

Draft January 12, 2015

Re: Written Comments to Action Plan Amendment 11, 12 & 13

Thank you for this opportunity to provide comments to New Jersey, CDBG-DR Action Plan Amendments 11, 12 and 13. The below-signed civil rights, housing, religious, special needs and community development organizations share the following comments and suggestions for these three Amendments.

First, we wish to acknowledge that the combination of housing recovery distribution proposed in Amendments 11 and 13 moves the total distribution closer to striking the correct balance between assistance to owner-occupied and rental housing and bringing the rental housing distribution up to the comparative levels of damage suffered by these populations. Over the three rounds of HUD allocations, a total of \$1,710,000,000 will be directed to programs assisting homeowners and \$ 839,520,000 to programs assisting renters. (A balance of 67% and 33% respectively). This improvement results from these Amendments implementing the Voluntary Compliance Agreement and Conciliation Agreement (VCA) signed between Fair Share Housing Center, the New Jersey State Conference of the NAACP, Latino Action Network, the State, and HUD in May 2014. We support the implementation of the VCA to address these critical housing needs for both renters and homeowners.

Amendment 11

That said, there are several immediate, pressing needs that are not met by the draft Amendments and several representations in the Amendments that are insufficiently described and for which no implementation guidelines are currently provided.

I. Interim Assistance for Homeowners

Financial assistance is sorely needed for families facing the simultaneous payment of rent, mortgage, and other living expenses while struggling through the extremely long delays in RREM program. This need is identified in Amendment 11, at § 2.1.1. D., pp 2-5 & 2-6.

Displaced homeowners are making both mortgage and rent payments on budgets still strained by other unanticipated storm-related expenses. As long as homeowners remain displaced, these storm-related expenses will persist,

Yet the concluding prioritization of DR funding (p. 2-6) does not include funding for this need.

Inability to make mortgage payments will result in foreclosure for many families. This reality, and others related to the lack of bridge support, without a change in policy will

result in the involuntary termination of many households from the RREM program and unconscionably snatch defeat from the jaws of success, heaping devastation on top of tragedy. Given that the State is now finally providing housing counseling to impacted homeowners, it would be especially limiting to fail to address the financial needs of homeowners facing foreclosures, who might for the first time, have access to guidance but have run out of resources to stave off a foreclosure.

In response to public comment requesting such assistance submitted in response to Action Plan Amendment 7, the Substantial Amendment submitted by the State in response to HUD's Round 2 Allocation Notice, the State responded in part that:

The State has also amended the RREM program description to provide that temporary relocation may be considered as an eligible cost under the program. Funding provided through the Homeowner Resettlement program also could be used toward the costs described by the commenters. (Amendment 7, Comment 40, p. 5-41)

The State has not implemented this change to the RREM program. We recognize that the CDBR-DR funding will never be enough to meet each and every need, but far too often the delays that bring families to this abyss are the fault of the dysfunction of the RREM program and in spite of herculean efforts by those families.

A pathway to a solution must be a part of this Amendment, either through reallocating funds from the first and second tranche or identifying other non-CDBG -DR funds (similar to SHRAP) that can fill this need.

II. Create Effective Oversight & Monitoring of RREM Construction & Elevation

Amendment 11 proposes to clear the RREM waiting list, which will help many families who have been waiting for assistance for over two years since the storm. We want to make sure that those families, along with other people awarded RREM through first and second round funds but who still have not received such funds, actually receive their funds quickly and effectively.

A significant component of the problems many homeowners have experienced with RREM is that DCA has not implement a simple, efficient and effective process for managing homeowners' process from application to certificate of occupancy and move-in of RREM assisted properties.

If the State intends to distribute an additional quarter of a billion dollars to the RREM program (\$225 million to RREM via Amendment 11, and \$30 million via Amendment 13 = \$255 million), then it is appropriate to address the functionality of the program in these comments.

In order to justify the expenditure of such a significant amount of additional funding, in a program that is widely understood to not yet be functioning effectively, the State must demonstrate, in the Amendment, what it intends to do to refine the RREM construction contract process to protect homeowners' from fraud and

improper construction activities and the State from wrongful expenditure of funds. The State must:

- a) Require the use of construction contracts that meet national industry standards and protect the homeowner in the event of faulty workmanship or fraud by contractors;
- b) Require a proper scope of work from each contractor, in writing, with dollar amounts attached to each line item;
- c) Require that the RREM - Estimated Cost of Repair and the contractor's Scope of Work agree not only in task content but also in the costs associated with each line item;
- d) Provide ongoing construction oversight, consistent with industry standards and local and state building codes and requirements, rather than just writing a check to a homeowner at the start and then coming back at the end to rubberstamp, or even worse find problems with, work that has been completed without proper oversight;
- e) Create an avenue for redress for homeowners if the work is not completed properly. The existing contracts for legal assistance for Sandy victims, which terminate in September of this year are wholly inadequate to provide the needed legal assistance and put the engaged attorneys in the position of committing malpractice because their contracts do not support them in filing appropriate court actions since such actions cannot possibly be brought to proper conclusion prior to the expiration of the legal assistance contracts.

III. Create and Publish Metrics to Inform Public of Status of Programs

The State should describe, in the Amendment, how it intends to cure its prior failure to comply with the HUD requirement that it provide detailed performance metrics for each and every round of CDBG-DR funding.

Amendment 11, § 4: Performance Schedule, p. 4-1, rightfully references FR Notice FR-5696-N-11, the March 5, 2013 first round Allocation Notice for the proposition that :

New Jersey will issue another proposed non-substantial amendment to provide a detailed performance metrics regarding the allocation of third round CDBG-DR funds. The performance metrics will be based on expected quarterly expenditures and outcomes.

This is in direct response to HUD's requirement, in its Allocation Notice (at 78 Fed Reg 14331), that the State:

submit to the Department a projection of expenditures and outcomes to ensure funds are expended in a timely manner.

The HUD Allocation Notice further states that:

This will enable HUD, *the public*, and the grantee, to track proposed versus actual performance. (emphasis added) (78 Fed Reg 14331)

With respect to each of the recovery programs, and particularly with respect to RREM, given the proposed distribution of an additional quarter of a billion dollars into the program, the Amendment must confirm, and describe in detail how the State will:

- Establish quarterly targets;
- Track progress toward these targets;
- Provide performance metrics in a format that is easy to read and understand;
- Publish them conspicuously on its website;
- Update them regularly, preferably in real time rather than quarterly

The metrics must include, but not be limited to:

- Updating the numbers in the Action Plan that show how many households have signed grant agreements for RREM
- Adding milestones for the construction process for RREM, including how many awardees have pulled building permits and begun construction
- How many RREM units will be elevated and where they are in the elevation process (elevation has not yet begun, elevation underway, elevation completed), including their location with respect to FEMA Special Flood Hazard Areas (all "A" and "V" zones), by municipality.
- How many households have finished RREM rebuilding and elevation and are back in their homes
- The rate of construction of new rental units under the Fund for Restoration of Multifamily Housing and when certain numbers of units will be available for rent
- Appropriate metrics and performance data for other programs;
- The reporting of results by census tract and municipality so that the public can tell that all communities are being fairly treated

The State should also now provide goals for what it anticipates for each metric described above so that the public knows how much longer the recovery process will take and can measure progress towards those goals. The State knows how many households have been approved for the major recovery programs and should be able, at this stage, to reasonably project whether it can, for instance, complete one-half of all RREM rebuilding and elevations by the third anniversary of the Storm, and what rate of progress will be necessary to achieve this metric.

The State should also, once it creates these metrics, be able to tell individual homeowners waiting for RREM funding where they stand and when the State anticipates they will be able to progress to various stages, so that they can make important life decisions around that timing. The State should also clearly tell all individual homeowners who still have not received funding what additional

information, if any, is needed to get to the next stage through a letter shortly after approval of the Action Plan so that there is clarity on what needs to be done to get funding, clarity that has too often been missing in the RREM process.

IV. Confirm Manufactured Housing Distribution

Section 2.2.1 B. should be corrected to comply with the Voluntary Conciliation Agreement. The section, at the top of page 2-4 states that \$10 million of the \$40 million LMI program will be initially reserved for residents in manufactured housing.

The VCA requires, at p. 13, that:

a minimum of \$10 million of the funds committed to this program shall be initially reserved for owners of manufactured housing whose homes were damaged (emphasis added).

The State should confirm that if more than \$10 million is needed that it is possible that more than \$10 million could go to residents in manufactured housing.

V. Post Integrity Monitoring Reports

The State should post, for public review, its integrity monitoring reports, most notably all integrity monitor reports generated by CohnReznick in its nearly \$10 million contract to oversee DCA's work, which the State told HUD would be publicly available in the first quarter of 2014.

Section 3.4 of Amendment 11 promises a continuation of it "high level of transparency and accountability." Neither the DCA nor the New Jersey Comptroller webpages, have, to date, provided a universally high level of transparency and accountability, The State should publish on its website all prior and ongoing integrity monitoring reports. This would be consistent with HUD's requirement that the public, as well as HUD and the State be able to track proposed versus actual performance and the statement in Section 3.4 of Amendment 11, that:

The primary purpose of the State's monitoring strategy is to ensure that all projects comply with applicable federal and state regulations and are effectively meeting stated goals and projected timelines.

Amendment 12

The Rebuild By Design projects (RBD) present a good opportunity to apply the lessons learned in the implementation of Round 1 and 2 CDBG-DR to make sure that from the start RBD is well administered and implemented and sufficiently incorporates equity and fair housing concerns.

I. Describe Anticipated Creation of Internal Project Capacity

The Amendment must describe in significantly greater detail how the Department of Environmental Protection (DEP) will use a portion of the \$380 million allocation, or engage other funding, to build internal capacity for RBD that will allow the DEP to properly Oversee & Implement these 7 to 10 year projects.

The Amendment extols the capacity of the Department of Environmental Protection to oversee & implement these Rebuild By Design projects. Yet the DEP has recently had its budget cut which has reduced its capacity as to its current responsibilities. (see: NJ OLS Analysis of the New Jersey budget: Department of Environmental Protection, April 2013 and April 2014: http://www.njleg.state.nj.us/legislativepub/budget_2014/DEP_analysis_2014.pdf, and http://www.njleg.state.nj.us/legislativepub/budget_2015/DEP_analysis_2015.pdf - Expended FY 2012, \$386,596,000, expended FY 2013, \$380,643,000; Appropriated FY 2014, \$372,909,000)

The DEP must not be put in the position of contracting out major portions of this work. The experience with the 1st & 2nd Round CDBG allocations – with extremely expensive contracts awarded to a number of contractors that were not up to the job - must be avoided.

In this regard, the First Round HUD Allocation Notice of March 5, 2013 requires that Action Plans (and their amendments) include:

“(4) A description of how the grantee will leverage CDBG–DR funds with funding provided by other Federal, state, local, private, and non-profit sources to generate a more effective and comprehensive recovery.” (78 Fed Reg 14333)

(12) A description demonstrating the adequacy of the grantee’s capacity, and the capacity of any UGLG or other organization expected to carry out disaster recovery programs (this assessment shall include a description of how the grantee will provide for increasing the capacity of UGLGs or other organizations, as needed and where capacity deficiencies (e.g., outstanding Office of Inspector General audit findings) have been identified. (78 Fed Reg 14334)

The description of the State’s approach and solution to this need must be addressed with overt recognition of the federal cap on administrative costs as well as the need to have this capacity remain strong for the long duration of these programs.

II. Describe Plans for Engaging Vulnerable and Underserved Populations

Much more must be disclosed in this Amendment regarding the DEP plans to engage the communities affected by the RBD projects.

Section 4 of Amendment 12 says many good things about engaging communities and stakeholder, including:

with community organizations within the municipalities, among other things, to engage vulnerable and underserved populations regarding the Rebuild by Design projects. (p.4-1)

These nods to such engagement, however, are not supported by anything approaching concrete steps or even an outline of how this will occur.

Here again, the State must learn from Rounds 1 & 2 of the CDBG-DR experience so that it does not have to revisit and/or correct a failure to affirmatively engage local organizations and the vulnerable and underserved populations. There is clear evidence from Rounds 1 and 2, that ground level organizations, and the residents of affected communities, have vital, useful knowledge and experience that can contribute to the conceptualization, development, and implementation of these projects.

Disturbingly, what cryptic assurance of engagement does appear in the Amendment does not assuage community concern, but rather, sounds an alarm. The second full paragraph on page 4-1 of Amendment 12 starts with this sentence:

DEP and its partners will hold a community meeting during this Action Plan Amendment comment period in each of the RBD project regions, where the projects and the Amendment will be discussed.

A fair reading of this promise is that one of “the RBD project regions” is in Moonachie and Little Ferry and the other is Weehawken and Hoboken. A search of the DEP Sandy Recovery Information page did not disclose any announcement of such meetings. The DEP must do better.

Equally disturbing is the list of the New Meadowlands Stakeholders in that project website. The sole entity that can be called a community organization is the Hackensack Riverkeeper. We recognize the important contribution that the Riverkeeper can provide and hope that the DEP will take full advantage of that organization’s formidable capacity. This does not excuse the fact that the list does not include a single community or grass roots organization that is made up of or represents a vulnerable or underserved population. The Meadowlands is a very diverse area in which low-income communities and communities of color were hit very hard by Sandy and remain vulnerable to future storms. Those communities, such as Little Ferry and Moonachie, and key community groups in them such as the residents of the two major manufactured housing parks in Moonachie, must be much more heavily represented in the outreach process.

We recognize that the Amendment cannot contain a detailed, step-by-step description of every action that the Department intends to take to fulfill its promise, and indeed its lawful obligation, but the proposed offerings are inadequate. Both during the development of the proposed amendment and the offering of the proposal for public comment the Department has failed to meet its obligation to the residents of affected communities.

The Amendment must be revised to include a system of concrete steps and metrics, which begin even before review of the Amendment by HUD and continue through the DEP's self-identified phases of 'Feasibility Study', 'Design', 'Construction' and 'Post Construction'. These steps and metrics must include a process for educating affected communities of the existence and potential of the RBD plans, identifying and engaging organizations in vulnerable and underserved communities, and providing a structure through which their input can be given real and effective voice.

We do not want to repeat the issues with the lack of outreach at the start of the CDBG-DR program in the RBD process, and urge that the Amendment address these issues head on.

III. Describe How Vulnerable and Underserved Populations Will Equitably Benefit

The Amendment must describe how it will develop the proposed projects in a way that equitably addresses the needs of all communities and populations in the regions, and particularly those of the acknowledged vulnerable and underserved.

The New Meadowlands Project description in the proposed Amendment, as well as the detailed RBD team submission promote the project as offering, among other things:

flood protection, connections between towns and wetlands, and will provide opportunities for towns to grow. (Amendment, p. 2-5)

All of these outcomes have the potential to aid or to devastate vulnerable and currently underserved populations. Indeed, New Jersey is rife with examples of such behaviors that have resulted in better protection of more affluent communities, connections, including public as well as automobile transportation, which benefitted those with cars or located transportation access in carefully conscribed locations, and viewed growth as the equivalent of gentrification.

HUD's Round 1 Allocation Notice of March 5, 2013 requires, in part, that Action Plans and Amendments contain:

(7) A description of how the grantee will encourage the provision of housing for all income groups that is disaster resistant, including a description of the activities it plans to undertake to address: (a) The

transitional housing, permanent supportive housing, and permanent housing needs of individuals and families . . . that are homeless and at-risk of homelessness; (b) the prevention of low income individuals and families with children . . . from becoming homeless, and (c) the special needs of persons who are not homeless but require supportive housing . . . Grantees must also assess how planning decisions may affect racial, ethnic, and low-income concentrations, and ways to promote the availability of affordable housing in low-poverty, non-minority areas where appropriate and in response to disaster related impacts.

(8) A description of how the grantee plans to minimize displacement of persons or entities, and assist any persons or entities displaced; (78 Fed Reg 14334)

The proposed Amendment 12 sorely fails to meet its obligation to address these bedrock concerns. It must be rewritten to comply with federal funding requirements, to show how it will ensure that both New Jersey RBD projects will serve all of the communities impacted. In particular, Amendment 12 should specifically commit that both RBD projects explicitly analyze the impacts on low-income communities and communities of color in their areas (e.g. manufactured housing parks in Moonachie, public and assisted housing in Hoboken), describe how the strategies they choose will protect those communities from future storms rather than displace them, and prioritize funding for those areas of their plans.

IV. Ensure Resiliency and Redundancy of Protections for Vulnerable Communities

Beginning with the feasibility studies and continuing through post construction, the RBD projects must incorporate resiliency and redundant protections for existing vulnerable and underserved communities and integrate such systems holistically with overall design.

The Amendment must address this need, to ensure a safe future for communities that suffered pervasive destruction in Superstorm Sandy, in a detailed manner. The standards by which such safety will be addressed and evaluated, across the geography of the project region, must be specified in the Amendment and must be built into the design through a process of community engagement addressed above.

Only with such foresight and focused attention can these communities have assurance that the growth envisioned by the RBD proposals will not be at their expense.

Amendment 13

I. Allow Tourism & Marketing Distribution to Remain Unchanged

We recognize that the Tourism Marketing distribution will remain the same as it was in the original Action Plan and agree that the State should not further pursue a HUD waiver to enlarge this program.

II. Transfer \$30 Million to RREM

Given the parallel commitment of substantial funds to the creation of affordable rental housing, we support the transfer of \$30 million to the RREM program.

We recognize that this funding will, in part be used to meet the needs of households initially improperly excluded from the program pursuant to the VCA and hope that, with this funding the RREM program will be more open to working with households that continue to be terminated for reasons that are beyond the control of otherwise eligible and worthy applicants. One such circumstance is the development of financial deficits caused by the lengthy delays in RREM project completion as referenced in Section 2.1.1 of Amendment 11.

III. Properly Define Assisted Housing

We fully support the clarification to Section 3.3.1 of Amendment 7, that public housing' was intended to read public housing and federally owned and assisted multifamily housing.

Conclusion

Thank you for this opportunity to provide written comments on the proposed Amendments 11, 12 and 13. We look forward to continuing engagement with both the DCA and the DEP in crafting Amendments that address the ongoing needs of the residents of New Jersey in the recovery and in the implementation of any Amendments approved by HUD.