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R A C I S M

March 2014

The Governor's Office of Storm Recovery
ATTN: Public Comments
Church Street Station, P. O. Box 3325
New York, NY 10008-33225

To: The Governor's Office of Storm Recovery:

RE: Comments on the State of New York Action Plan Amendment Number 6 to the Action Plan for Community Development Block Grant Disaster Recovery

ERASE Racism, a New York State Not-For-Profit organization, provides this letter pursuant to the solicitation of public comments on the State of New York Action Plan Amendment Number 6 to the Action Plan for Community Development Block Grant Disaster Recovery (Amendment 6).

ERASE Racism offers these comments and insights as an organization that has been fighting for racial justice, especially for fair housing and education equity, for thirteen years. It has utilized tools, such as demographic research, policy analysis and public education to identify and address inequities in opportunity and outcome affecting African Americans and Latinos, primarily in Nassau and Suffolk Counties. We submit these comments to assist New York State (the State) in ensuring that Amendment 6 meets the State's civil rights obligations and the requirements of the United States Department of Housing and Urban Development (HUD) Notice 5696-N-06 (HUD Notice) issued to implement the second disaster recovery fund allocation and related plans and applicable federal statutes.

ERASE Racism has submitted previous correspondence concerning The State's 2013 Action Plans and actions related to Superstorm Sandy disaster relief funds. These include ERASE Racism's April 12, 2013 written comments to New York State Homes and Community Renewal (NYSHCR) on the initial State of New York Action Plan for CDBG-DR; April 15, 2013 supplemental written comments to HUD with a copy to NYSHCR; July 8, 2013 written comments to Commissioner/CEO Darryl C. Towns, NYSHCR following up on our June 21, 2013 in-person meeting with Commissioner Towns and selected staff. These communications have articulated the critical need for The State to:

- Ensure equal opportunities for everyone regarding access to Sandy relief, with special emphasis on reaching low and moderate income households and African American and Hispanic households; and,

- Ensure that the State and all relevant municipalities meet their obligations to affirmatively further fair housing (AFFH), and not miss the opportunity afforded by these Community Development Block Grant - Disaster Recovery Funds (CDBG-DR) to preserve and, in fact, enlarge the rental market for low and moderate income families in ways that do not further exacerbate the existing severe racial segregation of housing in Nassau and Suffolk Counties. The HUD-required Analysis of Impediments to Fair Housing Choice (AI) is one document that should contain such an analysis. However, there are serious deficiencies in both the Nassau and Suffolk County AIs and in their efforts to ensure that the subrecipients in each County also affirmatively further fair housing, leaving the Counties out of compliance with their fair housing obligations.

Unfortunately, it is very difficult to evaluate the activities undertaken to date with the CDBG-DR funds because neither this draft amendment nor other reporting by The State adequately specify: (a) the outreach that has been undertaken to reach all of the affected populations, including low- and moderate-income residents (homeowners and renters), and to reach victims who are African American or Hispanic; (b) the participation levels of each group; and (c) who has been awarded assistance and who has been rejected. All of these statistics should be broken down by race and ethnicity as Hispanic or non-Hispanic, by income, and by renter and homeowner. ERASE Racism sought to obtain this information by submitting a FOIL request on December 19, 2013, to the New York State Division of Housing and Community Renewal (NYSDHCR), followed by a FOIL Appeal on February 7, 2014. On February 26, 2014, we received three reports, none of which related to renters. Further the reports were missing some demographic data and did not have any data about applicant rejections. For the most part, NYSDHCR reported that it did not provide the requested information because it was unavailable, unattainable, or irretrievable. Responses received from officials that the “information is not yet compiled” should not be commonplace. Such recordkeeping and response are unacceptable and fail to comport with the requirements of transparency outlined in the Action Plan (the Plan).

According to the 2010 United States Census, when measuring black to white racial segregation, Long Island is the tenth most racially segregated metropolitan area in the country, and when measuring Hispanic to white segregation, Long Island ranks fifteenth. This segregation results from a variety of actions by a variety of sectors, such as the real estate industry, banking, individual residents, etc. It also results from the policies and practices of municipal government bodies, such as discriminatory land use and housing planning, policies and practices. This continuing housing discrimination and racial segregation have severely limited housing choice for African American and Hispanic home owners and renters.

Based on Amendment 6, one can only conclude that extremely little, if any, effort has been undertaken to ensure that The State is complying with its duty to affirmatively further fair housing as a recipient of CDBG-DR funds, including the CDBG-DR funds that have already been received and the funds that it seeks to receive upon submission of Amendment 6. As a result of this inaction, the current Sandy Relief effort will not further fair housing, particularly for African Americans and Hispanics and thus, it will shortchange minority residents. Programs using public funds must ensure that they do not create or perpetuate unfair racial disparities.

As per previous HUD mandates, upon receipt of the CDBG-DR funding,¹

The grantee certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within its jurisdiction and take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard (see 24 CFR 570.487(b)(2) and 570.601(a)(2)). In addition, the grantee certifies that agreements with subrecipients will meet all civil rights related requirements pursuant to 24 CFR 570.503(b)(5).²

While the April 2013 Action Plan sets forth vague commitments to comply with these AFFH obligations, little, if any, action has been taken to do so. Moreover, Amendment 6 makes no mention of these fair housing obligations and how the new programs set forth in the Amendment will be administered in a manner that furthers fair housing.

The requirement to further fair housing is directly related to the requirement to meet the needs of the most vulnerable low and moderate income (LMI) residents. The Plan indicates that it will spend 51% of its total allocation on this target group. It also states that approximately 82% of rental units with major to severe damage were occupied by low and moderate income households. The New York Rising Rental Buildings Recovery Program includes the Multi-Family/Affordable Housing Fund, and states that it “will support both the preservation of governmentally-assisted affordable housing developments that were damaged by hurricane Irene, Tropical Storm Lee or Superstorm Sandy, as well as the development of new affordable housing to address the rental housing shortage created by the storms and help revitalize hard hit communities.” Moreover, communities that accept CDBG-DR funding must agree to “cooperate to undertake, or assist in undertaking, community renewal and lower-income

¹ Department of Housing and Urban Development, Docket No. FR-5696-N-01, Federal Register, vol. 78, no. 43, March 5, 2013, at VI(A) (“Grantees must pay special attention to neighborhoods with high percentages of damaged homes and provide a demographic analysis (*e.g.*, race, ethnicity, disability, age, tenure, income, home value, structure type) in those neighborhoods to identify any special needs that will need to be addressed.”).

² 78 FR 14347, § E (42)(a).

housing assistance activities.”³ Further, communities receiving CDBG-DR funds have explicitly agreed to “take all actions necessary to assure compliance with . . . the Housing and Community Development Act of 1974, . . . the Civil Rights Act of 1964, the Fair Housing Act, and affirmatively furthering fair housing.”⁴

Unfortunately, the Plan lacks the detail needed to substantively assess whether or not the housing programs, as proposed, will in fact meet the needs and obligations as stated above. For example, although Amendment 6 attempts to calculate the unmet rental housing needs of those affected by the storms as specified in the applicable HUD Notice (Federal Register, Volume 78, Number 222, November 18, 2013, Docket Number FR-5696-N-06), as stated in Amendment 6, calculating the estimate according to HUD instructions produces an unusually low estimate of unmet need. There are likely more than 12,365 damaged occupied rental units at issue. A significantly higher number of displaced renters were unaccounted for because this calculation excludes low income renters who earn more than \$30,000 per year. The Plan correctly states that this HUD restriction limits the accounting of unmet rental housing need to *deeply affordable housing*. This estimate also excludes a vast majority of low income renters who earn over \$30,000. As discussed in the Plan, a renter earning even \$58,000 annually would be considered “low income” by Nassau County standards.

While the HUD guidelines were followed, a determination of the total loss of affordable rental housing should be completed and plans to assist these additional residents need to be articulated. Such an assessment would provide a clearer picture of the existing LMI unmet rental housing needs on Long Island. The State should explore the possibility of requesting a waiver to the income cap.⁵

In addition to not meeting the needs of renters, we believe Amendment 6 does not adequately ensure that African American and Hispanic homeowners are fairly served. Amendment 6 states that a tremendous number of moderate and middle income homeowners were impacted, 23,809 in Nassau and Suffolk County,

³ Id. at Paragraph G.

⁴ Id.

⁵ In the alternative, the State could apply for a waiver similar to that of the State of New Jersey as an exception to use of “uncapped” income limits as described in 78 FR 46999 at Title II (“The State of New Jersey plans to initially target disaster recovery funds to low- and moderate-income households and has engaged in targeted outreach to ensure these households, particularly in high cost areas, can receive recovery funding. To ensure that all eligible households that are low- and moderate-income have equal access to resources, the State requested a waiver to allow all of the nine most impacted counties within the State to use HUD’s ‘uncapped income limits’ to better reflect the population of low- and moderate-income households in those areas. . . . Under this exception, a number of CDBG entitlement grantees may use ‘uncapped’ income limits that reflect 80 percent of the actual median income for the area. Typically, average incomes (and thus the cost of living, including home values) in these entitlement grantees are significantly higher than in surrounding areas. By using uncapped income limits, grantees are better able to identify and assist those households considered to be low- to moderate-income for that particular area.”); see <http://www.hud.gov/offices/cpd/systems/census/lowmod/uncapped.cfm>.

the highest number of storm-impacted low and moderate income households in New York. The Amendment fails to specify how the State will ensure that African American and Hispanic homeowners are equally provided access to Sandy relief funds and services. This concern is heightened because some programs specify a first-come, first-served access policy and outreach efforts are not detailed in the Plan.

Based on these concerns, ERASE Racism puts forth the following recommendations to ensure the State's compliance with its fair housing obligation and equal treatment of residents of color:

- Analysis of Racial Impact: The administration of CDBG-DR and other disaster recovery funding should take into consideration an analysis of the impact of these programs by race and ethnicity, and their impact on segregation patterns in the region to adjust allocations and uses of the funding where disparities based on race would occur. For instance, careful consideration should be given to how the first come, first served basis of the programs impact low and moderate income African American and Hispanic residents, including non-English speakers.⁶ Special outreach or priority may be needed to ensure the program administration is not creating racial disparities.
- Incorporating Fair Housing Obligations: Fair housing concerns are not sufficiently addressed in Amendment 6, as the proposal fails to specifically state how fair housing will be affirmatively furthered, especially in communities that have excluded low and moderate income people of color through the use of restrictive zoning. Fair housing language should be included to detail a comprehensive plan for compliance with fair housing laws and assure the availability of affordable housing for vulnerable populations throughout Long Island.
- Monitoring AFFH Compliance of Subrecipients: The State needs to assess whether and how the counties, municipalities and Public Housing Authority recipients of the CDBG-DR and other disaster recovery funding are complying with their AFFH obligations, including, but not limited to, the preparation of Analyses of Impediments to Fair Housing Choice that comply with HUD standards and take into consideration the changed circumstances and particular vulnerabilities of protected classes created by

⁶ See Department of Housing and Urban Development, Docket No. FR-5696-N-06, Federal Register, vol. 78, no. 222, Nov. 18, 2013, at Title VI.

Superstorm Sandy, Hurricane Irene, and Tropical Storm Lee. The Governor's Office of Storm Recovery should provide uniform and expansive oversight of local municipalities in Nassau and Suffolk Counties that are in receipt of CDBG-DR funds to ensure that rules are properly interpreted in the use of disaster relief funds in accordance with fair housing laws and affordable housing regulations. Such action is necessary as Nassau County mentioned in one section of the AI that there is strong opposition to affordable housing due to its perceived negative impact. However, there is no provision stated within the Action Plan to appropriately address such resistance.

- Tracking and Oversight: The State should provide oversight and supervision, including robust data collection and analysis, to ensure compliance with CDBG-DR requirements. One matter of great concern is the response received to the FOIL request from ERASE Racism that stated in part, “[t]he Rental Assistance Program and Multi-Family Assistance Program have yet to compile this information.”⁷ The fact that the State could not provide documents regarding the eligibility of applicants for these programs is alarming. A mechanism must be set forth immediately to address this huge oversight, particularly as it pertains to collecting data on renters who are seeking disaster relief.

Amendment 6 on page 1 states in part that “[t]he State’s initial Action Plan focused primarily on addressing the immediate housing and business assistance needs in the communities affected by recent storms...” However, Amendment 6 does not indicate whether vulnerable populations were adequately served, nor did the inadequate response to our FOIL request. In addition, the 2013 Action Plan on page 4 guaranteed that disaster relief funds would be distributed according to a stated standard of transparency in stating, “[t]o make certain that funds are spent appropriately and responsibly, the State will put rigorous spending accountability systems in place and employ an independent auditing firm.” Based on available data it is not clear whether such oversight is in place. Further, ERASE Racism remains concerned as to the apparent lack of

⁷ See ERASE Racism, Request for Public Records Related to Superstorm Sandy Recovery, December 19, 2013 (response to request number 4 for “[a]ll documents provided to applicants for each housing assistance program who are deemed eligible for such program.”); see also Frank Gannon, FOIL Request, email dated Feb. 26, 2014 at 6:10 PM.

participant tracking and analysis. Such tracking, reporting, and analysis would demonstrate the true impact of funding.⁸

Demographic information on program participants should be collected for all programs, especially in relation to relocation efforts of African Americans and Hispanics in light of the pervasive and continuous history of racial segregation in Nassau and Suffolk counties. There is brief mention of a study conducted of demographics in Amendment 6, but the report only pays minimal attention to this underlying concern by simply citing to the appendix. Appendix A, as cited, is lacking in specificity and should be more detailed to include information on affordable housing acquisition in neighborhoods that lack meaningful diversity.

- Meeting the Needs of Low-Income Renters to Further Fair Housing: While most residents on Long Island are white homeowners, the majority of African American and Hispanic residents are renters – 86.56% of white Long Islanders own their own homes, while 33.89% of African Americans and 33.75% of Hispanics live in rentals. African Americans and Hispanics are more likely than white Long Island residents to rent rather than own their own homes. Accordingly, special attention is needed to address the affordable housing needs of renters and the fair housing implications when addressing the needs of the minority population. For instance, the implementation and administration of Multi-Family/Affordable Housing Fund (the Fund) and other disaster recovery programs should take into consideration fair housing concerns, including the need for rental housing for lower-income families of color, and how the programs can enhance more integrated housing patterns. Doing so requires ensuring the Fund has adequate resources for new construction, in addition to preservation, and setting criteria for the creation of new affordable rental housing that will produce such housing in higher-opportunity, predominantly white areas in impacted communities and surrounding neighborhoods.

Rehabilitation and construction of new and existing affordable rental housing units should be at the core of all efforts to spend 51% of the total CDBG-DR allocation on low and moderate income persons, as indicated by HUD standards. As stated in Amendment 6, approximately 82% of renters with major to severe damage are estimated to be within low or moderate income. Accordingly, a proportionate share of relief funds should be distributed to the low and moderate income residents most in need, including the 12,059 owner and renter-occupied homes below 30% of the Area Median Income (“AMI”) that sustained major or severe

⁸ See 78 FR 14333, § VI (“The Action Plan must contain: . . . A description of the connection between identified unmet needs and the allocation of CDBG-DR resources by the grantee.”)

damage, and the 9,810 households within the 30 – 50% AMI range that were devastated by the storms. Doing so requires remedying the undercounting of the rental housing need. Indeed, the \$30,000 annual salary threshold described in Amendment 6 is admittedly too low to capture a clear picture of the housing funding needs of low and moderate income residents. Amendment 6 must include an assessment of how LMI residents with incomes of \$30,000 and above will be assisted with their housing needs.

Further, a strategic plan to build supplemental affordable rental housing should be included in any subsequent amendments to accommodate the sizeable subset of Long Island low and moderate income residents. Long Island African American and Hispanic low and moderate income residents are often excluded from neighborhoods with quality public schools in higher opportunity neighborhoods.

Finally, under existing and any supplemental programs, new construction of affordable housing funded by CDBG-DR funds must further fair housing. Steps should be taken through the Action Plan to promote affordable rental housing in areas with low minority populations to help further school integration measures and address race relations on a community level.

- Preventing the Loss of Affordable Housing: Amendment 6 has yet to devise a contingency plan to prevent the loss of LMI rental units. The State of New York requires a contingency plan to be in place to preserve deeply affordable rental housing. The funds allocated to the New York Rental Buildings Recovery Program are insufficient. Additional funds should be set aside to adequately address the expanding affordable housing needs on Long Island. The high cost of real estate, coupled with the high need for low and moderate income housing, far exceeds the \$200,000,000 allotment for the recovery and creation of affordable rental units. The Plan and its amendments have yet to report on the progress made in terms of affordable rental availability in relation to the first \$100,000,000 distribution under the New York Rising Rental Buildings Recovery Program.
- Addressing Illegal and Poor Quality Rental Units: Special efforts are needed to meet the disaster recovery issue and housing needs of those in illegal, poor quality rental units. A plan for strategic outreach should be set forth to address existing Long Island rental housing and/or rental units that may fall below code standards. Measures should be taken to bring illegal rentals into compliance to permit regulated apartments in single family and small multi-family units owned by individual landlords and homeowners as is prevalent on Long Island. Tenants in illegal apartments have been

identified as high-need residents who are effectively precluded from storm disaster relief.⁹ Affordable housing in the form of illegal apartments has been a persistent issue in New York, and, in particular, on Long Island.¹⁰ To address overcrowding and illegal housing conditions, New York should adopt programs that take into account the realistic illegal housing problem that is pervasive on Long Island due to the lack of affordable housing.¹¹ Funds should specifically be set aside to sufficiently address storm affected residents housed in illegal apartments.

- Ensuring Effective Outreach: The State must abide by the HUD mandate that grantees are to “conduct outreach to community groups, including those that serve the minority populations, [and] persons with limited English proficiency”¹² Such outreach should provide information and assistance in a multi-lingual format to adequately address Long Island’s diverse population. Special effort should be made to reach minority Long Island residents who are not homeowners, but were nonetheless affected by Sandy and the other storms at issue. Further, efforts should be focused to increase awareness of available assistance among African American and Hispanic low and moderate income program candidates. Finally, outreach to qualified affordable housing landlord recipients of the New York Rising program must be increased since the Action Plan acknowledges that only 10% of pre-registrants are owners of rental properties.
- Monitoring Public Housing Authority Compliance: Further reporting must provide a detailed assessment of the specific public housing improvements addressed through the repair and recovery efforts expended pursuant to the Plan. Specifically, each Public Housing Authority identified in Freeport, Long Beach, and Hempstead should be individually assessed as to how expenditures were used to stabilize public housing units and fortify its residents. In addition, the amendment should outline the mitigation needs that remain within the designated public housing authorities and other HUD-assisted properties as indicated, and provide a clear plan for rehabilitation. Moreover, any funding for public housing should take into

⁹ See Laura Kusisto, Sandy Forced Poor to Leave Illegal Units, Wall Street Journal, Dec. 26, 2013.

¹⁰ See Vivian S. Toy, Unraveling the Issue of Illegal Apartments, New York Times, June 8, 2003; see also Long Island Community Foundation, Long Island’s Rental Housing Crisis, September 2013 (“Regional planners estimate there may be as many as 50,000 illegal apartments on Long Island. . . . And a number of towns, including Huntington, North Hempstead, Islip and Brookhaven, have passed accessory apartment laws that essentially allow owners to register and legalize apartments that otherwise would be illegal.”).

¹¹ See Mireya Navarro, Looser Rules on Illegal Housing Sought, New York Times, Oct. 13, 2013.

¹² Id.

account whether the public housing authority is meeting its AFFH obligations.

In sum, ERASE Racism believes there are serious deficiencies in critical areas of Amendment 6, including but not limited to: compliance with the mandate to affirmatively further fair housing and monitor subrecipients for compliance; transparent accounting and recordkeeping of outreach efforts to residents that may be eligible for participation in CDBG-DR funded programs and participation levels of residents, particularly with regard to LMI individuals and African American and Hispanic residents; demographic assessments; and rental housing program parameters. We believe this disaster recovery effort provides a critical opportunity to help meet the State's fair housing obligations and enhance equal opportunity in New York. We hope to continue to work with you to meet those needs.

Sincerely yours,

A handwritten signature in cursive script that reads "Elaine Gross".

V. Elaine Gross
President