



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF THE ASSISTANT SECRETARY FOR
COMMUNITY PLANNING AND DEVELOPMENT

JAN 3 2013

Mr. Larry L. Laine
Deputy Land Commissioner
Texas General Land Office
1700 North Congress, Suite 935
Austin, TX 78701

Dear Mr. Laine:

I am pleased to inform you that HUD is accepting Texas' Amendment #5 to the State of Texas Plan for disaster recovery through Community Development Block Grant (CDBG) supplemental funding. The purpose of Amendment #5 is to allow the State greater flexibility in using administrative, planning, and programmatic funds; encourage economic development by allowing local governments to keep program income in certain cases; allow the State to designate non-profit entities as grantees; and provide greater administrative flexibility to subrecipients in choosing whether to implement single- or multi-family affordable rental projects.

Amendment #5 does not change any overall funding levels for administrative, planning, or program set-asides, nor does it affect the amount of funds dedicated to the State's affordable rental goals. Specifically, Amendment #5 accomplishes the following:

- **Revises the budget mechanisms for Administration, Planning, and Program—**
 - Since the State's housing and non-housing programs reside under the same agency, Amendment #5 combines administrative and planning funds into one allocation, eliminating the distinction between housing and non-housing or between Rounds 1 and 2.
 - Amendment #5 allows for the transfer of program funds between Rounds 1 and 2, while maintaining the distinction between housing and non-housing programs.

- **Revises previous program income restrictions—**
 - Previous amendments required that all program income generated under individual contracts be returned to the State.
 - Amendment #5 will allow program income retention by grantees for economic development and other eligible activities, as permitted by GLO guidelines.

- **Revises previous Amendment to allow public universities and other non-profit entities to be grantees for housing and non-housing activities.**
- **Provides flexibility in using single- and multi-family rental funds—**
 - Amendment #1 dictated the amount to be spent on either single- or multi-family construction activities in various regions of the State for Round 2. Amendment #5 allows subrecipients (with GLO approval) to shift funds between single- and multi-family activities, as long as the total affordable rental funding requirements for Round 2 are maintained within each region. Specific set-asides required by the State's Conciliation Agreement will still be maintained.
 - Amendment #1 also established a \$10,000,000 cap for multi-family project-based applications, as well as a \$20,000,000 cap per Developer/Applicant for applications related to public housing. Amendment #5 allows GLO to waive these caps in some cases, as prescribed by GLO guidelines for the waiver process.

The Department remains committed to assisting the recovery of the State of Texas from the devastating effects of Hurricanes Ike and Dolly. If you or any members of your staff have any questions, please contact Mr. Stanley Gimont, Director, Office of Block Grant Assistance, at (202) 708-3587.

Sincerely,



Mark Johnston
Deputy Assistant Secretary
for Special Needs Programs

STATE OF TEXAS



AP Photo by Tony Gutierrez

Plan for Disaster Recovery - Amendment No. 5 **U. S. Department of Housing and Urban Development (HUD)**

Consolidated Security, Disaster Assistance, and Continuing Appropriations Act,
Public Law 110-329

Effective:
September 30, 2012

Prepared by:
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AMENDMENT NO. 5:

Executive Summary

This document constitutes the Fifth Amendment to the *State of Texas Plan for Disaster Recovery* (Action Plan) dated February 18, 2009 for CDBG disaster recovery funds related to Hurricanes Dolly and Ike.

Action Plan Amendment #4 contained a detailed budget accounting for \$37,481,416 in DREF funds to specific categories for administration, planning and program activities, for a total allocation of \$3,113,472,856 when added to previously awarded amounts program-wide. The Amendment also split the administration and planning dollars by Round (1 and 2) and between housing and non-housing. For planning and administrative dollars, now that the housing and non-housing programs are under one agency and in order to create a more efficient internal accounting mechanism, the GLO will eliminate the distinction between housing and non-housing, as well as the distinction between Rounds through this Amendment #5. Administration and Planning dollars may be used to supplement existing allocations in accordance with GLO policies. Program dollars may be transferred between Rounds 1 and 2 in accordance with GLO policies, maintaining the distinction between housing and non-housing.

In order to facilitate the creation of an economic development and other programs which may generate program income locally, the GLO is affirming that program income is governed by the waiver in the Federal Register, Volume 74, No. 29, February 13, 2009 and may be retained by the grantees for economic development and other activities within program guidelines.

Because the Action Plan appears to restrict eligible grantees to cities and counties, Amendment #5 will allow public universities and other non-profit entities, as identified in the MODs, to be grantees for non-housing and housing activities.

Finally, in order to maintain maximum flexibility for the use of funds and to allow for innovation and efficiency in the construction of affordable rental units, Amendment #5 will allow for construction of either single or multi-family rental units as long as the affordable rental requirement for each region is maintained. The Amendment will also allow the GLO to waive the \$10,000,000 cap for multifamily project-based applications as well as the \$20,000,000 cap per Developer/Applicant for applications related to public housing.

All other information, requirements and certifications contained in the Action Plan, as amended, remain in force unless addressed in this amendment.

Action Plan - Amendment No. 5 was posted on the GLO website for the required 7-day comment period on September 12, 2012. Recipients of the public comment period notice will include, but are not limited to, low income housing advocates and community organizations representing homeless and special needs populations, all mayors, county judges, and tribal leaders in the declared areas.

Revised Budget Mechanisms for Administration, Planning and Program Dollars

Action Plan Amendment #4 contained a detailed budget accounting for \$37,481,416 in DREF funds to specific categories for administration, planning and program activities, for a total

allocation of \$3,113,472,856 when added to previously awarded amounts program-wide. The Amendment also stratified the administration and planning dollars by Round (1 and 2) and between housing and non-housing. This was done in part to ensure the 55% housing and 45% non-housing allocations, as stipulated by the Conciliation Agreement, were maintained across two agencies - Texas Department of Housing and Community Affairs (TDHCA) and Texas Department of Rural Affairs (TDRA). Now that the housing and non-housing programs are under one agency and in order to create a more efficient internal accounting mechanism, Amendment #5 will allow the Disaster Recovery (DR) Program to:

- Combine the administrative dollars into one allocation, eliminating the distinction between housing and non-housing and between Rounds 1 and 2 (see Tables 1 and 2).
- Combine the planning dollars into one allocation, eliminating the distinction between housing and non-housing and between Rounds 1 and 2.
- Allow for the utilization of administration and planning dollars to supplement existing allocations in accordance with GLO policies.
- Allow for transfer of program dollars between Rounds 1 and 2, maintaining the distinction between housing and non-housing, for budgeting and planning purposes.

Table 1 - Combined Funding

B-08-DI-48-0001 - IKE GRANT	
Administration	\$155,673,643.00
Planning	\$75,343,878.00
Program - Grant Funds	\$2,882,455,335.00
GRAND TOTAL*:	\$3,113,472,856.00

Table 2 - DREF Allocation

*NOTE: DREF dollars allocation detail	
DREF	\$55,481,416.00
DREF - Non-Housing	\$37,481,416.00
DREF - Housing	\$18,000,000.00

Program Income – Process Revision

The Action Plan states:

“Any program income earned as a result of activities funded under this grant will be subject to 24 CFR 570.489(e), which defines program income. For all activities, program income generated under individual contracts will be returned to ORCA.” (page 24)

The Action Plan – Amendment #1 reaffirms this and updates the designee to TDRA. The Federal Register, Volume 74, No. 29, February 13, 2009 which governs the CDBG-DR funds states (page 7249 - emphasis added):

*“This Notice waives the existing statute and regulations to **give the states, in all circumstances, the choice of whether a local government receiving a distribution of CDBG disaster recovery funds and using program income***

for activities in the Action Plan may retain this income and use it for additional disaster recovery activities. In addition, this Notice allows program income to the disaster recovery grant generated by activities undertaken directly by the state or its agent(s), to retain the original disaster recovery grant's alternative requirements and waivers and to remain under the state's discretion until grant closeout, at which point any program income on hand or received subsequently will become program income to the state's annual CDBG program."

In order to facilitate the creation of an economic development and other programs which may generate program income locally, the GLO is affirming that:

- Program income is governed by the waiver in the Register and may be retained by the grantees for economic development and other eligible activities, as permitted by GLO program guidelines.

Additional Eligible Entity

Regarding eligible entities, Amendment #1 states that (emphasis added):

*"Entities eligible to benefit from funding include city and county governments and other entities such as non-profit and for-profit organizations, individuals and municipal utility districts that are identified in the Method of Distribution process established by the COGs...and those identified in the Housing section...**For non-housing funds, entities other than city or county governments must be sponsored by a city or county as specified in the application guidance.**"*
(page 11)

Because the Action Plan – Amendment #1 appears to restrict eligible grantees to cities and counties, Amendment #5 will:

- Allow public universities and other non-profit entities, as identified in the MODs, to be grantees for non-housing and housing activities.

Single and Multi-Family Rental Funds Flexibility

Action Plan - Amendment #1 required that both (TDHCA and TDRA) agencies directly administer special purpose funding projects. TDRA administered the set-aside competitive allocations for the non-housing competitions for the pooled funds. TDHCA managed affordable rental housing to fulfill the requirement, as identified in the disaster recovery appropriation, to spend \$342 million (approximately 11% of total funding allocation) on this rental activity, including \$40 million for single family rental housing stock, \$50 million for projects with project based rental assistance, and \$84 million for multi-family rental stock.

Additionally, Amendment #1 listed specific housing set-asides, which exceed established minimum requirements set forth by HUD. Minimums for Round 2 for the Affordable Rental Housing Recovery Program are \$174 million. In conjunction with \$168 million from Round 1, this program will meet the total requirement for affordable rental housing. Table 3 from the MOD Guidelines for Round 2.2 illustrates the total allocation and set asides that were previously established for the COGs:

Table 3: Affordable Rental Program Set-aside Detail

Table 3: Affordable Rental Breakdown for 2.2						
COG	Round 2 Allocation	% Allocation	Single Family	Galveston PHU	Other PHU	Other Affordable Rental
SETRPC	\$ 33,096,235	19%	\$ 7,595,241		\$ 4,747,026	\$ 20,753,968
H-GAC	\$126,095,018	72%	\$ 28,937,493	\$ 50,000,000	\$ 18,085,933	\$ 29,071,592
LRGVDC	\$ 15,108,600	9%	\$ 3,467,266		\$ 2,167,041	\$ 9,474,293
DETCOG	\$ -	0%			\$ -	
POOL	\$ -	0%			\$ -	
					\$ 25,000,000	\$ 59,299,853
	\$174,299,853		\$ 40,000,000	\$ 50,000,000		\$ 84,299,853

Source: GLO MOD Guidelines for Round 2.2

Additional information in Amendment #1 further limits the awards for certain multi-family projects. Appendix G-2a – “Housing: Affordable Rental” of the Amendment #1 states:

“The maximum base award amount is \$10,000,000 for the multifamily and project-based categories with an overall cap of \$20,000,000 per Developer/Applicant. The maximum base awards for single family are \$65,000 for rehabilitation and \$125,000 for reconstruction with a maximum award per applicant of \$5,000,000.” (page 208 of PDF)

In order to maintain maximum flexibility for the use of funds and to allow for innovation and efficiency in the construction of affordable rental units, Amendment #5 will:

- Allow for construction of either single or multi-family rental units in accordance with the total rental set-aside outlined in Table 3 above. As long as the total affordable rental funding requirements for Round 2.2 (“Round 2 Allocation” column) are maintained within the region, Subrecipients may shift funds between single and multi-family at the discretion of the GLO. Specific set-asides required by the Conciliation Agreement must still be maintained.
- Allow the GLO to waive the \$10,000,000 cap for multifamily project-based applications as well as the \$20,000,000 cap per Developer/Applicant for applications related to public housing.

Citizen Participation

Comments/Responses for Comment period September 12-25, 2012

Comment #1: Support for the Proposal

Commenter supports the elimination of the distinction between housing and non-housing and cites three major reasons for such a change: (1) supplementation of existing allocations between rounds 1 and 2; (2) broader participation within program guidelines (e.g., universities); and (3) greater flexibility in meeting DR Program goals and objectives.

Staff Response:

This comment highlights the key objectives of the Amendment.

Comment #2: Support and concerns cited regarding shifting of funds between Rounds.

Commenter expressed both support and concerns regarding Amendment #5, especially with regards to shifting of funds back to Round 1 from Round 2,

Staff Response:

The GLO will ensure that the terms of the Conciliation Agreement are followed in regards to shifting funds between Rounds 1 and 2. The GLO-DR Program will approve or disapprove any such proposals from grantees in accordance with the requirements of the applicable funding round.

Comment #3: Support and concerns cited regarding waivers on caps for multifamily and public housing projects.

Commenter expressed support for the waiver of the \$10 million cap on multifamily projects and the waiver of the \$20 million cap on developers of public housing but recommended requiring Subrecipients to demonstrate why such shifts are necessary.

Staff Response:

The GLO will review requests from Subrecipients on a case-by-case basis taking into account the nature of the request and any supporting documentation submitted by the Subrecipient. Such requests will be approved or disapproved based upon existing processes. Inherent in the approval of such funding flexibility is the assumption that the local jurisdiction will demonstrate that such a shift is both in the best interests of the community and advisable for the use of Program funds.

Comment Topics

1	Support for the Proposal.
2	Support and concerns cited regarding shifting of funds between Rounds.
3	Support and concerns cited regarding waivers on caps for multifamily & public housing projects.

Public Comment: Initial Amendment #5 to Action Plan Draft			
Commenter	Commenter Information	Source	Comments made by Topic Number
Gary Traylor	Tyler resident	Email	1
John Henneberger	Austin resident	Email	2,3

GLO Actions Taken by GLO regarding Public Comments:

- Posted Amendment 5 draft to GLO-Website on September 12, 2012.
- Notified Public and interested parties (all Subrecipients, Grantees, Grant Administrators, Vendors and Contractors) of the posting of Amendment 5 via email blast on September 12.
- Remained on the GLO-Website until September 25, 2012 (beyond the 7-day required period).