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June 7, 2021

Jeanine Worden
Acting Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20419-2000

RE: Complaint alleging violations of the Fair Housing Act, Title VI, Section 109 and failure to comply with the obligation to affirmatively further fair housing against the State of Texas General Land Office regarding its failure to fund Houston and Harris County and other jurisdictions through the Hurricane Harvey CDBG Mitigation Program

Dear Ms. Worden:

Complainants Texas Housers, a Texas non-profit affordable housing research and advocacy organization and the Northeast Action Collective, an organization of residents of Northeast Houston and Harris County neighborhoods, requests that HUD immediately investigate the State of Texas General Land Office (GLO) for its unlawful plan, needs assessment and funding awards in the course of administering the HUD-funded CDBG Disaster Mitigation (CDBG-MIT) program in Texas. The GLO's actions have deprived African American and Hispanic persons of equitable access to the benefits of these federal funds.

COMPLAINANTS

Texas Housers is the state's foremost research and advocacy organization working to support people and communities of color to achieve the American Dream of a decent, affordable home in a quality neighborhood of choice. Founded in 1988, the organization has offices in Houston, San Antonio and Austin. Texas Housers has worked extensively with survivors to secure fairness and racial equity across Texas in the recovery from Hurricanes Rita, Dolly, Ike and Harvey.

The Northeast Action Collective (NAC) is a group of residents of the predominately African American and Hispanic Northeast Houston and Harris County neighborhoods working to improve the quality of life through collective action, grassroots advocacy and community education. NAC is working for a just recovery from Hurricane Harvey and Tropical Storm Imelda and believe that a just recovery must include disaster preparedness and mitigation. Since October 2018 the Collective has activated community members, built alliances, cleaned out storm drainage ditches, written letters and testified at public hearings. Their neighborhoods, like most African American and Hispanic neighborhoods in Southeast Texas, face disproportionate flood and environmental health risks. NAC believes that decades of inequity and oppression must be addressed directly with policies and budgets that prioritized communities that have been neglected for the economic benefit of others.

Complainants have previously provided numerous specific comments to GLO that identified discriminatory aspects of GLO needs assessments, action plans, methods of distribution, policies and scoring criteria. GLO has failed to address these comments.

VIOLATIONS

Complainants allege that the GLO's administration of the federally funded CDBG-MIT program in the state of Texas discriminates on the basis of race and national origin, in violation of the Fair Housing Act, 42 U.S.C. 3601 et seq., (FHA), including the obligation to affirmatively further fair housing, Title VI of the Civil Rights Act of 1964 (Title VI), Section 109 of the Housing and Community Development Act of 1987, the obligation to affirmatively further fair housing and in violation of federal regulatory requirements that prioritize providing benefits to low- and moderate-income persons, who are disproportionately persons in classes protected under Title VI and the Fair Housing Act. Please see the attached completed 903 complaint form for the Fair Housing Act complaint.

These violations cause African American and Hispanic disaster survivors and predominately African American and Hispanic neighborhoods, cities and counties to be denied access to federal funds to mitigate their disproportionate and repeated exposure to the effects of flooding from natural disasters.

The GLO has engaged in a pattern and practice of discrimination against these persons and communities through a flawed needs assessment and allocation process that is intentionally discriminatory, and which has a disparate impact based on race and national origin.

These violations of law are the basis for this complaint. The GLO has announced its intent to award CDBG-MIT funds in a manner that systematically and deliberately advantages white individuals and predominately white communities while systematically and deliberately denying low- and moderate-income African American and Hispanic individuals and communities' equal access to the federal funds. The GLO's actions harms people of color directly, by depriving them of assistance to rebuild homes damaged in disasters in a manner and in locations that would make them less susceptible to future disasters, depressing the economic value of their homes, and subjecting them to disproportionate physical hazards and property damage that will result from future flooding and other disasters and by perpetuating historical discrimination and disinvestment that have made these persons and communities disproportionately vulnerable to disaster.

In addition, a number of the criteria and priorities established by GLO have a discriminatory disparate impact based on race and national origin. These criteria include eligibility standards, scoring criteria which disadvantage LMI populations that should instead be prioritized, using counties rather than CDBG-MIT benefit areas to determine allocations, using criteria that disadvantage urban areas with larger populations of African American and Hispanic populations, establishing preferences for homeownership benefits without assuring similar protection for program beneficiaries who are renters (who, in Texas, are disproportionately African American and Hispanic), and in failing to follow important program requirements including consideration of AI analysis and current data, all individually and separately disqualifying otherwise eligible communities and are not substantially justified by an operational need or requirement.

Counter to the purpose of CDBG-MIT funds, the GLO process also fails to establish an organized and consistent approach to disaster mitigation and instead misuses the CDBG-MIT program to fund

routine infrastructure development in small, low percentage LMI communities with little experience of severe repetitive disasters that should have instead been financed with state and local tax dollars or other available funds.

Among the large areas of Texas harmed by the GLO allocation and assessment are Harris, Jefferson and Orange counties in Southeast Texas, the Rio Grande Valley county of Hidalgo and the cities of Houston, Port Arthur and Beaumont. All of these areas have large populations of low- and moderate-income persons, and African American and Hispanic persons, impacted by many disasters, and who comprise the largest share of these populations within the areas eligible for CDBG-MIT funds.

In its efforts to avoid funding people of color, the GLO has ignored or violated multiple provisions of the federal regulations governing the administration of CDBG-MIT funds that are intended by HUD to protect citizens from discrimination.

This discrimination became public when the GLO announced the award of over \$1 billion in Round 1 of its Hurricane Harvey CDBG-MIT grants on May 21, 2021.¹ The GLO declined to award grants to assist persons living in the epicenters of repeated natural disasters – Harris and Hidalgo counties and the cities of Beaumont and Port Arthur. These four jurisdictions have a combined population equal to 56.2% of the entire combined population of all the HUD CDBG-MID counties. These jurisdictions were denied funding despite the fact that the GLO was well aware of the disproportionate impact of repeated natural disasters on African American and Hispanic neighborhoods and their housing in these cities and counties. The state elected official overseeing the GLO, Texas Land Commissioner George P. Bush attempted to explain the May 21 awards outcome by falsely blaming HUD and the Biden Administration for decisions, regulations and requirements enacted by his agency and the Trump Administration.²

When Texas largest newspaper, local officials and experts pointed out the false nature of the commissioner's claim (see attached Houston Chronicle news story from May 31, 2021)³ and a public outcry ensued, George P. Bush, announced his intent to seek HUD's permission to award Harris County \$750 million outside of the GLO allocation plan.⁴ Bush did not however modify the GLO's award of the grant funds to other jurisdictions that he announced on May 21. The details of Commissioner Bush's plan to make a special allocation to Harris County have not been made public.

The subsequent announcement of funding to one of the excluded jurisdictions, even if ultimately allocated, will still cause racially discriminatory outcomes in Houston, Harris County, Beaumont, Port Arthur, Hidalgo County and other areas. It will not remedy the discriminatory impact of the GLO program in the remainder of the state. Nor will a direct allocation to Harris County offer Houston,

¹ <https://www.glo.texas.gov/the-glo/news/press-releases/2021/may/bush-requests-direct-funding-allocation-to-harris-county-for-mitigation.html>

² <https://www.glo.texas.gov/the-glo/news/press-releases/2021/may/bush-requests-direct-funding-allocation-to-harris-county-for-mitigation.html> Land Office Commissioner Bush wrote in his press statement, "I have heard the overwhelming concerns of Harris County regarding the mitigation funding competition," said Commissioner Bush. "The federal government's red tape requirements and complex regulations are a hallmark of President Biden's administration. I am no stranger to standing with the people of Texas as we fight against the federal government. As such, I have directed the GLO to work around the federal government's regulations and allocate \$750 million for mitigation efforts in Harris County."

³ Houston Chronicle, "Bush blamed federal rules for Harris County's lack of flood aid. Our analysis shows that's false" June 1, 2021 (attached)

⁴ *ibid.*

Harris County and the other jurisdictions that suffered from the GLO's discriminatory CDBG-MIT Round 1 fair access to the over \$1 billion that was allocated in a discriminatory manner on May 21. The harm produced by the unlawful practices of the GLO in violation of HUD regulations and Civil Rights and Fair Housing laws extend far beyond the Houston area to all of the HUD-identified "Most-Impacted and Distressed" (HUD MID) counties and ZIP code areas and in particular to those areas with large populations of African American and Hispanic persons impacted by disasters in 2017. Among those areas are the other major repeat disaster epicenters: the Lower Rio Grande Valley county of Hidalgo (92.2% Hispanic) and the Southeast Texas cities of Beaumont (46.5% African-American, 17.1% Hispanic) and Port Arthur (38.1% African-American, 34.5% Hispanic).

Map 1 (attached) shows the location of grants awarded to counties and cities by the GLO in Round 1 of the CDBG-MIT program. Also shown on this map is the color-coded racial dot density of the population. The map shows: 1) grants were not concentrated in the HUD-MID counties that suffered most severely from repeated disasters; 2) the great majority of the grants are targeted to areas with low population; 3) grants systemically exclude areas that have suffered repeated disasters where and significant number of African American and Hispanic persons reside.

Commissioner Bush's stated solution to his agency's exclusion of jurisdictions with the largest populations of persons subject to repeated disaster is: 1) to ask HUD to accept the discriminatory result of the GLO's award of over \$1 billion in federal CDBG-MIT funds; and 2) to grant only one of the excluded jurisdictions access to \$750 million, less funds than Harris County would have received had the awards been made using non-discriminatory criteria. Complainants contend that HUD cannot accept this and should require the GLO to allocate all \$4.1 billion in a non-discriminatory manner. GLO should be directed to correct the flawed needs assessment, flawed allocation plan and flawed scoring criteria to remedy violations of Title VI, Title VIII, including to affirmatively further fair housing and comply with the CDBG-MIT regulations.

Texas Housers has requested records and data from the GLO in order to more fully analyze and document the GLO's actions. The GLO has not yet provided access to the complete applications, specific geographies of the individual grant program benefit areas or scoring sheets. When these public records are made available to us by the GLO and our analysis is completed, Texas Housers will supplement this complaint through additional submissions to your office. At this point however, there is already ample evidence that the GLO's funding decision discriminates based on race and national origin and violates program requirements.

There is an urgent need for HUD to accept and file this complaint and begin an investigation that will prevent GLO from distributing CDBG-MIT funds in a discriminatory manner.

Specifically:

1. GLO developed, adopted and applied program eligibility criteria for grants to cities and counties that systematically deny funds for mitigation projects to low- and moderate-income individuals and communities and African American and Hispanic persons and communities. Specifically:
 - a. The GLO limited jurisdictions to submitting a maximum of three applications with a per application limit of \$100 million. This had the effect of preventing Houston, Harris County and several other jurisdictions from making successful application for mitigation funds that would have assisted more than one million African American and Hispanic

persons in hundreds of neighborhoods, predominately occupied by persons of color, who suffer and will continue to suffer from repetitive and disaster related flooding.

- b. The GLO diluted the impact of the program and reduced funds that would otherwise benefit persons who are members of protected classes under civil rights statutes by failing to give appropriate weight to the scoring criteria intended to incentivize sub recipients to leverage CDBG-MIT grants⁵ with other funding in compliance with federal regulations governing the administration of the CDBG Mitigation Program.⁶ Harris County for example, proposed to leverage billions of dollars in local flood bond proceeds with CDBG-MIT grants. The GLO scoring criteria minimized this commitment of local funds in the scoring, permitting jurisdictions that made no commitment of local funds and made no effort to adopt local mitigation policies to prevail over Harris County in the competition. The leverage of CDBG-MIT funds with local funds for mitigation would have made available more funding and benefited more residents and neighborhoods, especially predominately African American, Hispanic and LMI neighborhoods.
2. GLO adopted and applied a series of discriminatory scoring criteria for grants from cities and counties, each of which had the effect of denying funding for mitigation projects that primarily benefited low- and moderate-income individuals and African American and Hispanic persons. To wit the GLO:
 - a. Failed to prioritize LMI beneficiaries by failing to provide scoring preference to proposals that would assist the greatest number and greatest percentage of LMI persons.⁷
 - b. Adopted 50% LMI as a threshold and not a minimum requirement with incentives for exceeding the 50% threshold and thereby disproportionately denied grant applications that proposed to serve African American and Hispanic individuals and their neighborhoods which are disproportionately LMI.
 - c. Adopted the county as the unit for project scoring criteria instead of using the project benefit area, resulting in a reduction of points for applications from urban areas where large numbers and concentrations of African American and Hispanic persons disproportionately reside.
 - d. Established a standard LMI qualifying criteria across the state at 50% rather than adjusting LMI requirements to reflect regional variations and to prioritize projects that serve a greater number of LMI persons. This policy permits GLO and sub-allocating

⁵ "Maximize the impact of available funds by encouraging leverage, private public partnerships, and coordination with other Federal programs." Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,838 (August 30, 2019).

⁶ "HUD concurrently expects that grantees will take steps to set in place substantial governmental policies and infrastructure to enhance the impact of HUD-funded investments" Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,839 (August 30, 2019).

⁷ "The grantee certifies that it is complying with each of the following criteria: (1) Funds will be used solely for necessary expenses related to mitigation activities, as applicable, in the most impacted and distressed areas... (2) With respect to activities expected to be assisted with CDBG-MIT funds, **the relevant action plan has been developed to give priority to activities that will benefit low- and moderate-income families.** (3) The aggregate use of CDBG-MIT funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent." Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,870 (August 30, 2019). *[emphasis added]*

regional Councils of Government (COGs)⁸ to steer funds to low-population, low LMI percentage and largely white areas. The result is to fund projects assisting fewer numbers of LMI households and to deny mitigation assistance to African American and Hispanic persons who would otherwise benefit.⁹

- e. Adopted a per capita market value scoring criteria that divided the market value of all property in a county by the county population, instead of using the appropriate data for the smaller CDBG-MIT project area. This blocked urban areas with large populations of people of color from scoring equitably with smaller jurisdictions for mitigation funds. Use of this criterion favored smaller jurisdictions and disfavored larger jurisdictions and disproportionately disqualified large urban jurisdictions with large numbers of persons of color and LMI households. Houston's, Harris County's, Beaumont's and Port Arthur's rejected applications were significantly disadvantaged by this criterion.
 - g. Established a policy limiting any jurisdiction from receiving funds for more than one application until other applying jurisdictions who met a minimum score requirement had also received a grant. This, coupled with the \$100 million maximum grant limit, disproportionately excluded urban areas with large populations of people of color. If the GLO's objective was to ensure that rural jurisdictions with smaller populations received access to a fair portion of CDBG-MIT funds, the proper way to do so would have been to determine the appropriate share of funds rural and small towns should receive through the needs analysis and adopt an appropriate separate competition for those funds. Instead, GLO adopted scoring criteria designed to advantage small town and rural applicants across the board that has had the effect of withholding funds from many mid- to large-sized cities and counties with the attendant effect of denying access to program benefits to most of the African American and Hispanic persons and neighborhoods in the HUD-MID counties.
 - h. Used Social Vulnerability Index (SVI) data at the county level rather than the CDBG-MIT project benefit area. This effectively masked extreme levels of urban neighborhood social vulnerability, particularly for populations of low-income African Americans and Hispanic persons in counties with high levels of wealth and social inequality. It deprived these areas of the points they need for their application to score high enough to qualify for funding.
3. The GLO CDBG-MIT Action Plan established set-asides for activities that disproportionately and arbitrarily reduced the eligible population of persons of color and has a disparate impact based on race and national origin.
- a. The GLO refused to make funds available for rental housing and rental housing mitigation. The sole housing set aside the GLO made in its CDBG-MIT Action Plan was the 13% of funds set-aside for homeowners to supplement its CDBG-DR home repair

⁸ A separate allocation round is planned by the GLO in which regional councils of government (COGs) will develop their own MODs to award a portion of the remaining CDBG-MIT funds within their respective areas. The experience of this allocation scheme in the award of CDBG-DR funds in the past teacher says that many of the same violations detailed in this complaint will also occur in the award of grants overseen by the COGs.

⁹ "Therefore, this notice waives the requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), 24 CFR 570.484, and 570.200(a)(3), that 70 percent of funds be used for activities that benefit low- and moderate-income persons. Instead, 50 percent of CDBG-MIT funds must benefit low- and moderate-income persons. However, as provided in section V.A.2.a.(4), all grantees must prioritize the protection of LMI individuals." Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,856 (August 30, 2019). [emphasis added]

and rebuilding program. Homeowners in Houston and Harris County are not eligible for these supplemental funds. No funds were set aside for rental housing or rental housing mitigation in the CDBG-MIT action plan, nor did GLO incentivize the use of CDBG-MIT funds for rental housing in its grant competition scoring criteria. The imbalance between renter and owner assistance is one basis of Texas Housers' 2018 complaint against GLO currently being investigated by HUD.¹⁰ Within disaster impacted counties, FEMA damage claims data demonstrates that African American and Hispanic households were disproportionately renter households. In the counties eligible for the CDBG-DR funds under Hurricane Harvey for example, African American and Hispanic households are far more likely than white households to be renters. According to HUD's CHAS data, approximately 27% of white households in the eligible counties rent their homes compared to 55% of African American households and 46% of Hispanic households.¹¹ GLO offers no reasoned basis or data for the housing set-aside being restricted to homeowners, or for its failure to otherwise provide for or incentivize renter housing that would be less vulnerable to future disasters.¹² Table 1 (attached) shows housing tenure and race/ethnicity for many of the counties eligible for CDBG-MIT funds. This HUD data from 2017 illustrates the disparate racial impact of the GLO's decision to only fund owner occupied housing in the MIT program. African American and Hispanic households within the eligible counties rent their homes far more often than do white households. In Harris County for example, the share of homeowners is whites – 49%, Blacks – 14% and Hispanics – 29%. In Jefferson County the share is: whites – 57%, Blacks – 25% and Hispanics – 13%. In Orange County whites have an 88% share of homeowners, Blacks 6% and Hispanics 4%.

4. The GLO failed to analyze or consider the needs of individuals in protected classes, specifically race and national origin, in developing the program allocations, eligible activities, rules, funding criteria and scoring system for CDBG-MIT funds.¹³ The result is the disproportionate denial of benefits to persons of color and persons based on their national origin in the CDBG-MIT Hurricane Harvey Round 1 grant competition. The GLO:
 - a. Did not follow the fair housing compliance review process established in the State of Texas Analysis of Impediments to Fair Housing (AI). In the 2019 AI the GLO stated that, "The GLO, in its' interpretation of current AFFH requirements under the law, has taken the step to conduct AFFH reviews in coordination with Texas Appleseed." Madison Sloan, director of the Disaster Recovery and Fair Housing Project at Texas Appleseed reports her agency has not been asked by GLO to review any CDBG-MIT grant proposals or any other GLO administered CDBG-DR or CDBG-MIT activity.¹⁴

¹⁰ https://drive.google.com/drive/folders/1DScjnYAu1O9AiqJUznXwXWZmPM_GPwZ?usp=sharing

¹¹ Consolidated Planning/CHAS Data, HUD USER, https://www.huduser.gov/portal/datasets/cp.html#2006-2014_data

¹² "Grantees must reassess post-disaster population and housing needs to determine the appropriate type and amount of lower-income dwelling units to rehabilitate and/or rebuild." Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,859 (August 30, 2019).

¹³ "Grantees must also assess how the use of CDBG-MIT funds may affect members of protected classes under fair housing and civil rights laws, racially and ethnically concentrated areas, as well as concentrated areas of poverty." Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,847 (August 30, 2019).

¹⁴ From the 2019 State of Texas Analysis on Impediments to Fair Housing, page 462...

Affirmatively Furthering Fair Housing

- b. Relied on inappropriate summaries of statewide data on race/ethnicity drawn from the AI instead of using updated ACS data for the MID counties.
5. The GLO failed to comply with HUD regulatory requirements in preparing the CDBG-MIT needs assessment and plan, resulting in an inappropriate denial of benefits to persons of color and LMI persons.¹⁵ To wit:
- a. The plan for distributing funds fails to comply with HUD regulations in many aspects, including failing to put forth an appropriate mitigation strategy that guides the allocation of funds and the eligible projects. GLO declares that “maximizing as much local control as possible”¹⁶ is its objective. GLO implements this philosophy by improperly delegating to grant applicants the general power to determine how to spend CDBG-MIT funds. This approach may be preferred by GLO but does not comply with the HUD regulations that clearly require the GLO to develop and implement a coherent mitigation strategy and not simply leave that to the uncoordinated efforts of dozens of local governments.
 - b. The plan provides an inadequately reasoned basis to direct up to 50% of funds to counties that were not as significantly impacted by disasters (State MID counties) with the effect of greatly diminishing the availability of MIT funds to severely and repetitively impacted disaster-impacted areas (HUD-MID counties) that have far larger populations of classes of persons protected by Title VIII and Title VI.¹⁷ Of the 80 projects that received funding in CDBG-MIT Round 1, 52 were located in State-MID counties and 28 were located in the more impacted HUD-MID counties. Projects in State-MID counties received 55.4% of total funding. HUD requires the GLO to expend no less than half of

Affirmatively Furthering Fair Housing (AFFH) requires that federal grantees further the purposes of the Fair Housing Act through the provision of an effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.

The GLO, in its’ interpretation of current AFFH requirements under the law, has taken the step to conduct AFFH reviews in coordination with Texas Appleseed. This review process and all of its inner workings are being carefully crafted to ensure the most effective and efficient review process possible. To date, this review process will, at a minimum, include an assessment of the following as it relates to each project: area demography, socioeconomic characteristics, housing configuration and needs, education opportunities, access to public transportation, healthcare opportunities, and environmental hazards or concerns. It is the hope of the GLO that these reviews will present relevant data and establish solid reasoning to support the usage of CDBG- DR funds for certain recovery projects.

The GLO works to ensure that all policies, processes, and procedures associated with CDBG-DR Program implementation adequately reflect and adhere to, at a minimum, the above-listed provisions. Through effective usage of these provisions, the GLO fosters a more inclusive disaster recovery environment that actively combats NIMBYism.

¹⁵ “Grantees may determine where to use the remaining 50 percent of the CDBG–MIT grant (the grantee-identified MID areas), but that portion of the grant must be used for mitigation activities that address identified risks within those areas that the grantee determines are most impacted and distressed resulting from the major disasters identified by the disaster numbers listed in Table 1.” Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,841 (August 30, 2019).

¹⁶ This Action Plan considers and addresses critical mitigation needs over a large geography while maintaining as much local control as possible through several programs aimed at creating more resilient communities through improved infrastructure, housing, building and land use policies and practices, and hazard mitigation planning.” State of Texas CDBG Action Plan, page 208.

¹⁷ “Through this allocation for mitigation, HUD seeks to: Support data-informed investments in high-impact projects that will reduce risks attributable to natural disasters, with particular focus on repetitive loss of property.” Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,838 (August 30, 2019).

the \$4.2 billion in CDBG-MIT funds in the 23 counties that HUD determined were most impacted by natural disasters.

Without objective justification, GLO determined to expend the maximum allowable amount of funds permitted outside the most impacted counties (HUD-MID counties) in 26 other counties (State-MID counties). Map 2 shows the HUD-MID and State-MID areas. The map also shows the population as dots, color-coded to denote race. The additional State-MID counties are generally very low population areas and most contain very small numbers of African American and Hispanic persons. A comparison of the CDBG-MIT grants awarded by GLO shown on Map 1 with the HUD- and State-MID counties on Map 2 shows how heavily skewed the grants are toward State-MID counties. The maps also show the racial and ethnic population densities within the two categories of MID counties, with the overwhelming concentration of populations of people of color residing in HUD-MID counties. The State-MID counties have lower African American and Hispanic populations than the state of Texas as a whole. State-MID counties, which the GLO has made eligible for 50% of CDBG-MIT funds, are, white, non-Hispanic – 60.9%, Black – 8.0%, Hispanic – 28.1%. The Texas population as a whole is, white-non-Hispanic – 42.0%, Black – 11.8%, Hispanic – 39.3%.

- c. The GLO CDBG-MIT program fails to comply with HUD regulatory requirements to prioritize areas that have suffered repetitive losses and that contain large numbers of persons in protected classes¹⁸, including Harris, Jefferson and Hidalgo counties.¹⁹
 - d. The GLO CDBG-MIT plan fails to include any assessment or consideration of race or national origin or other Fair Housing analysis undertaken by the GLO to identify the most vulnerable populations that should be prioritized for mitigation funding.
6. The GLO did not properly report, consider and act on citizen comments received at the time the plan was proposed. Those comments raised a number of the issues about needs assessment, planning and scoring that are the subject of this complaint. Texas Housers and other parties raised these concerns in formal written comments to the draft plan and analysis during the public comment period. Our comments were not all reported in the GLO plan, they were not accurately summarized by GLO in the plan submitted to HUD for approval and the GLO failed to substantively respond to those comments in the plan as required in the HUD regulations.²⁰
 7. The GLO adopted a method of incentivizing and awarding mitigation grants to activities that it knew would result in the systematic and wholesale exclusion of certain cities and counties from receiving funds under this program. These are coastal cities and counties that are those most severely impacted by repetitive natural disasters, and which also have larger numbers of LMI, African American and Hispanic residents. Prominent among these excluded jurisdictions is the majority-minority city of Port Arthur, which arguably suffered the greatest cumulative impact from natural disasters in Texas. The GLO knew from previous federal funding rounds and from

¹⁸ *Ibid.* As evidence that the additional State-MID counties exclude counties with high degrees of repetitive flood loss see the State of Texas CDBG Mitigation (CDBG-MIT) Action Plan, Figure 2-66, page 157 that shows repetitive flood loss.

¹⁹ *Ibid.*

²⁰ “The grantee must consider all comments, received orally or in writing, on the action plan or any substantial amendment. A summary of these comments or views, and the grantee’s response to each must be submitted to HUD with the action plan or substantial amendment.” Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,853 (August 30, 2019).

the lack of the city's response to the State's initial damage assessments that Port Arthur and number of other cities and counties lacked the administrative capacity to develop applications for assistance. The GLO is required under HUD regulations to take the capacity of jurisdictions into account in designing the program. Yet, the GLO ignored the capacity issues and proceeded to design and carry out a program that was totally dependent on local governmental initiative and capacity to apply for funding.

The result of this flawed approach can be seen in 1) the low percentages of LMI beneficiaries residing in funded jurisdictions; and 2) the greatly disproportionate number of very small jurisdictions awarded benefits under the MIT program that also were awarded funding by the GLO under the Hurricane Rita and Hurricane Ike CDBG-DR program. These small jurisdictions had greater capacity to make successful applications because they were assisted in preparing applications for CDBG-MIT funds by a small number of private consultants who are well connected to the annual State of Texas CDBG-program and the GLO-administered disaster recovery programs. The consistent award of funds to these few smaller communities and consultants should have been ample evidence to the GLO that its method of distribution was flawed. Over multiple rounds of CDBG-DR and MIT funding, it resulted in a wholesale exclusion of the most severely and respectively impacted communities and produced a disparate racial impact in the distribution of benefits.

An example of the GLO's flawed and racially biased allocation process can be seen in the Southeast Texas city of Beaumont that has been subject to widespread repetitive property damage from many disasters. Beaumont has a population of 118,151 and the largest share of African American population of any major Texas city. The non-Hispanic white population is 32.0%, the African American population is 46.5% and the Hispanic population is 17.1%. The city has a poverty rate of 22.1%. Beaumont did not receive any mitigation funding from GLO. However, the Beaumont bedroom community of Vidor, an infamous Sundown Town²¹, was awarded by GLO a \$15 million grant to improve storm drainage. Vidor has a population of 10,725 which is 90.1% White, non-Hispanic and 0.1% African American. The poverty rate is 14.5%. In addition to the CDBG-MIT grant, the GLO has funded Vidor generously and repeatedly with CDBG-DR grants across multiple disasters.

8. Many of the projects funded by the GLO benefit largely white, relatively higher income populations that are either not eligible, or not prioritized, for funding under the CDBG-MIT regulations. On the other hand, many of the projects rejected by the GLO are disaster mitigation eligible projects serving primarily African American and Hispanic persons with large numbers and ratios of LMI persons. When the GLO makes available the complete application files, Texas Housers will provide a detailed analysis to HUD.
9. Examples of projects funded by GLO with CDBG-MIT funds that are outside repetitive major disaster areas and that are unrelated or tangentially related to disaster mitigation include:
 - a. \$17.5 million for a new Caldwell County community center (to double as an evacuation center) located 141 miles from the Gulf Coast,
 - b. \$10.8 million for installing a first-time city sewage system in the town of Iola, population 209, 59% LMI and 88% non-Hispanic white, located 144 miles from the Gulf coast,

²¹ <https://humanparts.medium.com/i-grew-up-in-the-most-hateful-town-in-america-a4e91e6b3bc>, Also see New York Times, quote Blacks move to Texas Housing project, January 14, 1994, available at <https://www.nytimes.com/1994/01/14/us/blacks-moved-to-texas-housing-project.html>

- c. \$4.2 million for an approximately 2000-foot-long road connection in Bastrop County, 161 miles from the Gulf Coast, connecting a Walmart parking lot and a Home Depot, justified as a cut through for emergency vehicles in case the adjacent freeway is clogged with Hurricane evacuees from the distant Gulf Coast²²; and
- d. \$6 million for a new sheriff's department radio tower and radios for Gonzales County, located approximately 90 miles from the Gulf Coast.

These are just a few examples of lower priority activities that received GLO funding. A number of the funded activities have little to do with disaster mitigation²³ and instead represent the use of the CDBG-MIT grants to carry out routine general governmental activities that cities and counties would normally be expected to fund with local taxes.²⁴ This is reflected in the nature of the overall projects funded by GLO. 39% of the funded projects include new or improved sewer systems. 18% include new or improved water systems and 26% include street and road improvements.

Many of the GLO funded projects are small size in very low population governmental jurisdictions. The funded projects are scattered widely across many counties and are not inter-related in a regional or area disaster mitigation strategy.

There is no evidence of any form of regional collaboration that is encouraged in the regulations or awards. In sum, the GLO awards did not accomplish the stated goals of the HUD regulations and GLO simply used HUD CDBG-MIT funds to grant cities the "local discretion" to propose isolated, small general government projects with little or no real relation to disaster mitigation. None of the funded projects are significant, much less regional mitigation of activities of the type that HUD regulations anticipated and incentivized.

- 10. Of the projects awarded funding by the GLO, the number and percentage of LMI persons receiving assistance is minimal. If a HUD waiver had not been granted, recipients would have been required to use funds to benefit areas where at least 70% of households were LMI. Of the projects funded by the GLO with these CDBG-MIT funds, only 8.5% of funded projects have a benefit area including 70% or more LMI persons. Notwithstanding the waiver, the GLO is required to prioritize LMI persons. GLO has failed to do so.

Texas Housers and the Northeast Action Collective respectfully ask for HUD's immediate investigation of the GLO administration of the HUD CDBG Mitigation program and action on this complaint.

²² <https://www.dropbox.com/s/4kxfnywqhplm8e3/BastropRoad%20copy.pdf?dl=0>

<https://www.statesman.com/story/news/local/bastrop/2021/05/27/bastrop-provides-timeline-agnes-street-extension-project/7430209002/>

²³ "For the purposes of this notice, mitigation activities are defined as those activities that increase resilience to disasters and reduce or eliminate the long-term risk of loss of life, injury, damage to and loss of property, and suffering and hardship, by lessening the impact of future disasters." Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,840 (August 30, 2019).

²⁴ "HUD expects that grantees will rigorously evaluate proposed projects and activities and view them through several lenses before arriving at funding decisions, including ensuring that already committed public or private resources are not supplanted by CDBG- MIT funds." Department of Housing and Urban Development; Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45,840 (August 30, 2019).

We seek a new reallocation analysis and award by GLO that is consistent with the Texas AI, considers current data and prioritizes based on impact, and provides an equitable and non-discriminatory allocation process.

Sincerely,



Christina Rosales, deputy director
Texas Housers



David Wheaton, attorney, advocacy director
Texas Housers

Attachments:

- A. Houston Chronicle, "Bush blamed federal rules for Harris County's lack of flood aid. Our analysis shows that's false" June 1, 2021
- B. Map 1: CDBG-MIT funded jurisdictions with ethnic and racial populations
- C. Map 2: HUD-MID and State-Mid counties with ethnic and racial populations

cc: Hon Secretary Marsha Fudge, U.S. Department of Housing and Urban Development

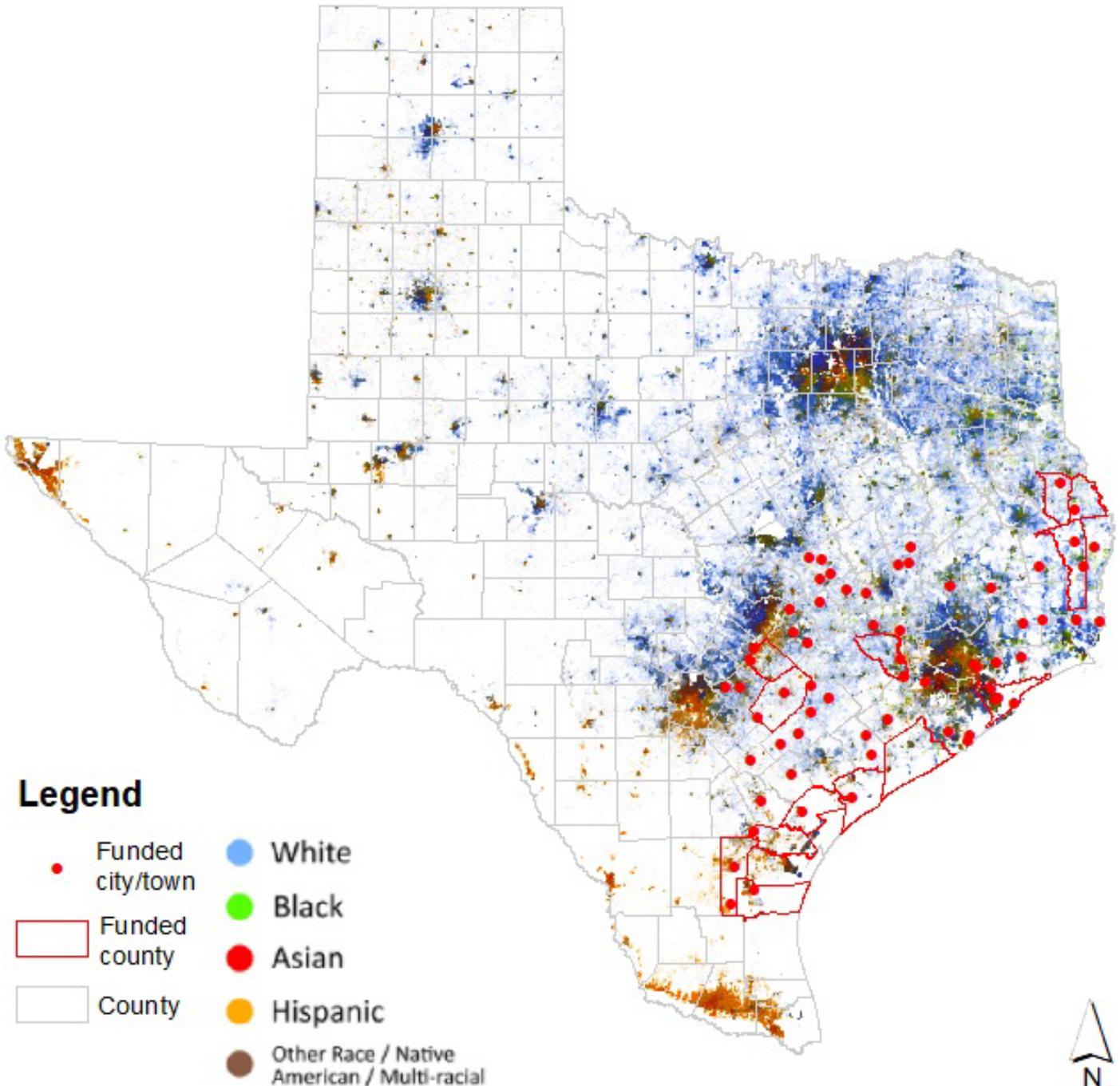
Christina Lewis, regional director, Fair Housing and Equal Opportunity, Fort Worth Office, U.S. Department of Housing and Urban and Urban Development

Jessie Kobe, Office of Block Grant Assistance, Office of Community Planning and Development, US Department of Housing and Urban Development

**MAP 1: RACIAL POPULATION DOT MAP
WITH LOCATION OF GLO-FUNDED CDBG-
MIT GRANTS**



**TEXAS
HOUSERS**
TEXAS LOW INCOME HOUSING
INFORMATION SERVICE

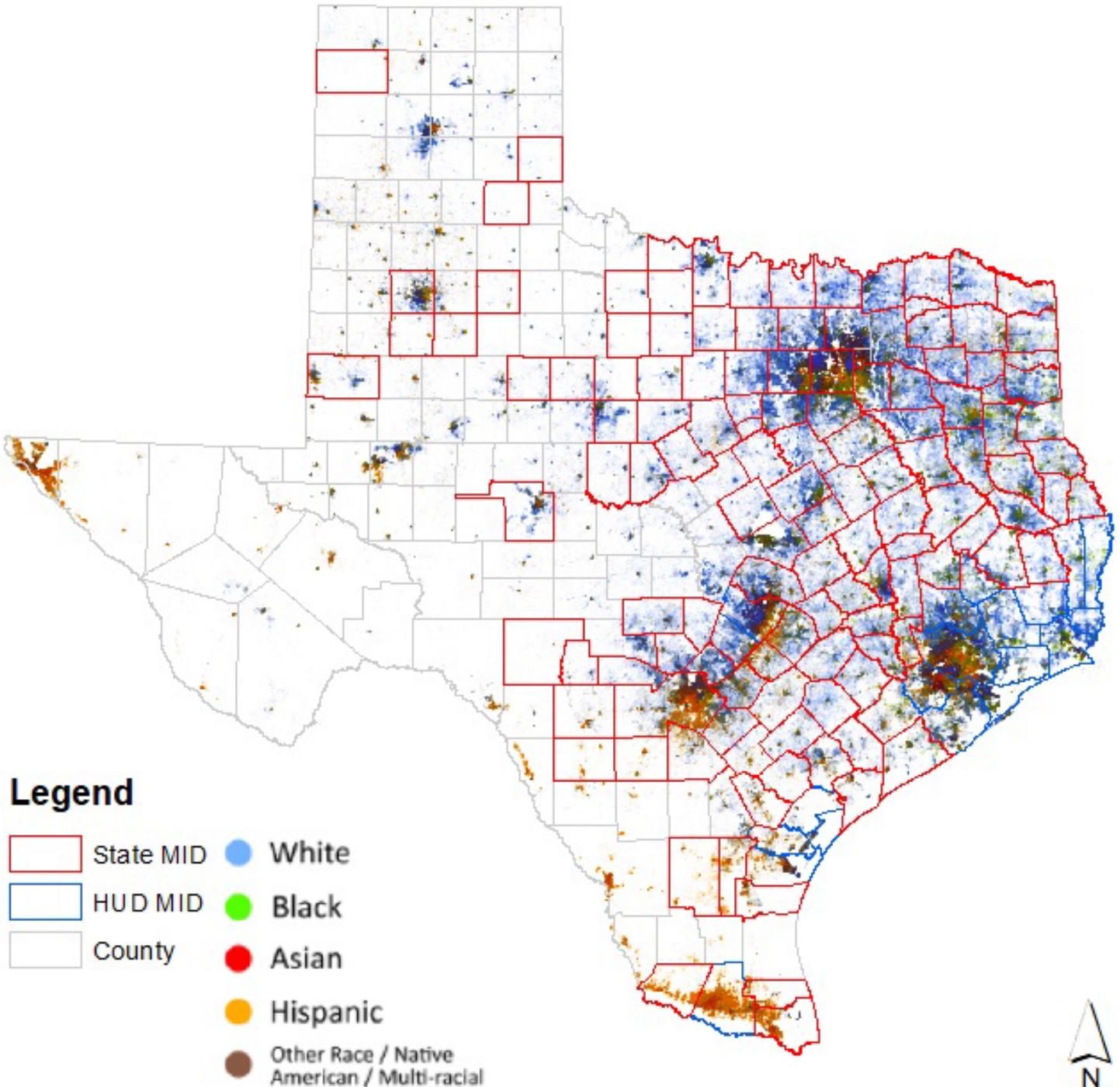


Sources : U.S. Census, Weldon Cooper Center for Public Service

**MAP 2: RACIAL POPULATION DOT MAP
INDICATING HUD-MID AND STATE-MID
COUNTIES**



**TEXAS
HOUSERS**
TEXAS LOW INCOME HOUSING
INFORMATION SERVICE



Legend

-  State MID
-  HUD MID
-  County
-  White
-  Black
-  Asian
-  Hispanic
-  Other Race / Native American / Multi-racial