



June 10, 2018

David B. Turkel, Executive Director  
Harris County Community Services Department  
Attn: HCCSD; Planning & Development Section  
8410 Lantern Point Drive, Houston, TX 77054  
Via email to: [plancomments@csd.hctx.net](mailto:plancomments@csd.hctx.net)

**RE: Comments on Harris County's Disaster Recovery Voluntary Buyout Program Guidelines**

Dear Mr. Turkel:

We appreciate the opportunity to provide the following comments on Harris County's Disaster Recovery Voluntary Buyout Program Guidelines for 2015, 2017, and 2017 Community Development Block Grant for Disaster Recovery (CDBG-DR) funds. We commend the County for proposing a buyout program that ensures that families have the opportunity to move to safer areas, including incentives and other necessary funding for LMI families that would otherwise be trapped in flood prone areas. These guidelines outline a program that is more equitable, that will increase both community and individual resilience, and is much more likely to accomplish the goal of moving families out of harm's way and reducing flood vulnerability than previous buyout programs for other disasters.

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

I. Up to 100% of CDBG-DR Buyout Funds Should Benefit LMI Families.

Because of the proposed (and important) use CDBG-DR funds for incentives that are not available or are not available to the same extent in other buyout programs, this program should serve LMI households first, and only if there is remaining funding after their needs have been met should the program buyout higher income homeowners. LMI families are the least have the least resources which which to relocate to a safer area on their own or with only the pre-storm value of their home, 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. The worst case scenario is that families who accept buyout are unable to find housing in safer areas and are forced to move back into their original or less safe neighborhoods.

## II. There Should be Community Participation in Implementing the Program

We appreciate that the County will be providing case management to ensure that individuals and families “understand the program’s housing options” and to decrease barriers to participation based on the special circumstances of the survivor’s need. In order to make a real choice about the program, participants must have full information about their options. Relocating, away from an existing community or a home that has been in a family for generations, can be difficult and even traumatic. Case management is a critical component of the program.

However, we also recommend that the implementation process include extensive community input. Local communities must have a citizen participation process for drafting buyout guidelines. Without community buy-in, a voluntary buyout program can result in a patchwork of empty and occupied homes, creating a blighted neighborhood. While the guidelines indicate that Harris County appreciates the issue of checkerboarding neighborhoods, it must still ensure that it is prioritizing LMI survivors and neighborhoods, and not using a limited number of households that fit the LMI national objective to justify spending on higher-income households who may access to other resources and programs that would help them relocate.

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

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

The potential discriminatory effects (and their impact on the success of a buyout program) is another reason the provision of incentives and other funds to ensure that LMI families have equitable access to moving to safety following a buyout is so critical.

### III. Clear Title Issues and Other Barriers to Participation for LMI Households

We understand that clear title is necessary to transfer property under a buyout program, however, it is essential that a title-clearing program accompanies the buyout program.

We note that legal services are eligible public service activities under the Housing and Community Development Act. Both case management that includes mobility counseling, and legal assistance with title clearing are essential to a successful and equitable buyout program. Inability to show clear title because of heirs' property ownership is a barrier to choosing to move to a safer location, particularly for African-American homeowners because of the prevalence of heirs property in African-American communities. The Harris County Action Plan includes legal services as a potential public service eligible for CDBG-DR funding; it should be a priority for that funding. While the Action Plan states that "the Harris County Advisory Services will provide owners with referrals and recommendations on title clearance assistance, such as local legal aid organizations" the County must ensure that these organizations have the capacity and funding to take on these cases. The State funded a successful title-clearing project following Hurricane Ike which can serve as a model for a County program.

The provision of alternative ways to verify occupancy also removes a barrier to participation which is particularly likely to affect LMI applicants, who may not have known they were entitled to a homestead exemption, for example. We recommend that a similar alternative documentation be available to tenants, instead of requiring a lease agreement. LMI tenants, in particular, may not have a formal lease or may not have been given a copy of the lease. Advocacy groups working with tenants on post-disaster issues have found not only that these tenants have not been given

copies of their leases, but that landlords have refused to provide copies or have required third party intervention to obtain them.

The availability of self -certification in Duplication of Benefits determinations is also important. Because the CDBG-DR funded programs are put in place approximately a year or more post-disaster, households may have lost receipts (including to a subsequent natural disaster) or those receipts may no longer be readable. Resources like scanning receipts and uploading them in order to preserve them are less or not available to LMI individuals.

Issues like Contract for Deed and land leases (e.g. for mobile homes) are also barriers more likely to affect LMI households. The Action Plan states:

*Properties where there is a different owner of the land than the owner of the dwelling unit(s), such as in Contracts for Deed, long-term land leases, and often with mobile homes, may be assisted through the buyout program only if the property owner converts the contract to full ownership. Any persons displaced by such conversion will be provided replacement housing assistance following applicable URA requirements. Harris County reserves the right to review each application on a case-by-case basis to determine the appropriate assistance amount.*

This provision needs to be clarified. If the property owner in a Contract for Deed “converts the contract to full ownership”, that ownership is not likely to be vested in the household buying the house. In addition to URA assistance, buyers on Contract for Deed (or other lease to own contracts) must be repaid any money they have paid to the deed holder over and above Fair Market Rent. Legal services should be provided to these households in order to resolve Contract for Deed issues.

#### IV. Incentives

Harris County’s provision of housing incentives “to allow owners the ability to relocate to an area with reduced risk of flooding while not being made worse off financially or in terms of housing quality by participating in the program” is critical to program success, equity, and mitigation. We applaud the inclusive list of eligible costs, which includes not only the buyout purchase price, but incentives like moving expenses, replacement housing incentives, rehabilitation incentives, and social vulnerability incentives.

The final version of the guidelines, however, should clarify how the equity incentive, defined as “provided to households who agree to purchase a home at or under 80 percent of area median value (\$169,679.00) to create an equitable financial participation to volunteers” will work. Does this mean non-LMI households can choose to buy a cheaper home and receive the incentive, even though that would reduce the number of homes affordable to LMI families?

## V. Mobility Counseling

We appreciate that the County will be providing case management to ensure that individuals and families “understand the program’s housing options” and to decrease barriers to participation based on the special circumstances of the survivor’s need. In order to make a real choice about the program, participants must have full information about their options. Relocating, away from an existing community or a home that has been in a family for generations, can be difficult and even traumatic. Case management is a critical component of the program.

Another critical component of mobility counseling and providing survivors with the ability to make a fully informed choice are the Relocation Advisory Services (“additional case management and real estate services to assistance vulnerable households locate eligible housing in lower risks areas”) included in the program.

## VI. Certifications

The guidelines must clarify the listed certifications. The list indicates that applicants must “[s]ign a Certification of Residency attesting to the fact that the new address where the applicant will relocate to or has already relocated to an area of reduced flood risk.” It will be impossible for most applicants to provide this information at the application stage, particularly LMI households that need incentives and perhaps mobility counseling and real estate services to locate a new home. The expectation that applicants will already have located (and know they will be able to buy) a new home before they are even determined eligible for the program, is unreasonable. Applicants should only be required to sign a certification that they will relocate to a lower risk area until they are able to obtain an new address for the program to review, or the guideline must clarify that this certification does not have to be signed until the applicant has been determined eligible and can realistically provide such an address.

## VII. Appeals and Grievance Process

The appeals and grievance process must be set out in detail. For example, at what point are households entitled to an informal hearing versus a third-party determination. The process description should also include how access will be provided for persons with disabilities and persons with limited English proficiency.

## Conclusion

We strongly support Harris County’s commitment to ensuring that families have the opportunity to move to safer areas, including incentives and other necessary funding for LMI families, and prioritizing LMI survivors for funding. We look forward to seeing a final version of the guidelines, and hope other jurisdictions will follow the County’s lead in drafting their buyout programs.

Please let us know if you have questions or concerns about our comments, or if we can be helpful in any other way.

Sincerely,

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