

January 22, 2025

Carrie Pagnucco
Chief, Housing and Civil Enforcement Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Re: Referral of Texas General Land Office for Enforcement
HUD Case Nos. 06-21-1483-6/8/9

Dear Ms. Pagnucco:

Following the conclusion of an investigation by the U.S. Department of Housing and Urban Development's Office of Fair Housing and Equal Opportunity ("HUD") into the Texas General Land Office's ("GLO") administration of HUD funding that began in 2021 and for which a previous referral to the U.S. Department of Justice Civil Rights Division ("DOJ") was rejected in 2023, HUD now refers this case back to DOJ without having resolved the deficiency previously identified by Assistant Attorney General Kristen Clarke, namely HUD's failure to reach a definitive conclusion with respect to the alleged violation of the Fair Housing Act. The GLO welcomes this opportunity to discuss the above-captioned matter and explain why DOJ should once again reject HUD's referral.

This case represents yet another example of regulatory whiplash following a change in presidential administration. After the passage of the Bipartisan Budget Act of 2018, HUD allocated \$4,297,189,000 to the State of Texas as Community Development Block Grant mitigation ("CDBG-MIT") funds in the Federal Register. 84 Fed. Reg. 45,838 (2019). At the time, HUD communicated that the funds could not be awarded to local communities simply based on damage from Hurricane Harvey or other disaster events that qualified the communities to be potentially eligible for the funds. HUD explained that CDBG-MIT funds are aimed at funding projects that promote resilience against future disasters, and unlike disaster relief funds, are not aimed at remedying damage caused by previous disasters.

GLO, the Texas agency tasked with distributing the mitigation funds, worked hand in hand with the Trump Administration's HUD to develop a process for deciding how to allocate the mitigation funds. HUD thoroughly vetted GLO's *State of Texas CDBG Mitigation Action Plan: Building Stronger for a Resilient Future* and issued

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its written approval on March 31, 2020. In issuing its approval, HUD verified that the contents of GLO's Action Plan complied with the requirements of federal law.

At no point in the review and approval process did HUD suggest that GLO needed to make a direct allocation of the "vast majority" of the \$4.3 billion to one locality, Harris County/Houston,¹ as HUD is now suggesting it should have done.² If HUD had directed GLO to allocate a certain amount of the funds to Harris County or the City of Houston, GLO would certainly have complied. But, as HUD acknowledges, its Federal Register notice stated that only 50% of the funds were required to be spent in areas HUD determined to be "most impacted and distressed" by the disasters ("HUD MID areas"), which included Harris County among a total of 23 different counties.³ HUD never suggested that laws generally prohibiting racial and ethnic discrimination should be interpreted to somehow require greater than 50% of the funds to go to HUD MID areas, with the "vast majority" segregated for one locality in particular: Harris County/Houston.

The Action Plan called for approximately \$2.144 billion of the \$4.3 billion allocation to be distributed through the Hurricane Harvey State Mitigation Competition with the possibility of multiple rounds. Round 1 (approximately \$1 billion) of the competition is the subject of this investigation and referral. That competition round employed a publicly available race-neutral point system for evaluating the merits of proposed projects. In the past, direct allocations of funds to local government entities that had no plan for how to spend those funds, such as Harris County and the City of Houston, resulted in botched projects and funds going unspent. In the experience of GLO staff, the principal virtue of running a competition is that funds are allocated only upon the showing of a meritorious project and the capacity to execute on that project.

GLO began accepting applications in May 2020 and finalized awards for Round 1 of the competition by May 2021, just a few months after the Biden Administration took office. As GLO explained in its administrative appeal, racial and ethnic minorities made up approximately two-thirds of the expected beneficiaries of the projects that were funded, including more than one million Texans identifying as Hispanic and more than 216,000 Texans identifying as Black, Asian, Pacific Islander,

¹ The City of Houston is located mostly in Harris County.

² Supplemental Letter of Findings dated January 15, 2025, p.20 (claiming that Harris County and the City of Houston had "billions of dollars in unmet mitigation needs" and should have received the "vast majority of the \$4.3 Billion dollars allocated to GLO").

³ *Id.* at 23 (acknowledging "HUD's requirement set forth in the HUD Notice that *at least* 50% of the mitigation funds benefit HUD MID areas").

Native American, or another non-white race.⁴ 100% of the awards issued were for projects serving populations of beneficiaries that are majority low-to-moderate income.⁵ Nevertheless, politicians and activists concerned about the local interests of Harris County/Houston, which did not submit any successful project applications, alleged that GLO's race-neutral competition was somehow racially discriminatory.

The legal theory advanced by those politicians and activists—and HUD in the last week of the Biden Administration—is that GLO was somehow racist for conducting a race-neutral, merit-based competition to allocate just a fraction of the total \$4.3 billion of grant money. Outside of the competition, GLO awarded \$750 million in CDBG-MIT funds to Harris County to address that region's needs, but HUD disregards this as “marginal” and asserts that the only way GLO could have avoided a finding of racial discrimination was to give a direct allocation of the “vast majority” of the \$4.3 billion to Harris County/Houston.⁶

Apparently, HUD has no concern for the rights of racial minorities who do not live in Harris County/Houston. If GLO had scrapped the results of the competition and redistributed the grant money so that the “vast majority” of the \$4.3 billion went to Harris County/Houston,⁷ the more than one million racial or ethnic minorities who were expected to benefit from the projects funded through the competition would have been injured. HUD fails to recognize that the position it has taken in this matter over the last four years is itself racially discriminatory and contrary to its obligations under federal antidiscrimination laws. HUD's actions are a prime example of what President Trump described in a recent executive order as “illegal discrimination” in the federal government.⁸

HUD wrongly claims that GLO has no justifiable purpose for allocating 50% of the funds in the competition for State MID areas, which include counties surrounding the HUD MID areas that received a presidential disaster declaration for Hurricane Harvey but were excluded from HUD's designation of HUD MID areas.⁹ As HUD itself has recognized in its analysis of CDBG programs, rural communities face

⁴ GLO Request for Review dated April 1, 2022, at p.1; *see also* Deposition of GLO Representative Heather Lagrone, 4/25/2024, 349:11–21 (“We told you. A million and a half people benefited from this competition and two-thirds of them are black and Hispanic. . . . [T]hose communities did serve those protected classes and vulnerable populations . . .”).

⁵ GLO Request for Review dated April 1, 2022, at p.3.

⁶ Supplemental Letter of Findings dated January 15, 2025, at p.20.

⁷ *Id.*

⁸ <https://whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/>

⁹ Supplemental Letter of Findings dated January 15, 2025, at p.23.

unique challenges that require special attention.¹⁰ President Biden in Executive Orders 13,985 and 14,091 identified rural areas as underserved communities.¹¹ Members of Congress from both parties have recognized the historic disadvantages that rural communities faced in applying for CDBG funds.¹² GLO's desire to ensure rural access to a portion of the funds was a compelling, nondiscriminatory policy goal. And given the failure of Harris County/Houston to submit any successful applications for even the 50% of funds that were set aside for HUD MID areas, allocating 100% of the funds to HUD MID areas would not have changed the results of the competition for Harris County/Houston.

HUD also wrongly claims that GLO's Project Impact Criterion disadvantaged urban areas such as Harris County/Houston. As GLO's representative testified, there were two components of the Project Impact Criterion, one of which was designed to favor denser urban areas. Fifteen of the twenty-five points available for the Project Impact Criterion were awarded based on the cost per beneficiary, and it is easier to design a project that benefits a large number of people in a denser urban area than in a more sparsely populated rural area.¹³ Based on this factor, GLO's representative testified that GLO actually thought Harris County/Houston might take the lion's share of the funds for which it was competing.¹⁴ The results of the competition were not foreordained and could not have been predicted by GLO prior to seeing the applications it received. The final results reflected the relative merits of the projects that were ultimately submitted to GLO.

¹⁰ <https://www.hud.gov/sites/dfiles/CPD/documents/Partnerships-Report-Sept-2019.pdf>

¹¹ These executive orders are no longer in effect after President Trump rescinded them on January 20, 2025, but they are cited here to show the inconsistency between HUD's position and that of President Biden.

¹² <https://rollcall.com/2021/06/16/house-panel-worries-community-grant-program-overlooks-rural-need/>

¹³ Deposition of GLO Representative Heather Lagrone, 4/24/2024, 137:24–138:3 (“So the project impact criteria was set at 25 points, with 15 points going to a more urban type project, a more likely urban project, and 10 points going toward a more rural type project.”); *see also id.* at 138:15–20 (“15 points of that project impact cost per beneficiary definitely would benefit people who had larger populations. So if you have 2 million people that you can benefit, then your cost per beneficiary is much lower than if you have 200 people to benefit.”).

¹⁴ *Id.* at 143:11–24 (“So we thought Houston and Harris County and potentially even Harris County Flood Control were going to sweep the program. We thought that they were going to be awarded probably the first \$600 million of this competition, because we thought they would take advantage of their populations. We thought we would see them applying for projects that benefited millions of people, because they have millions of people to benefit. So for that particular project and another one, Houston in particular applied for less than 10,000 people in both instances, instead of applying for the million we expected them to. So they didn't take advantage of the criteria that was designed for an urban benefit.”).

The bottom line is that the complainants are nakedly attempting to shoehorn their provincial interests about a single geographic locality, Harris County/Houston, into an inflammatory but inaccurate accusation of racial discrimination. HUD's most recent Supplemental Letter of Findings does not even resolve the issue that Assistant Attorney General Kristen Clarke identified in her letter dated April 19, 2023, in which she rejected HUD's referral to DOJ for enforcement on the ground that HUD had not completed its investigation of the Fair Housing Act issue. The Supplemental Letter of Findings "reiterate[s] and supplement[s]" HUD's previous position on the Title VI issue, but states only that there may be "potential violations of the Fair Housing Act" without reaching an actual conclusion on the matter.¹⁵ As GLO has explained to HUD, GLO has serious concerns about the applicability of the Fair Housing Act in this case, because the facts as summarized herein—a single geographic region's claim that it should have received the "vast majority" of funds given to the State of Texas for disaster-related infrastructure projects—are far astray from the text and purpose of the Fair Housing Act, which prohibits the denial of housing to people based on race or ethnicity.

For all of these reasons, GLO strongly urges DOJ to reject HUD's request for an enforcement action and work with GLO to close out this nearly four-year-old matter once and for all. Resolving this matter would be an important step toward achieving President Trump's goal, as he recently articulated in an executive order, of "align[ing] agency . . . enforcement activities, . . . consent orders, and litigating positions with the [Administration's] policy of equal dignity and respect."¹⁶ GLO would welcome the opportunity to discuss these issues in greater detail with DOJ at a mutually agreeable time and place.

Sincerely,

BUTLER SNOW LLP



Cory R. Liu

¹⁵ Supplemental Letter of Findings dated January 15, 2025, p.33.

¹⁶ <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/>