

Richard E. Constable, III, Commissioner
New Jersey Department of Community Affairs
P.O. Box 800
Trenton, NJ 08625-0800
via: Sandy.Recovery@dca.state.nj.us

November 20, 2013

Re: Comments to Amendment Number 4 to the New Jersey Sandy CDBG-DR Action Plan

Dear Commissioner Constable:

We, the undersigned coalition of civil rights, community development, housing, labor, religious, special needs, smart growth, and other groups and individuals submit these comments to proposed Amendment Number 4 to the New Jersey Sandy CDBG-DR Action Plan.

Generally, and as detailed below, we believe that the proposed Amendment must be revised to (a) reflect the housing needs of both homeowners and renters and (b) remedy the significant transparency and equity problems to date in the RREM and Resettlement programs to which the Amendment proposes transferring significant additional funds. The proposed transfer not only significantly and improperly alters the relative distribution of funds between homeowners and renters, but fails to describe or explain how the proposed distribution would further appropriately meet the required balance of funding for low and moderate income people and communities, provide transparency to the thousands of people who remain in limbo as a result of an unclear and seemingly capricious application process, or meet HUD's own guidelines either for affirmatively further fair housing or increasing the resiliency of our at-risk areas.

I. THE PROPOSED AMENDMENT WOULD UNDERFUND RENTAL ASSISTANCE.

A. THE PROPOSED AMENDMENT WOULD DISCRIMINATE AGAINST RENTERS, WHO ARE LARGELY LOWER-INCOME, AFRICAN-AMERICAN, AND LATINO.

The proposed redistribution of funding from small businesses to homeowners would proportionally underfund critically needed assistance to renters. The addition of \$145 million to the Action Plan distribution of \$780 million of combined Resettlement and RREM funding would direct a total of \$ 925 million dollars to programs that benefit homeowners exclusively. The redistribution would not, however, increase the allocation of \$324,520,000 to programs

that only benefit rental housing.¹ If this proposed amendment were to be approved, only 25% of the housing funding would go to programs exclusively focused on the needs of renters.

Data analysis by the Enterprise Community Partners concluded that, in New Jersey, 43% of all FEMA Registrants were renters.² Further, more detailed research by the Furman Center for Real Estate and Urban Policy replicating New York State's Action Plan methodology found that 40% of housing damage was to renters. New York State notably and correctly stated in its Action Plan that New Jersey's methodology systematically underrepresents the extent of damage to the rental stock; given the large proportion of minority and low income New Yorkers who require affordable rental properties, the State believes it is critical to understand damage incurred by this segment of the housing market."

Unfortunately, the proposed Amendment is consistent with prior, similar efforts by the state. Initially, in its March 12, 2013 Draft CDBG-DR Action Plan (Draft Plan) the state proposed to assist renters with only 23.6 % of the HUD housing recovery funding, and only increased that level after advocates pointed out, and HUD responded to, the mismatch between unmet need and funding.

The need for fair and adequate assistance to renters is compounded by the significantly lower incomes of renter households and the resulting need for greater assistance to these families. Of New Jersey renter households registered with FEMA, 41% reported annual incomes of at or below \$15,000, 26% reported incomes of at or below \$30,000 and an additional 22% stated annual household incomes of at or below \$60,000: a total of 89% having incomes at or below \$60,000. Of homeowner households, on the other hand, only 51% had annual incomes of at or below \$60,000. Additionally, renters impacted by Sandy, according to an Enterprise Community Partners analysis, are 23% African-American and 25% Hispanic, while owners are 8% African-American and 8% Hispanic. And according to another recent Enterprise Community Partners report based on an October 2013 poll, renters are significantly more likely to report that they have had partial or no repair of their homes since Sandy than owners, with the gap particularly significant for low-income households.³

The amendment must be revised so that at least 40% of funds being reallocated to housing, or \$58 million, is directed to rental programs. Those funds should both serve the need for multi-family rental housing in a way that prioritizes the most impacted areas and

¹ The State has previously claimed in its April 2013 Action Plan that \$379,520,000 of funds are going to renters. However, that includes programs open to both renters and homeowners, i.e. the Blight Reduction Pilot Program and Home Buyer Assistance Program. The assumption that all beneficiaries of these programs will be renters is not borne out by program requirements.

² Enterprise Community Partners, "FEMA Assistance Analysis," available at <http://www.enterprisecommunity.com/resources/ResourceDetails?ID=67899.pdf>. A more recent update of these data found basically the same numbers, with 42% of registrants being renters.

³ Enterprise Community Partners, "Hurricane Sandy: Housing Needs One Year Later," available at <http://www.enterprisecommunity.com/resources/ResourceDetails?ID=0083708>.

affirmatively furthers fair housing, and ensure that immediate rental needs are met. We are particularly concerned with the lack of allocation so far of funds meeting immediate rental needs. We ask the State to work with private service and advocacy organizations that are providing continuing support to desperate under-housed and homeless renters to develop programs that will meet the ongoing, immediate need for stable, decent housing and social services support for the many renters who have immediate needs, in addition to working through the multi-family program to add inventory to available, affordable stock. Further, all programs should ensure that renters have appropriate, and appropriately funded, housing counseling from experienced HUD certified providers to correct the deficiency so far in the State’s ReNJ Stronger Centers, which provide assistance to only homeowners.

B. THE STATE HAS ACTUALLY SPENT A FAR HIGHER SHARE OF RENTAL MONEY TO DATE THAN HOMEOWNER MONEY, FURTHER SHOWING THE NEED FOR ADDITIONAL RENTAL RESOURCES

The below information, based on data provided to the media by the Department of Community Affairs the week of November 11 to show housing program obligations to date, shows that to date the State of New Jersey has obligated 26% of all funds for programs serving homeowners, 54% of all funds for programs serving renters, and 34% of all funds for programs serving both. The largest rental program, the Large Multi-Family program, is significantly oversubscribed (the remaining funds in the program are mainly funds explicitly reserved for public housing authorities, a significant portion of which last week was approved to go to Jersey City Housing Authority repairs; meanwhile other applicants have been told that there are no further funds). Ironically, this is despite the fact that the State only funded this program at this level based on public and HUD feedback, over the State’s own initial attempts to underfund it.

Thus, while State officials may attempt to justify additional allocations to homeowner programs by saying they are oversubscribed – which they are – the same justification applies, with even more urgency given obligations to date, to renter programs. The data shows that there are serious needs for more funding for both homeowners and renters.

The State’s choice to only fund homeowners and not renters, instead of fairly recognizing both needs, inexplicably fails to provide any resources to address the challenges facing renters impacted by Sandy, who are disproportionately low-income, African-American, and Latino, and simply does not meet HUD’s Notice requirements or the requirements of the Fair Housing Act.

OBLIGATIONS TO DATE – RENTERS AND OWNERS

Housing Assistance Programs	Total Allocation	Obligations to date	% Obligated
RREM	600,000,000	33,538,233	6%

Housing Resettlement Program	180,000,000	171,785,697	95%
Subtotal – Owner Programs	780,000,000	205,323,930	26%
Large Multi-Family	179,520,000	153,900,000	86%
Landlord Rental Repair	70,000,000	4,428,539	6%
Pre-development Fund	10,000,000	3,000,000	30%
Incentive for Landlords	40,000,000	4,300,000	11%
Special Needs Housing	25,000,000	8,500,000	34%
Subtotal – Renter Programs	324,520,000	174,128,539	54%
Sandy Home Buyer Assistance Program	25,000,000	990,000	4%
Neighborhood Enhancement Program (Blight)	30,000,000	13,710,231	46%
Subtotal - Programs for Both Renters and Owners	25,000,000	8,500,000	34%
Total	1,159,520,000	394,152,699	34%

C. RENTAL HOUSING PROGRAMS ARE A KEY OPPORTUNITY TO AFFIRMATIVELY FURTHER FAIR HOUSING.

Rental assistance programs and other non-homeowner programs present the State with opportunities to embrace programs and actions actively that affirmatively decrease concentrations of race and poverty as required by federal law, by the Disaster Recovery Appropriations Act 2013, and by the HUD Allocation Notice of March 5. The state has never described, in its Action Plan or any Amendment thereto, how any of its actions fulfill this legal obligation. We ask that, in making this request to redistribute available funding, the State demonstrate its stated commitment “to affirmatively further fair housing through its housing programs” (Jul 1, 2013 thru Sep 30, 2013 Quarterly Performance Report (QPR), p.2) by actually including program eligibility provisions which require or incentivize deconcentration. Because renters who have been impacted are largely low-income, African-American, and Latino, any distribution of resources that does not fairly include renters and address exclusionary land use practices does not affirmatively further fair housing.

II. FULL DISCLOSURE OF EXISTING RULES OF ASSISTANCE, AND CORRECTIONS TO THE PROCESS SO IT IS FAIR AND TRANSPARENT FOR ALL APPLICANTS, SHOULD PRECEDE REDISTRIBUTION OF FUNDING.

A. THE APPLICATION PROCESSES FOR RREM AND RESETTLEMENT HAVE BEEN UNCLEAR AND DEEPLY UNFAIR, AND MUST BE CORRECTED BEFORE MORE FUNDS ARE ALLOCATED.

Before attempting to redistribute funds into the RREM and Resettlement Programs, the State should disclose the process and criteria whereby decisions have been and are being made to grant or deny assistance to current applicants. Grassroots and advocacy organizations across the state receive calls daily from families trying to get a rational explanation as to how and why their applications were processed and/or how and when they will receive a determination on their appeals. The anxiety and uncertainty is compounded by the total lack of information provided to applicants as to the reason they were rejected, waitlisted or ignored. For example:

- The denial letters for the homeowner programs do not inform applicants of the reason for the denial and therefore provide no information regarding what facts or questions will be addressed in the appeal.
- Applicants are consistently given an ever-changing list of required documents and told that their applications are incomplete for different reasons at different times.
- The State has failed to adhere to a standard appeals process, promising decisions within 50 days which are not met.
- People living in manufactured housing have been given an ever-changing set of answers as to whether they are or are not eligible for the programs, thus leaving this particularly vulnerable population with little assistance – at most 10 owners of manufactured houses in all of New Jersey have been qualified for RREM, according to DCA.
- There is no clear methodology for prioritization of applications, and data provided to date on who is accepted, wait listed, or rejected does not match up with any discernible objective criteria.
- Recovery Centers frequently have “lost” applications and thus people who think they have applied are later told they have not.
- The failure to provide information in Spanish on a consistent basis or, in some cases even providing misinformation, have disadvantaged applicants that read Spanish from having a fair opportunity at funds.

The Resettlement and RREM programs do not comply with the most rudimentary notions of due process and basic fairness. To redirect more money into the programs without addressing these problems, and providing remedial relief for those who have been disadvantaged to date, would likely doom many families to never being able to recover through no fault of their own.

To remedy these programs, DCA before redirecting any more money for these programs must, at the very least:

- Provide a clear, step by step, process of how funds have been allocated at all points to date and will be allocated in the future that complies with the Notice, due process, and the federal Fair Housing Act;
- Provide a definitive list of all documents required to receive grant approval;

- Provide an online tracking system also accessible via phone or walk in, with LEP and disability access, that allows every applicant to quickly check on the status of their application and what else is needed to provide funding;
- Provide clear and fair standards for funding those in manufactured housing, and set aside remedial funding for people in manufactured housing disadvantaged in the prior round;
- Set aside remedial funding for those reading Spanish who were disadvantaged in the first round of funding;
- Commit to a clear, predictable, and transparent appeals process, in which people are given clear reasons for any denial and a clear process and timeframe for appeals.
- Provide anyone on the wait list an explanation of the wait list process, where they are on the wait list, and a process for receiving updated information on the wait list.

It is extremely unusual that such basic procedures are not in place – especially in the context of people rebuilding their lives after a disaster. The Asbury Park Press editorial board recently described the experience of these New Jerseyans as “left in the bureaucratic dark nearly a year after their homes were damaged by the storm.” The State can and must do better.

B. ANY INCREASED RESETTLEMENT FUNDING MUST BE RE-MARKETED TO MEET THE 60% LMI SHARE, AND NOT JUST PROVIDED TO EXISTING APPLICANTS WITH NO CONSIDERATION FOR INCOME.

The April Action Plan promised 60% of Resettlement funds for LMI households. To date, only 37% of funds have been allocated to such households. Approximately 10,000 eligible LMI households, according to FEMA data, have not received a Resettlement grant. These households – for whom the State has contact information but has not done sufficient outreach to – must be prioritized for any additional funding first, until the 60% threshold is reached. Renters should also be eligible for the program.

III. ALL PROGRAMS MUST MEET NATIONAL FUNDING OBJECTIVES AND EMPHASIZE RESILIENCY.

A. ASSISTING EVEN MORE HOMEOWNERS TO REBUILD IN STORM THREATENED AREAS DOES NOT SUPPORT SOLUTIONS WHICH ARE RESPONSIVE TO CLIMATE CHANGE AND FUTURE STORMS.

This request for additional funding to go to homeowner programs that only provide the option of rebuilding in places that are intrinsically vulnerable to future storms and sea-level rise rather than encouraging smart and proactive adjustment to the inevitable future is short-sighted and dangerous. We believe that everyone should have the right to return to their homes and communities if they so choose, and oppose any efforts to restrict those rights. If people voluntarily wish to relocate rather than rebuild on site, programs like RREM should give equal incentives and benefit to those who desire to remove their loved ones from the danger zones. The currently available programs are inconsistent with the Strategy recommendations of the Hurricane Sandy Rebuilding Task Force and accepted science.

B. THE PROPOSED CREATION OF UNSAFE STRUCTURES DEMOLITION PROGRAM SHOULD NOT BE APPROVED WITHOUT CRITERIA AND SAFEGUARDS NOT PROVIDED IN THE DRAFT AMENDMENT.

The proposed \$15 million Unsafe Structures Demolition Program (USDP) must not be approved as described in Amendment 4 without further detail and guidance. Before requesting funding for such a program the State should establish detailed criteria for identifying structures to be demolished. It should, further, provide protection for owners or occupants and prevent municipalities and other government entities, and potentially private development interests, from using HUD funds in arbitrary and opaque ways.

In describing the USDP the proposed Amendment references FEMA's Private Property Debris Removal (PPDR) program (See: <http://www.fema.gov/9500-series-policy-publications/952313-debris-removal-private-property>). The proposal does not, however, state that the USDP funding will only be used as matching funds for FEMA-PPDR demolition and debris removal. The proposed Amendment also references towns that require property owner approval to initiate demolition, but not criteria for owner approval for this State program. There is, to the contrary, an indication that the proposed program will be operated by State agencies without the constraints of FEMA or existing local demolition and removal programs.

Therefore we ask the state to develop and rationalize the USDP to provide criteria and standards that ensure that it will primarily benefit low- and moderate-income persons. Such criteria and standards must provide protections against actions that exacerbate concentrations of poverty and race. And, particularly in cases in which the State is considering the demolition of affordable rental property there must be affirmative consideration given to the need for demolition and the availability of replacement housing units. The history of disaster responses over the past decade demands acknowledgment that assaults on affordable rental housing and resulting concentration of race and poverty have often been the rule rather than the exception. We ask the State to refrain from pursuing a demolition program until concrete, detailed and enforceable constraints on arbitrary or objected to demolitions are established.

C. THE DRAFT AMENDMENT, IN TAKING FUNDS AWAY FROM THE SMALL BUSINESS PROGRAM, SHOULD ASSESS HOW THE MORE LIMITED REMAINING FUNDS SHOULD BE DISPERSED AND MARKETED MORE EFFECTIVELY.

The Draft Amendment reallocates funds from the small business program due to lack of utilization of that program. Our understanding is that the program has been poorly utilized in part due to the program having duplicative and difficult application processes and ineffective marketing. As part of this Amendment, the State should, in reducing the remaining funds, provide an acceptable plan for showing that the funds that do remain will be marketed and dispersed in a more effective and efficient fashion than the program has done to date.

D. THE DRAFT AMENDMENT FAILS TO JUSTIFY OR EXPLAIN HOW THE PROPOSED REDISTRIBUTIONS OF FUNDS FURTHER THE ASSERTED NATIONAL OBJECTIVES, OR WILL MEET THE 50% LMI REQUIREMENT WHICH HAS NOT BEEN MET BY HOUSING PROGRAMS TO DATE

The Draft Amendment states (p.5) that the National Objectives served by the proposed redistribution include: “Low and Moderate Income; Elimination of Slum and Blight; Urgent Need.” We recognize that the urgent nature of the unmet needs. We also recognize that, if properly and transparently structured, a program to demolish dangerous structures could, but would not necessarily, impact slum and blight. However, as presently structured, there is no assurance or even assertion beyond the single line reference, that the proposed redistribution will, as implemented, meet or even address any of the stated Objectives.

The housing distributions to date, as set forth in the 3rd Quarter QPR, do not show that the required 50% of funds are being awarded to persons of low and moderate income. Without adequate program development, the proposed USDP program cannot be said to benefit low and moderate income people. We ask that the State refine and clarify the uses of funds intended by this proposed amendment. Until that occurs, none of the funds described in the Draft Amendment should be counted as addressing the stated Objectives nor counted as a portion of the 50 % of CDBG-DR funding mandated to programs that benefit low and moderate-income persons.

We appreciate your consideration of our comments.

REQUEST FOR ANSWERS TO QUESTIONS PRESENTED BY THESE COMMENTS:

We, the below signed organizations and individuals, hereby ask that the State, in its response to these comments, answer, individually, and specifically, each of the following questions in conformance with the requirement of the HUD Allocation Notice of March 5, 2013, 78 FR 14339, ¶ VI.3.c.:

- 1) What are the unmet needs of homeowners in each of the nine most affected counties and the remainder of the state?
- 2) What are the unmet needs of residential tenants in each of the nine most affected counties and the remainder of the state?
- 3) To what extent will the proposed Amendment Number 4 funding distributions meet the needs of homeowners and residential renters described in the answers to questions 1) and 2)?
- 4) To what extent would the redistribution of funding requested by proposed Amendment Number 4 meet the unmet needs described in the answers to questions 1) and 2)?
- 5) What is the justification for shifting the proposed \$145 million solely to homeowner housing and not distributing a portion to rental housing programs to maintain the balance of resources to unmet needs?
- 6) How will the State identify structures deemed eligible for demolition and removal assistance under the proposed Unsafe Structure Demolition Program?
- 7) How will the State choose, among the structures deemed eligible for demolition and removal assistance under the proposed Unsafe Structure Demolition Program, the specific structures to be demolished?

- 8) Will owners of structures chosen for demolition and removal under the proposed Unsafe Structure Demolition Program have the opportunity to appeal or otherwise challenge the decision that their structure is to be demolished?
- 9) How will the proposed transfer of funds from the Grants/Forgivable Loans to Small Businesses program to the RREM program meet the national objective of benefit to persons of Low and Moderate Income?
- 10) How will the proposed transfer of funds from the Grants/Forgivable Loans to Small Businesses program to the Homeowner Resettlement Program meet the national objective of benefit to persons of Low and Moderate Income?
- 11) How will the proposed transfer of funds from the Grants/Forgivable Loans to Small Businesses program to the Unsafe Structure Demolition Program meet the national objective of benefit to persons of Low and Moderate Income?
- 12) How will the proposed transfer of funds from the Grants/Forgivable Loans to Small Businesses program to the RREM program affirmatively further fair housing?
- 13) How will the proposed transfer of funds from the Grants/Forgivable Loans to Small Businesses program to the Homeowner Resettlement Program affirmatively further fair housing?
- 14) How will the proposed transfer of funds from the Grants/Forgivable Loans to Small Businesses program to the Unsafe Structure Demolition Program affirmatively further fair housing?
- 15) How will the proposed transfer of funds from the Grants/Forgivable Loans to Small Businesses program to the RREM program affirmatively address the federal requirement that grantees “promote: (a) Sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise; and (b) how it will coordinate with other local and regional planning efforts to ensure consistency”?
- 16) How will the proposed transfer of funds from the Grants/Forgivable Loans to Small Businesses program to the Homeowner Resettlement Program affirmatively address the federal requirement set forth in HUD’s April 19, 2013 Clarifying Guidance (78 FR 23578, 23579) that grantees “promote: (a) Sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise; and (b) how it will coordinate with other local and regional planning efforts to ensure consistency”?
- 17) How will the proposed transfer of funds from the Grants/Forgivable Loans to Small Businesses program to the Unsafe Structure Demolition Program affirmatively address the federal requirement set forth in HUD’s April 19, 2013 Clarifying Guidance (78 FR 23578, 23579) that grantees “promote: (a) Sound, sustainable long-term recovery planning informed by a post-disaster evaluation of hazard risk, especially land-use decisions that reflect responsible flood plain management and take into account possible sea level rise; and (b) how it will coordinate with other local and regional planning efforts to ensure consistency”?

- 18) What criteria, in detail, will be used to distribute any future RREM and Resettlement funding?
- 19) How will the remaining funds in the Small Business Program be utilized in a more effective and efficient way?
- 20) Why is Resettlement funding not available to renters?
- 21) What will DCA do to remedy past misinformation to Spanish readers on these programs and ensure funds are available for those harmed?
- 22) What will DCA do to remedy past misinformation to residents of manufactured housing on these programs and ensure funds are available for those harmed?
- 23) How will DCA meet the 60% LMI level in the Resettlement Program?

Very truly yours,