



FLORIDA LEGAL SERVICES, INC.

14260 WEST NEWBERRY ROAD #412, NEWBERRY, FL 32669 - PHONE: (407) 801-4350 - FAX: (407) 505-7327

EDRICK BARNES
PRESIDENT

CHRISTOPHER M. JONES
EXECUTIVE DIRECTOR

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Via e-mail: CDBG-DR@deo.myflorida.com
Florida Department of Economic Opportunity
107 East Madison Street
Tallahassee, Florida 32399-4120

Re: Public Comments on the Draft 2018 State of Florida CDBG-DR Action Plan

To Whom It May Concern:

Please find below comments from Florida Legal Services, Inc., on the draft Irma CDBG-DR State of Florida Action Plan for Disaster Recovery (the Plan). We appreciate this opportunity and look forward to your response.

Outreach and Notice to Public

The draft State of Florida Action Plan for Disaster Recovery (“the Plan”) makes numerous references to outreach conducted by DEO in order to guide development of the Plan, including surveys, stakeholder sessions, meetings, and workshops *See, inter alia*, pp. 72, 99, 100.

Florida Legal Services, Inc., (FLS) appreciates this outreach but is concerned about the scope of its reach and its publication. As an organization that works directly with low-income communities, persons, and nonprofit partners who serve hundreds of thousands of low-income Floridians statewide, FLS is unaware of any affected persons or organizations who were solicited or otherwise made aware of the opportunity for input until our organization reached out to DEO. Nor did we see public notice of any such events in <https://www.flrules.org/> under section 120.525(1) of the Florida Statutes (stating that 7-day advance notice of meetings and workshops must be given in the Florida Administrative Register and on the agency's website).

Meaningful notice to low-income Floridians is not an academic exercise without a real and important purpose. To the contrary, poor Floridians are the most impacted of all stakeholders affected by the Plan. Had adequate notice been provided, community groups (big and small) and individually affected Floridians would have had the opportunity to comment on use of funds that has the potential of profoundly affecting their lives and their communities.

We ask that DEO notice and conduct ADA- and LEP-compliant meetings and outreach sessions in impacted counties so that affected Floridians have a real chance at telling their stories and helping DEO shape a Plan that meets their unmet needs. Holding public hearings in multiple locations would increase the ability of people across the state to participate in the citizen comment period. This is particularly important given that 20% of Floridians over 16 years old lack basic reading skills, especially in some of the hardest hit counties of Florida. We also ask that DEO extend the comment period commensurate with these additional meetings and outreach sessions.

Homeless and Other Vulnerable Populations

DEO states that it will set aside “some” funding to address transitional housing for homeless populations. Plan at p. 73. FLS is concerned about the adequacy of this indeterminate funding and urges DEO to commit to a minimum level of funding to meet the needs of Irma-impacted homeless populations.

The Plan also notes that DEO will work with providers that serve vulnerable populations, such as the homeless, to ensure that it obtains information about ongoing impacts of Irma. Plan at p.73. Because we are not aware that DEO extensively reached out to legal services programs or non-profit homeless advocates in the planning stage thus far, we request that DEO include FLS and other interested organizations from this point forward as further development, planning and implementation of the Plan rolls out.

Further, the Plan notes that “ DEO will...[coordinate] with service providers that work with vulnerable populations to ensure that...storm-related impact is brought to DEO’s attention for a coordinated approach” and that “any vulnerable populations...who are not served under current DEO programs may be referred to specialized service providers for assistance.” Plan at p. 73. Given the overwhelming demand on and lack of funding for providers who serve the homeless and other vulnerable populations, we do not believe that kicking the can to specialized service providers is a meaningful response to meeting this population’s unmet needs. Instead, we suggest that DEO conduct more outreach now, before it finalizes the Plan, and develop a concrete roadmap that meets the needs of the homeless and other vulnerable populations.

Language Accessibility

Limited English Proficient (LEP) Floridians make up part of the special needs population for purposes of the Plan. See, inter alia, Plan at p. 27. Yet the Plan is not even accessible in Creole, which is spoken by many families in low-income communities in affected counties (e.g., Miami-Dade), much less one of the other prevalent languages spoken in those communities. Plan at p. 104.

To address its LEP populations in the impacted counties, Florida should develop a detailed Language Action Plan (LAP) that addresses outreach techniques to inform LEP Floridians. As part of the LAP, Florida should look to HUD guidelines suggesting that vital materials should be

translated.¹ For example, HUD guidelines specify that “HUD would expect translations of vital documents to be provided when the eligible LEP population in the market area or the current beneficiaries exceeds 1,000 persons or if it exceeds 5 percent of the eligible population or beneficiaries along with more than 50 persons.”² Across the twelve counties hit hardest by Hurricane Irma, there are many LEP communities that meet the 1,000 person threshold. In addition to Spanish, many of the impacted counties have qualifying LEP populations that speak Creole, Russian, Polish, or another Slavic language, Korean, Chinese, Vietnamese, Tagalog, and Arabic. We recommend that Florida make materials in all of these languages to allow substantive public comment from the communities impacted and likely to apply for aid.

Demonstrable Hardship

FLS appreciates and supports DEO’s intent to permit exceptions to program policies for applicants who demonstrate undue hardship. However, we encourage DEO to provide clear criteria, at least for the case-by-case exceptions already identified, so that like individuals are treated equally and are not subject to the whim of individual decision-makers. Plan at p. 74.

Appeals

The Plan states that it will provide a mechanism for homeowners and other applicants for services to appeal (Plan at pp. 77, 105). However, the Plan is devoid of important time limits, standards for decision making, etc. The right to appeal decisions that affect substantial interest is a critical right that not only safeguards the rights of individual applicants for services but also the perceived legitimacy of the program. DEO should flesh out details relevant to appeals in the Plan and make decisions clearly subject to Chapter 120 of the Florida Statutes.

Nonduplication of Benefits

The Plan mandates nonduplication of benefits. The Plan at, *inter alia*, pp. 78, 86. We urge DEO to provide more upfront concrete and humane policy governing this restriction. Most recipients of disaster-related housing assistance do not understand the intricacies of the law and policy governing non-duplication and are unable, without legal assistance, to successfully articulate their circumstances in a way that demonstrates that the assistance they received is non-duplicative. That alone puts low-income families, who often have significantly more disaster-related needs than their affluent neighbors, at risk of inadvertently duplicating assistance. Even if recipients of CDBG-DR, FEMA and HUD housing assistance had a way to clearly understand when assistance being provided is duplicative, a myriad of circumstances put them at risk of duplication of benefits for other reasons, e.g., applications not including spaces for applicants in mobile home parks to enter their lot numbers, post-disaster contractors

¹ HUD suggests that “[t]he recipient may conduct an individualized assessment that balances the following four factors: (1) Number or proportion of LEP persons served or encountered in the eligible service population (“served or encountered” includes those persons who would be served or encountered by the recipient if the persons were afforded adequate education and outreach); (2) frequency with which LEP persons come into contact with the program; (3) nature and importance of the program, activity, or service provided by the program; and (4) resources available to the recipient and costs to the recipient.”

² 72 FR 2731.

not providing adequate documentation of repairs that would establish non-duplication and how a recipient spent funds, doubling up of households to avoid homelessness, etc. We urge DEO to include, in the Plan and in rulemaking, policy that recognizes these challenges and ensures consistency and equal and fair treatment as to nonduplication of benefits.

Verification of Irma Damage

Although DEO requires applicants for services to prove Irma storm damage to qualify (the Plan at 88), many affected clients will need assistance in obtaining this verification if it is not already documented by FEMA. We ask that DEO recognize that low-income families may need assistance in obtaining verification, and offer such assistance.³ This will help ensure that eligible Floridians are not denied CDBG-DR assistance based on procedural requirements with which they cannot legitimately comply.

Voluntary Home Buyout

FLS is concerned about housing alternatives for low-income families that participate in voluntary buyout, particularly for those who want to remain in their home communities, The Plan at p. 91. Although buyout is voluntary, the Plan does not address what will happen to tenants or homeowners displaced by such programs. With regard to tenants, the Plan should provide a right of first refusal to tenants displaced by land acquisition programs as well as one for one replacement of rental units lost by such activities. Because many low-income families will be reluctant to take part in buyout unless they can find alternative housing nearby, we urge DEO to assist participants in voluntary buyout to locate affordable housing in the same community.

Persons with Disabilities

We commend the state for including people with disabilities as one of the groups prioritized for assistance in the Plan. However, to allow persons with disabilities access to and an opportunity to provide input into the Plan, both the Plan and DEO's website (where the Plan is posted), must be in compliance with Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act (Section 504). This is particularly important for persons whose disability prevents them from accessing DEO's website and the Plan, such as persons who are visually or mobility impaired and persons with cognitive disabilities. Approximately 13.7% of persons in Florida have a disability. Of persons with disabilities who are of working age, 25.8% live in poverty.⁴ We suggest that DEO take immediate steps to make its website and the Plan compliant with both Section 504 and the ADA so that the thousands of Floridians with disabilities who are impacted by DEO's proposal have equal access in providing input. Although the Plan purports to have been embedded with technology to provide accessibility, at least for those with vision impairments (Plan at p.104), it is unclear what technology was used, what

³ Offering agency assistance in obtaining verification that is difficult for the applicant to obtain is a common requirement in public assistance programs and recognizes the inherent challenges that low-income persons may have in documenting eligibility. See e.g., Fla. Admin. Code R, 65A-1.204(1).

⁴ Cornell University, 2016 Disability Status Report: Florida at <https://goo.gl/b7ejox>.

standards DEO adhered to, the efficacy of the technology, and whether both the Plan and the website (Plan at pp. 98, 104) that links the Plan are accessible.

Threshold for Income

We urge DEO to maintain the current threshold for income targeting for CDBG-DR funds to make sure that the people who are most in need of housing are able to obtain housing. Currently, 70% of CDBG-DR funds must be used for the benefit of low and moderate income (LMI) people and communities. As estimated by the State of Florida, the federal disaster recovery funds being directed to the state will not meet all of the affordable housing need. Therefore, it is important that these dollars be directed in a way that provides maximum recovery benefits. The program budget contained in the Plan focuses on assisting renter households through the Workforce Affordable Rental New Construction Program. However, the Plan does not define what constitutes workforce housing or that such housing will be affordable to LMI households. Florida's wages, especially for low-income workers, have not kept up with the price of housing. In addition, several impacted populations may not be able to work, including seniors and people with disabilities.

Allocation of Resources

Resources should be allocated equitably between homeowners and renters. Several state disaster recovery resources have already been directed at assisting homeowners. For example, Florida has made special allocations under its State Housing Initiatives Partnership program (SHIP), to provide assistance to homeowners post-disaster. However, the SHIP program prioritizes assistance for homeowners by requiring that 65 percent of allocated funds be spent on homeownership activities. Units housing low-income households, many of whom are renters, represent 75% of the units damaged from Hurricane Irma. It is important that the CDBG-DR allocation recognize the decrease in homeownership and increase in renter households that has taken place in the state.⁵

Allocation of funding for Tenant-Based Rental Assistance (TBRA).

We urge DEO to allocate funding for Tenant-Based Rental Assistance (TBRA). The Plan provides funding for new construction for rental housing but does little to address the needs of tenants who were displaced due to hurricane damage and are in need of housing now. Prior to the damage caused by Hurricane Irma, Florida was already experiencing an affordable rental housing shortage in several of the counties most impacted by the storm.⁶ As such, we recommend providing TBRA that can be extended for up to 48 5 months while renters wait for new affordable rental housing to be constructed.

⁵ See e.g., Florida's Affordable Rental Housing Needs: An Update by The Shimberg Center for Housing Studies.

⁶ See e.g., Florida's Affordable Rental Housing Needs: An Update by The Shimberg Center for Housing Studies; Affordable Rental Housing Trends: Orlando Area by The Shimberg Center for Housing Studies; Affordable Rental Housing Trends: South Florida by The Shimberg Center for Housing Studies.

Refusal to Rent Prohibition

We urge DEO to prohibit recipients of federal and state disaster recovery funds from refusing to rent to tenants based on their source of income. Florida's fair housing statute does not currently prohibit discrimination based on source of income, thereby allowing housing providers to refuse to rent to people who receive assistance with paying their rent. LIHTC properties are already prohibited from refusing to rent to Section 8 Housing Choice Voucher participants.⁷ Such a requirement ensures that low income families have access to affordable housing in more areas and are not forced to live in housing in high poverty and/or low opportunity areas.

50 Year Affordability

DEO should require a 50 year affordability period to address long-term affordability and maximize the federal investment. The Plan only requires a 20 year affordability period for rental housing rehabilitated under the Housing Repair Program. Yet, the current affordability restriction for Low Income Housing Tax Credit (LIHTC) properties in Florida is 50 years. There is no reason why the affordability restrictions for affordable rental housing developed with CDBG-DR funds should be less than 50 years.

Damaged Rental Units

We urge DEO to provide funding to address the preservation of damaged rental units. The Plan designates funding for new construction under the LIHTC program, but there doesn't appear to be any set asides for using the LIHTC program for rehabilitation to preserve affordable rental housing. Florida currently utilizes 15% of its LIHTC funding for preservation. Therefore, the Plan should set aside at least 15% of the LIHTC funding for preservation to rehabilitate existing affordable housing units. This would greatly increase the effectiveness of the LIHTC program, as preservation requires far less subsidy per unit than new construction.

Barriers for LMI Households to LIHTC Properties.

LIHTC properties often have admission policies which prevent LMI households from accessing the housing and are designed to screen people out instead of screening people in to housing. These include policies such as charging application fees as high as \$85 for each adult applying; requiring applicants to pay a security deposit, first and last month's rent, and miscellaneous fees up front; minimum income requirements for tenants with rental assistance; and unreasonable criminal and credit background checks. These policies deter many households from applying. For those that do apply, they are rejected because of these policies. Reducing the entry barriers to LIHTC properties is necessary to ensure that LMI households are able to access this housing.

Barriers to Continued Occupancy

We urge the elimination of barriers to continued occupancy in LIHTC properties. Many LIHTC properties utilize continued occupancy policies that result in households unnecessarily losing

⁷ 26 U.S.C. § 42(h)(6)(B).

their housing. For example, Section 5.2 E.4 of the Florida Housing Finance Corporation Manual permits rent increases during the term of lease when HUD issues new income limits, if so provided in the lease. Many LMI renters are already rent burdened such that an unexpected increases in their monthly rent during the middle of their lease term can lead to eviction or homelessness.

Rehabilitation Needs of Federally Subsidized Affordable Housing Units

We suggest that DEO assess the rehabilitation needs of federally subsidized affordable housing units. In the Plan, the only attempt at assessing the damage caused to federally subsidized housing units appears to be letters that were sent to PHAs and to which no PHAs responded. However, the majority of federally subsidized housing units, such as Project Based Section 8 properties, are owned and operated by private housing providers. As such, the state should obtain a copy of the Preliminary Disaster Assessment for Florida and the Affected Portfolio List/and Tracking Reports for HUD-funded properties in Florida to make an accurate assessment of the impact on HUD-funded properties.

Training

The Plan states that persons receiving public housing assistance will be referred to training programs. Plan at 98. We urge DEO to extend the pool of voluntary trainees to include all recipients of public assistance who are interested in obtaining this training, particularly those subject to Employment and Training programs as a condition of eligibility (*e.g.*, SNAP).

Again, thank you for your consideration of these comments.

Respectfully,

Cindy Huddleston

Florida Legal Services, Inc.
By Cindy Huddleston, Esq.

