

February 20, 2018

Texas General Land Office Community Development and Revitalization
P.O. Box 12873
Austin, TX 78711-2873

Submitted electronically through www.cdr@glo.texas.gov

Re: State of Texas Plan for Disaster Recovery: Hurricane Harvey (January 18, 2018)

To Whom It May Concern:

The undersigned civil rights, fair housing, and housing advocacy organizations submit these comments concerning the State of Texas Plan for Disaster Recovery: Hurricane Harvey, which was released on January 18, 2018 (hereinafter the draft Action Plan). These comments focus on the failure of the draft Action Plan to comply with Title VI of the 1964 Civil Rights Act (42 U.S.C. § 2000d) and other federal civil rights requirements. Title VI's plain text and agency regulations prohibit discrimination based on race, color, or national origin (including limited English proficiency). Recipients of federal financial assistance are also prohibited from implementing facially-neutral policies and practices that have a disproportionate impact on protected groups. Additionally, Title VI requires recipients to ensure that limited English speaking persons (LEP) have meaningful access to programs or activities, benefits, services, and vital information.¹

On August 16, 2016, the United States Departments of Justice, Homeland Security, Housing and Urban Development, Health and Human Services, and Transportation issued a document entitled "Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964." (Hereinafter referred to as the Guidance) See <https://www.justice.gov/crt/fcs/EmergenciesGuidance>. The Guidance is designed to assist recipients of federal financial assistance engaged in emergency management in ensuring that individuals and communities affected by disasters do not face unlawful discrimination on the basis of race, color, or national origin (including limited English proficiency) in violation of Title VI.

In order to achieve compliance with Title VI and other civil rights obligations when responding to disasters, the Guidance assists by setting forth best practices for ensuring that all communities receive the services they are entitled to during emergency and disaster preparedness, response, mitigation, and recovery. As discussed below, the failure of the draft Action Plan to implement many of the best practices set forth in the Guidance contributes to its violating Title VI.

¹ Recipients of federal financial assistance that provide information or services in connection with disasters must also comply with all federal anti-discrimination provisions, including prohibitions against discrimination and specific affirmative obligations for all federally assisted activities based on disability, sex, religion, age, economic status, or familial status. Other statutes prohibiting discrimination include, but are not limited to, the Robert T. Stafford Disaster and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5121 et seq. (2013) (as amended by the Post-Katrina Emergency Management and Reform Act of 2006); the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et. seq.; the Fair Housing Act of 1968, 42 U.S.C. § 3601 et seq.; HUD's Final Rule on Affirmatively Furthering Fair Housing, 24 C.F.R. Parts 5, 91, 92, *et al.*, and the Age Discrimination Act, 42 U.S.C. 6101 et seq.

1. Compliance with Fair Housing and Title VI Findings and Agreements

The impetus for the Title VI Guidance was a string of disasters – starting with Hurricane Katrina in 2005 – that uniformly revealed how communities of color and other populations were denied vital services and programs in disaster recovery efforts for these disasters. As the State is well aware, one of these disasters arose from Hurricanes Dolly and Ike in 2008. In 2009, a complaint was filed with HUD charging that the Action Plan adopted by the State violated federal fair housing laws. This complaint resulted in HUD withholding approval of \$1.7 billion of Community Development Block Grant Disaster Recovery (CDBG DR) funds and led to a comprehensive compliance agreement in 2010 that required extensive actions consistent with fair housing requirements, including mechanisms for ensuring that the funds were used by multiple administering jurisdictions in a non-discriminatory manner – a plan that is still being implemented. Furthermore, there is an outstanding HUD finding that actions of the City of Houston that consistently located subsidized rental housing in areas of concentrated poverty and areas of African-American and Hispanic population, while largely excluding subsidized rental housing from majority White, non-Hispanic neighborhoods, violated Title VI by perpetuating residential segregation.

But nothing in the draft Action Plan indicates that the lessons learned from past disasters – the basis for the Guidance – have been recognized or considered by the State. In the draft Action Plan, the State certifies that the disaster relief programs undertaken with the CDBG DR funding will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 and the Fair Housing Act (42 U.S.C. 3601-3619) and that it will affirmatively further fair housing. But, remarkably, it makes no mention of the 2010 comprehensive compliance agreement and its detailed fair housing provisions specifically remedying the civil rights violations growing out of the actions the State took with respect to Hurricanes Dolly and Ike. Nor, inexplicably, is there any mention of the outstanding Title VI finding that the City of Houston – one of the communities hardest hit by the Hurricane Harvey – intentionally perpetuated segregation.

The failure to recognize these major fair housing matters in the draft Action Plan indicates that the State is falling far short of complying with its fair housing certification. In light of this, the State must (1) incorporate the same provisions in the 2018 Action Plan that it agreed to in the 2010 conciliation agreement, including an updated Analysis of Impediments and utilization of the Fair Housing Activity Statement process; and (2) remedy residential segregation by using disaster relief funding to develop government-subsidized rental housing outside of the traditional and disadvantaged areas to the extent that current protected class residents choose to move; and provided that the government-subsidized rental housing of those choosing to stay is not in a floodplain. Moreover, if the City of Houston fails to resolve its outstanding Title VI violation, the Action Plan should include a process for State administration of CDBG DR funds earmarked for the City of Houston to address this violation, including permitting adequate public input and participation in the process.

2. Community Participation

The Guidance places major emphasis on the importance of ensuring participation of diverse racial, ethnic, and limited English proficient (LEP) populations in developing and implementing disaster relief Action Plans. It finds that direct engagement of diverse racial, ethnic, and LEP

populations, or indirectly through community, civil rights, and legal aid organizations, is a critical step in ensuring that recipients of federal financial assistance comply with Title VI nondiscrimination requirements, as well as those of other civil rights laws. It goes on to provide extensive recommended best practices concerning the importance of outreach to and involvement of these communities, which provides them the opportunity to share information about the disaster and their specific needs. The Guidance also provides advice and recommendations regarding provisions that should be included in the draft Action Plan.

This emphasis on community involvement is consistent with the requirement for a citizen participation plan found in HUD's December 27, 2017 notice allocating the disaster relief funding. It states that "Texas must meet the grant process requirements from the November 21, 2016 notice, which include the following: Consult with affected citizens, stakeholders, local governments, and public housing authorities to assess needs." (82 Fed. Reg. 61322). Moreover, HUD regulations set forth in detail the requirements of a citizen participation plan which include that the plan (1) be "designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and where CDBG funds are proposed to be used and by residents of predominantly low- and moderate-income neighborhoods," 24 CFR 91.115(a)(2)(i); and (2) "encourage the participation of all its residents, including minorities and non-English speaking persons as well as persons with disabilities." *Id.*

In the draft Action Plan, the State certifies that "it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.105 or 91.115 as applicable (except as provided for in notices providing waivers and alternative requirements for this grant)." However, the discussion of community participation in the plan belies this certification. Initially, it is not a "detailed" plan. Rather, it essentially just recites the citizen participation requirements of the November 21, 2016 Notice. More basically, there is no mention in the draft Action Plan of any outreach to low- and moderate-income persons or diverse populations. Instead, the only outreach described in the Plan is a list indicating that virtually all consultation has been with federal, state, and local governmental officials and that there has been little if any contact with low- and moderate-income community groups or civil rights and legal aid organizations.

In drafting any action plan, the State must encourage input from the public and ensure participation of low- and moderate-income populations and people of color. The draft Action Plan does not mention such input, resulting in a flawed community participation plan. Communities and the public have a right to know and must have a voice in what the State plans to do to help survivors and their neighborhoods recover. Before finalizing the draft Action Plan, the State must develop and publicize a detailed community participation plan which includes a process for receiving input from low- and moderate-income communities and responding to comments from such communities. The Guidance provides several promising practices for achieving this.

3. Data

Recipients' ongoing assessment of the needs of diverse racial, ethnic, and LEP populations that they encounter or serve is an indispensable tool for ensuring Title VI compliance and equitable preparation, response, mitigation, and recovery activities in emergencies and disasters. Thus, collecting and analyzing information about the race, color, national origin, languages spoken by LEP populations, and other demographic information of communities served by a federally

assisted program, activity, or service is vital to addressing potential barriers that may have an unlawful discriminatory impact in emergency preparedness, response, mitigation, and recovery.

The Guidance also notes that state and local entities must work with FEMA and local partners – including nonprofits, advocate groups, legal services organizations, and community representatives – to identify, obtain, review, and share aggregate race, color, and national origin data concerning the extent and geographic distribution of damage caused by disasters before formulating recovery and mitigation plans. An open exchange of data among recipients, FEMA, and the community in the data collection and analysis process enhances the accuracy of the information. FEMA and other data are required to permit assessment by interested community groups of the impact of race and national origin and patterns of segregation on the actions envisioned in the draft Action Plan.

In addition, in developing a draft Action Plan for Hurricane Harvey, the December 27, 2017 notice requires Texas to meet the grant process requirements from the November 21, 2016 notice which includes a provision that “all grantees must include sufficient information so that all interested parties will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the grantee” including “a single chart or table that illustrates, at the most practical level, how all funds are budgeted (e.g., by program, sub recipient, grantee-administered activity, or other category).” 81 FR 83254 at 83260 (Nov. 21, 2016).

The draft Action Plan fails to meet this requirement. While it indicates that information and data for its needs assessment were compiled using several federal and state sources, it falls far short of providing sufficient information for interested parties to understand and comment on the plan. FEMA data alone are insufficient to assess need and survivor characteristics because of limitations in the FEMA assessment process that significantly underestimate the needs of low- and moderate-income populations and because FEMA does not collect data on race and ethnicity. Further, the state data underlying the draft Action Plan’s conclusions are out of date; the methodology used underestimates the needs of renter households, especially those in low income areas, and low-income households; there is inadequate analysis and data provided on the status of temporary housing programs; and the draft Action Plan does not include sufficient data on damage and unmet needs of public and subsidized housing.

More basically, the FEMA data used to produce the needs assessment have been withheld from the public, and due to the short comment period, meaningful analysis of the needs and informed comment are impossible. The State must make individual-level data at the Census block or block group level (without name and address) that it relied on to prepare the draft Action Plan available to the public with adequate time to permit it to be analyzed and used to prepare comments.

Further, the data that the draft Action Plan states will be provided through GLO’s website during the course of implementation are insufficient to permit meaningful assessment of the GLO’s and its sub-recipients’ performance, including compliance with the duty to affirmatively further fair housing. The State must release monitoring, findings, and progress reports on sub-recipients’ activities and individual-level information at the Census block or block group level (without name and address) of beneficiaries.

4. Nondiscrimination Notice & Non-Discriminatory Allocations

Title VI regulations require that recipients provide participants and beneficiaries with information on nondiscrimination protections assured to them under the law. *See, e.g.*, 28 C.F.R. § 42.106(d); *Coordination of Enforcement of Non-Discrimination in Federally Assisted Programs*, 28 C.F.R. § 42.405(c)-(d). The Guidance notes that robust information-sharing with affected or potentially affected communities is an important way to reaffirm the recipients' commitment to Title VI protections that is essential to effective emergency preparedness, response, mitigation, and recovery efforts

Thus, the Guidance recommends posting a statement of nondiscrimination in all of their public facilities, on their public websites, and on notices distributed to the public during disasters and emergencies. Furthermore, such postings should provide information about housing, health services, or other emergency and long-term recovery-related services and that this information will be disseminated and accessible to diverse racial, ethnic, and limited English proficient populations. Nothing in the draft Action Plan provides for this kind of notice.

More troubling, the draft ignores several serious Title VI problems. Above, we noted the outstanding HUD Title VI finding concerning refusal to site subsidized housing in predominantly White communities. In addition, there is evidence that 88% of the vast and mostly substandard open ditch drainage system in the City of Houston is located in African-American and Hispanic neighborhoods. To fail to acknowledge and address the racial and ethnic inequities in the provision of storm water protection would violate Title VI. The draft Action Plan must ensure equitable investments in infrastructure and flood protection in communities with different racial and ethnic compositions by requiring the local jurisdictions to analyze the geographic distribution of public storm water infrastructure in these communities and take steps that address any inequities.

Finally, the unmet housing needs of Jefferson County, home to Beaumont and Port Arthur, seem to be ignored in the allocation of the 20% of funds for areas outside of Harris County. Jefferson County ranks second in HUD's analysis of unmet housing need behind Harris County and has a significant minority population estimated to be 34% African-American and 19% Hispanic in 2015. The State must assess the Title VI implication in the selection of the counties and ensure Jefferson County receives its fair share of assistance.

5. Meaningful Access for LEP Individuals

Title VI requires recipients of federal funds to take reasonable steps to ensure meaningful access to the information and services they provide to LEP individuals and to make language services available in all their public-facing programs or activities. In light of that, the Guidance recommends several actions designed to ensure that recipients make language services available in all their public-facing programs or activities. Moreover, the December 27, 2017 HUD Notice includes the following language: "The grantee must also ensure equal access for persons with disabilities and persons with limited English proficiency."

The draft Action Plan purports to ensure that all citizens have equal access to information about the programs, including LEP persons. Yet, when the draft Action Plan was released on January 18, 2018, translations of the plan were not provided in Spanish nor any Asian languages. Even after the initial release of a Spanish version of the draft Action Plan, it is not clear that required

translation into Asian languages has been provided. This failure would be a blatant Title VI oversight that must be corrected before going forward with any consideration of comments concerning the plan.

6. Access for Individuals with Disabilities

The Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, as amended, and the Fair Housing Act of 1968, as amended, all require equal physical, program, and effective communication access for disaster survivors with disabilities in the provision of sheltering and housing.

The Rehabilitation Act prohibits discrimination on the basis of disability by the federal government, federal contractors, and by recipients of federal financial assistance. Any recipient or sub-recipient of federal funds is required to make their programs accessible to individuals with disabilities. Its protections apply to all programs and businesses that receive any federal funds. This applies to all elements of physical/architectural, programmatic, and effective communication accessibility in all services and activities conducted by or funded by the federal government.

In light of these obligations, the draft Action Plan must explicitly address how disaster survivors with disabilities will be included and accommodated throughout all aspects of the implementation of the plan. The draft Action Plan must include the steps that will be taken to meet the disability accessibility requirements of disaster survivors and all impacted communities throughout all aspects of disaster recovery. For example, for reconstruction or new construction of residential buildings, the draft Action Plan should require recipients to follow the minimum construction standards for accessibility adopted for previous disaster recovery efforts including accessible features; and, for rehabilitation of non-substantially damaged residential buildings, the draft Action Plan should require architectural barrier removal or accessible features as required to make assisted units accessible.

There are no waivers or exceptions to these civil rights laws. Indeed, Public Law 114–223, Sept. 29, 2016 (130 Stat. 917) and the Allocation Notice of August 7, 2017 (82 Fed. Reg. 36812, 36818, IV., B), and all related statutes and notices prohibit the waiver of “requirements related to fair housing, nondiscrimination.” The draft Action Plan has not adequately addressed these obligations the State and all sub-recipients of funds must meet. Further, an affirmative plan that explicitly addresses accessibility will provide a community approach that will be a significant advantage in achieving and maintaining community resilience in the future.

7. Conclusion

In sum, we respectfully request the State revise the draft Action Plan to comply with its Title VI and fair housing obligations, including, but not limited to the following changes:

1. Ensure consistency with existing Title VI and fair housing requirements, findings, and agreements by (1) incorporating the same provisions in the 2018 Action Plan that it agreed to in the 2010 conciliation agreement, including an updated Analysis of Impediments and utilization of the Fair Housing Activity Statement process, (2) remedy residential segregation by using disaster relief funding to develop government-subsidized rental housing outside of the traditional and disadvantaged areas to the extent that current

protected class residents choose to move and ensure that the government-subsidized rental housing of those choosing to stay is not in a floodplain; and (3) ensure equitable investments in storm water infrastructure and flood protection by requiring analysis of the geographic distribution of public storm water infrastructure in neighborhoods and communities with different racial and ethnic compositions.

2. Develop and publicize a detailed community participation plan, including outreach to low- and moderate-income communities and hold public hearings in Austin and across disaster affected areas.
3. Revise the draft Action Plan to use the most current available FEMA data and update the needs analysis as updated FEMA data are available; to assess need and survivor characteristics by utilizing FEMA and other data that accurately capture the needs of low-income households and renters; and make available to the public individual-level data that the State relied on to prepare the draft Action Plan as well as adequate data to assess the State's and sub-recipients' compliance with federal laws and regulations;
4. Ensure compliance with the obligation to post nondiscrimination notices and ensure non-discrimination in allocations of disaster funds;
5. Provide translations of the draft Action Plan and all disaster-related communications in Spanish and Asian languages as required by federal law;
6. Revise the draft Action Plan to include affirmative steps that address accessibility requirements for disaster survivors with disabilities in all impacted communities.

We appreciate the opportunity to submit these comments. Should you have any questions or need further information, please contact Joseph Rich at the Lawyers' Committee for Civil Rights Under Law, jrich@lawyerscommittee.org, 202-662-8331.

Sincerely,

National Organizations

American Atheists

Association of University Centers on Disabilities

CarsonWatch

Center for Responsible Lending

Consumer Action

Fair Housing Council of Riverside County, Inc.

Lawyers' Committee for Civil Rights Under Law

NAACP

NAACP Legal Defense and Educational Fund, Inc.

National Coalition for Asian Pacific American Community Development (CAPACD)

National Coalition for the Homeless

National Community Reinvestment Coalition

National Consumer Law Center (on behalf of its low-income clients)
 National Disability Rights Network
 National Education Association
 National Fair Housing Alliance
 National LGBTQ Task Force
 National Low Income Housing Coalition
 National Urban League
 Natural Resources Defense Council
 Paralyzed Veterans of America
 PolicyLink
 Poor Peoples Economic Human Rights Campaign
 Poverty & Race Research Action Council
 Refuge Ministries Tampa Bay International
 UnidosUS
 Voces

State or Local Organizations	City	State
Housing Authority of Star City	Star City	AR
Southwest Fair Housing Council	Tucson	AZ
Fair Housing Foundation	Long Beach	CA
U.S Vets Homeless Feeding N Housing Services	Los Angeles	CA
Greater Napa Valley Fair Housing Center	Napa	CA
Inland Fair Housing and Mediation Board	Ontario	CA
Fair Housing Advocates of Northern California	San Rafael	CA
Fair Housing Council of Orange County	Santa Ana	CA
Connecticut Fair Housing Center	Hartford	CT
CT SILC	Hartford	CT
DC Coalition Against Domestic Violence	Washington	DC
Housing Alliance Delaware	Wilmington	DE
Affordable Homeownership Foundation Inc.	Fort Myers	FL
Legal Aid Service of Collier County	Immokalee	FL
Fair Housing Center of the Greater Palm Beaches	Lantana	FL
New Florida Majority	Miami	FL
Rebuilding Together Miami-Dade, Inc.	Miami	FL
Florida Student Power Network	Orlando	FL
Organize Florida	Orlando	FL
Fair Housing Continuum, Inc.	Rockledge	FL
Arise Business Women Organization	Atlanta	GA
Community Outreach Training Center, Inc.	Thomasville	GA

Housing Choice Partners	Chicago	IL
Mental Health America of Louisiana	Baton Rouge	LA
Massachusetts Fair Housing Center	Holyoke	MA
Greater KC Housing Information Center	Kansas City	MO
Long Island Housing Services, Inc.	Bohemia	NY
Center for Disability Rights	Rochester	NY
Catholic Social Services	Scranton	PA
Integra Home Counseling, Inc.	Tannersville	PA
Taller Salud	Loiza	PR
Coalición de Coaliciones Pro Personas sin Hogar de PR, Inc.	Ponce	PR
Casa La Providencia	San Juan	PR
Fundacion CAF	San Juan	PR
La Fondita de Jesus	San Juan	PR
Aiken County Habitat for Humanity	Aiken	SC
Habitat for Humanity of York County	Rock Hill	SC
Austin Tenants Council	Austin	TX
Disability Rights Texas	Austin	TX
RAISE Texas	Austin	TX
Paralyzed Veterans of America, Texas Chapter	Crosby	TX
North Texas Fair Housing Center	Dallas	TX
REACH Resource Centers on Independent Living - Fort Worth, Dallas, Denton & Plano, TX	Dallas	TX
Greater Houston Fair Housing Center	Houston	TX
Harmony House, Inc.	Houston	TX
Houston Center for Independent Living	Houston	TX
I Am Pleased Development Center	Houston	TX
The CREED	Houston	TX
Meals on Wheels Texas	Sherman	TX
Habitat for Humanity Virginia	Glen Allen	VA

Cc: Pamela Patenaude, Deputy Secretary, US Department of Housing & Urban Development
Anna Maria Farias, Assistant Secretary, Office of Fair Housing & Equal Opportunity, US
Department of Housing & Urban Development
Neal Rackleff, Assistant Secretary, Office of Community Planning & Development, US
Department of Housing & Urban Development