](#) (EITC) should be available to all Puerto Ricans regardless of where they choose to live. Equitable access to these programs would give a significant income boost to low- and moderate-income families in Puerto Rico, lower child poverty, while simultaneously providing [economic stimulus](#) benefits.

Nutrition and Food Insecurity: For the past 40 years, Puerto Rico has received nutritional assistance aid through a federally-funded block grant. Unlike SNAP, a federal entitlement in which everyone eligible for benefits under its formula receives them at the full benefit level and which has special provisions to provide food aid after a disaster, Puerto Rico’s capped funding prevents it from meeting the basic food needs of poor citizens living in Puerto Rico, including children, seniors, and people with disabilities. The program is available to fewer low-income households and typically provides much smaller benefits.

The \$1.9B capped block grant limits Puerto Rico’s ability to manage changes in demand, including those due to demographic shifts, poverty levels, and economic stagnation. Close to 1.5 million residents currently receive some level of nutrition assistance aid. Most of the beneficiaries are children, elderly, and disabled individuals. The levels of aid in Puerto Rico fall well below those of many states and territories. Puerto Rican children and families continue to experience food insecurity and inequity because of their exclusion from SNAP which is fully available to residents of the Continental US, U.S. Virgin Islands, Guam, and the District of Columbia. These disparities [necessitate legislative action](#) to integrate Puerto Rico into SNAP.

Support for low-income disabled persons: Supplemental Security Insurance (SSI) is a federal cash assistance program that provides monthly payments to low-income aged, blind, or disabled persons in the 50 states, the District of Columbia, and the Northern Mariana Islands. It is not available to low income, disabled persons living in Puerto Rico. It is estimated roughly [700,000](#) people are currently denied these benefits because they live in Puerto Rico. Recent court decisions determining that denying SSI benefits to people is [unconstitutional](#) are currently being [challenged](#) in the U.S. Supreme Court by the Biden administration.

Policy Asks: For A Sustainable Recovery

Ensure all federal disaster recovery and infrastructure investment funds and programs are effectively used for the sustainable recovery of Puerto Rico.

WHAT CONGRESS MUST DO

- I. Ensure Puerto Rico is treated equitably and is not an afterthought in new programs and policies passed to revive the economy and help the country rebuild from the pandemic, such as the massive Build Back Better agenda that presents historic opportunities to make generational change.
- II. Congress should require radical transparency and democratization of the federal and local recovery and rebuilding process. This is the best way to direct the funding to the people and communities that need it most and ensure oversight and accountability.
- III. Congress must not grant any additional authority to the FOMB, which has undemocratic authority over Puerto Rico budgetary and recovery matters. It should instead provide the means and oversight to ensure an [independent audit](#) is performed and certified by non-governmental experts to determine the [legality of the debt](#) prior to allowing the FOMB to enter into debt repayment agreements on behalf of the Puerto Rican government. The FOMB must be directed to prioritize rebuilding Puerto Rico instead of paying creditors.
- IV. A just recovery is not possible when those in power prioritize paying creditors instead of investing in the recovery and the future of Puerto Rico. Congress should eliminate the failed PROMESA law that has created an unelected body leading to severe austerity in social programs on the island. Instead, Congress should provide a mechanism for Puerto Rico to discharge its debt. Legislation such as the [United States Territorial Relief Act of 2019 \(S. 1312 & H.R. 2526\)](#) provides a roadmap. Repaying the debt should not be a higher priority than the rebuilding and recovery of the island's physical and human infrastructure. Providing for the basic needs of people, especially the most vulnerable after years of repeated crises should be the highest priority.

WHAT THE BIDEN ADMINISTRATION MUST DO

- I. Ensure that all federal funds allocated to Puerto Rico's energy grid, including the largest grant in FEMA history (\$9.7 billion) and \$1.9 billion in CDBG funds, are used to achieve the island's [legislatively mandated](#) climate goals of 40 percent renewable energy by 2025 and 100 percent renewable energy by 2050. The responsible use of federal funds must prioritize renewables, energy efficiency, solar energy based on rooftop and storage, microgrids, and programs like demand response to achieve electric bill reductions and ensure fair access to this critical service to all persons in Puerto Rico. FEMA should not approve any proposals in which renewables are merely incidental to the overall program - they must be central in any plan funded by federal dollars; that includes the pending PREPA/LUMA proposal which facilitates building new fossil fuel plants with the largest part of the budget focused on transmission which replicates vulnerability. Creating a resilient, decentralized energy system in Puerto Rico is not just about reaching climate goals – it is literally a matter of life and death.
- II. Ensure Puerto Rico is treated equitably and is not an afterthought in new programs and policies passed to revive the economy and help the country rebuild from the pandemic, such as the [President's Build Back Better](#) agenda. We agree this is no time to just build back to the way things were before with the old economy's structural weaknesses and inequalities in place. Biden must provide full parity in federal programs as promised in his presidential campaign through this historic opportunity.
- III. Continue to eliminate discriminatory restrictions that have created unique barriers to rebuilding and slowed access to federal disaster funds. The federal government needs to create programs that recognize and respond to Puerto Rico's unique realities, vulnerabilities, and legal framework. Examples include:

- **Reimbursement requirements:** Waive reimbursement and matching funds requirements to facilitate maximum participation of local non-profit organizations. Most non-profits in Puerto Rico are small by US standards or derive their non-profit status from the local instead of the federal government and lack the financial capacity and cash flow required to participate in federal programs with reimbursement mechanisms and or matching fund requirements.
- **Ownership:** Make ownership requirements for disaster funding responsive to Puerto Rico's legal tenancy realities and property law which is different from those in the United States. This reality has consistently been one of the main barriers for the most vulnerable people to access much-needed federal emergency and recovery funds. The federal government must ensure that the aid is available to those who need it the most.
- **Federal Tax Credits:** Make federal tax credits available as direct pay options to residents and organizations that do not qualify under U.S. tax law.
- **Accessibility issues:** Reform access to federal programs and funding that require internet connectivity. For example, in person assistance centers were very successful but closed too quickly after the earthquake in 2020.
- **Language barriers:** Increase access to programs and funding by creating processes that are accessible to Spanish speakers.
- **Technical Assistance:** Provide funding for education and technical assistance for local agencies, community-based organizations, and businesses that may be eligible for federal funding but have difficulty accessing it and complying with grant reporting requirements
- **Transparency:** Ensure information about disaster recovery dollars and decision-making processes are publicly available, easily accessible, objectively verifiable at all stages of decision-making including needs-assessment, planning, implementation, and monitoring, and ensure official documents are bilingual in Spanish and English.
- **Democratization:** Require effective, mandatory oversight criteria for public engagement and transparency in every plan for disaster funding approved by federal agencies.
- **Federal Coordination:** Create effective, transparent processes for interagency collaboration to ensure an effective deployment of federal programs and resources. The recent reactivation of the [White House Puerto Rico Working Group](#) is an important step to ensure interagency coordination of resources and technical assistance. The Working Group [must immediately engage](#) with Congress and Puerto Rico stakeholders, including community-based organizations that work directly with the people most impacted to ensure disaster relief and other federal funds are distributed in a *targeted*, effective, and equitable manner.