

March 4, 2014

Via Email: Sandy.Recovery@dca.state.nj.us.

Richard Constable
Commissioner
Department of Community Affairs
State of New Jersey
P.O. Box 800
Trenton, NJ 08625-0800

Re: Comments on February 3, 2014, NJ CDBG-DR Action Plan Amendment 7

Dear Commissioner Constable:

Please accept these comments on the State of New Jersey's Community Development Block Grant - Disaster Recovery (CDBG-DR) draft Action Plan Amendment 7 ("draft" or "draft Amendment"). Our organizations believe that the Superstorm Sandy recovery must respond to both the damage caused by that storm and, equally, to the challenges presented by the inevitability of future extreme weather and sea-level rise. We ask the Department of Community Affairs (DCA) to embrace, in the draft Amendment, lessons learned from the first year of recovery and opportunities presented by forward-looking science and technology.

We offer the following specific recommendations that will ensure the state of New Jersey Action Plan Amendment delivers: 1) *transparent* recovery programs that provide a model for decision-makers in local government and the private sector; 2) *resilient* investments in buildings and infrastructure that allow people and property to withstand future storms; and 3) *equitable* rebuilding that is fair and just for all New Jersey residents.

1. The state should commit, in the Plan Amendment, to share its information and analysis, and the policies and procedures governing program implementation, with the public, rather than keeping them a secret, and should provide implementation details to ensure true transparency in recovery programs.

The draft Amendment reiterates the commitment of the initial Action Plan¹ to ensure transparency in recovery programs and operations. (§ 3.7, p. 3-44).

Unfortunately, the DCA Sandy Recovery Division webpage has, throughout the recovery, failed to provide comprehensive up-to-date and accurate information.

The draft Amendment mentions numerous instances where the state has collected and/or analyzed data on Sandy impacts to infrastructure facilities and equipment. For example, the draft mentions \$2.6 billion in estimated needs for water and wastewater

¹ See Action Plan, § 4.6, p.4-27.

infrastructure, but no details are provided. Project-specific information must be shared with local governments and the public. The draft Amendment also notes that the state has analyzed 15 years' worth of FEMA data on storm damages in order to identify areas that routinely experience loss from repeated flooding. This information must be shared with local governments and the public.

The Action Plan Amendment must make clear where responsibility lies for transparency and provide a vehicle for correcting lapses and omissions.

2. The Risk Analysis proposed to inform the state's selection of infrastructure projects must be clearly defined and published for public comment.

The draft Amendment provides only a general overview of the Risk Analysis framework. The Action Plan must provide a detailed description of the required "performance resilience standards" and include a step-by-step process to produce an objective set of standards usable by design and development professionals for defined categories of infrastructure. The revised plan must also provide a detailed description of the cost-benefit analysis that will be used, how it will account for life-cycle costs in the face of sea-level rise, and what formulas it will use to evaluate the cost-effectiveness of green infrastructure. The public must be allowed to comment on the actual performance resilience standards and the Risk Analysis before they are adopted.

3. The amended Action Plan must commit to providing a *comprehensive, geographically specific Risk Analysis tool that is available publicly and can be used to guide state investments such as the buyout program and to support a regional risk analysis.*

Instead of taking a project-by-project approach, the Action Plan Amendment should provide a comprehensive risk analysis tool that provides a geographic depiction of areas at risk, based on historic damage data and projections of areas affected by storm surge and sea-level rise today and in the future. Only a comprehensive risk analysis tool can: 1) allow comparison of relative risks and thus facilitate the prioritization of state investments; and 2) facilitate working with nearby states and cities to analyze risk on a regional basis. Such a tool should be made available publicly so that it can be used by all levels of government and the private sector. All residents and local governments should understand where buyouts and other protective strategies are appropriate.

4. The Risk Analysis must be broadly applied, starting with all infrastructure projects and planning grants funded by the CDBG-DR program.

The Action Plan Amendment must provide a detailed list of projects in the \$225-million pot for "Non-Federal Cost Share Projects," and specify that the plan's risk analysis will apply to these projects. In addition, the plan should specify which projects meet the

HUD threshold for a “major infrastructure project,” triggering additional review by HUD that must consider the infrastructure’s regional importance and other criteria. The DCA Post Sandy Planning Grant Program should ensure local government recipients adopt a local risk analysis and vulnerability assessment as described in no. 6 below.

5. The Risk Analysis provisions for sea-level rise must provide a clear mandate to mitigate present and future risks.

The Action Plan Amendment indicates that the state intends to use federal government tools to consider whether project designs should be enhanced to address sea-level-rise scenarios *where such enhancements are cost-effective and reasonably practical*. Instead, the proposed Risk Analysis must consider risks from sea-level rise in evaluating not just project enhancements but more fundamentally the viability of projects. Risks must be projected over a planning horizon that spans the useful life of the infrastructure that will be affected, through 2050 and 2100.

6. The proposed Action Plan should dedicate \$20 million to planning grants for municipalities and counties and ensure that local planning includes consideration of risks from future storms and their impacts.

Municipalities and counties cannot recover fully from Sandy, nor do so in a way that makes them safer and more resilient, without additional resources for planning. Funds should be provided for local governments currently not participating in the program, as well as additional funds for those already participating. Municipalities that have or will receive a DCA planning grant should be required and funded to assess the risks and resulting vulnerabilities from sea-level rise. Affected towns in Cumberland County should be eligible for planning funds. Funds should be provided to encourage towns to participate in FEMA’s Community Rating System program. Municipalities should be able to use planning grants to obtain local recovery management services.

7. The State must propose second-round programs pursuant to comprehensive, fact-based assessments of unmet housing and infrastructure needs, including ensuring a fair, needs-related distribution of housing CDBG-DR funds among counties and towns

HUD’s allocation notices require that grantees update their assessments of unmet needs.

The draft describes in great detail the efforts the state has taken to “identify and address unmet needs.”² However, the state uses “demand for the state’s existing CDBG-DR funded homeowner and rental programs [as] a viable proxy.” (p.2-2)

Furthermore, in the first round, the Action Plan requires prioritization of rental housing programs to the most affected communities within the nine counties, based on the

² Draft Amendment, Section 5: Outreach and Public Comment, pp.5-1 to 5-9.

state's Needs Assessment. The state failed to meet this commitment.

The state should conduct and publish an objective, impartial, comprehensive, fact-based updated assessment of unmet needs so that the state and its residents can understand the current needs and craft responsive recovery efforts going forward.

This must include a reaffirmation and enforcement of a needs-related prioritization, including a catch-up provision for prior funding.

8. The state should distribute a fair share of funding to programs that aid renters in recovering.

Independent analyses have concluded that 40 percent of households that suffered severe or major damage from Sandy were renters. The state recognizes that renters are significantly more likely than homeowners to be of low or moderate income.

The current draft Amendment directs less than 30 percent of combined first- and second-round CDBG-DR funding to homeowners' housing and development to rental housing.

Table 5 of the draft (p.2-6) states that the Fund for Restoration of Large Multi-Family Housing has outstanding funding requests well in excess of \$364 million. The state should meet this dire need with unused funds from other programs.

9. The state should investigate and report to the public on questions of whether the processing and granting of RREM and RSP applications was fair, and on its firing of two major program contractors.

Department of Community Affairs data³ demonstrate significantly higher denial rates for African-Americans and Latino Americans than for whites in both the Resettlement Program (RSP) and the Homeowner Reconstruction, Rehabilitation, Elevation and Mitigation (RREM) program. Many rejected applicants of all ethnicities were discouraged or denied opportunities to appeal; however, three-quarters of those who did appeal won.⁴ The state has deflected all inquiries regarding the termination of two of its primary contractors responsible for RREM operations. Flood plain manager letters, necessary to prove "substantial damage" and receive priority-one status for assistance, have been difficult or impossible to obtain.

The state should explain this dysfunction and unexplained ethnic/racial disparity publicly prior to putting more funding into this program.

10. The state must craft and implement programs and program policies that further fair housing and address the historic pattern of the exclusion of lower-income families and persons of color from affected communities.

³ Disclosed to the public only after the state was sued for failure to produce records in compliance with the New Jersey Open Public Records Act and common-law right to know.

⁴ To its credit, the state has stated that it will return wrongfully rejected applicants to their proper place in line but this does not provide a remedy to applicants who, through program mismanagement, either were denied and did not appeal or were prevented from appealing.

The HUD Allocation Notice for first-round funding requires that the state identify and address impediments to fair housing choice. In one of the most racially and economically segregated states in the union, the state should make clear that it will use its power to remove barriers to creating homes for all residents of the state, including the linking of infrastructure funding to set fair housing milestones and objectives.

Conclusion

The significant levels of CDBG-DR funding represent a generous investment in New Jersey's recovery by the nation's taxpayers. Implementation of the above recommendations will help ensure that the Action Plan Amendment provides long-term benefits to all communities affected by Sandy in our state, through rebuilding that is fair, safe and resilient.

Thank you for your consideration. If you have any questions, please free to contact [Chris Sturm](mailto:Chris.Sturm@njfuture.org) (609-393-0008, x114) or any of the signatories below.

Sincerely,

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