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Constituent Services, Division of Disaster Recovery and Mitigation
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To Whom It May Concern:

Fair Share Housing Center (FSHC) and our allies greatly welcome the opportunity to discuss the development of the NJ-DCA Hurricane Ida CDBG-DR Action Plan. In reviewing the draft plan, we are pleased to see that many of the lessons learned from the Superstorm Sandy response have been addressed and that many aspects of community-based consultation and participation, and attention to the redevelopment of affordable rental inventory, are being supported. These include, but are not limited to, the Smart Move: New Housing Development program and the phased-in income eligibility provision of the HARP program.

In the interest of brevity, we are not specifically addressing many of the admirable components of the draft, but focus on elements which we believe contribute to both appropriate allocation of funding among the various programs and geographies as well as procedural and substantive resident and community-based participation. We also recognize that those directly impacted must have transparent and impactful roles in the design and implementation of this multifaceted and dynamic response to this devastating storm.

The signatories hereto have the following observations and concerns regarding the identified sections of the draft Action Plan:

2.2.3 Public Housing and Affordable Housing

2.2.3.1 Multifamily Assisted Housing and 2.2.3.2 Public Housing Authorities Damaged

p. 22-23: The draft Action Plan appears to assume that all needs for public and assisted housing are taken care of and that: “there is no recovery gap anticipated for these properties” outlined in Section 2.3.3.1. Similarly, the draft states that: “there is no known gap in funding for recovery” for public housing authorities outlined in Section 2.2.3.2.

It is certainly admirable and a credit to the Murphy Administration and the Legislature that they took action to appropriate \$25 million outside of CDBG-DR funds to address these needs; FSHC has also worked in some cases with municipalities to allocate municipal housing trust funds for these needs.

However, is it unclear from the language how these claims have been determined. For the sake of transparency and clarity, the State should detail that methodology and, more generally, list all impacted projects and how the unmet need is being met for each. It is hard to understand from the data provided which projects are included, though it does appear that there may be omissions—for example, there are no LIHTC units listed in Union County as damaged, when the Oakwood Plaza project, probably the single largest affordable housing development damaged by Ida, is located there.

In providing this detailed information, the State should also describe for each project how the plans include 1-for-1 renovation or replacement of affordable housing at the same income levels and bedroom sizes as before Ida, and resiliency measures to protect against future storms. Based on our experience in Superstorm Sandy, initial reported damage in many cases undershot what was needed for resilient rebuilding, and we want to truly ensure that this very critical need of preserving and making more resilient the most affordable housing damaged in Ida is met.

3.1.3 Complaints and Appeals

p. 112: The draft is clear that complaints will be accepted and addressed by the State and its subrecipients, and in appropriate cases, forwarded to other State departments or offices. Lacking in the description of the process is any recognition that complaints will be made public. Independent public access to, and analysis of, all complaints is necessary for residents and advocates to identify and address with the State patterns of complaints that identify elements of the plan implementation that merit attention and review.

p. 113: The provision on appeals states that: “DCA or its subrecipients will include a written appeals process within each set of program guidelines. The appeals processes will include, but are not limited to, the following:

- The process for submitting, tracking, and resolving a written appeal to the organization administering the program (DCA or its subrecipient), to include whether an appeals committee will be established to review and/or rule on appeals.”

We believe that the appeals process must be uniform across all programs, mandatory for all program administrations, provide access by the party taking the appeal to their entire program file, include the ability to access relevant program materials, and provide access to an impartial third-party authority and resort to a court of competent jurisdiction.

Appeals that are decided internally by the subject of the appeal (the State or subrecipient) are subject to the appearance of bias and erode confidence in the administration of the program.

3.2 Public Website

p. 114: The provision states in part that: “The website will also provide an up-to-date listing and link to critical documents, including, but not limited to, the following:

- All executed contracts that will be paid with CDBG-DR funds as defined in 2 CFR 200.22 (including subrecipients’ contracts)”

Considering our collective experience after Superstorm Sandy, and the fact that an untold number of relevant RFPs and RFQs will be issued by subrecipients, this description of contract/procurement materials is inadequate.

Critical documents include all RFPs and RFQs issued by any NJ State entity or subrecipient for programs and contracts to be funded in any part by CDBG-DR funding, the responses to such requests, and the report of the requestor describing the scoring /evaluation of the competing responses and the reasons for accepting the winning response. There could be a floor for such information, such as that it applies only to requests that result in contracts/awards of in excess of \$0.5 mil.

The section further states that: “At a minimum, the website will be reviewed and updated quarterly.”

In the best-case scenario, the webpage should be updated in real time. At worst, it should be updated at least monthly. In the case of RFPs and RFQs, updates should be made within 5 days of the posting of such requests—or there should be a prominent and direct notice on the website that this information regarding requests can be accessed through a direct link. The public must have easy access to all proposals for granting contracts using DR funds.

3.5.1 Elevation Standards

p. 116: The provision on elevation standards states that: “All structures, defined at 44 CFR 59.1, designed principally for residential use and located in the 1% annual chance (or 100-year) floodplain, which receive assistance for new construction, reconstruction, rehabilitation of substantial damage, or rehabilitation that results in substantial improvement, as defined at 24 CFR 55.2(b)(10), must be elevated with the lowest floor, including the basement, at least 2 feet above the 1% annual chance floodplain elevation (base flood elevation). Mixed-use structures with no dwelling units and no residents below 2 feet above base flood elevation must be elevated or floodproofed in accordance with FEMA floodproofing standards at 44 CFR 60.3(c)(3)(ii) or a successor standard up to at least 2 feet above base flood elevation.”

This standard does not appear to comply with the new standard for freeboard above base flood elevation proposed by the New Jersey Department of Environmental Protection of 3 feet that is currently being developed. Regardless of whether the NJDEP base flood elevation rule is changed, which involves a wide range of issues that go beyond the scope of this Action Plan, the 3-foot standard is much more in line with current projections for flooding and should be reflected in this draft plan as an appropriate standard when CDBG-DR funding is being utilized. This will increase costs and additional funds should be allocated to offset this increased cost.

The provision also states that: “In addition, where other State agencies, including the Department of Environmental Protection, impose more stringent elevation requirements (e.g., 3 feet of freeboard), DCA will adhere to the higher standard.”

If and when the NJDEP rule goes into effect, it should be made clear that there will be an amendment to this draft plan to reflect the 3-foot standard.

3.5.2 Flood Insurance Requirements

p. 117: The draft plan states: To ensure that adequate recovery resources are available to LMI homeowners who reside in a floodplain but who are unlikely to be able to afford flood insurance, homeowners may receive CDBG- DR assistance if:

- The homeowner had flood insurance at the time of the qualifying disaster and still has unmet recovery needs, or
- The household earns less than 120% of AMI or the national median and has unmet recovery needs.

However, we are concerned that Ida's impact does not overlap cleanly with communities that were already required to participate in the National Flood Insurance Program (NFIP). There are many Ida-impacted individuals who did not have flood insurance at the time because they do not reside in a FEMA-declared 100-year floodplain; as such, their communities did not participate in the program. In addition, the private insurance market has expanded since Superstorm Sandy, without, it appears, significant consideration on the federal level about impacted individuals who held private insurance (i.e., not through the National Flood Insurance Program) would then not qualify for disaster aid. Individuals who did not hold NFIP insurance but opt into the program now as part of receiving a grant, should have the opportunity to qualify for CDBG-DR assistance.

3.5.4 Contractor Standards

p. 118-119: §3 requirements provide an important opportunity for economic empowerment of LMI communities impacted by Ida. We hope that DCA will commit to concrete actions to drive compliance by both direct contractors and subrecipients. This should include working with local organizations whose members /residents are eligible for §3 supported employment and monitoring compliance.

p. 119: This provision provides in part that "all work performed, and contractors will be required to provide a warranty period for all work performed ", that will be set out in detail in the respective policies and procedures. Given the devastating fraud and abuse suffered

by many homeowners after Superstorm Sandy, we look forward to stringent and effective controls to be set out therein.

We applaud the promise that: “The processes for homeowners to submit appeals for rehabilitation work, as well as complaints such as contractor fraud, poor quality work, and associated issues, will be detailed within each respective set of program guidelines.”

Are there reasons why a uniform, standardized appeal process from contractor malfeasance or mis-feasance cannot govern all disaster recovery work and include appeal to a third party independent decision maker?

3.5.5 Preparedness, Mitigation, and Resiliency

p. 122: The draft states that: “DCA is prepared to initiate efforts to develop a statewide Housing Mitigation Strategy, which is a risk assessment that would determine which areas of the State are most impacted by repetitive flooding and where those areas overlap with LMI communities.”

We support the efforts to develop a statewide housing mitigation strategy and believe that proactive mitigation is the best way to ensure resiliency against future disasters. We would suggest providing a more specific timeline or accountability standard to ensure this critical element of the draft is able to move forward in a transparent, expedient manner.

3.5.7 Duplication of Benefits

p. 124: The draft provides that: “To comply with Section 312, DCA shall ensure that each program and activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met.”

In fulfillment of this commitment, DCA and subrecipients should agree to bear the cost of repayment of any DOB that is the result of error by the DCA or subrecipient, including the failure of either to exercise due diligence in this regard.

While there have multiple efforts on the federal level to address duplication of benefits issues substantively, they have not been sufficient. It is our understanding that if the DCA applies for a waiver, SBA loans will not be considered a duplication of benefits in instances

where people applied for, but did not accept, those loans and then went on to accept grant funds. While insufficient, we ask the DCA to apply for this or any waiver(s) that would proactively address duplication of benefits issues.

4.3.2 CDBG-DR Program Allocation

p. 128: The draft states that: “At this time, the State has not allocated funding to address large multifamily rental housing (properties with more than seven units) or additional economic revitalization needs because those needs are being addressed with other State and federal funds. Additional information on funding allocated for economic revitalization and multifamily housing is included in the Leveraging Funds section below. The State will continue to monitor multifamily affordable rental housing and economic revitalization needs and will amend this Action Plan in the future if warranted.”

Multifamily rental housing with greater than 7 units makes up a significant component of the affordable housing landscape in New Jersey. As noted above in section 2.2.3.1, public and assisted housing impacted by Ida, which predominantly occurs in greater than 7-unit buildings, is particularly critical for rebuilding. We repeat our request for a deeper analysis of those needs mentioned above, and if there are additional needs those should be addressed as the highest priority for rental housing funding. In the alternative, DCA could reserve a portion of the rental housing funds for a period to ensure that any needs that arise are met. Fair Share Housing Center would welcome the opportunity to participate in any review process(es) in coordination with DCA.

4.4.1 Housing

4.4.1.1 Capital Improvement and Assistance Program

p. 129: The draft states that: “the State of New Jersey approved a supplemental appropriation for fiscal year 2022 to provide \$25 million to the New Jersey Housing and Mortgage Finance Agency for its Capital Improvement and Assistance Program. The loans support the rehabilitation of eligible affordable housing properties—including multifamily affordable rental properties—that have been impacted by natural disasters, with priority given to those that suffered damage as a result of Tropical Storm Ida.

To date, the program has approved at least seven mortgage financing commitments from two multifamily affordable rental developers in Passaic and Union counties. At this time, the State anticipates that the combination of this funding with insurance will meet the HUD and affordable rental multi-family unmet recovery needs.”

We repeat our comments above about both the laudable action of providing this \$25 million, and the need to provide a deeper analysis to ensure all needs are met.

Homeowner Assistance and Recovery Program

4.8.3 How the Program Will Promote Housing for Vulnerable Populations

p. 134: We support this program and encourage DCA, in its work with community-based organizations, to carefully craft the outreach materials so that they inform residents of the nature of available assistance and the basic eligibility requirements to encourage persons unfamiliar with DR or other programs to investigate their eligibility and seek assistance. (We believe that the materials distributed in the wake of Superstorm Sandy, including those circulated in response to the voluntary consent agreement (VCA), were cryptic and did not properly alert residents to their possible eligibility.)

We believe homeowners may need assistance immediately, as many families are waiting for funds from grants, insurance, FEMA, or the Blue Acres program.

4.8.6 Program Eligibility

p. 137: In the wake of Superstorm Sandy, and many subsequent disasters, owners and occupants of manufactured homes suffered inadequate and egregious damage assessments and many ultimately received totally inadequate assistance to repair or replace their biggest economic asset.

In “provid[ing] the awards necessary to repair, reconstruct, acquire, or replace the damaged property per program guidelines”, in the case of residents of Ida damaged manufactured homes, DCA must provide damage assessment inspectors specifically trained in construction of and evaluation of damage to manufactured homes, which are susceptible to becoming totally uninhabitable and dangerous to occupants because of the structural design, elements including migration of mold, and other deterioration dissimilar

to that of traditional masonry or stick construction, and must modify the eligibility criteria accordingly.

4.8.8 Program Maximum Assistance

p. 138: This provision should recognize that materials and labor costs vary dramatically across the State and, to the extent reasonable, incorporate such variations in its “consistent program construction and award calculation standards”, rather than a single standard. This includes potential adjustments needed due to inflation or increased costs.

4.8.10 Program Method of Distribution Description/Overview

p. 139: Thousands of Superstorm Sandy survivors, as the direct result of the State or subrecipient awarding funds, had funding that was later reclaimed under the rubric of duplication of benefits (DOB). The draft provides that: “DCA will enter into grant agreements with approved applicants directly.”

Consistent with and pursuant to the commitment in § 3.5.8, (p. 124) that “DCA shall ensure that each program and activity provides assistance to a person or entity only to the extent that the person or entity has a disaster recovery need that has not been fully met,” there must be a DOB review prior to signing of these contracts and it should contain a provision that the State will indemnify the homeowner for any errors that might otherwise be charged against the owner.

4.8.13 Program Affordability Period

p. 142-143: The minimum affordability periods listed in Table 31 range from 5-15 years depending on the amount of homeownership assistance per unit. For homebuyers that receive over \$40,000 per unit, the minimum period of affordability should be increased to 30 years to better address the significant affordable housing shortage and the fact that lower-income New Jerseyans are more likely to experience long-lasting effects from disasters. The 30-year affordability restriction is also consistent with New Jersey’s Uniform Housing Affordability Controls (UHAC) standards.

Neighborhood Landlord Program

4.8.34 Program Description

p. 153: We support the Neighborhood Landlord program and DCA's commitment to providing zero-interest forgivable loans to owners of small rental properties, which will help to preserve rental housing across our State. We also strongly support the provision that: "Assistance also may be provided to build new or restore rental housing that will become affordable rental housing within storm-impacted counties." There is a significant shortage of affordable housing and we cannot afford to lose any more affordable units; we saw in the wake of Superstorm Sandy that owners of small rental properties were not incentivized to preserve affordable housing and instead converted many buildings to market-rate to help recoup expenses. It is critical that owners of rental housing maintain existing homes as affordable and are incentivized to convert additional units to affordable housing where possible.

However, following Superstorm Sandy, similar programs to provide aid to landlords did not receive the participation or uptake that was originally anticipated. We suggest a collective revisiting of both the Neighborhood Landlord Program and the Tenant-Based Rental Assistance program after a period of 6 months. If the Tenant-Based Rental Assistance funding is being expended more rapidly while the Neighborhood Landlord Program is not receiving significant participation after that timeframe, we suggest that the State consider how effective the program is and whether it should be modified or funding should be reallocated to support tenants directly.

We support increased housing inventory, which the Neighborhood Landlord Program will hopefully help to facilitate, and have every hope that the program will be successful, but the State should consider whether funding should be moved to direct tenant assistance after a stated period of time to ensure funds are able to be spent where it is needed most.

4.8.36 How the Program Will Promote Housing for Vulnerable Populations

p. 154: The draft states that the Neighborhood Landlord Program will promote housing for vulnerable populations through "utilization of accessibility standards and supporting code measures to support renters living with disabilities" and that "the program prioritizes units that were included in the State's accessible unit housing inventory through the New Jersey Housing Resource Center or equivalent process that will be defined in the program

guidelines.” Our experience has been that the Housing Resource Center does not have comprehensive information on accessibility. We would advocate for an alternative process to ensure that accessibility standards are built into all program-funded units.

4.8.37 Program Affordability Period (if applicable)

p. 155: The affordability period for new construction as part of the Neighborhood Landlord Program, outlined in Table 33, should be raised to 30 years to better address the significant affordable housing shortage and the fact that lower-income New Jerseyans are more likely to experience long-lasting effects from disasters. The 30-year affordability restriction is also consistent with New Jersey’s Uniform Housing Affordability Controls (UHAC) standards.

4.8.43 Program Estimated Begin and End Dates

p. 158: The draft states: “The State will continue to monitor landlords through the completion of their affordability period, which may extend beyond the life of the grant agreement with HUD.” To ensure that landlords are meeting their obligations to provide affordable housing through the end of the affordability period, there should be clear enforcement provisions outlined in this draft that detail how monitoring will occur and what penalties will be exacted against landlords who are out of compliance.

Tenant-Based Rental Assistance

4.8.47 Program Description

p. 159: We strongly applaud DCA for including tenant-based rental assistance as a component of this draft action plan. Funding that goes directly to survivors of storms is the quickest, most effective way to help impacted individuals begin to rebuild their lives and homes and mitigates against adverse outcomes such as long-term financial instability and homelessness.

We understand that the HUD allocation notice only represents 60% of the assessed damage from the storm. However, we would advocate for additional clarity from the State on how it plans to accommodate that shortfall. We encourage the State to identify additional opportunities for direct rental assistance wherever possible. This could include

potentially reallocating funds from the Neighborhood Landlord Program, as referenced in 4.8.34, should small landlords not participate in the program to the degree anticipated—and as the State experienced following Superstorm Sandy.

Housing Counseling and Legal Services

4.8.60 How the Program Will Promote Housing for Vulnerable Populations

p. 163: Legal Services of New Jersey, Volunteer Lawyers for Justice, and Bar Associations, and individual attorneys and advocates have, in the past decade, provided invaluable assistance to persons recovering from disasters. While we do not provide such assistance, we suggest that it would be of assistance to all if DCA were willing to consult with those most likely to provide such assistance to provide online trainings that can be recorded for easy subsequent access on the details of the relevant disaster recovery programs.

Resilient Communities Program

4.8.68 Program Description

p. 167: We support the visionary concept behind this program. It is also our experience that those living in communities often have perspectives, knowledge, and capacity to contribute to the success of major projects in their communities. Our review of the draft has not disclosed any provision elsewhere for community or resident participation in project selection and design. We hope that DCA will consider crafting and implementing such a component to engage the target communities early and throughout the design and implementation.

4.8.78 Program Competitive Application Overview

p. 170: One of the factors being considered by DCA in evaluating applications is “How effective the proposed project is in protecting the public, including members of protected classes, HUD-defined vulnerable populations, and historically underserved communities, from the risks in each of the respective impacted communities.” We would suggest DCA more explicitly tie-in affordability and affordable housing by evaluating projects/applications based on whether they provide infrastructure that helps to preserve or support creating affordable housing, and that be a very significant component of funding

decisions instead of just one point in a long list. This funding will be extremely attractive to municipalities and can offer a significant opportunity to promote housing affordability across New Jersey.

Conclusion

We, the undersigned, appreciate the opportunity to submit comments in response to the NJ-DCA Hurricane Ida CDBG-DR Action Plan draft. We agree with the assessment in this plan that additional funding is needed—between \$160–\$180 million—to provide for a full and fair recovery for Ida survivors. The State has historic budget levels and multiple federal funding sources at this time, from remaining COVID-19 relief funds to IIJA, and now IRA funds. We encourage the State to allocate the funds needed. We applaud the State of New Jersey and the Department of Community Affairs for this draft as a thoughtful initial response to Tropical Storm Ida recovery and would welcome the opportunity to discuss any of the above comments further to further improve the strategy for recovery.

Sincerely,

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