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April 4, 2013

Via Electronic Submission

Cas Holloway
Deputy Mayor, City of New York
Mayor's Office of Operations
253 Broadway
10th Floor
New York, NY 10007

Re: Comments on the City of New York Community Development Block Grant – Disaster Recovery Partial Action Plan A

Dear Mr. Holloway:

The NAACP Legal Defense & Educational Fund, Inc. (LDF) writes to offer its comments on the City of New York's Community Development Block Grant – Disaster Recovery Partial Action Plan A ("Action Plan"), published on March 22, 2013. The Action Plan outlines how New York City (the "City") intends to spend the first \$1.77 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) funds appropriated by Congress for disaster recovery from Hurricanes Sandy and Irene and Tropical Storm Lee.¹ LDF, the nation's premier legal organization fighting for racial justice, has long worked to ensure that race is not a barrier to African Americans as they seek equal access to economic security. In the context of disaster recovery, LDF seeks to ensure that recovery programs using public funds help those most in need and do not create or perpetuate unfair racial disparities.

On March 5, 2013, the U.S. Department of Housing and Urban Development (HUD) published Federal Register Notice 5696-N-01 ("HUD Notice"), detailing the requirements for grantees to receive CDBG-DR funds provided by the 2013 Appropriations Act.² We commend New York City for drafting a detailed, thorough plan and we recognize that the City has endeavored to create a plan that allows all New Yorkers affected by the storm to not only recover, but to come back stronger and better equipped to survive future disasters. Still, we believe the Action Plan falls short of meeting three important requirements to receive CDBG-DR funds.

First, the HUD Notice requires grantees to describe how they will encourage the provision of disaster-resistant housing for all income groups, including an assessment of

¹ The Disaster Relief Appropriations Act, Pub. L. No. 113-2 (2013) ("2013 Appropriations Act").

² Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy, 78 Fed. Reg. 14329 (Mar. 5, 2013).

“how planning decisions may affect racial, ethnic, and low-income concentrations.”³ The Action Plan is missing this assessment, without which we do not believe there can be any basis for the City's certification that it will affirmatively further fair housing.⁴ We believe the Action Plan must contain this required assessment, as well as specific language regarding the ways in which the State will ensure that all subgrantees take steps to meet their legal obligation to affirmatively further fair housing. Second, the Action Plan must contain an assessment of barriers to recovery for businesses affected by Hurricane Sandy, which it presently does not.⁵ Third, we believe that the competition-based business programs proposed in the Action Plan will disadvantage minority-owned businesses, especially those in low-income and predominantly African-American and Hispanic communities. Accordingly, we request that the City revise and supplement the Action Plan consistent with our comments below.

(A) Failure to Assess How Planning Decisions May Affect Racial, Ethnic, and Low-Income Concentrations

The HUD Notice requires that each Action Plan contain a description of how grantees will encourage provision of disaster-resistant housing for all income groups, including an assessment of how any such plans will affect areas with high concentrations of particular racial or ethnic groups and/or low-income households.⁶ The Action Plan does describe the City's plans to encourage the provision of housing for all income groups.⁷ With respect to low-income households, the Plan states that “more than 50% of the households in the impacted area are likely to have incomes at or below 80% of the area median” and that, to address the immediate needs of these families, “[t]o the extent possible these households will be placed in NYCHA public housing units or using HPD [Department of Housing Preservation and Development] Section 8 vouchers.”⁸ For those who will not receive this assistance, the City plans to establish an Interim Payment Assistance Program.

However, while this proposed assistance to low-income households is extremely important, the Action Plan's description of these programs is insufficient to meet the City's obligations under the HUD Notice. The Action Plan also must assess how these programs will affect racial, ethnic, or low-income *concentrations* – that is to say, geographic areas with high percentages of particular racial or ethnic groups or low-income families. This kind of analysis ensures that New York City's housing programs do not perpetuate or create racial segregation in violation of federal fair housing laws. For example, as part of the rental assistance program for extremely low-income households, “[t]he City will assist households in finding apartments in the existing affordable housing portfolio.”⁹ The Action Plan should include an assessment of not

³ 87 Fed. Reg. at 14334.

⁴ *See id.* at 14347.

⁵ *Id.* at 14333.

⁶ 87 Fed. Reg. at 14334.

⁷ Action Plan at 41-43.

⁸ *Id.* at 42.

⁹ *Id.* at 56.

only the income but the racial and ethnic composition of the households eligible for this and every program, where such housing stock is located, and how the eligible households would impact the demographics of the relevant neighborhoods (e.g., increasing racial and income segregation versus creating more inclusive, diverse communities).

The Action Plan's current discussion of the racial and ethnic makeup of the City is wholly insufficient to this end. In the "Overall Storm Impact and Response" section of the Plan, the Action Plan uses 2010 Census data to provide a racial and ethnic breakdown of populations impacted by Sandy, comparing the populations affected in each borough with the demographics of the borough and the City as a whole.¹⁰ However, the Action Plan must consider the racial and ethnic geography on a smaller scale – such as townships, zip codes, or neighborhoods¹¹ – to avoid perpetuating residential segregation. Parts of Queens, such as the Rockaway peninsula, for example, have a history of segregation, with predominantly black and Hispanic communities isolated in Far Rockaway at one end of the peninsula and virtually all-white communities such as Breezy Point at the other end.¹² As required by the Notice, the Action Plan must assess the impact of the proposed housing programs on racially and ethnically concentrated areas.

(B) No Plan to Ensure That Legal Obligations to Affirmatively Further Fair Housing Are Met

As stated above, the Action Plan does not include an assessment of how residential planning decisions may affect racial, ethnic, and low-income concentrations. Without such an assessment, we do not believe HUD can take at face-value New York City's certification that it will comply with the provisions of the HUD Notice regarding equal to access to housing. Specifically, the HUD Notice requires that the State certify that it will

affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within its jurisdiction and take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard . . . [and] that agreements with

¹⁰ *Id.* at 10-18.

¹¹ Indeed, the HUD Notice calls for grantees to provide unmet needs assessments for the "lowest geographic level practicable," and because resident zip codes were among the data collected by FEMA, the Small Business Administration (SBA), and other agencies, and also are part of the American Community Survey data relied on by the City to conduct its impact assessment, this kind of neighborhood-by-neighborhood analysis is certainly practicable. *See* Fed. Reg. at 14333.

¹² *See* Ford Fessenden and Sam Roberts, *Then As Now: New York's Shifting Ethnic Mosaic*, nytimes.com, Jan. 23, 2011,

<http://query.nytimes.com/gst/fullpage.html?res=9B05E4D7123EF930A15752C0A9679D8B63>; Damon Ghigliotty and James C. Fair III, *The Cultural Tides of Far Rockaway*, nytimes.com, Mar. 8, 2010, <http://cityroom.blogs.nytimes.com/2010/03/08/the-cultural-tides-of-far-rockaway/>.

subrecipients will meet all civil rights related requirements [under federal law].¹³

The Action Plan contains a certification mirroring this language.¹⁴ However, because the Action Plan does not even contain the required assessment regarding racial, ethnic, and low-income concentrations, we believe this certification may be misleading. The Action Plan must contain the required assessment and should ensure that the proposed housing programs do not perpetuate or further entrench segregated housing patterns. CDBG-DR funds should allow affected residents to choose to rebuild in place or relocate in a manner that is consistent with fair housing choice. The Plan also should include a specific statement that communities that engage in racially exclusionary practices will be ineligible for CDBG-DR funds.

(C) Competition-Based Business Programs May Exclude Minority-Owned Businesses and Businesses Located in Low-Income Neighborhoods

With respect to businesses, the HUD Notice requires that the Action Plan contain, in its unmet needs assessment, a description of the type of businesses most impacted by Sandy and their likely barriers to recovery.¹⁵ The Action Plan complies with the first half of the requirement – it states the number and types of businesses affected, the neighborhoods in which they are located, and the type of damage sustained. The businesses affected were largely in the retail and service sectors, and 95% were “small-and-medium enterprises” that employ 50 people or fewer.¹⁶ The City’s industrial sector, particularly along the Brooklyn-Queens Waterfront, suffered significant damage as well.¹⁷ But, beyond noting that many commercial losses were uninsured,¹⁸ the Action Plan does not describe the likely barriers to recovery for these businesses. The Action Plan should include this assessment, as required by the HUD Notice, and describe how the City intends to address any such barriers.

In addition to addressing existing barriers, the City should be cognizant that competition-based grant programs may create an unintended barrier to recovery for minority-owned businesses and businesses in low-income neighborhoods. Two of the business programs set forth in the Action Plan, the Neighborhood Game Changer Investment Competition and the Infrastructure and Building Resiliency Technologies Competitions, are designed to select grant recipients via a competitive process.¹⁹ The Neighborhood Game Changer Investment Competition would assist neighborhoods that sustained the most business- and job-related damage as a result of Sandy, including the East Shore and South Shore of Staten Island, Lower Manhattan, Southern Brooklyn, the

¹³ 87 Fed. Reg. at 14347.

¹⁴ Action Plan at 193.

¹⁵ 78 Fed. Reg. 14333.

¹⁶ Action Plan at 70.

¹⁷ *Id.* at 71.

¹⁸ *Id.* at 74.

¹⁹ *Id.* at 79 - 86.

Brooklyn-Queens Waterfront, and South Queens. To be eligible for funds under this program, “[r]ecipients would demonstrate an ability to generate full-time jobs and bring permanent investment to target areas, leverage public funds to attract private investment, and develop hard and soft infrastructure to increase resiliency.”²⁰ The New York City Economic Development Corporation would award funds to the “best ideas from public and private individuals and organizations.”²¹ The Infrastructure and Building Resiliency Technologies Competitions would award funds to grant applicants that “identify technologies and measures that improve the resiliency of (1) critical infrastructure networks and (2) building systems” and that “demonstrate the ability to successfully implement proposed projects using impactful and cost-effective resiliency measures.”²²

Such competitions are likely to disadvantage businesses and applicants in low-income and predominantly African-American or Hispanic neighborhoods. The Action Plan notes that the Brooklyn-Queens Waterfront, which is an area eligible for the Neighborhood Game Changer Investment Competition, contains “some of the city’s most low-income [neighborhoods], such as Red Hook with a 32% unemployment rate, to the City’s wealthiest, such as DUMBO with only an 8% unemployment rate.”²³ Minority-owned businesses, however, often suffer from a lack of access to capital and are unlikely to be able to attract permanent investment or to leverage public funds to generate private investment, particularly when they are located in low-income areas such as Red Hook.²⁴ The same lack of capital may impact the ability of otherwise capable minority-owned businesses or businesses in low-income neighborhoods to demonstrate their ability to successfully implement technological advances. Thus, these businesses may find themselves ineligible for funds made available under these two programs.

The Action Plan must include, per the HUD Notice, a description of the likely barriers to recovery for businesses impacted by Sandy. Any description of likely barriers must take into account that minority-owned businesses located in low-income or predominantly African-American and Hispanic communities are less likely to have access to capital or to be able to attract investors. The City therefore should consider other, non-competitive, eligibility and distribution criteria for the Neighborhood Game Changer Investment Competition and the Infrastructure and Building Resiliency Technologies Competitions, including earmarking a portion of the funds available for businesses in low-income neighborhoods and targeted advertising, outreach, and support for minority-owned businesses in these neighborhoods.

The Action Plan must include an assessment of how planning decisions will impact racial, ethnic, and low-income concentrations and specific plans and outlines regarding the fulfillment of grantees’ fair housing obligations. The City should also

²⁰ *Id.* at 79.

²¹ *Id.* at 80.

²² *Id.* at 85.

²³ *Id.* at 82.

²⁴ See, e.g., Dane Stangler, *Minority-Owned Businesses Come Up Short in Access to Capital: It's Time to Change the Equation for MBEs*, *Forbes.com*, June 30, 2012, <http://www.forbes.com/sites/kauffman/2012/07/30/minority-owned-businesses-come-up-short-in-access-to-capital-its-time-to-change-the-equation-for-mbes/>.

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consider reformulating the eligibility criteria for the proposed competition-based business programs. We respectfully request that New York City revise its Action Plan consistent with these comments.

Sincerely,


ReNika C. Moore
Director, Economic Justice Group