



Shaun Donovan, Secretary  
Department of Housing and Urban Development  
451 7th Street S.W.  
Washington, DC 20410

July 29, 2013

Dear Secretary Donovan:

Re: Suggestions for HUD Notice Amendment Establishing Criteria for Second Round Post-Superstorm Sandy CDBG-DR Allocation

Our organizations, Fair Share Housing Center, the Housing and Community Development Network of New Jersey, and New Jersey Future, recently joined over 100 other New Jersey and New York organizations in a June 26, 2013 letter to you and the Superstorm Sandy Rebuilding Task Force<sup>1</sup>, which presented observations and suggestions regarding the Task Force's anticipated report to President Obama. We look forward to the Task Force's upcoming report, and hope that it includes many of our recommendations.

In the meantime, we understand that HUD is working to prepare a Notice for the second round of Sandy funding (second round Allocation Notice),<sup>2</sup> and provide these comments on how HUD can take the principles that we and many others recommended in the June 26 letter and implement them in the second round of funding. We commend HUD on the inclusion, in the March 5, 2013 Allocation Notice (78 FR 14329), of requirements that grantees meet the needs of the most vulnerable, persons of low and moderate-income and residents of the most impacted areas. We also appreciate that the Allocation Notice, more than any before it, and particularly the Clarification Guidance published in the Federal Register on April 19, 2013, has required grantees to recognize and accommodate sea level rise and to use best available data to determine the location of recovery projects and activities. (78 FR 23578, 23579)

While these Notice requirements have positively impacted distribution of funds to date, as advocates and non-governmental organizations that work, daily, in the communities devastated by the storm, we believe that there are areas in which increased guidance would be helpful to ensure an equitable and resilient recovery and should be addressed in HUD's second round

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<sup>1</sup> See attachment

<sup>2</sup> We are aware of HUD's May 29, 2013 Allocation Notice (78 FR 32262), of funding appropriated by Pub. L. 113-2, to nine states that were not beneficiaries of the March 5, 2013 Notice (78 FR 14329). Herein we designate the March 5 Notice as the first round Allocation Notice. We designate the anticipated allocation notice we are addressing as the second round Notice because it will be the second allocation to New Jersey for Sandy recovery.

allocation Notice. Based on our insights from the recovery to date, this letter suggests updates to the Notice that address: (1) an updated assessment of unmet needs; (2) public disclosure of the impact of first round programs on assessed needs; (3) a requirement that grantees specifically explain how they will meet the unmet needs identified in the updated assessment; (4) how recovery programs affirmatively further fair housing; (5) how recovery programs build sustainable communities and anticipate future super-storms and sea level rise; (6) sufficient awareness by Sandy victims of opportunities to apply for funding and sufficient services to ensure they can utilize that funding; (7) the requirement to fully meet unmet needs of damaged Public and federally assisted housing; (8) a substantially enhanced effort to attain Section 3 employment and contracting targets; and (9) provisions for robust public participation, including public hearing and comment.

To that end we offer the following comments and recommendations which we hope will inform the anticipated second round allocation Notice.

I. Accurate and proper assessment of unmet needs is critical to the proper allocation of second round funding.

As HUD has consistently reminded grantees, allocations should be based upon the best available data to ensure all needs are met. The new Notice should require that grantees:

1) ACQUIRE AND USE BEST AVAILABLE DATA: The immediate post-storm data collection produced assessments that did not result in consistent and accurate data on comparative loss. In particular, FEMA IA data does not reflect the full extent of damage to the rental stock, as New York State and New York City's first Action Plans recognized, and analysis by the Furman Center substantiates.<sup>3</sup> HUD correctly required New Jersey to increase its rental allocation in the first round of CDBG-DR money in response to New Jersey's flawed action plan.

2) UPDATE METHODOLOGY: We ask that HUD require grantees to revisit the available data, rationalize it with regard to earlier inconsistencies and apply a proportional methodology correctly reflecting the true unmet need among homeowners and renters, urban and non-urban areas, most impacted areas (at the census tract level) and less affected areas and households, low-moderate-income (LMI) residents and high-income residents and among competing sub-grantees. HUD should heavily weigh, in deciding to approve or disapprove the submitted Action Plan or Action Plan Amendment addressing the second round allocation (hereinafter "Plan Amendment") whether the grantee has provided this critical assessment and proportional methodology.

We further note that the second round Notice should require proper balancing of all unmet needs and resiliency measures for future development. The June 25, 2013 letter from President Obama, which increased the FEMA share of Public Assistance funding to 90% for most applicable categories of unmet infrastructure needs,<sup>4</sup> will remove the need to divert critical

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<sup>3</sup> See attachment: *Undercounting of Renters in New Jersey CDBG-DR Action Plan*: April 19, 2013

<sup>4</sup> New Jersey; Amendment No. 9 to Notice of a Major Disaster Declaration, Notice, 78 FR 41074 (July 9, 2013).

CDBG-DR funding from restoration of housing and economic revitalization while allowing HUD to insist on responsible grantee accommodation of environmental realities. It will do so by dramatically decreasing the state's matching infrastructure share and lessening the impact of the anticipated infrastructure needs information<sup>5</sup> in second round grantee and sub-grantee allocations. We praise the President's action to recognize that the damage suffered by New Jersey "is of sufficient severity and magnitude that special cost share arrangements are warranted."<sup>6</sup> HUD should reflect this change in its funding allocation and second round Notice and ensure that, in response, (a) CDBG-DR funding properly balances funding for infrastructure with critical remaining needs for restoration of housing and economic revitalization; and (b) funding requirements include responsible grantee accommodation of climate and environmental realities. We further note that this reduction in state matching share resulted from this determination of warranted need, should not result in a reduction of the New Jersey allocation share in response to this matching funds adjustment.

II. HUD should require that grantees, in their Plan Amendments provide data and analysis of recovery activities to date and remaining needs so that HUD and the public can evaluate existing programs.

Without deliberate analysis of whether the recovery is addressing the needs as anticipated by that Plan, grantees risk increasing short term suffering and invite long term failure. It is, therefore of utmost importance, that as part of the Action Plan review process, grantees provide detailed data on whether programs are meeting the needs of the most impacted geographies, all income groups, people of all races and ethnicities, and people with disabilities, and what needs remain. In order for both HUD and the public to adequately evaluate a draft Action Plan or Amendment, all stakeholders must have available clear information on how existing programs are working.

Therefore, we ask that HUD require, in its second round allocation Notice, that for each existing program proposed to be continued and/or modified, grantee Plan Amendments:

1) **DISCLOSE THE DEMOGRAPHICS OF THOSE IN NEED AND THOSE ASSISTED:** Must identify and describe, for all first and second round funded LMI housing programs, organized by census tract (including highlighting tracts identified as "most impacted"): the number of persons and households assisted and amount of funding awarded, the number of homeowner and the number of rental units assisted and amount of funding awarded, any restrictions regarding the age or familial status of occupants, the presence or absence of accessibility design features, and the number of fully accessible units;

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<sup>5</sup> Deferred by the March 5 Notice because of the lack of adequate data: 78 FR 14329, 14349. Generally described in prior disaster allocation notices as: "FEMA estimated and obligated amounts under its Public Assistance program, Federal and State cost share." (75 FR 69097, 69111 and 77 FR 22583, 22598). FEMA-PA includes: Roads and Bridges; Water Control Facilities; Public Buildings; Public Utilities; and Recreational-Other. (See generally 44 CFR 206.220 et seq)

<sup>6</sup> See fn 4.

2) DISCLOSE FAIR HOUSING PERFORMANCE OF PROGRAMS TO DATE: Disclose the impact of recovery programs on income and racial segregation/integration and enable evaluation of whether the programs are meeting fair housing requirements by providing, for each program, at census tract level, data on demographics assisted by each program, including race, ethnicity, age, disability, and number of extremely-low, very-low, and low-income households, of the beneficiaries of each program funded with first round funding, and describe how each program affirmatively furthers fair housing.

3) ADDRESS POTENTIAL CHANGE TO PROGRAMS; Describe whether the grantee anticipates any changes to these results for each program, and if so, describe the changes and what basis the grantee has for expecting such changes.

4) DISCLOSE PLANNING GRANTS AWARDED ALONG WITH ASSESSMENT OF SUSTAINABILITY AND RESILIENCY PERFORMANCE AND POTENTIAL: For any planning program (e.g. a) the DCA Post Sandy Planning Assistance Grant Program, b) those supporting multi-jurisdictional and municipal hazard mitigation planning and c) any other planning assistance programs), disclose how the program supports the most impacted municipalities by publishing, on the grantee's disaster website, a list and copy of grants awarded these programs, and describe the metrics by which those planning programs advance sustainability and resiliency.

III. For both existing and new programs, HUD should require that the grantee specifically explain how it will meet the unmet needs identified in the updated assessment.

For each existing and new program, the second round Notice should require grantees to specifically explain how it will meet the unmet needs identified in the Action Plan, building upon a number of requirements in the first Allocation Notice, including Section VI. A. 1. a. (1) which states that: "Grantees must pay special attention to neighborhoods with high percentages of damaged homes and provide a demographic analysis (e.g., race, ethnicity, disability, age, tenure, income, home value, structure type) in those neighborhoods to identify any special needs that will need to be addressed." (78 FR 14333).

Particularly, programs should include (a) a description of how the projected use targets limited resources to the areas with the greatest need and types of impacted households with the greatest need based on the impact and unmet needs assessment and encourages the provision of housing for all income groups impacted by the disaster as required by first round Allocation Notice; (b) a description of how the activity promotes the availability of affordable housing in low-poverty, non-minority areas consistent with the proportion of such areas identified as areas with the greatest need based on the impact and unmet needs assessment; (c) a description of how the activity promotes the revitalization and rebuilding of urban neighborhoods consistent with the proportion of such areas identified as areas with the greatest need based on the impact and unmet needs assessment; and (d) how the activity addresses any special needs identified based on the demographic analysis in the impact and unmet needs assessment. As part of this analysis, grantees should also address whether the evaluation of program grant and loan awards under a 'first-received first evaluated' system properly prioritizes the benefits of the disaster recovery funding.

This analysis will help ensure that grantees fairly and comprehensively address all unmet needs in all communities impacted by the storm.

IV. HUD should ensure that all funding, including infrastructure funding, be programmed and spent in a manner that affirmatively furthers fair housing.

Section VI. A. 1. a. (7) (78 FR 14334) of the first round Notice reiterated the long standing requirements of the CDBG annual funding process that grantees: “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.”

HUD should build upon this existing provision by specifically requiring that each grantee describe in its draft Plan Amendment, how all funding, including but not limited to infrastructure restoration funding, will be spent in a manner which affirmatively furthers fair housing. This should include descriptions of how the programs receiving CDBG-DR second round funds will address one or more impediment to fair housing choice identified by the grantee in its most recent Consolidated Plan.

As part of ensuring that infrastructure funding affirmatively furthers fair housing, HUD should require that each grantee’s draft Plan Amendment analyze the amount of second round infrastructure funding necessary to support housing and other programs designed or intended to benefit LMI residents in the current Plan and the Plan Amendment, to ensure that funding is adequate to properly and sustainably carry out such programs. For example, if part of recovery for a public housing development requires repair of a sewer line, that repair and a description of how it will be funded should be included in an analysis in the Plan Amendment.

V. HUD should require that infrastructure restoration funding be spent in a manner that builds sustainable communities and anticipates future super-storms and sea level rise.

Based on the increasing understanding since the first round Notice of the need for a resilient recovery, and the increased focus on infrastructure, the second round Notice should include several additional provisions to ensure that the recovery accounts for future sea-level rise and storms:

1) PUBLICLY AVAILABLE HIGH RISK AREA ASSESSMENTS BASED ON FIFTY-YEAR PLANNING: HUD should require grantees to identify existing and future high-hazard risk areas based on a post-disaster evaluation of areas that have experienced damage from floods, storm surge and other hazards and areas that are expected to be at risk taking into account possible sea level rise over a fifty-year period. (While establishing the minimum requirement for elevations at one foot higher than the latest FEMA issued base flood elevation is a step in the right direction, it should not be considered a substitute for a science-based evaluation over a fifty-year time horizon.) Grantees should be required to make such information publicly available in an interactive GIS format on official state websites. HUD should require grantees to demonstrate how such existing and future high-risk areas are integrated into other local, regional and state

planning efforts to ensure consistency, including state, multi-jurisdictional and municipal hazard mitigation planning, CDBG-DR funded post Sandy planning assistance grants, and other local, regional and state plans.

2) REGIONALLY INTEGRATED PLANNING: Because many infrastructure projects, such as roads, transit systems, and water and wastewater facilities, can be regional in nature, and because they have a multi-decade lifespan, HUD should require grantees to prepare a geo-spatial regional infrastructure plan that considers existing and future high-hazard risk areas with a planning horizon of fifty years. Grantees should be required to demonstrate consistency with the regional infrastructure plans in other local, regional and state planning efforts, including state, multi-jurisdictional and municipal hazard mitigation planning, CDBG-DR funded post Sandy planning assistance grants, and other local, regional and state plans.

3) OPERATIONAL LINKAGE OF ALL CDBG-DR PROGRAMS WITH HIGH-RISK ASSESSMENTS: HUD should require grantees to describe and explain the operational links between proposed activities and high-hazard risk areas, for all CDBG-DR funded activities, including buy-out programs and infrastructure spending. HUD should require grantees to disclose the location of property buy-outs and infrastructure projects with respect to existing and future high-hazard risk areas. Grantees should be required to demonstrate in the Action Plan that infrastructure projects funded by grants or loans will withstand current and anticipated risks over a fifty-year planning horizon through regulation establishing standards to minimize risk (e.g. adequate setback from flood plains, wetlands, and river and ocean edge to minimize and avoid damages and losses in future storms), new public guidelines for project review or other means.

4) REWARD AND INTEGRATE SUSTAINABILITY AND LIVABILITY BEST PRACTICES: HUD should require that grantees, including but not limited to plans developed through programs such as the DCA Post Sandy Planning Assistance Grant Program, support for hazard mitigation planning and any other existing or new planning assistance program, adopt principles for infrastructure resiliency and sustainability that are consistent with the Partnership for Sustainable Communities Livability Principles, advance water and energy efficiency and mitigate the impact of future storms through best practices including asset management, performance-oriented cost/benefit metrics, and innovative approaches such as green infrastructure (which uses natural processes to provide multiple benefits including, but not limited to, flood mitigation and stormwater management), complete streets (to provide safety and redundancy in transportation) and green streets (which integrate both). Grantees should be required to reward best practices approaches through funding decisions.

VI. HUD should require grantees to demonstrate capacity to sufficiently inform impacted people of the availability of programs and provide needed services and counseling to access programs, to identify any challenges to date in doing so, and to describe, in the Plan Amendment what changes will be made to create the needed capacity.

The March 5 Notice requires that grantees demonstrate that they and their sub-grantees have, or will be provided, “the capacity . . . 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 . . . have been identified.” (78 FR 14334, VI. A. 1. a. (12))<sup>7</sup>

Particularly with regard to programs in which assistance is awarded directly to residents, rather than to UGLGs, contractors or NGOs, the capacity to deliver timely, correct and effective communication and assistance is of the utmost importance to those in need. Based on a number of complaints about problems with applying for and receiving assistance from the first round of funding, New Jersey advocates who work daily with impacted residents and business are particularly concerned that the second round Notice require that current programs and contractors (many of which have no prior experience in the impacted communities) be assessed with respect to their capacity:

1) EFFECTIVE OUTREACH: to create a far reaching media campaign, including multiple sources of outreach such as billboards, bus ads, television commercials etc. necessary to inform all of NJ on where Sandy survivors can go to seek the resources they need to get back on their feet.

2) EXPAND QUALITY HOUSING COUNSELING: to provide adequate numbers of HUD certified qualified housing counselors needed to help homeowners and renters whose homes were destroyed or heavily damaged to understand and evaluate their options and find the best solutions to their long-term housing needs.

3) AVOID SIGNIFICANT BUILDING DELAYS: by enabling local municipalities to: a) hire temporary inspectors to conduct building plan approvals and b) hire construction inspections, to address the high volume anticipated over the next few years or c) meet this pressing need by adopting temporary rules authorizing that plan approvals and inspections be done by qualified, licensed design professionals, such as the recently developed DEP policies.

Within this context, HUD should require that grantees, to the maximum extent feasible, engage existing, local companies, organizations and personnel in the performance of these functions both because such organizations are familiar with local circumstances integral to crafting solutions and moving recovery forward and because such practices return the benefits of the programs to the recovering communities. Prior to outsourcing recovery efforts, grantees should be required to demonstrate that they have taken all reasonable steps to engage local contractors and personnel.

VII. Before allocating second round funds, HUD should require grantees to comply with the requirements of the March 5 Notice to ensure that adequate funding is dedicated to addressing the unmet needs of damaged Public Housing and to set aside funding to specifically address Public and federally assisted housing needs.

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<sup>7</sup> See also: The requirement for periodic review by the Secretary of “whether the grantee has the continuing capacity to carry out [recovery] activities in a timely manner.” 78 FR 14337, VI. A. 2. a. ; The requirement that, if deficiencies are found, the Secretary evaluate the nature and degree of the deficiencies. 78 FR 14344, VI. A. 25.; The requirement that the Secretary “undertake corrective and remedial action” if appropriate. 78 FR 14344, VI. A. 26.

Section VI. A. 1. a. (6) of the first round Allocation Notice laudably states that: “The grantee must work directly with the PHA in identifying necessary costs and ensure that adequate funding is dedicated to addressing the unmet needs of damaged public housing.” The forthcoming Notice should update this provision by requiring that each grantee Plan Amendment state the total recovery needs of each Public Housing and HUD-assisted housing development or unit that suffered damage from Superstorm Sandy, and identify those recovery needs that remain unmet. HUD should, further, require that each Plan Amendment identify the source and amount of funds from each source, whether CDBG-DR, FEMA Department of Transportation, Army Corps of Engineers or other federal, state or local funds, which will be used to meet each need. The identified needs should include rehabilitation, reconstruction, replacement, mitigation and sustainability considerations and new construction of housing units and necessary supporting systems and infrastructure. The grantee program should support, if necessary, the relocation of assisted housing out of areas that present danger of future storm and sea rise damage.

VIII. HUD should require that grantees affirmatively address the obligation of Section 3 of the Housing and Urban Development Act of 1968 to engage local contractors and affected residents in the recovery efforts.

One of the ways in which the infusion of federal funds into the recovery effort can most directly benefit victims, is to support employment and contracting opportunities. Jobs not only put food on the table, or pay the rent. Jobs and business opportunities restore dignity and hope and reinforce the will to rebuild in ways that promise a better future.

To address the disinclination of grantees and their sub-grantees to attempt to meet Section 3 guidelines and targets, HUD should require, with respect to all Section 3 eligible programs and contracts, that grantees:

- 1) REWARD SECTION 3 ENGAGEMENT: Give a preference to Section 3 eligible contractors and to contractors that hire, on terms equivalent to those of other employees of such contractors, Section 3 eligible residents;
- 2) TRACK PERFORMANCE: Report, in the grantee’s Quarterly Performance Report, the number of hires, number of hires in categories of job description, percents such hires represent of the total new hires for each grantee or sub-grantee and the municipality or census tract within which the Section 3 employee primarily performs her or his work.

IX. HUD should mandate public comment periods as well as public hearings prior to submission of draft second round Plan Amendments for review.

To ensure intelligent and constructive public participation in the crafting of a grantee’s draft Plan Amendment, HUD should require not simply a reprise of the original Action Plan public comment process, but a truly interactive process:

1) ALLOW 10 DAYS FOR PUBLIC COMMENT: With significant funding already allocated, and FEMA, the Department of Transportation, the Army Corp of Engineers, HUD, State and local governments and private organizations actively engaged in recovery efforts, it is critical to maximize the potential that the ongoing first round programs, as well as the second round efforts, do the job correctly. With a number of the major programs designed to meet both emergency and permanent recovery needs up and running, adequate safeguards and public involvement processes can better ensure both that funding gets out quickly and that it is used effectively and transparently. Increased transparency and public involvement is appropriate in light of the increased information available about recovery efforts to date that the public can share insights on, and the different statutory framework for this allocation (i.e. the lack of the 60 day deadline that governed the initial allocations). The second round Notice should require ten (10) business days for public comment.

2) REQUIRE PUBLIC HEARING: HUD should require that grantees hold public hearings on their published needs and their draft Plan Amendments, with at least seven (7) days public notice, provide a fifteen (15) day comment period after the public hearings and require that grantees provide to HUD and the public the comments received and the grantee's response.

**Conclusion**

Thank you for your consideration of our observations and recommendations. We believe that our comments will help carry out your and President Obama's desire for a recovery that is fair to all people impacted no matter their race, ethnicity, income level, or disability status, and that ensures we rebuild in a resilient and sustainable way..

We look forward to continuing to work constructively with you and with state and federal officials in moving our region forward. As you have so often expressed, the lessons of the past must be that we can work together to build a better future.

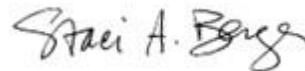
Very truly yours,



Fair Share Housing Center



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cc:

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The Honorable Shaun Donovan, Secretary  
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June 26, 2013

Re: Observations and suggestions to the Task Force regarding disaster preparedness, emergency operations and the recovery allocations

Dear Secretary Donovan:

We, the below signed community-based organizations, community development, fair housing, civil rights, smart growth groups and others offer our observations and suggestions for President Obama's Hurricane Sandy Rebuilding Task Force's forthcoming report.

We applaud the improvements Congress and HUD have made in the quality of disaster response to address many of the missteps experienced in recovery efforts over the past decade. The Notice setting out the criteria for obtaining and spending CDBG disaster recovery funds related to superstorm Sandy incorporated a number laudable changes made by Congress in the Disaster Relief Appropriations Act, 2013 (P.L. 113-2) and HUD's constructive response to recent experience. We believe that a number of these additions have driven and will continue to support prompt, transparent, equitable and effective recovery efforts.

The most critical provisions requiring ongoing attention include those supporting a fair distribution of funds to make sure that everyone impacted by the storm has a fair opportunity to rebuild. Additionally, affirmatively furthering fair housing, rebuilding public and assisted housing, directing funds to planning and building sustainable and resilient communities and requiring the creation of good jobs and local contracting through section 3 and related provisions are vitally important. Further, we believe that mandating transparency through the posting of recovery related materials on publicly accessible webpages and responding to written complaints within a specified time should be continued in future disaster recovery notices and requirements. Lastly, we support the strict requirements of the Notice implementing the statutory 'compelling reason' standard prohibiting the reduction of low and moderate income benefit below 50% of allocated funding and the specific time frames within which certain actions and/or phases of the recovery allocation and implementation processes must occur.

We hope that the Task Force will recommend the inclusion of these provisions in future disaster aid and link receipt of funding with compliance from grantees, to continue the progress that Congress and HUD have already accomplished.

Furthermore, we have met several times with multiple stakeholders to review the current disaster framework. Based on our experiences and these conversations, we support the following suggestions for improving the process for disaster recovery in future rounds of Sandy aid and

future disasters. We hope the Task Force will include these suggestions in its report to the President.

### **Pre-Disaster Planning Elements:**

- **RECOVERY PLANNING:** Using the Long Term Recovery Groups as a model, HUD and the grantees should create a statewide, and, subsequently, more local networks to develop major disaster response plans at the county and municipal levels. The groups would include leading CDCs, emergency first responders, government officials and other NGOs. These task forces should meet regularly during the year to review and update their plans and be prepared to execute them when disaster threatens. County and municipal-level task forces should be integrated into existing multi-jurisdictional hazard mitigation planning efforts.
- **CDBG-DR MENU:** Existing CDBG and CDBG-DR Action Plans should be used to advance HUD's pilot initiative announced on March 15, 2013 to develop model programs that provide best practices and a tried and true foundation for ease of development of an Action Plan. A grantee could select programs that have been used and well-received in other areas, for rebuilding in their community and avoid reinventing the wheel.
- **PREPARATION AND EXECUTION OF EMERGENCY COMMUNICATIONS:** Residents affected by disaster need to know where to turn for help, both immediately after a disaster strikes and in the weeks and months afterwards. CDBG-DR plans should require grantees to communicate that information widely, in multiple languages and in a variety of formats (earned, paid and social media), as well as grassroots community outreach for vulnerable populations. Special consideration should be paid to reaching vulnerable populations in the communities in which they live. To that end, centers of information should be established in local and accessible public areas such as libraries and schools. These communication channels should be regularly updated. Consider recommending the national use of the 211 system (both phone and on-line).
- **HOUSING PREPAREDNESS:** Federal agencies should use the Sandy model to establish standing agreements with lenders to provide a moratorium on foreclosures for 120 days and continue loan modification programs with Fannie, Freddie and FHA, and private lenders. A 120 day evictions moratorium should be established for renters, which can be extended by action of the HUD Secretary or grantee. The state should ensure that temporary and permanent housing vouchers are ready for deployment for immediate and longer term use.

### **Post- Disaster Response Elements:**

- **HOUSING COUNSELING:** CDCs and other NGOs within the disaster area (and/or with a proven capacity to assist) should be deployed first to assist with housing counseling needs in affected communities. Preference should be given to HUD-certified counseling agencies that have the skills and expertise to provide critical housing counseling to local residents. Impacted families and individuals turn to their local community organizations first, and these groups are best positioned to respond to their needs. HUD certified agencies are experts in providing counseling services and that expertise should be leveraged. Affected individuals and housing counselors should be able to access a centralized source of information that identifies HUD approved funding programs. In addition, housing counseling centers should

be located in central and accessible locations. Counseling services should be provided for housing, mental health, case management, and other social service needs. Residents need to know which programs and funding sources are legitimate, to eliminate confusion and potential fraudulent representation.

- **CAPACITY & RESPONSE RESOURCES:** CDCs and NGOs that provide immediate and short term response services, including housing counseling, will require timely additional resources. Housing counseling providers, for example, will need to train counselors about new programs and resources available to affected individuals as well as to expand their intake and service capacity to meet the immediate demands of their communities. Additional resources are needed for organizations to finance rehabilitation and rebuilding efforts, as well as support services for the community.
- **SHARE DATA:** Federal and state agency collected and reported data about the impact of a disaster should be shared between federal and state agencies, as well as CDCs and NGOs, through a centralized database during the disaster response to ensure transparency and accessibility.
- **RESTORE COMMUNITIES:** Local residents should be allowed the first opportunity to return to their communities or, as close to where they live or work, to promote and preserve the diversity of our communities. A list of affected residents should be maintained that collects information (and potentially individual identifiers) to be shared with CDCs and NGOs, to provide affected individuals the right of first refusal at housing opportunities.
- **PROVIDE RELIEF TO ALL:** Residents (undocumented, non-traditional families, extended families) should be identified and assisted regardless of status. Disaster recovery efforts should focus on connecting these families with CDCs and others who specialize in working with vulnerable populations.

#### **Notice, Implementation and Oversight Requirements**

- **FAIR ALLOCATION:** Data should be collected and used in a manner that allocates recovery resources and assistance based on the share of people at various income levels (e.g. very low income, extremely low income) impacted by the storm. Allocations by grantees should be proportional to accurately determine rental and homeownership needs. Resources should be allocated based on rebuilding cost, taking into account needed resiliency measures. Scarce resources should be awarded through a process that provides everyone an equal opportunity to benefit and not first-come first-served.
- **AFFIRMATIVELY FURTHERING FAIR HOUSING:** HUD should ensure that disaster recovery Action Plans are designed in a manner that Affirmatively Furthers Fair Housing. Grantees should be required, within 120 days of the disaster, to modify their Analyses of Impediments to Fair Housing (AI) to address the impacts of the disaster on impediments to fair housing choice. HUD's Office of Fair Housing and Equal Opportunity should provide technical assistance to grantees in analyzing and addressing impediments to fair housing choice.

- **PRESERVING AND REBUILDING PUBLIC, ASSISTED AND AFFORDABLE HOUSING:** HUD should require that, to the maximum extent feasible, public, assisted and lower-income housing is preserved and, if necessary, replaced. Grantees should not be allowed to use recovery funding to displace lower-income households from their pre-disaster communities and housing to areas of low opportunity. Grantees should be required to include, in the Action Plan, an assessment of need for persons in need of accessible or assisted housing, particularly people with disabilities, and a program, or components of relevant programs, that assure the provision of rehabilitated or replacement housing for such persons and families. All such rehabilitation and development must comply with sustainability principles set forth below.
- **PLANNING AND BUILDING SUSTAINABLE COMMUNITIES:** HUD should ensure that disaster recovery Action Plans are designed in a manner that advance resiliency, sustainability and green infrastructure.

Grantees should be required to include, in the Action Plan, an assessment of areas that have experienced repetitive loss and of the impact of rising sea levels over at least 50 years, and a program to provide such data in an interactive GIS format on official grantee websites.

HUD should require that CDBG-DR programs, including federally-funded planning grant programs, implement the Federal Partnership for Sustainable Communities Livability Principles or an acceptable substitute and require consideration of a forward-looking risk assessment that includes the impact of rising sea levels over a planning horizon of at least 50 years.

HUD should recommend that Grantees support three complementary planning programs to assist towns with recovery and conduct planning and implementation within a regional context:

- 1) Regional Cooperation Programs: which encourage the voluntary formation of multi-municipality partnerships supported with dedicated staff and funding resources.
- 2) NGO-led Recovery and Resiliency Networks: which will field recovery and resiliency managers and coordinators to work directly with municipalities over at least 3 years to plan and manage the recovery and future resiliency process; staffed by NGOs and FEMA to enable quick start-up, facilitate philanthropic support and ensure coordination.
- 3) Integrated Hazard Mitigation Plans: which align more comprehensive county-wide plans with the State Hazard Mitigation plan and identify actionable implementation activities including land use, capital improvement, investment frameworks, development and mitigation, advanced to construction readiness.

Grantees should operate asset management programs for water, wastewater and stormwater infrastructure that: 1) inventory and assess current systems 2) ensure upgrades to new standards that minimize risk over a fifty year horizon; and 3) provide technical and financial resources, especially for distressed municipalities.

Grantees should adopt performance-oriented cost/benefit metrics for evaluating transportation, water and energy infrastructure investments that integrate resiliency, sustainability and equity and integrate related cross-discipline benefits including but not limited to stormwater management, recreational, air quality, and beautification.

- **GOOD JOBS THROUGH SECTION 3 AND RELATED PROVISIONS:** HUD should require that each grantee prepare and publish a Section 3 plan that describes how the grantee and all subrecipients will employ residents and engage contractors of impacted communities as required by Section 3 of the Housing and Urban Development Act of 1968 [12 U.S.C. §1701u]. Grantees should be required to report Section 3 data in their Quarterly Performance Reports.
- **INTEGRATION OF STATE / LOCAL RESOURCES AND CDBG-DR ALLOCATIONS:** HUD should require that beneficiary jurisdictions maximize the leveraging of CDBG-DR funds, and not use CDBG-DR funds to replace existing state and local resources.
- **PUBLIC PARTICIPATION AND TRANSPARENCY:** HUD should require public hearings on applicant draft Action Plans and a minimum of ten days for public comment on plans or any revisions, which should be posted along with any related materials on a central web site for each grantee. HUD should provide, within 30 days of the disaster, an official website with information on all allocation and spending decisions from the federal Sandy-rebuilding supplemental fund. HUD should recommend that FEMA hold public hearings on grantees' draft Hazard Mitigation Administrative Plans and a minimum of ten days for public comment on plans or any revisions which should be posted along with any related materials on a central web site for each grantee. The Federal Emergency Management Agency should work with HUD to develop and implement data collection procedures which facilitate long term recovery as well as emergency response. Data used to develop and implement emergency response and recovery efforts should be available on official grantee websites.
- **HUD ROLE IN PLANS REVIEW AND OPTIMIZING OPERATIONAL SUCCESS:** Title 24 of the Code of Federal Regulations §570.480(c) is not the appropriate standard by which HUD should review draft Action Plans. HUD should require that Action Plans operationally link recovery programs to national goals. HUD should require that Action Plans exhibit programmatic capacity to comply with certifications submitted by applicants. The reporting requirements must allow grantees, HUD and the public to understand whether outcomes reflect statutory and Plan intent.

Much has been learned over the past decade about how to assess post disaster need and direct critical funding in ways which result in more equitable allocation and constructive intervention. We hope that these observations and suggestions will contribute to that progress.

We would welcome the opportunity to discuss these observations with the appropriate HUD representatives.

Very truly yours,

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## **Undercounting of Renters in New Jersey CDBG-DR Action Plan:**

Replicating New York State Methodology in New Jersey  
Produces a 40% Allocation of Funds to Renters

April 19, 2013

### **Overview**

Unlike neighboring jurisdictions affected by Superstorm Sandy, New Jersey's CDBG-DR Action Plan proposes to allocate disaster funding between homeownership and rental programs based exclusively on FEMA Individual Assistance (FEMA IA) damage assessments. New Jersey asserts that only 22% of the housing need resulting from Hurricane Sandy is from renters, and thus proposes to allocate only 24% of CDBG-DR housing resources to renters.

Using data analysis by the NYU Furman Center for Real Estate and Urban Policy, Fair Share Housing Center has determined that New Jersey's proposed allocation dramatically understates the need of affected renters. Were New Jersey to employ the New York State methodology, its Action Plan would devote 40% of housing resources to renters.

The New York State Action Plan rejects the use of FEMA IA data as a basis for allocating need because it finds that the IA data "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." New York City also rejects the FEMA IA methodology in favor of a methodology based on flood inundation areas and Census data, resulting in a more accurate (and larger) allocation of resources to renters.

Because the methodology used by New Jersey systematically underrepresents minority and low income people whose housing was damaged by Sandy (many of whom are renters), it must be rejected. This memorandum recommends the fairest methodology of allocating the damage between single family housing and rental housing that will allow New Jersey to comply with its civil rights obligations, most notably the obligation to affirmatively further fair housing.

### **Disparities Between Renters and Owners in FEMA IA Data**

In order to better understand the disparities in estimates produced under the New Jersey, New York State, and New York City methodologies, the Furman Center analyzed block group-level FEMA damage assessment data available on the HUD web site. Block groups contain between 300 and 3,000 residents and are geographically compact, usually containing just a few blocks. The data available from HUD only include block groups where at least 10 households have registered with FEMA, so the analysis necessarily is limited to those harder-hit block groups.

The Furman Center matched the HUD data on FEMA damage assessments to block group data from the 2007 – 2011 American Community Survey (ACS) detailing the building stock and homeownership rate in each block group. Specifically, the Furman Center computed the share of all occupied housing units located in buildings with five or more units (multifamily share), the share of all occupied housing units that are owner-occupied (homeownership rate) and the share of housing stock by tenure (single family owners, multifamily owners, single family renters, and multifamily renters).

For those areas in New York and New Jersey that where at least ten residents have registered with FEMA, the Furman Center then compared the share of properties deemed to be damaged by FEMA (damage rate) for block groups in the same Census Tract. Each Census Tract in our study area contains between one and eight affected block groups. The model assumes that all else being equal, the damage endured by residents of block groups in the same Census Tract should be similar.

The Furman Center found that block groups with higher homeownership rates and lower shares of multifamily housing had significantly higher reported damage rates than neighboring block groups in the very same Census Tract. Specifically, block groups with a homeownership rate ten percentage points higher had reported damage rates that were 2.4 percentage points higher than other block groups in the same Census Tract. Block groups with a ten percentage point higher proportion of housing units in multifamily structures had damage rates that were 3.3 percentage points lower than other block groups in the same Census Tract. When controlling for both the homeownership rate and the multifamily share, the Furman Center found that most of the difference in damage rates between block groups in the same Census Tract could be attributed to the difference in the multifamily share. However, even after controlling for the share of units in multifamily buildings, they still found a small, but statistically significant ( $p < 0.1$ ) lower damage rate in block groups with more rental units.

These data suggest that in block groups that would appear to have similar storm impact by virtue of being geographically proximate, block groups that were largely populated by renters—and especially renters in large multifamily buildings—consistently received fewer damage assessments than block groups that are comprised largely of homeowners.

| <b>Dependent Variable: Share of Households with FEMA Assessed Damage</b> |                       |                        |                        |                        |
|--|-----------------------|------------------------|------------------------|------------------------|
|  | (1)                   | (2)                    | (3)                    | (4)                    |
| Homeownership Rate   | 0.2364***<br>(0.0459) |                        | 0.0787*<br>(0.0429)    |                        |
| Multifamily Share  |                       | -0.3319***<br>(0.0372) | -0.2967***<br>(0.0382) |                        |
| <b>Detailed Tenure (Omitted Category: Single Family Homeowners)</b>      |                       |                        |                        |                        |
| Multifamily Owner Share  |                       |                        |                        | -0.3507***<br>(0.0570) |
| Single Family Renter Share   |                       |                        |                        | -0.1025**<br>(0.0518)  |
| Multifamily Renter Share   |                       |                        |                        | -0.3704***<br>(0.0476) |
| Census Tract Fixed Effects   | X                     | X                      | X                      | X                      |
| Observations   | 1,617                 | 1,617                  | 1,617                  | 1,617                  |

Clustered standard errors in parentheses. \*\*\*  $p < 0.01$ , \*\*  $p < 0.05$ , \*  $p < 0.1$ .

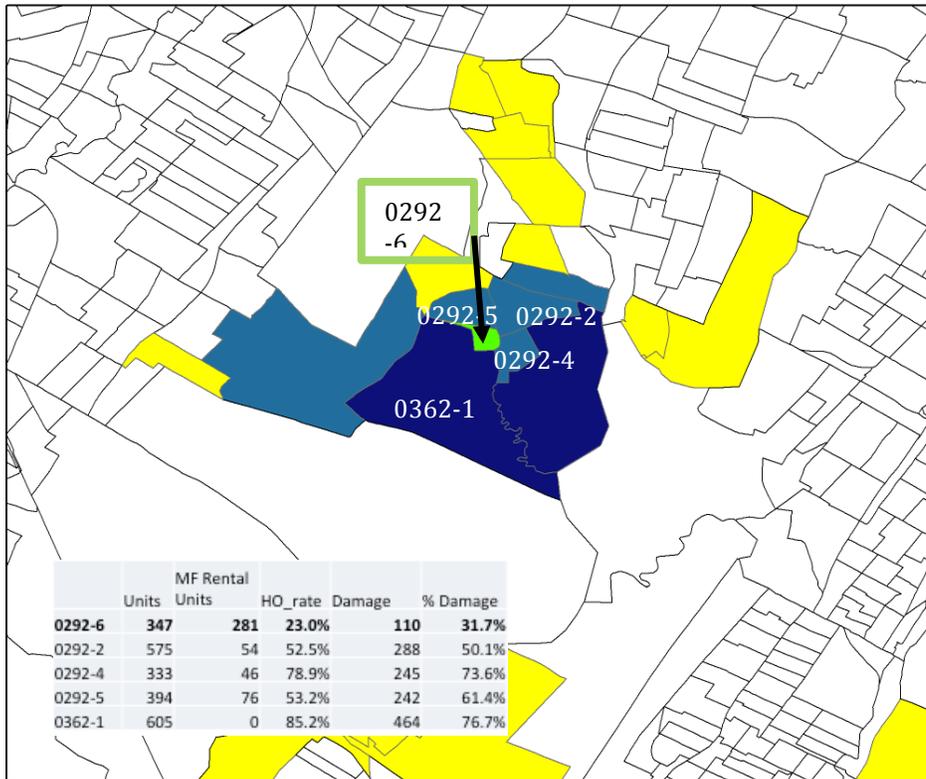
**Examples of Disparities**

The maps below provide some examples of the general trend noted above, in which adjacent Census block groups have lower damage assessments for block groups with high numbers of renters and multifamily buildings:

**Little Ferry, NJ**

In Little Ferry, NJ, Census Block Group 0292-6 has a homeownership rate that is at least 29.5% lower than all surrounding Census Block Groups. It also has at least a 17.5% lower reported FEMA damage assessment than all surrounding Census Block Groups. ; In general, the higher the homeownership rate in a block group in the area, the higher the reported FEMA damage.

Census Block Group 0292-6 is comprised largely of Liberty Bell Village Apartments. According to reporting in the local newspaper, the Bergen Record, the apartment complex experienced serious flooding and systems damage. Yet FEMA IA data, which report relatively little damage, do not account for this damage.



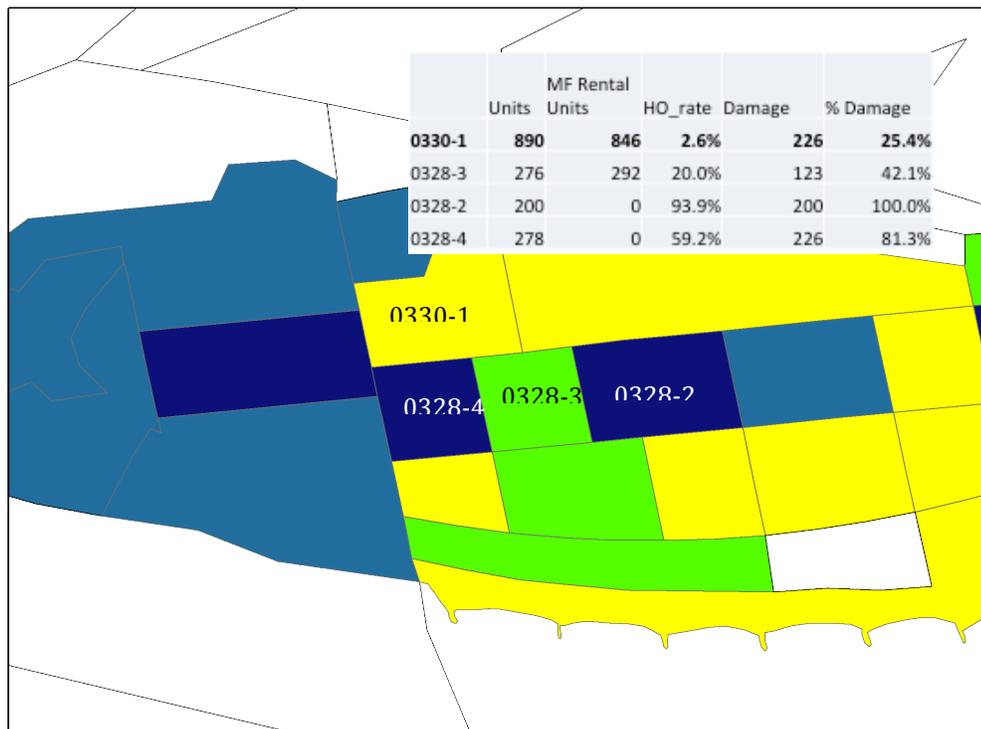
**Coney Island, NY**

While New York City correctly does not use the FEMA IA damage assessments to allocate funds between renters and homeowners, it is instructive that the same issue with damage assessment data noted above in Little Ferry, NJ can also be found in New

York City, which strongly suggests that it is a problem inherent in the data set.

In Coney Island, NY, Census Block Group 0330-1 has a 17 percentage point lower homeownership rate than the surrounding Census Block Group with the next lowest homeownership rate. It also has at least a 16 percentage point lower reported FEMA damage rate than all surrounding Census Block Groups. The differences are particularly stark with two neighboring Census Block Groups that are much more heavily homeowner-occupied; Census Block Group 0328-2, which has a 93.9% homeownership rate, has a 100% reported FEMA damage rate.

A major part of Census Block Group 0330-1 is a 334-unit Mitchell-Lama rental building. The elevator has been out of service at the building since Hurricane Sandy and continues to be out of service today. Though roughly half of the renters live in the building with no elevator service, only 23% are reported as having any damage in the FEMA data.



### Carteret, NJ

In Carteret, NJ there remain, nearly six months after Sandy, 47 uninhabitable public housing units plus others with damage. These public housing units are in Block Groups 036-3 and 038-5. These two block groups combined, which contain far more than just the public housing, show according to FEMA IA data only 13 multifamily rental units with any level of damage.

## **Replicating New York State Methodology in New Jersey**

In order to estimate what the rental share of damage would be if New Jersey used the same methodology as New York State, the Furman Center replicated that methodology using the best publicly available data, namely the data on HUD's web site on Block Group-level damage. The methodology essentially assumes that renters and homeowners living in the same block group suffer the same level of damage. Absent any empirical evidence that renters and owners suffer different levels of damage when living in the same block group, this methodology provides the most accurate currently available analysis of damage, as New York State recognized in its Draft Action Plan.

The methodology differed in the following ways from New York State's methodology: (1) because the HUD web site has made data available only at the Block Group and not the Block level, the analysis is done at that level (if there are no owners in a given Block Group, the methodology averages the damage percentage for owners of 1-4 unit buildings in the adjacent Block Groups); (2) the analysis is done based on the number of damaged units and not Full Verified Loss, again because the HUD web site includes the number of damaged units and not FVL. As such the results are expressed in terms of number of households impacted and not in dollar value, which also is useful because the NJ Action Plan need data are based on number of households and not dollar value.

Assuming that renters and owners experienced damage at the same rate when living in the same block group, the Furman Center estimated damage for renters as:

- Damaged NJ owner units: 45,009 (59.6%)
- Damaged NJ renter units: 30,485 (40.4%)

These are significantly different from New Jersey Action Plan data as follows:

- Damaged NJ owner units: 67,977 (78.4%)
- Damaged NJ renter units: 18,729 (21.6%)

The higher absolute number of owner units in the New Jersey data is particularly puzzling, given that the owner data is directly from the HUD web site. While a small share of the difference might be explained by the exclusion of block groups with fewer than ten registrants, that exclusion likely does not explain a difference of over 20,000 units. It appears that New Jersey may be including homeownership units that FEMA found to have zero damage, while HUD excludes these units.

As with all currently available storm-related data sets, further research and refinement may provide more accurate results over time; we suggest in the next section some further research. That said, the disparity between the methodology used by New York State and replicated by the Furman Center and the proposal in the New Jersey Action Plan is troubling and calls for attention to ensure fair treatment of all people impacted by Sandy in the initial phase of rebuilding.

We are happy to share more details about the Furman Center's methodology and data analysis and to discuss these with appropriate HUD officials.

## **Summary**

By replicating New York State's methodology, the Furman Center shows approximately twice as much share of damage to renters as the Action Plan does, which suggests, combined with the Enterprise Community Partners report on demographic characteristics of renters impacted by Sandy, that the underrepresentation of minority and low-income renters impacted by Sandy that New York State has recognized in the FEMA IA damage data is true in New Jersey also and thus must be corrected in New Jersey's Action Plan.

For the purposes of the first tranche of money, the methodology being used by New York State, and replicated by the Furman Center for New Jersey, is the most accurate currently available data for estimating the damage to renters and owners and allocating funds for immediate housing needs. For future tranches, we believe there are several important questions that could further refine this methodology.

First, the New York State methodology assumes that multifamily unit system damage, including but not limited to public and assisted units, is basically similar to single family damage; the New Jersey methodology omits that damage altogether. By more comprehensively understanding this damage and calculating its impact on a per unit basis, which may be more or less than single family damage depending on the context, the amount of systems damage could be reflected in a way that neither assumes it is the same as single family damage nor ignores it entirely.

Second, there is too little information available at present time on the amounts of need that is already covered by other sources, such as private insurance and FEMA grants, and how they impact renters and owners of different income levels. Again, this is an important methodology for the Task Force to work on further for coming rounds, especially as more data become available.

We ask HUD to require New Jersey to use the 60/40 split as described above for the first round of CDBG-DR funding, and then, through the Task Force over the next several months, work to come up with a more uniform methodology that can be used for the second and third rounds of funding. We would welcome the opportunity to discuss this with HUD further along with representatives of the Furman Center on the methodology to ensure the fair treatment of everyone impacted by Sandy.