

State of Texas

Partial Action Plan for Disaster Recovery to Use Community Development Block Grant (CDBG) Funding

to Assist with the Recovery of Distressed Areas
Related to the Consequences of

**Hurricanes Katrina, Rita, and Wilma
in the Gulf of Mexico in 2005**



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EXECUTIVE SUMMARY

The Texas Department of Housing and Community Affairs (“Department” or “TDHCA”) has prepared this State of Texas Action Plan for Community Development Block Grant (CDBG) Disaster Recovery Grantees under Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (“Action Plan”). This Action Plan will be used by TDHCA, the lead agency designated by Texas Governor Rick Perry to administer these funds, to provide \$428,671,849 in CDBG funding to help restore and rebuild in areas of the State most directly impacted by Hurricanes Rita and Katrina.

These funds, coupled with a previous supplemental appropriation authorized under Public Law 109-148 (\$74,523,000 in CDBG disaster recovery funding), will provide significant assistance to affected areas in southeast Texas. It should be noted that this Action Plan addresses a scope of needs beyond the similar plan issued May 9, 2006 to use the funding authorized under Public Law 109-148. While the previous plan only addressed needs associated with Hurricane Rita, this Action Plan addresses needs resulting from both Hurricanes Rita and Katrina. Combined, all the needs identified in *Texas Rebounds*, a document prepared by the Office of the Governor detailing \$2.02 billion in Rita and Katrina recovery needs, will not have been met. However, with an emphasis on helping restore homes and improving neighborhoods, these funds will help address many of the key priorities for recovery.

The Action Plan gives priority to community infrastructure development and rehabilitation as well as the rehabilitation and reconstruction of the affordable rental housing stock including public and other HUD-assisted housing. More specifically, the funds will be used to help:

- provide assistance to homeowners of low to moderate income whose houses were damaged by Hurricane Rita;
- provide focused efforts to restore and protect owner occupied housing stock in the community of Sabine Pass which was severely damaged by the storm;
- repair, rehabilitate, and reconstruct (including demolition, site clearance and remediation) the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas;
- restore critical infrastructure damaged by Hurricane Rita where no other funds are available; and
- provide assistance in the City of Houston and Harris County for increased demands for public services, law enforcement and judicial services, community development, and housing activities in specific areas (police districts, schools, apartment complexes, neighborhoods) that have experienced a dramatic population increase due to an influx of Katrina evacuees.

The comment period opened on December 15, 2006, and closed on January 2, 2007. The Department received written public comment as well as verbal public comment at three public hearings, two of which were held in the affected region of Southeast Texas. Because these natural disasters impacted a region with diverse communities, TDHCA released public comment notifications and Action Plan drafts in English, Spanish, and Vietnamese to provide persons with limited English proficiency a better opportunity to participate in the public comment process.

It should be noted that this is a partial action plan. A more detailed description of how the funding will be used (eligible activities, beneficiaries, areas, etc.) that has been targeted for the City of Houston and Harris County will be included in the final Action Plan. This description will be developed separately because of the complexity of crafting a plan that effectively addresses remaining needs in the City of Houston and Harris County. The required amendment to the Action Plan shall be developed through a separate public comment process and will be coordinated by the City of Houston and Harris County CDBG entitlement communities, in conjunction with TDHCA.

INTRODUCTION

In the fall of 2005, Texas felt the extreme impact of both Hurricanes Rita and Katrina. While Hurricane Katrina did not make land fall in Texas, the need for vast amounts of both short and long term assistance to help persons who evacuated to the state soon became apparent. Shortly thereafter, Texas suffered the direct impact of Hurricane Rita, which physically destroyed communities and regions already stretched thin by providing aid and support services to Hurricane Katrina evacuees. This one-two punch left Texas with estimated recovery needs of almost 3 billion dollars, as documented in the report *Texas Rebounds* – an in-depth assessment of the impact of the Hurricanes on Texas prepared by the Governor as part of a request for additional funding assistance from Congress.

Supplemental appropriations to the CDBG program are providing funding to the affected states to implement disaster recovery efforts that address the widespread need caused by these storms. The first supplemental appropriation was tied to Public Law 109-148 (effective December 30, 2005) which provided \$11.5 billion of supplemental appropriation for the CDBG program. This funding was for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of Hurricanes Rita, Katrina and Wilma. Of this amount, \$74,523,000 was specifically allocated to Texas by the Secretary of HUD to address the consequences of Hurricane Rita. The funds were intended by HUD to be used toward meeting unmet housing, infrastructure, public service, public facility, and business recovery needs in areas of concentrated distress.

Texas developed the required action plan to use these funds through intensive consultation with the citizens, local government leaders, state and federal legislators, and community action and social services agencies that were hit hardest by Hurricane Rita. In addition to the numerous meetings that were held across the region, five public hearings were held for the specific purpose of crafting the required action plan. The resulting *State of Texas Action Plan for CDBG Disaster Recovery Grantees under the Department of Defense Appropriations Act, 2006* was approved by HUD on May 9, 2006. This action plan used four of the state's Councils of Governments to serve as applicants for the entitlement communities, non-entitlement communities, and federally recognized Indian Tribes within their region. Under the plan, a minimum of approximately \$38.9 million is being used to meet housing needs. The remaining approximately \$31.9 million is being used for infrastructure needs.

Congress recognized that the CDBG funding authorized under PL 109-148 was not sufficient given the full impact that the 2005 hurricane season had on the entire gulf coast region. Therefore, the earlier emergency funding was increased by authorizing Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law 109-234, approved June 15, 2006). As required by Congress, the U.S. Department of Housing and Urban Development published requirements for distribution and use of these funds by the impacted states in its "Department of Housing and Urban Development [Docket No. FR-5089-N-01] Allocations and Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees Under Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006" published in Federal Register (Vol. 71, No. 209) on October 30, 2006. Part of this requirement was to create a document that will guide and direct the use of funds within the categories outlined under the funds notice.

The funds were made available to the State of Texas through the Office of the Governor. With more needs identified in Texas Rebounds than there were funds available, Governor Rick Perry identified the needs that should be given priority. The majority of the funds are to be used to directly assist Texans who, more than a year after the hurricanes, still struggle with unmet housing needs as a result of the storms. Given that the largest share of the funds would go to meet the housing needs of Texans, the Governor directed TDHCA to assist with the distribution of these funds.

To best inform the public and receive its input, as well as to meet the requirements established by the HUD funding notice, the Department has developed this Proposed Partial Action Plan for Disaster Recovery (“Action Plan”). This Action plan will be used to distribute Federal funding for recovery of distressed areas related to the consequences of Hurricanes Rita and Katrina in the Gulf of Mexico in 2005. The amount of funding to Texas was specified in the funding notice by HUD along with general priorities and a specific funding priority to assist rental housing damaged by Hurricane Rita in Texas. More specifically, the Action Plan describes the:

- priorities to best assist the needs of the State’s citizens and communities,
- citizen participation process used to develop the Action Plan,
- the types of activities and funds available for which assistance may be provided,
- who may apply and the application process,
- the methodology used to distribute funds, and
- method of grant administration standards and procedures that will be used to ensure that program requirements, including non-duplication of benefits, are met through continuous quality assurance and internal audit functions.

FEDERAL APPROPRIATION ASSOCIATED WITH THIS PLAN

As described above, Public Law 109-234 (effective June 15, 2006) provided \$5.2 billion supplemental appropriation of CDBG Disaster Recovery Funding for “*necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, or Wilma.*” In reviewing the totality of the need in the five state region covered by the law, \$428,671,849 was specifically allocated to Texas by the Secretary of HUD. As further provided for under the law, “*funds provided under this heading shall be administered through an entity or entities designated by the Governor of each State.*” Governor Rick Perry has designated TDHCA as this entity for the State of Texas.

All regulations associated with the CDBG program apply to this funding unless specifically detailed as a waiver in the Department of Defense Appropriations Act, 2006 (Public Law 109-148, approved December 30, 2005 or as specified in the February 13, 2006 *Federal Register* notice) or subsequently waived by HUD as documented in this Action Plan. In addition, definitions and descriptions contained in the *Federal Register* are applicable to this funding.

THE IMPACT OF THE STORMS AND TEXAS RECOVERY NEEDS

The 2005 Atlantic hurricane season was one of the most extreme in recorded history. The U.S. Gulf Coast was hit by Hurricanes Katrina, Rita, and Wilma. Texas was greatly impacted by both Hurricanes Katrina and Rita. While Hurricane Katrina did not make landfall directly in Texas, the indirect impact on Texas led to a presidential disaster declaration to provide emergency funding as Texans assisted Katrina evacuees. While that assistance was ongoing, Hurricane Rita dealt a second blow to the lives, homes and property of Texans.

TIMELINE OF STORM EVENTS AND STATE RESPONSES

The timeline of the storm events and related responses are below provided.

1. The Governor of Texas declared a State of Emergency on August 29, 2005, relative to Hurricane Katrina’s imminent landfall on the Gulf Coast. Hurricane Katrina made landfall that same day in Louisiana. While Texas did not directly receive the impact of the storm, within hours, the significant impact Katrina would have on the State became clear.
2. The President issued an Emergency Declaration on September 2, 2005, for all 254 counties in Texas for emergency protective measures due to the huge influx of evacuees from Alabama, Louisiana, and Mississippi. As a result of massive evacuations, Texas absorbed more than 400,000 evacuees – mostly from Louisiana.

3. While Texas authorities were beginning to assess the long-term sheltering operation for Hurricane Katrina evacuees, dangerous Hurricane Rita entered the Gulf of Mexico. On September 21, 2005, due to the impending threat of Rita, the President issued another Emergency Declaration for all 254 Texas counties.
4. On September 24, 2005, only 26 days after Katrina devastated the Gulf Coast, the Category Three Hurricane Rita came ashore. The eye of the storm made landfall near Sabine Pass, Texas severely damaging communities and homes unfortunate enough to fall within its path. As the storm traveled inland, the core of the hurricane's most extreme destruction hit the heavily populated and industrialized areas of Port Arthur, Orange, and Beaumont. Communities in the path of the hurricane sustained enormous physical damage from excessive winds and rain. In some heavily wooded areas, an estimated 25 percent of the trees were lost. High winds and falling trees caused extensive damage to homes and businesses. The same day of the storm, Texas received a FEMA Major Disaster Declaration for all 254 counties for debris operations and emergency protective measures for Hurricane Rita. Multiple amendments have since been added to the Major Disaster Declaration to expand the list of eligible counties for FEMA Individual Assistance Program (IAP) funding to 22 designated counties and Public Assistance Program (PAP) funding to 29 designated counties.

OVERVIEW OF STORM IMPACT

The Governor's Division of Emergency Management (GDEM) and FEMA reported the receipt of 479,199 registrations for the Individual Assistance Program as a result of Hurricane Rita in the 29-county area. As a result of Hurricane Rita, more than 75,000 homes in the area suffered major damage or were destroyed. Of these, approximately 40,000 homes were uninsured. Furthermore, a substantial percentage of the damaged households are located in areas predominantly occupied by individuals meeting the definition of low to moderate income (LMI). There were 44 recovery centers set up in disaster impacted counties and throughout the state so that residents could apply for immediate assistance, meet with Small Business Administration loan specialists, and get information about available federal and state assistance. Additionally, 4,249 travel trailers were issued to displaced individuals and families.

According to FEMA, 640,968 Katrina and Rita applicants for assistance resided in Texas as of February 1, 2006. Most of these families are living in Southeast Texas. Second only to Louisiana, Texas hosts the most people impacted by the devastating hurricanes of 2005. In light of these facts, the lasting impact of Hurricanes Katrina and Rita on Texas is widespread and extremely apparent.

CITIZEN PARTICIPATION

Since the Hurricanes hit, the State has been working closely with the citizens and organizations who were directly impacted by the storm and a wide variety of municipal, county, regional, and state officials to determine what the greatest disaster recovery needs are and how to best address those needs. Through this ongoing interaction and the three public hearings and two TDHCA Board meetings accepting public comment held to develop the *State of Texas Action Plan for CDBG Disaster Recovery Grantees under the Department of Defense Appropriations Act, 2006* (required to use disaster recovery funding associated with Public Law 109-148), the need for assistance to repair homes and to meet specific remaining critical infrastructure needs has been well established.

PUBLIC COMMENT PERIOD AND PUBLIC HEARINGS

On Friday, December 15, 2006, the Action Plan was made available for public comment via TDHCA's website or upon request. The 18-day public comment period began on Friday, December 15, 2006 and ended at the close of business on Tuesday, January 2, 2007.

Verbal comment on the Action Plan was taken at the following public hearings times and accessible locations.

Location:	Austin	Houston	Beaumont
Facility:	Rusk Building Room 227	City Council Annex Chambers Public Level	South East Texas Regional Planning Commission
Address:	208 E. 10th Street Austin, TX 78701	900 Bagby Houston, TX 77251	2210 Eastex Freeway Beaumont, TX 77703
Date and Time:	Tuesday, December 19 6:00 p.m.	Tuesday, December 19 12:00 p.m.	Wednesday, December 20 12:00 p.m.

The hearing announcement specifically described the process by which individuals who require special assistance could contact TDHCA to make appropriate arrangements so that they could participate in the hearing.

Written comment was also accepted at the public hearings and by mail, fax, or email at the following addresses.

Mail: TDHCA, Division of Policy and Public Affairs, P.O. Box 13941, Austin, TX 78711-3941

Fax: (512) 469-9606

Email: info@tdhca.state.tx.us

As is the Department's standard practice when developing rules or policies, a summary of the issues raised by comment received and the corresponding reasoned responses was generated for both the decision makers and the public. A summary of the comments received during the public comment period and the Department's reasoned responses and resulting changes to the Action Plan is provided in Appendix B of this document.

ADVERTISING THE PUBLIC COMMENT PERIOD

As the disaster impacted region has a diverse community, both the public comment notifications and Plan were published in English, Spanish, and Vietnamese. This enhanced the ability of persons with limited English proficiency to provide comment. The following efforts were made to advertise the public comment period.

- On November 28, 2006, an electronic hearing notification was made through TDHCA's email list serve. This is a list of 3,112 public officials, for-profit and non-profit developers, community housing development organizations, advocacy groups, and supportive service providers that have an interest in TDHCA programs and who sign up to receive notification of upcoming events.
- On December 15, 2006, as required by State law, a notice of the public comment period and associated public hearings was published in the *Texas Register*.
- On December 1, 2006, a letter advertising the comment period and hearings was distributed to a list of 1,531 addresses which included the State's mayors, county judges, CDBG entitlement communities, and councils of government.
- On December 4, 2006, TDHCA posted a webpage at <http://www.tdhca.state.tx.us/cdbg/index.htm> to specifically advertise the hearings and consolidate all documents associated with the Action Plan.

DESCRIPTION OF THE STATE'S OVERALL PLAN FOR DISASTER RECOVERY

PROMOTING SOUND SHORT AND LONG-TERM RECOVERY PLANNING

The Governor's Division of Energy Management (GDEM) offers Disaster Recovery Courses and Workshops to educate local governments on the recovery process following a disaster. Other state agencies and volunteer groups are encouraged to participate in these courses focusing on a combined effort of valuable resources to be made available in

the aftermath of a disaster. During major disasters, representatives of state agencies and volunteer organizations work closely with GDEM staff to participate in the operation of Disaster Recovery Centers. In addition, GDEM has supported and has had significant involvement in the formation of long-term recovery committees. The frequency and magnitude of disasters in this state, necessitates the growing number of long-term recovery committees in order to address unmet needs.

PROMOTING LAND USE DECISIONS THAT REFLECT RESPONSIBLE FLOOD PLAIN MANAGEMENT AND REMOVAL OF REGULATORY BARRIERS TO RECONSTRUCTION

The State promotes wise land use decisions in several ways. It conducts National Flood Insurance Program inspections. Communities who are found to have improperly permitted development in the 100 year floodplain are subject to fines, suspensions, and ejection from the program. A surge marker project has been initiated, which will place warning markers in those areas along the coast which are subject to storm surge flooding. Texas participates in the federally funded mitigation grant programs and is thus in a position to offer incentive grants to communities who wish to repair past mistakes and clear their floodplains. Mitigation funding is denied for some projects unless they are outside the 100 or 500 year floodplain. The State denies all mitigation funding to communities that have not identified the number of citizens and number of community facilities that are in the 100 year floodplain. State law prohibits a manufactured home retailer, broker, or salesperson from delivering a manufactured home for installation in the 100-year floodplain, as designated by FEMA, unless the consumer provides evidence that installation of the home in the floodplain will not violate certain requirements of state and federal law.

COORDINATING PLANNING REQUIREMENTS WITH OTHER STATE AND FEDERAL PROGRAMS AND ENTITIES

To encourage consistent flood plain development across Texas, the State runs an extensive education program for local officials. It runs dozens of classes a year, most of which emphasize the danger of allowing development in the floodplain or near Hazmat facilities/routes. These classes are provided free of charge and travel costs are covered.

PROMOTING HIGH QUALITY, DURABLE, ENERGY EFFICIENT, AND MOLD RESISTANT CONSTRUCTION METHODS

A requirement for construction related activities is that work on residential dwellings must meet the 2000 International Residential Code Chapter 11. For commercial and multifamily rental activities, the International Building Code of 2003 or local municipal code, whichever is more stringent, must be followed. Within this code, there is a section entitled the 2000 International Energy Conservation Code (IECC) which works to provide more energy efficient structures. Following these codes should result in the construction of high quality, durable, energy efficient, and mold resistant buildings.

PROMOTING THE MITIGATION OF FLOOD RISK

Under this Action Plan, housing units receiving funds must be elevated in accordance with FEMA advisory flood elevations or subsequent FEMA permanent maps. For the Rental Housing Stock Restoration Program, accessibility issues created by this elevation must be addressed. The Sabine Pass Dwelling Restoration Program specifically serves as a source of financing to elevate homes. Under that funding priority, persons with disabilities and the elderly can request up to \$15,000 to address the costs associated with accessibility issues caused by the increased elevation of the home.

PROMOTING ADEQUATE, FLOOD-RESISTANT HOUSING FOR ALL INCOME GROUPS THAT LIVED IN THE DISASTER IMPACTED AREAS

Approximately 71 percent of the Action Plan's funding allocation will go towards repair, rehabilitation, and reconstruction of owner occupied and rental units across the disaster impacted areas.

ADDRESSING THE NEEDS OF SPECIAL NEEDS POPULATIONS

Persons with disabilities face unique challenges in finding accessible and affordable housing in the disaster impacted area. The need is clearly described in *TDHCA's State Low Income Housing Plan, 2005-2009 State of Texas Consolidated Plan*, and *The Housing Needs of Texans with Disabilities* (published by TDHCA in April 2005). This Action Plan includes the following strategies that help provide assistance to persons with disabilities.

- Construction activities which result in a change of elevation must consider the accessibility needs of persons with disabilities.
- \$42 million of homeowner assistance is being targeted towards assisting persons with special needs.
- Under the Sabine Pass Restoration Program, a homeowner whose household includes a person with a disability or an elderly person may apply for an additional \$15,000 in assistance for accessibility related costs associated with elevating the dwelling.

TDHCA has found that directly involving program beneficiary representatives, community advocates, and potential applicants for funding in the process of crafting its policies and rules is extremely helpful. This process is often done through a "working group" format. The working groups provide an opportunity for staff to interact with various program stakeholders in a more informal environment than that provided by the formal public comment process. TDHCA will consult with a Disability Advisory Workgroup organized by TDHCA for guidance on how the NOFAs associated with this plan can be structured to effectively serve persons with disabilities.

USE OF ACTION PLAN FUNDING

ANTICIPATED ACCOMPLISHMENTS

Accomplishments resulting from this Action Plan will include restoration of housing units and critical public infrastructure damaged by Hurricane Rita and the provision of enhanced public services and community development efforts to meet increased demand from evacuees from Katrina. TDHCA anticipates that low to moderate income (LMI) individuals will be the primary beneficiaries of the program. Under HUD program guidelines, LMI beneficiaries are part of households that earn less than 80 percent of the area median family income.

NATIONAL OBJECTIVE

Under this Action Plan, all eligible activities must meet one of the three national objectives set out in the Housing and Community Development Act (address slum and blight, urgent need, primarily benefit LMI persons). Pursuant to explicit authority in the Department of Defense Appropriations Act, 2006 (Public Law 109-148, approved December 30, 2005), HUD is granting an overall benefit waiver that allows for up to 50 percent of the grant to assist activities under the urgent need or prevention or elimination of slums and blight national objectives, rather than the 30 percent allowed in the annual State CDBG program. The primary objective of Title I of the Housing and Community Development Act and of the funding program of each grantee is the "development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income." The statute goes on to set the standard of performance for this primary objective at 70 percent of the aggregate of the funds used for support of activities producing benefit to low and moderate income

persons. Since extensive damage to community development and housing affected those with varying incomes, and income-producing jobs are often lost for a period of time following a disaster, HUD is waiving the 70 percent overall benefit requirement, leaving a 50 percent requirement, to give grantees even greater flexibility to carry out recovery activities within the confines of the CDBG program national objectives.

GENERAL USE OF FUNDS AND FUNDING ALLOCATION

TDHCA will use the following funding allocation to prioritize the use of funds based on the highest observed needs.

Activity	Primary National Objective Addressed	Additional Objectives Established in the <i>Federal Register</i> *	Available Funding for Activity	% Plan Funding
Homeowner Assistance Program (HAP)	LMI Benefit	n/a	\$210,371,273	49.08%
Sabine Pass Restoration Program (SPRP)	LMI Benefit	n/a	\$12,000,000	2.80%
Rental Housing Stock Restoration Program	LMI Benefit	i, iii	\$82,866,984	19.33%
City of Houston and Harris County Public Service and Community Development Program	TBD	n/a	\$60,000,000	14.00%
Restoration of Critical Infrastructure Program	Urgent Need	i	\$42,000,000	9.80%
State Administration Funds	Not Applicable	n/a	\$21,433,592	5.00%
Total Plan Funding			\$428,671,849	

*As established by the “Action Plan additional elements” requirement included in the *Federal Register* notice, the activity addresses one or more of the identified additional elements below described.

“b. The grantee’s overall plan for disaster recovery will also include:

(i) An explanation of how the State will give priority to the rehabilitation and reconstruction of the affordable rental housing stock including public and other HUD-assisted housing, a description of the activities the State plans to undertake with grant funds under this priority, and a description of the unique challenges that individuals with disabilities face in finding accessible and affordable housing;

(ii) An explanation of how the State will give priority to infrastructure development and rehabilitation, and a description of the infrastructure activities it plans to undertake with grant funds; and

(iii) An explanation of how the method of distribution or use of funds described in accordance with the applicable notices will result in the State meeting the requirement that at least 19.3311 percent of its allocation under this notice shall be used for repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas.”

OVERARCHING ACTIVITY ELIGIBILITY REQUIREMENTS

This Action Plan outlines the Department’s framework for allocating funding as guided by the requirements published in the *Federal Register* (Vol. 71, No. 209) on October 30, 2006. Unless otherwise stated in the *Federal Register*, statutory and regulatory provisions governing the CDBG program for states, specifically 24 CFR Part 570 Subpart I, apply to the use of these funds. All activities must be eligible CDBG activities according to 24 CFR Part 570 Subpart I, except as waived by HUD, must meet requirements for disaster recovery funding cited throughout this document, and must meet at least one of the three national CDBG objectives.

As noted in the *Federal Register*, under the law “...the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency or the Army Corps of Engineers. Further, none of the funds made available under this heading may be used by a State or locality as a matching requirement, share, or contribution for any other Federal program.” This will be a key requirement that will be monitored by TDHCA throughout every stage of the program.

ELIGIBLE ACTIVITIES UNDER THE SPECIFIC FUNDING PRIORITIES

As stated in the Federal Register, *“the appropriations statute requires funds be used only for disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of hurricanes in the Gulf of Mexico in 2005. The statute directs that each grantee will describe in its Action Plan for Disaster Recovery how the use of the grant funds gives priority to infrastructure development and rehabilitation and the rehabilitation and reconstruction of the affordable rental housing stock including public and other HUD-assisted housing.”* The following specific funding categories reflect the State of Texas prioritization of need based on its review of available damage assessments and discussions with local leaders and citizens.

Homeowner Assistance Program (HAP)

The Governor has identified destruction done to an individual’s home as one of the most persistent and difficult issues to address in the aftermath of Hurricane Rita. To deal with this real need of Texans who have no other place to turn, the largest share of the funding priorities is provided for the HAP. Funding in the amount of approximately \$210 million shall be made available in the form of a grant to homeowners of LMI income whose homes were damaged by Hurricane Rita. Assistance provided in a special flood hazard area (defined as zone “A”, “V”, “M”, and “E” series (44 CFR 64.3) as shown on a current Flood Insurance Rate Map (FIRM), as amended by Letters of Map Amendment (LOMA) or Letters of Map Revision (LOMR)) will be in the form of a deferred forgivable loan. All other assistance will be in the form of a grant. This assistance will be made available for both homeowners who had insurance in an insufficient amount to cover the storm damage as well as those who did not have homeowner’s insurance. All grant amounts will be based on damage to the dwelling, plus the funds necessary for the rehabilitation or reconstruction and/or new construction to meet applicable local, state and/or federal building codes, and funds necessary for mitigation efforts to reduce the impact of future storms, but do not include its contents or other personal property.

Part of this funding priority, \$42 million (20 percent of the Homeowner Assistance Program funds) will be targeted specifically for persons with special needs. According to HUD, in addition to the homeless, special needs populations include persons with disabilities, the elderly, persons with alcohol and/or drug addictions, persons with HIV/AIDS, and public housing residents. The targeted amount is based on the percentage of elderly households in the 22 counties eligible for this funding. If after 120 days, there are not sufficient applications received for the special needs target, then these funds will be rolled back into the general HAP funding priority.

Eligibility Requirements

The program is limited to homeowners that satisfy all of the following conditions.

- The owner’s household must be eligible under the applicable low and moderate income limits (80% percent of the area median family income for the household size).
- The owner must be able to prove ownership and that he or she occupied the property as a primary residence at the time of Hurricane Rita (September 24, 2005). Rental dwellings and second homes are not eligible.
- The owner’s home is located in one of the 22 counties eligible for the FEMA IAP as established by FEMA-1606-DR-TX (Angelina, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, and Walker).
- The owner must be able to clearly establish that their residence was physically damaged by Hurricane Rita. Examples of acceptable types of documentation include, but are not limited to, evidence:
 - from FEMA that the homeowner applied for FEMA IAP and the home was categorized by FEMA as having been “destroyed” or having suffered “major” damage. Homeowners who were approved by FEMA for \$5,200 or more in FEMA home repair assistance (a component of the Individual Assistance Program) will fall into one of these categories, or

- from their homeowner's insurance provider that a claim for damage specifically related to Hurricane Rita was filed and that the provider determined that such damage existed.

A description of alternate methods that a program management firm will use to establish that the damage was related to Hurricane Rita, as well as a description of all other policies and procedures relating to the HAP and SPRP, will be clearly described in the Procedures Manual produced by the PM.

Requirements for Receiving Assistance

To receive assistance under this funding activity, the owner must:

- sign a release so that financial assistance received through any public or private source can be verified by the Program;
- agree to verification of ownership status and the amount of disaster-related damage to the home;
- swear to the accuracy and completeness of all information provided to the Program under penalty of law;
- agree to sign a legally binding agreement that commits the owner to the following terms and conditions:
 - the home will meet the legal requirements of local, state and/or federal building codes, including but not limited to the State Uniform Construction Code, comply with local zoning, and comply with the latest available FEMA guidance for base flood elevations, unless exceptions are granted by TDHCA where the action is designed or modified to minimize harm to or within a floodplain;
 - assure the home will remain owner-occupied for at least three years after the repairs/replacement or a new purchase;
 - maintain flood insurance if the home is located in a floodplain;
 - subrogate claims for unpaid and outstanding insurance claims back to the Program; and
 - ensure mitigation efforts to reduce the impact of future storms are undertaken, if mitigation can be done to make a home safer and are cost beneficial to undertake, and if the homeowner's eligible assistance allows funds for such activities.

Maximum Benefit

The Maximum Benefit for rehabilitation under the HAP is \$40,000 per household for costs associated with the rehabilitation of a qualified home. This limit is based on the average cost to repair homes with major or severe damage for a subset of FEMA registrants with real property damage who applied to the Small Business Administration for a loan to assist with repairing their property. The rehabilitation of a manufactured housing unit is not an eligible activity. If a feasibility analysis indicates that rehabilitation costs would exceed the \$40,000 applicable limit, replacement reconstruction will be determined to be the preferable method of assistance. The homeowner will be notified and the options available will be explained.

The maximum benefit for the HAP for reconstruction, replacement, and/or new construction of a qualified home, including manufactured housing units, is based on Household size:

- 1 - 4 person Household: \$60,000
- 5 - 6 person Household: \$67,500
- 7 or more person Household: \$75,000

Benefit Calculation

Benefits will be calculated as follows, in accordance with the policies and procedures outlined in the Procedures Manual produced by the PM:

1. Estimate of Storm Damage Cost - The calculation of the benefit amount starts with the PM's estimate of the funds necessary for the rehabilitation or reconstruction and/or new construction to meet applicable local, state and/or

federal building codes, mitigate efforts to reduce the impact of future storms on the home, and/or to repair the storm damage to the home.

2. Storm Damage Cost Gap – To avoid duplication of benefits, the Estimate of Storm Damage Cost will be reduced by the following if such benefits were or will be paid to the household toward any of the activities included in the Estimate of Storm Damage Cost:
 - a. FEMA Grants which represent a duplication of benefits,
 - b. homeowner insurance proceeds (Unpaid and outstanding insurance claims must be subrogated back to the State),
 - c. National Flood Insurance Program proceeds, and
 - d. SBA Loans identified by SBA as a duplication of benefits.
3. Benefit Amount - The amount of the HAP grant or deferred forgivable loan is the lesser of the Storm Damage Cost Gap or the Maximum Benefit limitation outlined in previous section.

Funding GAP:

If the cost to fully repair the home exceeds that covered by the grant or loan, then the homeowner must provide evidence that they have the available funds or can obtain financing from an outside source to cover the funding gap. Working with faith based or nonprofit organizations that provide funding, volunteer service, or other forms of self help assistance is an eligible source of such financing. Distribution of Funding

Program Management Firm Request for Proposal (RFP)

A RFP for a program management firm to administer this funding priority throughout the eligible areas will be released upon HUD's approval of this Action Plan. TDHCA will organize a working group for guidance on how the RFP can be structured most effectively. This working group will include persons impacted by the storm and representatives from organizations working on case management and distribution of funds in the impacted areas.

The RFP will clearly establish all milestones and timelines required of the program management firm to ensure that the funds are distributed in an expeditious manner.

To insure effectiveness of operations as well as accounting and control oversight, the RFP respondent must:

- document their experience with administering such a program including evidence that they have previously developed and utilized effective standard operating procedures to validate eligibility, determine benefits procedure; work with contractors, and account for the distribution of funds; and
- establish that they have the available resources and existing administrative systems required to effectively manage the program.

The RFP will require the respondent to clearly describe specific efforts that ensure outreach efforts are conducted across the entire region. The respondent must demonstrate that they will be able to implement and maintain a communications process that will reach eligible homeowners to tell them how to apply for benefits. The application process should be customer friendly and include the use of, but not be limited to, 1-800 numbers and a "one-stop" web portal that allows for online application submission. Local assistance facilities shall be established in areas where the need is most concentrated. The respondents must describe the efforts that will be used to ensure that assistance is made available to assist lower income households and households with special needs.

The management firm shall be required to build upon the existing application intake and case management efforts of faith based, regional councils of government, and nonprofit organizations (Local Organizations). In designing its program, the management firm shall:

- determine how to best work with the existing case management and intake processes of Local Organizations;
- develop guidelines so that reasonable and well documented costs incurred by Local Organizations to prequalify, document, and counsel grant applicants are eligible program costs.

Therefore, respondents will be required to describe how they will utilize the current case management and intake systems of the Local Organizations already working in the targeted areas. It is expected the response to the RFP will include the process by which applications received by Councils of Governments for CDBG Disaster Recovery Program funding authorized by Public Law 109-148 will be given priority while still allowing the management firm to maintain oversight of the program.

Other Basic Application Guidelines

Applications shall be accepted on a first come, first served basis with a priority to both applications received for the CDBG Disaster Recovery Program funding authorized by Public Law 109-148, and/or applications received by faith based organizations for non-CDBG disaster assistance, as long as the applicant files are transferred by the faith based organizations to the PM no later than February 22, 2008 for processing. Priority applications will be processed until all funds are utilized. The process developed through the Procedures Manual produced by the PM shall ensure that all grant or loan applications are processed equitably, that the privacy of applicant information is maintained, and that an appeals process is in place that can effectively address applicant concerns.

Sabine Pass Restoration Program (SPRP)

While many communities in South East Texas were substantially impacted by Rita, the coastal community of Sabine Pass was nearly destroyed by the storm. To help address this need, funding in the amount of \$12 million shall be made available to homeowners whose homes were damaged by Hurricane Rita. Because all of Sabine Pass is located within a special flood hazard area, such assistance shall be in the form of a deferred forgivable loan unless the funds are being used to move out of the flood zone.

Funding Purpose

Funding from the SPRP will serve three purposes.

1. Home rehabilitation and reconstruction and/or new construction assistance will be made available for homeowners whose family income is up to 150 percent of the area median family income for the household size. Such assistance will be available to both homeowners who had insurance in an insufficient amount to cover the storm damage as well as those who did not have homeowner's insurance. The eligible loan amount shall be calculated in the same manner as the HAP assistance, and the Maximum Benefit limitations apply.
2. Homeowners may apply for additional assistance in an amount up to \$30,000 to help defray the costs of elevating rehabilitated or reconstructed homes in accordance with FEMA advisory flood elevations or subsequent FEMA permanent maps. Unlike the home rehabilitation and reconstruction assistance described above, homeowner income restrictions do not apply for the home elevation assistance. These funds may also be used for other special construction improvements required to increase a home's ability to survive another significant storm event. A homeowner whose household includes a person with a disability or an elderly person may apply for an additional \$15,000 in assistance for additional accessibility related costs associated with elevating the dwelling. While the home elevation assistance may serve all incomes, it is estimated that almost half of the owner occupied households in Sabine Pass are of LMI income.
3. After 180 days if uncommitted funding remains available, in instances where a homeowner whose family income is up to 150 percent of the area median family income has experienced damage in an amount equal to or greater than 50 percent of the market value of the home at the time of the storm based on an appraisal and wants to move out

of the flood plain, a grant will be made available to purchase a new home elsewhere in the Rita Go Zone. The eligible grant amount shall be calculated in the same manner as the HAP assistance, but shall not exceed \$40,000.

Eligibility

The Hurricane Rita damaged home must be located in Census Tract 4824501160 which includes Sabine Pass (See Appendix D for a map of this tract.). With the exception of the household income requirements described in the “Funding Purpose” section above, all eligibility requirements associated with the HAP funding priority apply.

Requirements for Receiving Assistance

All requirements for receiving assistance associated with the HAP funding priority apply. Additionally, for the homeowner to receive assistance, the dwelling must be elevated to comply with the requirements of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128) which applies to the use of funds provided under the CDBG Disaster Recovery Program.”

Distribution of Funding

The same program management firm used for the HAP funding priority will be used to manage the SPRP.

Assistance applications shall be accepted on a first come, first serve basis until all of the SPRP funds are utilized. In the event that the SPRP is fully utilized, if HAP funding is still available, it may be used to address storm damage to households in Census Tract 4824501160. Note that homeowners in Census Tract 4824501160 may only apply through the SPRP for Action Plan assistance.

Rental Housing Stock Restoration Program

Funding in the amount of \$82,866,984 shall be made available in the form of a grant or loan to the owners of affordable rental properties that were damaged by Hurricane Rita. This funding amount complies with statutory provisions as interpreted by HUD in the Federal Register that requires that “...not less than \$1.0 billion of the \$5.2 billion appropriation less \$27.0 million in administrative set-asides (which computes to 19.3311 percent of any State’s allocation) shall be used for repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD- assisted housing) in the impacted areas. Therefore, HUD is requiring that not less than 19.3311 percent of each State’s grant be used for these activities.” As further described in the *Federal Register*, Texas shall set aside \$82.9 million which will be used for activities related to the “repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas.” This federally mandated set aside meets the national objective of serving low and moderate income persons because of the income restrictions placed on the occupancy of the affordable housing units which are being restored.

This funding will be allocated through a two tiered approach.

1. For 180 days, the NOFA will be open to multifamily properties with a minimum of 16 units. Applications for assistance for such properties shall be submitted to TDHCA for review and possible approval as described in the NOFA.
2. TDHCA will consider the \$20,000,000 set-aside available for rental rehabilitation under the under the Houston Neighborhoods to Standard Program toward meeting this \$82,866,984 set-aside. If after 180 days, at least \$62,866,984 under the Rental Housing Stock Restoration have not been committed, then properties of fewer than 16 units, including single family units, may apply for assistance. This program will be administered through a program management firm that has been selected for the HAP.

Eligibility Requirements

The applicant must satisfy the following basic eligibility requirements:

- The applicant must be able to prove ownership of the property at the time of Hurricane Rita (September 24, 2005).
- The applicant must establish that this property was physically damaged by Hurricane Rita through the provision of evidence that an insurance claim related to Hurricane Rita was filed and subsequently reviewed by their insurance provider.

Requirements for Receiving Assistance

In exchange for accepting funding assistance, each applicant must agree to the following requirements.

- At a minimum, the number of affordable housing units available on September 24, 2005 must be available when the construction has been completed.
- To assure that the assisted housing is as affordable as possible and is occupied by families with appropriate incomes, a land use restriction agreement must be recorded that establishes appropriate low to moderate rent and income limits for the period of years required by HUD regulations.
- All construction will be in accordance with the International Building Code (IBC) of 2003 or local municipal code, whichever is more stringent.
- Units that are being demolished and rebuilt shall be elevated in accordance with FEMA advisory flood elevations or subsequent FEMA permanent maps. In doing so, access needs for persons with disabilities must be met as required by State and Federal law.
- Maintenance of 100 percent insurance coverage on replacement values of the property for all hazard types will be required.

Benefit Calculation

The amount and terms of the loan or grant shall be based on underwriting criteria established in the NOFA. The assistance amount for the first tier of funds shall be determined through an intensive review of the application by the Department's Real Estate Analysis Division. Among other items, this review will specifically assess each application's stated operating proforma, cost estimates, and area rental market conditions to develop the appropriate amount of and structure for the assistance. If available, the assistance amount for the post 180 day program awards shall be determined through careful review of the application conducted by the program management company selected for the HAP.

Applicants are encouraged, but not required, to leverage other available resources to preserve affordable housing for low and very low income residents.

All application requests will be carefully scrutinized to ensure that the assistance does not duplicate any of benefits that the applicant may have received from other sources.

Distribution of Funding

TDHCA will issue a Notice of Funding Availability (NOFA) for the Rental Housing Stock Restoration assistance upon HUD's approval of this Action Plan. This NOFA will clearly establish the application acceptance period, threshold criteria, and selection criteria. In addition to other factors, the selection criteria will give a scoring priority to applications which:

- serve households at very low income levels;
- are constructed or will be rehabilitated in a manner that provides for low maintenance and energy efficiency; and
- help persons avoid or transition from homelessness.

City of Houston and Harris County Public Service and Community Development Program

Many Texas communities openly welcomed persons displaced by Hurricane Katrina. The initial and ongoing impact was felt most strongly in the City of Houston and Harris County. With a reported peak of more than 400,000 displaced persons in the Harris County area, the area has worked tirelessly to provide ongoing assistance with food, shelter, clothing, emergency services, law enforcement, community services, education, and medical care. According to information provided by a Gallup poll commissioned by the Texas Health and Human Services Commission, Houston remains the transitional home to nearly half of the 251,000 people evacuated from Louisiana and elsewhere along the Gulf Coast as a result of Hurricane Katrina.

It is proposed under the Action Plan, that funding in the amount of \$60 million be included in this funding priority for public service, community development, and housing activities in areas (police districts, schools, apartment complexes, neighborhoods) comprised predominantly of low to moderate income households and where it can be clearly demonstrated that the population within the area has seen a dramatic population increase due to an influx of Katrina evacuees.

The State has identified this as an important part of disaster recovery. However, the funds available for this effort does not meet all the need demonstrated in the request from the City of Houston and Harris County. It is expected that the City of Houston and Harris County will need to cooperatively determine where it is most appropriate to direct the dedicated resources under the requirements identified in the HUD release.

An amendment to this plan will follow detailing how the funding priorities will meet HUD's NOFA's requirements, the delivery mechanism, the distribution of funds and other HUD requirements. The amendment to this Action Plan may designate the City of Houston and/or Harris County as the subdivision of the State of Texas charged with administering

these funds as they have a direct relationship with HUD as participating jurisdictions. If that designation is not made, and/or approved, TDHCA, by and through its Governing Board, will negotiate with the parties to develop a cost-effective process for administration of these funds in the City of Houston and Harris County.

Restoration of Critical Infrastructure Program

While housing is the priority in this Action Plan, a number of significant infrastructure projects were identified as budget priorities. Approximately 10 percent of the available funding will be used for the restoration of critical infrastructure damaged by Rita. This \$42 million will be used solely for infrastructure projects where there is outstanding damage and no other sources of funding can be obtained. The Office of Rural Community Affairs (ORCA) will administer activities awarded under this program through a contract with TDHCA and approved by TDHCA's Governing Board.

Reserved Funds from the Restoration of Critical Infrastructure Program

As significant need for the following projects has already been clearly established, funding for these purposes has been accordingly reserved.

Memorial Hermann Baptist Orange Hospital

Funding in an amount of up to \$6 million will be provided in the form of a grant to the Memorial Hermann Baptist Orange Hospital. In order to provide emergency medical care in Orange County, the Memorial Hermann Baptist Orange Hospital, the only emergency care hospital in the county, should be restored and hurricane damage repaired. The hospital also serves the entire Southeast Texas region, which consists of eight counties covering over 6,800 square miles.

The hospital was severely affected by Hurricane Rita. The storm's powerful winds removed rooftops and destroyed HVAC, power and water supply systems, buildings and windows, and caused water damage throughout various hospital facilities. Exposure to wind and water caused costly medical and surgical equipment to rust, corrode, or mold. As a result, in addition to repairing structural damages, the hospital must replace an extensive amount of expensive, high tech equipment, restock supplies, and recreate a sterile environment. After reimbursement from insurance and FEMA assistance, it is estimated that the hospital suffered over \$20 million in uninsured damages from the storm. The Action Plan has established a budget priority of \$6 million to assist with necessary remaining repairs.

Many citizens in this region are poor and medically underserved. In Orange County, the 2005 unemployment rate stood at 8%¹, while the median household income was \$37,174². This compares to Texas statewide figures for the same period of 5.3% unemployment and median household income of \$42,139. Approximately 15.2% of individuals in Orange County were living below the poverty level. According to the U.S. Department of Health and Human Services, Hardin, Jefferson, and Orange Counties are the only places in Texas with both Medically Underserved Area (MUA) and Medically Underserved Population (MUP) designations.

Bridge City Water Infrastructure

Funding in an amount of up to \$3.8 million will be provided in the form of a grant to Bridge City for water, sanitary sewer, and drainage structure work. The funds will assist in the rebuilding and replacement of Ferry Drive, a major street in Bridge City connecting two main arteries (Highway 87 and FM 1442).

Hardin County Drainage Restoration Project

¹ U.S. Bureau of Labor Statistics

² U.S. Census 2000

Funding in an amount up to \$10 million will be provided in the form of a grant to Hardin County. This funding will assist the County with removal of vast amounts of fallen timber and debris that resulted from Hurricane Rita. Currently, this debris is blocking ditches and drainage areas, especially in the Pine Island Bayou area, causing flooding with each subsequent storm event.

Unreserved Funds from the Restoration of Critical Infrastructure Program

The remaining unreserved funds from the Restoration of Critical Infrastructure Program will be provided in the form of grants in an amount up to \$5 million to help communities address unmet, critical infrastructure needs directly related to damage from Hurricane Rita. Following a not more than 120-day application period, ORCA will evaluate the requests based on priorities included in a NOFA announcing the availability of these funds.

Eligible activities include:

- flood and drainage projects (including flood buyouts in which the property is converted into open, undeveloped land);
- repair of roads and bridges, utilities, water control facilities, water supply facilities, waste water facilities, buildings and equipment, hospitals and other medical facilities; and
- debris removal.

Ineligible activities include:

- reimbursement of entities for disaster related funding that has been previously expended.
- assistance for storm shelters that were not damaged by Hurricane Rita.

Evidence must be provided that all other options of financing have been explored and no other options are available.

Projects must be identified, approved, and underway within 12 months of approval of the Action Plan by HUD. Work must be substantially underway and drawing funds within 18 months. The TDHCA governing Board may reallocate any funds to HAP that have not been committed within 12 months or may deobligate committed funds where substantial progress has not been achieved within 18 months.

Eligibility Requirements

Infrastructure work must occur in one of the counties eligible for FEMA's Public Assistance Program for Hurricane Rita. These counties include Angelina, Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Walker, Cherokee, Gregg, Harrison, Houston, Marion, Panola, and Rusk.

Eligible applicants for these funds are local and county governments. Requests regarding utility reconstruction are limited to municipally owned entities

Adherences to Program Regulations

The following procedures will be followed to comply with HUD's CDBG program regulations for this project. The State or its designee will:

- review the procurement process utilized in the hiring of an architect and/or engineer for the project and will verify and document that the person/firm hired is not listed on the federal Excluded Parties List;
- review the professional services contract to ensure that it includes all required supplemental clauses and conditions;
- review the project's bid package and ensure inclusion of all required supplemental clauses and conditions, Federal Labor Standards Provisions, current wage decision(s), etc.;
- attend the pre-bid conference and the bid opening as necessary;
- obtain a copy of the bid tabulation and verify and document the eligibility of the contractor selected via the federal Excluded Parties List system;

- attend the pre-construction conference to ensure that all required Equal Opportunity forms and certifications are signed by the prime contractor and all subcontractors, as well as to provide these contractors with a list of eligible workers obtained from the State’s Department of Labor. This list will help the contractor in meeting the Section 3 hiring goals requirement. At this conference, the Labor Standards requirements of weekly payrolls and daily inspections reports will be explained;
- review submitted payrolls, new and existing employee forms, payroll deduction authorization forms, etc., as well as conduct employee interviews and make site visits to the project when necessary. During the review of the payrolls, it will be verified that Davis-Bacon and Contract Work Hours and Safety Standards Act (CWHSSA) requirements are being met and will ensure payment of restitution where needed;
- review and process Request for Payment forms and supporting documentation, and will review change orders for reasonableness of cost and consistency with the project’s scope of work; and
- prepare a Final Wage Compliance Report, accept clear liens, make final payments and issue Acceptance of Work Certificates.

State Administration Funds

The state may use up to 5 percent of the funding, approximately \$21.1 million for the Departments’ administrative expenses, including contract administration, compliance monitoring, and the provision of technical assistance.

GENERAL APPLICATION PROCESS

PREVIOUS PERFORMANCE

Each applicant’s or respondents performance with previous state and federal funding assistance will be thoroughly reviewed to ensure they are in compliance with the program requirements. Specifically, they must be in compliance with both of the following sections of the Texas Administrative Code (TAC).

- As more thoroughly described in 10 TAC Sec. 1.3, "Delinquent Audits and Other Issues," applicants are ineligible to apply for Plan funds if they have any audits past due to TDHCA and are ineligible to receive funds until any unresolved TDHCA audit findings or questioned or disallowed costs are resolved.
- As more thoroughly described in 10 TAC Sec. 255.1(h)(6), an applicant that has one year’s delinquent audit may apply for disaster funding but must satisfy all outstanding ORCA audits prior to award. A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation.

REGULATORY REQUIREMENTS

Contract awardees (applicants to NOFAs or respondents to an RFP that are awarded funds) must comply with relevant fair housing, nondiscrimination, labor standards, and environmental requirements applicable to the CDBG Program.

FAIR HOUSING

Each contract awardee will be required to take steps to affirmatively further fair housing. TDHCA will require that special emphasis be placed on those communities who both geographically and categorically consist of individuals who comprise “protected classes” under the Civil Rights Act of 1964 and the Fair Housing Act of 1978 as amended. The efforts will be recorded in an “Affirmative Marketing Plan” which will be part of the application or RFP response submitted to the Department. At all times, “Housing Choice” will be an emphasis of program implementation and outreach will be conducted in the predominate language of the region where funds will be spent.

NONDISCRIMINATION

Each contract awardee will be required to adhere to the Department's established policies which ensure that no person be excluded, denied benefits or subjected to discrimination on the basis race, color, national origin, religion, sex, familial status, and/or physical and mental handicap under any program funded in whole or in part by Federal CDBG funds. Contract awardees will be required to document compliance with all nondiscrimination laws, executive orders, and regulations.

LABOR STANDARDS

Where required by CDBG regulations, the contract awardee will be required to oversee compliance with Davis-Bacon Labor Standards and related laws and regulations. Regulations require all laborers and mechanics employed by contractors or subcontractors on CDBG funded or CDBG assisted public works construction contracts in excess of \$2,000, or residential construction or rehabilitation projects involving eight or more units be paid wages no less than those prescribed by the Department of Labor and in accordance with Davis Bacon Related Acts.

ENVIRONMENTAL

Specific instructions concerning environmental requirements at 24 CFR Part 58 will be made available to all contract awardees. Some projects will be exempt from the environmental assessment process, but all contract awardees will be required to submit the Request for Release of Funds and Certification (HUD Form 7015.15) for those activities requiring environmental review. Funds will not be released for expenditure until TDHCA is satisfied that the appropriate environmental review has been conducted if required. Contract awardees will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR Part 55.

PREVENTING FRAUD, ABUSE OF FUNDS, AND DUPLICATION OF BENEFITS

TDHCA will monitor all contract expenditures for quality assurance and to prevent, detect, and eliminate fraud, waste and abuse as mandated by Executive Order RP 36, signed July 12, 2004, by the Governor. TDHCA will particularly emphasize mitigation of fraud, abuse and mismanagement related to accounting, procurement, and accountability which may also be investigated by the State Auditor's Office. TDHCA will monitor the compliance of applicants, and HUD will monitor the Department's compliance with this requirement.

MONITORING STANDARDS AND PROCEDURES

TDHCA's monitoring procedures have been modified to specifically address the requirements of the CDBG Disaster Recovery Program. These procedures will ensure that all contracts funded under HUD disaster recovery allocation are carried out in accordance with federal and state laws, rules, regulations, and the requirements. The procedures will ensure that there are no duplication of benefits that have otherwise been covered by FEMA, private insurance, or any other federal assistance or any other funding source. Expenditures will be disallowed if the use of the funds is not an eligible CDBG activity, does not address disaster-related needs directly related to Hurricane Katrina or Hurricane Rita, or does not meet at least one of the three national CDBG objectives. In such case, contract awardees shall be required to refund the amount of the grant that was disallowed. To ensure that funds are spent promptly, contracts will be terminated if identified timetables/milestones are not met.

QUALITY ASSURANCE

Continual monitoring efforts will provide quality assurance. These efforts will be guided by both CDBG Program requirements and responsibilities to low income Texans. In determining appropriate monitoring of the Action Plan, TDHCA will consider prior CDBG grant administration, audit findings, as well as factors such as complexity of the project. TDHCA will determine the areas to be monitored, the number of monitoring visits, and their frequency. Any entity administering CDBG Disaster Recovery funding will be monitored not less than once during the contract period. The monitoring will address program compliance with contract provisions, including national objectives, financial management, and the requirements of 24 CFR Part 58 (“Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities”) or 50 (“Protection and Enforcement of Environmental Quality.”) as applicable. TDHCA will utilize the checklists specifically developed for monitoring activities under this Action Plan.

These monitoring efforts include:

- identifying and tracking program and project activities to ensure the activities address needs caused by Hurricane Katrina or Hurricane Rita;
- identifying technical assistance needs of applicants;
- ensuring timely expenditure of CDBG funds;
- documenting compliance with program rules;
- preventing fraud and abuse;
- identifying innovative tools and techniques that help satisfy established goals; and
- ensuring quality workmanship in CDBG funded projects

INVESTIGATION

Section 321.022(a) of the Texas Government Code requires that if the administrative head of a department or entity that is subject to audit by the State Auditor has reasonable cause to believe that money received from the State by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the State Auditor. TDHCA is responsible for referring suspected fraudulent activities to the State Auditor’s office as soon as is administratively feasible. The State Auditor reports directly to the Texas Legislature.

TDHCA has also established a strong working relationship with HUD’s Office of Inspector General during administration of the first supplemental CDBG Disaster Recovery funding. TDHCA anticipates that this partnership will be carried through to the Department’s administration of the second supplemental funding round.

INDEPENDENT INTERNAL AUDIT

TDHCA and contract awardee are subject to the Single Audit Act. A “Single Audit” encompasses the review of compliance with program requirements and the proper expenditure of funds by an independent Certified Public Accountant or by the State Auditors Office. Reports from the State Auditors Office will be sent to the Office of the Governor, the Legislative Audit Committee and to the TDHCA Governing Board.

Internal Audit staff at TDHCA perform independent internal audits of programs and can perform such audits on these programs and Applicants. The TDHCA Internal Auditor reports directly to TDHCA’s Governing Board.

INCREASING CAPACITY OF IMPLEMENTATION AND COMPLIANCE

TDHCA staff will be provided with all training necessary to ensure that activities funded under this Action Plan are correctly administered. As contracts are made, necessary efforts to increase the capacity of local governments, subrecipients, applicants, contractors and any other entity responsible for administering funding under this Action Plan will be implemented to ensure they have the specific skills needed to successfully oversee the activity.

CONTRACT ADMINISTRATION

AMENDMENTS

Action Plan Amendments

The following events would require a substantial amendment to the Action Plan:

- addition or deletion of any allowable activity described in the Action Plan;
- change in the allowable beneficiaries; or
- a change of more than five percent in the funding allocation between the activity categories described in the Action Plan (unless sufficient Applications are not received to meet the targeted percentages for each activity).

If a substantial amendment to the Action Plan is needed, then reasonable notice will be given to citizens and units of general local government to comment on the proposed changes in accordance with state law.

Contract Amendments

TDHCA will direct contract awardees to carefully plan projects that meet the stated requirements and to specify activities, associated costs, milestones/delivery dates, and proposed accomplishments and beneficiaries in order to reduce the need for amending contracts. Contract amendments that vary more than 10 percent in budget categories or project deliverables must be approved by the TDHCA Governing Board.

TDHCA will follow an established, consistent process for amendments. Contract awardees shall contact TDHCA prior to requesting an amendment or contract modification that affects the budget, activities, beneficiaries or timeframe for accomplishing the work. Should a proposed amendment result in the need for modification of this Action Plan, the State will follow the process required by HUD for this disaster recovery funding.

Substantial amendments may be cause to review the entire Application or Response submitted to determine if the project is meeting its stated goals and timelines.

CERTIFICATIONS REQUIRED

The use of the disaster funding is contingent upon certain requirements, and both TDHCA and contract awardees will be expected to certify that these requirements will be met or carried out. Applicable federal and state laws, rules and regulations are listed in the NOFA or RFP, and the designee authorized by the contract awardee will be required to certify in writing that the grant will be carried out in accordance with the stated requirements.

Anti-Displacement and Relocation

Each contract awardee must certify that they will minimize displacement of persons or entities and assist any persons or entities displaced in accordance with the Uniform Anti-Displacement and Relocation Act and local policy.

HUD Action Plan Certification

TDHCA has provided a fully executed copy of HUD Required Certifications for State Governments, Waiver and Alternative Requirement as in Appendix E.

CITIZEN COMPLAINTS

Each contract awardee must have adopted procedures for responding to citizens' complaints as is required under the Texas Small Cities Nonentitlement CDBG Program or Entitlement programs. Citizens must be provided with the address, phone numbers, and times for submitting such complaints or grievances. Contract awardee must provide a written response to every citizen complaint within 15 working days of the complaint, if practicable.

DOCUMENTATION AND REPORTING

Each contract awardee must submit or maintain documentation that fully supports the application submitted to TDHCA. Requirements relating to such documentation will be established in the Application Guide. Any recipient of public funds in Texas is subject to Texas Government Code Chapter 552, commonly called the Public Information Act. Records retention policies must meet federal Office of Management and Budget guidelines and/or other applicable state or local statute with regards to record retention.

Each contract awardee must report on a quarterly basis (on a form provided by TDHCA) on the status of the activities undertaken and the funds drawn. Quarterly status reports will be due to TDHCA within 15 calendar days following the end of the quarter. TDHCA will then report to HUD using the online Disaster Recovery Grant Reporting system.

More frequent reports may be required if the contract awardee has missed milestones/or has not met substantial elements of the Application.

MATCH REQUIREMENT

The provisions at 42 USC 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap State administration expenditures and require a dollar for dollar match of State funds for administrative costs exceeding \$100,000.

PROGRAM INCOME

Any program income earned as a result of activities funded under this grant will be subject to 24 CFR 570.489(e), as waived by H.U.D., which defines program income and provides when such income must be paid to the state.

TIMEFRAME FOR COMPLETION

Availability of funds provisions in 31 USC 1551-1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the Appropriations Act for these grants directs that these funds be available until expended unless, in accordance with 31 USC 1555, TDHCA determine that the purposes for which the appropriation has been made have been carried out and no disbursement has been made against the appropriation for two consecutive fiscal years. In such case, TDHCA shall close out the grant prior to expenditure of all funds. All grants will be in the form of a contract between the Applicant and TDHCA that adheres to the federal time limitation.