

LAW OFFICES OF
TEXAS RIOGRANDE LEGAL AID, INC.

4920 NORTH INTERSTATE 35
AUSTIN, TEXAS 78751
(512) 374-2700



June 26, 2018

Timothy Smyth
Deputy Assistant Secretary
Office of Fair Housing and Equal Opportunity
Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Garry Sweeney
Regional Director
Department of Housing and Urban Development
Southwest Office
801 Cherry St., Unit 45, Suite 2500
Fort Worth, TX 76102

Re: Challenges to the Civil Rights Certifications of the Texas General Land Office

Dear Deputy Assistant Secretary Smyth and Regional Director Sweeney,

I write on behalf of my client, Texas Low Income Housing Information Service (“Texas Housers”), to request that you and your colleagues take immediate action to examine the validity of the current civil rights certification of the Texas General Land Office (“GLO”) in connection with the State Action Plan for Round One of CDBG-DR for Hurricane Harvey Recovery (the “Action Plan”) pertaining to \$5.024 billion in appropriations under the Community Development Block Grant-Disaster Recovery (“CDBG-DR”) program approved on June 25, 2018, as well as any forthcoming certifications related to similar CDBG-DR funds.¹

For your consideration, I have included a copy of the administrative complaint submitted by Texas Housers pursuant to 42 U.S.C. § 3610 of the Fair Housing Act, 42 U.S.C. §3601 *et seq.* (the “FHA”), alleging violations by the State of Texas of the FHA, Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, Section 109 of the Housing and Community Development Act of 1974 (as amended, the “HCDA”), and all implementing regulations. This letter, coupled with the evidence set forth in the administrative complaint, provides compelling evidence to support HUD’s rejection of the GLO’s certifications that it is complying with its obligations under HUD requirements, civil rights laws, or its separate obligation to affirmatively further fair housing (“AFFH”).

¹ TEXAS GENERAL LAND OFFICE COMMUNITY DEVELOPMENT & REVITALIZATION PROGRAM, STATE OF TEXAS PLAN FOR DISASTER RECOVERY: HURRICANE HARVEY – ROUND 1 [hereinafter Action Plan].

In order to receive CDBG-DR funds, the GLO must certify its compliance with Title VI, the FHA and that it “will affirmatively further fair housing.”² The requirement to affirmatively further fair housing obligates the GLO, among other things, to take “meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.”³ It also means that the GLO will take “no action that is materially inconsistent” with its AFFH obligation and assure “that units of local government funded by the State comply with their certifications to affirmatively further fair housing.”⁴ Overall, this duty reflects Congress’ desire that “HUD do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases.”⁵

The GLO’s failure to take meaningful actions to overcome the extensive, longstanding patterns of racial segregation throughout the area impacted by Hurricane Harvey constitutes a violation of its AFFH obligations. Its view of CDBG-DR funds as simply a means to provide disaster relief significantly limits its ability to promote “a more integrated society.”⁶ For the failures included below and otherwise detailed herein, HUD must promptly act to declare the GLO’s civil rights certification inaccurate and unsatisfactory.

1. The GLO, for all practical purposes, has rendered the Analysis of Impediments, dated October 18, 2013 (the “2013 AI”), meaningless.⁷ It failed to effectively use the goals and action items of the 2013 AI to inform its efforts to overcome impediments to fair housing. At no point in the Action Plan does the GLO even reference it and its decisions often directly contradict its recommendations.
2. The GLO misunderstands its AFFH obligations by deeming a project-level analysis sufficient to meet its AFFH obligations. It does not provide meaningful AFFH guidance in the Action Plan or even direct subrecipients to comply with their own

² *Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Recovery Grantees*, 83 Fed. Reg. 5844, 5867 (Feb. 9, 2018) [hereinafter HUD Notice].

³ *Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42,272 (July 16, 2015) (codified at 24 C.F.R. pt. 5, et al.) [hereinafter AFFH Rule].

⁴ *Housing and Community Development Act*, 24 CFR § 570.487(b).

⁵ *N.A.A.C.P. v. Sec’y of Hous. & Urban Dev.*, 817 F.2d 149, 155 (1st Cir. 1987); *see also Otero v. N.Y. City Hous. Auth.*, 484 F.2d 1122 (2d Cir. 1973) (Section 3608 requires public housing authority admission plan furthers the FHA’s goals to take action to further integration and avoid segregation after demolition and redevelopment of low income housing at a specific site).

⁶ *See Texas Dep’t of Housing and Community Affairs v. Inclusive Communities Project*, 135 S. Ct. 2507, 2526 (2015) (“The Court acknowledges the Fair Housing Act’s continuing role in moving the Nation towards a more integrated society.”).

⁷ *See generally* TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, STATE OF TEXAS PLAN FOR FAIR HOUSING CHOICE: ANALYSIS OF IMPEDIMENTS (2013) [hereinafter 2013 AI].

AIs.⁸ The Action Plan also does not include repercussions in the event subrecipients adopt rules, policies, or programs that have the effect of discriminating or perpetuating segregation on the basis of race, color and national origin. Thus, the GLO cannot certify that it has met its own AFFH obligations when its and its subrecipients AFFH obligations are, at best, an afterthought.

3. The GLO seeks to reinforce the separate and unequal status quo for low- and moderate-income (“LMI”) communities of color that characterized the recovery process after Hurricanes Ike and Dolly before Texas Housers intervened. In failing to implement known safeguards from the 2010 Conciliation Agreement between Texas Housers, Texas Appleseed and the State of Texas (the “2010 Conciliation Agreement”), the GLO has regressed.⁹ Thus, Texas Housers asks that HUD require the GLO to agree to offer equivalent protections from past recoveries, including increased homeowner mobility.

Given the parallels between the conditions that prompted involvement by Texas Housers after Hurricanes Ike and Dolly and the recovery process after Hurricane Harvey, Texas Housers remains optimistic to work alongside the GLO at this early point in the process. Ordinarily, a HUD finding that the GLO’s certification is legally insufficient would permit HUD to bar it from receiving CDBG-DR funds and require updates to the 2013 AI and a revised Action Plan with appropriate certifications to HUD.¹⁰ However, in recognizing that the process for the 2019 Analysis of Impediments has begun and that CDBG-DR funding plays a critical role in the recovery process, Texas Housers requests that HUD secure the assurances set forth on Exhibit A from the GLO to address these shortcomings identified in this letter before allowing the GLO to draw down its funds pursuant to the Action Plan or future allocations. Unless and until these voluntary assurances have been made, HUD must act promptly to declare any certification by the GLO regarding compliance with its civil rights certification inaccurate and unsatisfactory.

A. The GLO’s Actions Do Not Reflect Any Effort to Recognize or Address the Goals and Impediments of the 2013 AI

HUD guidance states that “the AI should continue to be updated every three to five years in accordance with the HUD Fair Housing Planning Guide (1996).” Additionally, the Affirmatively Furthering Fair Housing regulations (the “AFFH Rule”) promulgated by HUD in 2015 requires Assessments to Fair Housing to be updated for material changes, including

⁸ 24 CFR 570.487(b) (requiring the State assure “that units of local government funded by the State comply with their certifications to affirmatively further fair housing”); *See also* OFFICE OF FAIR HOUSING AND OPPORTUNITY, HUD, FAIR HOUSING PLANNING GUIDE: VOLUME 1 at 3.3-3.49 (1996) (#HUD-1582B-FHEO). [Hereinafter Fair Housing Planning Guide].

⁹ *See* UNITED STATES DEP’T OF HOUSING AND URBAN DEVELOPMENT, CASE NO. 06-10-0410-8 (TITLE VII); CASE NO. 06-10-0210-9 (SECTION 109), CONCILIATION AGREEMENT 17 (2010) [hereinafter 2010 Conciliation Agreement].

¹⁰ HUD Notice at 5844.

disasters.¹¹ However, in these circumstances, Texas Housers instead asks the GLO to prioritize the goals and action items identified by the 2013 AI to overcome existing impediments instead of focusing on updating the 2013 AI.¹² HUD must require the GLO to more effectively use the six fair housing goals and action items identified in the 2013 AI to inform how it and its subrecipients, at its direction, will address the systemic disinvestment responsible for making many communities of color susceptible to flooding in the first place.

In the current Action Plan, the GLO does not make any attempt to incorporate even minimal action items from the 2013 AI to address the fair housing impediments. The AFFH obligation requires that the GLO must certify not only that it is not discriminating but that it will take meaningful actions and then *actually* take them.¹³ For example, Goal No. 1 is to “[c]reate greater mobility and improve housing opportunities for low income households and members of protected classes,” which addresses the following impediments and observations:

IMPEDIMENT NO. 6—There are barriers to mobility and free housing choice for protected classes.

OBSERVATION NO. 1—Racial and ethnic concentrations exist in many areas within Texas.¹⁴

Here, the GLO’s failure to take the action items below shows that its reluctance to invest funds in a manner that overcomes existing barriers to community integration.

Recommended Action	Actions Taken By GLO
“[E]ngage in practices that encourage local governments to work to support outcomes, which further fair housing, including...[r]equiring compliance with fair housing laws.” ¹⁵	The Action Plan does not direct entitlement subrecipients to incorporate their own AIs into the planning process or require non-entitlement jurisdictions to refer to the 2013 AI in making decisions on activities to be funded.
Create a simpler version of the Fair Housing Activity Statement—Texas (“FHAAT”) form for recipients of CDBG-DR funds to describe their AFFH efforts to the GLO as done after Hurricanes Ike and Dolly. ¹⁶	The Action Plan does not contain any similar requirement for FHAAT forms after Hurricane Harvey. ¹⁷

¹¹ 24 CFR § 5.164. The requirement to update in the event of a disaster also applies to an AI that continues to be in effect given, among other things, the applicability of the AFFH Rule and HUD’s view that “the objectives of the AFH—identifying significant contributing factors and related fair housing issues and establishing goals for overcoming the effects of those—to enhance those of the AI—identifying impediments to fair housing choice.” HUD, OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY, INTERIM GUIDANCE FOR ADDITIONAL INFORMATION ON COLLABORATION, at 6 (January 18, 2017) *available* at <https://www.hudexchange.info/resources/documents/Interim-Guidance-for-Program-Participants-on-Status-of-Assessment-Tools-and-Submission-Options.pdf>.

¹² Fair Housing Planning Guide at 3.2; 2013 AI, Section VIII at 7.

¹³ *See also Langlois v. Abington Housing Authority*, 234 F. Supp. 2d 33, 73, 75 (D.Mass. 2002) (holding that “[t]hese regulations unambiguously impose mandatory requirements on the [recipients] not only to certify their compliance with fair housing laws, but actually to comply.”)

¹⁴ 2013 AI, Executive Summary at 4-7. “For the purposes of this study, an “observation” is an identified fair housing issue that may create an impediment to fair housing choice; but for which a direct link to a cause or effect (“nexus”) of an action on a protected class has not been established.” 2013 AI, Section VIII at 2.

¹⁵ 2013 AI, Executive Summary at 4-7.

¹⁶ 2013 AI, Executive Summary at 5.

<p>“[R]eward communities for activities that mitigate such barriers and promote housing choice” while ensuring “a method is in place to provide corrective actions as a condition of past and future funding (similar to a HUD voluntary compliance agreement).”¹⁸</p>	<p>The GLO’s failure to address corrective actions for jurisdictions with significant histories of fair housing violations emboldens the discriminatory behaviors limiting housing opportunities for low-income households and protected classes in the first place.</p>
---	--

B. By Focusing Solely on Not Discriminating, the GLO’s Actions Are Not Sufficient to Meet Its Expansive AFFH Obligations to End Discrimination

The GLO’s disregard for its AFFH obligations is evident in both the Action Plan and the minimal guidance it has provided on the issue of fair housing. During a presentation by the GLO before potential landlord applicants, the GLO representative described fair housing as one of “those strings attached” to qualifying for free money available and included the following characterization of AFFH:

There will also be a discussion on whether it affirmatively furthers fair housing. That is a very nebulous term to say the least right now. HUD had some definitions, and now they pulled those definitions. We’re just trying to figure out what they want us to do and how they come up with the definition of affirmatively furthering fair housing. But, the theory behind it is that they just don’t want people dumping units into the poor side of town.¹⁹

The GLO further demonstrates its misunderstanding of AFFH obligations in the Action Plan by deeming a project-level analysis sufficient to meet its obligations at the state level.²⁰ By relying on isolated assessments of individual projects to lessen segregation of minorities and provide housing choices in higher opportunity areas, the GLO violates its own AFFH obligations. The GLO cannot meet its AFFH obligation by potentially exercising a veto power over projects brought to it that do discriminate. A correct assessment would require an assessment of the GLO’s program on fair housing as well as both an individual and cumulative assessment of the specific developments assisted with federal funds in each respective area. Only by identifying the complex barriers that have perpetuated segregation in an area can the GLO take the actions

¹⁷ Although the FFAST form is limited as far as its ability to bring about substantive compliance with AFFH, it, at least, begins the discussion of potential barriers to fair housing and provides the GLO with a means to assess a jurisdiction’s understanding of fair housing laws and recommend areas for improvement. Reviewing these FFAST forms provides fair housing advocates an opportunity to target additional outreach in non-compliant areas and provide a basis for which the GLO can decide to take corrective actions.

¹⁸ 2013 AI, Executive Summary at 5.

¹⁹ ARANSAS COUNTY, ROCKPORT-FULTON LONG TERM RECOVERY, HURRICANE HARVEY AFFORDABLE RENTAL HOUSING PROGRAM, (February 20, 2018), *available at* <https://www.youtube.com/watch?v=AOGRfaUOnbc&feature=share>. (Hereinafter Rockport-Fulton Affordable Rental Presentation).

²⁰ Action Plan at 62.

needed to break them down.²¹ The need for advanced planning to fulfill AFFH obligations in the disaster context is crucial given the immense pressure to provide affordable housing as quickly as possible regardless of the location. Simply providing affordable housing does not equate to addressing patterns of segregation and may instead result in the perpetuation of those patterns.²² In making its decisions as to what programs to offer and their respective funding levels, the GLO has failed to acknowledge how its decisions promote racial and economic integration.

In its responses to public comments on the action plan for the first \$57.8 million in CDBG-DR funds, the GLO claimed that all programs and projects will undergo individual review for AFFH compliance and that the GLO will partner with Texas Applesseed to conduct AFFH compliance review for each program and project.²³ However, there is no indication that the GLO honored its minimal commitment to partner with Texas Applesseed for AFFH review of the \$1.5 million award to rehabilitate 48 apartments in the Oak Harbor Apartments and \$5 million to reconstruct 50 apartments in the Salt Grass Apartments, both in Rockport, Texas approved on June 6, 2018.²⁴

C. The GLO Discriminates and Permits Subrecipients With Little Expertise or Capacity to Comply with Civil Rights Obligations to Discriminate

The GLO has a *dual* responsibility to not only affirmatively further fair housing in its own activities but also to ensure that each subrecipient complies with its individual certifications. As a further affirmation to the GLO's role in the AFFH process, HUD requires the inclusion of "a description of actions taken in that quarter to affirmatively further fair housing" in its Quarterly Progress Report.²⁵ Despite this requirement and the 2013 AI's recognition of "inadequate information available to local governments, stakeholders and the public about fair housing requirements and programs to assist persons with disabilities and low income residents," the GLO has tasked local jurisdictions with administering the Local Buyout and Acquisition Program and the Local Infrastructure Program contrary to the recommendations of the 2013 AI.

²¹ Texans have continued to express their opposition to construction of multi-family housing in areas of higher opportunity. *See, e.g.,* Mary Huber, *Homeowners Oppose Proposed Hunters Crossing Apartments in Bastrop*, AUSTIN AMERICAN-STATESMAN (Feb. 2, 2017), <https://www.statesman.com/news/local/homeowners-oppose-proposed-hunters-crossing-apartments-bastrop/n412upIJ35WUAe24UA9XUO/> ("Twenty of 29 homeowners opposed the permit, citing concerns including increased crime and traffic and lowered property values...").

²² *See U.S. ex rel. Anti-Discrimination Ctr. of Metro New York, Inc. v. Westchester Cty., N.Y.*, 668 F. Supp. 2d 548, 564–65 (S.D.N.Y. 2009) ("As a matter of logic, providing more affordable housing for a low income racial minority will improve its housing stock but may do little to change any pattern of discrimination or segregation. Addressing that pattern would at a minimum necessitate an analysis of where the additional housing is placed.").

²³ Texas General Land Office, COMMUNITY REDEVELOPMENT AND REVITALIZATION PROGRAM, STATE OF TEXAS PLAN FOR DISASTER RECOVERY: HURRICANE HARVEY, at 74 (Jan. 2018) (as submitted to HUD for \$57.8 million).

²⁴ COMMUNITY DEVELOPMENT & REVITALIZATION PROGRAM, TEXAS GENERAL LAND OFFICE, STATE OF TEXAS PLAN FOR DISASTER RECOVERY: HURRICANE HARVEY 74 (March 6, 2018). Press Release, Texas General Land Office, Cmr. George P. Bush Awards \$6.5 Million in Funds to Rebuild Rental Housing in Rockport Damaged By Hurricane Harvey (June 6, 2018), <http://www.glo.texas.gov/the-glo/news/press-releases/2018/june/cmr-george-p-bush-awards-6-point-5-million-in-funds-to-rebuild-rental-housing-in-rockport-damaged-by-hurricane-harvey.html>.

²⁵ HUD Notice at 5853.

Many of these local units of government have little expertise or capacity to comply with the civil rights and AFFH obligations that are preconditions to the receipt of federal funds.²⁶ HUD itself recognizes the unique challenges for smaller jurisdictions in the recovery process. HUD created a Federal/State Long Term Disaster Recovery Strike Team (the “Strike Team”) to meet with leadership of smaller areas affected by Hurricane Harvey “to help these communities develop strategies and secure the financial resources and leveraging needed to achieve long-term recovery.”²⁷ After meeting with these jurisdictions, the Strike Team summarized its findings and noted that these units of local government expressed doubts about having the capacity or being prepared to address long-term recovery.²⁸ As recently as last month, a representative of the City of Port Arthur remarked, “[the] GLO is going to have to staff us up to do this...it’s amazing how many months we are still scurrying for information” on program guidelines and application processes.²⁹

Additionally, coupled with the lack of guidance from the GLO, understanding the nuances of what it means to affirmatively further fair housing takes time and experience that units of local government cannot simply acquire through increased training. For example, at a February 2018 meeting of the Aransas County Commissioners Court, a long-term recovery team specialist, expressed a commitment to showing “that we can do affordable housing, quality affordable housing in the area, and we are able to do so because the utilities are there and the ownership is through the City and the County.”³⁰ Yet, as part of initial proposals to increase housing supply, Aransas County was considering “some sites that are maybe a little bit more in the perimeter” in order to keep costs down.³¹ Here, conflating affordable housing with fair housing can result in a violation of AFFH obligations for jurisdictions that do have the right intentions. The recovery specialist also added that they were waiting to turn in certain bids until other entities do so in order “to see what they put in their bids and that we are also meeting all of the State and Federal requirements,” which speaks to the difficulties these local jurisdictions face in navigating the complex grant process and the slew of federal requirements that comes with it.³²

HUD also requires the State to certify that it and any subrecipient “currently has or will develop and maintain the capacity to carry out disaster recovery activities in a timely manner.”³³

²⁶ 2013 AI, Section VIII at 7.

²⁷ FEDERAL/STATE HURRICANE HARVEY LONG-TERM DISASTER RECOVERY STRIKE TEAM, REPORT DECEMBER 2017-MARCH 2018 at 1 (2018), available at <https://www.hud.gov/sites/dfiles/State/documents/ReportDisasterStrikeTeamApril18F.docx>.

²⁸ *Id.* at 2.

²⁹ Ken Stickney, *Port Arthur Preps to Maximize Federal Aid*, PA NEWS (May 29, 2018, 9:53 AM), <https://www.panews.com/2018/05/29/port-arthur-preps-to-maximize-federal-aid/>.

³⁰ ARANSAS COUNTY, MINUTES OF THE COMMISSIONERS’ COURT REGULAR MEETING – FEBRUARY 12, 2018, <https://www.aransascountytexas.gov/commissioners/e-docs/02-12-18%20Minutes%20CC%20Reg%20Mtg.pdf>.

³¹ *Id.*

³² *Id.*

³³ HUD Notice at 5867.

However, instead of complying with this requirement, the GLO is setting itself up to repeat past mistakes. After Hurricane Ike, the unconscionable delays by the City of Galveston’s affordable housing recovery resulted “in a community that is less economically diverse and a city that is likely to face serious workforce challenges in the coming years as it seeks to compete in one of the fastest-growing regions in the nation.”³⁴ Despite the known consequences of prolonged disaster recovery, the GLO has chosen not to specify timelines or benchmarks for the recovery process. Not only does the failure to carefully monitor capacity and timeliness put the entire CDBG-DR award to the State in jeopardy, it makes the recovery process more expensive and disproportionately prevents displaced renters from returning to the support networks in their communities.

D. The GLO Cannot Meet Its AFFH Obligations When It Fails to Hold Subrecipients Accountable for Egregious Fair Housing Violations

Even putting aside issues of capacity, training and the ease with which jurisdictions with the right intentions can violate fair housing law, many of the jurisdictions set to receive CDBG-DR funding have a history of fair housing violations. By allocating funds to these jurisdictions, the GLO is allowing discrimination to flourish at the local level despite its recognition that “[n]ot in My Backyard syndrome (NIMBYism) can create barriers to housing choice for protected classes in some communities.”³⁵ The GLO must explicitly address its plans to ensure that these jurisdictions, including the City of Beaumont, the City of Pasadena, the City of Galveston, and the City of Houston, do not perpetuate racially discriminatory housing and infrastructure spending with the Hurricane Harvey CDBG-DR funds.

It is especially imperative that the GLO set clear expectations as to AFFH obligations for Harris County, the recipient of \$1.2 billion in CDBG-DR funds, and the City of Houston, the recipient of \$1.1 billion in CDBG-DR funds, given that each will be responsible for implementing their local programs.³⁶ Harris County and the City of Houston are required to obtain approval from the GLO before submitting their action plans to HUD, and the GLO, as the state grantee, is no less responsible for their failures to fulfill AFFH obligations than it is for the rest of the areas impacted by Hurricane Harvey. The GLO has neglected enforcement of even the simplest requirements in the Action Plan, given that many council of governments had yet to post citizen participation plans.³⁷ The GLO has a heightened responsibility to review how the policies, practices and activities of its subrecipients affirmatively further fair housing.³⁸ Having

³⁴ KIM DANCY, FED. RESERVE BANK OF DALLAS, SEIZING THE OPPORTUNITY FOR EQUITABLE AND INCLUSIVE REDEVELOPMENT: GALVESTON’S TRIALS AFTER HURRICANE IKE OFFER LESSONS FOR OTHER COMMUNITIES 5, <https://www.dallasfed.org/-/media/Documents/cd/pubs/galveston.pdf>.

³⁵ 2013 AI, Section VIII at 5.

³⁶ See Action Plan at 8–9.

³⁷ Action Plan at 79 (requiring each COG to develop a citizen participation plan).

³⁸ 24 CFR 570.487(b) (requiring the State assure “that units of local government funded by the State comply with their certifications to affirmatively further fair housing”).

failed to conduct such a review, the GLO cannot certify that it has met its own AFFH obligations.

The severe segregation across the area impacted by Hurricane Harvey is not a coincidence. Houston, one of the areas hardest hit by Hurricane Harvey, is among the most segregated cities in Texas.³⁹ Its demographic composition is 25.1% non-Hispanic white, 22.8% non-Hispanic African American, and 44.3% Hispanic or Latino of any race.⁴⁰ The city has historically experienced a high rate of segregation and continues in that fashion today. Its white/African American dissimilarity index is 75.5, meaning 75.5% of all white residents would have to relocate to other neighborhoods in order to produce an even distribution of African-American and white residents throughout the city.⁴¹ Other similarly impacted cities and counties through the area impacted by Hurricane Harvey also have high dissimilarity index scores. For instance, Beaumont's score is 62.2, and Galveston's score is 52.⁴² The perpetuation and exacerbation of these patterns of segregation, among other things, is a direct result of the GLO's refusal to hold the following subrecipients accountable and HUD's failure to do the same for the GLO in violation of its AFFH obligations.

The City of Beaumont

HUD has been complicit in the City of Beaumont's failure to meet its AFFH obligations since 1985 when the Eastern District of Texas found that HUD "knowingly created, promoted, and funded racially segregated housing in East Texas in violation of the United States Constitution and federal civil rights laws," which included Beaumont.⁴³ This pattern of refusing to locate affordable housing anywhere but the most segregated, polluted, economically depressed areas and overall contempt for fair housing obligations has not stopped. Instead of taking advantage of much-needed CDBG-DR funding after Hurricane Ike, Beaumont instead chose to forego \$12.5 million rather than desegregate its affordable housing.⁴⁴ In 2013, HUD first rejected the Beaumont Housing Authority's application to rebuild Concord Homes, a 100-unit public housing facility, in Beaumont's North End. HUD strongly rebuked the City for locating Concord Homes on a site that already demonstrated concentration of low-income people and was subject to environmental hazards. The Housing Authority submitted new plans that involved

³⁹ John D. Harden, *Maps Show Visible Racial Divides in Major Texas Cities*, HOUSTON CHRONICLE (July 24, 2015, 5:06 PM), <https://www.houstonchronicle.com/news/houston-texas/article/Highways-interstates-reinforce-divides-in-Texas-6399606.php> (discussing segregation in "five major Texas cities," including Houston as the first example).

⁴⁰ *Quick Facts: Houston City, Texas, U.S.* CENSUS BUREAU (2016), <https://www.census.gov/quickfacts/fact/table/houstoncitytexas/PST045216>.

⁴¹ *Segregation: Dissimilarity Indices*, CENSUSSCOPE (last visited June 10, 2018), http://www.censuscope.org/us/s48/rank_dissimilarity_white_black.html.

⁴² *Id.*

⁴³ *Young v. Pierce*, 628 F.Supp. 1037 (E.D. Tex. 1985).

⁴⁴ *Ike Funds Set Aside for Beaumont Housing Complex Will Now Go Towards Homes in 3 Counties*, BEAUMONT ENTERPRISE (April 15, 2015, 2:30 PM), <https://www.beaumontenterprise.com/news/article/Ike-funds-set-aside-for-Beaumont-housing-complex-6202070.php>.

rebuilding new units in areas of higher opportunity but also rehabilitating Concord Homes, all of which were rejected.

Beaumont's fair housing violations have yet to slow down. First, in May 2016, the Department of Justice announced that the City of Beaumont had "agreed to pay \$475,000 and change its zoning and land use practices to settle a lawsuit alleging that it discriminated against persons with intellectual and developmental disabilities who sought to live in small group homes in residential neighborhoods."⁴⁵ More recently, in February 2018, the Beaumont City Council approved a resolution to allow the Beaumont Housing Authority to apply for a tax credit to once again try to redevelop the Concord Homes, which it has rebranded as the St. Helena Square Apartments.⁴⁶ While the City of Beaumont has completed infrastructure projects and invested in the community surrounding the development, the inadequacies of its four-page revitalization plan are numerous.⁴⁷ Among other things, it fails to reference any budget showing a commitment by source for all planned expenditures, include any metrics to measure plan success, or address the environmental hazards in the area.⁴⁸

Local jurisdictions, such as Beaumont, will continue to skirt fair housing obligations, albeit in a less facially-discriminatory manner, but its attempt to hide behind an ill-conceived four-page revitalization plan and a name change is still equally as harmful.⁴⁹ Texas Housers ask HUD to reject the GLO's AFFH certification based on the fact that allowing jurisdictions such as Beaumont to be eligible for CDBG-DR funding without any additional oversight is materially inconsistent with its AFFH obligations. The GLO has first-hand knowledge that any AFFH certification by Beaumont would be false, given the extent to which past funds have been disproportionately excluded African-American families from neighborhoods of opportunity violation of 42 U.S.C. §3604(a), §3604(b) and §3608.

⁴⁵ Press Release, Department of Justice, Justice Department Reaches \$475,000 Settlement with Beaumont, Texas, to Resolve Disability Discrimination in Housing Lawsuit (May 4, 2016), <https://www.justice.gov/opa/pr/justice-department-reaches-475000-settlement-beaumont-texas-resolve-disability-discrimination>.

⁴⁶ BEAUMONT, TEXAS, MINUTES - CITY OF BEAUMONT: CITY COUNCIL MEETING FEBRUARY 13, 2018 (Feb. 21, 2018), <http://portal.beaumonttexas.gov/weblink/0,0,0/doc/3795219/Page1.aspx>.

⁴⁷ BEAUMONT, TEXAS AND HOUSING AUTHORITY OF BEAUMONT, TEXAS, CITY OF BEAUMONT NORTH END CONCERTED REVITALIZATION PLAN (approved by the Beaumont City Council Feb. 12, 2018).

⁴⁸ *Id.*

⁴⁹ The AFFH Rule speaks to the dangers of relying solely on investment in areas with high racial or ethnic concentrations of low-income residents to the exclusion of providing access to affordable housing:

[I]n areas with a history of segregation, if a program participant has the ability to create opportunities outside of the segregated, low-income areas but declines to do so in favor of place-based strategies, there could be a legitimate claim that HUD and its program participants were acting to preclude a choice of neighborhoods to historically segregated groups, as well as failing to affirmatively further fair housing..." AFFH Rule at 42279.

The City of Pasadena (Harris County):

Despite a recent finding by the Southern District of Texas that the City of Pasadena intentionally discriminated against Hispanic residents, the GLO has not made any attempt to subject the City of Pasadena to additional AFFH compliance measures. In January 2017, in no uncertain terms, Judge Rosenthal held that the City of Pasadena intentionally racially discriminated against Hispanic voters and ordered any changes to its voting laws subject to federal oversight until 2023.⁵⁰ The Court explained how Pasadena’s “history of discrimination in voting and segregation in housing, education, and employment have left a ‘legacy of fear, alienation and a lower participation in voting and other practices of democracy.’”⁵¹ The Court further described the racial segregation that has characterized the City of Pasadena:

Most Latino residents live in North Pasadena, which is separated from the predominately Anglo South Pasadena by the Spencer Highway....Across North Pasadena, the older part of town, the sewers, streets, sidewalks, and water lines were neglected for more than thirty years. The sidewalks are cracked and uneven; some areas that need them do not have them....In Anglo South Pasadena, by contrast, the streets are relatively smoothly paved and more quickly repaired than in North Pasadena. Streets are well lit. There are sidewalks on both sides of most streets, and they are generally in good repair. Rains that produce floods in North Pasadena do not in South Pasadena.⁵²

As part of its Settlement Agreement, the City of Pasadena agreed not to appeal the Court’s ruling.⁵³ On the basis of the final ruling alone, HUD should reject the AFFH certification of the GLO and Pasadena in light of the severe patterns of racial discrimination and unequal access to services that have become the norm for Hispanic residents there.

The City of Galveston

The GLO’s pattern of aiding subrecipients that refuse to meet AFFH obligations would be incomplete without a discussion of the City of Galveston and the difficulties it faced rebuilding affordable housing there after Hurricane Ike. The editor of Galveston’s Daily News acknowledged that many residents in Galveston subscribed to the sentiment that “the island would be a better place if the poor people went elsewhere.”⁵⁴ Approximately ten years after Hurricane Ike, only about 51% of Galveston’s affordable public housing units had been rebuilt.⁵⁵ The 2010 Conciliation Agreement had required that Galveston rebuild its public housing on a

⁵⁰ *Patino v. City of Pasadena*, 230 F. Supp. 3d 667 (S.D. Tex. 2017).

⁵¹ *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 714 (S.D. Tex. 2017) (citing Bench Trial Tr. 1:182–83).

⁵² *Id.* at 684, 695-96.

⁵³ Settlement Agreement and Mutual Release, available at http://www.maldef.org/assets/pdf/Pasadena_Settlement_Ordinance_from_2017-10-03_Council_Agenda.pdf.

⁵⁴ Heber Taylor, *People Trailing in Wake of Poor Image*, GALVESTON COUNTY DAILY NEWS (Nov. 25, 2008), https://www.galvnews.com/opinion/editorials/article_934aee67-e523-5a8d-9f0a-6e1caf67453.html.

⁵⁵ DANCY at 17.

one-for-one basis.⁵⁶ In July 2011, HUD sent a letter notifying Galveston that it was out of compliance with the 2010 Conciliation Agreement and its noncompliance could impact statewide CDBG-DR recovery.⁵⁷ It was not until two years later that the GLO actually gave Galveston the ultimatum to either return the CDBG-DR funds or rebuild public housing units.⁵⁸ After realizing that returning the funds could force it into bankruptcy, the City Council agreed, though not unanimously, to rebuild a portion of the affordable housing while the GLO committed to building the remaining units.⁵⁹

The Houston-Galveston Area Council’s Fair Housing Equity Assessment acknowledged that its ability to effect “change is limited by a number of factors, the most significant being limited authority over jurisdiction governance or regional decision-making.”⁶⁰ It did acknowledge that the adoption of “policies and practices that increase access to opportunity region-wide” can help limit the effects.⁶¹ However, according to the Strike Team report, in a February 7, 2018 meeting with Galveston County, the GLO recommended that Galveston County work with fair housing advocates and “think about offering a down-payment assistance program.”⁶² With nothing more than recommendations and the GLO’s veto power to ensure an equitable recovery for LMI populations in Galveston, LMI survivors of Hurricane Harvey will join those still waiting to recover from Ike. The GLO has not enacted sufficient parameters for Galveston in advance to support an accurate certification of its AFFH compliance.

The City of Houston

Lastly, the GLO permits Houston to reinforce and exacerbate severe patterns of ongoing segregation in violation of Title VI and AFFH obligations. In its 2015 Analysis of Impediments, Houston included the following high-priority recommendations to address the patterns of segregation:

⁵⁶ 2010 Conciliation Agreement at 16.

⁵⁷ DANCY at 11.

⁵⁸ *Id.* at 12.

⁵⁹ *Id.* at 12–13.

⁶⁰ HOUSTON-GALVESTON AREA COUNCIL, FAIR HOUSING EQUITY ASSESSMENT at V-93 (2014)

<http://www.ourregion.org/FHEA/FHEA-FINAL.pdf>.

⁶¹ *Id.*

⁶² FEDERAL/STATE HURRICANE HARVEY LONG-TERM DISASTER RECOVERY STRIKE TEAM, REPORT DECEMBER 2017-MARCH 2018 at 21–22 (2018), <https://www.hud.gov/sites/dfiles/State/documents/ReportDisasterStrikeTeamApril18F.docx>. Additionally, the State failed to set aside funds for much-needed title clearing services. The 2010 Conciliation Agreement had required \$500,000 for a title clearance and legal assistance program. 2010 Conciliation Agreement at 16. Many homeowners who lack clear title are low-income people of color. *See, e.g.,* Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 ST. LOUIS U. PUB. L. REV. 113, 116–17. (“[T]he law, limited access to legal resources, and little third party oversight leave many of the nation’s most vulnerable homeowners—largely poor Black, Latino, and immigrant families—with reduced legal protections and insecure, unmarketable title to their homes.”); *See, e.g.,* Kuris, Gabriel, ““A Huge Problem in Plain Sight”: Untangling Heirs’ Property Rights in the American South, 2000-2017,” 2018, Innovations for Successful Societies, Princeton University, <http://successfulsocieties.princeton.edu/>.

- The city will work towards creating more housing...especially for person[s] in various protected classes including in higher opportunity areas where housing is generally not available.”⁶³
- The city is committed to promoting economically, racially, and ethnically integrated neighborhoods of opportunity and will take actions to encourage mixed income housing, preserve affordability in neighborhoods rapidly increasing in value, and create affordability and opportunities to find housing in areas of high opportunity.⁶⁴

However, in 2016, the City of Houston did the opposite when it blocked the Fountain View Apartments, which was a multi-family housing complex set to be built in an area that was 75.7% white. Houston hid behind the per unit cost of the Fountain View development as a justification for its decision, while approving a very similar per unit cost housing development in a racially segregated, high-poverty neighborhood of the city.⁶⁵

In January 2017, in response to a fair housing complaint from Texas Housers, HUD found that Houston’s actions relating to Fountain View had violated Title VI. It concluded that the approval process had been “influenced by racially motivated opposition to affordable housing and perpetuate[d] segregation.”⁶⁶ HUD’s letter also recognized Houston’s “established pattern of failing to site or support affordable housing projects in predominately white neighborhoods.”⁶⁷ Houston has yet to take effective actions to adjust its housing policies and practices to overcome segregation as required by Title VI and AFFH. However, on March 9, 2018, HUD announced that it had entered into a Voluntary Compliance Agreement with Houston, which purportedly resolved the outstanding violations without any protections against racially-motivated opposition to affordable housing in high opportunity areas.⁶⁸ At a minimum, the GLO must impose clear sanctions for noncompliance, including repayment of any CDBG-DR awards, if Houston fails to *actually* site affordable housing in high-opportunity areas.⁶⁹

Until the GLO can provide additional assurances that it will monitor and implement a process to mandate corrective actions for its subrecipients, especially those with a demonstrated history of discrimination, HUD must act promptly to declare the GLO’s certification inaccurate and unsatisfactory.⁷⁰

⁶³ Housing and Community Development Department, *2015 Analysis of Impediments to Fair Housing Choice*, August 2015, at 147, available at <http://houstontx.gov/housing/AI%20Final%208.18.2015%20reduced%20size.pdf>.

⁶⁴ *Id.* at 149.

⁶⁵ ACS Demographic and Housing Estimates, 2012-2016 American Community Survey 5-Year Estimates.

⁶⁶ Letter from U.S. Department of Housing and Urban Development to Sylvester Turner, Mayor, City of Houston, Letter Finding Noncompliance with Title VI of the Civil Rights Act of 1964.

⁶⁷ *Id.*

⁶⁸ Voluntary Compliance Agreement between the United States Department of Housing and Urban Development and the City of Houston, Title VI Investigation Case No. 06-16-R001-6 (March 6, 2018).

⁶⁹ 24 C.F.R. § 91.225(a)(1) (2014).

⁷⁰ 2013 AI, Executive Summary at 5.

E. The GLO Cannot Fulfill Its AFFH Obligations Without Implementing Additional Protections to Overcome the Existing Patterns of Racial Segregation in its Recovery Programs

Through its own policies, the GLO and its subrecipients actively discourage people of color from settling in certain communities, and tends to segregate them in less desirable parts of those communities, in violation of 42 U.S.C. §3604(a), §3604(b) and §3608. The vast majority of the programs in the Action Plan, including the Homeowner Assistance Program, the Homeowner Reimbursement Program, the mortgage assistance aspect of the Homelessness Prevention Program, the Affordable Rental Program to the extent it is reconstructing units in place, and the Partial Repair and Essential Power for Sheltering Program, all favor reinforcing the severe patterns of segregation by rebuilding in place. Without any attempt to supplement existing programs with initiatives to promote integrated neighborhoods, any attempt by the GLO to claim it has taken meaningful action is false.

The advocacy of Texas Housers resulted in a 2010 Conciliation Agreement that governed the distribution of nearly \$2 billion in CDBG-DR funds following Hurricanes Dolly and Ike in 2008.⁷¹ Texas Housers negotiated for the inclusion of the Homeowner Opportunity Program (“HOP”), which allowed homeowners with substantially damaged homes to relocate instead of rebuilding.⁷² HOP allows homeowners in designated areas to purchase an existing home or vacant lot for a new home instead of rebuilding in place.⁷³ HOP focused on providing applicants with critical mobility counseling and real estate assistance to allow program participants to make *informed* decisions on whether to move or rebuild in place.⁷⁴ However, neither the Action Plan nor the Housing Guidelines included an opportunity similar to HOP for homeowners with substantially damaged homes to relocate.

HOP, available in lieu of home repairs, is distinct from the GLO’s \$275 million allocation to the Local Buyout and Acquisition Program to be administered by local jurisdictions. However, there is important overlap between these two programs in terms of the additional resources that must be offered to homeowners to make relocating to an area of higher opportunity a viable possibility. The importance of funding incentive payments, relocation assistance, mobility counseling, and other similar initiatives in both programs cannot be understated. It is incumbent on the GLO to make these offerings a requirement and work with local jurisdictions in identifying qualifying candidates. Without doing so, homeowners are left

⁷¹ See generally 2010 Conciliation Agreement.

⁷² *Homeowner Opportunity Program*, TEXAS REBUILDS (last visited June 10, 2018), <http://texasrebuilds.org/Pages/HR-Existing-Home-Purchase.aspx>; see generally 2010 Conciliation Agreement.

⁷³ Texas Department of Housing & Community Affairs, *Community Development Block Grant Disaster Recovery Program Hurricanes Ike and Dolly Round 2 Housing Guidelines*, at 23, available at <http://texasrebuilds.org/Documents/Ike%20and%20Dolly%20Round%202%20Housing%20Guidelines.pdf> [hereinafter Round 2 Housing Guidelines].

⁷⁴ Round 2 Housing Guidelines at 24.

with little choice but to remain in, for the Homeowner Repair Program, or relocate to, for the Local Buyout and Acquisition Program, neighborhoods characterized by substandard housing conditions and high crime rates.

In addition to complying with AFFH obligations, the GLO's inclusion of HOP and requirements to make incentive payments and other public service activities mandatory in both HOP and the Local Buyout and Acquisition Program would mitigate the impact of future disasters on these vulnerable populations by allowing them to move to safer areas, which are less prone to flooding. Thus, Texas Housers asks that HUD require the GLO to agree to offer a HOP program to homeowners after Harvey and mandate reasonably equivalent protections from HOP to the relocations conducted under the Local Buyout and Acquisition Program.

Even though HUD has approved the Action Plan, there is still time for HUD to require the GLO to make the critical assurances on Exhibit A before it can draw down funds pursuant to the Action Plan or future allocations. Unless and until these voluntary assurances have been made, HUD must act promptly to declare any certification by the GLO regarding its compliance with civil rights and AFFH obligations inaccurate and unsatisfactory. We appreciate HUD's consideration, and please do not hesitate to reach out if there is any further information that would be helpful.

Respectfully submitted,

Texas RioGrande Legal Aid, Inc.



Kate Rainey

Attorney

4920 N. Interstate 35

Austin, Texas 78751

krainey@trla.org

Telephone: (512) 374-2785

Fax: (512) 447-3940

Enclosures: as stated

CC: Neal Rackleff
John Henneberger

Exhibit A

1. The GLO and all other jurisdictions administering CDBG-DR funds will implement the Homeowner Opportunity Program for homeowners assisted under the Hurricane Harvey CDBG-DR program in accordance with substantially similar terms as it operated this voluntary mobility program after Hurricanes Dolly and Ike.
2. The GLO will update the Housing Guidelines to make the provision of services and incentives available to assist with relocation as expansive as necessary to afford program participants effective fair housing mobility choices and to promote the residential desegregation objectives in accordance with analyses of impediments statewide and by entitlement jurisdictions. These services will include the use of incentive payments, relocation assistance, and similar use of mobility counseling and real estate professionals.
3. The GLO will require that buy-out programs offer owner-occupants sufficient payouts to permit program participants the opportunity to secure replacement housing outside RECAPs and in safe, low-crime and decent neighborhoods. Any participant should not be required to assume additional mortgage debt in excess of what that household had at the time of the disaster unless such participant makes an informed choice to do so.
4. The GLO will require all subrecipients to complete modified FFAST forms in lieu of updating AIs that focus on impediments to fair housing after Hurricane Harvey. Such form will be developed in consultation with Texas Housers. As part of the FFAST process, the GLO will require each subrecipient to assess the adequacy of storm water protection and other essential public services in racially and ethnically segregated LMI neighborhoods of color and in RECAPs. The GLO will review the FFAST forms and monitor the actions undertaken by each jurisdiction to remedy any identified deficiencies. The GLO will provide Texas Housers with copies of the FFAST forms and any additional documentation relating to its actions and determinations.
5. The GLO will provide Texas Housers with any documentation relating to capacity certifications of subrecipients, including the results of the review by the independent third-party referenced in the Action Plan.
6. The GLO or each subrecipient, as applicable, will collect the following data on an ongoing basis and provide it to Texas Housers on a monthly basis by posting it to its website or otherwise making available to Texas Housers.

For each program activity, the following data should be collected and updated monthly:

- the administering entity (grantee or subrecipient name);
- the address(es) of the activity;
- the amount allocated/budgeted for the activity;
- the amount expended for the activity as of date of data report;
- the number of units assisted (if applicable);
- the percentage of the overall activity complete.
- the race of the head of household;
- the ethnicity of the head of household;
- the household income;
- the household income as a percentage of AMFI as calculated by HUD;
- whether anyone in the household has a disability;
- the activity type (rehab, rebuild, etc.);
- the program under which the activity is occurring;
- the date upon which an application for program assistance was received; and
- the date upon which an application for program assistance was approved.

For each activity providing housing or housing assistance that is not directly linked to a specific beneficiary:

- the total CDBG-DR assistance provided to any owner applicant in connection with rehabilitation or new construction of rental properties;
 - the total amount expended;
 - how many housing units that assistance is expected to fund;
 - the maximum qualifying household income as a percentage of AMFI as defined by HUD and the number of units available at each qualifying income level;
 - any restrictions regarding age or familial status;
 - any accessibility accommodations for those with disabilities; and
 - the number of fully accessible units in a multi-family development.
7. The GLO will provide clear guidelines to each of the City of Houston, the City of Pasadena, the City of Beaumont and the City of Galveston mandating each subrecipient *actually* take actions to remedy past noncompliance. The GLO must also detail a process by which it will take corrective actions against any jurisdiction that fails to meet its individual AFFH certifications.

8. The GLO will provide fair housing training through a competent fair housing expert and will require the participation of all jurisdictions receiving, planning for or administering CDBG-DR grants.
9. In a manner consistent with AFFH obligations, the GLO will provide that the total of affordable rental housing funded with CDBG-DR will provide units at rents affordable at 30 percent, 50 percent and 80 percent AMFI for each of these income group's proportional shares of households with unmet housing needs on an aggregate basis.
10. The GLO will provide for programs it administers and for programs administered directly by other entities, that prior to commencement of program activities, an outreach plan will be adopted for identifying and engaging in appropriate outreach activities to ensure affordable rental and owner-occupied housing funded with CDBG-DR is affirmatively marketed to LMI disaster survivors who have unmet housing needs stemming from the disaster.
11. The GLO will provide Texas Housers fourteen (14) days advance notice of the location, project description and terms of all multi-family housing developments that GLO or other direct grantees propose to fund. The GLO will permit Texas Housers with the opportunity to comment on the consistency of the proposal with AFFH obligations. The GLO will provide Texas Housers with a reasoned response to its comments prior to the award of a CDBG-DR grant for the project.