

January 24, 2014

Calvin Johnson
Assistant Director, CDBG-DR
NYC Office of Management & Budget
255 Greenwich Street, 8th Floor
New York, NY 10007

Dear Mr. Johnson:

The NAACP Legal Defense & Educational Fund, Inc. (LDF) writes to offer its comments on Amendment 5 to the City of New York's Community Development Block Grant – Disaster Recovery Action Plan. Amendment 5 outlines how New York City (the "City") intends to distribute its second allocation of Community Development Block Grant – Disaster Recovery (CDBG-DR) funds, in the amount of \$1.45 billion, which brings the City's total CDBG-DR allocation to \$3.22 billion. 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.

LDF is concerned about the transparency surrounding the development and implementation of Sandy recovery programs, including the distribution of funds. Additionally, LDF remains concerned that the Amendment to the Action Plan fails to fully address, and in some cases ignores entirely, the needs of low-income populations and renters. We are similarly concerned that the City's business recovery programs have not been made equally available to low-income communities and communities of color. Accordingly, we request that the City revise and supplement the Action Plan and Amendments consistent with our comments below.

I. Overarching Issues

LDF was pleased to see the requirement in the Department of Housing and Urban Development (HUD) Notice published November 18, 2013 ("Nov. 18 Notice"), that any grantee receiving CDBG-DR funds in this second allocation of funds must publish a substantial amendment to its Action Plan, post such amendment on the grantee's website for thirty (30) days, and hold at least one public hearing to solicit comments on the amendment. This is a substantial improvement over the seven (7) day comment period required by prior HUD notices. Yet despite the new HUD requirements, to date, the City has failed to hold any public hearing for this Amendment. Although New York City had scheduled three public hearings to take place on January 14, 15, and 16 of 2014, the City postponed all three hearings. Those hearings have yet to be rescheduled, despite the fact that written comments to Amendment 5 are due on January 25, 2014. In order for the City to fulfill its obligations under HUD's Nov. 18 Notice, LDF recommends that at least one, and preferably all three, public hearings be rescheduled

immediately and the deadline for submission of written comments be extended until at least 7 days after the last hearing. Pursuant to the Nov. 18 Notice, in the absence of a public hearing, HUD cannot approve Amendment 5. Meaningful opportunity for the public to voice its concerns is necessary to a transparent and effective recovery process.

Additionally, LDF is concerned about the substance of and methodology behind any “assessments” the City used in developing Amendment 5. On page 12, for example, the Amendment states: “According to detailed needs assessments performed by the City, the City’s needs still exceed its total CDBG-DR award.” In a Freedom of Information Law (FOIL) request to the City, dated November 6, 2013, LDF asked for any assessments relating to unmet needs,¹ but was recently told by the Mayor’s Office of Housing Recovery Operations that the Mayor’s Office is unaware of any such assessments. If such assessments exist, they should be made available to the public so that we may better understand the factual basis for the City’s proposals regarding the distribution of CDBG-DR funds.

II. Concerns Related to Housing Programs

LDF applauds the City’s extensive outreach efforts in the final months before the close of registration for the Build it Back housing recovery programs. We are concerned, however, that the dramatic influx of registrants in the final two months indicates that many households in need were unaware of the programs during the registration period and, therefore, there are likely still many more families in need of assistance who were unable to register. The City’s own data demonstrate that registration was lower than expected during summer 2013, leading the City to extend the registration deadline, and, following that extension, the number of applicants increased in the very areas where the City conducted outreach. Accordingly, it is imperative that the City reopen registration for the Build it Back programs and engage in further targeted outreach with demonstrated efficacy, such as door-to-door canvassing, to affected communities. In particular, LDF is concerned that renters are severely underrepresented among registrants to the Build it Back programs. Because a substantial number of rental units were damaged and rental property owners have registered for Build it Back, it is likely that tenants who lived in those units may require housing assistance. While LDF appreciates the difficulties in tracking this population, the importance of efforts to reach out to and assess the needs of renters cannot be overstated.

Relatedly, LDF believes that the City’s projections regarding the number of housing units to be rehabilitated ignore renters. Amendment 5 states that the City intends “to serve approximately 7,000 units of low-, moderate-, and/or middle-income housing that serve as primary residences or rental properties with year round tenants that were destroyed or had major damage. In addition, the City plans to provide assistance to more than 35,000 units of low-, moderate-, and middle-income housing that experienced moderate damage.” Amendment 5 at 56. These projections raise a red flag for two reasons. First, as the Alliance for a Just Rebuilding notes in their comments, the use of the disjunctive “or” means that it would be consistent with this projection for the City to serve 7,000 middle-income units and no low-income units, though such an outcome would be inequitable and inconsistent with the City’s projection that 55% of the funds allocated to the Build it Back 1-4 unit houses program will

¹ Specifically, item 10 of LDF’s November 6th FOIL request asks for “[a]ll documents relating to any additional analysis, monitoring, or decision-making the City or City Housing Agencies have undertaken with respect to addressing any remaining unmet housing needs.”

benefit low- and moderate-income households. The City should rephrase the Amendment to indicate that the majority of units served will be low- and moderate-income. Second, these numbers refer to the number of *units* to be served, including some rental units, but do not address the number of *tenants* to be served. That is, these numbers address property to be rehabilitated but say nothing of the displaced people who still may require assistance.

The failure to address the number of tenants to be served is especially troubling because, as the City notes, “[l]ow-income households disproportionately are in need of immediate relocation assistance.” Amendment 5 at 30. Yet, Amendment 5 does not allocate any additional funding to the rental assistance program, called the Temporary Disaster Assistance Program (TDAP). *See* Amendment 5 at 59-60. Additionally, while the original Action Plan proposed to serve households in need of immediate assistance through a combination of public housing units and Section 8 vouchers, Amendment 5 does not propose to offer Section 8 vouchers. *See* Amendment 5 at 30. LDF is concerned that this change will put an additional strain on already limited New York City Housing Authority (NYCHA) resources. The Amendment also does not address whether these households will be given priority over those already on NYCHA waiting lists, nor does it explain whether and why such a solution is sustainable. Given these concerns, LDF suggests that, instead of attempting to place displaced households in public housing, the City should increase funding to the TDAP program to address these families’ needs.

The Amendment states that placement in NYCHA will serve the needs of all but 600 displaced households. *See* Amendment 5 at 30. In light of the concerns surrounding the City’s outreach and projections described above, LDF is skeptical of this number. Taking it on its face, however, LDF presumes these remaining 600 households will be served through the TDAP program. In addition to the suggestion that the City provide additional funding for this program, LDF has some concerns about the ways in which Amendment 5 changes eligibility for the TDAP program. On one hand, LDF is pleased to see that, in addition to being available to displaced households at or below 50% of the Area Median Income (AMI), TDAP is now available to households at or below 50% of AMI that relocated following Sandy but that have leases expiring within 4 months of applying to the program or that now pay more than 40% of household income in rent. On the other hand, TDAP is no longer available to households who had “non-conventional pre-storm housing (e.g. illegal units, doubled-up, rooming houses, etc.)” Amendment 5 at 59. LDF believes this population should continue to be eligible for TDAP and the City should engage in targeted outreach to assist these tenants in finding replacement housing. Furthermore, as stated above, the City should increase funding for TDAP so as to assist *all* renters displaced by the storm – a population that LDF believes has been woefully undercounted.

III. Concerns Related to Business Programs

In addition to revising the housing recovery programs, Amendment 5 addresses the City’s Sandy recovery programs for businesses. Of particular interest to LDF, the Amendment states that the City remains committed to the Resiliency Technologies Competition and the Neighborhood Game Changer Investment Program, *see* Amendment 5 at 77, about which LDF expressed concern in its April 4, 2013, comment letter to Action Plan A. As we stated in that letter, competition-based recovery programs that require businesses to demonstrate an ability to attract private investment are likely to disadvantage businesses and applicants in low-income and predominantly African-American or Hispanic neighborhoods because minority-owned businesses 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.² LDF remains concerned that minority-owned businesses in storm-damaged neighborhoods were disproportionately excluded from participation in these programs. Amendment 5 should include a description of the City's outreach efforts with respect to these and other business programs, similar to the "Consultation with Stakeholders" section that describes outreach with respect to housing programs, *see* Amendment 5 at 34.

With respect to outreach efforts for business programs, LDF especially is concerned by the Amendment's acknowledgement that "demand for the Business Recovery Loan and Grant Program . . . has been less than anticipated." Amendment 5 at 76. In the original Action Plan, the City noted that "[f]rom data collected through on-the-ground canvassing and surveying of [business] applicants, it is clear that the need far surpasses the funds that are currently available." Amendment 5 at 78 (quoting original text). This suggests that the City expected high demand for this program, and low demand is likely the result of insufficient or ineffective outreach on the City's part. Because this program is designed to help small businesses and serves the objectives of "low- and moderate-income job creation/retention; low- and moderate-income area; and low- and moderate-income limited clientele (microenterprise)," Amendment 5 at 79, and is not competition based, it is especially important that the benefits of this program reach its intended targets. Thus, in addition to the above request that Amendment 5 include a description of the City's outreach efforts for the business recovery programs, LDF suggests that the City conduct additional, targeted outreach in low- and moderate-income areas for the Business Recovery Loan and Grant program. The City also should not decrease funding for this program so significantly at this time, because the City's own initial data indicated that the need for this program likely is greater than the initial number of applications suggests. Relatedly, LDF supports the increase in funding to the Business Resiliency Investment Program, which is also designed to assist storm-damaged businesses in low- and moderate-income areas and aid in job creation.

We respectfully request that New York City revise Amendment 5 to the CDBG-DR Action Plan consistent with these comments.

Sincerely,



Veronica Joice, Esq.
Economic Justice Group
NAACP Legal Defense & Educational Fund, Inc.

² *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/>.