



**Written Testimony of Texas Appleseed for the Senate Committee on Intergovernmental Relations**  
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**Interim Charge 3: Review natural disaster preparedness planning and coordination in the wake of a growing range of threats. Evaluate whether existing processes maximize regional cooperation to rebuild housing and infrastructure, and allow for the timely dissemination of funds to units of local governments for reconstruction following a federal declaration. Develop recommendations, if necessary, to improve the efficiency of disaster recovery efforts, incorporating best practices identified from other states, as well as lessons-learned from past reconstruction efforts in Texas.**

Texas Appleseed appreciates the opportunity to provide testimony to the Senate Committee on Intergovernmental Relations. Texas Appleseed is a nonprofit, nonpartisan organization that works for justice for underrepresented Texans — including children, low-income families, and those with disabilities. Texas Appleseed promotes social and economic justice for all Texans by leveraging the skills and resources of volunteer lawyers and other professionals to identify practical solutions to difficult, systemic problems. We have worked on systemic disaster recovery issues since Hurricanes Rita and Katrina in 2005. Done well, the disaster recovery process emphasizes the needs of populations most affected by the disaster, results in recovery for the whole community, and reduces risks for the next disaster; done poorly, it shortchanges actual recovery needs and results in delay, waste of funds, inequity, lack of accountability, and prolonged displacement and hardship for families whose lives have been disrupted by al disaster.

Over the past 10 years, Texas has administered multiple CDBG-DR allocations related to hurricanes, in addition to disaster funds for wildfires, floods, drought, and an industrial explosion, and there are some

Texas programs and processes that could be models for other jurisdictions as well as for the next disaster in Texas, as well as areas that need improvement.

## Lessons Learned and Recommendations

### I. Inadequacies in the immediate and short-term disaster response affect not only individual survivors but the long-term recovery of entire communities.

Federal disaster recovery aid is administered through multiple programs and by multiple federal agencies. The diverse programs funded by emergency supplemental appropriations address three stages of disaster assistance—Emergency Response, Short-Term Assistance, and Long-Term Recovery.

- **Emergency Response** involves Emergency Protective Measures such as search and rescue operations and provision of emergency medical care. Up to 75% of Emergency Protective Measures are reimbursable under FEMA's Public Assistance Program.<sup>1</sup>
- **Short-term Assistance** focuses on providing for the basic needs of survivors and addressing dangerous conditions through actions such as debris removal and demolition of unsafe structures. FEMA, under the Stafford Act, is primarily responsible for short-term assistance following a disaster.<sup>2</sup>
- **Long-term Rebuilding** focuses on rebuilding housing and infrastructure to pre-disaster capacity. FEMA's Public Assistance Program and HUD's CDBG disaster recovery program are the primary vehicles for providing federal assistance with long-term rebuilding.

Because of limitations on the use of FEMA Individual and Public Assistance funds, the primary source of federal money for long-term recovery, particularly housing recovery, is administered under HUD's Community Development Block Grant (CDBG) program. However, unlike FEMA assistance, CDBG funds for disaster recovery are not a formal part of the statutory disaster recovery system and must be appropriated by Congress following a disaster. Unless the appropriating statute otherwise restricts the funds, or HUD grants a waiver of program requirements, the same program requirements and national objectives that apply to annual CDBG grants also apply to CDBG-DR, with the additional requirement that CDBG-DR grants can only fund projects related to the covered disaster.<sup>3</sup> Since 1992, Congress has used the CDBG program to fund disaster recovery more than 15 times.<sup>4</sup>

- A. The national disaster recovery system is not set up to deal with catastrophic disasters that affect large geographic areas and populations. For example, the FEMA individual assistance program assumes families will be back in permanent housing in 18 months; the program had to be repeatedly extended after both the 2005 and 2008 Hurricanes. The initial allocation of CDBG-DR

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<sup>1</sup> Press Release, Federal Emergency Management Agency, *Federal Aid Programs for Texas Disaster Recovery* (July 24, 2008) available at: <http://www.fema.gov/news/newsrelease.fema?id=45217>;

Federal Emergency Management Agency, *Public Assistance Policy Digest*, January 2008, available at: <http://www.fema.gov/pdf/government/grant/pa/pdigest08.pdf>

<sup>2</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5174(b).

<sup>3</sup> In 1994, Congress amended the 1974 Housing and Community Development Act to grant HUD the authority to waive certain program requirements when funds are appropriated for a natural disaster.

<sup>4</sup>. Dept Housing & Urban Development, Community Planning & Development *Disaster Recovery Assistance*, available at <http://www.hud.gov/offices/cpd/communitydevelopment/programs/drsi/driquickfacts.cfm>

funds after Hurricane Katrina did not take into account the needs of states dealing with large numbers of evacuees in a regional disaster, which particularly disadvantaged Texas. Amendments to the Stafford Act that would have created a specific process and more coordinated federal response to catastrophic disasters were proposed in 2011, but not passed by Congress.<sup>5</sup>

- B. FEMA data is the only standardized data available after a disaster, but it routinely underestimates damage, affecting the allocation of other disaster recovery funds.
1. Following Hurricane Ike, FEMA denied at least 85% of the more than 578,000 applications for housing assistance.<sup>6</sup> The most common denial code used by FEMA (in over 100,000 cases<sup>7</sup>) was "insufficient damage." Many low-income applicants were told informally by FEMA that their "insufficient damage" denials were actually based on "deferred maintenance." FEMA alleged that the homes had been in poor condition before the storm and therefore damage could not be attributed to the hurricane. Because low-income households are more likely to have "deferred maintenance," these denials had a disproportionate impact on low-income households, particularly in minority neighborhoods.<sup>8</sup> Non-profit groups in Houston reported that entire neighborhoods, generally low income and minority concentrated, of damaged homes were deemed to have "insufficient damage."<sup>9</sup> FEMA similarly denied half of all applications for housing assistance following Hurricane Dolly.<sup>10</sup> Based on a suit by Texas homeowners, a Federal District Court held that FEMA could not rely on this unpublished rule.
  2. FEMA's data collection is far more limited for renters than homeowners, because renters are not owners of the damaged structure. While this process is not necessarily problematic for FEMA's programs, it undercounts renters, who are disproportionately lower-income, disabled, African-American and Latino. The use of FEMA data to assess damage for CDBG-DR programs then underestimates the need for, and underfunds, the rebuilding of rental housing.<sup>11</sup>

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<sup>5</sup> Senator Mary Landrieu of Louisiana and Senator Thad Cochran of Mississippi introduced S.B. 1630 in October 2011 "to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to allow for a more effective recovery from disasters." Among the bill's provisions are a new section of the Stafford Act that would create a new category of "catastrophic" disasters with a different declaration process, a more coordinated federal response, and recovery metrics.

<sup>6</sup> Email from FEMA External Affairs to the Houston Chronicle, June 26, 2009.

<sup>7</sup> Email from FEMA External Affairs to the Houston Chronicle, June 26, 2009 and FEMA *Top Five Reasons for FEMA Ineligibility for Housing*, (Last modified June 4, 2009), available at <http://www.fema.gov/hazard/hurricane/2008/ike/factsheets/housing.shtm>

<sup>8</sup> See also, *LUPE v. FEMA*

<sup>9</sup> Mike Snyder, *Pre-Ike damage restricts funding / Homes were in bad shape already, FEMA tells many*, Houston Chronicle, Section B, Page 1, (January 25, 2009); Associated Press *FEMA defends 650K denials for post-Ike housing aid*, (February 8, 2009); Associated Press, *Agency says many misunderstand its mission*, (February 9, 2009); Mike Snyder, *FEMA's inspection process criticized / Temporary contract workers who lack skills are getting blame*, Houston Chronicle, Section B, Page 1, (February 8, 2009).

<sup>10</sup> See, *LUPE v. FEMA*, Case: 1-08-cv-00487 (S.D. Texas, 2008)

<sup>11</sup> FEMA's data collection practices should be changed to recognize that their data are used for multiple purposes. FEMA and HUD are in initial stages of a research project to address this issue, called "Accelerating Post-Disaster Community Recovery."

- 3. This type of discrimination is not only illegal under the Stafford Act and other civil rights laws, it delays recovery and increases costs; not only by allowing homes to deteriorate until they require complete reconstruction, but because the cost of temporary housing for disaster victims often exceeds the cost of repairing their homes. For example, in Mississippi following Hurricane Katrina, the average cost of a 280-square-foot trailer for more than 24 months of temporary housing ranged from \$30,000 for trailers placed on private sites to \$229,000 for trailers on group and commercial sites.<sup>12</sup>
- C. Because CDBG-DR is not a regular part of the national disaster recovery framework, there is no standard set of regulations for CDBG-DR and HUD deals with a new set of rules for each appropriation.
- D. The ad-hoc nature of federal appropriations for disaster recovery creates confusion, results in multiple disaster recovery programs operating simultaneously under different rules, and leaves the process vulnerable to political and media pressure. For example, while no state received sufficient recovery funding in the first round of CDBG-DR funding for the 2005 hurricanes Mississippi received 67 times the amount of disaster recovery block grant funding that Texas did, despite the fact that it had only five times the number of badly damaged homes. Louisiana received only slightly more funding than Mississippi, despite the fact that it had three times the number of badly damaged homes. Louisiana received the statutory maximum, and Mississippi received the amount it requested in a plan submitted by Governor Barbour. The remaining states, including Texas, shared what funds were left.<sup>13</sup> After the first round of CDBG funding for the 2005 hurricanes failed to address Texas' needs, direct intervention by Texas Senator Kay Bailey Hutchison and Governor Perry was needed to obtain further disaster recovery funds for the state.<sup>14</sup> In the aftermath of the 2008 Hurricanes, HUD used a standard allocation formula based on unmet need to allocate the CDBG money appropriated for disaster recovery, which resulted in a fairer allocation of funds and accounted for some of the problems with FEMA data. But there is no guarantee that such a formula will be used to direct a future disaster recovery appropriation.

We recognize that some degree of uncertainty is inevitable, particularly as long as CDBG-DR is an ad hoc program, but there is still a broad scope within which states can plan for disaster response and recovery.

## **II. Lack of pre-disaster planning and coordination is a major cause of delays in the delivery of funding.**

In 2011, the Texas Sunset Commission's review of the Texas Department of Housing and Community Affairs, at the time the lead agency for Rita CDBG-DR, the first finding was that "Lack of State Planning Delays Funding to Hard Hit Texas Communities Recovering from Major Disasters."<sup>15</sup> While many local jurisdictions have plans for emergency response and management, as they are required to under State

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<sup>12</sup> GAO 08-106, "Ineffective FEMA Oversight of Housing Maintenance Contracts in Mississippi Resulted in Millions of Dollars of Waste and Potential Fraud," November 2007.

<sup>13</sup> Testimony of Jack Norris, Executive Director, Governor's Office of Recovery and Renewal, State of Mississippi, Hearing before Subcommittee on Housing and Community Opportunity of the Financial Services Committee, U.S. House of Representatives, "Emergency CDBG Funds in the Gulf Coast: Uses, Challenges, and Lessons for the Future" May 8, 2008, pg. 17.

<sup>14</sup> National Low Income Housing Coalition *Senate Hearings Held on Hurricane Supplemental Funding Memo to Members*: Vol 11, No. 10, (March 10, 2006) available at: [http://www.nlihc.org/detail/article.cfm?article\\_id=2066](http://www.nlihc.org/detail/article.cfm?article_id=2066)

<sup>15</sup> Texas Sunset Commission, *Texas Department of Housing and Community Affairs Sunset Hearing Material* pp 1-24b (November 2010).

law, those plans do not include long term disaster recovery, and there is no comprehensive plan for long-term recovery at the State level. What Texas does have is experience administering CDBG-DR programs for four major Hurricanes over the last ten years, and a wealth of experience to draw on to identify best practices and incorporate them into planning for future disasters; Texas has done parts of disaster recovery well, but there's no process for institutionalizing those best practices and carrying them forward to the next disaster recovery program.

1. Responsibility for administering CDBG-DR has bounced between three different State Agencies over the past 10 years.<sup>16</sup> Until responsibility for CDBG-DR was transferred to the Texas General Land Office (GLO), administration of housing and non-housing funds was split between two agencies with no effort to coordinate the use of disaster recovery funds. Transferring responsibility between agencies also prevents the accumulation of institutional knowledge.
2. Using a new program design for each round of funding makes it difficult for regional and local jurisdictions to plan ahead or to build expertise in the administration of CDBG disaster recovery programs. Each round of funding has required administrators to learn a new set of rules and requirements. These rules and regulations have also changed during the administration of the program. While this has often been done to solve administrative issues and make the program easier to administer, many of these changes could have been avoided by advance planning that incorporates what state and local administrators have learned from administering the last round of funding. For example, instead of creating numerous new housing programs from scratch every time a disaster strikes, the State should have in place an off-the-shelf housing program that communities could deploy quickly.
3. Lack of planning exacerbates problems with local capacity. SB 1376, which was approved by this Committee, contained a number of proposals that would have improved disaster recovery planning, and given local communities the opportunity to do their own long-term planning with the help of the State and experts.
4. We agree with the Sunset Commission report that recommended :
  - Unambiguous methods of program administration. The plan should outline how the state intends to distribute funding to local areas.
  - Clear outreach, eligibility, and program guidelines for both housing and non-housing programs. Clear guidelines would provide consistent direction on how local administrators could run programs and interpret rules and regulations, while still allowing local governments the choice of which programs they wish to operate.
  - Clear-cut lines of communication between federal, state, and local entities so that local administrators are clear about where to get the most up-to-date information and have reasonable expectations about when they will receive guidance from state partners.

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<sup>16</sup> TDRA as lead agency for disaster recovery, and delegated housing recovery to TDHCA. In February 2011, primary responsibility for the oversight of disaster recovery activities was transitioned away from TDRA to a private contractor (HNTB) originally hired to provide technical assistance.<sup>16</sup> During the 2011 Session of the Texas Legislature, the Legislature voted to move the annual state CDBG program to another agency, essentially eliminating TDRA. On June 17, 2011, Governor Perry wrote to HUD, changing the designation of the state agency responsible for administering CDBG disaster recovery funds for Hurricanes Katrina, Rita, Ike, and Dolly to the General Land Office (GLO) as of July 1, 2011.<sup>16</sup> For the first time, administration of CDBG disaster recovery funds was handled by one state agency instead of two. The Governor's letter stated that the designation of GLO would save on administrative costs, would give local communities one contact regarding disaster recovery funds, and would increase accountability because, unlike TDRA and TDHCA, GLO is headed by a statewide elected official.

- Timely training programs, both pre- and post-disaster to ensure that essential expertise is not lost if Texas does not experience a major storm for several years and ensure regional and local administrators receive information in a timely manner and are informed about any disaster-specific changes to standard guidance.
- Standard forms and checklists. Similar to material provided by the Division of Emergency Management, the agencies should compile and update all standard forms required to perform eligible activities as much as is possible in advance of hurricane season, and post the materials online.
- Explicit monitoring and reporting requirements to ensure local administrators clearly understand reporting and data requirements, and that local, state, and federal information systems can work well together. This is a continuing problem.
- Up-front coordination with other state agencies. The plan should identify elements of disaster recovery where coordination with other state agencies is required and implement memoranda of understanding as appropriate.<sup>17</sup>
- Specific performance requirements for grantees, and a plan dealing with grantees who are struggling to meet benchmarks and contract expectations to ensure that program delivery to Texans and their communities is not delayed or interrupted.

States should recognize and plan for both mandatory federal requirements and their own established policies. Standards related to fair housing, nondiscrimination, labor standards, and the environment are not waived in disasters; therefore, the state should plan recovery programs that take these complications into account.

### **III. Administrative Layers and Complexity Contribute to Delays and Can Result in the Misallocation of Funds**

Long-term CDBG-DR recovery funds flow through many administrative layers before actually reaching victims of a disaster:

1. Because CDBG-DR is not an official part of the federal disaster scheme, Congress must pass a bill appropriating supplemental CDBG.
2. HUD then allocates funds to individual states and issues regulations.
3. State Governors designate an entity to administer the CDBG-DR program, and the State must submit an Action Plan to HUD. In Texas, the Governor designated two state agencies to administer the funds.
4. These agencies further delegated decision-making to regional planning bodies, the Councils of Government (COGs).
5. COGs awarded funds to local jurisdictions.
6. Local jurisdictions select projects and programs, and many jurisdictions contracted with private contractors for program delivery.

Each administrative layer contributed to program delays.

- **Presidential and Congressional Response.** This step varied significantly from Katrina and Rita to Ike and Dolly. Funds for Katrina and Rita were done in two separate and appropriations, the initial allocation two months after Hurricane Rita and the second nine months after the storm.

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<sup>17</sup> Texas Sunset Commission Staff Report on TDCHA, September 2010, pp 22-23.

By comparison, funds for Ike and Dolly Rounds One and Two were appropriated a mere 17 days after Ike struck

- **Suballocation from the State.** After both disasters, Texas chose to distribute funds to regional COGs through the Action Plan, and then each COG conducted a Method of Distribution process to distribute funds to units of local government. Acceptance of the State's Action Plan by HUD, therefore, triggered not spending, but another planning and plan-approval process. There was then an additional planning process at the local level as communities made substantive decisions about which priorities and projects to fund with CDBG disaster recovery funds.
- **Reconstruction vs. Compensation.** Following both the 2005 and 2008 hurricanes, Texas chose to do a housing reconstruction program rather than a compensation grant program where money was given directly to homeowners. Reconstruction implicated additional federal requirements such as environmental review and required additional time for procurement and contracting. While this type of program takes time to implement, **it protects vulnerable homeowners from contractor fraud, keeps residents from being displaced, and helps ensure that reconstructed homes meet building standards that make them less vulnerable to future disasters.**<sup>18</sup> Over the course of Rounds One and Two of Katrina and Rita disaster funding, Texas actually constructed homes more quickly than either Louisiana or Mississippi and had a higher rebuilding completion rate, however Texas took longer than average to rebuild from the date of the disaster (39.8 months) compared to Louisiana and Mississippi, suggesting that delays took place in the pre-construction phase of the program.<sup>19</sup>
- **Homeowner Eligibility Determination.** The outreach and eligibility process for individual households and small rental landlords is time-consuming. The most vulnerable disaster victims—persons with disabilities, the elderly and low-income households—are more likely to face barriers like limited education and lack of transportation, leading to a reduced likelihood that such victims are informed about recovery programs or able to complete a demanding application process quickly and easily. The initial application for Texas' Katrina and Rita Round Two Homeowner Assistance Program, for example, was originally 52 pages long, required the applicant to read at college level, and contained 14 affidavits that needed to be witnessed and notarized.<sup>20</sup> When asked why they had not applied for CDBG homeowner assistance, 19.9% said that the application process was “too complicated for me to handle,” 25.2% said the process was “not worth the hassle,” and 18.2% said they did not have the necessary paperwork.<sup>21</sup> The homeowner assistance application process itself presented a number of barriers to access for low and moderate income families and other vulnerable populations.

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<sup>18</sup> In addition, long delays in setting up the program resulted in further damages as unrepairs homes remained open to the weather or protected only by ubiquitous blue tarps for over two years. See Texas Low Income Housing Information Service (TxLIHIS), *Two Years After the Storm: Issues and recommendations concerning owner-occupied housing recovery programs for Texas survivors of Hurricane Rita* (Sept. 24, 2007) available at:

[http://www.texashousing.org/txlihis/hurricanehousing/Two\\_Year\\_Rita.pdf](http://www.texashousing.org/txlihis/hurricanehousing/Two_Year_Rita.pdf)

<sup>19</sup> U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Housing Recovery on the Gulf Coast, Phase II; Results of Property Owner Survey in Louisiana, Mississippi, and Texas*, August 2011. pp. 86-87

<sup>20</sup> Texas deserves credit for responding to advocates for disaster victims and substantially reworking its application.

<sup>21</sup> *Housing Recovery on the Gulf Coast, Phase II* p. 109

- **Inability to establish clear title to real property.** Heir property (divided ownership of property inherited by multiple heirs, often over multiple generations) and other real property ownership issues are particularly prevalent in low-income communities, and disproportionately affect African-American and elderly populations. Lack of clear title, particularly heir property ownership, has presented a serious barrier to the receipt of CDBG Disaster repair and reconstruction assistance in the wake of Hurricanes Katrina and Rita along the entire Gulf Coast. **In 2009, the Texas Legislature passed HB 2450, which allowed TDHCA to accept alternative proof of ownership, including an Affidavit of Heirship, for purposes of disaster recovery programs only. This alternative process was possible because Texas was running a reconstruction program, rather than a compensation program.**
- **Delays increase costs.** Failing to incorporate lessons learned, in every round of funding Subrecipients have underestimated the number of homes that would need reconstruction rather than repair, and had to reduce the number of homeowners they planned to serve. Homes that might have been repair jobs soon after the Hurricanes had to be rebuilt by the time housing programs started. In addition, the cost of temporary housing for disaster victims often exceeds the cost of repairing their homes. For example, in Mississippi following Hurricane Katrina, the average cost of a 280-square-foot trailer for more than 24 months of temporary housing ranged from \$30,000 for trailers placed on private sites to \$229,000 for trailers on group and commercial sites.<sup>22</sup>

#### **IV. The State must help build local capacity for disaster recovery.**

A report from the U.S. Government Accountability Office (GAO) summarizing lessons learned from past disasters, including Hurricane Rita, highlighted the need to build local capacity for recovery, stating "State and local governments need certain capacities to effectively make use of federal assistance, including having sufficient financial resources and technical know-how."<sup>23</sup> In the wake of Hurricane Ike, TDRA engaged contractor HTNB to help some local jurisdictions understand the CDBG-DR program and identify [infrastructure] projects because "many of the leaders of these small communities needed guidance to fully understand the underlying engineering, environmental, and implementation issues associated with their projects."<sup>24</sup> However, TDRA assumed that the same jurisdictions who needed help identifying projects had both (1) the capacity to identify, assess, estimate, and implement even more complex housing and economic development recovery programs, and (2) the capacity to prioritize community recovery needs in accordance with federal program requirements.

Capacity to run disaster recovery programs varies widely between localities, and institutional memory may be lacking for rare events such as disaster response. Many communities in Texas already rely on consultants to administer their annual CDBG and other federal housing and community development programs. While Texas delegated many disaster recovery activities to local governmental units, many of them lacked the resources and administrative capacity necessary to maximize the benefit of the available federal funds or administer them most efficiently, particularly those communities most devastated by disasters.

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<sup>22</sup> GAO 08-106, "Ineffective FEMA Oversight of Housing Maintenance Contracts in Mississippi Resulted in Millions of Dollars of Waste and Potential Fraud," November 2007.

<sup>23</sup> U.S. Government Accountability Office. *Disaster Recovery: Past Experiences Offer Insights for Recovering from Hurricanes Ike and Gustav and Other Recent Natural Disasters*. GAO-08-1120 (September 26, 2008)

<sup>24</sup> HTNB Ike Summary Report at 12.

**This is not to devalue the role of local governments in disaster recovery, but to encourage the federal and state governments to provide local governments with resources and technical assistance that will reduce their administrative burdens and reduce delays in getting disaster recovery funds out.**

The State's delegation of authority in the Ike and Dolly Round One housing program led to the creation, from scratch, of 18 separate housing programs. Eighteen jurisdictions, including some that had never run a CDBG housing program, were required to come up with program rules and activities, eligibility guidelines, and program application and implementation procedures. By March 2010, a year after HUD's approval of the Ike and Dolly Round One action plan, 18 months after Ike and 20 months after Dolly, no direct housing activities had begun. Recipient guidelines for housing activities were still being approved.<sup>25</sup> Then when all 18 programs were approved, the State had to monitor programs under 18 separate sets of rules, as well as CDBG grant requirements, substantially increasing its own administrative burden.

In Round Two, the State worked with representatives of the COGs and local jurisdictions to create standard housing guidelines and programs (that could be adjusted for local construction costs). While this was an improvement over the Round One process, and an incorporation of lessons learned from the Rita program as well, and although the Subrecipients had been involved in drafting the guidelines, the State still gave the Subrecipients an opportunity to rewrite the guidelines. The responses to this opportunity demonstrated the lack of understanding, at the Subrecipient level, of federal and state program requirements, and added several months to the process. State guidance like uniform programs and guidelines would allow subrecipients to focus program implementation and getting money out the door. It would also ensure that Texans aren't subject to different eligibility guidelines and benefit levels based solely on where they happen to live.

State-level guidance and coordination is crucial. First, the State is ultimately responsible for the use of federal disaster recovery funds, including ensuring that the State's subrecipients comply with program rules and requirements. Second, without some State guidance and coordination, the cumulative effect of local and regional government decisions may not work for the recovery program as a whole. For example, the initial Ike/Dolly Round Two Plan Action Plan delegated the allocation of CDBG-DR funds to regional and local entities without guidance, and the result was that as a whole, the State's proposed plan would not have met one of the statutory CDBG requirements – that a certain percentage of funds benefit low and moderate income families.

**V. Disaster recovery should be fair and equitable, and incorporating these goals into pre-disaster planning improves the efficiency and effectiveness of disaster recovery.**

Disaster recovery needs to be fair and equitable; between both different disaster affected areas in Texas and different populations and communities. From the families that could not evacuate from New Orleans because they did not have access to transportation, to colonias in the Rio Grande Valley where families spent weeks wading through floodwaters because they were not connected to a regional drainage system, the storms of the last ten years have made it painfully clear that there are systemic inequities that affect access to physical safety and the ability to recover from a disaster. Historically underserved populations—the poor, people of color, persons with disabilities—often live in areas most vulnerable to

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<sup>25</sup> TDHCA Board Materials, (March 11, 2010), available at <http://www.tdhca.state.tx.us/pdf/agendas/100311-book-100304.pdf>

flooding and other impacts of a disaster.<sup>26</sup> The same communities and families are also disproportionately affected by government failures in disaster response and recovery. For example:

- In the Lower Rio Grande Valley, inadequate drainage in the colonias, where the areas' lowest-income residents live, meant there was standing water for weeks and even months.
- In the City of Galveston, floodwaters disproportionately destroyed the housing in the Island's northeast side neighborhoods, which are historically African-American. These communities were not protected by the City's seawall, which was built after the 1900 hurricane.
- In Houston, low-income communities, often with residents that are African-American or Hispanic, are more likely to have open ditch drainage (often poorly maintained) that causes frequent and more severe flooding, repeatedly damaging the same homes and neighborhoods.

Long-term disaster recovery programs must look not just at rebuilding individual houses or specific infrastructure, but *at how disaster recovery can rebuild in a way that makes communities – particularly those that have been historically neglected -- more resilient, and less susceptible to damage from future storms*. CDBG-DR funds are an opportunity to rebuild stronger and better, and to address some of the conditions that make some populations more vulnerable to disasters than others.<sup>27</sup>

Equity should start at the top. Under Rita Round One, Mississippi ended up receiving a disproportionately large share of CDBG disaster recovery funds, and Texas and Louisiana disproportionately small shares. Lack of a funding formula and inaccurate FEMA data meant federal allocation of CDBG recovery funds post-Katrina was influenced by politics and state advocacy. The federal government should adopt objective formula-based guidelines for the appropriation and allocation of CDBG disaster recovery funds similar to the allocation formula for the annual CDBG program, or the formula for determining unmet needs created for the second allocation of funds for the 2008 storms. However, there are ways for Texas to ensure that its own allocations are data-based and target the areas of greatest need regardless of federal response. In addition to issues caused by the proposed "weather model", Mississippi allocated funds away from hard hit communities and used them for non-disaster related economic development projects.

CDGB-DR is the sole source of long-term housing recovery funding, and the allocation of funding should reflect the critical nature of post-disaster housing need.

While problems from undisclosed FEMA rules that deny benefits to low-income communities of color to apparently neutral program rules that turn out to have a disproportionate negative effect, the last ten years of disaster recovery have included numerous examples of how failing to think about equity and civil rights requirements has affected not only families struggling to recover, but the recovery of whole communities and the State overall. However, the last decade of disaster recovery has also shown that in CDBG-DR programs makes a real difference in the fairness and effectiveness of disaster recovery overall:

- An increase of \$150 million benefitting low and moderate income Texans.

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<sup>26</sup> See, e.g., Thomas Gabe, Gene Falk, Maggie McCarty, and Virginia Mason, *Hurricane Katrina: Social-Demographic Characteristics of Impacted Areas*, Congressional Research Service Report to Congress (November 5, 2005); Alice Fothergill and Peek Lori, *Poverty and Disasters in the United States: A Review of Recent Sociological Findings*, Natural Hazards 32: 89–110, 2004; and, Shannon Van Zandt, Walter Gillis Peacock, Wesley E. Highland, and Samuel D. Brody, "Mapping social vulnerability to enhance housing and neighborhood resilience", Housing Policy Debate 22(1):29-55 (January 2012).

<sup>27</sup> For example, the City of Port Arthur used CDBG-DR funds to rebuild public housing away from the fenceline of the largest refinery in North America, reducing the residents' vulnerability to an industrial disaster as well as a natural disaster.

- Increased community input on disaster recovery programs including moving an additional \$40 million in housing assistance for low-income homeowners in Houston, and reallocating \$14 million in infrastructure funds to fixing drainage in colonias in the Rio Grande Valley.<sup>28</sup>
- Requirements that housing funds serve income categories proportionally to their share of damage has more than doubled rebuilding assistance for the lowest income homeowners between Ike and Dolly Round One and Ike and Dolly Round Two.
- Three hundred and sixty-three households, 11% of homeowners receiving Ike and Dolly Round Two reconstruction funds, have chosen voluntarily to rebuild in safer and higher opportunity areas.<sup>29</sup> This is the first homeowner mobility program of its kind in the country, and a national model.
- Over 180 Texas jurisdictions have received fair housing training and have conducted reviews of their own impediments to fair housing choice.
- In Louisiana, African-American homeowners and two civil rights organizations sued the state over its formula for allocating repair and reconstruction grants to homeowners under the state's Road Home program, alleging that the formula had a discriminatory impact on the basis of race. African-American homeowners were much more likely than whites to receive grants based on the pre-storm value of their homes rather than on the actual cost to repair. These grants were much lower than the actual cost or repairs, rendering homeowners unable to rebuild. The case was settled in July 2011, providing additional compensation grants based on the actual cost to repair to over 13,000 homeowners.<sup>30</sup>
- In November 2010, advocates in Mississippi, along with HUD and the state, announced a new plan to direct \$132 million in CDBG disaster recovery funds to housing for low-income Mississippi families whose homes were destroyed by Hurricane Katrina. As part of the agreement, Mississippi civil rights groups agreed to dismiss a 2008 lawsuit against HUD, challenging the agency's approval of the diversion of funds from housing recovery programs to a port expansion on fair housing grounds.<sup>31</sup>
- Regardless of changes to the federal allocation formula, recovery resources should be allocated within Texas under a data-driven formula that prioritizes unmet need. This would ensure that allocations were fair, reached the hardest hit areas and communities, and eliminate the time necessary to come up with a new allocation formula for each round of funding. Under the State's "weather model" for allocating the second round of Dolly/Ike CDBG-DR funding, "two of the hardest hit counties, Galveston and Orange, would have received less than half of what they would under the HUD model, and 22 counties where the HUD model showed no measurable

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<sup>28</sup> Letter from Diana R. Serna, Exec. Dir., Hidalgo Cty Urban Cty Program, to Drew Cameron, HNTB Corp. (Oct. 19, 2011 (on file with author); *Residents organizing with the Equal Voice Network win \$14 million for drainage improvements in Hidalgo County colonias*, LA UNIÓN DEL PUEBLO ENTERO BLOG (Nov. 2, 2011), <http://lupergv.wordpress.com/2011/11/02/residents-organizing-with-the-equal-voice-network-win-14-million-for-drainage-improvements-in-hidalgo-county-colonias/>.

<sup>29</sup> Because Round Two is ongoing, this number may change in the future.

<sup>30</sup> Kelly Parker, *Settlement reached in Road Home discrimination challenge*, The Louisiana Weekly (July 11, 2011). Available: <http://www.louisianaweekly.com/settlement-reached-in-road-home-discrimination-challenge/>

<sup>31</sup> HUD No. 10-54, "HUD Approves \$132 million Mississippi Disaster Plan," November 15, 2010. Available: [http://portal.hud.gov/hudportal/HUD?src=/press/press\\_releases\\_media\\_advisories/2010/HUDNo.10-254](http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2010/HUDNo.10-254)

unmet need would have received federal disaster relief monies.<sup>32</sup> There will never be enough funding to address all disaster recovery needs, but governments, both state and federal, should prioritize on the basis of severity of damage and unmet need.

Disaster recovery brings opportunity as well as adversity, but only by learning from our experience and institutionalizing best practices and lessons learned can we use that opportunity to create stronger and more resilient communities

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<sup>32</sup> HUD Map and Calculations, December 17, 2009. Please note that the terms “underfunded” and “overfunded” are being used in the context of the Texas allocation, and not in terms of the actual dollar amount of unmet need in the state.