



**TEXAS
HOUSERS**
TEXAS LOW INCOME HOUSING
INFORMATION SERVICE

August 2, 2019

Morgan Lumbley
MCOHSEM
9472 Airport Rd.
Conroe, TX 77303
Sent via email to: morgan.lumbley@mctx.org

Comments on the Montgomery County 2016 Storm and Flood Disaster Recovery Buyout Program Housing Guidelines

Dear Ms. Lumbley:

Thank you for opportunity to comment on Montgomery County's 2016 Storm and Flood Disaster Recovery Buyout Program Housing Guidelines. We appreciate the County's intent to use this funding to help its residents, who could not otherwise afford to do so, to move to safer areas where they will not at risk from future natural disasters.

1. Civil Rights Requirements

The Fair Housing Act and Title VI of the Civil Rights Act of 1964 protect persons from discrimination based on their national origin (including perceived national origin). HUD funding recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. In certain circumstances, the failure to ensure meaningful access to LEP persons may constitute discrimination based on national origin under existing law, including Title VI of the Civil Rights Act of 1964. (*See, e.g.,* 72 FR 2732 (January 22, 2007))

According to 2013-2017 American Community Survey (ACS) data, 7.9% of the population 5 years and older speaks English "less than very well" and the majority of those persons are Spanish-speaking. These numbers are well above the "safe harbor" of providing written translations of vital documents for an eligible LEP language group constituting 5% or 1000 persons of the population likely to be affected.¹ We have not been able to find a copy of these guidelines, or even notice of the comment period, in Spanish. The unavailability of

¹ HUD Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons; Notice (72 F.R. 2745, Monday, January 22, 2007).

information about the program in Spanish precludes meaningful participation in the public comment process for LEP individuals, and renders it inadequate to satisfy federal civil rights requirements.²

The County acknowledges these LEP obligations, as well as its obligations to make the process accessible for persons with disabilities, in the outreach and case management stages of the program, but this is not the same as offering protected classes a meaningful opportunity to participate in a public process that will have major effects on their lives. Critical to a successful buyout program are equity and ensuring that program rules and processes do not have a disparate impact on particular groups of homeowners. In addition, most of the notice methods proposed in the outreach plan are the same as the notice methods that were, or should have been, used to provide notice of these guidelines; it is unclear why the County is able to provide these notices in a manner accessible to LEP persons during the outreach process, but not for the guidelines process.

We appreciate that the County recognizes that “[a]pplicants may have suffered significant losses and emotional hardship” and that the “mechanics of applying to the CDBG-DR Program may be complicated by the loss of documents or temporary residence outside the area” and that one-on-one case management and support is necessary throughout the entire process. The County’s commitment that “[c]ase managers and/or counselors or interpreters must be able to communicate with the applicant in their primary language.” Is critical.

2. Outreach and Case Management

In order to make a real choice about the program, participants must have full information about their options. Case management must include mobility counseling and real estate services to assist vulnerable households locate eligible housing in lower risks areas. Relocating, away from an existing community or a home that has been in a family for generations, can be difficult and even traumatic. Case management is a critical component of the program.

We also recommend that the outreach process include extensive community input. Without community buy-in, a voluntary buyout program can result in a patchwork of empty and occupied homes, creating a blighted neighborhood. The County should consider strategies that help communities relocate together and ways to address concerns that may prevent the most vulnerable families from voluntarily relocating and remaining in high-risk areas, and help the County with its goal of assembling contiguous land for additional greenspace to mitigate future disasters.

² The “safe harbor” is not a bright line rule. Instead, the Guidance lays out a four-factor balancing test that recipients of federal funds should use to determine the extent of their obligation to provide LEP services. However, County has not included any analysis of those factors.

3. Clear Title Issues and Other Barriers to Participation for LMI Households

We understand that clear title is necessary to transfer property under a buyout program, however, it is essential that a title-clearing program accompany the buyout program.

Inability to show clear title because of heirs' property ownership is a barrier to choosing to move to a safer location, particularly for African-American homeowners, because of the prevalence of heirs' property in African-American communities. Hispanic/Latinx communities in Texas have historically been the targets of predatory "contract for deed" lending, particularly in unincorporated areas and colonias. The case managers must provide applicants with referrals and recommendations on title clearance assistance, such as local legal aid organizations, and the County must ensure that these organizations have the capacity and funding to take on these cases. The State funded a successful title-clearing project following Hurricane Ike, which can serve as a model for a County or COG-level program.

The provision of alternative ways to verify occupancy also removes a barrier to participation that is particularly likely to affect LMI applicants, who may not have known they were entitled to a homestead exemption, for example. We recommend that a similar alternative documentation be available to tenants, instead of requiring a lease agreement. LMI tenants, in particular, may not have a formal lease or may not have been given a copy of the lease. Advocacy groups working with tenants on post-disaster issues have found not only that these tenants have not been given copies of their leases, but that landlords have refused to provide copies or have required third party intervention to obtain them.

The availability of self-certification in Duplication of Benefits determinations is also important. Because the CDBG-DR funded programs are put in place approximately a year or more post-disaster, households may have lost receipts (including to a subsequent natural disaster) or those receipts may no longer be readable. Resources like scanning receipts and uploading them in order to preserve them are less or not available to LMI individuals.

4. Other Issues and Recommendations

- The County should include a map of the priority areas that includes the number of potentially eligible units the income eligibility categories.
- We are very concerned about the use of FEMA verified loss data to identify and prioritize homeowners. While we understand that a FEMA award is not a prerequisite to a CDBG-DR award, the County must be cautious about relying on FEMA data because of FEMA's history of undercounting damage to LMI families, and of using unpublished criteria that discriminate against low-income homeowners and people of color. (See, e.g. *LUPE v. FEMA*)
- The goal of an Affirmative Marketing Plan is not just to ensure that no groups are left out of outreach and marketing based on their protected class status, but to ensure that the groups least likely to apply for a particular program are specifically

targeted. The outreach plan's emphasis on marketing to LMI areas and communities affected by the disaster with concentrations of protected classes is appropriate and important. Outreach in their primary language to person with LEP and in ways accessible to persons with disabilities is also necessary.

- The program correctly includes MHU and mobile homes as an eligible housing type. The County should consider incentives that allow these homeowners to move into more disaster resistant stick-built housing.
- The County should include a methodology for calculating additional incentive and relocation benefits so that the public can evaluate whether these incentives are enough to actually allow families to move to safer areas.
- Ongoing information about outreach efforts should be made publicly available.

Please let us know if you have questions or concerns about our comments, or if we can be helpful in any other way.

Sincerely,

Madison Sloan
Director, Disaster Recovery and
Fair Housing Project
Texas Appleseed
msloan@texasappleseed.net

Zoe Middleton
Southeast Texas Co-Director
Texas Housers
zoe@texashousing.org

Adam Pirtle
Advocacy Co-Director
Texas Housers
adam@texashousing.org



CITY OF PATTON VILLAGE

CITY HALL
16940 MAIN ST.
SPLENDORA, TX 77372
(281) 689-9511
FAX (281) 689-2385



July 30, 2019

TO WHOM IT MAY CONCERN:

With the new distribution of funds for buyouts being based on the census block instead of the population within the city limits, once again the City of Patton Village has been victimized. The Patton Village census block encompasses some of the more affluent neighborhoods **outside our city limits** which resulted in our city LMI rate of 71% being twisted and distorted to an adjusted rate of approximately 46%.

Using our true 71% LMI for Patton Village as anticipated, it enabled the victims in the floodway to qualify for buyout funding which would allow our citizens to move on with their lives; but these new distributions have discriminated against them and virtually eliminated any hope for their futures.

The homes in the floodway are completely uninhabitable, with some of the structures already demolished as they had been identified as dangerous structures. The crime rate in this area is skyrocketing with empty houses being used as drug houses. Cases of serious crime have multiplied, including murder in this very same floodway area. It is a breeding ground for drug addicts and illegal activities.

Montgomery County was given an exception allowing them to receive buyout funds at an LMI rate of 50.06%; but with the distribution based on the census block the citizens of Patton Village are unjustly barred from assistance that should be their saving grace.

Scenarios like the one in Patton Village were the reason for creation of the governmental buyout programs—to help the ones extremely financially disadvantaged and most vulnerable to future devastation to have resources available to remove them from future threats from natural disasters. For almost two years these people have struggled to survive but believed our government would help those most in need. After Hurricane Harvey we attended meeting after meeting reinforcing our hope that the buyouts would soon be available for our citizens. However, as time passes that flicker of hope now been almost extinguished. Why would any governmental agency adopt guidelines for assistance to literally eliminate our most desperate?

We are respectfully pleading with all officials who have *any* influence on this situation to offer assistance to the City of Patton Village enabling us to receive an exception and base our LMI on the true city demographic *or* approval of an exception for the city itself to be eligible for the buyouts.

We are providing this information to our citizens and asking them to contact their local representatives to express their outrage at being excluded from buyout considerations. The ones who have had no way to go anywhere else are still at risk for more devastation and possible loss of life if another flood situation should arise. Time is of the essence.

Patton Village is in desperate need of buyout funds as soon as possible. Please assist us in resolving this dilemma and fulfill our responsibilities as public servants to protect and assist those in greatest need.

Respectfully,

Leah Tarrant, CEO

Leah Tarrant, CEO
Mayor of Patton Village

xc: Federal, State, and Local Governmental Representatives
FEMA, GLO, and Related Flood-Assistance-Related Agencies