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CERTIFIED MAIL – RETURN RECEIPT REQUESTED AND REGULAR MAIL

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SUBJECT: Letter Finding Noncompliance with Title VI and Section 109
Case Number: 06-21-1483-6/9

Dear Parties:

This letter reports the findings of the investigation conducted by the U.S. Department of Housing and Urban Development (the “Department”) under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and its implementing regulation at 24 CFR Part 1 (“Title VI”) and Section 109 of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309, and its implementing regulations at 24 CFR Part 6 (“Section 109”) concerning the Texas General Land Office’s (“GLO”) design and operation of the Hurricane Harvey State Mitigation Competition (the “Competition”).

The Department initiated this investigation on June 25, 2021, pursuant to 24 CFR §1.7(c) and 24 CFR §6.11(a), based on a complaint filed with the Department by Texas Housers and Northeast Action Collective alleging that GLO’s design and operation of the Competition discriminated on the basis of race and national origin through the use of scoring criteria that substantially disadvantaged Black and Hispanic residents. This complaint also alleged violations of the Fair Housing Act, the processing of which by the Department remains ongoing.

The Department finds GLO in noncompliance with Title VI and Section 109. The Department's findings of fact, conclusions of law, and remedies are set forth in this letter.

I. SUMMARY

The Department finds that the design and operation of the Competition discriminated on the basis of race and national origin. GLO utilized two scoring criteria that substantially and predictably disadvantaged minority residents,¹ with particularly disparate outcomes for Black residents. First, GLO excluded areas designated by HUD as most impacted and distressed from competing for 50% of the Competition funds, though nearly 90% of the eligible population² resided in those areas. Second, GLO scored applicants based on jurisdiction size, providing more points to a smaller jurisdiction than it would to a larger jurisdiction for an equivalent project. GLO utilized both of these criteria even though they disadvantaged areas with the greatest mitigation needs by GLO's own measure and ran counter to the intended focus on low- and moderate-income (LMI) households.

The Department's findings are based on interviews and review of documents related to GLO's design and operation of the Competition. The Department requested and reviewed relevant documents, data, and other information from GLO. The Department also interviewed key GLO staff, including the Senior Deputy Director of Community Development and Revitalization and the Director of Policy Development. The Department appreciates the cooperation it received from GLO during its investigation and looks forward to working with GLO to resolve the findings in this letter.

II. FINDINGS

A. Background

In August 2019, HUD allocated \$4,297,189,000 (approximately 4.3 billion dollars) in CDBG-Mitigation funds to the State of Texas. The purpose of CDBG-Mitigation funds is to assist areas impacted by recent disasters to carry out "strategic and high-impact activities to mitigate disaster risks and reduce future losses."³

GLO allocated \$2,144,776,720 (approximately two billion dollars) of the award to the "Hurricane Harvey State Mitigation Competition" at issue in this investigation. The purpose of the Competition was to mitigate risk of hurricanes/tropical storms/tropical depressions, and severe coastal/riverine flooding in areas identified as having suffered damage from Hurricane Harvey. GLO divided the Competition into two consecutive rounds, each of approximately one

¹ As used in this letter, the term "minority" refers to residents of all races and national origins other than those who are White-non-Hispanic. This usage is consistent with that of caselaw, the U.S. Census, and certain HUD programs, though other terms such as "communities of color" may be more appropriate in other contexts. Black and Hispanic residents comprise the two largest minority groups in the areas at issue, so at times and as appropriate this letter focuses on the impact on those two groups in particular.

² The eligible population is defined as persons residing in either HUD MID areas, or areas identified by the state ("State MID") as eligible areas for the Competition. "Eligible residents" refers to residents of those areas.

³ 84 FR 45838 (August 30, 2019).

billion dollars. Round 1 of the Competition was conducted from May 28, 2020 to October 28, 2020 and is the basis of this investigation. Awards were announced on May 21, 2021. Round 2 of the Competition has not been conducted.⁴

The Competition permitted eligible entities (cities, counties, Councils of Government, state agencies, Indian tribes, port authorities, river authorities, and special purpose districts) to apply for funding for projects to mitigate qualifying future disaster risk. Eligible projects included flood control and drainage improvements, infrastructure improvements, green infrastructure, public facilities, and buyouts. GLO limited applicants to a single funded project and a single funded joint project.⁵ GLO also set an award cap of \$100,000,000 (100 million dollars) for any one project. Applications were scored pursuant to published criteria with a total possible score of 105, as shown in the below chart. GLO set a minimum score of 65 points to receive funds.

Hurricane Harvey State Mitigation Scoring Criteria	
<u>Criteria</u>	<u>Maximum Points</u>
County Composite Disaster Index	10
Social Vulnerability Index	10
Per Capita Market Value	10
Low-to Moderate Income National Objective	20
Project type Identified in Local Adopted Plan	5
Management Capacity	15
Project Impact	25
- Project beneficiaries/Total applicant population (10 points)	
- Cost/Beneficiary (15 points)	
Leverage	5
Mitigation/Resiliency Measures	5
<i>Total Possible Point</i>	<i>105</i>

Source: “State of Texas CDBG-MIT Action Plan: Supplemental Material, Hurricane Harvey State Mitigation Competition Application Eligibility and Scoring Criteria” at 3-4.

HUD set forth requirements for the funds in the Federal Register Notice (“Notice”) allocating the funds.⁶ Two HUD-established requirements are relevant here. First, at least 50% of total funds must be used for activities benefiting low- to moderate-income (LMI) persons (households under 80% of area median income (AMI)). And second, at least 50% of total funds must benefit areas HUD designates as the most impacted and distressed areas (“HUD MID areas”).

⁴ GLO has proposed reallocating the funds originally allocated to Round 2 of the Competition to other uses per a substantial amendment submitted to the Department (originally submitted on November 8, 2021 and resubmitted on February 18, 2022).

⁵ Unless there were no other eligible applications.

⁶ *Supra* n. 3. In addition, the Notice required GLO to certify that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), and implementing regulations, and that it will affirmatively further fair housing.”

The results of the Competition announced in May 2021 were shocking to many community members. Local leaders described the Competition design and outcomes as unfathomable, outrageous, bewildering, problematic, and flawed. Local leaders noted the Competition design was patently unfair and contrary to the intended focus on disaster risk and LMI residents.⁷

For example, Harris County and the City of Houston – the two jurisdictions with by far the largest numbers of residents who suffered harm from Hurricane Harvey (and each of whom have high future disaster risk as estimated by the GLO) – received *no* funds from the Competition. Four smaller jurisdictions within Harris County (which each submitted separate applications from the county as a whole) received awards totaling 90 million dollars, but those were the only funds from the Competition to go to residents of Houston or Harris County. Residents of Harris County (inclusive of the City of Houston, which is located in the County) comprise 51% of the total Competition eligible population yet received just 9% of the funds. Several other significantly sized jurisdictions also did not receive funds, including Jefferson and Nueces Counties (two of the next three largest eligible counties after Harris County).

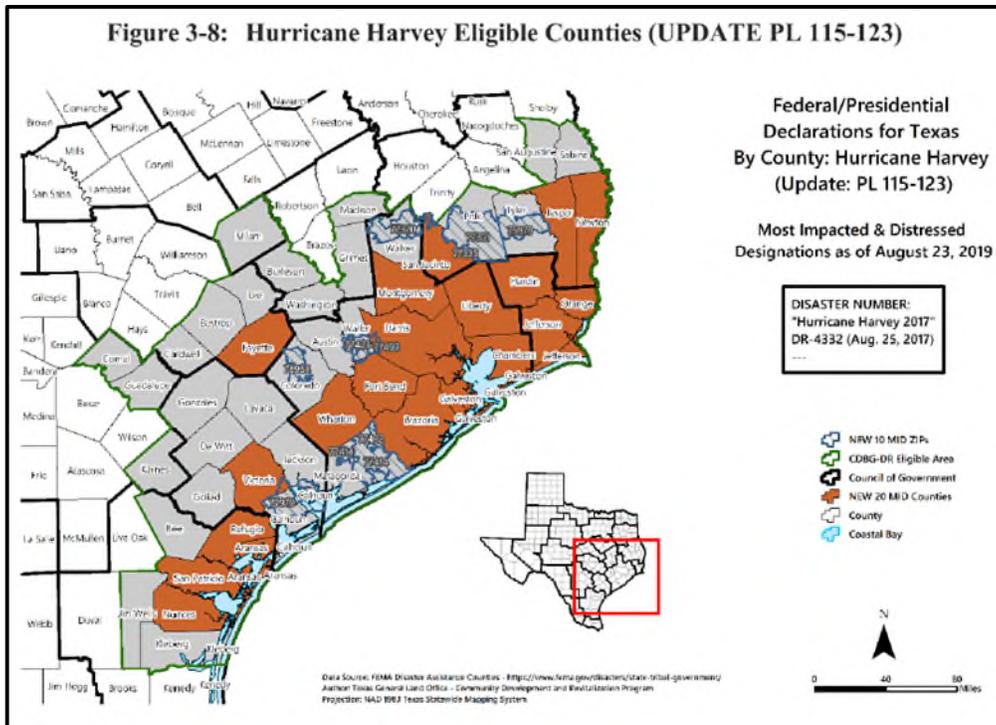
The Department found that two scoring criteria discussed below diverted funds from projects that would have assisted residents with the some of the greatest needs, and disproportionately disadvantaged minority residents.

B. The HUD MID Exclusion

As noted above, HUD required that at least 50% of the total mitigation funds benefit HUD MID areas. HUD also permits grantees to designate additional State MID areas “based upon ... a data-driven analysis that illustrates the basis for designating the additional area as most impacted and distressed as a result of the qualifying disaster.”⁸ For the funding at issue, HUD designated twenty counties and ten zip codes as HUD MID Areas based on unmet disaster recovery need from prior disasters. GLO designated twenty-nine additional counties as State MID Areas. The GLO made these designations for any county that received a Presidential disaster declaration for Hurricane Harvey, without any additional “data-driven analysis.” The map below shows the HUD MID Areas in orange and the State MID areas in gray.

⁷ See substantial news coverage, e.g., Reese Oxner, *Houston, Harris County Get Nothing In Latest Round Of \$1 Billion Federal Hurricane Harvey Relief Funding*, Houston Public Media (May 24, 2021), <https://www.houstonpublicmedia.org/articles/news/politics/2021/05/24/398859/houston-harris-county-get-nothing-in-latest-round-of-1-billion-federal-hurricane-harvey-relief-funding/>; Margaret Downing, *Lina Hidalgo Wants a New Deal on Hurricane Harvey Mitigation Funds [UPDATED]*, Houston Press (May 21, 2021), <https://www.houstonpress.com/news/no-harvey-mitigation-funds-for-harris-county-11569124/>; Zach Despart, *Texas Said Inland Counties Had Lower Disaster Risk, yet Awarded Them Huge Share of \$1B in Harvey Aid*, The Houston Chronicle (June 19, 2021), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Texas-said-inland-counties-had-a-lower-disaster-16256286.php>; Zach Despart, *The Fight Over Federal Flood Money in Texas is Really Complex. We Break It Down for You*, The Houston Chronicle (June 3, 2021), <https://www.houstonchronicle.com/news/houston-texas/houston/article/The-fight-over-federal-flood-money-in-Texas-is-16223265.php>. Leaders quoted include the Harris County Judge, the Mayor of Houston, the Jefferson County Commissioner, the executive Director of the Harris County Flood Control District, Aransas County officials, State and Federal congressional elected representatives, and more.

⁸ *Supra* n. 3 at 45841.



Source: "State of Texas CDBG Mitigation (CDBG-MIT) Action Plan: Building Stronger for a Resilient Future" at 15 (August 23, 2021).

HUD MID areas had nearly *eight times* the population of State MID areas (approximately eight million people compared to one million people) – or 88% of the total Competition eligible population.

Despite this fact, GLO split the billion-dollar Round 1 Competition into two separate approximately \$500 million competitions, one for HUD MID areas and one for State MID areas. This structuring of the Competition effectively excluded the substantially more populous HUD MID applicants from competing for any more than 50% of the funds ("the HUD MID Exclusion").

1. The HUD MID Exclusion had a disparate impact on residents based on race and national origin.

The GLO's decision to split the Competition as described above resulted in highly disproportionate outcomes based on race and national origin. White non-Hispanic residents of the total eligible areas are nearly twice as likely as minority residents to reside in State MID areas. HUD MID areas contain about five times the White population of State MID areas, but about *ten times* the minority population of State MID areas.

Racial Demographics of Eligible Population for the Competition ⁹									
	All residents	White non-Hispanic residents		Minority residents		Black residents		Hispanic residents	
HUD MID	8,079,190	3,054,824	84%	5,024,366	91%	1,303,542	93%	3,011,918	89%
State MID	1,090,850	583,199	16%	507,651	9%	100,640	7%	374,432	11%
Total	9,170,040	3,638,023		5,532,017		1,404,182		3,386,350	

Due to these disparities, the HUD MID Exclusion disadvantaged minority residents in two ways.

First, the HUD MID Exclusion caused disproportionately less funding to be available to benefit minority residents than to benefit White non-Hispanic residents. GLO's exclusion of HUD MID areas from competing for 50% of the Competition funds caused substantially fewer funds to be available per capita to benefit residents of HUD MID areas than State MID areas. Specifically, approximately \$458 per resident was made available to State MID applicants, while just \$62 per resident was made available to HUD MID applicants. Put differently, State MID areas were eligible for *seven and a half times* the funding per resident than HUD MID areas.

Because eligible White non-Hispanic residents are much more likely than minority residents to live in State MID areas and therefore be eligible to benefit from the higher per capita State MID awards, the approximate average dollar amount available to benefit eligible White non-Hispanic residents was \$125 per person. Because Black residents in particular are much less likely to live in State MID areas, the approximate average dollar amount available to benefit eligible Black residents was just \$90 per person. Put another way, Black residents of Competition areas were eligible, on average, to benefit from only 72 cents for every dollar that White non-Hispanic residents were eligible to benefit from. Similarly, the approximate average dollar amount available to benefit eligible Hispanic residents was \$105 per person, which is 84 cents for every dollar that White non-Hispanic residents were eligible to benefit from.

Second, due to the HUD MID Exclusion, HUD MID applicants needed to score significantly higher than State MID applicants to achieve an award. The exclusion of HUD MID applicants from competing for 50% of the Competition funds imposed a higher burden to achieve an award. HUD MID applicants had to achieve a minimum score *nearly 13 points higher* (12% of the total competition points) than State MID applicants to be awarded funds.

GLO received 224 applications for the Competition. 158 applications were from HUD MID applicants and 66 were from State MID applicants. GLO awarded funding to 30 HUD MID applicants and 50 State MID applicants. In other words, GLO awarded funding to just 19% of HUD MID applicants but 77% of State MID applicants.

The lowest score received by an applicant that won an award in the State MID competition was 65.27 points – just barely above the *minimum* score of 65 required to receive an award, as set

⁹ U.S. Census Bureau, American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table B03002; http://factfinder.census.gov/bkmmk/table/1.0/en/ACS/14_5YR/B03002.

forth in the application guide. The lowest score received by an applicant that won an award in the HUD MID competition was 78 points – 12.73 points higher than the State MID Competition. Thirty-three *awarded* State MID applicants scored between 65.27 and 78. Sixty-four *unawarded* HUD MID applicants scored between 65.27 and 78. This means GLO awarded funds to dozens of State MID applications over higher scoring HUD MID applications.

In fact, had GLO administered one competition, HUD MID applicants would have been awarded hundreds of millions more dollars. Roughly eight additional HUD MID projects would have been approved, including one for the Harris County Flood Control District and one for the City of Beaumont in Jefferson County. As detailed in Section D below, the HUD MID Exclusion caused funding to be awarded in a manner that disproportionately disadvantaged minority residents.

2. The HUD MID Exclusion is unjustified and contrary to the purpose of the program.

The HUD MID Exclusion is unrelated to, and in fact contrary to, the purpose of CDBG-Mitigation funds. As noted above, the purpose of CDBG-Mitigation funds is to assist areas impacted by recent disasters to carry out strategic and high-impact activities to mitigate disaster risks and reduce future losses. By the GLO’s own metrics, the Competition’s HUD MID areas have a greater need for mitigation funding. The County Composite Disaster Index (“CDI”), served as the GLO’s measure of disaster risk for the Competition. CDI was assessed at the County level using a 10-point scale, with 10 points representing the greatest risk of future disasters, and 0 points representing the lowest risk of future disasters. No State MID applicant scored a ten on the CDI; in fact, 75% of all *awarded* State MID applicants scored a two or five on the CDI, representing low risk for future disasters. In contrast, 99 of the 128 *unawarded* HUD MID applicants (77%) achieved a nine or ten point score on the CDI, representing substantially greater risk for future disasters. GLO’s decision to exclude HUD MID areas from competing for half of the available funds shifted money away from the areas and people that needed it the most.

To support its decision to exclude HUD MID areas from competing for the full Competition funds, the GLO cites HUD’s requirement set forth in the Notice that *at least 50%* of mitigation funds benefit HUD MID areas. HUD’s requirement is a floor, not a ceiling, and provides no support for the GLO’s restriction. GLO has articulated no other purpose of the exclusion.

C. The Jurisdiction Size Criterion

In addition to the HUD MID exclusion, GLO awarded 10 of the potential 105 points in the Competition based on the percentage of residents in the jurisdiction who would benefit from the project (the “Jurisdiction Size Criterion”).¹⁰

¹⁰ Hurricane Harvey State Mitigation Competition Application Eligibility and Scoring Criteria at 21.

Jurisdiction Size Criterion		
What is the percentage of project beneficiaries out of the total population within the applying jurisdiction(s)?	Percentage of total project beneficiaries out of the total population within a jurisdiction(s)	10 Points

Source: “State of Texas CDBG-MIT Action Plan: Supplemental Material, Hurricane Harvey State Mitigation Competition Application Eligibility and Scoring Criteria” at 4.

Per this criterion, a project serving 1,000 people in a 1,000-person town would receive 10 points. The same project serving 1,000 people but located in a 10,000-person town would receive 1 point.

An example of how this criterion played out in the Competition is as follows. The City of Iola applied for a project benefitting 379 people. This project received 10 points out of 10, because Iola has only 379 residents. The City of Houston applied for a project benefitting 8,845 people in the Kashmere Gardens neighborhood. This project received 0.37 out of 10 points, because Houston has approximately 2.3 million residents.

1. The Jurisdiction Size Criterion had a disparate impact based on race and national origin

This criterion disadvantaged larger population jurisdictions. Jurisdictions awarded funds in the Competition were significantly smaller than jurisdictions in the Competition areas overall. The average size of eligible jurisdictions was 155,424 people and the average size of applicant jurisdictions was 308,902 people.¹¹ However, the average size for jurisdictions awarded funds in the Competition was just 13,465 people. GLO awarded funds to only one jurisdiction with a population greater than 100,000 (that jurisdiction’s population was 154,193).¹² However, 67 applications - nearly a third of all applications - were from jurisdictions with populations over 100,000. GLO denied 66 of those 67 applications.

Minority residents of eligible areas are more likely than White non-Hispanic residents to reside in large-population jurisdictions. For example, an estimated 45% of eligible Black and Hispanic residents live in jurisdictions with over a million people, while just 25% of White non-Hispanic residents do. By contrast, eligible White non-Hispanic residents are about twice as likely as Black residents and as Hispanic residents to live in a jurisdiction with fewer than 10,000 people.¹³ In fact, White non-Hispanic residents comprise the majority of people living in towns with populations under 10,000 while comprising just 25% of residents of larger-population cities and counties with over a million people.

In operation, the Jurisdiction Size Criterion made it practically impossible for jurisdictions with over 100,000 residents to score well. To score the full 10 points, a jurisdiction would need to

¹¹ This number is larger than the eligible population total due to multiple applications from distinct applicants using the Harris County total population.

¹² Pasadena City, CDR17-1140-APP

¹³ 17% of White non-Hispanic residents compared to 8% of Black residents and 9% of Hispanic residents.

serve its entire population with a proposed project. However, as noted above, GLO imposed a \$100 million project cap that served to limit the number of beneficiaries that could reasonably be served with a single project. For example, using the average cost per beneficiary of awarded projects of approximately \$1,600, the most people that could practically be served with a \$100 million project would be approximately 62,000 people. Additionally, Competition rules limited the number of people that could be counted as beneficiaries for purposes of this calculation to, for example, residents of a particular watershed. Because cities like Houston comprise multiple watersheds, most flood infrastructure projects would not serve the entire population, regardless of the cost.

A further implication of this criterion is that larger jurisdictions had to serve substantially more people *per dollar* than smaller jurisdictions to receive the same score for otherwise identical projects. The following scenario illustrates the score that would be awarded to jurisdictions of different sizes for the same hypothetical project benefitting 50,000 people and costing \$100,000,000 (one hundred million dollars). If the applicant jurisdiction's population was 50,000 people, the project would score 10 points. If the applicant jurisdiction's population was 1,000,000 (one million) people, the application would receive just .5 points. The only way for the million-person jurisdiction to achieve a higher score would be to serve substantially more people with the same amount of money. The million-person jurisdiction would need to serve *twenty times* as many people as the 50,000-person jurisdiction to receive the same score.

Of the fourteen applications submitted to GLO to benefit residents of Houston or Harris County, the largest jurisdictions in the Competition, only one application scored more than one point on the Jurisdiction Size Criterion. Even still, this application, submitted by the Harris County Flood Control District, scored only 1.68 points out of 10 but would have benefitted nearly 800,000 people.

Because minority residents are more likely to live in large jurisdictions, this criterion caused applications that would disproportionately benefit minority residents to be eligible for fewer points than other applications for projects that would benefit an equivalent number of residents. The Jurisdiction Size Criterion shifted funding away from areas with the greatest need without justification.

2. The Jurisdiction Size Criterion is unjustified and contrary to the purpose of the program.

The Jurisdiction Size Criterion ran counter to the intent of the program to focus on areas with the greatest need for disaster mitigation per GLO's own metrics. Dozens of applicants with low Jurisdiction Size Criterion scores had the highest CDI score of 10. Nevertheless, 38 projects with CDI scores of 5 or below and 59 with scores below 10 were awarded funds, in part due to their high Jurisdiction Size Criterion scores.

Requiring jurisdictions to serve their entire population to achieve full points – as opposed to focusing efforts on serving LMI beneficiaries – is contrary to the statutory objectives of the program. The Notice explains that “CDBG-DR and CDBG-MIT grants have a statutory focus on

benefiting vulnerable lower-income people and communities and targeting the most impacted and distressed areas.”¹⁴ All but three of the eligible counties have total LMI populations below 50%, making it impossible for them to both serve their entire population and have 50% of benefited residents be LMI, as required – and, overall, disincentivizing jurisdictions from serving higher percentages of LMI residents

The rationale for this criterion is also unclear. In response to requests by the Department for records regarding the purpose of the Jurisdiction Size Criterion, the GLO produced a single undated document linking competition criteria to Federal Register requirements. This document states “HUD indicated in training, verbally, and in the federal register the CDBG-MIT activities must include consideration for cost benefit while still maintaining a 50% overall benefit to LMI projects.” This does not explain why GLO scored applicants based on the beneficiaries served by a project as a percentage of the jurisdiction’s total population. The Jurisdiction Size Criterion is solely a measure of population; it does not consider project cost or cost per beneficiary.

GLO has never used the Jurisdiction Size Criterion in prior Disaster Recovery or similar competitions. Likewise, FHEO found no evidence that any other recipient of CDBG-MIT funding has adopted the same or similar method to score applications for Mitigation funds or other DR or related funds. Published Competition design manuals and FAQs offer no explanation for the criterion.¹⁵

In interviews, GLO staff provided varied and conflicting justifications for the Jurisdiction Size Criterion, and provided no documentary support for any proffered justification – for example, showing contemporaneous consideration of the effect.

D. The HUD MID Exclusion and the Jurisdiction Size Criteria caused fewer funds to be awarded to benefit eligible minority residents

The award data confirms that minority residents were disadvantaged by the two Competition features discussed – and disproportionately so relative to White non-Hispanic residents. Black residents were particularly negatively affected.

If the Competition were run without either the HUD MID Exclusion or the Jurisdiction Size Criterion, over 300 million dollars would have been awarded differently. The projects that would have been funded would have both been more likely to benefit minority residents and benefited substantially more minority residents. Nearly a million more residents would have benefited in this scenario, approximately 600,000 of whom are minority. Nearly four times as many Black residents would have benefited, and more than twice as many Hispanic residents.¹⁶

¹⁴ *Supra* n. 3 at 45838.

¹⁵ The GLO’s response to public comment to its action plan alludes vaguely to balancing rural and urban awards but provides no support for the need for the criteria to accomplish that objective.

¹⁶ An exact assessment of alternative beneficiaries is not possible for several reasons. First, the two Competition features considered – the HUD MID exclusion and Jurisdiction Size Criterion - interplayed with each other and each affected outcomes in different ways. Second, GLO funded applicants in order of score up to the last fully fundable application (leaving a remainder of funds). How the remainder would be allocated is unknown at this time.

Approximately 40 to 80 million more dollars would have been awarded to the benefit of minority residents.¹⁷

The negative effect of the criteria was particularly acute for Black residents. The funds that would have been allocated differently without the two criteria were nearly three times as likely to benefit Black residents without the criteria than with the criteria.

III. ANALYSIS

Title VI mandates that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”¹⁸ Section 109 mandates that that “no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded [under the Housing and Community Development Act of 1974].”¹⁹

HUD’s regulations implementing Title VI prohibit recipients from distributing benefits based on “criteria . . . which have the effect of subjecting persons to discrimination.”²⁰ HUD regulations also prohibit recipients from utilizing “criteria . . . which have the effect of . . . substantially impairing accomplishment of the objectives of the program . . . as respect to persons of a particular race, color, or national origin.”²¹ A criterion has an unjustified discriminatory effect if it has a disparate impact based on race, color, or national origin²² and it lacks a legally sufficient justification.²³

¹⁷ This is likely an undercount as it does not capture deterrence. Published competition scoring criteria influence what project applications are submitted, as applicants attempt to craft applications that will be successful and abandon options less likely to be successful.

¹⁸ 42 U.S.C. § 2000d; 24 C.F.R. § 1.4(a).

¹⁹ 42 U.S.C. § 5309, 24 C.F.R. § 6.4(a). Because the Section 109 regulations closely track the Title VI regulations this letter will focus on Title VI and only identify differences with Section 109 where necessary.

²⁰ 24 C.F.R. § 1.4(b)(2)(i).

²¹ *Id.*

²² See *Villanueva v. Carere*, 85 F.3d 481 (10th Cir. 1996); *New York Urban League v. New York*, 71 F.3d 1031, 1036 (2d Cir. 1995); *Chicago v. Lindley*, 66 F.3d 819 (7th Cir. 1995); *Elston v. Talladega County Bd. of Educ.*, 997 F.2d 1394, 1405 n.11, 1407 n.14 (11th Cir.), reh'g denied, 7 F.3d 242 (11th Cir. 1993); *David K. v. Lane*, 839 F.2d 1265 (7th Cir. 1988); *Gomez v. Illinois State Bd. Of Educ.*, 811 F.2d 1030 (7th Cir. 1987); *Georgia State Conference of Branches of NAACP v. Georgia*, 775 F.2d 1403 (11th Cir. 1985); *Larry P. v. Riles*, 793 F.2d 969 (9th Cir. 1984); see also 24 C.F.R. § 100.500(a).

²³ A legally sufficient justification is one that (1) is substantial, legitimate and nondiscriminatory, in other words a justification that demonstrates that the policy is “necessary to meeting a goal that [is] legitimate, important, and integral to the [recipient’s] institutional mission”; and (2) cannot be achieved through a less discriminatory alternative. See *Sandoval v. Hagan*, 7 F.Supp. 2d 1234, 1278 (M.D. Ala. 1998), aff’d, 197 F.3d 484 (11th Cir. 1999), aff’d, *Alexander v. Sandoval*, 532 U.S. 275 (2001) (quoting *Elston*, 997 F.2d at 1413). A justification must be “substantial,” meaning it reflects a core interest of the organization that has a direct relationship to the function of that organization; “legitimate,” meaning it is genuine and not false or fabricated; and not hypothetical or speculative, meaning the housing provider must be able to provide evidence showing both that the housing provider has a substantial, legitimate, nondiscriminatory interest supporting a preference and that the preference actually achieves that interest. See 78 Fed. Reg. 11,460 – 11,482 (Feb. 15, 2013).

As detailed above, GLO utilized two criteria that disparately impacted minority residents. The HUD MID Exclusion disparately impacted minority residents. First, the HUD MID exclusion caused there to be disproportionately less funding available to benefit minority residents than was available to benefit White residents. Second, the exclusion necessitated applicants that would disproportionately benefit minority residents to score significantly higher to succeed than other applicants needed to. Third, the exclusion caused funds to be awarded in a manner that disproportionately benefited White residents. In addition, the Jurisdiction Size Criterion disparately impacted minority residents as well. The criterion caused applicants that would disproportionately benefit minority residents to receive fewer points than other applicants for projects that would benefit an equivalent number of residents. This caused funding to be awarded in a manner that disproportionately benefited White residents.

GLO has not proffered a legally sufficient justification for its use of either criterion. As detailed above, the HUD MID Exclusion is not mandated by HUD policy, as GLO claims. To the extent the Jurisdiction Size Criterion aimed to ensure that smaller impacted communities would not be left out, the criterion was too blunt an instrument to achieve this objective as it did so in a way that excluded large areas entirely. Furthermore, neither policy took into account differences in need or LMI concentration.

Thus, the two policies had an unjustified discriminatory effect and GLO failed to comply with HUD's regulation that prohibits a recipient from "utilize[ing] criteria . . . which ha[d] the effect of subjecting persons to discrimination." The two polices also had "the effect of . . . substantially impairing accomplishment of the objectives of the program" with respect to minority residents. Two key objectives of the program are focusing benefits on residents who are LMI and on residents with the greatest mitigation needs. The criteria deprioritized such residents, who are disproportionately minority, in favor of residents who were less likely to be LMI and residents who had lesser mitigation needs. Because the criteria had these unjustified discriminatory effects, their use failed to comply with HUD's regulations, Title VI, and Section 109.

IV. CONCLUSION

Based on the Department's investigation and for the reasons set forth above, the Department concludes that the GLO is in non-compliance with Title VI and Section 109. The Department would like to resolve these matters as soon as possible. If a voluntary resolution cannot be obtained, HUD may initiate administrative proceedings or refer this matter to the United States Department of Justice for judicial enforcement.²⁴ A voluntary resolution would be addressed through a written Voluntary Compliance Agreement (VCA) with a clear timetable for implementation.²⁵ A VCA resolving this matter would require the GLO to address the discriminatory outcomes of the Competition as well as adopt enhanced fair housing planning and monitoring metrics.

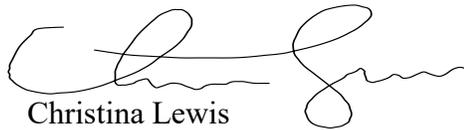
²⁴ See 24 C.F.R. § 1.8.

²⁵ See 24 C.F.R. §§ 1.7(d)(1) and 8.56(j)(2).

Please note that pursuant to 24 CFR 6.11(a)(8) and 6.11(c) either party to the referenced complaint may request review of this letter of findings by the Responsible Official, by mailing or delivering a request for review to the Responsible Official, Room 5100, Office of Fair Housing and Equal Opportunity, HUD, Washington, DC 20410, including a written statement of the reasons why the letter of findings should be modified.

If there are any questions or GLO wishes to voluntarily correct the violations, please contact Jacy Gaige, Director, Office of Compliance and Disability Rights, at jacy.d.gaige@hud.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Christina Lewis', written in a cursive style.

Christina Lewis
Region VI Director
Office of Fair Housing and Equal Opportunity

cc: Texas General Land Office
c/o Jeff Gordon
1700 Congress Avenue
Austin, TX 78701-1495

Relman Colfax PLLC
c/o Sara Pratt
1225 19th Street NW
Suite 600
Washington, D.C. 20036