



OFFICE OF THE GOVERNOR

RICK PERRY
GOVERNOR

November 16, 2009

The Honorable Shaun L. S. Donovan
Secretary
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, D.C. 20410

Dear Secretary Donovan:

On behalf of the disaster-affected citizens of our state, I am shocked at the November 10 letter from HUD and the delay your office has created in providing much-needed assistance to Texas citizens and communities still reeling from our 2008 hurricanes. Additionally, HUD's claim that "there is no compelling need to immediately approve" Texas' Hurricane Ike recovery funding is an insult to affected families, small businesses and local governments.

Washington, D.C., is a long way from Texas, but it is still surprising that someone so far removed from the state would assume that the Texas families affected by the 2008 hurricane season do not need immediate assistance. Texas families and taxpayers affected by recent hurricanes deserve a more immediate, compassionate response from their federal government.

The letter from HUD Assistant Secretary Mercedes Márquez not only misrepresents the state's amended plan, but also seeks to establish new criteria that conflict with published federal guidelines, and to mandate policy changes advocated by activist organizations.

A few specific instances:

1. The state strongly disagrees with HUD's assertion that the Texas' amended plan does not specify how it will distribute funding to units of general local government.

Specifically, the letter states that a major reason for denial of disaster recovery funds to Texas citizens is that "the state's allocation methodology of (Community Development Block Grant) CDBG disaster recovery funds to Councils of Governments (COGs)... does not include a method of distribution to units of general local government." However, under Texas law, COGs *are* units of local government, led by locally elected officials who coordinate the interests of cities and counties through a regional approach.

Texas conducted eight public hearings on the issue, and input from local officials and residents of the 62-county affected area played a large role in the submission of the state funding plans. Furthermore, local officials and residents were notified that the

four most-affected regional COGs are responsible for further allocating funds through methods of distribution that will be developed incorporating a state-prescribed citizen participation process. The amendment fully discloses that the state has established a competitive set-aside pool for the remaining seven regions as well as other state set-asides.

2. Despite having approved Texas' plan for the Round I funding, HUD is now retroactively contending that Texas "did not meet the citizen participation requirement as citizens did not receive adequate information on the proposed use of funds or how they could benefit from the proposed activities."

As HUD is well aware, the state's original plan called for additional public hearings by COGs to gather more citizen input on how CDBG funds were to be allocated. Those hearings have been held, and HUD has approved funding of every Round I submission.

3. HUD's rejection of the state's amended plan ignores the fact that Texas was given only 46 days in which to file its amended plan, an impossibly short time for the state to provide the kind of detail HUD is now demanding. And, as with the Round I funding plan, Texas proposed a series of additional public hearings to be held by COGs to gather additional public input. At no previous time – even with the Hurricane Rita Recovery plan – did HUD register a concern about this approach.
4. HUD once again is placing an unreasonable deadline on Texas by requiring that the state amend its amended plan within 45 days. Given that the Federal Register notes that it normally takes at least 30 days to get citizen input, the 45-day deadline is unreasonable.
5. HUD's requirement for additional public hearings contradicts federal guidelines published in the Federal Register that allow for a streamlined process of citizen participation. Indeed, the guidelines state, "The waiver removes the requirement at both the grantee and state grant recipient levels for public hearings or meetings as the method for disseminating information or collecting citizen comment."
6. HUD seeks to interject unrelated concerns about Texas' analysis of impediments (AI) to fair housing choice. It is baffling that these concerns would be raised now, since HUD found the state's AI acceptable in March when your office approved the first round of CDBG funding. Since then, HUD has offered no new guidance regarding updates to AI, and we understand that new guidance will not be available from HUD until February 2010.

Furthermore, HUD's stated concerns about the state's commitment to fair housing stem from two housing advocacy groups and an editorial in one newspaper. As you know, editorials reflect the opinion of the writer and do not necessarily reflect the concerns of local officials or the majority of residents.

In contrast to its usual practice, HUD did not give the state or the City of Galveston an opportunity to respond to any complaints prior to the issuance of its denial. The state already provided a response to the two housing advocacy groups that submitted a complaint to HUD in the summary responses to the comments provided in the Action Plan amendment. In fact, the Texas Department of Rural Affairs (TDRA) and the Texas Department of Housing and Community Affairs (TDHCA) met Friday, November 13, with these two advocacy groups to develop strategies to assess housing needs in the affected areas.

7. HUD's complaint about the state's proposed use of CDBG funds for mitigation of future storms contains conflicting language regarding the importance of mitigation efforts and directly contradicts the direction given by HUD related to the Disaster Recovery Enhancement Fund.

In a recent audit by HUD's Office of Inspector General, the state was criticized for not spending disaster recovery funds to protect against future loss due to insurable contingencies, yet TDHCA's policies in this regard conformed completely to HUD program guidance.

We are left with irreconcilable directions from HUD: Either comply with the program rules and maximize housing recovery, or spend large amounts of housing recovery funds on protecting what was built with those recovery funds, which is essentially a financial variant on mitigation strategies. TDRA has provided funding for non-housing activities that help protect facilities from future damage. However, these projects are not purely for mitigation. For example, if homes are rehabilitated, but drainage protection is not provided, the investment of federal funds will have been wasted if another storm damages these homes.

TDRA disagrees that these projects are considered only mitigation, because these facilities had to be affected by the hurricanes. Otherwise these activities would not be eligible for funding. TDRA is funding only projects that address needs as a result of an impact or a failure to function during the hurricanes.

8. The CDBG regulations clearly state that HUD should defer to the state's interpretation of the CDBG regulations. Specifically, the regulations provide:

(c) In exercising the Secretary's obligation and responsibility to review a state's performance, the Secretary will give maximum feasible deference to the state's interpretation of the statutory requirements and the requirements of this regulation, provided that these interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act.

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The mandate provided in this regulation should be considered all the more important for CDBG funds administered for disaster recovery purposes.

9. The State of Texas believes HUD is now attempting to impose new guidelines, restrictions and policies that countermand Federal Register guidelines that call for an expedited process of providing disaster recovery funding.

The state will proceed with the development of locally controlled methods of distribution and criteria for competitive processes, with appropriate public participation, that should be completed in late February and submitted to HUD, as was done during the first round of funding. TDHCA will proceed with plans to update the current AI once HUD guidance is published sometime after the first of the year.

I ask for your personal involvement to expedite the approval of Texas' disaster recovery plans and the \$1.7 billion in recovery funds that Texas families, employers and communities need and deserve.

Sincerely,

A handwritten signature in black ink that reads "RICK PERRY". The letters are bold and slightly slanted, with a cursive-like flow.

Rick Perry
Governor

RP:kwp

cc: Texas Congressional Delegation