

Letter of Determination and Finding of Compliance

CASE NAME: Texas Housers and Northeast Action Collective v. Texas General Land Office

CASE NUMBERS: 06-21-1483-6, 06-21-1483-8, 06-21-1483-9

I. INTRODUCTION

This letter officially closes the civil rights investigation conducted by the U.S. Department of Housing and Urban Development (HUD) into the Texas General Land Office's (GLO) administration of natural disaster mitigation (CDBG-MIT) funds. The investigation began on June 25, 2021.

Under the Fair Housing Act, HUD's Office of Fair Housing and Equal Opportunity (FHEO), subject to the supervision and control of the Assistant Secretary for Fair Housing, reviews investigations to determine, based on the totality of the circumstances, whether reasonable cause exists to believe a discriminatory housing practice has occurred under the Fair Housing Act. FHEO also has jurisdiction over alleged violations of Title VI of the 1964 Civil Rights Act ("Title VI"). If a Title VI investigation fails to show noncompliance, "the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing."¹

Based on the evidence uncovered in FHEO's prolonged investigation into GLO, no reasonable cause exists to believe GLO has violated the Fair Housing Act, Title VI, or the Housing and Community Development Act through its administration of the 2019 CDBG-MIT funds, including the Hurricane Harvey State Mitigation Competition. FHEO previously issued two letters finding GLO violated Title VI and Section 109 of the Housing and Community Development Act of 1974 ("Section 109") and likely the Fair Housing Act. Those findings were fatally flawed—legally and factually—and, therefore, this letter rescinds both.

II. STATEMENT OF FACTS

The facts underlying this case began with HUD's administration of congressionally appropriated CDBG-MIT funds in the aftermath of flooding disasters in Texas. The allegations of discrimination concerned many aspects of GLO's distribution of the CDBG-MIT funds, but the findings centered on the components of one program within GLO's Action Plan, the Hurricane Harvey Competition. Numerous procedural steps prolonged the investigation. The following provides relevant background information.

a. 2019 CDBG-MIT Funds

In August 2017, Hurricane Harvey struck Texas and produced historic flooding damage and loss of life across the State. Harvey followed on the heels of catastrophic flooding events in 2015 and 2016. HUD administers Community Development Block Grant Disaster Recovery (CDBG-DR) funds and CDBG-MIT funds. Both address natural disasters, but they serve different functions. The former addresses specific unmet disaster recovery needs in the aftermath of specific

¹ 24 CFR § 1.7(d)(2).

disasters, while the latter was created in 2018 to fund mitigation projects to increase resiliency against future natural disasters. GLO administers disaster relief grants received by the State of Texas and handles distribution of the funds to subrecipients.

On February 9, 2018, the United States Congress passed the Further Additional Supplemental Appropriations for Disaster Relief Requirements Act, 2018, Pub. L. 115-123, making available \$28 billion in Community Development Block Grant funds for disaster relief. HUD was required to allocate a portion of these funds for CDBG-MIT activities. This appropriation marked the first time HUD was entrusted to distribute disaster mitigation funds. On August 30, 2019, HUD published a notice in the Federal Register governing its award of CDBG-MIT funds to Texas.²

HUD allocated \$4,297,189,000 to the State of Texas as CDBG-MIT funds. According to the Federal Register, GLO had to reserve at least 50% of CDBG-MIT funds for areas HUD designated as most impacted and distressed (HUD MID) under prior notices for CDBG-DR grants. It further provided, “Grantees may determine where to use the remaining 50 percent of the CDBG– MIT grant,” provided the funds were used to mitigate “identified risks” in areas affected by the qualifying major disasters.³

b. GLO’s Action Plan Approval, Amendment, and Implementation

The State of Texas developed the *State of Texas CDBG Mitigation Action Plan: Building Stronger for a Resilient Future* (the “Action Plan”), outlining the State’s proposed uses for the CDBG-MIT funds, to present to HUD for review and approval. The Action Plan’s budgetary section included three State Mitigation Competitions, two for areas impacted by flooding in 2015 and 2016 and one for areas impacted by Hurricane Harvey in 2017.

The Harvey Competition would disburse over two billion dollars of the CDBG-MIT funds based on competitive project applications submitted by public entities in the disaster areas, such as county organizations, municipal governments, flood control districts, and others. It would include two rounds, with each distributing a little more than \$1 billion. The proposed budget showed that the competition would be split between HUD MID areas and areas that received a Presidential major disaster declaration for Hurricane Harvey but were not classified as HUD MID. Entities in the areas HUD designated as most impacted and distressed would compete for roughly \$500 million, while entities in the 29 additional counties identified by the Presidential Disaster Declaration for Hurricane Harvey would compete for another \$500 million. On March 31, 2020, after reviewing and suggesting edits that GLO enacted, HUD approved the Action Plan. The Hurricane Harvey State Mitigation Competition was one of over a dozen different programs in GLO’s initial 2019 CDBG-MIT Action Plan.

The scoring criteria for the Harvey Competition were the same as those used in the other two State Mitigation Competitions under the 2019 Action Plan. The ten categories comprised 105 total points:

² Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45838 (Aug. 30, 2019).

³ *Id.* at 45841.

Criterion	Point Values
County Composite Disaster Index (CDI)	10
Social Vulnerability Index (SoVi)	10
Per Capita Market Value	10
Low-to-Moderate Income (LMI) National Objective	20
Project Type Identified in Local Adopted Plan	5
Management Capacity	15
Cost per Beneficiary	15
Project Beneficiaries/Total Applicant Population	10
Leverage	5
Mitigation/Resiliency Measures	5
	105

The draft Action Plan was posted to the disaster recovery websites of GLO and the State of Texas in late November. A public comment period was held from November 22, 2019, to January 6, 2020. GLO issued a press release announcing that public comment period to 6,157 recipients across 140 eligible counties, targeting local emergency management coordinators, county and local government officials, public housing authorities, Indian tribes, and other interested stakeholders.

GLO extended the initial comment period by four days to receive additional input. During the public comment period, the GLO held eight public hearings, gathering verbal or written comments submitted by a total of 114 commentators. The GLO also received 4,144 written comments via mail and/or email from 944 separate commentators.

In the first round of the competition, GLO received 290 applications totaling \$6.5 billion in project funding requests. Applications were filtered through two phases of review. First, they were scored by two separate reviewers based on the competition criteria and then the scores were verified during an eligibility review phase. For every application, grant managers (who had worked on previous flood competitions) used census tract and block group data to ensure that the proposed service area for low to moderate income projects was in fact 51% LMI.

GLO subsequently used the HUD-approved competition design in three separate competitions to award more than \$1 billion to fund 108 specific disaster mitigation projects. GLO obligated funds to subrecipients to begin their proposed hurricane and flood mitigation projects in the HUD-eligible areas.

After the first round of the Hurricane Harvey State Mitigation Competition (Harvey Competition) did not fund projects submitted by Harris County or the City of Houston, GLO submitted Action Plan Amendment 1. The proposed Amendment abandoned the second round of the competition prior to the filing of the complaint in this case. Rather than maintain the competition structure, the amended Action Plan directly allocated \$750 million in CDBG-MIT funds to Harris County, which includes the City of Houston.

c. Procedural History

On June 7, 2021, Texas Low Income Housing Information Service (Texas Housers) and Northeast Action Collective (NAC) sent a complaint letter to then-Acting Assistant Secretary for Fair Housing and Equal Opportunity.⁴ Three weeks later, the same organizations filed an official inquiry through HUD’s complaint system, prompting FHEO to launch an investigation.⁵ The complaint alleged “that GLO’s administration of the CDBG-MIT program” violated the Fair Housing Act, Title VI, and the Housing and Community Development Act. It further alleged “GLO’s needs assessment, methods of distribution, polices and scoring criteria advantaged white communities while denying low-and-moderate income (LMI) African American and Hispanic communities.”⁶ The complaining organizations received legal representation from the law firm Relman Colfax.

FHEO investigators initially sent GLO a request for information for thirteen categories of data and documents related to the Action Plan, generally, and the Hurricane Harvey State Mitigation Competition, specifically. In late 2021, FHEO sent a second request for information seeking emails and drafts pertaining to specific criteria in the challenged Competition. FHEO staff interviewed four different GLO officials.

In February 2022, representatives for Texas Housers sent FHEO a memo outlining its statistical analysis of the first round of the competition. The analysis focused on the Harvey Competition component within the CDBG-MIT program. It did not estimate “the share of total beneficiaries” from the Competitions that were black, white, or Hispanic or the impact of distributions outside of Round One of the Harvey Competition.⁷ The analysis instead calculated whether “the average awarded beneficiary population” in Round One of the Harvey Competition reflected the demographics of the overall eligible population.⁸ The analysis determined black individuals were underrepresented in awarded projects and non-Hispanic white individuals overrepresented. The analysis did not identify underrepresentation for Hispanic beneficiaries. The data for the analysis came from Appendix H of GLO’s Action Plan Amendment 1.

One month later, FHEO issued a letter finding that GLO in noncompliance with Title VI because the disaster mitigation competition “substantially and predictably disadvantaged minority residents.”⁹ GLO administratively appealed the findings, maintaining that they were legally and factually flawed. FHEO affirmed the finding of noncompliance without granting the hearing GLO requested and referred the matter to the United States Department of Justice for “appropriate action.”¹⁰

⁴ Complainants’ Letter to Asst. Sec’y for Fair Housing, “Complaint alleging violations of the Fair Housing Act, Title VI, Section 109 and failure to comply with the obligation to affirmatively further fair housing,” (June 7, 2021).

⁵ Official Complaint Form 903, Texas Housers and Northeast Action Collective, 2 (June 23, 2021).

⁶ *Id.* at 2.

⁷ Memo From Complainants, 3 (Feb. 7, 2022) (Texas Housers Memo).

⁸ *Id.*

⁹ FHEO, Letter Finding Noncompliance with Title VI and Section 109, 2 (Mar. 4, 2022).

¹⁰ FHEO, Letter Referring Title VI Noncompliance to DOJ, 1 (Apr.17, 2023).

Two days after HUD’s referral, the Department of Justice’s Civil Rights Division declined to take enforcement action and returned the matter for “further investigation.”¹¹ Over the next two years, Texas GLO, at the request of FHEO, produced additional official documents and records, including internal communications. To date, GLO has produced over 80,000 pages of documents. GLO eventually designated its Director of Disaster Recovery Programs, Heather Lagrone, to sit for a deposition on behalf of the organization. Her deposition spanned two days.¹²

On January 15, 2025, FHEO issued a Supplemental Letter of Findings of Noncompliance.¹³ In the supplemental findings, FHEO determined “that GLO intentionally discriminated based on race” by steering CDBG-MIT “money away from urban [b]lack and Hispanic communities that had the highest storm and flood risk into [w]hiter, more rural areas with less risk.”¹⁴ The findings relied on six *Arlington Heights* factors to show GLO’s “consistent pattern of decision making” to steer CDBG-MIT funding away from eligible areas that “had the highest concentrations of [b]lack and Hispanic individuals in areas eligible to receive awards.”¹⁵

HUD referred its findings to the Department of Justice as a pattern and practice case. One month later, HUD rescinded its referral to the Department of Justice and undertook a review of the investigative file and findings.

III. ALLEGATIONS AND DEFENSES

A. Complainants

Complainants are Texas Housers and NAC. Texas Housers is a research and advocacy agency that supports “people and communities of color” in securing “fairness and racial equity across Texas.”¹⁶ NAC “is a group of residents of the predominately African American and Hispanic neighborhoods located in northeast Houston and Harris County.”¹⁷ “NAC believes that decades of inequity and oppression must be addressed directly with policies and budgets that prioritize communities that have been neglected for the economic benefit of others.”¹⁸

Complainants allege GLO’s administration of the CDBG-MIT funds discriminates on the basis of race and national origin, in violation of the Fair Housing Act, Title VI, and Section 109. Complainants further allege the State’s needs assessment action plans, methods of distribution, policies, and scoring criteria systematically and deliberately advantage white communities while disadvantaging low- and moderate-income (LMI) African American and Hispanic communities.

Complainants argue GLO developed, adopted, and applied a program-eligibility-criteria for grants to cities and counties that systematically denied competition funds for mitigation

¹¹ Letter from U.S. Dep’t of Justice, Civil Rights Division, Referral of Texas General Land Office Matter (Apr. 19, 2023).

¹² GLO’s deposition transcript is cited as “Tr.” throughout this letter.

¹³ See generally FHEO, Supplemental Letter of Findings of Noncompliance (January 15, 2025).

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 21-22.

¹⁶ Complainants’ letter, *supra* n.3 at 1.

¹⁷ *Id.*

¹⁸ *Id.*

projects to black and Hispanic persons. Complainants challenge all provisions in GLO's CDBG-MIT Action Plan that allegedly "established set-asides for activities" that reduced the eligible population of persons of color and had "a disparate impact based on race and national origin."¹⁹ They challenged the criteria only as applied to the Hurricane Harvey State Mitigation Competition, though the competitions for 2015 and 2016 flooding used the same structure and criteria.

The complainants acknowledge that GLO canceled the second round of the Harvey competition "after public outcry" and "made a request for a special allocation of \$750 million" directly to Harris County—roughly three quarters of the funds that would have been available in that second round.²⁰ The direct allocation allegedly did not remedy the "neglect" toward the City of Beaumont (46.5% African American) and Port Arthur (38.1% African American and 34.5% Hispanic).²¹

Complainants also allege that the GLO failed to analyze or consider the needs of specific racial and ethnic groups in developing the program allocations, eligible activities, rules, funding criteria, and scoring system for the CBG-MIT funds.

B. GLO's Defenses

In response to the complaint, GLO asserted that the Action Plan's program design and eligibility criteria for grants to cities and counties, as approved by HUD, complied with all HUD requirements and applicable federal law. GLO stated that it properly conducted a Mitigation Needs Assessment (the "Needs Assessment") to determine need and prioritize mitigation programs and activities. GLO maintained that the Needs Assessment informed decisions on the assignment of CDBG-MIT funding to specific programs and projects to achieve mitigation activities. The draft Action Plan was then posted for public consumption and a full and complete public participation process was conducted.²²

GLO appealed HUD's initial finding "that GLO's disbursement of disaster-mitigation funds had a 'disparate impact' on minorities."²³ The appeal letter denied that GLO's MIT competitions in fact disproportionately excluded minorities. GLO presented evidence that 59% of the projects funded by the three different competitions served majority-minority populations.²⁴ Roughly 1,216,000 of the 1.5 million Texans benefiting from the projects were Hispanic, black, Asian, Pacific Islander, or Native American.²⁵ 100% of the awards were for projects in a majority LMI area.²⁶

GLO argued that it was legal error for FHEO to ignore the results of the other Action Plan Competitions, which were conducted in an identical manner, and instead limit its analysis "to

¹⁹ Texas Housers and Northeast Action Collective, Official Complaint Form 903, ¶8 (June 23, 2021).

²⁰ *Id.*

²¹ *Id.*

²² Texas General Land Office, Response to Housing Discrimination Complaint, 3-6 (July 6, 2021).

²³ Texas General Land Office, 24 C.F.R. § 6.11(c) Appeal of HUD Letter of Findings in Case No. 06-21-1483-6/9, 1 (Apr. 1, 2022).

²⁴ *Id.* at 3.

²⁵ *Id.*

²⁶ *Id.*

particular components of the Action Plan contained in Round One of the Hurricane Harvey State Mitigation Competition.”²⁷

GLO responded that the hypothetical removal of the two criteria could not satisfy the “robust causality” required for a disparate impact claim. GLO identified “steps in the causal chain” that had to be accounted for when isolating the racial impact of the proposed competition criteria changes, including: “whether a different set of projects might have been presented to GLO for funding in the absence of the disputed components,” “what the merits of those applications would have been with respect to the various other criteria examined”; “the extent to which hypothetical alternative projects would have been successfully completed”; and the potential for projects not funded in the first round of the Harvey Competition to “be funded at a later step in GLO’s distribution of the total funds allocated to Texas by HUD for distribution over twelve years.”²⁸

Similarly, GLO argued that the findings failed “to identify populations for comparison” to adequately assess the alleged disparate impact of the Competition.²⁹ The appeal asserted that FHEO could not rely on county-level demographic data as opposed to the demographic data of the project beneficiaries.

GLO also argued that HUD acted unlawfully by issuing a noncompliance finding after approving the Action Plan two years prior. Because Competition funds had already been contracted and spent in reliance on HUD’s approval, GLO asserted that the reversal in policy was arbitrary and capricious and HUD was “equitably estopped from reversing its position.”³⁰

Finally, GLO challenged both the legality of enforcing disparate impact regulations under Title VI and the constitutionality of HUD’s disparate impact rules.

C. FINDINGS AND CONCLUSIONS

These findings rescind and replace FHEO’s initial and supplemental findings of noncompliance. Based on FHEO’s investigation, insufficient evidence exists to reasonably believe GLO violated the Fair Housing Act, Title VI, or any other civil rights statute when structuring and administering the 2019 CDBG-MIT funds.

The rescinded findings focused almost exclusively on Title VI compliance. The supplemental letter determined that its Title VI findings “likewise indicate potential violations of the Fair Housing Act.”³¹ The allegations in the complaint are not tied to any specific CDBG-MIT funded housing programs. Complainants’ initial letter to FHEO explicitly acknowledged that “[n]o funds were set aside for rental housing or rental housing mitigation in [GLO’s] CDBG-MIT action plan.”³² Assuming the Fair Housing Act does apply, no reasonable cause exists to believe Texas

²⁷ *Id.* at 5.

²⁸ *Id.* at 6-7.

²⁹ *Id.* at 8.

³⁰ *Id.* at 9-10.

³¹ FHEO, *supra* n.13 at 33.

³² Complainants’ Letter to Ass’t Sec’y for Fair Housing, “Complaint alleging violations of the Fair Housing Act, Title VI, Section 109 and failure to comply with the obligation to affirmatively further fair housing,” 7 (June 7, 2021).

GLO violated subsections 804(a) and (b) of the Fair Housing Act for many of the same reasons that the Title VI findings must be rescinded.

This determination is divided into two sections to address the two different theories of liability advanced by complainants and adopted by HUD: disparate impact and intentional discrimination. Both theories focus on how two distinct components of the State Mitigation Competitions—the competition split between HUD MID and State MID areas and the “Project Impact” competition criterion—impacted competition applications in the Harvey Competition. The initial findings misapplied the then-existing disparate-impact framework, while the supplemental findings misapply the Supreme Court’s *Arlington Heights* factors. This letter dismisses the complaint and closes the investigation without reaching GLO’s arguments challenging the adjudication under the Administrative Procedure Act and findings under the Equal Protection Clause of the Fourteenth Amendment.

A. Disparate Impact Findings

Under Title VI of the Civil Rights of 1964, “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”³³ Title VI’s nondiscrimination provision “prohibits only intentional discrimination.”³⁴ The United States Department of Justice recently rescinded its Title VI disparate-impact regulations to conform with Title VI’s text.³⁵ Because Title VI prohibits only intentional discrimination, the findings under Title VI that depend on disparate-impact liability should be rescinded.³⁶

Separately, the Supreme Court has interpreted the Fair Housing Act to permit disparate-impact claims.³⁷ HUD promulgated a three-part discriminatory-effects regulation under the Fair Housing Act. Properly applying the disparate-impact framework in this case also results in a no-cause finding.

Under 24 C.F.R. § 100.500(a), “[a] practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons[.]” A prima facie case of disparate impact requires a disparate-impact challenger to first show “disproportionate impact” toward a racial group, “measured in some plausible way.”³⁸ Crucially, showing a *substantial* adverse effect is not the same as showing a *disproportionate* or *disparate* effect.³⁹ “The charging party ... has the

³³ 42 U.S.C. § 2000d. Section 109 of the Housing and Community Development Act contains the same relevant language barring intentional discrimination. *See* 42 U.S.C. § 5309. For this reason, the rescinded findings extended its Title VI analysis to Section 109, without independently analyzing Section 109. This determination likewise applies its Title VI analysis to Section 109.

³⁴ *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001).

³⁵ Rescinding Portions of Department of Justice Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281, 90 Fed. Reg. 57141 (Dec. 10, 2025).

³⁶ Under 24 C.F.R. § 1.4(b), recipients of federal funds cannot “utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race[.]”

³⁷ *Tx. Dep’t of Hous. & Comm. Aff. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 545 (2015).

³⁸ *Greater New Orleans Fair Housing Action Center v. HUD*, 639 F.3d 1078, 1085 (D.C. Cir. 2011).

³⁹ *Inclusive Cmty. Project v. Lincoln Prop. Co.*, 920 F.3d 890, 903 (5th Cir. 2019); *Reyes v. Waples Mobile Home Park Ltd.*, 903 F.3d 415, 424 (4th Cir. 2018).

burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.”⁴⁰

To find that GLO’s CDBG-MIT competition structure and criteria had a disparate (disproportionate) impact, FHEO needed to “identify a sound benchmark for assessing the disparateness” of GLO’s disbursement of the CDBG-MIT funds.⁴¹ The complainants’ submissions and FHEO’s rescinded findings failed this necessary step. They did not show a particular racial group was disproportionately excluded from CDBG-MIT funds or identify any plausible benchmark for assessing GLO’s distribution of funds. Without a disproportionate effect measured in some plausible way, the first element of the disparate-impact claim is not met.

A disparate impact challenger must also show that the challenged policy—here, two competition components—caused the disproportionate racial impact. Thus, “a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant’s policy or policies causing that disparity.”⁴² The evidence indicates that high-cost, low-impact project proposals, not merely the Competition components, caused the Competition outcomes.

After the charging party establishes a discriminatory effect, “the respondent ... has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests[.]”⁴³ If respondent establishes the policy is necessary to advance a legitimate interest, then the charging party must prove that the “nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.”⁴⁴

The findings improperly discount GLO’s legitimate policy interest in following HUD’s guidelines and ensuring mitigation investment in rural, disaster-impacted parts of Texas. Assuming the competition structure had a disproportionate impact, however, GLO eventually took the less discriminatory alternative by abandoning the challenged competition structure before complainants’ filed their complaint and directly allocating most funds from round two of the Harvey Competition to Harris County—where the City of Houston and complainants are located.

Because at least three necessary elements for a disparate impact claim have not been met in this case, no reasonable cause exists to believe GLO violated the Fair Housing Act under that theory.

i. The Harvey Competition’s Impact

FHEO cannot plausibly meet its burden to establish a disparate impact. The evidence indicates that GLO’s distribution of CDBG-MIT funds has *not* disproportionately excluded black and Hispanic residents. According to American Community Survey data presented in the GLO’s Action Plan Amendment 1, residents of CDBG-MIT eligible counties were 44.3% non-Hispanic

⁴⁰ 24 C.F.R. § 100.500(c)(1).

⁴¹ *Greater New Orleans Fair Housing Action Center*, 639 F.3d at 1086.

⁴² *Inclusive Cmty. Project*, 576 U.S. at 542.

⁴³ 24 C.F.R. § 100.500(c)(2).

⁴⁴ *Id.* § 100.500(c)(3).

white alone, 35.8% Hispanic alone, and 13.5% black alone.⁴⁵ These figures could serve as a plausible benchmark for assessing the racial demographics of project service areas.

By the end of May 2021, GLO awarded \$1.149 billion in CDBG-MIT grants through three competitions for the 2015 floods, 2016 floods, and Hurricane Harvey. The awards funded 108 different projects, 59% of which served majority-minority populations. With a total of 1.5 million project beneficiaries for all funded projects, roughly one million were Hispanic and another 216,000 were black, Asian, Pacific Islander, Native American, or another nonwhite race. 100 percent of the projects funded by the Competitions served majority Low-to-Moderate Income (LMI) populations.⁴⁶ GLO's CDBG-MIT Action plan substantially exceeded HUD's 50% HUD MID threshold by directing roughly 60% of the CDBG-MIT funds to HUD MID areas.⁴⁷

The competition figures understate the total value of mitigation dollars Texas GLO directed to majority-minority populations. Compared to the demographics of the CDBG-MIT eligible populations, Harris County contains a disproportionately high number of nonwhite residents. When GLO directly distributed \$750 million in CDBG-MIT funds to Harris County in lieu of a second competition round, Harris County's share of Hispanic alone (42.9%) and black alone (18.6%) residents exceeded their overall representation in CDBG-MIT jurisdictions. The initial findings unreasonably omitted this direct distribution, thereby excluding an allocation that necessarily increased the percentage of mitigation dollars going to minorities and equaled 65% of the funds awarded through the prior CDBG-MIT competitions.

The initial and supplemental findings fail to identify specific disproportionate racial outcomes throughout funded project service areas. The undisputed record indicates that neither the results of the Competitions nor the overall CDBG-MIT distribution scheme resulted in non-Hispanic whites claiming a disproportionate share of funding.

ii. How FHEO Found a Disparate Impact

Rather than address the facially equitable disbursement of CDBG-MIT funds, FHEO's initial findings zeroed in on how State Mitigation Competition components, as applied to the Harvey Competition, could have been changed to favor larger jurisdictions where a higher percentage of residents were nonwhite.

First, the findings faulted GLO for splitting the mitigation competitions between HUD MID areas and additional State MID areas. This split "caused disproportionately less funding to be available to benefit minority residents than to benefit [w]hite non-Hispanic residents" in Round One of the Harvey Competition.⁴⁸ Because "eligible [w]hite non-Hispanic residents were much more likely than minority residents to live in State MID areas,"⁴⁹ awarding the same amount of money in the State MID competition and the HUD MID competition meant that, in the first round of the Harvey Competition, white residents in disaster-impacted areas were eligible for more money per capita than minorities.

⁴⁵ Texas General Land Office, State of Texas CDBG-MIT Action Plan Amendment 1, 33 (Aug. 23, 2021).

⁴⁶ FHEO's initial and supplemental findings do not dispute these figures.

⁴⁷ Tr. 80:1-6; Tr. 255:2-6.

⁴⁸ FHEO, *supra* n.9 at 6.

⁴⁹ *Id.*

Second, a “jurisdiction size” criterion, worth 10 of 105 competition points, was found to substantially disadvantage minorities. GLO included a criterion that awarded more points to applications from smaller, rural jurisdictions. “Minority residents of eligible [disaster-impacted] areas are more likely than White non-Hispanic residents to reside in large-population jurisdictions.”⁵⁰ The disadvantage of the “jurisdiction size” criterion is thus tautological. It “caused applications”—by larger jurisdictions—“that would disproportionately benefit minority residents” to receive “fewer points.”⁵¹

The initial findings determined that without those two features of the competition, “[a]pproximately 40 to 80 million more dollars would have been awarded to the benefit of minority residents”⁵² in the Harvey Competition. It is unclear how this range was calculated. First, the findings themselves admit that “an exact assessment of alternative beneficiaries is not possible” and that “competition scoring criteria influence what project applications are submitted.”⁵³ Second, because the applicants are governmental organizations, not individuals, money awarded to applicants doesn’t benefit a particular race but instead a project service area. The findings do not disclose the racial demographics or numerosity of the hypothetical alternative project service areas. Moreover, for any residents to “benefit” from a subrecipient award, the award would need to be converted into a tangible mitigation project by the applicant (*infra* § IV.B.ii).

Regardless, showing GLO *could* have increased—even *substantially* increased—funding to densely populated, majority-minority jurisdictions by isolating and changing two competition components does not show that majority-minority jurisdictions or project service areas received disproportionately low funding because of those components.

Notably, the initial findings never assess the total racial composition of the project service areas for awards under Round One of the Harvey Competition. They do not clearly define which groups are at issue but instead identify the groups disadvantaged as “all races and national origins other than those who are [w]hite-non-Hispanic.”⁵⁴ At different times, the findings consider minorities as a monolith, black and Hispanic residents as a pairing, or black residents “in particular.”⁵⁵ But throughout, the findings never compare the overall racial demographics of all eligible CDBG-MIT areas with the racial demographics of areas *that received project funding*.⁵⁶ The Texas Housers memo failed to assess the share of *total* beneficiaries that were black, white, or Hispanic compared to the racial demographics of the eligible areas.⁵⁷

⁵⁰ FHEO, *supra* n.9 at 8.

⁵¹ FHEO, *supra* n.9 at 9.

⁵² FHEO, *supra* n.9 at 11.

⁵³ FHEO, *supra* n.9 at 10 n.16, 11 n.17.

⁵⁴ FHEO, *supra* n.9 at 2.

⁵⁵ FHEO, *supra* n.9. at 2 n.1, 6.

⁵⁶ FHEO, *supra* n.9 at 8. The initial and supplemental findings use 2010-2014 American Community Survey 5-Year Estimates to compare the racial demographics of the eligible coastal, urban HUD MID areas with the more rural State MID areas. Only respondents provide a comprehensive estimate of the racial breakdown for actual project beneficiaries from the CDBG-MIT competitions.

⁵⁷ Texas Housers, *supra* n.6 at 3.

FHEO's initial findings and the Texas Housers memo ignore GLO's Action Plan Amendment that allocated \$750 million in CDBG-MIT funding directly to Harris County. FHEO thus found a disparate impact based on one Action Plan program—the Harvey Competition—without considering the offsetting effect of another—the direct distribution to Harris County. This was clear error.

Whether the Harvey Competition produced a disparate racial impact could be assessed only in the context of other Action Plan programs. HUD granted GLO a total of \$4.3 billion in CDBG-MIT funding, which GLO distributed to various entities through a dozen programs. Because Round One of the Harvey Competition was only one of these programs, its impact could not be viewed in a vacuum.

The scarcity of the CDBG-MIT funds also guaranteed that relatively few projects could be funded through the Competition, which accentuates the need for (and lack of) a plausible benchmark to assess disparateness. In the first round, 290 applications sought a total of \$6.5 billion in mitigation funding. If GLO dedicated the entire \$4.3 billion block grant to the first round of the Harvey Competition, the funding shortfall would still have exceeded \$2 billion. This oversubscription meant GLO had to pick disaster mitigation winners and losers. The disparate impact analysis second-guessed elements of GLO's method for picking winners and losers in the State Mitigation Competitions, without ever specifying what the expected racial composition of project service areas would be in a nondiscriminatory competition.

In sum, the initial findings concluded that the Harvey Competition caused a disparate racial impact without specifically identifying which racial (or national origin) groups were impacted, quantifying the disproportionate effects on those groups, or putting forward a benchmark by which to assess the Competition's disparateness. Based on the substantial record in this case, no reasonable cause exists to believe GLO's administration of Round One of the Harvey Competition had a disparate racial impact on the disbursement of CDBG-MIT funding to project beneficiaries.

iii. The Evidence Fails to Show That Two Components within the Competition, as Opposed to the Project Applications, Caused Any Disparities That Existed.

As outlined above, the initial findings never assess what share of the total beneficiaries from the State Mitigation Competitions were black, Hispanic, or white. This misstep allows the unquantified “disadvantage” of two competition components on large jurisdictions to substitute for the required showing of a measurable disparate impact on a defined racial or ethnic group. With the causality dice so loaded, the findings do not link the neutral competition components with specific disparate outcomes. But even if a specific racially disparate outcome was identified, the evidence fails to establish that the split and “jurisdiction size” criterion, as opposed to other factors, *caused* such a disparity.

As GLO pointed out in its appeal letter, deleting the “HUD MID split” and “Jurisdiction Size” criterion would not necessarily result in more minorities benefiting from the Competition. Indeed, the merits of the project proposals and scores on the remaining competition criteria affected the results of the competition.

For instance, Houston’s poor performance in the Harvey Competition is attributable, at least in part, to its expensive, low-impact project proposals. The “Beneficiaries/Applicant population” (“Jurisdiction Size”) criterion accounted for only 10 of the 25 points allotted to assess “Project Impact.” The remaining 15 points to assess project impact, however, were assigned based on a cost-per-beneficiary metric. These two criteria, taken together, favored applications with low cost-per-beneficiary project proposals that would benefit a high percentage of residents in the applying jurisdiction.

Houston, with a population exceeding 2.3 million people, submitted two applications for projects with fewer than 10,000 beneficiaries each. One \$94 million project was projected to benefit roughly 8,400 people in the historic black neighborhood of Kashmere Gardens.⁵⁸ In other words, the city sought 18% of Round One HUD-MID funding to benefit less than a half-percent of the city’s population. The cost per beneficiary for the Kashmere Gardens project was six-fold higher than the average cost per beneficiary for awarded projects. Houston’s selection of expensive, narrowly-focused projects caused the applications to be less competitive.

Pasadena City, another municipality in Harris County, chose a different strategy. Pasadena has a population of over 150,000, roughly two thirds of whom are nonwhite Hispanic. It applied for a flood mitigation project that would cost \$47,278,951 and benefit 49,315 residents.⁵⁹ Within the HUD-MID split of the Harvey Competition, Pasadena’s application was successful.⁶⁰ With this one subrecipient award, ten percent of HUD-MID funds in Round One of the competition went to a project service area in which 84.01% of the beneficiaries were Hispanic alone and 65.37% were low to moderate income. While Houston’s Kashmere Gardens project registered a cost-per-beneficiary exceeding \$10,000, Pasadena’s cost-per-beneficiary was only \$958.71. If Houston’s Kashmere Gardens project received all ten Jurisdiction Size points, it would have barely cleared the 65-point threshold for award eligibility and still wouldn’t have received an award. Thus, the merits of project proposals legitimately impacted the success of applications.

FHEO’s disparate-impact findings failed to acknowledge that the cost-per-beneficiary criterion comprised the majority of the “project impact” points, did not account for Houston’s disproportionately expensive project applications, considered only two features of the Competition “relevant,” and failed to consider how Pasadena City was successful despite being a large majority-minority jurisdiction.

In sum, the record and initial findings do not establish that the two disputed Competition features caused minority residents of eligible disaster-impacted areas to receive a disproportionately low share of mitigation funds.

iv. Justification for the Competition Features

FHEO’s rescinded findings inappropriately asserted that the HUD MID split and “Jurisdiction Size” criterion were unjustified features of the State Mitigation Competitions.

⁵⁸ Tr. 142:20-143:24.

⁵⁹ Pasadena City, Hurricane Harvey State Mitigation Competition, Round 1 Application.

⁶⁰ Press Release, Texas General Land Office, \$90.4 million granted by Texas GLO for historic disaster mitigation projects in Harris County (May 21, 2021).

HUD deemed the split unjustified due to the higher average CDI scores of HUD-MID applicants compared to State MID applicants. Since the CDBG-MIT funding was meant to reduce future disaster risk, complainants reasoned, funds should be directed to areas with the highest future disaster risk to the maximum extent possible. FHEO agreed with this policy determination.

GLO admitted that the HUD MID areas had higher CDI scores but responded that more sparsely populated areas along the coast were similarly situated for severe flood risk.⁶¹ Moreover, GLO recognized that granting funds based solely on risk ignored the need for awards to be effectively utilized for risk reduction (*infra* § IV.B.ii).⁶² Large distributions to municipalities solely based on risk would not ensure that the funds benefitted a large cross-section of the community or were completed in a timely fashion.

Setting aside these thorny policy questions, HUD's own regulatory requirements justified splitting the competitions fifty-fifty. HUD's regulatory notice required HUD MID areas to receive at least 50% of CDBG-MIT funds. The State-grantees were explicitly given discretion as to the remainder, "Grantees may determine where to use the remaining 50 percent of the CDBG- MIT grant (the grantee-identified MID areas)" so long as they were impacted by the qualifying disasters.⁶³ GLO previously split competitions for CDBG-DR funds between HUD MID areas and State MID areas precisely according to the federal register. As previously mentioned, GLO would nonetheless exceed the minimum 50% requirement.⁶⁴ In crafting competitions to distribute only a quarter of the total CDBG-MIT grant, GLO followed its standard practice and the parameters provided by HUD in the Federal Register.

FHEO also found the "Jurisdiction Size" criterion unjustified and contrary to the purpose of the program. In response to public comments on its proposed action plan, GLO articulated its interest in balancing rural and urban awards to justify this criterion. The findings didn't credit "the need for GLO's criteria to accomplish that objective" and reiterated that the objective disadvantaged populous, high-risk HUD MID areas.⁶⁵ In its "policy objectives" overview, the HUD notice explained that the CDBG-MIT funds gave "grantees"—here, the State of Texas—"the opportunity to transform State and local planning."⁶⁶ Thus, the grant was intended for Texas, not FHEO, to make local planning decisions. The record does not indicate that GLO's concern for investing in rural communities was pretextual or contrary to the purpose of the mitigation program. FHEO's previous findings improperly disregarded GLO's justifications for designing one competition criterion within a massive funding plan to benefit Texans living in smaller and rural jurisdictions.

⁶¹ Tr. 80:10-81:5.

⁶² Tr. 40:16-23.

⁶³ Allocations, Common Application, Waivers, and Alternative Requirements for Community Development Block Grant Mitigation Grantees, 84 Fed. Reg. 45838 (Aug. 30, 2019).

⁶⁴ Tr. 80:1-4.

⁶⁵ FHEO, *supra* n.9 at 10 n.15.

⁶⁶ 84 Fed. Reg. 45838.

B. Intentional Discrimination - Arlington Heights

The facts of this case do not suggest that GLO intentionally discriminated against any racial or ethnic group through its administration of the CDBG-MIT funds. FHEO's supplemental findings of noncompliance reached the opposite conclusion by misapplying the Supreme Court's guidance in *Village of Arlington Heights v. Metropolitan Housing Development*.⁶⁷ Federal agencies sometimes use a variety of nonexhaustive "Arlington Heights factors" to find racially discriminatory intent, in the absence of direct evidence.

The starting point for an *Arlington Heights* analysis is whether a policy has a disparate racial impact. Once identified, if the disparate impact does not establish a "clear pattern, unexplainable on grounds other than race," the court can look to additional factors, such as: "(1) the historical background of the decision, (2) the specific sequence of events leading up to the decision, (3) departures from the normal procedural sequence, (4) substantive departures, and (5) legislative history, especially where there are contemporary statements by members of the decision-making body."⁶⁸

Properly applied, the *Arlington Heights* factors offer no reasonable cause to believe GLO intentionally discriminated against Complainants on the basis of race.

i. Impact of the Challenged Policy

As outlined in Section IV.A.i, the record fails to establish a disparate impact and instead indicates that beneficiaries of funded State Mitigation Competition projects were predominantly minorities.

Like the initial findings, the supplemental findings decry, without objectively measuring, the impact of GLO's decisions to (1) hold a Harvey Competition as one of a dozen CDBG-MIT programs, (2) split that competition based on a HUD-approved ratio, and (3) then allocate 10 of 105 competition points based on a criterion that favored small jurisdictions. The supplemental findings make explicit the flaws underlying the initial findings: Harris County, Houston, and other large jurisdictions "could have . . . been awarded the vast majority of the \$4.3 billion dollars allocated to GLO under the CDBG-MIT program," and GLO's failure to do this constituted "disproportionate harm."⁶⁹

The discriminatory disadvantage amounted to "substantially fewer funds" per capita being made "available for [b]lack and Hispanic residents than for [w]hite residents" in *Round One of the Harvey Competition*.⁷⁰ The findings consider the racial composition of the "aggregate number of beneficiaries" across the multiple Competitions that shared the Harvey criteria to be irrelevant, because those figures "obscure[] the effect of the [Harvey] Competition on [b]lack and Hispanic

⁶⁷ 429 U.S. 252, 265 (1977).

⁶⁸ *Rollerson v. Brazos River Harbor Navigation Dist. of Brazoria Cnty. Tex.*, 6 F.4th 633, 639-40 (5th Cir. 2021).

⁶⁹ See FHEO, *supra* n.13 at 3, 20 ("Under oath, GLO acknowledged that it could have allocated more" funds to HUD MID areas.).

⁷⁰ FHEO, *supra* n.13 at 23.

communities.”⁷¹ So, by failing to directly allocate the “vast majority” of CDBG-MIT funds to specific jurisdictions in HUD MID areas and including two competition features that disadvantaged large jurisdictions, FHEO found the competition to have a discriminatory impact.

This analysis is insupportable. For starters, Round One of the Harvey Competition determined the distribution of less than 25% of the 2019 CDBG-MIT funds. GLO could not craft an CDBG-MIT Action Plan “without *some* element having a disproportionate impact on a protected group.”⁷² Complainants made allegations about the CDBG-MIT program in general, and the supplemental findings inappropriately isolated two elements within that Competition to find a discriminatory impact.

The complainants also isolate certain majority-minority localities that did not receive awards, such as the City of Houston and Beaumont City, while ignoring localities with a higher proportion of minority residents that did, such as Pasadena City. And though the findings highlight the lack of Harvey Competition awards to Harris County residents, four applicants within Harris County received \$90 million of the \$500 million offered in Round One to HUD MID areas. “To allow [complainants] to pick a special subset of the affected localities to test for disparate impact would, just like allowing them to single out the effects of a single formula element, expose almost any grant formula to litigation.”⁷³ The rescinded findings made both mistakes: picking a special subset of affected localities and singling out the effects of two Competition components within the larger CDBG-MIT Action plan.

FHEO’s real objection to the Harvey Competition was that it failed to *maximize* awards to densely-populated, urban governmental entities—whose constituents are disproportionately minorities. The Supplemental Findings abandon the earlier assertion that “approximately \$40-80 million more dollars would have been awarded to the benefit of minority residents” without the HUD-MID split and Jurisdiction size criterion.⁷⁴ Instead, the findings conclude that, without those components, more money likely would have gone to HUD MID areas. Whatever may be said of the wisdom of absolutely maximizing distributions to densely populated HUD MID areas, failing to do so in one aspect of a CDBG-MIT scheme does not constitute a disproportionate impact, much less a “clear pattern, unexplainable on grounds other than race.”⁷⁵

The rescinded findings do not refute GLO’s response that most of the Harvey Competition’s beneficiaries were nonwhite. They instead assume that “is the case” but contend “it is not a defense because Title VI ensures equal opportunity for individuals, not just *equal outcomes* for protected class groups.”⁷⁶ While Title VI and the Fair Housing Act prohibit discrimination based on protected characteristics, they do *not* guarantee equal outcomes for protected class groups.⁷⁷ But after finding

⁷¹ FHEO, *supra* n13 at 32 n.91.

⁷² *Greater New Orleans Fair Housing Action Center v. HUD*, 639 F.3d 1078, 1085 (D.C. Cir. 2011).

⁷³ *Id.*

⁷⁴ *Compare* FHEO, Letter Finding Noncompliance with Title VI, 11 (March 4, 2022), *with* FHEO, Supplemental Letter of Findings of Noncompliance, 19 (January 15, 2025).

⁷⁵ *Arlington Heights*, 429 U.S. at 266.

⁷⁶ FHEO, *supra* n.13 at 32 (emphasis added).

⁷⁷ *See Sandoval*, 532 U.S. at 280, 286 n.6 (explaining Title VI bars “only intentional discrimination” and “permits” facially neutral policies, enacted without discriminatory intent, that cause disparate outcomes); *Inclusive Cmty.*

GLO discriminated based on the group-outcome rationale, the findings waved away GLO's showing that the outcomes did not disproportionately favor whites by emphasizing Title VI's individual protections. The record, however, discloses no *individual* harmed by GLO's distribution of CDBG-MIT funds.

FHEO's previous analysis under this factor misplaced its focus on GLO's lack of justification for not maximizing distributions to HUD MID areas.⁷⁸ The other *Arlington Heights* factors address the context and rationale for a policy producing a disparate impact, but the evidence does not establish a measurable disparate impact in the first place.

Without a disparate impact, no reasonable cause for finding intentional discrimination exists. Again, even assuming a disparate impact, the other factors decisively cut in GLO's favor.

ii. Historical Background of the Harvey Competition

The historical background for distribution of the 2019 CDBG-MIT grant and implementation of the Harvey Competition reveals no discriminatory purpose by GLO.

GLO's Senior Deputy Director, Heather Lagrone, testified that GLO regularly uses a competition structure when it expects to be "oversubscribed"—facing "more need than dollars available."⁷⁹ The first competition for federal disaster recovery funds was held in 2012 for a grant to address wildfires.⁸⁰

Since 2012, GLO has "run multiple competitions" to administer "disaster recovery funds" (CDBG-DR).⁸¹ For HUD's 2015 flood disaster recovery grant to GLO, the Federal Register required 80% of the funds to be directed to HUD MID areas.⁸² In response, GLO allocated 80% of the funds to the HUD MID areas and held a competition for the remaining 20% of funds among State MID areas. For Hurricane Harvey CDBG-DR funds, separate from the 2019 CDBG-MIT grant, GLO directly allocated \$1.2 billion to both Harris County and the City of Houston based on HUD's express directive.⁸³

The 2019 CDBG-MIT award was the first disaster mitigation program, as opposed to disaster recovery, to be administered by HUD.⁸⁴ HUD reduced the required allocation of 2019 CDBG-MIT funds to HUD-MID areas from the 80% threshold imposed in CDBG-DR grants to 50%. HUD's notice stressed that State grantees should consider management capacity and local leverage to encourage grant subrecipients to effectively utilize federal funds for high-impact projects.⁸⁵

Project, 576 U.S. at 540 (explaining liability under the Fair Housing Act could not be "imposed based solely on a showing of a statistical disparity").

⁷⁸ FHEO, *supra* n.13 at 22-24.

⁷⁹ Tr. 70:14-16.

⁸⁰ Tr. 26:13-17.

⁸¹ *Id.*

⁸² Tr. 29:8-15.

⁸³ Tr. 30:5-10.

⁸⁴ Tr. 51:17-22.

⁸⁵ Tr. 63:14-21; 149:6-7.

GLO contemplated directly allocating the 2019 CDBG-MIT grants to the nine Councils of Government in the eligible areas in Texas, but this would have required the COGs to develop their own local methods of distribution.⁸⁶ Unless instructed by HUD to act differently, GLO utilized competitions to distribute large grants involving hundreds of millions of dollars, rather than allocating funds at the regional level.⁸⁷

Notably, municipalities and local governments within HUD-MID areas had historically struggled to utilize their disaster recovery funds for eligible projects, while entities in State-MID areas did not have the same issues. With the 2015 and 2016 CDBG-DR grants, where 80% of the funds were required to go to HUD MID areas, the HUD MID subrecipients failed to fully “utilize their funds and [had] run out of eligible projects.”⁸⁸ GLO observed “communities outside of HUD’s most impacted area being more responsive with the dollars.”⁸⁹ In 2018, Harris County issued a bond for more than \$2 billion to fund flood and drainage mitigation projects, which as of April 24, 2024 (when the GLO Director was deposed) had not been completely funded.⁹⁰ Both Houston and Harris County had federally-funded projects that were out of compliance.⁹¹

The supplemental findings’ historical analysis omits most of the above and instead highlights that Texas entered a voluntary compliance agreement with HUD in 2010 to resolve allegations that its distribution of CDBG-DR funds after Hurricanes Dolly and Ike was discriminatory.⁹² This VCA does not taint the 2019 grant at issue in this case. The VCA involved a different grant with different terms and embodied voluntary measures by GLO to meet HUD’s then-existing requirements. One voluntary settlement agreement does not establish a history of racial discrimination in disaster mitigation funding. Here, GLO followed HUD’s evolving guidance and consistently denied allegations of discrimination. The racially neutral history of the CDBG-MIT competitions outweighs any probative value of the 2010 VCA.

The historical background for the Harvey Competition is neutral and reveals no discriminatory purpose.

iii. The Specific Sequence of Events Leading to Implementation of the Harvey Competition.

When Congress appropriated funds for HUD to administer the CDBG-MIT grants to Texas, GLO met with local officials from the City of Houston, Harris County, Fort Bend, Brazoria, and some Councils of Government.⁹³ HUD took approximately 19 months to publish its notice concerning the specific federal requirements for the mitigation funding. The notice was published two years after Hurricane Harvey. Lagrone testified that, by necessity, GLO quickly developed the

⁸⁶ Tr. 72:9-12.

⁸⁷ Tr. 72:20-25.

⁸⁸ Tr. 40:18-20.

⁸⁹ Tr. 40:21-23.

⁹⁰ Tr. 82:21-83:18.

⁹¹ Tr. 152:12-20.

⁹² FHCO, *supra* n.13 at 24.

⁹³ Tr. 41:5-15.

Action Plan and submitted it to HUD to avoid further “delay in getting this money out on the street.”⁹⁴

Throughout the process, officials from Houston and Harris County consistently expressed their expectation to receive half of the disaster mitigation funds awarded to Texas.⁹⁵ Before the development of the Action Plan, a Harris County judge and the former mayor of Houston wrote a letter to GLO “assuming” that their localities would receive a direct CDBG-MIT distribution as with previous disaster recovery grants.⁹⁶ The letter also requested that any system for awarding funds be based only on risk, determined by rainfall volume, population size, and economic activity. The GLO policy development team rejected the letter’s assertion that Harris County and the City of Houston were uniquely situated for flood risk compared to all other disaster-impacted areas or that funds should be awarded based on metrics (i.e., population and economic activity) that categorically excluded rural communities.⁹⁷

GLO’s Action Plan included a needs assessment that mapped previous damage, the CDI, and disaster-related social vulnerability.⁹⁸ GLO assessed mitigation need based on a combination of Texas’s Hazard Mitigation Plan, a disaster composite index created in consultation with the University of Texas, watershed and river information, and GLO’s coastal master plan.⁹⁹ The social vulnerability index considered race and ethnicity as two of 30 factors.¹⁰⁰

Early proposals for the Competition scoring criteria weighed social vulnerability at 30% and the composite disaster index at 30%.¹⁰¹ After reviewing HUD’s Notice in the Federal Register, GLO added competition criteria to account for non-federal funds dedicated to the projects, capacity to administer federal funds, and comprehensive project planning.¹⁰² As previously mentioned, HUD approved the Action Plan without flagging any flaws in the division of funds between HUD MID and State MID areas.¹⁰³

At the request of Harris County and the City of Houston, GLO raised the maximum number of applications per applicant from two to six—allowing each participant to submit an additional individual application and three additional applications with a partner.¹⁰⁴ With this change, Houston, Harris County, and the Harris County Flood Control District had more opportunities to win the entirety of the \$500 million in the HUD MID competition through different project applications.

⁹⁴ Tr. 210:5.

⁹⁵ Tr. 41:18-19.

⁹⁶ Tr. 75:16-22.

⁹⁷ Tr. 78:9-79:1.

⁹⁸ Tr. 52:11-15.

⁹⁹ Tr. 36:1-13.

¹⁰⁰ Tr. 93:8-12.

¹⁰¹ Tr. 62:13-16; 63:5-8.

¹⁰² Tr. 65:8-10.

¹⁰³ Tr. 89:9-10.

¹⁰⁴ Tr. 84:23-85:15.

GLO solicited public comment before action plan development and during the release of the draft action plan.¹⁰⁵ GLO responded to the public comments and held extra meetings in the Houston/Galveston area to receive public comment from Harris County residents.¹⁰⁶

GLO staff met in person with government officials in the City of Houston to explain how the competition criteria would be scored. She described the meetings as “almost like an application workshop.”¹⁰⁷

After competition applications were selected but before funds were awarded, GLO compared the beneficiaries of selected projects with the demographics of the surrounding area to evaluate the potential for racially disparate outcomes.¹⁰⁸

Neither the Governor of Texas nor his staff gave instructions to GLO’s policy development team on whether to grant a direct allocation to the City of Houston and Harris County or to hold a general competition.¹⁰⁹

The specific sequence of events before the Harvey Competition show GLO attempted to comply with HUD’s directives within a short timeline. GLO leaders, to the extent feasible, followed standard notice and comment procedures, and they proactively reached out and were responsive to HUD MID stakeholders, including Houston and Harris County. This factor does not reveal a discriminatory motive by GLO.

iv. The Procedural and Substantive Departures within the Harvey Competition and other Arlington Heights Factors

As the historical background and sequence of events leading up to the Competition indicate, GLO followed standard procedures and HUD guidance to establish competitions to disburse the CDBG-MIT funds. Under this “departures” factor, the supplemental findings omit entirely how GLO procedurally and substantively departed from the competition structure to benefit—not discriminate against—HUD MID areas, specifically Harris County and Houston.

The results of the first round of the competition led to outcry from the city of Houston and Harris County. After this outcry, GLO initially considered changing the criteria for the second round but instead granted \$750 million directly to Harris County for a local method of distribution to fund shovel-ready projects within the county. To reiterate, *by August 23, 2021*,¹¹⁰ GLO had responded to complaints about the mitigation fund awards by abandoning the second competition round and directly allocating the vast majority of the second-round funding to the aggrieved areas.

Before scoring the first round of the Harvey Competition, GLO also modified competition scoring specifically for Houston and Harris County. Houston and Harris County lagged other

¹⁰⁵ Tr. 43:1-7.

¹⁰⁶ Tr. 191:14-21; 252:13-25.

¹⁰⁷ Tr. 183:23-25.

¹⁰⁸ Tr. 56:7-15.

¹⁰⁹ Tr. 23:23-24:3.

¹¹⁰ This is the date GLO’s first Amended Action Plan was published.

localities—including State MID applicants—in converting grants into tangible projects. For this reason, GLO did not apply the generally applicable management capacity criterion to applications by Houston and Harris County. Regarding these unique accommodations, the GLO Director stated in her deposition, “[W]e did what we needed to get them some additional points, recognizing that the way we treated everybody else was going to definitely lower their scores.”¹¹¹ This accommodation and the eventual abandonment of the competition model refute allegations that GLO administered funds with a discriminatory motive.

The contemporary statements and actions of key policymakers further establish GLO abandoned the second round of the Harvey Competition to address the concerns of Harris County residents. Texas GLO Commissioner George P. Bush initiated the Action Plan amendment that directly allocated \$750 million to Harris County in lieu of a second competition round.¹¹² He explained his decision at the time: “I have heard the overwhelming concerns of Harris County regarding the mitigation funding competition.”¹¹³ This statement, in May 2021, by the chief GLO policymaker further undermines any suggestion of discriminatory intent by GLO.

In GLO’s organizational deposition, FHEO investigators asked how GLO “ensure[d] appropriate funds went to racial and ethnic minorities.”¹¹⁴ FHEO questioned GLO’s failure to “map where the majority of [b]lack residents lived in the eligible areas” or adequately “consult with the demographic profiles” of disaster-impacted areas “when structuring the competition.”¹¹⁵ Thus, FHEO’s previous findings determined that GLO intentionally discriminated by not allocating disaster mitigation funding based on race.

Despite GLO disclosing 80,000 pages of official documents and internal communications, the record discloses no direct evidence that GLO designed or operated the Harvey Competition (or any portion of the Action Plan) with a racially discriminatory motive.

Other *Arlington Heights* factors assess the foreseeability of the disparate impact, knowledge of that impact, and the availability of less discriminatory alternatives. The evidence does not reveal an actual or predictable discriminatory impact from the Harvey Competition. In any event, GLO staff members could not reasonably be expected to foresee Houston would submit proposals with such a high cost-per-beneficiary. Upon review of the applications, staff were surprised that Houston hadn’t submitted “projects that benefited more people.”¹¹⁶ GLO expected Houston to “take advantage of the populations of [the] river basins as they were applying for projects within those areas.”¹¹⁷

After the results produced unfavorable outcomes for Harris County and Houston, GLO scrapped the Harvey Competition and distributed second round funds directly to that area. Even to the extent poor performance in the first round of the Harvey Competition by certain densely

¹¹¹ Tr. 150:18-21.

¹¹² Press Release, Texas General Land Office, Bush Requests Direct Funding Allocation to Harris County for Mitigation (May 27, 2021).

¹¹³ *Id.*

¹¹⁴ Tr. 136:14-16.

¹¹⁵ Tr. 57:3-4; 169:15-17.

¹¹⁶ Tr. 187:25.

¹¹⁷ Tr. 188:11-13.

populated HUD MID jurisdictions amounted to a discriminatory impact, the result was not foreseeable and GLO availed itself of an alternative to change the Harvey Competition outcome.

C. Conclusion

For the foregoing reasons, no reasonable cause exists to believe that GLO violated Title VI, the Fair Housing Act, or the Housing and Community Development Act through its administration of the 2019 CDBG-MIT funds.

D. ADDITIONAL INFORMATION

Notwithstanding this determination by HUD, the Fair Housing Act provides that the complainant may file a civil action in an appropriate federal district court or state court within two years after the occurrence or termination of the alleged discriminatory housing practice. The computation of this two-year period does not include the time during which this administrative proceeding was pending. In addition, upon the application of either party to such civil action, the court may appoint an attorney, or may authorize the commencement of or continuation of the civil action without the payment of fees, costs, or security, if the court determines that such party is financially unable to bear the costs of the lawsuit.

The Department's regulations implementing the Act require that a dismissal, if any, be publicly disclosed, unless either party requests that no such release be made. Such request must be made by the respondent within thirty (30) days of receipt of the determination to the Field Office of Fair Housing and Equal Opportunity at the address contained in the enclosed summary. Notwithstanding such request by the respondent, the fact of a dismissal, including the names of all parties, is public information and is available upon request.

A copy of the final investigative report can be obtained from:

FHEO, Region VI
U.S. Department of Housing & Urban Development
307 W. 7th Street, Suite 1000
Fort Worth, TX 76102

On behalf of the Department of Housing and Urban Development:

Christina Lewis, Regional Director
Office of Fair Housing and Equal Opportunity
Region VI

Date