LESSONS FROM TEXAS

10 YEARS OF DISASTER RECOVERY EXAMINED

White Paper

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Texas Appleseed's Mission
Texas Appleseed promotes social and economic justice for all Texans by leveraging the skills and resources of volunteer lawyers and other professionals to identify practical solutions to difficult, systemic problems.

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INTRODUCTION

Over the past ten years, the State of Texas has weathered the impact of four major hurricanes: Katrina, Rita, Dolly, and Ike, which caused more than $38 billion in damages. As communities began to recover and rebuild, Texas learned what many other states have discovered in the wake of record storms: Natural disasters reveal and highlight systemic inequalities in the communities affected and in the federal, state, and local systems set up to respond and rebuild.

One of the legacies of segregation is that historically underserved populations—the poor, people of color, persons with disabilities—often live in areas most vulnerable to flooding and other impacts of natural disasters.[1] The same communities are often overlooked during the recovery process, despite having borne the brunt of the damage. While disparities based on race and income in the immediate response to Hurricane Katrina have been extensively examined, there has been much less attention paid to inequities in long-term disaster recovery—the process of rebuilding homes, infrastructure, and whole communities.

Texas Appleseed's research and advocacy around these issues began shortly after Katrina struck the Gulf Coast, as Texas struggled to meet the needs of hundreds of thousands of survivors who were displaced by the storms. It continued after Rita, Ike, and Dolly wrought billions in damage to Texas communities. Over the last 10 years, Texas Appleseed's work has identified shortcomings in each phase of the disaster recovery process, from emergency services, to short-term recovery, to long-term rebuilding.

This white paper examines these problems and makes policy recommendations drawn from Texas' experience, focusing primarily on the challenges surrounding administration and oversight of the long-term recovery process.

Specifically, our research and work on these issues has revealed:

- The national statutory disaster recovery scheme is not set up to handle catastrophic regional disasters.
- The failure to incorporate civil rights and fair housing into disaster recovery planning and implementation results in inequitable recovery and exacerbates historical disadvantage.
- Lack of federal guidelines, poor data availability, and waivers of federal program requirements increase the probability that aid will be misallocated at the federal, state, and local levels.
- Lower- and moderate-income persons do not proportionately benefit from housing and infrastructure projects aimed at rebuilding hurricane-damaged communities.
- Multiple administrative layers at the different levels of government and difficulties encountered by local governments in administering these complex grant programs hamper efficient, effective, and timely use of disaster recovery funds.

[1] See, e.g., Thomas Gabe, Gene Falk, Maggie McCarty, and Virginia Mason, *Hurricane Katrina: Social-Demographic Characteristics of Impacted Areas*, Congressional Research Service Report to Congress (November 5, 2005); Alice Fothergill and Lori Peek, *Poverty and Disasters in the United States: A Review of Recent Sociological Findings*, Natural Hazards 32: 89–110, 2004; and, Shannon Van Zandt, Walter Gillis Peacock, Wesley E. Highland, and Samuel D. Brody, "*Mapping social vulnerability to enhance housing and neighborhood resilience*", Housing Policy Debate 22(1):29-55 (January 2012).

HURRICANE TIMELINE						
HURRICANE	LANDFALL DATE	LANDFALL	FUNDING ROUND	DATE APPROPRIATING LAW SIGNED	DATE FUNDS ALLOCATED	TEXAS SHARE (MILLIONS)
KATRINA	8/29/2005	Louisiana, Mississippi and Alabama.				
RITA	9/24/2005	Texas and Louisiana border[2]				
			"Katrina and Rita One"	12/30/2005	1/25/2006	$74.5[3]
			"Katrina and Rita Two"	6/15/2006	8/18/2006	$428.6[4]
DOLLY	7/23/2008	South Padre Island, Texas[5]				
IKE	9/13/2008	Galveston, Texas[6]				
			"Ike and Dolly One"	9/30/2008	11/26/2008	$1,315.0[7]
			"Ike and Dolly Two"	9/30/2008	6/10/2009	$1,743.0[8]
					TOTAL :	**$3,561.1**

Done well, the disaster recovery process emphasizes the needs of populations most affected by the disaster and results in recovery for the whole community; **done poorly**, it shortchanges actual recovery needs and results in delay, waste of funds, inequity, lack of accountability, and prolonged displacement and hardship for families whose lives have been disrupted by natural disasters.

2 Nasa.gov, 2005 Hurricane Season: Rita, http://www.nasa.gov/vision/earth/lookingatearth/h2005_rita.html

3 Department of Defense Appropriations Act, 2006, P.L. 109-148.

4 Emergency Supplemental Appropriations Act for Defense, Global War on Terror, and Hurricane Recovery, 2006, Publ. L. No. 109-234

5 Nasa.gov 2008 Hurricane Season: Dolly, available at http://www.nasa.gov/mission_pages/hurricanes/archives/2008/h2008_dolly.html

6 Nasa.gov 2008 Hurricane Season: Ike, available at http://www.nasa.gov/mission_pages/hurricanes/archives/2008/h2008_ike.html

7 Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. Publ. L. No. 110-329. Although the Federal Register notice was not released until February 2009, [Docket No. FR–5256–N–01] the allocation was publically announced by HUD in November 2008. See also: Press Release, U.S. Department of Housing and Urban Affairs, *PRESTON ANNOUNCES $2.1 BILLION IN DISASTER ASSISTANCE TO 13 STATES AND PUERTO RICO IMPACTED BY 2008 STORMS*, (November 26, 2008) at http://archives.hud.gov/news/2008/pr08-179.cfm

8 Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. Publ. L. No. 110-329. Although the Federal Register notice was not released until August 2009, [Docket No. FR–5337–N–01] the allocation was publically announced by HUD in June 2009. See also: Press Release, U.S. Department of Housing and Urban Affairs, *DONOVAN ANNOUNCES $3.7 BILLION IN DISASTER ASSISTANCE TO 11 STATES IMPACTED BY 2008 NATURAL DISASTERS*, (June 10, 2009) at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2009/HUDNo.09-084

DISASTER RECOVERY CHALLENGES

1. THE NATIONAL STATUTORY DISASTER RECOVERY SCHEME IS NOT SET UP TO HANDLE CATASTROPHIC REGIONAL DISASTERS.

STRUCTURE OF DISASTER RECOVERY FUNDING

Under the National Disaster Recovery Framework, one of the core principles of disaster recovery is deference to state and local governments in planning and management of recovery.[9] The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) requires a state governor to seek a presidential disaster declaration in writing, certifying that combined state and local resources are insufficient and that the disaster is beyond the state's recovery capabilities.[10] Yet, while the philosophy of disaster recovery emphasizes placing state and local governments in a primary position, the reality of large-scale disasters is that federal assistance provides the bulk of disaster recovery resources. Thus, the delays created by the need for a state request for a declaration in a large-scale regional disaster can result in an inadequate emergency response. This was starkly evident in the immediate aftermath of Hurricane Katrina.

THE FEDERAL DISASTER RECOVERY SYSTEM

Federal disaster recovery aid is administered through multiple programs and by multiple federal agencies.[11] The diverse programs funded by emergency supplemental appropriations address three stages of disaster assistance—Emergency Response, Short-Term Assistance, and Long-Term Recovery.

- ***Emergency Response*** involves Emergency Protective Measures such as search and rescue operations and provision of emergency medical care. Up to 75% of Emergency Protective Measures are reimbursable under FEMA's Public Assistance Program.[12]
- ***Short-term Assistance*** focuses on providing for the basic needs of survivors and addressing dangerous conditions through actions such as debris removal and demolition of unsafe structures. FEMA, under the Stafford Act, is primarily responsible for short-term assistance following a disaster.[13]
- ***Long-term Rebuilding*** focuses on rebuilding housing and infrastructure to pre-disaster capacity. FEMA's Public Assistance Program and HUD's CDBG Disaster Recovery (CDBG-DR) program are the primary vehicles for providing federal assistance with long-term rebuilding.

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9 "Local, State and Tribal governments have primary responsibility for the recovery of their communities and play the lead role in planning for and managing all aspects of community recovery." FEMA, N*ational Disaster Recovery Framework: Strengthening Disaster Recovery for the Nation*, September 2011. pg. 9 Available: http://www.fema.gov/pdf/recoveryframework/ndrf.pdf

10 FEMA, "Declaration Process Fact Sheet," Available: http://www.fema.gov/media/fact_sheets/declaration_process.shtm, See also, Stafford Act 42 U.S.C. §§ 5121-5206

11 Following Hurricanes Katrina and Rita, for example, Congress appropriated $116 billion dollars for recovery efforts along the Gulf Coast—$94.8 billion of which was emergency supplemental spending covering recovery activities such as flood control mitigation, Small Business Administration loans, federal highway funds, Social Services Block Grants, and other health care and anti-poverty programs. Over half of the emergency supplemental funds went to two agencies: $45.3 billion to the Federal Emergency Management Agency (FEMA) and $16.7 billion to the Department of Housing and Urban Development (HUD). Testimony of Donald E. Powell, Federal Coordinator for Gulf Coast Rebuilding Before the H. Comm. on the Budget, (August 2, 2007) (statement of Donald E. Powell, Federal Coordinator, Gulf Coast Rebuilding), *available at* http://www.dhs.gov/files/programs/gc_1187965134242.shtm; Congressional Budget Office (CBO), *The Federal Government's Spending and Tax Actions in Response to the 2005 Gulf Coast Hurricanes* at 2 (August 1, 2007) *available at* www.cbo.gov/doc.cfm?index=8514.

12 Federal Emergency Management Agency, Public Assistance Policy Digest, January 2008, *available at*: http://www.fema.gov/pdf/government/grant/pa/pdigest08.pdf

13 Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5174(b).

Once the emergency response phase of a disaster is over, the federal government begins providing short-term assistance, largely through FEMA's Public Assistance Program and Individual Assistance Program. FEMA's Individual Assistance Program focuses on damage to individual survivors of disasters, providing direct payments to individuals or households for housing assistance (lodging, rental assistance, home repair, home replacement, and housing construction) or Other Needs Assistance (medical, dental, funeral costs, transportation costs, etc.).[14]

All assistance under the Individual Assistance sections of the Stafford Act is only available for 18 months after the President makes a disaster declaration, with the expectation that individuals will be able to return home or have secured other permanent housing in that time period. While this may be a realistic expectation for higher income families with resources that allow them to find permanent housing or rebuild more quickly, it is not realistic for lower income homeowners or renters that need federal funds to help them rebuild, or are dependent on third-party decisions about the rebuilding of rental housing.

The expectation of an 18-month recovery is also unrealistic for a catastrophic regional disaster that overtaxes recovery resources. The President may extend housing assistance beyond 18 months for "extraordinary circumstances." Following Hurricanes Katrina, Rita, and Ike, housing assistance was extended multiple times. The Disaster Housing Assistance Program for Hurricane Ike, for example, ended on January 31, 2012, some 40 months after the disaster.[15]

FEMA's Public Assistance Program funds infrastructure restoration on a project-by-project basis, including debris removal, repair of roads and bridges, and rebuilding government buildings. The Public Assistance program is generally conducted on a reimbursement basis and is a federal matching program: The federal government contributes 75% of project funding, and the state or local government requesting funding must contribute the remaining 25%. This match and financing arrangement is often extremely challenging for disaster devastated communities and states, as is the approval and reimbursement process itself. In addition, the Public Assistance Program pays only for repairs to restore infrastructure to its pre-disaster condition—funds for mitigation or improvements must come from another source.

Because of limitations on the use of FEMA Individual and Public Assistance funds, the primary source of federal money for long-term recovery, particularly housing recovery, is administered under HUD's Community Development Block Grant (CDBG) program. CDBG-DR is not a reimbursement program and vests more discretion in state and local governments, making it a more attractive option for eligible disaster recovery projects, both housing and infrastructure.[16]

However, unlike FEMA assistance, CDBG funds for disaster recovery are not a formal part of the statutory disaster recovery system and must be appropriated by Congress following a disaster. Unless the appropriating statute otherwise restricts the funds, or HUD grants a waiver of program requirements, the same program requirements and national objectives that apply to annual CDBG grants also apply to CDBG-DR, with the additional requirement that CDBG-DR grants can only fund projects related to the covered disaster.[17] Since 1992, Congress has used the CDBG program to fund disaster recovery more than 15 times.[18]

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14 State of Texas, *State of Texas Action Plan for CDBG Disaster Recovery Grantees under the Department of Defense Appropriations Act*, *2006 available at http://www.tdhca.state.tx.us/housing-center/docs/06-DRPlan.pdf*

15 Following extensive problems with FEMA's housing assistance program, in July 2007, FEMA, through an inter-agency agreement, transferred responsibility for administering rental assistance to HUD, creating the Disaster Housing Assistance Program (D-HAP). IAA available at: *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_10902.pdf*

16 See 42 U.S.C. § 5172(a)(1)(A); 44 C.F.R. Part 206.

17 In 1994, Congress amended the 1974 Housing and Community Development Act to grant HUD the authority to waive certain program requirements when funds are appropriated for a natural disaster. For example, a state may request a waiver of the cap on administrative costs for a given project. The 1994 law granted the Secretary of HUD authority to suspend all requirements for funds designated to address the damage in a Presidentially declared disaster area, "except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit persons of low- and moderate-income." Dept Housing & Urban Development, Community Planning & *Development Disaster Recovery Assistance*, available at *http://www.hud.gov/offices/cpd/communitydevelopment/programs/drsi/driquickfacts.cfm*

18 Dept Housing & Urban Development, Community Planning & Development Disaster Recovery Assistance, available at *http://www.hud.gov/offices/cpd/communitydevelopment/programs/drsi/driquickfacts.cfm*

THE CDBG PROGRAM

The 1974 Housing and Community Development Act created the Community Development Block Grant (CDBG) program with its primary purpose being the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." U.S.C. § 5301(c) The non-disaster CDBG program, referred to as the "annual" CDBG program, provides formula-determined annual grants to state and local governments for activities addressing a wide range of community development needs. Eligible activities under the statute are numerous and include housing, park construction, job creation, and water and sewer improvements. Communities receiving grant money directly from HUD are called "entitlement communities." Non-entitlement cities and counties, referred to as Units of General Local Government, are funded indirectly through state programs. Under the States (or Small Cities) program, the states receive CDBG funding directly from HUD, and then distribute funds to local governments according to a process set up by the state. Congress has appropriated CDBG disaster recovery funds for both entitlement and non-entitlement jurisdictions through state governments.[19]

After Congress appropriates CDBG-DR in response to a disaster, HUD allocates the funds among eligible states. Unlike annual CDBG funds, which are allocated via a statutory formula approximating relative need among recipient communities, CDBG-DR funds are allocated on an ad-hoc, and potentially political, basis.[20]

After allocation, the government entities (generally states) eligible for the funds must develop and submit an Action Plan for Disaster Recovery (Action Plan). The Action Plan must describe the needs, strategies, and projected uses of the disaster recovery funds, including the split between housing and infrastructure funding. The Action Plan also includes the "method of distribution," or the process for providing funds to local units of government.[21] An opportunity for citizen participation and public comment must be provided before the plan is submitted to HUD. HUD must approve the Action Plan before federal recovery funds can be distributed.

FAILURE TO ACCOUNT FOR MASS DISPLACEMENT

Katrina's major impact on Texas resulted from the displacement of over 1 million people.[22] Texas' population increased by 3% following Hurricane Katrina; an estimated 250,000 evacuees were displaced to Houston alone.[23] However, the initial CDBG-DR allocation for the 2005 hurricanes ("Katrina and Rita Round One") failed to account for additional recovery needs related to evacuees.[24] **No Round One funds could be allocated to the needs of Katrina evacuees.**

When the Bush administration sent a second supplemental appropriations request ("Katrina and Rita Round Two") to Congress in February 2006, that request contained no additional CDBG funding for Texas. The State challenged FEMA's damage estimates and submitted its own request for funding. On February 27, 2006, Governor Rick Perry

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19 See 42 U.S.C. § 5172(a)(1)(A); 44 C.F.R. Part 206.

20 May 20, 2009 Hearing of the Ad Hoc Subcommittee on Disaster Recovery of the Senate Homeland Security and Governmental Affairs Committee *The Role of Community Development Block Grant (CDGB) Programs in Disaster Recovery* transcript at p. 26, available at www.hsdl.org/?view&doc=111817

21 Department of Housing and Urban Development *CDBG Disaster Recovery Assistance*, available at http://www.hud.gov/offices/cpd/communitydevelopment/programs/drsi/

22 http://www.csmonitor.com/2005/0912/p01s01-ussc.html

23 Eugene Boyd, *CRS Report for Congress: Community Development Block Grant Funds in Disaster Relief and Recovery*, Order Code RL 33330, 8 (April 25, 2006).

24 Eugene Boyd, *CRS Report for Congress: Community Development Block Grant Funds in Disaster Relief and Recovery,* Order Code RL 33330, 8 (April 25, 2006). At the March 8, 2006 Senate Appropriations Committee hearing on the supplemental funding request, Texas Senator Kay Bailey Hutchison pointed out that, in addition to damages suffered as a result of Hurricane Rita, Texas also had incurred costs of providing assistance to large numbers of Katrina evacuees from Louisiana, and needed additional CDBG disaster recovery funding to meet the needs of evacuees.

requested $2.017 billion in federal assistance to meet the documented needs created by Hurricanes Katrina and Rita: $1.274 billion for critical local government unmet needs and $743.2 million to reimburse the state for hurricane-related costs in the areas of education, housing, health care, and workforce, including costs related to Katrina evacuees.[25] Funds from the Round Two allocation could be used to address the needs of evacuees.

2. FAILURE TO INCORPORATE CIVIL RIGHTS AND FAIR HOUSING REQUIREMENTS INTO DISASTER RECOVERY PLANNING AND IMPLEMENTATION DENIES EQUITABLE RECOVERY TO THE HARDEST HIT COMMUNITIES AND EXACERBATES EXISTING INEQUALITY.

Natural disasters tend to graphically expose the myth that the American ideal of equal opportunity is accessible to everyone. From the families that could not evacuate from New Orleans because they did not have access to transportation, to colonias in the Rio Grande Valley where families spent weeks wading through floodwaters because they were not connected to a regional drainage system, the storms of the last ten years have made it painfully clear that race and wealth affect access to opportunity, and even fundamental access to physical safety.

Long-term disaster recovery programs must look not just at rebuilding individual houses or specific infrastructure, but at how disaster recovery can rebuild in a way that makes communities – particularly those that have been historically neglected — more resilient, and less susceptible to damage from future storms. Existing civil rights and fair housing requirements attached to federal CDBG-DR funds are intended to ensure that recovery is fair and equitable – that housing is rebuilt in a way that gives families choices about where they live, and that federal funds address the long-term effects of racial segregation and disinvestment that have left minority communities with inadequate infrastructure and unequal access to public resources and services.

Because there is no institutionalized general guidance on how to incorporate civil rights and fair housing into disaster recovery and the federal government has not historically enforced these requirements, there has been a pattern of grantees initially allocating CDBG-DR funds based on considerations other than damage, or using incomplete and inconsistent data that disproportionately underrepresents the effects of a disaster on low-income families and communities of color. At best, grantees have had to later revise those allocations based on fair housing complaints, lawsuits, or HUD review, which can cause significant delays in delivery of disaster recovery resources. At worst these issues go unaddressed and disaster recovery reinforces historical inequities and creates additional barriers to access to opportunity.

As a review of a decade of hurricane Allocation Notices and disaster-specific guidance reveals, HUD's understanding of the ways in which grantees' Action Plans can have discriminatory effects has evolved.[26] For example, HUD's Allocation Notice for the first round of Hurricane Sandy CDBG-DR funds identifies the "most impacted and distressed" counties and requires 80 percent of the allocated funds to address unmet needs in those counties; requires a demographic analysis of neighborhoods with a high percentage of damaged homes; and an assessment of "how planning decisions may affect racial, ethnic, and low-income concentrations, and ways to promote the availability of affordable housing in low-poverty, non-minority areas."[27] However, HUD still has not *institutionalized* a system to evaluate proposed Action Plans and the implementation of disaster recovery programs with a critical eye toward compliance with relevant statutory, regulatory and executive civil rights mandates.

A review of the last decade of disaster recovery implementation also reveals systemic discrimination, from undisclosed FEMA rules that deny benefits to low-income communities of color, to long-term recovery decisions that permanently displace those communities. However, the last decade of disaster recovery has also shown that incorporating and enforcing fair housing and civil rights requirements in CDBG-DR programs makes a real difference in the fairness and effectiveness of disaster recovery overall.

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[25] Rick Perry & Michael Williams, *Texas Rebounds: Helping Our Communities Recover from Hurricanes Katrina and Rita* at 12 (Feb. 2006) available at www.osfr.state.tx.us/WRfiles/Texas%20Rebounds%2003-01-06.pdf

[26] Review conducted by Texas Appleseed.

[27] See 78 Fed. Reg. 43: 14329-14349 at 14330 and 14333-4 (March 5, 2013).

FAIR HOUSING OBLIGATIONS UNDER THE CDBG PROGRAM

The fair housing requirements of the CDBG program arise primarily under the Fair Housing Act of 1968. Under the Fair Housing Act, housing and community development programs must be administered "*in a manner to affirmatively further the policies of [the Fair Housing Act].*"[28] In other words, federal grant recipients must not merely refrain from discrimination, they must act in a way that "*assist[s] in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.*"[29] CDBG grant funds are expressly conditioned on a jurisdiction's certification that it will affirmatively further fair housing. The Secretary of HUD cannot obligate funds when a grantee has failed to make a certification that is material to its eligibility to receive CDBG funds.[30]

In order to be eligible for CDBG-DR funds, eligible jurisdictions must certify that they will affirmatively further fair housing. In the context of disaster recovery, that obligation includes ensuring that decisions about resource allocation and program implementation:

- do not result in the permanent displacement of communities of color and other groups protected by the Fair Housing Act;
- do not reinforce and exacerbate existing patterns of segregation and disadvantage by failing to rebuild multifamily assisted housing in safer and higher opportunity areas, and by failing to give homeowners a choice to rebuild in those areas as well;
- do not reinforce and exacerbate existing patterns of segregation and disadvantage by failing to invest infrastructure and economic development funds in a way that remediates historical disinvestment in distressed communities and makes them more resilient; and,
- ensures that programs and processes comply with civil rights requirements under both the Fair Housing Act and Title VI of the Civil Rights Act of 1964 by providing equal access for persons with disabilities and persons with limited English proficiency, and for disaster victims regardless of their race, color, national origin, familial status, disability, religion, or sex.

Federal and state enforcement of fair housing and civil rights laws has made a significant difference in the fairness of disaster recovery, not only in Texas but in states across the country.

- St. Bernard Parish, just outside of New Orleans, was the subject of a Fair Housing Complaint initiated by HUD and lawsuits filed by fair housing advocates and the United States Department of Justice (DOJ) over the Parish's intentionally discriminatory actions to exclude African-American renters from the overwhelmingly white Parish. HUD's warning that it would withhold funds from St. Bernard Parish, and possibly the State, if the Parish did not repeal discriminatory zoning ordinances resulted in their repeal. But additional litigation was necessary over the

[28] 42 U.S.C. §3608(e)(5). CDBG grant funds are expressly conditioned on a jurisdiction's certification that it will affirmatively further fair housing. "The AFFH certification [is] not mere boilerplate formality, but rather a substantive requirement, rooted in the history and purpose of the fair housing laws and regulations, requiring the [jurisdiction] to conduct an AI, take appropriate actions in response, and to document its analysis and actions." *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc., v. Westchester County,* Case 1:06-CV-02860-DLC, Document 118 at 50-51, (S.D.N.Y, February 24, 2009)

[29] N.A.A.C.P. v. *Sec'y of Housing and Urban Development*, 817 F.2d 149, 155 (1st Cir. 1987). "The AFFH certification [is] not mere boilerplate formality, but rather a substantive requirement, rooted in the history and purpose of the fair housing laws and regulations, requiring the [jurisdiction] to conduct an AI, take appropriate actions in response, and to document its analysis and actions." *United States of America ex rel. Anti-Discrimination Center of Metro New York, Inc.*, v. Westchester County, Case 1:06-CV-02860-DLC, Document 118 at 50-51, (S.D.N.Y, February 24, 2009) ; "[A]n individual government employee's decision to approve or continue such funding, even with full access to all relevant information or knowledge of the falsity of the applicants certification does not demonstrate that the falsity was not material . . . the assertion that certain HUD bureaucrats reviewed the County's submissions and continued to grant the County funding cannot somehow make the false AFFH certifications immaterial, where the funding was explicitly conditioned on the certifications." *ADC v. Westchester County* at 53.

[30] In order to truthfully certify that it is affirmatively furthering fair housing, a grantee must certify that it (a) has or will conduct an analysis to identify impediments to fair housing choice within the state, (b) take appropriate actions to overcome the effects of any impediments identified through that analysis, and (c) maintain records reflecting the analysis and actions in this regard. See 24 CFR §570.487(b)(2); 74 Fed. Reg. 7254

Parish's subsequent attempts to block multifamily housing. The final resolution cost the Parish over $2.5 million in damages, and an additional $3 million in attorney fees, costs, and fines.[31]

- In Louisiana, African-American homeowners and two civil rights organizations sued the state over its formula for allocating repair and reconstruction grants to homeowners under the state's Road Home program, alleging that the formula had a discriminatory impact on the basis of race. African-American homeowners were much more likely than whites to receive grants based on the pre-storm value of their homes rather than on the actual cost to repair. These grants were much lower than the actual cost of repairs, rendering homeowners unable to rebuild. The case was settled in July 2011, providing additional compensation grants based on the actual cost to repair to over 13,000 homeowners.[32]
- In November 2010, advocates in Mississippi, along with HUD and the state, announced a new plan to direct $132 million in CDBG disaster recovery funds to housing for low-income Mississippi families whose homes were destroyed by Hurricane Katrina. As part of the agreement, Mississippi civil rights groups agreed to dismiss a 2008 fair housing lawsuit against HUD challenging the agency's approval of the diversion of funds from housing recovery programs to a port expansion.[33]
- In April 2013, three civil rights groups in New Jersey filed a Fair Housing and Title VI complaint with HUD against the State of New Jersey over the State's failure to comply with civil rights laws and HUD's Allocation Guidance in its Action Plan for CDBG-DR funds, including underserving renters, who were disproportionately African-American and Hispanic and failing to meet the requirements for an affirmatively furthering fair housing certification.[34] The parties reached a Conciliation Agreement in May 2014 that increased funding for displaced renters and persons with special needs, set new targets for funding the most impacted areas, and required the State to re-review applications for homeowner repair and reconstruction assistance, 80% of which had been erroneously rejected.[35] African-American homeowners who applied for this program were rejected at a rate more than twice as high as the rejection rate for whites, and Latino homeowners were being rejected at a rate 50 percent higher than whites.[36]

3. LACK OF FEDERAL GUIDELINES, POOR DATA AVAILABILITY, AND WAIVERS OF FEDERAL PROGRAM REQUIREMENTS INCREASE THE PROBABILITY THAT AID WILL BE MISALLOCATED AT THE FEDERAL, STATE, AND LOCAL LEVELS.

AD HOC STRUCTURE OF CDBG-DR

The ad hoc nature of federal appropriations for disaster recovery creates confusion, results in multiple disaster recovery programs operating simultaneously under different rules, and leaves the process vulnerable to political and media pressure. For example, while no state received sufficient recovery funding in the first round of CDBG-DR funding for the 2005 hurricanes, **Mississippi received 67 times the amount of disaster recovery block**

[31] See, e.g. United States of America v. St. Bernard Parish (2:12-cv-00321, E.D. La, May 10, 2013); and Benjamin Alexander-Bloch, *Department of Justice and St. Bernard Parish settle in post-Hurricane Katrina housing discrimination case*, NOLA.com/The Times-Picayune (May 10, 2013). Available: http://www.nola.com/crime/index.ssf/2013/05/department_of_justice_and_st_b.html

[32] Kelly Parker, *Settlement reached in Road Home discrimination challenge*, The Louisiana Weekly (July 11, 2011). Available: http://www.louisianaweekly.com/settlement-reached-in-road-home-discrimination-challenge/

[33] HUD No. 10-54, "HUD Approves $132 million Mississippi Disaster Plan," November 15, 2010. Available: http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-254

[34] *Latino Action Network and Fair Share Housing Center v. State of New Jersey*, Administrative Complaint filed April 1, 2013.

[35] *Voluntary Compliance Agreement and Conciliation Agreement between the U.S. Department of Housing and Urban Development Office of Fair Housing and Equal Opportunity and LAN, NJ NAACP, and Fair Share Housing Center, and the State of New Jersey and the NJ Department of Community Affairs*, Case Nos: Title VI, No: 02-13-3348-6, Title VIII, No: 02-13-0303-8 (May 30, 2014). Available: http://fairsharehousing.org/images/uploads/sandyagreementsigned.pdf

[36] See, e.g. Alan Jenkins, U*nder Chris Christie, Blacks and Hispanics Got Shorted on Sandy Relief*, The Root (January 22, 2014). Available: http://www.theroot.com/articles/politics/2014/01/minorities_seeking_sandy_relief_were_treated_unfairly.1.html

grant funding than Texas did, despite the fact that it had only five times the number of badly damaged homes. Louisiana received only slightly more funding than Mississippi, despite the fact that it had three times the number of badly damaged homes. Louisiana received the statutory maximum, and Mississippi received the amount it requested in a plan submitted by Governor Barbour. The remaining states, including Texas, shared what funds were left.[37] After the first round of CDBG-DR funding for the 2005 hurricanes failed to address Texas' needs, direct intervention by Texas Senator Kay Bailey Hutchison and Governor Perry was needed to obtain further disaster recovery funds for the state.[38]

Despite these problems, the ad hoc nature of CDBG as a disaster recovery program is part of the program's design. CDBG funding is not a formal part of the federal statutory disaster recovery framework. Because there is no standard program for engaging in large-scale disaster recovery, HUD deals with a new set of rules for each appropriation. For example, Congress limited the amount of CDBG-DR funds that could go to any one state in its appropriations for Hurricanes Katrina and Rita at $6.4 billion, which went to Louisiana, making it difficult to apply a standard formula, but did not impose a similar requirement on CDBG-DR funds allocated in the aftermath of the 2008 hurricanes. In that instance, HUD used a standard allocation formula based on unmet need to allocate the CDBG money appropriated for disaster recovery, which resulted in a fairer allocation of funds. But there is no guarantee that such a formula will be used to direct a future disaster recovery appropriation.

INCOMPLETE DATA

The lack of standardized and reliable data on unmet local recovery needs, particularly in a catastrophic regional disaster, exacerbates the problems caused by the ad hoc nature of the primary funding mechanism for disaster recovery. The data that is available often is not standardized, by method of collection or indicators assessed, across jurisdictions, and vary in quality.

Federal allocation formulas have historically relied primarily on FEMA claims data. While this data may be the only standardized data available, it routinely underestimates damage to low-income minority communities, biasing the allocation of disaster recovery funds.

The Stafford Act, FEMA's enabling legislation, prohibits the agency from discriminating on the basis of race, color, religion, nationality, sex, age or economic status in its disaster response and recovery programs. The Act establishes the same requirements for private relief organizations that participate in response and recovery efforts. Yet, historically, FEMA has not acted in keeping with these obligations. This in turn affects the data available for calculating funding needs.

For example, FEMA collects data on the extent and severity of property damage in disaster areas. However, its data collection is far more limited for renters than homeowners because renters are not owners of the damaged structure. While this process is not necessarily problematic for FEMA's programs, it undercounts renters, who are disproportionately lower income, and African-American and Latino. The use of FEMA data to assess damage for CDBG-DR programs then underestimates the need for, and underfunds, the rebuilding of rental housing. FEMA's data collection practices should be changed to recognize that their data are used for multiple purposes. FEMA and HUD are in initial stages of a research project to address this issue, called "Accelerating Post-Disaster Community Recovery."

In addition to undercounting the recovery needs of renters, FEMA's policies also routinely and deliberately undercount the needs of low-income and minority homeowners. Following Hurricane Ike, FEMA denied at least

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37 Testimony of Jack Norris, Executive Director, Governor's Office of Recovery and Renewal, State of Mississppi, Hearing before Subcommittee on Housing and Community Opportunity of the Financial Services Committee, U.S. House of Representatives, "Emergency CDBG Funds in the Gulf Coast: Uses, Challenges, and Lessons for the Future" May 8, 2008, pg. 17.

38 National Low Income Housing Coalition Senate Hearings Held on Hurricane Supplemental Funding Memo to Members: Vol 11, No. 10, (March 10, 2006) available at: http://www.nlihc.org/detail/article.cfm?article_id=2066

85% of the more than 578,000 applications for housing assistance.[39] The most common denial code used by FEMA (in over 100,000 cases[40]) was "insufficient damage." Many low-income applicants were told informally by FEMA that their "insufficient damage" denials were actually based on "deferred maintenance." FEMA alleged that the homes had been in poor condition before the storm and therefore damage could not be attributed to the hurricane. Because low-income households are more likely to have "deferred maintenance," these denials had a disproportionate impact on low-income households, particularly in minority neighborhoods. [41] Non-profit groups in Houston reported that entire neighborhoods, generally low income and minority concentrated, of damaged homes were deemed to have "insufficient damage."[42] FEMA similarly denied half of all applications for housing assistance following Hurricane Dolly.[43]

This type of discrimination is not only illegal under the Stafford Act and other civil rights laws, it delays recovery and increases costs; not only by allowing homes to deteriorate until they require complete reconstruction, but because the cost of temporary housing for disaster victims often exceeds the cost of repairing their homes. For example, in Mississippi following Hurricane Katrina the average cost of a 280-square-foot trailer for more than 24 months of temporary housing ranged from $30,000 for trailers placed on private sites to $229,000 for trailers on group and commercial sites.[44]

For the second allocation round following Hurricanes Dolly and Ike in 2008, HUD created a new formula for allocating CDBG disaster recovery funds between states. The formula took into account: "(i) The sum of estimated unmet housing, infrastructure, and business needs, adjusted by (ii) a HUD-calculated risk level for recovery challenge," which compensated for some of the problems with FEMA data – particularly the underrepresentation of unmet needs in low-income minority families and communities.[45]

The new formula accounted for some of the problems with HUD's earlier use of FEMA data in several ways, by:

- using the Small Business Administration (SBA) disaster loan program average cost to fully repair a home, which is generally more than the FEMA estimate of repairs necessary to make a home habitable;
- increasing the base amount of unmet housing needs by 20% to reflect the administrative costs of the CDBG program;
- assuming unmet infrastructure needs will have aggregate costs 25% greater than what is covered by FEMA;
- adjusting the calculated unmet economic revitalization needs by the proportion of SBA applications not processed because the applicant did not have adequate credit or income; and
- including a "challenge to recover" factor reflecting data from Hurricanes Katrina, Rita, and Wilma that was used to calculate the risk a home would not recover, adjusting grant allocations so that states with higher per-damaged home risk scores received more funds.[46]

However, because there are no standard regulations for the CDBG disaster recovery program, there is no guarantee that this formula, or any standard formula, will be used for future disasters.

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39 Email from FEMA External Affairs to the Houston Chronicle, June 26, 2009.

40 Email from FEMA External Affairs to the Houston Chronicle, June 26, 2009 and FEMA *Top Five Reasons for FEMA Ineligibility for Housing*, (Last modified June 4, 2009), available at http://www.fema.gov/hazard/hurricane/2008/ike/factsheets/housing.shtm

41 See also, *LUPE v. FEMA*

42 Mike Snyder, *Pre-Ike damage restricts funding / Homes were in bad shape already, FEMA tells many,* Houston Chronicle, Section B, Page 1, (January 25, 2009); Associated Press *FEMA defends 650K denials for post-Ike housing aid*, (February 8, 2009); Associated Press, *Agency says many misunderstand its mission*, (February 9, 2009); Mike Snyder, FEMA's *inspection process criticized / Temporary contract workers who lack skills are getting blame*, Houston Chronicle, Section B, Page 1, (February 8, 2009).

43 See, *LUPE v. FEMA*, Case: 1-08-cv-00487 (S.D. Texas, 2008)

44 GAO 08-106, "Ineffective FEMA Oversight of Housing Maintenance Contracts in Mississippi Resulted in Millions of Dollars of Waste and Potential Fraud," November 2007.

45 Department of Housing and Urban Development *Additional Allocations and Waivers Granted to and Alternative Requirements for 2008 Community Development Block Grant (CDBG) Disaster Recovery Grantees* (August 14, 2009) Federal Register/Vol. 74, No. 156 [Docket No. FR–5337–N–01] *available at* http://edocket.access.gpo.gov/2009/pdf/E9-19488.pdf

46 Fed. Reg. Vol. 74, No. 156. Friday, August 14, 2009, p. 41155

There was also no requirement that states use a particular allocation formula to distribute CDBG-DR funds internally. This lack of federal guidance opened the door to Texas' using a misguided "weather model" to allocate the second round of CDBG-DR funding for Hurricane Ike and Dolly recovery. Under the state's "weather model," two of the hardest hit counties, Galveston and Orange, would have received less than half of what they would under the HUD model, and 22 counties where the HUD model showed no measurable unmet need would have received federal disaster relief monies.[47] This model precipitated a fair housing complaint based on the under-funding of predominately minority urban areas of the state and low- and moderate-income communities, which were also some of the hardest hit areas of the state.[48]

4. LOW- AND MODERATE-INCOME PERSONS DO NOT PROPORTIONATELY BENEFIT FROM HOUSING AND INFRASTRUCTURE PROJECTS AIMED AT REBUILDING HURRICANE-DAMAGED COMMUNITIES.

WAIVERS OF INCOME TARGETING REQUIREMENTS

In 1994, Congress amended the 1974 Housing and Community Development Act to grant HUD the authority to waive certain program requirements when funds are appropriated for a natural disaster. The 1994 law granted the Secretary of HUD authority to suspend all requirements for funds designated to address the damage in a Presidentially declared disaster area, "except for those related to public notice of funding availability, nondiscrimination, fair housing, labor standards, environmental standards, and requirements that activities benefit persons of low- and moderate-income."[49]

Congress granted broad waiver authority in the 2005 and 2008 CDBG-DR appropriations, and HUD readily exercised that authority, especially with respect to the requirements relating to the amount of funding targeted to low- to moderate-income recipients. For both CDBG-DR appropriations, HUD issued common waivers applicable to all five states affected by Hurricanes Katrina and Rita, including a waiver of income targeting requirements. The waiver reduced the required percentage of funding used to benefit low- and moderate-income families from 70% to 50%.

State-specific waivers further complicated the regulatory landscape and compounded the deleterious impacts the common waivers had on getting needed benefits to low- and moderate-income persons. Of the five states, Mississippi has used the waiver process most aggressively. Notably, Mississippi was the only state to make multiple requests for a blanket waiver of the already reduced requirement that 50% of funds benefit low- and moderate-income persons. While HUD did not waive the low- to moderate-income benefit requirement below 50%, it granted other waivers that allowed Mississippi to divert $600 million in CDBG-DR funds from housing recovery programs to a major, and non-hurricane recovery related, expansion of the Port of Gulfport.[50]

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47 HUD Map and Calculations, December 17, 2009. Please note that the terms "underfunded" and "overfunded" are being used in the context of the Texas allocation, and not in terms of the actual dollar amount of unmet need in the state.

48 See pages 17-18, infra.

49 Dept Housing & Urban Development, Community Planning & Development Disaster Recovery Assistance, available at http://www.hud.gov/offices/cpd/communitydevelopment/programs/drsi/driquickfacts.cfm

50 "Mississippi has followed a consistent practice of diverting CDBG funds initially allocated to housing recovery programs to non-housing programs through a series of partial action plans. . . In August, 2007, the State requested (and HUD approved) diverting $150 million from the homeowner assistance Phase I program to the economic development program, bringing the total amount for economic development to $650 million. In September, 2007 the State proposed (and HUD approved) diverting $600 million from the Phase I housing assistance program to expand the State Port at Gulfport. In April 2008, the State requested (and HUD approved) diverting $241 million from one of few housing programs targeted to assist hurricane-damaged LMI homeowners to a workforce housing program for individuals who were not required to have suffered hurricane-related housing damage. In July, 2008 the State requested (and HUD approved) the diversion of $200 million from homeowners' assistance programs,to a new Hancock County Ground Zero program that was all for non-housing purposes -- primarily economic development and community amenities, such as a new marina." Written statement of Reilly Morse, Senior Attorney, Katrina Recovery Office, Mississippi Center for Justice, before the Ad Hoc Committee on Disaster Recovery of the United States Senate on "The Role of the Community Development Block Grant Program in Disaster Recovery." May 20, 2009, pg. 11

Disaster recovery housing projects tend to be targeted at specific households in the low- and moderate-income population. On the other hand, infrastructure projects tend to serve a broader segment of the local population, diluting the targeting of the funds to poorer neighborhoods. Nevertheless, because they spread the money more widely, infrastructure projects may have broader local political support, increasing pressure to divert funds from low- and moderate-income communities to jurisdiction-wide projects.

For example, among the projects proposed by Texas communities for Round Two Ike and Dolly funding were construction of a conference center and a traffic light coordination study—both questionably linked to disaster related needs at all, let alone the unmet needs of low- and moderate-income residents and neighborhoods.[51] Low-income communities, the statutory priority recipients of CDBG funds, are also more likely to be located in disaster-vulnerable areas, and to suffer more severe housing and infrastructure damage in a disaster.

A substantial portion of the population affected by Hurricanes Katrina and Rita was low income. More than 10% of coastal residents in Louisiana, Mississippi, and Alabama were living in poverty.[52] Coastal counties in Texas also tend to have higher poverty rates than the state as a whole, and counties in the Rio Grande Valley hit by Hurricane Dolly contain some of the poorest areas in the country.[53] Both the income-targeting provisions of the CDBG program and the requirements of the Fair Housing Act prioritize low-income and historically underserved neighborhoods for housing and infrastructure disaster recovery spending. States cannot use housing money to meet income-targeting goals but ignore low-income neighborhoods when it comes to spending infrastructure and economic development funds.

ISSUES IN THE ADMINISTRATION OF HOUSING PROGRAMS

The homeowner assistance application process itself presented a number of barriers to access for low- and moderate-income families and other vulnerable populations:

- **Inability to establish clear title to real property.** Heir property (divided ownership of property inherited by multiple heirs, often over multiple generations) and other real property ownership issues are particularly prevalent in low-income communities, and disproportionately affect African-American and elderly populations. Lack of clear title, particularly heir property ownership, has presented a serious barrier to the receipt of CDBG Disaster repair and reconstruction assistance in the wake of Hurricanes Katrina and Rita along the entire Gulf Coast.[54] In Mobile County, Alabama, 1,200 families were denied benefits because they could not provide clear title.[55] In 2009, the Texas Legislature passed HB 2450, which allowed Texas Department of Housing and Community Affairs (TDHCA) to accept alternative proof of ownership, including an Affidavit of Heirship, for purposes of disaster recovery programs only. This alternative process was possible because Texas was running a reconstruction program, rather than a compensation program.
- **Duplication of benefits.** Federal statutes require that applicants for homeowner assistance, who received money for home repair or replacement from FEMA or the SBA, either verify that those funds were used for allowable activities or have that amount deducted from their grant award. Many low-income recipients spent these funds on subsistence needs following the storm or, given the delayed implementation of recovery efforts, did not have

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51 These examples were drawn from Round 2.2 Applications for Disaster Recovery Supplemental Allocation submitted by governmental jurisdictions to the Tex. Dep't of Rural Affairs and the Tex. General Land Office and reviewed by Texas Appleseed and Texas Low Income Housing Information Service (on file with authors)

52 Daniel Sutter, Ensuring Disaster: *State Insurance Regulation, Coastal Development, and Hurricanes*, Mercatus Policy Series Policy Comment No. 14, pp. 11-12 (2007), http://mercatus.org/publication/ensuring-disaster-state-insurance-regulation-coastal-development-and-hurricanes. The data collected is from the 2000 census and may underestimate poverty rates in light of Hurricane Katrina and the current recession.

53 Ibid. at 11, and Small Area Income and Poverty Estimates, 2007, available at http://www.census.gov/cgi-bin/saipe/saipe.cgi (providing Texas poverty rate data).

54 Heir property, which is particularly common in low-income communities, is real property that is owned by all living heirs (as defined by respective state laws) of the original owner of the property who died without a will and whose estate was never probated.

55 Donna Reynolds, *Alabama Extension Working with Property Issues*. Southeast Farm Press,(September 10, 2007).

receipts for the initial emergency repairs when later housing programs were rolled out.[56] Because Louisiana and Mississippi ran compensation programs, they could simply deduct the amount of the duplication of benefits from the check given to the homeowner. In Texas, however, the deduction often resulted in a financing gap that had to be bridged by the homeowner before construction could begin, disqualifying the very low-income homeowners most reliant on the program to rebuild their homes. In an additional complication, the impact of Hurricane Ike the previous summer forced adjustments to the "duplication of benefits" calculations for some applications.[57] Duplication of benefits figured in many gap financing complications. Long gaps between the initial disaster and long-term aid also exacerbate duplication of benefits issues, as survivors may need to use funds initially intended for home repairs for basic subsistence. HUD issued new guidance on duplication of benefits in November 2011 that clarified requirements under the Stafford Act, which dramatically reduced Duplication of Benefits issues in the Ike and Dolly Round Two housing programs.[58]

- **Gap financing.** Low maximum benefits meant that home repair and reconstruction grants often did not cover the full cost of needed repairs. This, coupled with a requirement that recipients must "provide evidence that they have the available funds or can obtain financing from an outside source to cover the funding gap,"[59] prevented many low-income households impacted by the storms from accessing recovery funds available to higher income households in Texas. When Texas created a program to help low-income households bridge these funding gaps, HUD held that the program created a duplication of benefits.[60] In Louisiana, funding gaps were created by the State's formula for awarding repair and reconstruction grants to homeowners, which disproportionately prevented African-American homeowners from rebuilding. A civil rights lawsuit was required to correct the disparity and obtain additional compensation grants based on the actual repair costs for over 13,000 homeowners.[61]

5. MULTIPLE ADMINISTRATIVE LAYERS AT THE DIFFERENT LEVELS OF GOVERNMENT AND DIFFICULTIES ENCOUNTERED BY LOCAL GOVERNMENTS IN ADMINISTERING THESE COMPLEX GRANT PROGRAMS HAMPER EFFICIENT, EFFECTIVE, AND TIMELY USE OF DISASTER RECOVERY FUNDS.

Long-term recovery funds flow through many administrative layers before actually reaching victims of a natural disaster. As outlined above, after each hurricane, Congress appropriated funds to HUD. In turn, HUD allocated funds to individual states. In Texas, the Governor designated two state agencies to administer the funds. These agencies further delegated decision-making to regional planning bodies, the Councils of Government (COGs) that in turn awarded funds to local jurisdictions, many of which then contracted with private consultants for program delivery. Each administrative layer contributed to program delays.

- **Presidential and Congressional Response.** This step varied significantly from Katrina and Rita to Ike and Dolly. Given the limited funds allocated to Texas in Katrina and Rita Round One, the bulk of CDBG-DR funds available to the state were not appropriated until 264 days after the hurricane. By comparison, funds for Ike and Dolly Rounds One and Two were appropriated a mere 17 days after Ike struck. Both Louisiana and Mississippi received the bulk of their CDBG-DR funding for Hurricanes Katrina and Rita closer to the disaster, but not until at least four months after Hurricane Katrina.

56 Program staff reported at least one case in which the applicant had all his receipts, but they had faded over time and could no longer be read.

57 TDHCA *Board Materials*, February 5, 2009.

58 76 Fed. Reg. 221,71060-71066, (Wednesday, November 16, 2011); and, Conversation with GLO, September 10, 2015. This reduction can also be attributed to GLO's decision to adjust home designs to reduce costs to cover small funding gaps caused by Duplication of Benefits issues presented by low-income homeowners.

59 Ike Action Plan Two, 10.

60 TDHCA *2008 Housing Trust Fund Annual Plan* (October 2007), at p. 9. available at http://www.tdhca.state.tx.us/htf/docs/08-HTFAnnualPlan.pdf

61 Kelly Parker, *Settlement reached in Road Home discrimination challenge,* The Louisiana Weekly (July 11, 2011). Available: http://www.louisianaweekly.com/settlement-reached-in-road-home-discrimination-challenge/

- **State Action Plan Approval.** The State of Texas' failure to address the deficiencies of the Original Ike and Dolly Round Two Action Plan, including the plan's negative fair housing implications, resulted in HUD's failure to accept that plan. This contributed to delays in Round Two. After both disasters, Texas chose to distribute funds to regional COGs through the Action Plan, and then each COG conducted a Method of Distribution process to distribute funds to units of local government. Acceptance of the State's Action Plan by HUD, therefore, triggered not spending, but another planning and plan approval process. There was then an additional planning process at the local level as communities made substantive decisions about which priorities and projects to fund with CDBG disaster recovery funds.
- **Local Procurement.** Following both the 2005 and 2008 hurricanes, Texas chose to do a housing reconstruction program rather than a compensation grant program, which triggered additional federal requirements such as stringent building code standards, lead and asbestos abatement and mold remediation, and required additional time for procurement and contracting. While this type of program takes time to implement, it protects vulnerable homeowners from contractor fraud, prevents permanent displacement, and helps ensure that reconstructed homes meet building standards that make them less vulnerable to future disasters.[62] This stage also includes the local Request for Proposals (RFP) process and federal requirements for Environmental Review. Over the course of Rounds One and Two of Katrina and Rita disaster funding, Texas actually constructed homes more quickly than either Louisiana or Mississippi and had a higher rebuilding completion rate, however Texas took longer than average to rebuild from the date of the disaster (39.8 months) compared to Louisiana and Mississippi, suggesting that delays took place in the pre-construction phase of the program.[63]
- **Eligibility Determination.** The outreach and eligibility process for individual households and small rental landlords is time-consuming. Without any system of tracking survivors who are displaced following a disaster, it is difficult to identify and maintain communication with survivors about recovery programs. The most vulnerable disaster victims—persons with disabilities, the elderly, and low-income households—are more likely to face barriers like lack of transportation, leading to a reduced likelihood that such victims are informed about recovery programs or able to complete a demanding application process quickly and easily. The initial application for Texas' Katrina and Rita Round Two Homeowner Assistance Program, for example, was originally 52 pages long, required the applicant to read at college level, and contained 14 affidavits that needed to be witnessed and notarized.[64] When asked why they had not applied for CDBG-DR homeowner assistance, 19.9% of disaster victims said that the application process was "too complicated for me to handle," 25.2% said the process was "not worth the hassle," and 18.2% said they did not have the necessary paperwork.[65] In Louisiana, the Road Home program took an average of eight months to award grants; almost half of the homeowners who applied in December 2006 had not received grants a year later.[66] In New Jersey, the State's home repair and reconstruction program incorrectly denied eligible applications: Data from the State showed that almost 80 percent of rejected applications that were reviewed on appeal were actually eligible for funding. African-American and Latino homeowners were rejected at higher rates than white non-Latino applicants and the Spanish language information on the program had incorrect information, including the wrong deadlines for applying.[67]

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62 In addition, long delays in setting up the program resulted in further damages as unrepaired homes remained open to the weather or protected only by ubiquitous blue tarps for over two years. See Texas Low Income Housing Information Service (TxLIHIS), *Two Years After the Storm: Issues and recommendations concerning owner-occupied housing recovery programs for Texas survivors of Hurricane Rita* (Sept. 24, 2007) available at: http://www.texashousing.org/txlihis/hurricanehousing/Two_Year_Rita.pdf

63 U.S. Department of Housing and Urban Development, Office of Policy Development and Research, H*ousing Recovery on the Gulf Coast, Phase II; Results of Property Owner Survey in Louisiana, Mississippi, and Texas*, August 2011. pp. 86-87

64 Texas deserves credit for responding to advocates for disaster victims and substantially reworking its application.

65 *Housing Recovery on the Gulf Coast*, Phase II p. 109

66 Eden, Rick and Patricia Boren. Timely Assistance: Evaluating the Speed of Road Home Grantmaking. Santa Monica, CA: RAND Corporation, 2008. http://www.rand.org/pubs/documented_briefings/DB557

67 Fair Share Housing Center, LAN, NJ NAACP, The State of Sandy Recovery: Two and a Half Years Later, Over 15,000 Families Still Waiting to Rebuild (Second Annual Report, February 2015). Available: http://fairsharehousing.org/images/uploads/State_of_Sandy_English_2015.pdf

In addition, Texas' delegation of authority in the Ike and Dolly Round One housing program led to the creation, from scratch, of 18 separate housing programs. Eighteen jurisdictions, including some that had never run a CDBG housing program, were required to come up with program rules and activities, eligibility guidelines, and program application and implementation procedures. By March 2010, a year after HUD's approval of the Ike and Dolly Round One action plan, 18 months after Ike and 20 months after Dolly, no direct housing activities had begun. Recipient guidelines for housing activities were still being approved.[68]

LACK OF LOCAL CAPACITY TO ADMINISTER DISASTER RECOVERY PROGRAMS

A report from the U.S. Government Accountability Office (GAO) summarizing lessons learned from past disasters, including Hurricane Rita, highlighted the need to build local capacity for recovery, stating "*[s]tate and local governments need certain capacities to effectively make use of federal assistance, including having sufficient financial resources and technical know-how.*"[69] Capacity to run disaster recovery programs varies widely between localities, and institutional memory may be lacking for rare events such as disaster response. Many communities in Texas already rely on consultants to administer their annual CDBG and other federal housing and community development programs. While Texas delegated many disaster recovery activities to local governmental units, many of them lacked the resources and administrative capacity necessary to maximize the benefit of the available federal funds or administer them most efficiently, particularly those communities most devastated by disasters.

This is not to devalue the role of local governments in disaster recovery, but to encourage the federal and state governments to provide local governments with resources and technical assistance that increase their capacity in order to reduce both administrative burdens and delays in getting disaster recovery funds out.

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68 TDHCA *Board Materials*, (March 11, 2010), available at http://www.tdhca.state.tx.us/pdf/agendas/100311-book-100304.pdf

69 U.S. Government Accountablity Office. *Disaster Recovery: Past Experiences Offer Insights for Recovering from Hurricanes Ike and Gustav and Other Recent Natural Disasters*. GAO-08-1120 (September 26, 2008)

CASE STUDY: TEXAS

A number of the problems described earlier were exacerbated by the fact that Texas designed new disaster recovery programs for each allocation of CDBG-DR funds: Katrina and Rita Round One, Katrina and Rita Round Two, Ike and Dolly Round One, and Ike and Dolly Round Two. However, the state did not sufficiently incorporate its experience with different models to improve program performance in the initial program design for the next round of funding. For example, there were a number of issues in the eligibility process, including clear title and property tax issues that caused complications and delays in the Katrina and Rita Round one eligibility process, and program rules were eventually modified to take these issues into account. But when the state began implementing a state-level housing program for Katrina and Rita Round Two, it started out with the same program rules that had caused delays in Katrina and Rita Round One. This failure to institutionalize knowledge gleaned from earlier recovery processes translated into specific complications in the four disaster rounds in Texas. The failure to translate lessons learned from one program to the design of subsequent programs also contributed to delays and administrative issues. Similarly, the Ike and Dolly Round Two program recreated deficiencies in the Round One program.

Among the challenges to the Ike and Dolly Round One hurricane recovery program were:

- Split and shifting responsibilities and priorities between state agencies. Following the initial appropriation of CDBG-DR funds for Hurricanes Katrina and Rita, Texas Governor Rick Perry designated the Texas Department of Housing and Community Development (TDHCA) as the lead agency for disaster recovery, delegating non-housing recovery programs to the Texas Department of Rural Affairs (TDRA), making it extremely difficult to coordinate housing and infrastructure recovery.[70] When Congress appropriated funds for Hurricanes Dolly and Ike in 2008, the Governor appointed TDRA as lead agency for disaster recovery, and delegated housing recovery to TDHCA. In February 2011, primary responsibility for the oversight of disaster recovery activities was transitioned away from TDRA to a private contractor originally hired to provide technical assistance.[71] During the 2011 Session of the Texas Legislature, the Legislature voted to move the annual state CDBG program to another agency, essentially eliminating TDRA, and on June 17, 2011, Governor Perry wrote to HUD, changing the designation of the state agency responsible for administering CDBG disaster recovery funds for Hurricanes Katrina, Rita, Ike, and Dolly to the General Land Office (GLO) as of July 1, 2011.[72] For the first time, administration of CDBG-DR funds was handled by one state agency instead of two. The Governor's letter stated that the designation of GLO would save on administrative costs and would give local communities one contact regarding disaster recovery funds. However, if GLO is not the designated lead agency in the future, the institutional knowledge and programmatic expertise built up over the last four years will be lost, and a new agency will face a steep and time-intensive learning curve.
- An Ike and Dolly Round One Action plan that ceded decisions on allocation of federal CDBG-DR funds among housing, infrastructure, and economic development programs to the COGs—resulted in underfunded housing programs and a failure to prioritize projects serving low- to moderate- income disaster victims. Only 48% of the funding allocated by the COGs was directed to 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) were excluded, only 27% of the money allocated by COGs was set aside for housing. By comparison, Texas, Louisiana, and Mississippi all allocated at least 70% of their Katrina- and Rita-related CDBG-DR funding to hous-

70 Katrina and Rita Round One Action Plan.

71 TDRA Disaster Recovery Program Transition Letter (February 25, 2011) *available at* http://www.tdra.state.tx.us/TxDRA/Libraries/disrDocs/February_25_2011_TDRA_Disaster_Recovery_Program_Transition_Letter.sflb.ashx

72 Letter from Governor Rick Perry to the Honorable Sean Donovan, Secretary, U.S. Department of Housing and Urban Development, June 17, 2011.

ing.[73] Within the COGs, the proposed home rehabilitation programs were underfunded and not correlated with unmet need. For example, Deep East Texas Council of Governments (DETCOG) estimated that its program would serve only 99 out of 989 households with unmet housing needs. Fort Bend County estimated it would serve 38 out of 5,100 damaged owner-occupied homes.[74]

- The COGs' proposed allocations also "prioritized projects other than those serving lower- and middle-income residents" to the extent that Texas would not meet its federal statutory obligation to expend 50% of Ike and Dolly CDBG-DR funds to serve this segment of the population.[75]

Like the Ike and Dolly Round One Action Plan, the initial Ike and Dolly Round Two Action plan allocated both funds and most substantive decision-making to regional COGs with little to no guidance or oversight, stating that "[f]or all aspects of this Action Plan Amendment, local choice shall be emphasized, and the COGs shall have the right . . . to make determinations as to the allocations of funds within their regions among housing, infrastructure, and economic development programs."[76] The document "recommend[ed]" that Round Two funds be split equally between housing and non-housing activities, but imposed no requirement that COGs meet this "goa[l]."[77]

However, unlike previous action plans submitted by Texas, the initial Ike and Dolly Round Two Plan allocated funds within the state according to a funding allocation model based on weather intensity instead of actual damage or unmet needs. Notably, this model did not take into account actual damage, population numbers in affected areas, housing density, types of economic activity, nor the demographics of a community.[78] Rather than adjusting for the known flaws in the FEMA data, the State chose **not to use damage data or try to estimate unmet need at all**, instead basing allocations on wind speed, rainfall, and storm surge.[79] The proposed allocation specifically reduced regional Ike and Dolly Round Two allocations by the funds received in the Ike and Dolly Round One allocation made using FEMA damage estimates, erasing the influence of the initial data-based allocations.[80] The weather model further misallocated funding away from the needs of low- and moderate-income families.

The application of the weather model resulted in the Houston-Galveston region, one of the hardest hit areas of the state, seeing its allocation drop from 70% of the total funding under the Ike and Dolly Round One Action Plan to less than 60% of the total allocation under the initial Ike and Dolly Round Two Action Plan.

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73 Florida, in fact, allocated 70% of its CDBG disaster recovery funds to affordable housing recovery. See US Government Accountability Office, *Gulf Coast Rebuilding: Preliminary Observations on Progress to Date and Challenges for the Future*, GAO-07-574T (April 12, 2007) *available at www.gao.gov/new.items/d07574t.pdf*

74 Housing Assistance Program Plans submitted to TDHCA, See TDHCA Board Book (September 3, 2009). *Available at http://www.tdhca.state.tx.us/pdf/agendas/090903-book-090827.pdf*

75 ORCA Disaster Recovery Division, *State of Texas Plan for Disaster Recovery, U.S. Department of Housing and Urban Development (HUD), Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, Public Law* 110-329, at p. 7, (March 4, 2009).(The 50% standard is already a downward departure from the standard 70% LMI requirement.)

76 Categorical set asides include those for healthcare facilities, some portion of the affordable rental housing funding, innovative housing approaches ($6 million), and title clearance and legal assistance ($500,000). See State of *Texas Plan for Disaster Recovery - Amendment no. 1 U. S. Department of Housing and Urban Development (HUD) Consolidated Security, Disaster Assistance, and Continuing Appropriations Act*, *Public Law 110-329*, at p. 11 (September 30, 2009) *available at http://www.lrgvdc.org/downloads/disaster-recovery/Action_Plan_Amendment_One_complete.pdf.*

77 See State of Texas *Plan for Disaster Recovery - Amendment no. 1 U. S. Department of Housing and Urban Development (HUD) Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, Public Law 110-329*, at p. 6 and 2 (September 30, 2009) available at *http://www.lrgvdc.org/downloads/disaster-recovery/Action_Plan_Amendment_One_complete.pdf.*

78 Types of data and a detailed description of model development are presented in the HNTB, *ORCA Funding Allocation Model* at p. 4.

79 HNTB *ORCA Funding Allocation Model* at 4.

80 Although the Funding Allocation Model was being used to distribute the second round of CDBG disaster recovery funds, TDRA applied the Model to the full allocation of $3 billion and based Round 2 allocations on that distribution. ("After the development of the Model and consideration of additional data gathered, ORCA determined that this Model would be used to determine the Round 2 allocation, including adjustments for each region to provide an aggregate distribution of funds that would align with the model results. The totals of Round 1 and Round 2 funding allocations will allocate 87% to Ike disaster areas and 13% to Dolly disaster areas. . . . This approach allows for adjusting Round 1 funding allocations, which used the best information available at the time, to provide a fair and reasonable total allocation of funds from Round 2.") HNTB, *ORCA Funding Allocation Model* at 10-12.

This occurred despite the fact that more than 70% of the homes damaged by Ike were located in Houston-Galveston, which had received more than 70% of FEMA individual assistance funding and more than 75% of all Small Business Administration (SBA) disaster loans. Every other disaster-affected region received an increased share of the CDBG disaster recovery funding related to Hurricane Ike, **including counties with no remaining unmet disaster recovery needs.**[81]

Advocates, including Texas Appleseed and our partner Texas Low Income Housing Information Service, were able to use civil rights and fair housing requirements to negotiate a more equitable disaster recovery program.

ADMINISTRATIVE COMPLAINTS

On October 28, 2009, Texas Appleseed and the Texas Low Income Housing Information Service (TxLIHIS) filed an administrative complaint with HUD.[82] The complaint repeated allegations made by a number of advocates for low-income disaster victims during the public comment process on the Amendment and highlighted many shortcomings with the Original Ike and Dolly Round Two Action Plan, including:

- The plan's deferral to the COGs of decisions relating to the use of Round Two Ike and Dolly CDBG-DR funds and this deferral's impact on public participation in the allocation process.
- The plan's reliance on a "weather model" that failed to allocate funds in proportion to unmet recovery need.
- The plan's failure to ensure that at least 50% of CDBG funds would benefit low- and moderate-income persons.
- The plan's reliance on an "Analysis of Impediments to Fair Housing Choice" (AI) which had not been updated since 2003, despite significant events impacting housing choice in the state. An AI is a required review of impediments to fair housing choice in the public and private sector, including a review of recommended actions addressing the identified impediments.[83]

Two weeks later, on November 10, 2009, HUD refused to accept the Original Ike Round Two Action Plan, stating that the plan "fails to describe the method of allocating funds to units of general local government" and citing the failure to provide an opportunity for citizen participation.[84] This language referenced the state's delegation of authority to the COGs regarding the regional distribution of the funds between localities and housing and non-housing activities. HUD also noted concerns with Texas' AI.

However, there is no formal complaint process within the Community Planning and Development (CPD) section of HUD, although CPD is responsible for the administration of the CDBG program. Because the deficiencies in the Ike and Dolly Round Two Action Plan violated the Fair Housing Act, on December 1, 2009, Texas Low Income Housing Information Service filed a fair housing complaint with HUD, alleging that "the State [of Texas] has engaged in, and permitted its sub-recipients to engage in, differential treatment of the ultimate beneficiaries of federal housing and community development funds . . . on the basis of race, color and national origin. Furthermore, the State has adopted rules and policies, and permitted its subrecipients to adopt rules and policies, that have the effect of discriminating on the basis of race, color

81 See State of Texas *Plan for Disaster Recovery - Amendment no. 1 U. S. Department of Housing and Urban Development (HUD) Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, Public Law 110-329*, at Appendix E-2 (September 30, 2009) *available at* http://www.lrgvdc.org/downloads/disaster-recovery/Action_Plan_Amendment_One_complete.pdf.

82 Complaint *available at:* https://www.texasappleseed.org/sites/default/files/10-28-09%20Texas%20CDBG%20Administrative%20Complaint.pdf

83 HUD's Fair Housing Planning Guide defines an Analysis of Impediments as:

- A comprehensive review of a jurisdiction's laws, regulations and administrative policies, procedures and practices.
- An assessment of how those laws, regulations and practices affect the location, availability and accessibility of housing.
- An assessment of conditions, both public and private, affecting fair housing choice for all protected classes. The protected classes are: race, color, religion, sex, national origin, familial status (in other words, households with children) and disability.
- An assessment of the availability of affordable, accessible housing in a range of unit sizes.

See Ed Gramlich, *Analysis of Impediments to Fair Housing Choice*, NLIHC website, *available at* www.nlihc.org/detail/article.cfm?article_id=6099 \

84 Letter from HUD Assistant Secretary Mercedes Márquez to Texas Governor Rick Perry, (11/10/09) *available at* http://www.tdra.state.tx.us/TxDRA/Libraries/disrDocs/HUDletter111009_1.sflb.ashx

and national origin, and that have perpetuated segregation on the basis of race, color and national origin."[85] On February 7, 2010, Texas Appleseed joined this complaint.[86]

HUD indicated that it would not obligate funds under the submitted Action Plan and encouraged the parties to negotiate a Conciliation Agreement. Over the following months, the State of Texas, Texas Appleseed and the Texas Low Income Housing Information Service negotiated an agreed settlement of the filed complaints (the "Conciliation Agreement" or "Agreement"), which was signed on May 21, 2010.[87]

On May 25, 2010, HUD signed the Conciliation Agreement[88] and released a statement praising it, stating that the Agreement "provides for extensive relief, including requiring that funds be re-allocated to affirmatively further fair housing; that the State produce an updated Analysis of Impediments to Fair Housing ("AI") for public comment and approval; and provide more fair housing training to sub-recipients of federal funding."[89]

THE TEXAS CONCILIATION AGREEMENT

The Agreement, among other provisions, requires that 55% of the Ike Round Two funds be spent on housing activities, and that 55% of the recovery expenditures benefit low- to moderate-income households. The Agreement additionally guaranteed funding for the replacement of public housing destroyed by the hurricanes. It also mandated specific housing programs, including a "Homeowner Opportunity Program" allowing affected homeowners to move out of disaster-vulnerable areas with concentrations of poverty, and required the State of Texas to draft a new Analysis of Impediments to Fair Housing Choice.

Texas submitted its revised Ike and Dolly Round Two Action Plan Amendment, which incorporated the Conciliation Agreement, to HUD on June 1, 2010, and the Amendment was conditionally accepted by HUD on June 25, 2010, with the majority of funding conditioned on a regional Method of Distribution of funds. HUD approved the Analysis of Impediments to Fair Housing required under the Conciliation Agreement on May 13, 2011.[90]

Once again, the State used a regional Method of Distribution process to allocate money to sub-recipients. Before sub-recipients could submit funding applications, however, they had to conduct fair housing assessments based on the Phase 1 Analysis of Impediments. In order to streamline this process, the Analysis of Impediments created the Fair Housing Activities Statement – Texas (FHAST form). Sub-recipients completed the FHAST form and submitted it to GLO for approval before filling out funding applications, ensuring that funding decisions were informed by fair housing, as required by the Conciliation Agreement and federal law.

85 Texas Low Income Housing Information Service *FAIR HOUSING COMPLAINT*, (12/1/2009), *available at* http://www.tdra.state.tx.us/TxDRA/Libraries/disrDocs/Fair_Housing_Complaint_12_1_09_FINAL_TO_HUD.sflb.ashx

86 On April 27, 2010, a technical amendment to the complaint was filed by complainants

87 Texas Low Income Housing Information Service and Texas Appleseed v. State of Texas *Conciliation Agreement* (May 25, 2010) *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_4305.pdf

88 Texas Low Income Housing Information Service and Texas Appleseed v. State of Texas *Conciliation Agreement* (May 25, 2010) *available at* http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_4305.pdf

89 Housing and Urban Development Press Release *HUD APPLAUDS REVISED $1.7 BILLION TEXAS DISASTER PLAN*, (5/25/10) available at http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-106

90 Letter from Garry L. Sweeny, director of HUD's Fort Worth Office of Fair Housing and Equal Opportunity, Region VI to Kevin Hamby, TDHCA Senior Counsel (5/13/11), *available at* http://www.scribd.com/doc/55384732

RELIMINARY RESULTS OF THE CONCILIATION AGREEMENT AND FAIR HOUSING ENFORCEMENT

Texas anticipates that its Ike and Dolly CDBG-DR program will not be finished until 2016 at the earliest, but we have already seen preliminary results from the Conciliation Agreement:

- An increase of $150 million benefitting low- and moderate-income Texans.
- Hundreds of units of public and affordable housing rebuilt in safer and higher opportunity locations.[91]
- Increased community input on disaster recovery programs including moving an additional $40 million in housing assistance for low-income homeowners in Houston, and reallocating $14 million in infrastructure funds to fixing drainage in colonias in the Rio Grande Valley.[92]
- Requirements that housing funds serve income categories proportionally to their share of damage has more than doubled rebuilding assistance for the lowest income homeowners between Ike and Dolly Round One and Ike and Dolly Round Two.
- Three hundred and sixty-three households, 11% of homeowners receiving Ike and Dolly Round Two reconstruction funds, have chosen voluntarily to rebuild in safer and higher opportunity areas.[93]
- Over 180 Texas jurisdictions have received fair housing training and have conducted reviews of their own impediments to fair housing choice.
- In Galveston, HUD and the State of Texas made clear they would uphold federal law and the Conciliation Agreement and withhold $586 million in CDBG-DR funds to overcome racially motivated resistance to rebuilding public housing that threatened to prevent hundreds of low-income predominantly African-American, families from returning home to the Island.[94] The first phase of public housing rebuilding is underway and expected to be complete in 2015.

Over the past 10 years, Texas has administered multiple CDBG-DR allocations related to hurricanes, in addition to disaster funds for wildfires, floods, drought, and an industrial explosion, and there are some Texas programs and processes that could be models for other jurisdictions as well as for the next disaster in Texas. It's past time for not only Texas, but other state, local, and federal officials to formally review what we have learned about long-term disaster recovery and institutionalize what works.

91 Because the Round Two program is ongoing, this number will increase.

92 Letter from Diana R. Serna, Exec. Dir., Hidalgo Cty Urban Cty Program, to Drew Cameron, HNTB Corp. (Oct. 19, 2011 (on file with author); *Residents organizing with the Equal Voice Network win $14 million for drainage improvements in Hidalgo County colonias*, LA UNIÓN DEL PUEBLO ENTERO BLOG (Nov. 2, 2011), *http://lupergv.wordpress.com/2011/11/02/residents-organizing-with-the-equal-voice-network-win-14-million-for-drainage-improvements-in-hidalgo-county-colonias/.*

93 Because Round Two is ongoing, this number may change in the future.

94 Letter from Sandra B. Henriquez, Asst. Sec'y for Public and Indian Housing, Mark Johnston, Acting Asst. Sec'y for Cmty. Planning and Dev., and John Trasvina, Asst. Sec'y for Fair Housing and Equal Opp., U.S. Dep't of Housing & Urban Dev., to Lewis Rosen, Mayor of Galveston (July 1, 2012) (on file with author); Harvey Rice, *Critics Say New Galveston Mayor Can't Block Public Housing*, HOUSTON CHRONICLE, July 2, 2012, *http://www.chron.com/news/houston-texas/article/Critics-say-new-Galveston-mayor-can-t-block-3679982.php*; and, Harvey Rice, *Galveston OKs Housing Plan at 11th hou*r, HOUS. CHRONICLE, Sep. 28, 2012. *http://www.chron.com/news/houston-texas/article/Galveston-OKs-housing-plan-at-11th-hour-3903449.php*

LESSONS LEARNED & POLICY RECOMMENDATIONS

1. DISASTER RELIEF SHOULD BE FAIR AND EQUITABLE, INCORPORATING CIVIL RIGHTS AND FAIR HOUSING REQUIREMENTS, AND SEIZING THE OPPORTUNITY TO REMEDY HISTORICAL DISINVESTMENT AND DISCRIMINATION.

Disaster programs at all levels of government should be based on unmet need. Federal guidance and oversight should eliminate inequities both between and within states and ensure that recovery funding programs are based on unmet need and not capacity or political considerations. The government must ensure that all federal funds, including disaster recovery funds, are spent in compliance with fair housing and civil rights laws. ***This is, perhaps, even more critical following a disaster, because the same communities that have been historically underserved are also those most affected by natural disasters.*** **Rebuilding housing in those communities, without similarly investing in infrastructure, means that the next disaster will require rebuilding of the very same homes.**

There should be an objective data-based formula for allocation of CDBG-DR funds at all administrative levels to ensure that money goes to hardest hit areas and people who will have the most difficult time with recovery to ensure that recovery is equitable and does not leave large portions of a state behind.

Federal guidance should also ensure that allocations between housing, infrastructure, and economic development within a state's federally-funded disaster recovery activities are linked to actual unmet need. There is also a need to coordinate housing and non-housing recovery programs: fair housing and civil rights concerns may mandate providing disaster victims with an opportunity to relocate out of environmentally vulnerable and economically impacted areas, but the obligation to invest in devastated and historically underserved areas is not eliminated by the provision of housing in higher opportunity areas.

The state must provide meaningful and effective outreach and application assistance to reach and maintain contact with the low- and moderate-income populations that CDBG-DR funds are intended to benefit. Effective outreach must include not only publicity, but also home visits, accessibility accommodations for those with disabilities and language barriers, and help with documentation of eligibility.

2. THE FEDERAL DISASTER RECOVERY STRUCTURE NEEDS TO TAKE INTO ACCOUNT THE DIFFERENT NEEDS CREATED BY A CATASTROPHIC DISASTER IMPACTING AN ENTIRE REGION OF THE COUNTRY.

A disaster response structure that places primary responsibility on state and local governments is not adequate for catastrophic disasters on the scale of Hurricane Katrina, which affect multiple states, disperse evacuees nationally, and are beyond the capacity of state and local governments to respond to effectively on their own. Since Hurricane Katrina, much of the conversation at the national level around reforming the Stafford Act and the national disaster response structure has focused on creating a new category of catastrophic disasters that would trigger a different kind of response.[95] Regardless of whether such legislation is passed (and to date it has not) FEMA and state and local governments should plan specifically for how to deal with catastrophic regional disasters.

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[95] See, e.g. Ad Hoc Subcomittee on Disaster Recovery of The Committee on Homeland Security and Government Affairs, United States Senate, May 12, 2010. In October 2011, Senator Mary Landrieu of Louisiana and Senator Thad Cochran of Mississippi introduced S.B. 1630 "to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to allow for a more effective recovery from disasters." Among the bill's provisions are a new section of the Stafford Act that would create a new category of "catastrophic" disasters with a different declaration process, a more coordinated federal response, and recovery metrics

3. DISASTER RECOVERY ADMINISTRATORS SHOULD INVEST IN IMPROVED DATA COLLECTION REGARDING UNMET NEED, PROGRAM ADMINISTRATION, AND PROGRAM OUTCOMES.

Better assessment of unmet need. The federal and state governments need accurate and timely data to deliver disaster recovery resources where they are most needed, inform oversight of on-the-ground program administration, and learn from recovery efforts. While CDBG-DR funds should be allocated based on damage and unmet need, existing FEMA data has known shortcomings. Data on unmet need is often lacking, but is important to collect or approximate unmet needs data given that poor communities have fewer outside resources, such as private insurance or access to emergency funds, to recover from disasters. HUD's new allocation formula, if applied after future disasters, may alleviate some of the problems with FEMA data by incorporating factors for "challenge to recover."

Data on state program administration. The lack of timely and publicly available data on program administration obscures how programs operate and which populations are being helped, and makes it more difficult to evaluate what works. For example, TDHCA did not analyze the Katrina and Rita Round One data until almost a year after distributing the funds. This complicated monitoring for compliance with program requirements and civil rights laws. Data on program performance (type and amount of assistance awarded to applicants, overall statistics on program status, etc.), demographic characteristics of all applicants (race, income, age, etc.), and reasons for any denial of eligibility should be collected and publicly disseminated throughout program activities.

4. HUD SHOULD INSTITUTIONALIZE CDBG RULES AND GUIDANCE FOR DISASTER RECOVERY FUNDING, AND SHOULD PROVIDE MORE EXTENSIVE OVERSIGHT AND TECHNICAL ASSISTANCE TO CDBG DISASTER RECOVERY GRANTEES.

CDBG-DR is not a permanent part of the federal disaster response framework.[96] As a result, idiosyncratic appropriating legislation and federal register notices for supplemental disaster appropriations contribute to a lack of standard guidance and predictability regarding CDBG-DR program rules. The lack of federal statutory structure puts HUD at a disadvantage, forcing the agency to administer multiple ongoing programs under multiple sets of rules, making it more difficult for the agency to monitor programs and to provide technical assistance.

However, there are enough standard elements in the use of CDBG for disaster recovery that HUD should recognize the reoccurring nature of disasters and institutionalize disaster-specific rules and guidance. Such rules should ensure uniform and data-based allocation methods, greater uniformity in program design and eligibility rules, early disclosure and public comment on overall uses of CDBG-DR funds, and compliance with civil rights and fair housing requirements from the Action Plan stage. Specific and consistent guidance on how to incorporate fair housing and civil rights requirements into disaster recovery would be helpful to state and local governments, and they have expressed this as a need.

HUD should also help states learn from and replicate successful program structures from previous disasters by providing Technical Assistance (TA) to entities receiving CDBG disaster recovery funds.

[96] United States Government Accountability Office *GULF COAST DISASTER RECOVERY Community Development Block Grant Program Guidance to States Needs to Be Improved* GAO-09-541 (June 2009).

5. STATES SHOULD ENGAGE IN PRE-DISASTER PLANNING AND IDENTIFY BEST PRACTICES.

From 1953-2008, there were 83 presidentially declared disasters in Texas, including 12 resulting from hurricanes.[97] Upfront investment in disaster program administration and planning can reduce unnecessary delays getting help on the ground. For example, Texas has designated three different agencies to administer disaster recovery programs in the last ten years, inhibiting the formation of institutional knowledge. States should designate the agency coordinating long-term disaster recovery efforts before disaster strikes.[98]

Program rules and requirements have also been inconsistent between rounds of funding. Using a new program design for each round of funding makes it difficult for regional and local jurisdictions to plan ahead or to build expertise in the administration of CDBG-DR programs. Each round of funding has required administrators to learn, and in many cases create, a new set of rules and requirements. These rules and regulations have also changed during the administration of the program. While this has often been done to solve administrative issues and make the program more effective, many of these changes could have been avoided by advance planning that incorporates what state and local administrators have learned from administering previous rounds of funding.

Lack of planning exacerbates lack of local capacity. For Ike and Dolly Round One funding in Texas, 18 jurisdictions, many with little to no experience with disaster recovery or federal housing programs, were expected to create, set up, and implement housing programs that complied with a complex set of federal and state regulations, with little guidance from the state. Many jurisdictions initially submitted housing guidelines that did not comply with state law and were forced to redraft their guidelines, causing further delays. Variations between locally-designed programs also meant that different program requirements and benefit levels applied depending on where disaster victims lived: A homeowner in one part of the state was entitled to reconstruction benefits of over $100,000, while homeowners in another part of Texas was limited to a maximum of $65,000 to rebuild their homes. This also created administrative problems at the state level, where agency staff had to review applications under 18 different sets of rules, in addition to state and federal guidelines. HUD and the State should create an off-the-shelf DR housing program that incorporates best practices. Adjusting an existing program to deal with disaster-specific issues would be administratively easier and more efficient than creating programs from scratch every time.

When planning disaster recovery programs, states should lay out specific performance requirements for grantees, including a timeline for reaching benchmarks and expending funds. States should plan for when grantees fail to reach program benchmarks and build in a mechanism for taking over programs and projects from grantees who cannot meet performance requirements. The adoption of best practice program management policies can help ensure optimum service delivery.

States should also recognize local capacity limitations and lack of institutional memory regarding disasters, and provide technical assistance regarding disaster planning to local grantees. Florida has adopted such an initiative; requiring localities to prepare Post-Disaster Redevelopment Plans and providing a technical assistance toolbox and guidelines to assist localities prepare such plans.[99]

Texas has now administered four rounds of hurricane recovery funding and has experience to draw from. The State of Texas should conduct an evaluation of the Katrina and Rita and Ike and Dolly CDBG-DR programs and identify best practices. This was also a recommendation of the Texas Sunset Commission, which identified lack

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97 Public Entity Risk Institute *Database of Major Disasters and Emergencies declared by Presidents, available at http://www.peripresdecusa.org/*

98 This recommendation mirrors that of the Texas Sunset Commission. Texas Sunset Commission, T*exas Department of Housing and Community Affairs Sunset Hearing Material*, (November 2010).

99 See Florida Department of Community Affairs Website *Post-Disaster Redevelopment Planning, available at http://www.dca.state.fl.us/fdcp/dcp/PDRP/*

of planning as a major cause of delays in the delivery of funding to hard hit communities.[100] The Sunset staff recommended, in its TDHCA review, that the Governor designate an agency to administer any potential long-term disaster recovery funds every other year, and that the designated agency, together with the Office of the Governor, develop a plan and update it biennially to include the following:

- ***Unambiguous methods of program administration.*** *While different storms may require different responses, the plan should outline how the state intends to distribute funding to local areas. The Governor would still have discretion to change the model if circumstances require it, but outlining the state's approach would provide better information to localities and assist them in preparing for future disasters.*
- ***Clear outreach, eligibility, and program guidelines.*** *The designated state agency should list all guidelines for outreach to applicants, eligible housing and infrastructure activities, benefit and eligibility criteria, housing quality standards, and priorities for serving local populations. The plan should outline procedures to comply with duplication of benefits requirements and other complicated federal requirements, which should reduce the time for applicants to establish eligibility. The plan should rely on efforts already underway through the Housing Program Guidelines Task Force established through the Conciliation Agreement. Clear guidelines would provide consistent direction on how local administrators could run programs and interpret rules and regulations, while still allowing local governments the choice of which programs they wish to operate.*
- ***Clear-cut lines of communication.*** *The designated state agency should detail lines of communication between federal, state, and local entities so that local administrators are clear about where to get the most up-to-date information and have reasonable expectations about when they will receive guidance from state partners.*
- ***Timely training programs.*** *The plan should establish a pre-event and a post-event training plan. Pre-event training will help ensure essential expertise is not lost if Texas does not experience a major storm for several years. Post-event training, designed to ensure local administrators receive information in a timely manner, could include manuals, trainings, webinars, and regular local administrator roundtables, once funds are released to Texas.*
- ***Standard forms and checklists.*** *Similar to material provided by the Division of Emergency Management, the agencies should compile and update all standard forms required to perform eligible activities as much as is possible in advance of hurricane season, and post the materials online. Having appropriate forms developed in advance of a storm helps ensure that materials are ready in a timely manner, and reduces the amount of work local administrators must perform as they establish recovery programs.*
- ***Explicit monitoring and reporting requirements.*** *The agencies should clearly outline federal and state monitoring and reporting requirements. To the extent possible, the plan should provide a comprehensive list of the types of data local administrators would be required to collect, analyze, and report. The plan should also detail state information technology systems and processes that would be used to administer federal funds. This would help ensure local administrators clearly understand reporting and data requirements, and that local, state, and federal information systems can work well together.*
- ***Up-front coordination with other state agencies.*** *The plan should identify elements of disaster recovery where coordination with other state agencies is required and implement memoranda of understanding as appropriate. Initially this would include agreements with the Texas Historical Commission and Texas Department of Insurance, and could expand to include other agencies as necessary.*[101]

[100] Texas Sunset Staff Report on TDHCA, September 2010, Issue 1.

[101] Texas Sunset Commission, Staff Report on TDHCA, September 2010, pp. 22-23. All bulleted items above.

Part of states' planning and implementation should be building collaborative relationships with a broad range of stakeholders, from local jurisdictions to grassroots community groups. Community organizations and advocates for low income and minority populations, for example, can be invaluable in helping craft outreach and application processes that will reach the populations that are the intended beneficiaries of CDBG-DR funds and enable these populations to complete the application process.

States should recognize and plan for both mandatory federal requirements and their own established policies. Standards related to fair housing, nondiscrimination, labor standards, income tareting, and the environment are not waived in disasters; therefore, the state should plan recovery programs that take these complications into account. One way to ensure that fair housing issues are addressed in recovery planning is to ensure that both state and local Analyses of Impediments/Assessments of Fair Housing and fair housing action plans are up to date. An assessment that complies with current requirements should identify areas that have been historically underserved with infrastructure, for example, which can help jurisdictions prioritize projects in those areas for disaster recovery, and for investments that will mitigate the impact of future disasters on these areas.

We recognize that some degree of uncertainty is inevitable, particularly as long as CDBG-DR is an ad hoc program, but there is still a broad scope within which states can plan for disaster response and recovery.

CONCLUSION

Natural disasters reveal and highlight systemic inequities in housing and infrastructure driven by historical patterns of public spending and investment. The failure to equitably invest in communities means that the poor, people of color, and people with disabilities often live in neighborhoods most vulnerable to flooding and damage caused by disasters, and have the most difficulty recovering. When the federal, state, and local systems set up to respond don't work well, or don't work in a way that takes equity into account, they not only affect the families and communities struggling to recover, they recreate and reinforce existing conditions, making recovering from the next disaster even more difficult.

Disaster recovery brings opportunity as well as adversity, but only by learning from our experience and institutionalizing best practices can we use that opportunity to create stronger and more resilient communities.