Texas
APPLESEED

August 6, 2018

Pete Phillips
Heather Lagrone
Community Development and Revitalization
Texas General Land Office
1700 N. Congress Avenue,
Austin, TX 78701
Via Email: Pete.Phillips@glo.tx.gov and Heather.Lagrone@glo.tx.gov

Comments on Hurricane Harvey Round 1 Council of Governments Methods of Distribution

Dear Mr. Phillips and Ms. Lagrone:

We have carefully reviewed the Regional Methods of Distribution (MODs) suballocating Community Development Block Grant for Disaster Recovery (CDBG-DR) funds submitted by the nine eligible Councils of Government (COGs) as required by the Texas Action Plan for Hurricane Harvey. Many of these MODs do not comply with the State Action Plan, the GLO MOD Guidelines, or in some cases, the Federal Register Notice, and should be returned for revision to address these issues, and reposted for public comment.

I. CBCOG, H-GAC, and AACOG did not submit MODs.

Three of the nine eligible COGs, CBCOG, H-GAC, and AACOG, did not complete the MOD Summary Form or provide other information required by the General Land Office's (GLO) Hurricane Harvey - Round 1 Councils of Governments Method of Distribution Guidelines (Guidelines).

Therefore, these COGs have not published for public comment, or submitted to GLO for approval, a MOD. They must draft and publish for public comment an actual MOD.

II. SETRPC's Method of Distribution failed to include required distribution factors in violation of the State Action Plan, GLO's MOD Guidelines, and the Federal Register Notice

The *State of Texas Plan for Disaster Recovery: Hurricane Harvey – Round 1* (Action Plan) states that "for both housing and infrastructure, the MOD establishes a balance between the total unmet need, the ability to recovery, and the relative population of the impacted areas . . . each of these variables plays a factor in the recovery process and is reflected in the distribution models." (Action Plan at 73) The Action Plan reflects HUD's Federal Register Notice allocating these CDBG-DR funds' mandate requiring "each grantee to primarily consider and address its **unmet housing recovery needs**." (83 F.R. 5884 (February 9, 2018)) (emphasis added) Similarly, the GLO's *Hurricane Harvey - Round 1 Council of Governments Method of Distribution Guidelines* (MOD Guidelines) require local MODs to "[e]stablish objective criteria for the allocation of funds to eligible entities or activities (**distribution based on, but not limited to, unmet need**)". (MOD Guidelines at 7 and 8) (emphasis added)

SETRPC bases its suballocation of funds solely on a distribution factor it calls "storm impact." This factor is undefined. While there are data sources listed, it is not explained how these sources are used to arrive at any particular breakdown of "impact" by local jurisdiction. The MOD does not contain "a detailed description of the methodology used to allocate and prioritize funds within [the] region" as required by the MOD Guidelines.

Justifying the choice to use only this one factor by indicating that "all areas of the Southeast Texas region received the same type of damage (rising water)" is also completely insufficient. The source of damage may be relevant to the type of infrastructure and housing programs provided, particularly to targeting buyout and acquisition programs, but it cannot justify a particular distribution of funds.

Texas Housers obtained additional information on how the COG defines "storm impact" from by directly contacting SETRPC. While this information was not included in the published MOD, rendering the MOD incomplete and insufficient, the COG informed Texas Housers that:

> *[t]he "impact" of the storm was determined by the development of a regional representation of water heights using inundation maps created by FEMA after Harvey, USGS/NOAA data and local jurisdictional reports to gather data points of water inundation in the region. Local jurisdictional reports include data*

> *points of water heights from volunteer fire departments, drainage districts, emergency management officials and community surveys conducted by the counties.*
>
> *Using these data points of water depths in connection with the FEMA inundation map and USGS/NOAA data, we used GIS to find out the populations in those inundated areas which gave us the total "affected" population. We then divided the "affected" population of a jurisdiction by the total population of the jurisdiction from the 2016 census to get the percent of the jurisdiction "impacted." We used that percentage as the "impacted" population which is our "Storm Impact Distribution Factor.*[1]

This information confirms that SETRPC has allocated funds based solely on level of inundation and total population in the inundated area without considering unmet need, ability to recover, or the relative population of the impacted area. This distribution is blatantly inequitable and inconsistent with damage data. Port Arthur will receive only about twice as much funding as cities with less than 1% of its population. Beaumont will receive less than twice the funding of cities that are 0.5% of its size.

SETRPC's MOD is highly reminiscent of The Texas Department of Rural Affairs' (TDRA, formerly ORCA) discredited "weather model" for Hurricanes Ike and Dolly which considered solely weather data and high water maps without taking into account actual damage, population numbers in affected areas, housing density, types of economic activity, or community demographics. Like the "weather model" SETRPC's "storm impact" based distribution tracks where the weather was most intense, not where damage occurred or where there are CDBG-eligible unmet disaster recovery needs. The use of the "weather model" was the partial basis for a fair housing complaint by Texas Appleseed and Texas Housers against the State of Texas in 2009, which resulted in disapproval of the Ike/Dolly Round 2 Action Plan, the redistribution of CDBG-DR funds, and a Conciliation Agreement.

SETRPC failed to include the detailed description of methodology that is the primary requirement of a MOD, and it is clear from even the inadequate description of its methodology that the COG has not based its distribution of CDBG-DR funds on the distribution factors required by the MOD Guidelines, the State Action Plan, and HUD's Federal Register Notice.

---

[1] July 16, 2018 email from Collin B. Sheldon, SETRPC to Amelia Adams, Texas Housers.

A. SETRPC's MOD does not include a plan to meet the 70 percent low- and moderate-income benefit requirement and it is unlikely to do so.

The MOD does not include the required plan to meet the 70 percent low- and moderate-income requirement. (GLO Guidelines at 7 and 9.) It simply restates that the Action Plan requires that at least 70 percent of all program funds must benefit low- and moderate-income (LMI) persons. Restating a requirement is in no way a plan, and the MOD must be revised to meet this requirement.

Further, the use of the "storm impact" factor alone makes it extremely unlikely that SETRPC will meet the 70 percent LMI requirement because it does not take into account unmet need or ability to recover. While communities at all income levels were affected by Hurricane Harvey, and any community that has been damaged by the storm and needs help to recover should receive funding, the use of CDBG funding, with its LMI benefit requirement, for disaster recovery, as well as the Federal Register Notice and State Action Plan, acknowledge that some families and communities are more vulnerable and will need more help to recover, in particular, LMI communities and households.[2] While our organizations remain critical of the

[2] Using FEMA Verified Loss (FVL) of real property (owners) to determine unmet need at the State level found that 54% of affected homeowners had no unmet needs on the basis that their FVL was below the thresholds set for the FEMA damage categories. However, when this is broken down by income level, 69 percent of extremely low-income (ELI) owners were found to have no unmet needs. Conversely, only 41 percent of non-LMI owners were found to have no unmet needs. The conclusion, based on FEMA data, that families making less than 30% of Area Median Income (AMI), which, for example, is $12,060 in the Beaumont-Port Arthur MSA, have been better able to recover than families making more than double that amount is simply not credible. The inaccuracy of this calculation is borne out by a study conducted by the Episcopal Health Foundation and the Kaiser Family Foundation three months after Hurricane Harvey. The study found that lower-income families and Black and Latinx Texans were less likely to have homeowners', renters', or flood insurance, and nearly half had lost job-related income since the storm. "These income disruptions affected a greater share of Hispanic (65%) and Black (46%) residents compared to White residents (31%)." Lower- and even middle-income families are less likely to have the savings and access to credit that let them access safe housing (including more immediate repairs) and are more likely to be forced to relocate far from jobs and schools, to live in overcrowded housing or double up with family or friends, remain in unsafe housing, or become homeless. A 2015 Pew Charitable Trust study found that less than half (45%) of American households have even one month's income in savings in case of an emergency. Lower income households are in an even more precarious situation, with only two weeks of savings. Those at the bottom of the income scale could only survive 9 days on their liquid assets. The study also indicates that even middle-income households could only scrape together about four months of income; it has been nearly 10 months since Hurricane Harvey. There are also racial and ethnic disparities in the availability of liquid savings. In addition, median white wealth is twelve times median black wealth, a disparity that can be traced to the history of segregation and discrimination in the United States, from government redlining to current lending discrimination. This is not to say

HUD methodology used by the State to distribute funds because it substantially undercounts the needs of LMI families and communities, that methodology is based on unmet need and specifically takes into account LMI households and the Social Vulnerability Index in an attempt to ensure that the Texans who are most vulnerable and need the most help with recovery will get assistance. A higher income community may have been inundated to the same level as a lower income community, but if higher income families have been able to benefit from insurance, FEMA, SBA loans, and other resources, they will not have the same amount of unmet need as families that did not have access to those resources. The goal of the MOD is not to distribute funding equally; it is to distribute it equitably to ensure long-term recovery and resilience.

For example, Port Arthur was devastated by Hurricane Harvey. According to SETRPC's uncited data, almost 50,000 out of its total population of roughly 55,000 (90%) were "impacted" by the storm. Under SETRPC's "storm impact" methodology, the amount of buyout funding SETRPC has allocated to Port Arthur comes out to $85 for each impacted person. In Beaumont, the figure is only $41. Also underfunded are the unincorporated counties of Orange, Hardin, and Jefferson, all of which would receive less than $200 per impacted person. However, the smaller communities of Bevil Oaks, Pine Forest, Rose City, and Rose Hill Acres, who have been given allocations of $2 million each, are receiving up to $4,494 per person.

Median household income in Port Arthur is $32,003 (with a per capita income of $18,519) and a poverty rate of 29.3% while Bevil Oaks has a median household income of $76,574 and a poverty rate of 2.72%. [3]

There are even larger disparities between cities like Port Arthur and Beaumont and other small cities that have been slated for allocations over $1 million. For example, Taylor Landing is a city of about 237 people with a median income of $45,390[4] and with 22 people (9%) impacted. In Taylor Landing, the average household size is 2.5, so that means about 8.8 homes were impacted. With an allocation of $1,333,160, that would be $151,495.45 per home ($60,598 per impacted person). In Port Arthur, the figure is $71 per home.

---

that poverty and lack of wealth are not issues that affect Americans of all races, particularly in rural areas.

[3] https://www.census.gov/quickfacts/fact/table/portarthurcitytexas/PST045217 and https://datausa.io/profile/geo/bevil-oaks-tx/

[4] http://www.city-data.com/city/Taylor-Landing-Texas.html

While we understand CDBG-DR funds will not simply be divided between impacted persons and will be targeted through specific programs, the MOD does not include any justification for this distribution. Again, the methodology produces a distribution that is inequitable on its face. Port Arthur ends up with only about twice as much funding as cities with less than 1% of its population. Beaumont ends up getting less than twice the funding of cities that are 0.5% of its size.

The entire community of Taylor Landing may in fact need to be bought out and relocated because of repetitive flooding and future flood risk, but the methodology does not incorporate this information, it is simply a per capita distribution based on flood height. And, as we have laid out above, no consideration is given to unmet need or ability to recover.

In order to be eligible for CDBG-DR funds, the State has certified that "the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families". SETRPC's MOD places this certification at risk.

B. <u>SETRPC cannot certify that it is affirmatively furthering fair housing nor that "the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d), the Fair Housing Act (42 U.S.C. 3601-3619), and implementing regulations" as required by the Federal Register Notice, the State Action Plan, and the GLO MOD Guidelines.</u>

SETRPC's use of the "storm impact" methodology is even more troubling when looking at the figures for buyout funding per "impacted" person alongside the racial breakdown of each city. The cities in the SETRPC region with the three highest percent Black non-Hispanic populations (Beaumont, Port Arthur, and Orange) are also the three cities with the lowest per capita funding for buyouts. The result is that Port Arthur (a city that is 38.2% Black, 31.8$ Hispanic or Latino, and 22% non-Hispanic White) will receive only about twice as much funding as cities with less than 1% of its population. Beaumont (which is 34% non-Hispanic White, 48% Black, and 14.4% Hispanic or Latino) will receive less than twice the funding of cities that are 0.5% of its size.[5] Taylor Landing is 87.3% non-Hispanic White, Bevil Oaks is 81.8% non-Hispanic White, Pine Forest is 90.4% non-Hispanic White, Rose City is 88.4% non-Hispanic White, and Rose Hill Acres is 91.4% non-Hispanic White.[6]

---

[5] The City of Orange is 30.8% Black, 7.0% Hispanic or Latino, and 56.6% non-Hispanic White. All data from the U.S. Census Bureau.
[6] https://datausa.io/

1609 Shoal Creek Blvd., STE 201, Austin, TX 78701
Phone 512.473.2800 Fax 512.473.2813 www.texasappleseed.org
info@texasappleseed.net

Port Arthur, Beaumont and Orange also have the highest number of damaged owner-occupied homes in the region according to FEMA data (which we note undercounts damage to LMI households). This MOD would result in a funding allocation that would disproportionately fund recovery for overwhelmingly White communities while underfunding more diverse and majority-minority cities where the majority of damaged homes are located.

The methodology deliberately excludes unmet need, ability to recover, and relative population and does not include any review of demographics, socioeconomic charactaristics, or other factors material to an AFFH determination or a determination that the allocation methodology does not have a disparate impact based on race, color, and national origin.

Low-income communities and communities of color are disproportionately affected by and have a harder time recovering from a disaster because of both geographic and social vulnerability forced on them by segregation, discrimination, and often the cumulative effects of previous disasters, on wealth and access to opportunity. Failure to consider these issues is a failure to comply with the obligation to affirmatively further fair housing.

III. None of the MODs submitted provide required information under Part C of the Guidelines.

The Guidelines require COGs not only to complete the MOD summary form, but to include specific information about various factors.

a. Citizen Participation Plan Documentation

The Guidelines require COGs to "provide a copy of a sign-in sheet and draft minutes or official signed minutes from the public meetings and hearings in the MOD submittal" as well as "the citizen comments and the COG response to each comment received during the public hearing or public comment period." The closest any COG came to complying with this requiremet was CTCOG's inclusion of a meeting sign-in sheet.

No COG included draft minutes of the meetings and hearings, and no COG included citizen comments and the COG's response to those comments. Each COG was required to hold a hearing prior to drafting its MOD and on the draft MOD, and

Texas Appleseed submitted written comments on each MOD draft. There are no responses to these comments or any others received.

b. Long-Term Planning and Recovery , Unmet Housing Needs, and LMI Requirements

None of the MODs submitted include an explanation of how the MOD will foster long-term community recovery, address unmet housing need, or meet the LMI requirement in the Federal Register. Many MODs will in fact inhibit long-term community recovery and result in an ineffective, inefficient, and inequitable outcome. Neither a description of future suballocations and how decisions will be made on proposed projects, nor a recitation of program requirements constitutes and explanation of how the proposed method of distribution will achieve these goals.

The failure to use planning documents, including hazard mitigation plans, to establish funding priorities is disturbing and likely to result in ineffective and incomplete disaster recovery without consideration of mitigating future disasters. The allocation methodologies used by the COGs exacerbates this problem, by making adequate funding for effective programs unavailable and misdistributing funding.

i. Buyout and Accquistion Programs:

Allocating funding for a buyout program that does not include whether areas allocated funding are prone to and have a history of repeated flooding, the level of risk to the residents or neighborhoods, and whether there are other options for hazard mitigation is ineffective and inefficient. Buyouts are not a panacea for all Hurricane Harvey damage, but should be used only when they are the best or only option.[7]

The COGs must make use of data available through the National Flood Insurance Program about concentrations of repetitive loss properties in order to effectively suballocate this funding. The Community Rating System (CRS) offers jurisdictions advice on locating concentration areas of repetitive loss properties, collecting remote data on these properties and determining the cause of the ongoing flooding problems there. Many jurisdictions that have applied for FEMA Hazard Mitigation

[7] This is particularly true in areas where the majority of Harvey damage was caused by wind and not flooding. Where buyouts are not the best solution, GLO may want to consider allowing jurisdictions to allocate that funding to other types of mitigation or multifamily rental housing.

Grants also have specific local information about repeat flooding and flood risk. This type of investigation will be essential in locating areas that are suited to buyouts, as opposed to individual homes that were damaged and should be rebuild with mitigation in mind or areas where poor infrastructure is to blame.

Allocating small amounts of funding to a large number of jurisdicitons is also ineffective and not conducive to long-term recovery and planning or mitigating future disaster damage. Buying out a few homes in scattered areas will result in "checkerboard" neighborhoods (lack of concentration of buyouts in affected areas) that leaves remaining residents vulnerable to future disasters (and unable to access other disaster recovery resources); strain resources and city services because of the continued need to serve areas that have been partially bought out; and recreate current patterns of vulnerability and flood hazard. One million dollars is not enough to fund a significant buyout program that doesn not exacerbate these problems. The purpose of GLO's one million dollar floor for buyout programs was to ensure that they would be feasible and effective, it was not a prescription to allocate that amount to any area with a certain level of storm damage. Buyout funding needs to be concentrated in areas that have repetitive flood losses that can only be addressed through an organized acquisition program that offers households sufficient money to move to an equivalent home in a safer area.

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

LMI households must be provided with enough funds that the choice to move is a realistic one; that they can actually move to a safer area. The worst-case scenario is that families who accept a buyout are unable to find housing in safer areas and are forced to move back into their original or less safe neighborhoods.

The decision of whether to use pre- or post-storm home value is also an important one. In particular, using the pre-storm value of a home to determine disaster recovery program benefit limits often has a discriminatory impact on the basis of race or ethnicity as well. Following Hurricane Katrina, the National Fair Housing Alliance (NFHA), the Greater New Orleans Fair Housing Action Center (GNOFAC), and African-American homeowners sued the State of Louisiana and the U.S. Department of Housing and Urban Development (HUD) alleging racial discrimination in the State's CDBG-DR funded Road Home Program, which provided grants to homeowners to repair or rebuild their homes. The original grant formula was based on the pre-storm value of a home, which resulted in African-American homeowners receiving less repair money than White homeowners, because their homes were located in neighborhoods with lower home values based on market discrimination and the legacy of segregation. Many African-American families were left unable to complete repairs or return home or living in uninhabitable houses. As Louisiana Congressman Cedric Richmond said when the case was settled in 2011,

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

COGs and local jurisdictions should be particularly careful that they are not using a program or allocation formula that provides lesser benefits to serve communities and homeowners of color. **Local program guidelines must be identical; no family should have unequal access to disaster recovery simply because of where they live.**

ii. Local Infrastructure Programs:

Resilience is the ability to withstand and recover from disasters quickly, in a way that mitigates future damage and vulnerability, and in a way that goes beyond physical infrastructure. Again, low-income communities and communities of color are disproportionately affected by and have a harder time recovering from a disaster because of both geographic and social vulnerability forced on them by segregation, discrimination, and often the cumulative effects of previous disasters, on wealth and access to opportunity. Historical disinvestment, exclusionary zoning, and other forms of intentional discrimination have pushed communities of color into geographically vulnerable areas, deprived them of adequate infrastructure, and left them out of disaster recovery in the past. For its Natural Disaster Resilience Competition (NDRC) HUD defined a resilient community as one which "is able to resist and rapidly recover from disasters or other shocks with minimal outside assistance," and that plan and implement disaster recovery that mitigates future threats "while also improving quality of life for existing residents and making communities more resilient to economic stresses or other shocks." Improving the quality of life for existing residents and making them more resilient to other shocks, including economic stress that can push middle and working class families into poverty following a disaster, is at the core of our concern for equity in disaster recovery.

No COG referenced or attached any planning documents; including hazard mitigation plans in its MOD and these plans were clearly not used to establish funding priorities.

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

Much like buyout programs, the proposed distributions of funding are likely to result in individual jurisdictions receiving funding inadequate for many major disaster recovery infrastructure projects, which means that jurisdictions will be funding whatever fits under the funding cap instead of the actual most urgent needs. Simply dividing the infrastructure funding between localities diverts funds away from the areas with the most damage and the most critical infrastructure needs. This method of distribution also fails to take into account historical disinvestment in communities of color that left them with inadequate infrastructure pre-storm and does nothing to affirmatively further fair housing.

COGs should strongly consider an application based distribution process that selects projects based on the most urgent needs and as part of a long-term disaster recovery and mitigation plan. While we understand that this may feel unequal to individual jurisdictions, it would be the most effective use of disaster recovery funding.

We appreciate GLO's work, and your consideration of these comments. We look forward to seeing the COGs publish compliant MODs for public comment. Please let us know if we can provide further information or be helpful in any way.

Madison Sloan
Director, Disaster Recovery and Fair Housing Project
Texas Appleseed
msloan@texasappleseed.net
512-473-2800 ext. 108