

HOUSING DISCRIMINATION COMPLAINT

Submitted June 26, 2018

CASE NUMBER:

**(Title VIII)
(Section 109)
(Title VI)**

1. Complainant:

Texas Low Income Housing Information Service
John Henneberger, Co-Director
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Representing the Complainant:

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2. Other aggrieved parties

Low- and moderate-income residents of Texas who have been subjected to or will be subject to discriminatory treatment and the discriminatory effects of practices and procedures established by the State of Texas for the allocation of federal Community Development Block Grant Disaster Relief ("CDBG-DR") funding on the basis of their race, color, or national origin.

3. The following is alleged to have occurred or is about to occur:

Denial of housing and making housing unavailable.
Discrimination in the terms and conditions of housing.
Failure to affirmatively further fair housing.
Perpetuation of segregation.

4. The alleged violation occurred or is about to occur because of:

Race, color, and national origin.

5. Address and location of the property in question (or if no property is involved, the county and state where the discrimination occurred):

Throughout the 49 CDBG-DR eligible counties impacted by Hurricane Harvey in the State of Texas.

6. Respondent:

The State of Texas
c/o Commissioner George P. Bush
Texas General Land Office
1700 Congress Ave
Austin, Texas 78701

7. The following is a statement of facts regarding the alleged violations:

Pursuant to 42 U.S.C. § 3610 of the Fair Housing Act, 42 U.S.C. §3601 *et seq.* (the “FHA”), Texas Low Income Housing Information Service (“Texas Housers”) lodges the following complaint 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.¹ Specifically, the actions and omissions by the State of Texas will have the following illegal effects: (a) making housing unavailable on the basis of race, color and national origin, in violation of 42 U.S.C. §3604(a); (b) discriminating in the terms, conditions, or privileges of sale or rental of a dwelling, and in the provision of services or facilities in connection therewith, because of race, color, and national origin, in violation of 42 U.S.C. §3604(b); and (c) failing to meet its obligations to affirmatively further fair housing as required by 42 U.S.C. §3608 and related federal statutes and regulations. Additionally, the State has adopted rules and policies that have the effect of discriminating on the basis of race, color and national origin.

The State of Texas, through the General Land Office (the “GLO”), submitted its State Action Plan for Round One of CDBG-DR for Hurricane Harvey Recovery (the “Action Plan”) for \$5.024 billion² in funds to the U.S. Department of Housing and Urban Development

¹ Texas Housers is an aggrieved person according to 42 USC 3602(i)(1) and (2). Texas Housers was founded in 1988 and works to achieve the mission to “support low-income Texans’ efforts to achieve the American dream of a decent, affordable home in a quality neighborhood.” Texas Housers has had to curtail its activities related to many of its efforts and divert its scarce resources to overcome the effects of the discriminatory and segregative administration of CDBG-DR funds by the State of Texas.

² This Complaint is limited to the programs and policies covered by the GLO’s Action Plan. The State delegated administration of approximately \$1.155 billion to the City of Houston and approximately \$1.115 billion to Harris County. Each will develop separate action plans, and only the action plan from the City of Houston has been published at this time. TEXAS GENERAL LAND OFFICE COMMUNITY DEVELOPMENT & REVITALIZATION PROGRAM,

(“HUD”) on May 8, 2018.³ HUD approved the Action Plan on June 25, 2018.⁴ However, the State’s limited view of CDBG-DR funds as simply a means to provide disaster relief disproportionately excludes from the recovery process the exact low- and moderate-income (“LMI”) populations that it should prioritize.⁵ The purpose of the CDBG program is to fund the “development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income.”⁶ HUD expends significant effort to ensure compliance with civil rights obligations and broader program principles. HUD’s requirements for the Action Plan are set forth in *Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Recovery Grantees*, 83 Fed. Reg. 5844, 5844 (Feb. 9, 2018) (the “HUD Notice”).⁷

The State’s failure to meet its obligations to LMI persons in accordance with the HUD Notice has a disparate impact on the African American and Hispanic populations overrepresented in this group when compared to the 15.6% poverty rate statewide.⁸

	Percentage of Total Population (49 Eligible Counties)	Percentage of Population Less than 100% of Poverty Line (Texas)	Percentage of Population Less than 50% of Poverty Line (Texas)
White	74.40%	15.5%	6.4%
African American	16.27%	22.6%	10.2%
Hispanic	36.61%	24.2%	9.2%
Asian	6.38%	11.7%	5.3%

2012–2016 American Community Survey

Additionally, when the State takes actions that provide significantly more opportunities for homeowners, who are disproportionately white, and considerably fewer opportunities for

STATE OF TEXAS PLAN FOR DISASTER RECOVERY: HURRICANE HARVEY – ROUND 1, at 8–9 (May 7, 2018) [hereinafter Action Plan].

³ The General Land Office (“GLO”) is the state agency responsible for administering CDBG-DR funds associated with disasters. *Community Development & Revitalization*, TEXAS GENERAL LAND OFFICE, <http://www.glo.texas.gov/recovery/about/about-cdr/index.html> (last visited June 23, 2018).

⁴ HUD, *HUD Approves \$5 Billion Texas Disaster Recovery Plan*, June 25, 2018, available at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_18_060.

⁵ *Allocations, Common Application, Waivers, and Alternative Requirements for 2017 Disaster Community Development Block Grant Recovery Grantees*, 83 Fed. Reg. 5844, 5855 (Feb. 9, 2018) [hereinafter HUD Notice]. (“To carry out this objective, the statute requires that not less than 70 percent of the aggregate of CDBG program funds be used to support activities benefitting low- and moderate- income persons.”).

⁶ Housing and Community Development Act (HCDA) of 1974, 42 U.S.C. § 5301(c).

⁷ HUD Notice at 5844. Moreover, the HCDA prohibits the distribution of funds until a grantee satisfactorily certifies compliance with the HUD Notice and applicable laws. HCDA 42 U.S.C. § 5304(b)(5).

⁸ *Quickfacts: Texas*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/tx/PST045217> (last visited June 23, 2018).

renters and households subsidized by HUD, both disproportionately Hispanic and African-American, the disparate impact is even more significant.⁹ According to HUD's Comprehensive Housing Affordability Strategy ("CHAS") data, approximately 27% of white households in the eligible counties rent their homes compared to about 55% of African American households and 46% of Hispanic households.¹⁰ By favoring homeowners and non-housing programs to the detriment of renters, the State has failed to implement the measures necessary for an equitable recovery when the data demonstrates that renter and LMI households experience more disaster-caused unmet need than acknowledged and generally have fewer resources to recover.

Through the provisions and omissions of the Action Plan and the Draft Housing Guidelines, dated April 18, 2018 (the "Housing Guidelines"), and other provisions and omissions to be identified during the course of HUD's review and investigation, the State proposes to engage in, and permits its subrecipients to engage in, differential treatment of the ultimate beneficiaries of the CDBG-DR funds on the basis of race, color and national origin.¹¹ Even if actions or inactions by the State favoring homeowners are not designed with overt discriminatory intent, they still violate the FHA if their effect is discriminatory.¹² Because of the needs of residents and the critical role of CDBG-DR funding in the recovery process, we urge HUD to expedite the process of resolving this Complaint by requiring the GLO to make the assurances contained in Exhibit A before HUD allows it to draw down funds in accordance with the Action Plan or pursuant to future allocations.

I. The State's Reluctance to Commit to the 70% LMI Targeting is at Odds With Its Civil Rights Obligations

The State of Texas has ignored HUD requirements specifically designed to assist with civil rights compliance, including the requirement to expend 70% of the CDBG-DR funds on activities that benefit LMI persons and give maximum feasible priority to activities that benefit LMI persons.¹³ HUD reaffirmed the importance of the compulsory mandate to expend 70% CDBG-DR funds on activities that benefit LMI persons by expressly directing grantees to rely on the LMI benefit objective wherever possible.¹⁴

Yet, from the beginning, the highest levels of Texas leadership have committed themselves to a recovery directed disproportionately at benefiting white and non-LMI

⁹ For purposes of this Complaint, assistance provided under HUD programs includes public housing, tenant-based, and privately-owned project based assistance.

¹⁰ *Consolidated Planning/CHAS Data*, HUD USER, https://www.huduser.gov/portal/datasets/cp.html#2006-2014_data (last visited June 23, 2018).

¹¹ TEXAS GENERAL LAND OFFICE COMMUNITY DEVELOPMENT & REVITALIZATION PROGRAM, HOUSING GUIDELINES (Apr. 18, 2018), http://texasrebuilds.org/Documents/2018%20Housing_Guidelines_DRAFT_4-18-18.pdf.

¹² Title 24, CFR §100.500(a) defines discriminatory effect as a practice which "actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin." 24 C.F.R. 100.500(a) (2015).

¹³ HUD Notice at 5857.

¹⁴ HUD Notice at 5856.

households in violation of its civil rights obligations. In April 2018, in Galveston's Daily News, Commissioner Bush asserted that "storms do not only affect low-to-moderate income residents" and detailed his efforts to obtain a waiver from the requirement to expend 70% of funds on LMI persons a mere *four* days after Harvey hit.¹⁵ Even after Commissioner Bush enlisted the help of the Texas congressional delegation, HUD did not grant his request.¹⁶ Commissioner Bush's editorial in the Daily News noted that he advocated for the elimination of LMI targeting requirements at a time when the flood water had not yet receded.¹⁷ Without any information available as to income levels of those with unmet housing needs, Commissioner Bush was already trying to steer funds away from LMI communities that are disproportionately comprised of people of color. Based on his past disaster experiences, Commissioner Bush should be aware of the fact that people of color are more likely to have limited resources and live in neighborhoods that have endured decades of disinvestment that make the targeting requirements that much more important.¹⁸

Following in Commissioner Bush's footsteps, many local jurisdictions have also readily expressed their criticism of spending 70% of funds to benefit LMI households before having analyzed data on the incomes of households with unmet housing needs. The responses to public comments in the Action Plan show that the Houston-Galveston Area Council, Galveston County, Fort Bend County, Waller County, and Chambers County all sought a waiver from the 70% LMI requirement.¹⁹ Even Governor Abbott has displayed a similar disregard for LMI needs by emphasizing that "Congress purposefully provided" CDBG-DR funds to local jurisdictions to pay cost shares under FEMA's Hazard Mitigation Grant Program ("HMGP") and Public Assistance projects.²⁰ The projects funded by these two programs do not contain any similar priority for LMI populations as CDBG-DR funds, which drastically limits the possibility that cost shares will count towards the 70% LMI benefit requirement.²¹

The stated disposition of both state and local officials necessitates an unequivocal commitment by the State to LMI targeting to avoid disproportionately excluding African

¹⁵ George P. Bush, *Setting the Record Straight on GLO's Post-Harvey Work* (Apr. 28, 2018), THE DAILY NEWS, http://www.galvnews.com/opinion/guest_columns/article_2681ab7a-e274-5a04-b4db-4ae3153b8803.html.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See generally CENTER FOR DISEASE CONTROL, PLANNING FOR AN EMERGENCY: STRATEGIES FOR IDENTIFYING AND ENGAGING AT-RISK GROUPS (2015), https://svi.cdc.gov/Documents/Publications/SVI_Community_Materials/atriskguidance.pdf (outlining strategies for including vulnerable populations in disaster assistance). The Kaiser Foundation and Episcopal Health Foundation released a report confirming that people of color and LMI populations experienced the hardest impacts after Harvey. LIZ HAMEL ET AL., AN EARLY ASSESSMENT OF HURRICANE HARVEY'S IMPACT ON VULNERABLE TEXANS IN THE GULF COAST REGION 5–7 (2017), <https://www.kff.org/other/report/an-early-assessment-of-hurricane-harveys-impact-on-vulnerable-texans-in-the-gulf-coast-region-their-voices-and-priorities-to-inform-rebuilding-efforts/>.

¹⁹ Action Plan at 134–203.

²⁰ Letter from Governor Greg Abbott to Harris County Commissioners Court at 2 (May 7, 2018), <https://gov.texas.gov/uploads/files/press/HarrisCountyCommissioners201805070615.pdf>.

²¹ See generally FEMA, HAZARD MITIGATION ASSISTANCE GUIDANCE ADDENDUM (Feb. 27, 2015); FEMA, PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE (PAPPG) (Apr. 26, 2018).

American and Hispanic LMI residents from the recovery process. At no point does the State of Texas provide a detailed analysis of how it plans to meet the 70% LMI income targeting requirements. Instead, the Action Plan and Housing Guidelines are inconsistent and ambiguous as to the process by which the GLO will guarantee that 70% of CDBG-DR funds will be used to serve LMI populations. The following summarize the GLO's statements regarding its intent to ensure compliance with the LMI national objectives for certain programs:

- Local Buyout and Acquisition and Local Infrastructure Programs: Each council of governments must provide a plan to meet the 70% LMI benefit requirement. The Action Plan also prioritizes the use of funds from these two programs for FEMA cost shares.²²
- Homeowner Reimbursement Program: After an initial thirty-day period restricted to LMI families, the funds will become available to non-LMI households.²³
- Economic Revitalization Program: Despite its LMI objective, the Action Plan does not specify any requirements for when job creation or retention can be considered as benefiting LMI and then provides that any remaining funds will be reallocated to the Local Infrastructure Program.²⁴

The State will not meet the 70% requirement by only requiring a plan to do so and encouraging the use of funds for local cost shares without any sort of cap. The State has not even implemented basic precautionary measures, such as requirements to target infrastructure funds in certain historically underserved LMI communities of color and limit infrastructure funds to counties where it will be harder to qualify projects on the basis of LMI. Even if the GLO argues that it has ultimate veto power over project funding, HUD cannot release the CDBG-DR funds without further assurances as to how exactly it will ensure compliance.

II. The State Has Proposed an Action Plan that Does Not Adequately Respond to the Recovery Needs of Renters Who Are Disproportionately African American and Hispanic

a. Demographics of Renters

In the counties eligible for the CDBG-DR funds, African American and Hispanic households are far more likely than white households to be renters. According to HUD's CHAS data, approximately 27% of white households in the eligible counties rent their homes compared to 55% of African American households and 46% of Hispanic households.²⁵ Additionally, while

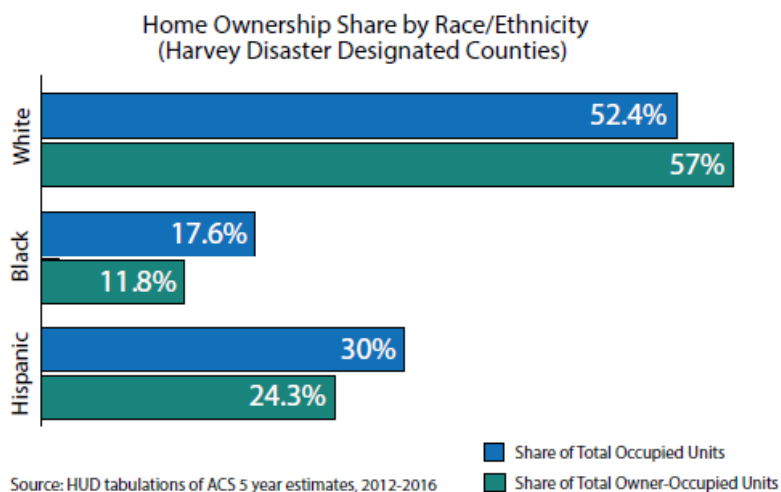
²² Action Plan at 79–80, 86–87.

²³ Housing Guidelines at 44.

²⁴ Action Plan at 88–89.

²⁵ *Consolidated Planning/CHAS Data*, HUD USER, https://www.huduser.gov/portal/datasets/cp.html#2006-2014_data (last visited June 23, 2018).

African American and Hispanic households occupy about half of the State’s housing units, they are less likely than white households to own their homes as shown by the following chart:



Not only are African American and Hispanic households more likely to rent than are white households, African American and Hispanic households are also largely overrepresented in terms of the number of households that are subsidized by HUD. Exhibit B contains a chart summarizing the share of total households and subsidized households by race and/or national origin in each disaster-affected county. In nine of these counties, African Americans have a differential of 50 or more percentage points between their share of the total population in that county and the share of households receiving HUD benefits. For example, in Hardin County, African Americans comprise 6% of all total households but 73% of the HUD-assisted households. While not as pronounced, Hispanic households are also generally overrepresented in households that received HUD assistance. In Karnes County, Hispanic households make up 47% of total households but 78% of the households receiving HUD assistance. Thus, any underfunding of multi-family complexes and other rental units that accept Section 8 Housing Choice Rental Vouchers will disproportionately harm African American and Hispanic households who are more likely to be beneficiaries of HUD assistance.

The Pew Charitable Trusts also found that white households, on average, have significantly greater access to funds for an emergency than do African American and Hispanic households.²⁶ Moreover, renters, who are disproportionately households of color, on average have significantly less income than homeowners. Data from the American Community Survey indicates that over 64% of renters in the Harvey impacted area have a household income of less than \$50,000 compared to less than 35% of all homeowners.

²⁶ PEW CHARITABLE TRUSTS, THE ROLE OF EMERGENCY SAVINGS IN FAMILY FINANCIAL SECURITY: WHAT RESOURCES DO FAMILIES HAVE FOR FINANCIAL EMERGENCIES? 2 (2015), <http://www.pewtrusts.org/-/media/assets/2015/11/emergencysavingsreportnov2015.pdf> (“The typical white household has slightly more than one month’s income in liquid savings, compared with just 12 days for the typical Hispanic household and only five days for the typical African-American household.”).

	Disaster Area (All Households in CDBG Counties)	
Income	Owners	Renters
< \$25,000	13.7%	34.9%
\$25,000 to \$49,999	19.0%	29.3%
\$50,000 to \$74,999	17.7%	16.8%
\$75,000 to \$99,999	13.8%	8.4%
\$100,000+	35.8%	10.6%

2011–2015 American Community Survey

Thus, the State’s efforts to prioritize homeowners violate the fundamental purpose of CDBG-DR funds to provide critical assistance to vulnerable communities unable to recover.

The allocation of funds to renters is even more critical given the severe shortage of rental units affordable and available to extremely low-income households in the disaster-affected counties before Harvey.²⁷ For example, the 2018 Assessment of Fair Housing for Montgomery County, where African Americans comprise 4% of the total population but 32% of those subsidized by HUD, found:

Montgomery County is burdened by a severe lack of affordable housing options countywide. The problem has been exacerbated by three major flooding events in the past eighteen months, which has seriously hampered rapid rehousing countywide. As affordable housing is lost to buyouts and demolition, the problem will continue to intensify.²⁸

The damage to the existing housing stock only created more challenges for renters now forced to compete with displaced homeowners for the limited affordable housing, thereby driving up the costs of rent.²⁹

²⁷ The NLIHC’s Gap Report seeks to demonstrate the gap between the number of households at various income levels and the amount of rental housing that is affordable and available to them in their area. In Texas, as in many other areas, the deepest deficits in affordable housing are for units available to Extremely Low and Very Low income households. NATIONAL LOW INCOME HOUSING COALITION, *THE GAP: A SHORTAGE OF AFFORDABLE HOMES* App. A (March 2017), http://nlihc.org/sites/default/files/Gap-Report_2017.pdf.

²⁸ MONTGOMERY COUNTY, 2018 ASSESSMENT OF FAIR HOUSING PLAN at 1 (2018), <http://www.mctx.org/2018%20Fair%20Housing%20Assessment%20Plan.pdf>.

²⁹ See *Ensuring an Equitable Recovery for Renters Impacted by Hurricane Harvey*, NATIONAL LOW INCOME HOUSING COALITION (Oct. 31, 2017),

<http://nlihc.org/article/ensuring-equitable-recovery-renters-impacted-hurricane-harvey/> (presenting data that shows that renter “households, especially larger families with low incomes...are now facing even greater challenges in absorbing the economic shock of Hurricane Harvey”); FEMA, *INDIVIDUAL ASSISTANCE PROGRAM AND POLICY*

b. The State's Methodology to Determine Unmet Need Severely Undercounts the Needs of Renters

The State's inequitable treatment of renters begins with its failure to expand upon the methodology used by HUD in allocating CDBG-DR funds among regions affected by natural disasters in 2017.³⁰ HUD uses this methodology to quickly allocate each state's proportional share of the limited funding available based on the unmet needs of the most-impacted homeowners and renters by assigning a rough average cost for repairs.³¹ Since FEMA does not inspect rental units for real property damage at the initial stage of the process, HUD must rely entirely on the inadequate measure of a renter's personal property loss as a proxy for unit damage.³² This methodology severely understates the unmet housing needs of renters. Even if personal property damage were an adequate proxy for unmet housing need, the \$2,000 FEMA verified loss threshold that a renter must meet to be considered as having unmet need further shuts LMI renters out of the recovery process by excluding their damage from calculations entirely.

Nothing in the HUD Notice prohibits the State from using more accurate information to determine unmet housing need among renters.³³ In fact, HUD has instructed recipients to design a methodology that more accurately responds to the unmet recovery needs following Harvey, especially given the availability of better data ten months after Harvey.³⁴ For example, the State of Florida, which is required to abide by the same HUD requirements as Texas, viewed the needs assessment of its state action plan as an opportunity to address shortcomings of the FEMA data instead of deeming HUD's methodology a ceiling on unmet need.³⁵ Florida calculated unmet housing need in accordance with HUD's methodology to be \$404.4 million, but it did not stop its analysis there.³⁶ Florida acknowledged the importance of "accounting for under-representation of impacted populations, stemming from FEMA-ineligible applicants" in arriving at \$6.4 billion as its actual estimate of unmet housing need.³⁷ Florida highlighted the unusual result that FEMA awarded "\$288,097,837 in housing assistance...to nearly 260,000 additional applicants who did not have recorded FEMA property loss."³⁸

GUIDE (IAPPG) 96 (2018) ("FEMA may provide financial assistance to pre-disaster homeowners or renters to rent temporary housing when an applicant is displaced from their primary residence as a result of a Presidentially-declared disaster.").

³⁰ HUD Notice at 5868.

³¹ *Id.* at 5868–5869.

³² *See id.*

³³ *Cf.* FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, STATE OF FLORIDA ACTION PLAN FOR ECONOMIC RECOVERY (Apr. 20, 2018), <http://www.floridajobs.org/docs/default-source/community-development-files/2018-state-of-florida-cdbg-dr-action-plan-draft.pdf?sfvrsn=2> [hereinafter Florida Plan].

³⁴ HUD Notice at 5849.

³⁵ *See generally* Florida Plan.

³⁶ *Id.* at 37–71.

³⁷ *Id.* at 64.

³⁸ *Id.* at 61.

Unlike Florida, the State of Texas has ignored both the data and its own experiences speaking to the significant unmet needs of renters across Texas. First, it failed to take measures to ensure that the allocation of funds used the best available data to accurately assess renter housing need. Despite acknowledging that approximately 50% of applicants for FEMA assistance after Hurricane Harvey were renters and renters faced higher rates of being deemed by FEMA to have no verified loss, the State has steered CDBG-DR funds to higher income, non-LMI households, at the expense of Hispanic and African American renters.³⁹ Even the City of Houston's Action Plan acknowledged that the 51% of owner applicants who received a FEMA verified loss over \$0, compared to the 18% of renter applicants who received a FVL over \$0, "may indicate that renter needs are under-represented in FEMA [Individual Assistance] estimates."⁴⁰ The State's failure to account for the limitations of data from FEMA and the Small Business Administration resulted in its assessment that only 29% of households with unmet needs were renters, thereby preventing an equitable recovery.⁴¹ Additionally, in developing the Action Plan, the State did not use the wealth of information it gained from administering FEMA's short-term housing programs.⁴² The Multi-Family Lease and Repair Program, a short-term housing program created to repair or improve existing multi-family housing, did not have one property owner participate despite overwhelming need. Given that large-scale rental housing recovery had not begun at the time of the Action Plan, the State still only allocated multi-family housing programs a much smaller portion of the recovery funds.⁴³

c. The State's Decision to Fund Homeowner and Non-Housing Programs to the Exclusion of Proportional Funding for Renter Recovery Programs Has a Disparate Impact on African Americans and Hispanics

The pattern of excluding renters from their fair share of the recovery funds is a practice of which the State and HUD are very aware. In 2010, the Government Accountability Office reviewed ten federal disaster assistance programs in Louisiana and Mississippi and found that 62% of damaged homeowner units received assistance compared to only 18% of damaged rental units.⁴⁴ The report stated that "[w]ithout specific direction on how to better target disaster-related CDBG funds for the redevelopment of homeowner and rental units after future disasters, states' allocation of assistance to homeowners and rental property owners may again result in

³⁹ Action Plan at 42. The Action Plan did not compensate for the fact that renters faced more challenges in obtaining assistance from FEMA given that 18.1% of total renter applicants were found to have a FEMA verified loss while 47.3% of homeowner applicants were found to have a FEMA verified loss.

⁴⁰ CITY OF HOUSTON, DRAFT LOCAL ACTION PLAN: HURRICANE HARVEY HOUSING RECOVERY 21 (June 7, 2018), http://houstontx.gov/housing/Draft_Houston_local_action_plan_6.6.2018.pdf.

⁴¹ Action Plan at 42.

⁴² TEXAS REBUILDS, <http://texasrebuilds.com/> (last visited June 23, 2018) (providing documents explaining the short term and emergency housing programs administered by the State of Texas).

⁴³ See Action Plan at 74 (allocating only 4.98% of the full CDBG-DR allocation to the Affordable Rental Program).

⁴⁴ GOVERNMENT ACCOUNTABILITY OFFICE, DISASTER ASSISTANCE: FEDERAL ASSISTANCE FOR PERMANENT HOUSING PRIMARILY BENEFITED HOMEOWNERS; OPPORTUNITIES EXIST TO BETTER TARGET RENTAL HOUSING NEEDS 27 (2010), <https://www.gao.gov/assets/310/300098.pdf>.

significant differences in the level of assistance provided.”⁴⁵ Additionally, after Hurricanes Ike and Dolly, in response to a 2009 fair housing complaint alleging inequitable allocation of funds, the State entered a Conciliation Agreement, dated May 25, 2010 with Texas Housers and Texas Appleseed requiring it to provide, among other things, additional funding for affordable rental housing.⁴⁶ Lastly, after Superstorm Sandy, New Jersey’s failure to sufficiently fund the recovery of renters became the subject of a \$240 million fair housing settlement.⁴⁷ Instead of improving on past recoveries, the State’s actions have once again relegated African American and Hispanic households, who are far more likely to be renters, live in housing subsidized by HUD, and have lower incomes than are white households, to not only an unequal recovery after Harvey but continued vulnerability during future storms as well.

Even putting aside the severe undercounting of unmet renter needs, the Action Plan states that LMI unmet housing need is more than \$2.59 billion for owners and more than \$1.85 billion for renters.⁴⁸ Yet, only one of the eight housing programs, the \$250 million Affordable Rental Program, is devoted solely to the needs of renters.⁴⁹ This minimal allocation virtually guarantees renters will be left out of the recovery process.⁵⁰ The Affordable Rental Program funds the rehabilitation and new construction of multi-family units and requires all projects to accept Housing Choice Rental Vouchers during the affordability period and maintain a certain percentage of units at specific rents.⁵¹ Given the overrepresentation of African American and Hispanic beneficiaries of HUD subsidies and the number of renters with unmet disaster-related housing need, the failure to proportionally fund affordable multi-family complexes will have a significant disparate impact on African American and Hispanic persons in the eligible counties.

Furthermore, in addition to the amount of funding, the Action Plan provides more advantageous benefits to homeowners, including benefits that are tied to the impacted households and generally puts these homeowners in a better position with increased equity in their homes. In contrast, benefits for renters do not similarly target the recoveries of individual renters, despite the challenges faced by renters of increased financial uncertainty from rising rents.⁵² The State should offer financial assistance to renters on the same level provided to homeowners through home repair programs in order to avoid a disparate effect on the Hispanic

⁴⁵ *Id.* at 41.

⁴⁶ 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 Conciliation Agreement].

⁴⁷ See generally UNITED STATES DEP’T OF HOUSING AND URBAN DEVELOPMENT, CASE NO. 02-13-0048-5 (TITLE VI); CASE NO. 2-13-0303-8 (TITLE VIII), VOLUNTARY COMPLIANCE AGREEMENT AND CONCILIATION AGREEMENT (2013).

⁴⁸ Action Plan at 46–47.

⁴⁹ *Id.* at 83–84. The GLO did allocate \$50 million to the Homeless Prevention Program to provide short-term mortgage assistance, utility assistance, and tenant-based rental assistance, but only for the purpose of preventing homelessness.

⁵⁰ See Action Plan at 74.

⁵¹ Housing Guidelines at 49.

⁵² Action Plan at 82–83.

and African American households more likely to rent. Favoring homeowners with the amount of funds and types of benefits only enhances the nation's racial wealth gap, which is created, in significant part, by differences in homeownership rates.⁵³ Per the Census Bureau's Current Population Survey, for every \$100 of wealth a white family accumulates, their African American counterpart has just \$5.04.⁵⁴

Additionally, a report from the Kaiser Family Foundation and Episcopal Health Foundation found that "those with lower incomes—who are less likely to hold salaried jobs and more likely to work on an hourly or contract basis—are more likely to report adverse effects on employment and income as a result of the storm."⁵⁵ Thus, the higher rate of employment-related losses and lower likelihood for savings coupled with rising rents disproportionately affects the ability of LMI renters to recover—especially displaced renters unable to return to their community support networks. The protracted nature of housing replacement means that these households often remain displaced for an extended period of time; for example, a year after Hurricane Sandy, more than 22,000 households remained displaced.⁵⁶ Not only has the GLO failed to make its anti-displacement plan available to the public per HUD requirements, the GLO has not provided any priority for displaced renters to obtain the new units under the Affordable Rental Program.⁵⁷ At a minimum, the GLO must use CDBG-DR funds to conduct outreach to displaced renters in order to properly assess the number of units it needs to set aside.

On top of all these challenges, the Affordable Rental Program must comply with High HOME rent limits, which are only affordable for Low Income (LI) families but are not households with Very Low Income (VLI) and Extremely Low Income (ELI). Spending such a large share of income on housing limits a renter's ability to save and accumulate wealth to put them on the path to homeownership. As illustrated in the chart below, a VLI family of four in Aransas County would not be able to afford more than an efficiency at the High HOME rent limit without spending more than 30% of their income on rent. An ELI household of four could not afford any unit—even an efficiency.

⁵³ Matthew Desmond, *How Homeownership Became the Engine of American Inequality*, N.Y. TIMES MAGAZINE (May 9, 2017), <https://www.nytimes.com/2017/05/09/magazine/how-homeownership-became-the-engine-of-american-inequality.html>.

⁵⁴ Emily Badger, *Whites Have Huge Wealth Edge Over Blacks (But Don't Know It)*, N.Y. TIMES (Sept. 18, 2017), <https://www.nytimes.com/interactive/2017/09/18/upshot/black-white-wealth-gap-perceptions.html>.

⁵⁵ LIZ HAMEL ET AL., AN EARLY ASSESSMENT OF HURRICANE HARVEY'S IMPACT ON VULNERABLE TEXANS IN THE GULF COAST REGION 5–6 (2017), <https://www.kff.org/other/report/an-early-assessment-of-hurricane-harveys-impact-on-vulnerable-texans-in-the-gulf-coast-region-their-voices-and-priorities-to-inform-rebuilding-efforts/>.

⁵⁶ Colin Moynihan et al., *One Year After Hurricane Sandy, Meet the Families That Are Still Homeless*, N.Y. MAGAZINE (Oct. 27, 2013), <http://nymag.com/daily/intelligencer/2013/10/slideshow-hurricane-sandy-one-year-later.html>.

⁵⁷ See HUD Notice at 5849–5840 (requiring the Action Plan to contain "[a] description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced.").

Aransas County, TX	Efficiency	1BR	2BR	3BR
High HOME Rent Limit	\$ 622	\$ 722	\$ 833	\$ 997
Monthly Income Needed to Afford (30% income)	\$ 2,073	\$ 2,407	\$ 2,777	\$ 3,323
Yearly Income Needed to Afford	\$ 24,880	\$ 28,880	\$ 33,320	\$ 39,880
Affordable to LI Family of 4? (50-80% MFI)	X	X	X	X
Affordable to VLI Family of 4? (30-50% MFI)	X			
Affordable to ELI Family of 4? (Less than 30% MFI)				

CHAS Data (2010–2014), HUD Income Limits (2017)

Thus, given the extent to which many renters will not be able to afford these rents, the State must at the very least ensure that a certain percentage of units will be available for each LMI grouping.⁵⁸

Instead of complying with the HUD requirement of giving the maximum feasible priority to activities that will benefit LMI families, the State allocated \$100 million to the Homeowner Reimbursement Program, \$413 million to the Local Infrastructure Program, and \$100 million to the Economic Revitalization Program.⁵⁹ As a result, the State not only denies renters their proportionate allocation of the CDBG-DR funds and the opportunity for advancement on par with homeowners, it goes a step further by allocating funds to homeowners who have already repaired their homes and, by definition, do not have an unmet housing need. Given the extent of unmet rental housing need at more than \$1.85 billion and the State’s failure to explain how this remaining unmet housing need will be addressed or how its non-housing spending will contribute to the restoration of housing in accordance with the HUD Notice, these allocations disadvantage minority LMI households, especially renters, significantly more than predominantly white homeowners.⁶⁰

The Homeowner Reimbursement Program

The Homeowner Reimbursement Program contemplates a maximum award of \$50,000 to reimburse homeowners for out-of-pocket expenses incurred before the CDBG-DR funds were available.⁶¹ Given that 80% of the Area Median Income, for example, for a family of four in Aransas County is \$45,200, it is evident that LMI persons do not likely have the means to rebuild

⁵⁸ See Action Plan at 90–91 (showing that the Action Plan allocated \$137.7 million to local, regional and state planning).

⁵⁹ *Id.* at 74.

⁶⁰ HUD Notice at 5851 (“In proposing the use of CDBG–DR funds for economic revitalization under this notice, a grantee must identify how any remaining unmet housing needs will be addressed or how its economic development activities will contribute to the long-term recovery and restoration of housing in the most impacted and distressed areas.”).

⁶¹ Action Plan at 81–82.

in the first place.⁶² Additionally, the Housing Guidelines only give LMI applicants thirty days to apply before processing non-LMI applicants for the Homeowner Reimbursement Program.⁶³ The State's and its subrecipients' experience in recent CDBG-DR programs has shown that the process used to conduct outreach to LMI populations, especially LMI communities of color, has taken several months to generate significant numbers of applications. The State proposes no enhanced outreach activities for the current program that would overcome this barrier. Allowing only thirty days before opening the program to non-LMI households will not overcome the disparities in exposure to information about recovery options, will depress LMI participation, and will result in a violation of affirmatively furthering fair housing requirements as well as civil rights obligations. The State has little basis to justify its decision to deem this program as meeting the LMI objective.⁶⁴ Instead of limiting reimbursement funds only for homeowners, the State has less discriminatory alternatives available to lessen the effect on renters, including opening up the program to assist rental housing recovery.

Local Infrastructure Program

The Action Plan names the "October 31, 2017, Request for Federal Assistance Critical Infrastructure Projects" produced by the Governor's Commission to Rebuild Texas as an important source of information for its needs assessment.⁶⁵ That document requested \$61 billion in public infrastructure funding for Hurricane Harvey recovery.⁶⁶ The report reached this conclusion utilizing a flawed methodology that underrepresented and excluded cities, counties, and regions with known disaster needs. For example, while there is a request for billions to rebuild housing in Houston and Harris County, not a dollar is requested to rebuild homes in the devastated city of Port Arthur, a city with a 38.2% African American population.⁶⁷ In relying on the survey estimate, the Action Plan redirects funds from unmet disaster-related housing needs to discretionary public works projects that are often unrelated to the disaster. The Action Plan does not investigate which of these infrastructure projects have already been funded by other sources in violation of HUD's requirement to "use the most recent available data to estimate the portion of need unlikely to be addressed by...other funding sources (thus producing an estimate of unmet need)."⁶⁸ For example, the Commission included a \$3 million allocation for facilities restoration

⁶² 2018 HOME Income Limits - Texas, HUD EXCHANGE, https://www.hudexchange.info/resource/reportmanagement/published/HOME_IncomeLimits_State_TX_2018.pdf (last visited June 23, 2018) (generally, low income refers to 80% or less of area median income).

⁶³ Housing Guidelines at 44.

⁶⁴ See Action Plan at 82 ("National objective: Low-and moderate-income and urgent need.").

⁶⁵ Action Plan at 49.

⁶⁶ See generally GOVERNOR GREG ABBOTT AND COMMISSIONER JOHN SHARP, GOVERNOR'S COMMISSION TO REBUILD TEXAS, REQUEST FOR FEDERAL ASSISTANCE: CRITICAL INFRASTRUCTURE PROJECTS (Oct. 31, 2017), https://cdn.ymaws.com/www.acectx.org/resource/resmgr/Hurricane_Harvey/RebuildTexas103117.pdf [hereinafter Infrastructure Funding Request].

⁶⁷ Quick Facts: Port Arthur City, Texas, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/portarthurcitytexas/PST045217> (last visited June 23, 2018).

⁶⁸ HUD Notice at 5849.

in Nueces County.⁶⁹ However, a meeting of Nueces County Commissioners on March 1, 2018 suggested that these projects had been funded through FEMA's Public Assistance Program.⁷⁰ Additionally, the projects identified by the Commission did not require any LMI priority or even require the project to address direct impacts of Hurricane Harvey, as shown by the request for \$100 million in CDBG-DR funds to purchase land owned by West University Place, which has a median household income of \$220,868, and the request for \$231 million to improve the Brazos Island Harbor channel from the City of Brownsville, which was not directly impacted by Hurricane Harvey.⁷¹

Furthermore, most subrecipients have already prioritized their infrastructure wish lists independent of LMI targeting requirements given that the mitigation and public assistance grants do not have similar LMI-focused requirements.⁷² Because infrastructure projects tend to serve a broader segment of the local population, it is unlikely that LMI neighborhoods will benefit proportionately without well-considered protections. Given the pressure to divert funds to jurisdiction-wide infrastructure projects with broader local political support, local jurisdictions may find it difficult to spend 70% of the infrastructure funds to benefit LMI populations.⁷³ To the extent that infrastructure projects should be funded at all given the extent of unmet housing needs, the disproportional benefit for LMI communities suggests the long-term disinvestment that have left minority communities with inadequate infrastructure will continue with these CDBG-DR funds.⁷⁴

Economic Revitalization Program

The Action Plan allocates \$100 million to the Economic Revitalization Program for small businesses in exchange for inadequately defined job creation programs or commitments to retain LMI employees.⁷⁵ If a grantee allocates CDBG-DR funds to address economic revitalization,

⁶⁹ Infrastructure Funding Request at 236.

⁷⁰ *March 1, 2018 Commissioners Court*, NUECES COUNTY, <http://nuecescountytexas.swagit.com/play/03012018-815/#0> (last visited June 23, 2018).

⁷¹ See Infrastructure Funding Request; *QuickFacts: West University Place City, Texas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/westuniversityplacecitytexas/PST045216> (last visited June 23, 2018).

⁷² See generally FEMA, HAZARD MITIGATION ASSISTANCE GUIDANCE ADDENDUM (Feb. 27, 2015); FEMA, PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE (PAPPG) (Apr. 26, 2018).

⁷³ For example, local jurisdictions proposed construction of a conference center and a traffic light coordination study for infrastructure for consideration during Round Two Ike and Dolly funding. These examples were drawn from Round 2.2 Applications for Disaster Recovery Supplemental Allocation submitted by governmental jurisdictions to the Texas Department of Rural Affairs and the Texas General Land Office.

⁷⁴ For example, Texas Housers has previously provided data to HUD demonstrating that 88% of open ditch drainage in the City of Houston is located in African American neighborhoods. Despite the fact that residents of these minority communities with open ditch drainage had been harmed by recurring flooding, which depressed property values, the City of Houston did not remedy the issue despite having the opportunity to do so. As a result, these areas were among those impacted most by flooding. Letter from Michael Allen to Anna Maria Farias, Assistance Secretary, Office of Fair Housing and Equal Opportunity, HUD 3 (Oct. 31, 2017), <https://www.dropbox.com/s/m52f7ere3or32ye/2017.10.31%20.%20Allen%20ltr%20to%20A.%20Farias.pdf?dl=0>.

⁷⁵ Action Plan at 89–90.

just as for infrastructure, HUD regulations require the grantee to “identify...how its economic revitalization or infrastructure activities will contribute to the long-term recovery and restoration of housing.”⁷⁶ The State has failed to do so. Given the shortages of affordable housing for renters, small businesses will not be able to hire or retain the LMI individuals who cannot access affordable housing in these communities. For example, Harvey damaged an estimated 31.6% of apartments in Victoria, Texas.⁷⁷ Hispanic residents in Victoria County are more likely to be renters, with 54.2% of Hispanic households renting compared to 38.2% of the total households in Victoria County renting.⁷⁸ Given that the effects of limited rental housing will be felt more by the Hispanic and African American renters, the allocation to funds to this program at the expense of supporting rental housing disproportionately affects any ability to benefit from such job-creation program.

III. Programs That Support Owner-Occupied Housing at the Expense of Rental Housing Inherently Reinforce Existing Patterns of Segregated Occupancy and Reduce the Potential for Mobility in Violation of Affirmatively Furthering Fair Housing Obligations.

The State’s disregard for its obligation to affirmatively further fair housing in a manner that ends discriminatory housing patterns is evident from its description of fair housing as one of “those strings attached” to qualify for available free money.⁷⁹ During a presentation by the GLO in front of potential multi-family landlords, the GLO representative provided the following commentary:

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.⁸⁰

Given this characterization of AFFH obligations as a mere technicality instead of a real commitment to prioritizing programs and projects that best embody its objectives, the State is once again ensuring that segregation will be preserved and the CDBG-DR funds will be spent in violation of its AFFH obligations. Overall, the duty to affirmatively further fair housing reflects

⁷⁶ HUD Notice at 5851.

⁷⁷ Laura Garcia and Jessica Priest, *Survey Reveals Harvey Damaged 3rd of Victoria Apartments*, VICTORIA ADVOCATE (Mar. 3, 2018), https://www.victoriaadvocate.com/news/survey-reveals-harvey-damaged-rd-of-victoria-apartments/article_70249c16-1820-11e8-85a4-e38a5e099de4.html.

⁷⁸ Victoria County, 2016 American Community Survey 1-Year Estimates, Tenure, B25003.

⁷⁹ Aransas County – Rockport - Fulton Long Term Recovery, *GLO Hurricane Harvey Affordable Rental Housing Program* (Feb. 20, 2018), <https://www.youtube.com/watch?v=AOGRfaUOnbc&feature=share> [hereinafter Rockport-Fulton Affordable Rental Presentation]; 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.” HUD Notice at 5867.

⁸⁰ *Id.*

Congress's 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."⁸¹

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."⁸² However, the GLO displays its disregard for the dual nature of its AFFH obligations in the Action Plan by deeming a project-level analysis sufficient to meet its AFFH obligations at the state level.⁸³ By relying on isolated assessments of individual applicants to lessen segregation of minorities and provide housing choices in higher opportunity areas, the State violates its AFFH obligations. A correct assessment would require an assessment of the State'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. In its current form, the GLO is only meeting its obligation to not discriminate by potentially exercising a veto power over isolated projects brought to it by multi-family property investors. In making its decisions as to what programs to offer and the much lower allocation to support renters, it failed to acknowledge or assess the impact of its decisions on achieving racial and economic integration.

The State has a rare transformative opportunity to overcome the extensive, longstanding, and entrenched patterns of residential segregation in the areas impacted by Hurricane Harvey. Houston, one of the areas hardest hit by Hurricane Harvey, is among the most segregated cities in Texas.⁸⁴ Its demographic composition is 25.1% non-Hispanic white, 22.8% non-Hispanic African American, and 44.3% Hispanic or Latino of any race.⁸⁵ 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

⁸¹ *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).

⁸² 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].

⁸³ Action Plan at 62.

⁸⁴ 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).

⁸⁵ *Quick Facts: Houston City, Texas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/houstoncitytexas/PST045216> (last visited June 23, 2018).

and white residents throughout the city.⁸⁶ Other similarly impacted cities and counties across the disaster-impacted area also have high dissimilarity index scores.

Through its own policies, the State and its subrecipients actively discourage people of color from settling in certain communities, tending to segregate them in less desirable parts of those communities by supporting homeowner and non-housing recovery programs at the expense of renters, in violation of 42 U.S.C. §3604(a), §3604(b), and §3608. The vast majority of the programs proposed in the Action Plan, including the Homeowner Assistance Program, the Homeowner Reimbursement Program, the mortgage assistance aspect of the Homelessness Prevention Program, and the Partial Repair and Essential Power for Sheltering Program, all favor maintaining and reinforcing the existing patterns of segregation by making it faster and easier for homeowners to build in place, and therefore more likely that impacted households will not relocate. When coupled with Commissioner Bush’s and Governor Abbott’s proactive steps to directly undermine fair housing choice for African American and Hispanic households, the GLO’s violation of its AFFH obligations is about more than just acceptance of the status quo of extreme racial segregation; it consists of purposeful decisions to serve beneficiaries who are disproportionately white and not LMI. Thus, the Action Plan and any plans pertaining to future CDBG-DR allocations warrant the highest levels of HUD scrutiny.

IV. The State Has Violated Protections for Limited English Proficient (“LEP”) Persons in Violation of Title VI of the Civil Rights Act

Lastly, the State has shown a willingness to engage in differential treatment on the basis of national origin by choosing not to respond to a request for a Spanish-language translation of the Housing Guidelines from RAICES, a Texas nonprofit focusing on underserved immigrant communities. The request is attached hereto as Exhibit C. By failing to ensure that Spanish-speaking persons who are limited English proficient (“LEP”) persons can effectively participate in, or benefit from, its housing programs, the State has violated Title VI’s prohibition against national origin discrimination.

This behavior only enhances the existing barriers for LEP populations to achieve homeownership. In March 2018, the Urban Institute and Sloan Foundation’s Administrative Data Research Facility found that limited English proficiency has a considerable impact on homeownership rates.⁸⁷ The study found that

Neighborhoods with the lowest concentration of LEP residents had a median homeownership rate of 74 percent in 2016, but neighborhoods with the highest

⁸⁶ *Segregation: Dissimilarity Indices*, CENSUSSCOPE, http://www.censuscope.org/us/s48/rank_dissimilarity_white_black.html (last visited June 10, 2018).

⁸⁷ Edward Golding et al., *New Evidence Shows that Limited English Proficiency is a Barrier to Homeownership*, URBAN INSTITUTE (Mar. 26, 2018), <https://www.urban.org/urban-wire/new-evidence-shows-limited-english-proficiency-barrier-homeownership>.

LEP concentration had only a 64 percent median rate—a 10 percentage-point difference. If we control for other factors that influence homeownership (e.g., income, age, and race), neighborhoods with the highest concentrations of LEP residents have homeownership rates 5 percentage points lower than rates in neighborhoods with the median concentration of LEP residents.⁸⁸

In its 2017 State of Texas Consolidated Plan: One-Year Action Plan, the Texas Department of Housing and Community Affairs also recognized the overwhelming need for Spanish translation, given that 74% of LEP persons for households at 200% of the federal poverty line needed Spanish language translation.⁸⁹ However, instead of recognizing the heightened need for LEP protections in Texas, the GLO never responded nor posted a Spanish-language version of the Housing Guidelines on its website as of the date of this Complaint.

8. The most recent date on which the alleged discrimination occurred:

Ongoing as of the date this Complaint was submitted.

9. Types of federal funds identified:

Community Development Block Grant-Disaster Recovery Funds

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Sections 804a and 804b of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988

Title VI of the Civil Rights Act of 1964

Section 109 of Title I of the Housing and Community Development Act of 1974

Conclusion

Under all the applicable laws and regulations, HUD has the authority and the obligation to enforce the State's compliance with civil rights obligations and CDBG-DR requirements, including the HUD Notice. For the reasons set out above, Texas Housers ask that you require the GLO to make the assurances set forth on Exhibit A before allowing the GLO to draw down any funds in accordance with the Action Plan or pursuant to future allocations.

⁸⁸ *Id.*

⁸⁹ TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, DRAFT 2018 STATE OF TEXAS CONSOLIDATED PLAN: ONE YEAR ACTION PLAN (Feb. 22, 2018), <https://www.tdhca.state.tx.us/housing-center/docs/18-OYAP-Draft.pdf>.

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

June 26, 2018

Respectfully submitted,

Texas Low Income Housing Information Service

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Exhibit A

1. The GLO will double its allocation to better address the significant unmet needs of renters and further develop program guidelines to grant families with unmet needs priority in rental housing assistance at affordable rents.

At a minimum, the GLO must double the current amount of funding for renters from \$250 to \$500 million. We suggest that the GLO allocate the \$72.7 million from the PREPS match, \$50 million from the Homeowners Reimbursement Program, \$50 million from the Economic Revitalization Program and \$77.3 million from the Homeowner Assistance Program to do so. Additionally, the GLO and all other jurisdictions administering CDBG-DR funds will establish a program to identify renters with unmet housing needs after Hurricane Harvey. The GLO will develop additional guidelines and affirmative marketing plans to grant those families priority rental housing assistance at affordable rents.

2. The GLO and all other jurisdictions administering CDBG-DR funds will agree to present LMI infrastructure projects to Texas Housers for review and comment.

The GLO and other jurisdictions administering CDBG-DR funds, as applicable, must present all infrastructure project proposals believed to qualify under the 70% LMI national objective to Texas Housers within a week of approval. The GLO must also include documentation and data concerning the beneficiary family, race/ethnicity, family size and income to establish that the proposed project will serve a specific targeted group of persons, of which at least 51% must be LMI. Texas Housers may challenge the GLO's characterization of an infrastructure project as meeting the 70% LMI objective. On a quarterly basis, the GLO will make documentation available showing expenditures for non-LMI infrastructure projects by county.

3. The GLO will provide and require that any jurisdiction applying for non-housing funds provide documentation to identify how unmet housing needs will be addressed and how its economic revitalization and infrastructure activities will contribute to the long-term recovery and restoration of housing consistent with HUD requirements.

The GLO will make this documentation available to Texas Housers, and Texas Housers may challenge the jurisdiction's documentation and determination. The GLO will respond to any challenge.

4. The GLO and all other jurisdictions administering CDBG-DR funds will present data for housing program participants to Texas Housers for review on a monthly basis.

On a monthly basis, the GLO or applicable subrecipient will make the income documentation, race, national origin, beneficiary family size and whether any member of the household has a disability for each participant in the Homeowner Assistance Program, the Local Buyout and Acquisition Program, the Affordable Rental Program and the Homeowner Reimbursement Program available to Texas Housers to ensure overall compliance with the 70% LMI benefit requirements.

5. The GLO and all other jurisdictions administering CDBG-DR funds will revise the Housing Guidelines to set forth clear directives for each program on how the requirements for meeting 70% LMI income targeting will be met.

The GLO will revise the Housing Guidelines to specify the LMI targeting requirements for each program. The GLO will also set forth a mechanism for increased oversight once a local jurisdiction nears the 30% non-LMI limitation and has at least 50% of the allocated remaining.

6. The GLO and all other jurisdictions administering CDBG-DR funds will commit to Affirmative Marketing Efforts for each program in the Action Plan.

The Housing Guidelines currently only require affirmative marketing policies for the Affordable Rental Program. In order to ensure the maximum LMI participation possible, the GLO must require affirmative marketing efforts for each program. The GLO must analyze and monitor whether outreach is successful and applications received accurately reflect the socioeconomic and demographic diversity of the area. Only then can the GLO and other jurisdictions open up the programs up to non-LMI populations

EXHIBIT B

Housing Type Breakdown by Race/Ethnicity

Share of Total Households (HUD, 2017)				Share of Homeowner Households (HUD, 2017)				Share of Renter Households (HUD, 2017)				Share of Subsidized Households (HUD, 2017)				
County	White	Black	Hispanic	Other	White	Black	Hispanic	Other	White	Black	Hispanic	Other	White	Black	Hispanic	Other
Aransas County	79%	1%	20%	0%	82%	0%	14%	4%	60%	3%	33%	5%	55%	6%	35%	4%
Austin County	75%	9%	16%	0%	78%	7%	14%	1%	61%	13%	24%	2%	52%	31%	13%	4%
Bastrop County	68%	7%	25%	0%	69%	6%	23%	2%	54%	14%	29%	2%	45%	32%	22%	1%
Bee County	45%	2%	53%	0%	49%	2%	49%	0%	36%	4%	59%	1%	14%	4%	82%	0%
Brazoria County	63%	13%	24%	0%	62%	10%	21%	7%	51%	18%	26%	5%	35%	41%	22%	2%
Caldwell County	53%	5%	42%	0%	56%	5%	38%	1%	44%	7%	48%	1%	30%	22%	48%	0%
Calhoun County	56%	3%	41%	0%	57%	2%	36%	5%	41%	5%	48%	7%	23%	14%	63%	0%
Chambers County	78%	9%	13%	0%	79%	7%	12%	3%	63%	19%	18%	0%				
Colorado County	69%	12%	19%	0%	76%	9%	14%	0%	40%	21%	38%	0%	51%	31%	18%	0%
DeWitt County	62%	10%	29%	0%	68%	6%	25%	0%	38%	22%	40%	0%	30%	26%	44%	0%
Fayette County	81%	6%	13%	0%	84%	6%	10%	0%	70%	7%	22%	1%	47%	35%	18%	0%
Fort Bend County	51%	25%	24%	0%	45%	19%	18%	19%	32%	28%	28%	13%	6%	75%	18%	1%
Galveston County	67%	14%	19%	0%	70%	9%	16%	5%	52%	22%	22%	5%	16%	70%	14%	0%
Goliad County	65%	5%	30%	0%	70%	6%	24%	1%	36%	0%	63%	1%	25%	16%	59%	0%
Gonzales County	55%	8%	37%	0%	63%	5%	31%	1%	35%	13%	51%	1%	25%	32%	42%	1%
Grimes County	69%	14%	18%	0%	74%	9%	15%	2%	45%	27%	25%	3%	20%	70%	10%	0%
Hardin County	91%	6%	3%	0%	90%	5%	3%	2%	84%	10%	4%	2%	24%	73%	3%	0%
Harris County	43%	22%	35%	0%	49%	14%	29%	8%	28%	27%	37%	7%	7%	77%	11%	5%
Jackson County	71%	6%	23%	0%	76%	6%	18%	0%	54%	7%	37%	2%	22%	50%	26%	2%
Jasper County	81%	15%	3%	1%	86%	11%	3%	1%	63%	31%	5%	0%	33%	60%	5%	2%
Jefferson County	52%	35%	13%	0%	57%	25%	13%	4%	37%	47%	12%	5%	5%	85%	4%	6%
Karnes County	51%	3%	47%	0%	56%	2%	40%	2%	32%	4%	62%	2%	16%	6%	78%	0%
Kleberg County	28%	5%	67%	0%	32%	2%	64%	3%	23%	7%	67%	4%	7%	6%	86%	1%
Lavaca County	81%	8%	11%	0%	85%	5%	8%	1%	63%	15%	22%	0%	34%	48%	17%	1%
Lee County	74%	11%	15%	0%	79%	7%	12%	2%	55%	22%	22%	1%				
Liberty County	78%	9%	13%	0%	78%	8%	12%	2%	73%	11%	13%	3%	50%	44%	6%	0%
Matagorda County	57%	10%	33%	0%	63%	7%	27%	2%	38%	16%	43%	3%	23%	48%	29%	0%
Montgomery County	80%	4%	16%	0%	80%	3%	14%	3%	68%	8%	20%	4%	54%	32%	10%	4%
Newton County	82%	17%	1%	0%	83%	15%	1%	1%	76%	24%	0%	0%	39%	59%	1%	1%
Nueces County	40%	4%	56%	0%	42%	3%	53%	2%	35%	6%	56%	3%	12%	11%	75%	2%
Orange County	86%	9%	5%	0%	88%	6%	4%	2%	70%	21%	6%	3%	29%	69%	2%	0%
Polk County	83%	9%	8%	0%	84%	6%	7%	3%	66%	19%	11%	4%	47%	48%	4%	1%
Refugio County	52%	6%	43%	0%	54%	6%	39%	2%	38%	3%	54%	5%	19%	25%	56%	0%
Sabine County	93%	6%	1%	0%	94%	5%	1%	0%	81%	16%	3%	0%	66%	33%	1%	0%
San Jacinto County	81%	12%	7%	0%	83%	11%	6%	0%	72%	15%	11%	2%	40%	53%	0%	7%
San Patricio County	50%	2%	48%	0%	52%	1%	45%	2%	42%	3%	54%	1%	20%	4%	75%	1%
Tyler County	92%	6%	3%	0%	90%	5%	3%	2%	85%	9%	2%	3%	30%	67%	1%	2%
Victoria County	57%	6%	38%	0%	63%	4%	30%	2%	40%	8%	48%	3%	21%	18%	61%	0%
Walker County	74%	19%	8%	0%	78%	13%	7%	1%	64%	25%	9%	3%	41%	56%	3%	0%
Waller County	55%	22%	23%	0%	63%	13%	21%	3%	32%	39%	28%	1%	5%	86%	8%	1%
Wharton County	56%	16%	28%	0%	65%	11%	24%	0%	36%	26%	37%	1%	13%	45%	40%	2%

Housing Type Breakdown by Race/Ethnicity

Share of Total Households (HUD, 2017)					Share of Subsidized Households (HUD, 2017)				Subsidized Share - Household Share			
County	White	Black	Hispanic	Other	White	Black	Hispanic	Other	White	Black	Hispanic	Other
Aransas County	79%	1%	20%	0%	55%	6%	35%	4%	-24%	5%	15%	4%
Austin County	75%	9%	16%	0%	52%	31%	13%	4%	-23%	22%	-3%	4%
Bastrop County	68%	7%	25%	0%	45%	32%	22%	1%	-23%	25%	-3%	1%
Bee County	45%	2%	53%	0%	14%	4%	82%	0%	-31%	2%	29%	0%
Brazoria County	63%	13%	24%	0%	35%	41%	22%	2%	-28%	28%	-2%	2%
Caldwell County	53%	5%	42%	0%	30%	22%	48%	0%	-23%	17%	6%	0%
Calhoun County	56%	3%	41%	0%	23%	14%	63%	0%	-33%	11%	22%	0%
Chambers County	78%	9%	13%	0%								
Colorado County	69%	12%	19%	0%	51%	31%	18%	0%	-18%	19%	-1%	0%
DeWitt County	62%	10%	29%	0%	30%	26%	44%	0%	-32%	16%	15%	0%
Fayette County	81%	6%	13%	0%	47%	35%	18%	0%	-34%	29%	5%	0%
Fort Bend County	51%	25%	24%	0%	6%	75%	18%	1%	-45%	50%	-6%	1%
Galveston County	67%	14%	19%	0%	16%	70%	14%	0%	-51%	56%	-5%	0%
Goliad County	65%	5%	30%	0%	25%	16%	59%	0%	-40%	11%	29%	0%
Gonzales County	55%	8%	37%	0%	25%	32%	42%	1%	-30%	24%	5%	1%
Grimes County	69%	14%	18%	0%	20%	70%	10%	0%	-49%	56%	-8%	0%
Hardin County	91%	6%	3%	0%	24%	73%	3%	0%	-67%	67%	0%	0%
Harris County	43%	22%	35%	0%	7%	77%	11%	5%	-36%	55%	-24%	5%
Jackson County	71%	6%	23%	0%	22%	50%	26%	2%	-49%	44%	3%	2%
Jasper County	81%	15%	3%	1%	33%	60%	5%	2%	-48%	45%	2%	1%
Jefferson County	52%	35%	13%	0%	5%	85%	4%	6%	-47%	50%	-9%	6%
Karnes County	51%	3%	47%	0%	16%	6%	78%	0%	-35%	3%	31%	0%
Kleberg County	28%	5%	67%	0%	7%	6%	86%	1%	-21%	1%	19%	1%
Lavaca County	81%	8%	11%	0%	34%	48%	17%	1%	-47%	40%	6%	1%
Lee County	74%	11%	15%	0%								
Liberty County	78%	9%	13%	0%	50%	44%	6%	0%	-28%	35%	-7%	0%
Matagorda County	57%	10%	33%	0%	23%	48%	29%	0%	-34%	38%	-4%	0%
Montgomery County	80%	4%	16%	0%	54%	32%	10%	4%	-26%	28%	-6%	4%
Newton County	82%	17%	1%	0%	39%	59%	1%	1%	-43%	42%	0%	1%
Nueces County	40%	4%	56%	0%	12%	11%	75%	2%	-28%	7%	19%	2%
Orange County	86%	9%	5%	0%	29%	69%	2%	0%	-57%	60%	-3%	0%
Polk County	83%	9%	8%	0%	47%	48%	4%	1%	-36%	39%	-4%	1%
Refugio County	52%	6%	43%	0%	19%	25%	56%	0%	-33%	19%	13%	0%
Sabine County	93%	6%	1%	0%	66%	33%	1%	0%	-27%	27%	0%	0%
San Jacinto County	81%	12%	7%	0%	40%	53%	0%	7%	-41%	41%	-7%	7%
San Patricio County	50%	2%	48%	0%	20%	4%	75%	1%	-30%	2%	27%	1%
Tyler County	92%	6%	3%	0%	30%	67%	1%	2%	-62%	61%	-2%	2%
Victoria County	57%	6%	38%	0%	21%	18%	61%	0%	-36%	12%	23%	0%
Walker County	74%	19%	8%	0%	41%	56%	3%	0%	-33%	37%	-5%	0%
Waller County	55%	22%	23%	0%	5%	86%	8%	1%	-50%	64%	-15%	1%
Wharton County	56%	16%	28%	0%	13%	45%	40%	2%	-43%	29%	12%	2%

EXHIBIT C



Spanish Version of Housing Guidelines

1 message

@raicestexas.org>
to: cdr@glo.texas.gov

Thu, May 3, 2018 at 5:59 PM

Can you please let me know when the Spanish version of the Housing Guidelines is going to be available for comment?
Will Tuesday's deadline be extended to allow Spanish speakers more time to review?

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San Antonio, Texas 78201

Tel: 

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