

April 9, 2018

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20510

The Honorable Ann Wagner
Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20510

To Chairman Hensarling and Congresswoman Wagner:

On behalf of the Disaster Housing Recovery Coalition (DHRC), I write to thank you for the opportunity to work with you in crafting legislation to permanently authorize the Community Development Block Grant - Disaster Recovery (CDBG-DR) program. In particular, I welcome a conversation with you about ways to ensure that authorizing legislation can help ensure that all disaster survivors – including low income seniors, people with disabilities, families with children, veterans, people experiencing homelessness, and other vulnerable populations – receive the recovery resources they need to get back on their feet.

DHRC is led by the National Low Income Housing Coalition and includes more than 700 national, state, and local organizations, including many organizations working directly with disaster-impacted communities and with first-hand experience recovering after disasters. We work to ensure that federal disaster recovery efforts reach all impacted households, including those with the lowest incomes who are often the hardest-hit by disasters and have the fewest resources to recover afterwards.

Below is a comprehensive set of recommendations on ways to build on the Reforming Disaster Recovery Act of 2018, as written, on issues of data transparency, the effective and equitable allocation limited resources, and critical oversight of federal dollars. In addition, I have included policy recommendations that we encourage you to add to the bill to ensure that the affordable rental housing crisis is not worsened after a disaster and to create job opportunities for low income people and communities in the recovery process.

I look forward to discussing these issues in more detail with you or your staff. NLIHC staff will reach out to your office to schedule a meeting.

Sincerely,



Diane Yentel
President and CEO
National Low Income Housing Coalition

Recommendations to Improve the Reforming Disaster Recovery Act of 2018, As Written

Data and Transparency

The Disaster Housing Recovery Coalition (DHRC) urges you take advantage of this opportunity to draft CDBG-DR authorization legislation that would improve data transparency at the Federal Emergency Management Agency (FEMA) and the U.S. Department of Housing and Urban Development (HUD). In particular, we encourage you to set stricter requirements for data sharing by federal agencies, ensure that all data is made publicly available in a manner allowing for meaningful analysis while protecting privacy interests, and broaden the scope of data collection to ensure the needs of protected classes are met.

For example, we urge you to require FEMA and HUD to share all data points the agencies (1) collect or (2) analyze in the course of the disaster recovery. This transparency will allow all federal agencies to operate and allocate resources with the full breadth of data available. The federal government – and the public – has a direct interest in ensuring that any individual agency does not have the discretion or ability to withhold or limit data sharing among other federal agencies.

It is critical that authorizing legislation require federal agencies to share all data collected or analyzed with the public – including data on damage caused by the disaster and how federal dollars are spent. This would have several benefits: Access to the full scope of data on unmet needs collected and analyzed by FEMA and HUD and data on how resources are spent are necessary to inform effective public participation in the development of state action plans. Public access to this data will also help ensure that the use of public funds is equitably balanced among homeowners, renters, and people experiencing homelessness and to make sure that housing, infrastructure, and mitigation projects are targeted to the most affected areas and the lowest-income households. Making data public can help identify gaps in services, as well as reforms needed for future disaster recoveries. It would also decrease the number of Freedom of Information Act (FOIA) requests that federal agencies are asked to comply with, which have overwhelmed staff.

To allow meaningful analysis by the public and protect the privacy concerns of individuals, this data must be provided on a (1) block group or (2) census tract level. Currently, federal disaster recovery data is provided to the public on a zip code level, which is not granular enough to allow meaningful analysis.

Moreover, we urge you to expand the data points that federal agencies are required to collect, analyze, and make public. Data should be collected on all protected classes covered by the *Stafford Act*, *Americans with Disabilities Act*, *Fair Housing Act*, Title VI, and other civil rights protections, including, but not limited to race, national origin (including limited English proficiency), income and economic status, age, disability, and gender. Data should also be collected, analyzed, and made public on education,

vulnerability for gentrification and future displacement, transportation dependence, housing tenure of the individual, and location at a granular basis to enable meaningful analysis.

These standards should also be required of all grantees of CDBG-DR funds.

Efficient Use of Limited Resources

Prioritizing Low Income People and Communities

CDBG-DR plays a critical role in addressing the needs of low and moderate income disaster survivors and their communities. It is one of the only recovery tools available to help low income families and communities recover after a disaster. Far too often, these scarce resources are diverted away from the people and communities that face the greatest recovery needs and for whom the program was designed to serve. As a result, vulnerable populations – including low income seniors, people with disabilities, families with children, veterans, and others – are unable to get the disaster aid they need to recover.

For this reason, we urge you to maintain the current requirement that 70% of CDBG-DR investments benefit people with low and moderate incomes unless there is conclusive data – from FEMA or HUD’s damage or unmet needs assessments – that demonstrates the need for this change.

Moreover, we urge you use CDBG-DR grant funds to prioritize those households who do not have access to other resources – including Small Business Administration (SBA) loans, insurance coverage, and savings. Current provisions barring CDBG-DR grants from being used to pay down SBA loans and limiting CDBG-DR grants to households with incomes below 120 percent of the Area Median Income are steps in the right direction. We believe this can be strengthened by requiring that CDBG-DR recovery grants be used to address the needs of low and moderate-income households first, when federal resources are not sufficient to cover all impacted households. This can be further improved by requiring FEMA, SBA, and HUD to streamline the application processes for these separate assistance programs into a single application. This would allow federal agencies to allocate disaster recovery aid faster and in a way that is less burdensome to survivors.

Another opportunity to use CDBG-DR funds more effectively is to calculate CDBG-DR grants based on the cost to replace or repair damaged property, rather than property values. This will help close financing gaps and protect households that live in neighborhoods where property values are less than the cost of repairs and replacement. The current standard – which is based on property values – makes it more difficult for low income communities to recover after a disaster.

Duplication of Benefits

DHRC understands that preventing the duplication of benefits is a primary focus of the this legislation. However, we urge you to balance this goal with the mission and purpose of the CDBG-DR program, which is to ensure that low income families get the disaster assistance they need to get back on their feet. In the past, we have seen efforts to avoid duplication come at the expense of families in need.

For example, we urge you to amend the provision providing the HUD Secretary with the ability to waive remedies for duplication of benefits by adopting the standard typically included in disaster supplementals. This standard allows the secretary to waive remedies ““if the Secretary finds that good cause exists for the waiver or alternative requirement and such waiver or alternative requirement would not be inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974.” This is more consistent with historical practice, and it directly acknowledges the purpose and mission of the CDBG-DR program. Moreover, we believe legislation should provide the HUD secretary with the authority to waive this remedy if the alleged duplicative payment was the result of, or was caused by, action or inaction by the grantee or its agent.

It would also be incredibly helpful to require grantees to provide all recipients of assistance of any funds made available under this section with a detailed, line-item accounting of the purpose for which the awarded funds are intended. This would allow grantees and recipients to properly determine or contest whether funds awarded under other programs or from other sources constitute a duplicative award. Currently, recipients of recovery funds are often left in the dark about what their assistance must be used for and the reasons for any denials.

The duplication of benefits calculation should take into account the cost of delays. When federal aid is not distributed at the same time, low income people are often unable to set aside those resources when their immediate need for housing and food are so pressing. Under current practice, these families are punished for trying to meet their immediate needs by finding that they are no longer eligible for other assistance. Using aid to cover living expenses, including interim housing costs, while awaiting a full award should be treated as a cost of delay and not a duplication of benefits. In determining its award, HUD should be able to assess the use of its own earlier aid and the aid given by other federal agencies and determine that it was used for another eligible purpose.

Legislation should make clear that volunteer labor and assistance from philanthropic organizations is not a duplication of benefits. Such private-sector efforts should be encouraged.

It is important to require grantees to publish a process whereby any applicant or recipient of federal assistance can appeal any adverse action or inaction, including the right to seek redress in a court of record.

Cost-Effective RAPIDO Housing Programs

We urge you to take caution to ensure that this legislation will not make it more difficult for states to use CDBG-DR to implement a RAPIDO program. RAPIDO was developed after Hurricane Dolly to provide displaced households with temporary-to-permanent housing solutions. Under RAPIDO, families have access to a core, modular home – assembled on-site – where they can live during the lengthy recovery process. During this time, the core home can be expanded to meet the long-term needs of the family. RAPIDO provides both immediate shelter and the foundation for a permanent home. It is an innovative solution that costs less than current federal practices of providing temporary shelter and then rebuilding a separate, permanent structure at a later date.

The legislation, as written, currently bars CDBG-DR funds to be used for purposes covered by FEMA funds. However, FEMA funds are often used to build the initial phase of a RAPIDO home. We urge you to consider language to exempt RAPIDO or clarify that RAPIDO is an allowable use of CDBG-DR and FEMA funds.

Oversight of Federal Dollars

State Action Plans

DHRC believes authorization legislation provides a critical opportunity to set some standards for the approval or disapproval of state action plans in HUD's subsequent regulation.

At a minimum, we believe authorization legislation should be used to address concerns raised in a [2010 GAO report](#) that recommends that Congress provide more direction in how states allocate CDBG-DR funds. The report found that after past disasters, CDBG-DR dollars were diverted away from housing to pay for infrastructure projects, and states have diverted resources away from people with the greatest needs – including low income renters and people experiencing homelessness – to relatively higher income homeowners. The report concludes, “Without specific direction on how to better target disaster-related CDBG funds for the redevelopment of homeowner and rental units after future disasters, states’ allocations of assistance to homeowners and renters may again result in significant differences in the level of assistance provided.”

Legislation could address the GAO's recommendations by requiring HUD to disapprove state action plans if, when compared to FEMA and HUD damage and unmet needs assessment, the plans (1) do not equitably allocate resources between infrastructure and housing projects, and (2) do not equitably allocate resources between homeowners, renters, and people experiencing homelessness. Housing recovery should be explicitly made a priority for all disaster recovery action plans.

We also urge you to consider other statutory criteria for HUD to consider in the approval process, including whether the state action plan:

- Includes an analysis of the quality of FEMA data and any skewing or biases for which compensation is needed. FEMA data undercounts the needs of low-income renters, who are more likely to be members of protected classes. Any use of FEMA data should be supplemented by HUD and other data that documents the scope of damage to renters and the extent of need in each low- and moderate-income category;
- Provides meaningful opportunity for public input, including a 30-day comment period;
- Addresses the legal aid services needed for low income survivors to access disaster recovery programs and overcome legal obstacles to recovery, such as title issues and legal representation in mortgage foreclosures;
- Funds social services, transportation, and education to address the full scope of needs for displaced individuals and individuals experiencing homelessness, including resources to help homeless students attend school;
- Includes measures to protect individuals from rent hikes and price gouging during disaster recovery;
- Funds housing counseling, including mobility counseling services, to help low income households identify all housing opportunities, including the option to relocate to the neighborhood of their choice, and to understand the risk and cost of future disasters;
- Requires property owners receiving federal disaster assistance, including CDBG-DR funds, to prioritize tenants receiving housing assistance for available units;
- Requires that the repair or rebuilding of federally subsidized rental housing is done in a manner that is consistent with HUD's Affirmatively Furthering Fair Housing guidance to ensure fair housing choice;
- Bars private owners who receive disaster recovery assistance from discriminating against displaced individuals based on housing status, eviction history, and source of income, including rental housing assistance;
- Funds qualified fair housing enforcement organizations to help people in disaster-affected areas understand their fair housing rights and how to enforce them, investigate and resolve fair housing complaints, monitor conditions in the housing market to proactively identify and stop discriminatory home sale and rental practices, and undertake other efforts, as needed, to ensure that those affected by the disasters do not face unfair, discriminatory housing practices as they recover from the disaster; and
- Bars any grantee or subgrantee of federal disaster recovery funds from passing or enforcing laws which criminalize people experiencing homelessness for self-sheltering or conducting other life-sustaining behaviors in public places when there are inadequate alternatives.

Financial Controls

While it is critical that grantees spend federal dollars effectively, we urge to you to include legislative language to ensure survivors are able to obtain the resources available to them in order to get back on their feet. Currently, grantees are not audited and do not conduct quality control on underpayments to qualified survivors. For example, a contractor is only liable for overpaying a survivor, but not for underpaying a survivor. As a result, federal law incentivizes grantees to deny assistance, in opposition to the goals and purposes the CDBG-DR program. There is a need to balance these mutual goals, and legislative language would help accomplish this. For example, authorizing legislation should be amended to require grantees to provide adequate procedures “to ensure all eligible people are being approved for assistance and that recipients are receiving the full amount they are eligible to receive.”

Moreover, it would be helpful to set a standard of proof required for grantees and contractors when making assistance decisions. For example, grantees should be held to a “preponderance of the evidence” standard and provided a safe harbor – i.e. the grantee will not be penalized by requiring repayment – if the grantee properly applied this burden of proof, and it is later discovered that the decision was erroneous.

Timing

When developing a statutory requirement for HUD to allocate and spend down CDBG-DR funds, it is important to make sure any framework still provides grantees the time needed to prepare and submit action plans with public input. A solution is simply to legislate the timeframe to “allocate” resources, not to “provide” them to grantees. An allocation only requires HUD to sequester funds for future obligation pending the grantee’s compliance with other legal obligations.

Procurement Processes and Procedures

All grantees – including states and tribal authorities – should also be required to publish on its comprehensive, publicly accessible disaster recovery website the full and unredacted copies of all requests for qualification or procurement, however styled, all responses to such requests, the identity of any entity that reviews, evaluates, scores or otherwise influences or decides which respondent is chosen, the reports, however styled, containing the reviewing entity’s scores, findings and conclusions, and the resulting contract, agreement, or other disposition of the grantees’ requests. Making this information available to the public adds another layer of oversight.

Inspector General

DHRC urges you to expand the scope of the HUD Office of Inspector General (OIG) beyond fraud, waste and abuse, to include oversight of whether the program fulfills its mission and purposes by directing the OIG to also focus on program outcomes. For example, the legislation could state, “in conducting audits, reviews, oversight,

evaluation, and investigations, the Inspector General shall place primary importance on ensuring that a program fulfills its purposes, and concerns about fraud, waste and abuse shall not take precedence over concerns about serving all eligible applicants. To this end, and because the disaster recovery process is, by definition, chaotic and difficult, acceptable error rates shall be recognized.”

Moreover, authorization language should direct HUD’s OIG to oversee and collect data disaggregated by race and geography on all disaster recovery efforts and report to Congress on its findings. Data should include all protected classes covered by the *Stafford Act*, the *Americans with Disabilities Act*, *Fair Housing Act*, *Title VI*, and other civil rights protections. This data should also be made available to the public.

Deposit of Unused Amounts in Fund

While we appreciate your interest in spending down disaster funds quickly and effectively, we urge you to consider a more realistic timeframe. We are concerned that the timeframe provided in the current bill – six years – is too optimistic. Funds provided after Hurricane Katrina are still being allocated 12 years after the disaster. Recovery efforts take a long time, and while every effort should be made to do so in a reasonable timeframe, a strict, short timeframe would be unnecessarily burdensome and time-intensive since each waiver would require a bureaucratic procedure at the Office of Management and Budget.

Additional Measures Needed

There are a number of items that could be included in CDBG-DR authorization to ensure adequate oversight to ensure that taxpayer dollars are well-spent. This includes:

- Requiring grantees to submit to HUD for its approval performance goals for the recovery of homeownership and rental housing programs, including goals for processing applications, beginning construction, and completion. Performance goals and grantees’ progress in reaching these goals should be made available to the public.
- Requiring grantees to track and report to HUD and make publicly available the completion status of all homeowner and rental units that receive federal recovery assistance;
- Requiring HUD to report to Congress on specific criteria on a regular basis;
- Requiring grantees to provide meaningful opportunities for public comment, including a public hearing;
- Requiring grantees to complete a language assessment within the first 90 days and to submit to HUD for approval to ensure that all communications be made accessible to individuals with limited English proficiency or who are blind, deaf, or hard of hearing. After past disasters, language assessments were completed after critical communications were made.

Mitigation, Resiliency, and Environmental Concerns

Authority and Use of Funds

We encourage you to specifically list “resiliency” as an authorized use of CDBG-DR funds to ensure that communities are able to build back even stronger than prior to a disaster. A reference to resiliency should also be added in Section 123(c)(1)(A).

Environmental Review

While streamlining the environmental review process to avoid duplicative reviews, approvals, or permitting would allow CDBG-DR funds to move more quickly, there should be some review of those documents for adequacy. Given the disparate impact of environmental hazards on communities of color, there should be review of the environmental justice segment of NEPA reviews and the impact on low-income communities, communities of color, and communities disproportionately occupied by members of protected classes, and an opportunity for public comment. A narrow review would not significantly slow the process, but it would ensure that historically disinvested communities that are already disproportionately affected by natural disasters are not further subject to environmental risks by disaster recovery.

Subsection (3) provides the HUD Secretary with the authority to waive NEPA reviews for individual single-family homes. Despite this waiver, it is important to provide some mechanism by which the Secretary is made aware of hazards on a neighborhood level. Texas has performed neighborhood-level reviews under a similar waiver.

Additional Measures Needed

Rebuilding homes and infrastructure to be better prepared to withstand future disasters is common sense. While we cannot prevent disasters, we can decrease the risk that these disasters pose. With mitigation and resiliency, communities are better able to maintain vital functions during an emergency and to recover more efficiently. Congress can also ensure that resources are being spent wisely.

To this end, we urge you to consider legislative language requiring HUD to ensure that all rebuilding efforts meet mandatory mitigation standards. For example, legislation can require:

- All infrastructure financed with federal resources meet minimum standards storm water protection, such as those required by Federal Flood Risk Management Standards;
- Any reconstruction of a home built with federal resources located in 100-year flood hazard area includes cost-effective mitigation strategies, including the elevation of residential structures and parking areas above the 100-year floodplain or higher, floodproofing lower levels of residential structures, and other methods.

Additional Recommended Policy Changes to the Reforming Disaster Recovery Act of 2018

Addressing the Needs of Low Income Households

Ensuring the Affordable Rental Housing Crisis is Not Worsened

After past disasters, affordable housing stock is often lost and never rebuilt, exacerbating the affordable rental housing crisis in these communities.

The DHRC strongly urges you to include in legislation a requirement that state action plans replace federally assisted housing that was damaged or destroyed on a one-for-one basis or give priority to rebuild public housing or federally subsidized housing developments. This provision should require a minimum affordability period (30 years) for any rental housing built using CDBG-DR funds in order to protect the federal investment. Moreover, new developments built with CDBG-DR funds should be rebuilt in both high-opportunity communities outside of the flood plain with access to good schools, jobs, healthcare, and transit, and in distressed communities as part of a comprehensive revitalization plan.

We also encourage you to consider requiring housing providers receiving federal disaster assistance, including CDBG-DR funds, to prioritize tenants receiving disaster housing assistance for available units. After a disaster, rents often skyrocket in impacted areas and low income survivors find it difficult to afford a place to live. Even households with housing assistance face difficulty in identifying housing providers willing to accept their vouchers. Requiring housing providers who receive federal recovery dollars to accept disaster housing vouchers is a good way to maximize the effectiveness of these programs.

Documentation and Standards of Proof

Any CDBG-DR authorization bill should address issues of documentation, which often bars survivors from receiving the assistance for which they are eligible. Legislation should identify alternative forms of documentation to establish facts, including residence or ownership. Such documentation should include utility bills, credit card, or bank statements, employer paystubs, drivers' licenses, mortgage payments, real estate tax receipts, wills, or affidavits.

Legislation should also address the standard of proof used by federal agencies to determine whether they accept these alternative documents. Under the Road Home Program used after Hurricane Katrina, federal agencies considered a wide range of documentation to verify residence, ownership, income, size of property, contractor fraud, theft, and interim housing costs, but ultimately, the federal agencies decided the alternative documentation did not meet a high enough standard and denied assistance.

A solution is to adjust the standard of proof used by federal agencies to a "preponderance of the evidence."

Local Job Opportunities

To help stimulate local economies and ensure that low income communities are built back stronger, authorization legislation could be used to encourage job training and employment opportunities for low income residents and contract opportunities for small businesses in connection with projects and activities in their neighborhoods.

This can be achieved by directing grantees to include measures to promote job training and employment opportunities for low income residents in state action plans. Another way to accomplish this would be to use Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701) for all contractors receiving funds derived from any disaster recovery related appropriation or program. Section 3 –which HUD Secretary Ben Carson has indicated some interest in utilizing – was enacted by Congress to ensure that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training and employment opportunities to low- or very low-income residents and contract opportunities to small businesses in connection with projects and activities in their neighborhoods.