



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410-7000

NOV 10 2009

ASSISTANT SECRETARY FOR  
COMMUNITY PLANNING AND DEVELOPMENT

The Honorable Rick Perry  
Governor of Texas  
P.O. Box 12428  
Austin, TX 78711-2428

Dear Governor Perry:

I regret to inform you that the Department is not accepting the State of Texas's Amendment 1 to its Action Plan for more than \$1.7 billion of Community Development Block Grant (CDBG) Disaster Recovery supplemental funding, as submitted on September 30, 2009. The proposed Amendment 1, as submitted, is substantially incomplete as it does not comply with applicable action plan and citizen participation requirements.

Amendment 1 provides the State's allocation methodology of CDBG disaster recovery funds to Councils of Governments (COGs), but does not include a method of distribution to units of general local government. In addition, while it is clear that the State has undertaken citizen participation in the development of its amendment, the State has not provided citizens with public notice and the opportunity to comment on the COGs methods of distribution to units of general local government. The Federal Register notices announcing the first two allocations of disaster recovery funds require a state to submit an Action Plan or Amended Action Plan that includes "descriptions of the method of allocating funds to units of local government" and provide for reasonable public notice, appraisal, examination and comment on the activities proposed for the use of the CDBG disaster recovery grant funds. 74 Fed. Reg. 7244, 7250 and 74 Fed. Reg. 41146, 41151.

Upon review of Texas's Action Plan submitted in March, the Department determined that the Plan did not include a description of the method of allocating funds to units of general local government, as required by the Federal Register notice. Accordingly, the State did not meet the citizen participation requirement as citizens did not receive adequate information on the proposed use of the funds or how they could benefit from the proposed activities. Due to Texas's need for immediate assistance, however, HUD approved the Action Plan, in part. The Department conditioned the release of funds on the provision of citizen participation on the method of distribution to units of general local government determined by the COGs.

Amendment 1 also fails to describe the method of allocating funds to units of general local government. The description must include all criteria used to select applications from local governments for funding, including the relative importance of each criterion, a description of how the disaster recovery grant resources will be allocated among all funding categories and the threshold factors and grant size limits that are to be applied. Although the problems with the initial action plan and Amendment 1 are similar, unlike the first allocation, there is no compelling need to immediately approve the incomplete Amendment 1 for the second allocation because Texas has yet to award \$476 million from the initial allocation of \$1.3 billion.

To make Amendment 1 substantially complete, the State must revise the amendment to incorporate the COGs methods of distribution to units of general local government in sufficient detail as described above and resubmit it within 45 days. As permitted in the first Federal Register Notice, the State may submit an initial partial amendment and amend it one or more times subsequently until the amended Action Plan describes uses for the total grant amount. The Department will, however, only make the remaining funds available as the State's amended action plan describes the COGs methods of distribution, provides for citizen participation on the amendment, and submits the amendment to HUD for review.

The Department would also like to take this opportunity to note several broader concerns with regard to the State's recovery plan. The first concern is on the State's analysis of impediments to fair housing choice (AI). A recipient of CDBG funding is required to certify that it will affirmatively further fair housing, which means that the recipient: 1) has or will conduct an AI within the state; 2) take appropriate actions to overcome the effects of any identified impediments; and 3) maintain records reflecting the analysis and actions taken in this regard. While the Department has already accepted the State's certification, the State is strongly urged to consider updating and revising its existing AI. The State's existing AI apparently dates to 2003 and, without revisions or updates, likely does not account for significant effects upon the Texas housing market resulting from Hurricanes Katrina and Rita in 2005 and Hurricanes Dolly, Ike and Gustav in 2008. For example, it is likely that the current AI does not address accessibility issues that may arise in housing elevation projects. An updated AI may assist with addressing these issues in project development. In addition, the effects of these storms have been compounded by systemic weaknesses in the housing market in 2008 and 2009 that have produced unprecedented levels of home foreclosures.

Recent events demonstrate that it is in the State's best interest to update the existing AI. The Department notes a recent U.S. District Court settlement in which a deficient AI was the basis for an action under the Federal False Claims Act. As a result of the deficient AI, the court found that Westchester County, New York, violated its certification that it would affirmatively further fair housing. Accordingly, the Department is urging all CDBG grantees to consider updating their AIs.

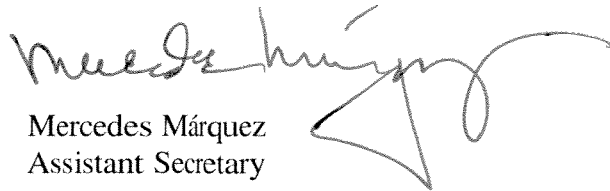
In addition, the Department has read the Galveston County Daily News articles and received complaints about public opposition to proposed plans to rebuild public housing and affordable housing for low- and moderate-income persons in Galveston. The Department reminds the State of its certification to conduct and administer its CDBG Disaster Recovery program in conformity with the Civil Rights Act of 1964 and the Fair Housing Act. Units of general local government must also make this certification in order to receive CDBG disaster funding from the State. The Department supports the rebuilding of public and affordable housing in Galveston, particularly for low-income families. The housing re-development may involve different configurations. The Department is willing and prepared to offer technical assistance and guidance on this matter.

The final concern relates to proposed use of CDBG funding for activities that focus on mitigation of future disasters as opposed to addressing core recovery needs arising directly from damage caused by Hurricanes Dolly, Ike and Gustav. The CDBG disaster recovery funds are, as stated in the appropriation, primarily targeted to restoration of infrastructure, housing, and economic revitalization. The emphasis on mitigation activities is not consistent with this direction although

the Department does encourage mitigation enhancements in the context of the above listed purposes. While some mitigation activities may support disaster recovery, the Department urges the State to focus on clear recovery needs.

Please be assured that the Department stands ready to assist the State in any way possible to address these concerns. If you have any questions regarding this letter, please contact me at (202) 708-2690.

Sincerely,



Mercedes Márquez  
Assistant Secretary