

Texas Appleseed Comments on the State of Texas Plan for Disaster Recovery: Hurricane Harvey - Round 1 (April 6, 2018)

May 1, 2018

We appreciate the opportunity to provide comments on the State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1, covering \$5.024 billion in Community Development Block Grant for Disaster Recovery (CDBG-DR) funds allocated by the U.S. Department of Housing and Urban Development (HUD) by Federal Register Notice, 83 F.R. 5844, February 9, 2018.

Texas Appleseed is a public interest justice center that works to change unjust laws and policies that prevent Texans from realizing their full potential. Since Hurricanes Katrina and Rita in 2005, Texas Appleseed has worked with a network of organizations in Texas, including housing advocates, policy experts, and grassroots community groups, to ensure that all Texas families are able to recover in the wake of a natural disaster, that communities are rebuilt to be more resilient, and that all families have the opportunity to live in safe, decent neighborhoods with equal access to educational and economic opportunity.

I. Introduction

The Texas General Land Office (GLO), in the Action Plan, estimates that Hurricane Harvey caused \$120 billion in damages, including to one million homes. In total, Texas has been allocated over \$10 billion dollars in CDBG-DR. However, the Federal Register Notice for \$4.726 billion in CDBG-DR funds appropriated by Public Law 115-123 (February 9, 2018). In addition, only \$652 million of these funds are allocated for “unmet need”, the remaining \$4.074 billion are appropriated for unspecified “mitigation” projects.

In light of limited funding and the potential limited nature of future federal appropriations, the State needs to prioritize how these funds are spent, and it is correct to prioritize both housing, and the needs of low and moderate income families who will have the most limited access to other resources and will have the most difficult time recovering from Hurricane Harvey. This prioritization is particularly critical for CDBG-DR funds. Unlike non-housing needs, which can be funded with FEMA Public Assistance, U.S. Army Corps of Engineers, Department of Agriculture, and Department of Transportation disaster funding, CDBG-DR is only source of funding for long-term permanent housing repair and reconstruction. We strongly support the state’s assessment that housing is the most urgent and critical need, is integral to successful and resilient recovery, and that prioritizing safe, resilient, and affordable housing for disaster survivors should be prioritized. Too many families, particularly low-income families and the most vulnerable

populations, remain displaced, homeless, or are living in unsafe and unhealthy conditions. However, we are extremely concerned that the methodology used by HUD to determine unmet need and the “most impacted and distressed areas”, and by GLO for its Needs Assessment substantially undercount the needs of low- and moderate-income (LMI) families, particularly renters, and result in an Action Plan that does not, in fact, prioritize the greatest unmet need, the greatest unmet housing need, or LMI families, as required by the Federal Register Notice.

II. The Unmet Needs of Low- and Moderate-Income Texans are Not Accurately Determined by HUD and GLO Methodology

GLO has used HUD’s methodology to determine unmet housing need by income category. HUD’s methodology, however, uses FEMA Verified Loss (FVL) of real property (owners) or personal property (renters). Overall, 54 percent of owners and 53 percent of renters were found to have no unmet needs on the basis that their FVL was below the thresholds set in the draft Action Plan. However, when this is broken down by income level, 69 percent of extremely low income (ELI) owners and 58 percent of ELI renters were found to have no unmet needs. Conversely, only 41 percent of both non-LMI owners and renters were found to have no unmet needs. The conclusion, based on FEMA data, that families making less than 30% of Area Median Income (AMI), which is \$12,060 in the Beaumont-Port Arthur MSA and \$13,100 in in the Corpus Christi MSA, have been better able to recover than families making more than double that amount is simply not credible.¹ The inaccuracy of this calculation is borne out by a study conducted by the Episcopal Health Foundation and the Kaiser Family Foundation three months after Hurricane Harvey. The study found that lower-income families and Black and Latinx Texans were less likely to have homeowners’, renters’, or flood insurance, and that,

[n]early half (46%) say they or someone else in their household lost job-related income as a result of the storm, such as getting fewer hours at work (32%), losing a job entirely (12%) or losing income from a small business or unpaid missed days (32%). These income disruptions affected a greater share of Hispanic (65%) and Black (46%) residents compared to White residents (31%).

Lower- and even middle-income families are less likely to have the savings and access to credit that let them access safe housing (including more immediate repairs) and are more likely to be forced to relocate far from jobs and schools, to live in overcrowded housing or double up with or friends, remain in unsafe housing, or become homeless.

¹ Income figures from HUD’s FY 2017 Median Family Income (MFI) estimates. Available: <https://www.huduser.gov/portal/datasets/il.html#2017>

2015 Pew Charitable Trust study found that less than half (45%) of American households have even one month's income in savings in case of an emergency.² Lower income households are in an even more precarious situation, with only two weeks of savings. Those at the bottom of the income scale could only survive 9 days on their liquid assets. The study also indicates that even middle income households could only scrape together about four months of income; it has been nearly 10 months since Hurricane Harvey.

Pew also looked at disparities in liquid savings among various racial and ethnic groups and found that,

[t]he typical white household has slightly more than one month's income in liquid savings, compared with just 12 days for the typical Hispanic household and only five days for the typical African-American household. In fact, a quarter of black households would have less than \$5 if they liquidated all of their financial assets, compared with \$199 and \$3,000 for the bottom 25 percent of Hispanic and white households, respectively.³

In addition, median white wealth is twelve times median black wealth, a disparity that can be traced to the history of segregation and discrimination in the United States, from government redlining to current lending discrimination.

The primary purpose of the CDBG program is to benefit LMI populations, yet the HUD methodology the State is using has the clear, disproportionate effect on LMI populations of excluding them from the state's unmet needs assessment conclusions. This disproportionate effect is not only on low- and moderate-income Texans, but on Black and Latinx populations as well. The State's use of the FEMA/HUD methodology to determine unmet need by income category and by tenure (owner/renter) affects the State's ability to certify that "the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families" and that "the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d), the Fair Housing Act (42 U.S.C. 3601-3619), and implementing regulations, and that it will affirmatively further fair housing."

² "What Resources Do Families Have for Financial Emergencies?" The Pew Charitable Trusts. November 18, 2015. Accessed February 20, 2018. <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/11/emergency-savings-what-resources-do-families-have-for-financial-emergencies>.

³ "Pew Finds American Families Ill-Equipped for Financial Emergencies." The Pew Charitable Trusts. November 18, 2015. Accessed February 20, 2018. <http://www.pewtrusts.org/en/about/news-room/press-releases/2015/11/18/pew-finds-american-families-ill-equipped-for-financial-emergencies>.

Basing damage level on the estimated loss amount, as FEMA's methodology⁴ does, also disadvantages low-income victims, particularly those that are Extremely Low Income (ELI) earning 30% of AMI or below. FEMA does not inspect rental units for damage; it uses personal property damage as a proxy for unit damage. Rental units are only "most impacted" if there is a FEMA personal property assessment of \$2000 or more or over one foot of flooding. Low-income families may have lost everything, but if a FEMA inspector does not think their personal property was worth \$2000 or there was less than one foot of water in the unit, that unit will not be included in damage estimates. Calculating a damage amount based on personal property loss rather than unit loss results in an entirely inaccurate amount of unmet need for rental housing. If a household's belongings were not evaluate as worth more than \$2000, even if the unit is destroyed or otherwise uninhabitable, it will not be included as unmet housing need.

Using this methodology means that GLO is budgeting for unmet housing needs with the expectation that most LMI households, who fall into lower level damage categories if they are represented at all, are not severely damaged and will not need their homes rebuilt or affordable rental housing. While the average FVL for non-LMI homeowners was about twice that of ELI owners, the average income for non-LMI owners is over 14 times that of ELI owners. Among renters, the average FVL for non-LMI renters was 28 percent higher than that for ELI renters, but the average non-LMI income is nearly 13 times that of ELI renters. Among both owners and renters, there is a huge gulf between average incomes, however the methodology used in the draft Action Plan doesn't consider income levels until after damage levels have already been determined using the flawed FEMA/HUD methodology . This methodology underrepresents LMI housing needs by income level, particularly misrepresenting the level of unmet rental housing need for ELI families.

As the Action Plan points out, "some housing and income demographics are slightly different in the eligible counties versus the statewide averages. The 49 eligible counties have an estimated median owner-occupied housing unit value and median household income lower than the state as a whole." The affected counties also have higher African-American and minority populations as a whole than the statewide total.⁵ Given this data, we repeat our concern about the State's ability to certify that "the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families" and that "the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d), the Fair Housing Act (42 U.S.C. 3601-3619), and implementing regulations, and

⁴ We have detailed in earlier comments (attached as Appendix A) severe additional problems with FEMA data, including systemic denial of home repair benefits to low-income homeowners, and process issues that result in high denial levels of qualified applicants. FEMA has approved less than half of the applications submitted for Individual Assistance for Hurricane Harvey. <https://www.fema.gov/disaster/4332>

⁵ Action Plan at 18.

that it will affirmatively further fair housing” if it uses only the FEMA/HUD data and methodology to assess unmet need

Texas Appleseed supports the use of a data-based formula to allocate funds within the State of Texas. But that formula must be adjusted to account for deficiencies in FEMA and other data and ensure that the needs of all Texans affected by Hurricane Harvey are taken into account. We strongly recommend that the State use the methodology proposed by the Texas Low Income Housing Information Service (Texas Housers) in its comments on the draft Action Plan - or a similar methodology - which relates a household’s FVL to their income, thereby considering the level of impact on a household, acknowledging the loss valuation variations produced by the FEMA/HUD methodology, and more accurately counts households with unmet housing needs that are the least able to recover and most vulnerable to housing insecurity. This method also ensures that the geographic allocation of funding addresses the actual levels of unmet housing needs in each region.

We also recommend that GLO re-allocate Local Infrastructure Program funding and Economic Revitalization Program funding in accordance with the Texas Housers or similar methodology in order to cover the additional LMI unmet needs and ensure that the State is in compliance with the Federal Register requirement that if a grantee allocates CDBG-DR funds to address unmet economic revitalization and infrastructure needs, “the grantee must identify how unmet housing needs will be addressed or how its economic revitalization or infrastructure activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas.” (83 FR 5844)

III. Use of Funds

The State’s prioritization of housing needs, the needs of low and moderate income families, and rebuilding affordable rental housing are not only the correct priorities from an equity standpoint, but also from a comprehensive disaster recovery standpoint. Low-income families and communities are disproportionately affected by natural disasters, and then are disadvantaged again when the recovery process does not take their unique needs into account. Prioritizing rebuilding affordable and rental housing across the region, and ensuring that infrastructure and economic revitalization activities are coordinated with housing activities, will prevent permanent displacement, preserve the jobs and populations of many communities, and increase the quality of Texas housing stock.

A. Homeowner Assistance Program

We applaud the State's commitment to proportional funding for various income categories. As the State's experience with recovery from Hurricanes Ike and Dolly demonstrated, a "first come, first served" housing program significantly underserves lower income homeowners. The amount of funding going to the lowest income homeowners to rebuild and repair their homes more than doubled between Rounds I and II of the Ike/Dolly recovery program after proportional housing funding was instituted in Round II.

An standardized housing program that both the GLO and subrecipients have experience running will substantially reduce the amount of time it will take to stand up programs and start delivering housing, as well as ensure that Texans across the impacted areas are treated equitably. In disaster recovery programs pre-Ike Round II, homeowners were subjected to different eligibility rules and different amounts of help to rebuild based solely on where they lived. It also took more than 18 months for local jurisdictions administering Round I housing programs to come up with programs and housing guidelines that complied with state and federal requirements. A housing program that would delay actual housing assistance to Harvey victims by a year and a half by creating additional levels of administration and bureaucracy and that treats victims differently based solely on where they happen to live is unacceptable, and we believe a state-run model, in partnership with affected COG regions, is a better alternative.

While the eligible activities include "new construction", which would allow relocation activities, the State should explicitly include a homeowner mobility program like the post-Ike/Dolly Homeowner Opportunity Program (HOP), which allows eligible homeowners to choose to move to lower-risk higher opportunity area rather than rebuild in place, in its Homeowner Assistance Program. The HOP program, created after Hurricanes Dolly and Ike, was the first of its kind nationally. As of February 17, 2017, 282 households, or 9% of total applicants for homeowner assistance had been successfully relocated to safer, higher opportunity areas.⁶ The HOP program not only provided homeowners with a choice of whether to move or rebuild in place, but it included services like mobility counseling and real estate assistance to help ensure that the choice was an informed one, as well as using a formula determined benefit amount that the choice to relocate a real one for LMI families. The State and regional Councils of Government know have experience running a homeowner mobility program that is both a source of valuable lessons learned on how to improve the program, a resource for other voluntary and mandatory buyout programs, and will allow this program to be stood up quickly following HUD's approval of the State's draft Action Plan (as amended to include a homeowner mobility program.)

⁶ Data obtained from GLO, February 28, 2017.

Including a homeowner mobility program not only increases resiliency and mitigates the impact of future disasters by allowing homeowners to move to safer and less disaster-vulnerable areas, but also ensures that the State can truthfully certify that it is in compliance with civil rights laws and its obligation to AFFH. Homeowner Assistance Programs that lock homeowners into rebuilding in place, because of historical segregation imposed by federal, state, and local government policies, may perpetuate segregation in violation of the Fair Housing Act and/or result in the use of federal financial assistance in a way that discriminates based on race, color, and national origin, even if the State lacks any discriminatory intent.

We note that housing counseling and legal counseling are eligible public service activities under the Housing and Community Development Act. Both mobility counseling and legal assistance with title clearing are essential to a successful and equitable mobility program. Inability to show clear title because of heirs' property ownership is a barrier to choosing to move to a safer location, particularly for African-American homeowners.⁷ The State of Texas has successfully addressed this issue in disaster recovery programs in two ways. First, in 2009, the Texas Legislature passed HB 2450, which allowed the agency administering CDBG-DR to accept alternative proof of ownership, including an Affidavit of Heirship, for purposes of disaster recovery programs that repaired or rebuilt homes in place. Second, following Hurricanes Ike and Dolly, the State funded the Texas Title Project, which helped LMI households clear title and access, in particular, the State's homeowner mobility program that allowed them to choose to move to a safer area rather than rebuild in place. The Action Plan should include mobility counseling and legal assistance.

B. Local Buyout and Acquisition Program

Program guidelines for this program must be developed in a transparent process with extensive community input. Local communities must have a citizen participation process for drafting buyout guidelines as well as for local/regional MODs. Regardless of whether these planned buyouts are voluntary or mandatory, relocating, away from an existing community or a home that has been in a family for generations, can be difficult and even traumatic.⁸ Without planning and community buy-in, a voluntary individual buyout program can result in a patchwork of empty

⁷ Heirs' property is created when a landowner dies without a probated will, creating divided ownership of property between multiple heirs, creating a situation in which all the heirs must agree, for example, in order to sell the land, obtain a mortgage, or access programs like CDBG-DR home repair and rebuilding programs. Heir's property ownership is particularly prevalent in African-American communities. *See, e.g.*: Kuris, Gabriel, "A Huge Problem in Plain Sight": Untangling Heirs' Property Rights in the American South, 2000-2017," 2018, Innovations for Successful Societies, Princeton University, <http://successfulsocieties.princeton.edu/>; xxx other cites?

⁸ Over 50% of applicants who opted out of the State's Hurricane Ike and Dolly homeowner mobility program cited attachment to their neighborhood or the fact that the property had been in their family for a long time as their reason for choosing not to move. (February 28, 2017 data obtained from GLO)

and occupied homes, creating a blighted neighborhood. One of the critical issues in ensuring a successful buyout program is equity and ensuring that program rules and processes do not have a disparate impact on particular groups of homeowners.

Local buyout and acquisition programs must also prioritize LMI households in floodways and floodplains, who have the least resources which which to relocate on their own, leaving them a choice between housing instability and potential homelessness or continuing to live in homes that may be structurally compromised or present health risks because of mold. It is particularly critical for LMI families this buyout program includes not only acquisition and demolition, but relocation payment and assistance as well. As the Federal Register Notice states, “a buyout program that merely pays homeowners to leave their existing homes does not result in a low- and moderate-income household occupying a residential structure and, thus, cannot meet the requirements of the LMH national objective.” (83 FR 5863) Local buyout programs should include plans to build housing in safer areas.

The February 9, 2018 FR Notice recognizes the importance of this use of funds, as did previous applicable FR Notices, by clarifying the previously published alternative requirement qualifying this use of funds to meet the LMI national objective criteria for buyouts and housing incentives. To meet the Low/Mod Buyout (LMB) and Low/Mod Housing Incentive (LMHI) national objectives, grantees must demonstrate that the buyout award is greater than the post-disaster fair market value of the property, or that housing incentives are tied to voluntary buyout programs in order to help LMI households move outside of the affected floodplain or to a lower-risk area.⁹

Low and moderate income households must be provided with enough funds that the choice to move is a realistic one (or to ensure that they can actually move to a safer area in the case of mandatory buyouts.) The worst case scenario is that families who accept buyout are unable to find housing in safer areas and are forced to move back into their original or less safe neighborhoods.

In particular, using the pre-storm value of a home to determine disaster recovery program benefit limits often has a discriminatory impact on the basis of race or ethnicity as well. Following Hurricane Katrina, the National Fair Housing Alliance (NFHA), the Greater New Orleans Fair Housing Action Center (GNOFAC), and African-American homeowners sued the State of Louisiana and the U.S. Department of Housing and Urban Development (HUD) alleging racial discrimination in the State’s CDBG-DR funded Road Home Program, which provided grants to homeowners to repair or rebuild their homes. The original grant formula was based

⁹ 82 F.R. 61320; 61323 (December 27, 2017).

on the pre-storm value of a home, which resulted in African-American homeowners receiving less repair money than White homeowners, because their homes were located in neighborhoods with lower home values based on market discrimination and the legacy of segregation.¹⁰ Many African-American families were left unable to complete repairs or return home or living in uninhabitable houses. As Louisiana Congressman Cedric Richmond said when the case was settled in 2011,

[e]veryone knew that the Road Home formula for calculating grant awards was deeply flawed and punished folks in neighborhoods where home values were lower. . . After all, if two families are both rebuilding a three bedroom home then their construction costs will be the same—regardless of the neighborhood. In that case, each family deserves the same assistance from their government. Unfortunately, the flawed formula was effectively discriminatory, locking many families out of equitable assistance.¹¹

The lawsuit (which resulted in a change to the Road Home formula) and settlement resulted in an additional \$535 million in repair and rebuilding funds for LMI homeowners in the four most impacted parishes in Louisiana.¹²

MODs and local program guidelines must ensure that buyout and acquisition programs are consistent regardless of whether the cost is funded by FEMA, local bond funding, or CDBG-DR. CDBG-DR funding could be used to provide additional funds for LMI families in FEMA programs that would not provide them with enough funding to move, for example. Jurisdictions should be particularly careful that they are not using a program which provides lesser benefits to serve communities and homeowners of color.

C. Homeowner Reimbursement Program

As a direct housing program, the reimbursement program must set aside proportional funding to serve each income category.

¹⁰ For example, redlining by the Federal Housing Administration in the 1930s, GI Bill loan guarantee requirements that forced developers to build all-white neighborhoods, discriminatory zoning that placed environmental hazards and industrial uses in communities of color, failure to provide adequate infrastructure or public services in communities of color, etc. These areas are not only high risk because of flooding, some communities, particularly low-income communities of color, were impacted not only by flooding but by hazards related to chemicals, oils, sewage, waste or air pollution during the event,

¹¹ Congressman Cedric Richmond, quoted in “Settlement Reached in Road Home Discrimination Challenge,” Kelly Parker, *The Louisiana Weekly*, July 11, 2011. Available at <http://www.louisianaweekly.com/settlement-reached-in-road-home-discrimination-challenge/>

¹² We note that ensuring buyout programs provide homeowners with awards that will enable them to move to safer areas will benefit homeowners of all races and ethnicities.

D. Homelessness Prevention Program

The Action Plan's acknowledgement that households in disaster-stricken areas are left in unstable housing and risk becoming homeless and provision of funding for homelessness prevention are commendable. However, the proposed homelessness prevention program does not allocate enough funds, potentially leaves out families displaced to Bexar, Dallas, Tarrant, and Travis Counties, and does not include help for households that are currently homeless as a result of the hurricane.

While \$50 million, about 1% of the available funds, is not an insignificant amount of funding, it will likely not be adequate funding even to assist even families that are at risk of homelessness. The Texas Homeless Network estimates that even if only 1,500 households needed temporary rental assistance for an average of 24 months, the entire \$50 million allocation would be nearly exhausted, exclusive of mortgage and utility assistance programs.

While Bexar, Dallas, Tarrant, and Travis Counties are appropriately ineligible for other housing and infrastructure funding, we encourage the State to allow families that were displaced from the other disaster-affected counties to access homelessness prevention funds that will enable them to recover, whether that means reestablishing themselves in their current location or moving back to their original homes. The most marginalized evacuee communities remain displaced in Austin, San Antonio, Dallas, and Fort Worth, with little idea of when or how they will return to stable housing and whether they will end up permanently displaced. Their disaster-related needs are not alleviated because they are not currently where they were when Hurricane Harvey hit. Cities, like Houston after Hurricane Katrina, that welcome evacuees for an indeterminate period need additional resources in order to address displaced persons' financial challenges.¹³

As important as homelessness prevention is, it does not address the needs of those who became homeless because of the hurricane, including over 3,800 evacuee households living in

¹³ Office of the Texas Governor, "Governor Abbott Announces Extension Of Transitional Sheltering Assistance," press release, March 6, 2018, <https://gov.texas.gov/news/post/governor-abbott-announces-extension-of-transitional-sheltering-assistance>; FEMA, "Transitional Shelter Assistance Deadline Extended to May 31 for Some Survivors as Efforts Continue to Help Texans Move to Permanent Housing," press release, April 18, 2018, <https://www.fema.gov/news-release/2018/04/18/transitional-shelter-assistance-deadline-extended-may-31-some-survivors>; Abe Louise Young, "Displaced by the Storm: Texas Evacuees Without Options," *Texas Monthly*, October 9, 2017, <https://www.texasmonthly.com/articles/displaced-by-the-storm-texas-evacuees-without-options/> .

hotels through the Transitional Shelter Assistance (TSA) program.¹⁴ Some of these households will have a place to return to once repairs are completed on their housing. Many of these households, however, particularly renter households who are dependant on whether third parties rebuild, will not have stable housing after TSA ends and may become homeless.

E. Affordable Rental Recovery Program

The Action Plan allocates \$250 million for “rehabilitation, reconstruction, and new construction of affordable multifamily housing projects in areas impacted Hurricane Harvey.” While the set aside for affordable rental housing is important, the Action Plan should allocate significantly more funding for rebuilding affordable rental housing. For reasons enumerated in the Unmet Needs section of our comments, the need for rental housing, particularly for the lowest-income families, has been significantly undercounted. If all projects were funded at the maximum award of \$25 million, this funding allocation would only produce 10 multi-family projects. In addition, CDBG regulations only require 51 percent of units to be affordable to families at 80% of AMI. Only roughly half of the units produced by this funding would be affordable, and no units would be affordable to ELI families.

The State’s Needs Assessment found that the largest amount of unmet rental need (37%) in the affected counties was in the 0-30% income category; 14% in the 31-50% category; 17% in the 51-80% income category, and 25% non-LMI.¹⁵ Following the CDBG and HOME affordability guidelines would not produce housing affordable to 51% of the unmet renter need, and would produce double the non-LMI renter need. Public money would be used to replace affordable housing with less affordable housing.

Like the Homeowner Assistance Program, rents for must be affordable to families at 30% of AMFI, 50% of AMFI, and 80% of AMFI in proportion to the unmet housing need in these income categories. Neither the State nor subrecipients should be replacing damaged or destroyed affordable housing with housing that is less affordable to low-income households. Like the Low-Income Housing Tax Credit (LIHTC) program, developments funded with public CDBG-DR dollars should be prohibited from source of income discrimination, particularly against housing voucher recipients.

The State of Texas in fact administered its Hurricane Ike and Dolly Round II CDBG-DR funding to serve both renters and homeowners proportionally at various income levels. Both the State and

¹⁴ Figures for Transitional Shelter Assistance available through Rebuild Texas, <https://www.rebuildtexas.today/recovery-tracker/> (last accessed April 25, 2018).

¹⁵ Action Plan at 34.

subrecipients are familiar with administering housing programs to serve all income levels, and their most recent (and in some cases ongoing) experience with housing program administration included a proportionality requirement. These programs successfully served more low-income homeowners and produced more units affordable to the lower-income families most in need of housing.

The State should also increase the set-aside for affordable rental in order to dedicate funds specifically for rebuilding public housing, assisted and affordable housing, housing for persons with special needs, and other types of affordable housing listed in Section III.A. of the Action Plan. The failure to rebuild public housing, often because of race-based community opposition, has been an ongoing issue in Texas. Rebuilding housing for the most vulnerable Texas families should be a priority, and GLO should ensure that jurisdictions are aware of the relationship between public housing rebuilding and their eligibility for other CDBG-DR funds, and that its contracts with subrecipients contain sufficient enforcement provisions. Much of this housing serves families making less than 30% of AMI.

Housing affordable and accessible to ELI and VLI households is also critical to ensuring that the state and local jurisdictions carry out their integration obligations under the Supreme Court's landmark decision in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999) (*Olmstead*), Title II of the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Evacuees with disabilities who had been living independently are often placed in residential care facilities (e.g. nursing homes) and then cannot return home if there are not affordable accessible units available. In effect, persons with disabilities often endure forced institutionalization because they have lost access to the community and housing of their choice.¹⁶

Even before Harvey made landfall, there was already a severe shortage of rental units affordable and available to Extremely Low Income households.¹⁷ While this is true across the country, Texas is one of the states with the fewest rental units available and affordable to ELI households, only 29 units are available per 100 households. The Houston metropolitan area, which encompasses 10 counties on the Gulf Coast, ranks third lowest nationwide for affordable

¹⁶ *See, e.g.*:

¹⁷ The NLIHC's Gap Report seeks to demonstrate the gap between the number of households at various income levels and the amount of rental housing that is affordable and available to them in their area. In Texas, as in many other areas, the deepest deficits in affordable housing are for units available to Extremely Low and Very Low income households.

Source: National Low Income Housing Coalition, "The Gap Report: A Shortage of Affordable Homes" March 2017, Accessed February 19, 2018 http://nlihc.org/sites/default/files/Gap-Report_2017.pdf

and available ELI units, with only 18 available and affordable units per 100 households. Hurricane Harvey not only decreased the number of rental units available overall, it forced additional households, like homeowners who are waiting for repairs, into the market, raising rents and further reducing the number of units affordable to low-income families.

Local officials have testified repeatedly that their most urgent recovery need is affordable rental housing. Affordable housing is not only a housing need, it is an economic revitalization need, particularly for jurisdictions that rely heavily on tourism, and who need lower-wage workers for the service industry jobs that are integral to that economy. As the Federal Reserve Bank of Dallas' recent report on the City of Galveston's recovery from Hurricane Ike points out,

[T]he vital roles small businesses and LMI individuals play in supporting the local and regional economy should not be overlooked. Without quality housing, communities stand to lose not only a large segment of their workforce and employer base, but also a critical driver and source of revenue.¹⁸

We appreciate that the GLO is dealing with not only data and assessment issues, but also, very likely, pressure from various groups to prioritize that group's particular interests. However, the set-aside for affordable rental housing rebuilding, is too low. The summary of total unmet needs provided in Table 18 suggested there more than \$2.7 billion in losses or a gap for rental-occupied housing. Although FEMA data identifies at least one third of the unmet housing need as rental, the state has allocated less than 5% of CDBG-DR funding to rental housing rebuilding. Many low- and moderate- income families affected by Harvey, who have no control over whether rental housing is rebuilt, are likely to be permanently displaced from their homes and communities. We ask the state to increase the allocation for the affordable rental program, and suggest that one way in which the state can do so is to reallocate the \$72,675,000 million currently allocated to reimburse the state for local match fund for the PREPS program. The FR Notice specifically reminds grantees that it expects them "to financially contribute to their recovery through the use of reserve or "rainy day" funds, borrowing authority, or retargeting of existing financial resources." Texas has a "rainy day fund" double the size of this CDBG-DR allocation, it should not be taking funds away from urgent housing and infrastructure needs to reimburse itself when it is able to cover its local match easily.

F. Local Infrastructure Program and Economic Revitalization Program

Resilience is the ability to withstand and recover from disasters quickly, in a way that mitigates future damage and vulnerability, and in a way that goes beyond physical infrastructure. Low

¹⁸ Kevin Dancy, *Seizing the Opportunity for Equitable and Inclusive Redevelopment: Galveston's Trials After Hurricane Ike Offer Lessons for Other Communities*, Federal Reserve Bank of Dallas (March 2018) Available:

income communities and communities of color are disproportionately affected by and have a harder time recovering from a disaster because of both geographic and social vulnerability forced on them by segregation, discrimination, and often the cumulative effects of previous disasters, on wealth and access to opportunity. For its Natural Disaster Resilience Competition (NDRC) HUD defined a resilient community as one which “is able to resist and rapidly recover from disasters or other shocks with minimal outside assistance,” and that plan and implement disaster recovery that mitigates future threats “while also improving quality of life for existing residents and making communities more resilient to economic stresses or other shocks.” Improving the quality of life for existing residents and making them more resilient to other shocks, including economic stress that can push middle and working class families into poverty following a disaster, is at the core of our concern for equity in disaster recovery.

Infrastructure programs must prioritize the needs of low and middle income households and communities, in particular, communities with substandard infrastructure as a result of discrimination and disinvestment. A key issue for many of these communities is environmental justice, as they were impacted not only by flooding but by hazards related to chemicals, oils, sewage, waste or air pollution during the event. Neighborhoods, like those in Port Arthur and Houston, that were doubly impacted by flood waters polluted with chemicals, oils, waste, or sewage should be prioritized for mitigation as well.

Also key to economic recovery and future resilience is ensuring that the jobs generated by recovery projects and programs are filled by local workers and those who lost jobs because of Harvey to create real jobs and job training for community residents, and create additional opportunities for community businesses. An economic development program that provides loans to small business will not be successful unless that business has access to a workforce. (We note again that affordable rental housing rebuilding is an economic revitalization program.)

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u; 24 C.F.R 135) requires recipients of certain HUD financial assistance, including CDBG-DR, provide job training, employment, and contracting opportunities for low or very low income residents in connections with projects or activities in their neighborhoods to the greatest extent possible. Historically, Section 3 has not been vigorously enforced, and jurisdictions have completely failed to comply with its provisions. We urge the State to fully implement and enforce Section 3, including monitoring (including of whether contractors are genuinely Section 3 eligible), helping to set up a training and jobs pipeline, measuring success in terms of the number of hours worked by Section-3 eligible workers, clearly defining the geographic area from which residents should get preference as locally as possible, and imposing monetary penalties on

contractors who do not meet their Section 3 goals. In addition to Section 3, jurisdictions routinely impose requirements like local hiring and job production in exchange for government financial assistance or other benefits.

Other options for increasing the number of jobs going to affected individuals and communities are ensuring that contractor qualifications include a commitment to local hiring and best value bidding processes that give more points to bidders who can comply with job quality and targeted hiring standards. CDBG-DR presents an opportunity to leverage housing and infrastructure funds into economic development funds as well.

IV. Public Participation, Reporting, and Public Access to Disaster Recovery Information

Meaningful public participation and comment require the direct engagement of impacted communities and individuals. We appreciate that the MOD process will require two public hearings, however, this is not enough. Jurisdictions must actively seek out and engage affected communities, particularly, as required by CDBG regulations, those least likely to participate.

HUD's Disaster Impact and Unmet Needs Assessment Kit recommends that data analysis include the question, "what is the engagement of the citizenry"?

*Grantees need to determine if the broader public has been engaged in planning and recovery efforts to date. **Are needs being communicated by the public that have not been heard or captured by the entities gathering impact data?** A grantee with a deep and comprehensive understanding of the public's perspective and level of engagement will be better able to define and prioritize unmet needs. (emphasis added)[9]*

The joint *Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964* (Disaster Title VI Guidance) also emphasizes the importance of engagement with diverse racial, ethnic, and LEP populations from emergency planning through the recovery stages.[10]

Direct engagement with diverse racial, ethnic, and LEP populations is necessary during the recovery stage to ensure that recovery programs . . . are developed in a manner that takes into account the needs of all members of the community, regardless of race, color, or national origin, and do not result in the creation or perpetuation of racial or ethnic disparities.

We also encourage the state and its subgrantees to re-build with cultural and economic preservation in mind by making an Anti-Displacement Plan (as required by the FR Notice). Many LMI communities in urban areas are already under the threat of displacement due to gentrification. We encourage the General Land Office to implement creative solutions such as community-benefit agreements or community land trusts when re-building in these areas.

Meaningful and ongoing citizen participation also requires that information and data posted on the required public website go beyond the documents specified in the FR Notice.¹⁹ The majority of public interest in CDBG-DR programs will not be in procurement processes, but in the progress of programs and projects, and in the beneficiaries of those programs. GLO must publish information that enables the public to monitor the progress of programs, and reports data necessary to determine civil rights compliance of grantees.

We particularly urge the GLO to publish waiver requests and supporting documentation on its website, and allow public comment before the waiver request is submitted to HUD. The waiver process must be transparent; the history of disaster recovery involves too many examples of waivers being used to divert funds away from LMI families, from housing, and even from disaster related unmet need.²⁰

VI. Conclusion.

We appreciate GLO's work on the Action Plan and disaster recovery, and your consideration of these comments. Please let us know if we can provide further information or be helpful in any way.

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¹⁹ See; 81 F.R. 83254; 83262 VI.C.4.e.; *and*, VI.A.1.b(2).

²⁰ E.g. Mississippi's diversion of housing funds to an "economic development" project at the Port of Gulfport, which had been unaffected by Hurricane Katrina.