



Texas Low Income Housing
Information Service

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Disaster Recovery Division
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Date 9/23/09

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Dear Ms. Cardenas,

This letter conveys the comments of the Texas Low Income Housing Information Service regarding the proposed State of Texas Amended Plan for Disaster Recovery (hereinafter "the Plan").

The mission of TxLIHIS is to support low-income Texans' efforts to achieve the American dream of a decent, affordable home in a quality neighborhood. TxLIHIS exists to combat poverty, as manifested in substandard and unaffordable housing for millions of Texans, and to develop solutions to this crisis.

The proposed State of Texas Amended Plan for Disaster Recovery is based on a flawed allocation model that will prevent Texas from recovering from the damages incurred through Hurricanes Dolly and Ike and will poorly serve the many thousands of Texas families who need help to rebuild their homes.

The State of Texas Amended Plan for Disaster Recovery should incorporate ten standards.

1. Prioritize funds for the recovery of individual Texans first and for government projects second.
2. Utilize the most expeditious and efficient means of providing assistance to individuals displaced by the hurricanes and fund the housing rebuilding needs of people still displaced from their homes on a priority basis.
3. Guarantee a fair, needs-based allocation of available resources for low- and moderate-income families.
4. Allocate sufficient funds for full owner and rental housing restoration in instances where insurance has not restored housing.
5. Propose a workable program that can be carried out in the most cost efficient manner.

6. Establish uniform, state-wide benefit eligibility standards to ensure all Texans are treated fairly, equitably and on a non-discriminatory basis.
7. Assign program benefit distribution goals to geographic regions based on actual disaster damage.
8. Adopt and carry out a plan at the community level to design program assistance and administer funds to affirmatively further fair housing.
9. Use the funds to mitigate likelihood of future storm damage to housing units through appropriate building technologies.
10. Consider and solicit meaningful public participation in the Plan.

The State of Texas Amended Plan for Disaster Recovery fails to incorporate any of the ten standards we set out for disaster recovery activities.

The State's proposed categorical competitive activities or set asides (healthcare facilities (\$17 million), affordable rental housing (\$174 million), innovative housing approaches (\$6 million), and title clearance and legal assistance (\$500 thousand)) are appropriate. We support allocation for those activities as proposed in the Plan. These programs comprise only 11 percent, less than \$200 million of the \$1,743,001,247 allocated under the Plan. The 89 percent of CDBG disaster funds are not allocated with any degree of specificity by the Plan.

Before CDBG disaster recovery funds are released to a state, the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act requires that, "each State shall submit a plan to the Secretary [of HUD] detailing the proposed use of all funds, including criteria for eligibility and how the use of these funds will address long-term recovery and restoration of infrastructure."

The State of Texas Amended Plan for Disaster Recovery fails to comply with this requirement.

The State's approach to fund allocation is fundamentally flawed and inappropriate, as is the State's model for geographically sub-allocating funds. The Amended Plan does not in fact constitute a plan. In the Plan's mere 15 pages it fails to provide essential information regarding final funding allocations, program descriptions, or beneficiary eligibility standards. In short, with a few minor exceptions listed above, the Plan never indicates how the CDBG funds will be spent. Instead, the Amended Plan sketches the mere outline of a process that the State of Texas will use to develop a plan in the future. The failure to produce a real plan completely frustrates any ability of the public to comment meaningfully upon the proposed uses and beneficiaries because they are not set forth in the Plan.

Instead of producing a plan as required under the statute, the State has delegated that responsibility to regional Councils of Government, self elected and self selected bodies who are not accountable to the hurricane survivors or to the citizens of Texas.

"Regional Councils of Governments (COGs) in the areas most impacted by the disasters will be responsible for developing methods of distribution (MODs) for housing and nonhousing funds not termed as categorical competitive activities or set asides (healthcare facilities, affordable rental housing, innovative housing approaches, and title clearance and legal assistance)." - State of Texas Amended Plan for Disaster Recovery, page 3.

Congress mandated that state's would be responsible for administering the CDBG disaster recovery program and for producing a plan that explains how the funds will be expended. Nowhere in the federal statute is a state allowed to transfer responsibility for making the decision on how the funds are to be allocated to a third party. Yet this is what the Texas Amended Plan for Disaster Recovery does.

The critical place this comes into play is in the decision regarding who will benefit from the CDBG disaster recovery funds. The State transfers its responsibility for this decision inappropriately to the COGs. Instead of setting out the use of funds in the Plan the State indicates that it intends to offer the COGs only a "recommended" division of funds between housing and non-housing uses. The Plan allows the COGS to ignore the State's recommendation for the use of funds for housing and non-housing purposes at the onset or at any point in the future when the COGs actually elect how to spend the CDBG funds.

Recommended housing and nonhousing allocations are provided within this amendment, but regions will be allowed to move funds between housing and non-housing interchangeably in the development of MODs using objective criteria that indicate such a need. All decisions for housing and nonhousing splits must be made at the submission of the MOD [developed by the COGs]. - State of Texas Amended Plan for Disaster Recovery, page 7.

It is important to note that the submission of the Method of Distribution (MOD) by the COGs as to how the CDBG disaster recovery funds will be used will occur after the citizen participation process is concluded and after the Secretary of HUD is asked to approve the State's Plan for expenditure of CDBG disaster recovery funds, rendering both citizen participation and federal oversight meaningless. This is plainly inappropriate and in violation of the statute.

The State's justification for this abdication of the State's statutory responsibility to produce a plan for the expenditure of CDBG Disaster Recovery Funds is set out on page 5 of the Plan as follows:

The initial Action Plan distributed funds to impacted regions, as discussed previously, based upon the FEMA public assistance and individual assistance data available as of December 1, 2008. Responsibility for further distribution of funds was assigned to the regional Councils of Governments, utilizing their own objective method of distribution (MOD), with the intent that local officials could best determine local needs. - State of Texas Amended Plan for Disaster Recovery, page 5.

While it is appropriate for the State of Texas to listen to the needs of local citizens as expressed by local officials, it is not appropriate for the State to deny its citizens the opportunity to comment upon the proposed uses of CDBG funds nor to abdicate it's responsibility under the federal statute governing CDBG Disaster Recovery to unelected Councils of Governments. The result of this practice under Round 1 has been to reduce the CDBG Disaster Recovery program to a general revenue sharing fund with critical disaster recovery funds diverted by the COGs away from the most urgent needs of hurricane survivors and away from principally benefiting low- and moderate-income people.

Despite the clear evidence through FEMA damage reports that overwhelmingly the damages caused by hurricanes Dolly and Ike were to housing, only 48% of the funding distributed to the COGs under the Round 1 CDBG disaster recovery program for hurricanes Dolly and Ike was allocated for housing recovery. If the City of Houston (which allocated 80% of its funding to housing) and the City of Galveston (which allocated 60% of its funding to housing) are excluded, only 27% of the money allocated by COGs was set aside for housing under Round 1 of the program. In contrast, Texas, Louisiana, and Mississippi all allocated at least 70% of their Katrina and Rita related CDBG disaster recovery funding to housing.

The failure of the State of Texas to consider citizen communication is part of an ongoing pattern and practice. The Texas Low Income Housing Information Service, Texas Appleseed and Texas Rio Grande Legal Aid submitted extensive comments regarding the original State of Texas Action Plan raising many the concerns that we raise again in this letter. The State failed to take our concerns into account or respond to our comments. In response, we sent our concerns to HUD Secretary Donovan who responded March 26, 2009 through Nelson R. Bregon, General Deputy Assistant Secretary as follows:

In accordance with HUD's procedures for handling citizen's complaints, your letter will be forwarded to: Mr. Charlie Stone, Executive Director, Texas Office of Rural Community Affairs, P.O. Box 12877, Austin, TX 78701, for direct response to you within fifteen (15) days of receipt of this letter. Also, the Office of Rural Community Affairs will be asked to provide the Department with a copy of its response to you. HUD intends that your concerns in regards to the state's Action Plan will be properly reviewed and addressed."

We never received a response from Mr. Stone or from ORCA.

The Plan acknowledges that the result of abdicating the State's responsibility to the COGs to decide how CDBG disaster recovery funds will be spent has resulted during Round 1 of the program in serious non-compliance with the federal statute. Federal statutes require that more than one-half of the funds be used to principally benefit low and moderate income persons and furthermore the State is required to demonstrate that it has given maximum feasible priority to activities benefiting low- and moderate income persons. But the COGs, in deciding how the CDBG disaster recovery funds will be spent, failed to adequately fund programs benefiting low- and moderate-income persons in Round 1.

Several trends have become evident in the review of the applications and the comments from stakeholders. Jurisdictions have prioritized projects other than those serving LMI residents in an effort to move recovery forward as fast as possible by focusing on urgent need projects with overall benefit to the community. This impacts the State's ability to fulfill its obligation to expend 50% of the total funds to meet the LMI national objective. - State of Texas Amended Plan for Disaster Recovery, page 6.

The State's stated justification for improperly transferring fund allocation responsibility to the COGs is the State's contention that local officials best understand the needs of the local communities. The facts show that this is not the case in the area of disaster recovery program planning. The State claims that local governments will be submitting disaster analysis and needs information that only these local governments possess to support their funding decisions. This analysis and information, the State indicates, will provide a basis for the allocation of funds between housing and non-housing and the beneficiaries who will receive the housing funds.

COGs, or subrecipient county and local governments designated by the COGs, will be asked to provide documented, updated needs assessments to earlier Round 1 FEMA damage assessments. These more fully developed damage and needs assessments will be used to develop an array of housing programs that addresses local needs in an appropriate and proportional manner to ensure that all income levels impacted are served, and to meet federal and state fair housing laws, and HUD requirements. Decisions on program development must evidence a correlation to the needs and other assessments, as well as data collected on damage from the storms. TDHCA shall approve all eligibility criteria to ensure programmatic consistency and that the needs of impacted persons are being met. - State of Texas Amended Plan for Disaster Recovery, page 12

The State offered similar assurances in conjunction with Round 1 funding. The Texas Low Income Housing Information Service has examined the housing submissions of the COGs and local governments to the State under Round 1. We found no substantive additional analysis or information on housing needs was submitted and that the local entities offered

little to no justification for the post Plan determination of the nature of housing programs they choose to fund or the characteristics of the beneficiaries they made eligible for assistance.

In fact, we observed a consistent practice on the part of local governments of ignoring the available needs data in proposing housing activities. Many failed to provide rehabilitation assistance, electing instead for far more costly but easier to administer new construction programs. Almost all failed to address the specific housing needs of very low income households in their programs. Few reserved any funds for rental housing despite the heavy impact of the hurricanes on this type of housing.

The State of Texas Amended Plan for Disaster Recovery makes certifications that the State cannot reasonably expect to comply with. For example, the State assures HUD it will "affirmatively further fair housing". Yet most local governments charged with determining how much will be spent on housing and determining the specific uses of the funds have prepared no analysis of impediments to fair housing. A similar structural problem exists with the State's certification of development and compliance with an anti-displacement and relocation strategy.

Another state certification is that each recipient has the capacity to carry out the proposed activities in a timely manner. The State cannot make such a certification if it relies on local governments to carry out the host of different recovery programs proposed in this Amended Plan. Texas made a similar certification with regard to Hurricane Rita funds and now acknowledges that program has experienced unacceptable delays in the housing and non-housing activities carried out by COGs and local governments. Despite this knowledge and experience the State now proposes to certify to HUD that this same approach of COG and local government program administration will result in a timely expenditure of funds.

An alternative method of fund administration, that would likely result in housing assistance being provided in a more timely manner, the use of the now on-going housing rehabilitation and reconstruction program administered by the State and established under the Round 2 Hurricane Rita Disaster Recovery Program, could and should have been adopted by the State for the administration of housing assistance under Rounds 1 and 2 of the Hurricane Ike Disaster Recovery Program. Yet, the State elects in this Amended Plan for Disaster Recovery instead to rely on a method of distribution of housing assistance that has proven to produce unconscionable delays. To do so the State falsely certifies to HUD that activities will be carried out in a timely manner.

The local fund allocation model relied on in the Plan results in massive fiscal inefficiencies along with waste and abuse of CDBG funds. Under the State's Hurricane Rita Recovery Plan Round 2 the state administered a housing reconstruction program (which we have frequently acknowledged works well). That program currently builds a new, reconstructed, site-built home for low-income hurricane survivors at a cost of \$65,000 to \$70,000. This contrasts with the Hurricane Rita Recovery Plan Round 1 program in which COGS administered housing reconstruction resulting in extraordinary delays and producing a small number of site-built homes at costs of over \$100,000 and trailers at \$80,000. The proposals for housing programs submitted by local governments for the Hurricane Ike Recovery Plan Round 1 program are even more expensive with expenditures to build new homes reaching \$125,000 each.

With limited funds available meaning that many potentially eligible Texans likely to be turned away, how can the State justify allowing local programs to spend \$125,000 to build a home when the State has an ongoing and proven track record of producing similar homes at half the cost?

The regional sub-allocation of funds by the State is fatally flawed. Regions that received virtually no real physical storm damages are allocated funds while coastal communities like Galveston are shortchanged. We will not provide expansive documentation of this fact in this comment letter but will note that we concur in the comments and analysis provided to

the State by Gulf Coast Interfaith and Texas Appleseed regarding the inequity of the regional allocations the State has proposed in this Plan.

We have expressed the deep concerns we have outlined here over this flawed Plan to State officials responsible for the Plan for several months now. The following is a summary of the concerns we have raised.

In summary, the proposed State of Texas Amended Plan for Disaster Recovery is inadequate and plainly inappropriate for the following reasons.

1. Fails to properly prioritize individual recovery needs over public infrastructure, economic development, etc.
2. As a consequence of allowing each COG and local government agency administering housing programs to make up their own eligibility guidelines, establish program activities and set different benefit levels, the Plan provides inconsistent and inadequate housing program benefits between geographic regions and between cities even within the same county, producing an unfair and discriminatory distribution of CDBG benefits.
3. Allocates funds geographically through a flawed model comprised of weather reports with the result that funds will not be allocated based on actual disaster damages sustained in the community.
4. Fails to make significant funds available specifically for housing repairs to owner-occupied homes — the greatest need in the wake of the hurricane disasters.
5. Fails to acknowledge the demonstrable needs for and inadequately funds rental housing repair and rebuilding due to a prejudice on the part of COGs and local governments against rental housing because rental housing predominately houses low- and moderate income persons and people of color within Hurricane Ike impacted region.
6. Does not analyze impediments to fair housing at the community level and fails to coordinate the allocation and program design of CDBG funds to promote fair housing and therefore fails to affirmatively further fair housing as required under the statute.
7. Sub-allocates CDBG funds to jurisdictions that have stated their intent to use funds in a manner to eliminate rental housing and housing affordable to lower-income households, policies that are inconsistent with fair housing and civil rights laws.
8. Funds overly expensive and inefficient local housing reconstruction programs as opposed to a much more cost effective state-administered program.
9. Fails to provide explicitly for hazard mitigation to prevent a recurrence of storm damage to homes rebuilt with CDBG funds.
10. Channels funds through institutions with track records of unreasonably slow and inefficient use of CDBG funds in the Hurricane Rita CDBG disaster recovery program.
11. Adopts a funding Plan that the State knows cannot achieve the 50 percent low- moderate-income benefit statutory objective.
12. Does not meet the minimum state planning threshold required in the statute.

13. Does not meet the standards of a plan required under the statute because the Plan is subject to and is anticipated to be changed in significant ways after HUD approval.
14. Renders public participation meaningless because the Plan was approved by state administering department governing boards prior to the end of the public participation process.
15. Provides certifications to HUD that the State knows to be inaccurate.
16. Fails to take steps to address ongoing civil rights and fair housing violations by local governmental entities that will be eligible to administer CDBG funds under the Plan.
17. Adopts a regional allocation model that fails to provide funds sufficient to equitably serve the needs of low- and moderate-income persons, persons with disabilities and ethnic and racial minorities.
18. Sub-allocates CDBG disaster recovery funds to Councils of Governments and other subrecipients knowing that some of these COGs, cities and counties have stated an intend to use funds to carry out projects unrelated to disaster recovery.

I request that the State of Texas set aside the proposed State of Texas Amended Plan for Disaster Recovery and develop a new plan based on the ten standards I have set out in these comments.

As the comments provided here raise serious objections to the appropriateness of the proposed State of Texas Amended Plan for Disaster Recovery and raise substantive objections that the Plan fails to comply with federal statutes, I respectfully request that these comments be included in their entirety with the State's submission of the Plan to HUD along with a reasoned response from the State of Texas. I further request that your agency provide me with an acknowledgement and response to the issues I raise in this correspondence.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "John Henneberger". The signature is stylized with large loops and a cursive script.

John Henneberger, co-director