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TONY R. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

CARL BERNOFSKY and
SHIRLEY G. BERNOFSKY

VERSUS

THE ROAD HOME CORPORATION,
ICF EMERGENCY MANAGEMENT
SERVICES, LLC, LOUISIANA RECOVERY
AUTHORITY, and LOUISIANA DIVISION
OF ADMINISTRATION THROUGH THE
OFFICE OF COMMUNITY DEVELOPMENT

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CIVIL ACTION NO.

5:09-CV-01919-TS-MLH

MOTION IN OPPOSITION TO DEFENDANT LRA'S AND
DEFENDANT OCD'S MOTION TO DISMISS

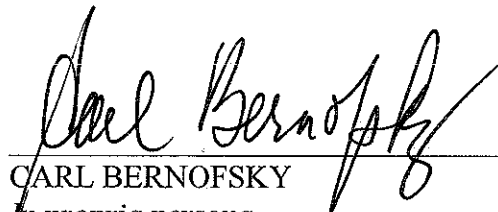
NOW INTO COURT, *in propria persona*, come plaintiffs Carl Bernofsky and Shirley G. Bernofsky (collectively, Bernofsky), who respectfully oppose the Motion to Dismiss by defendants, the Louisiana Recovery Authority (LRA) and the Louisiana Division of Administration through the Office of Community Development, (OCD).

As detailed in the accompanying Memorandum in Support, plaintiffs will show that, by Louisiana statute, the LRA has no immunity from suit. Moreover, in accordance with U.S. Supreme Court precedent, the Fifth Circuit has repeatedly stripped Eleventh Amendment

immunity from state actors who are recipients of federal funds in cases that involve violations of Fourteenth Amendment rights and other federal statutes. Thus, defendants' contention that they are entitled to Eleventh Amendment immunity is invalid. Additionally, the U.S. Supreme Court has ruled that a person's money is property that is protected by Fifth Amendment due process rights. Plaintiffs aver that, as intended third-party beneficiaries, they were improperly denied access to federal disaster relief funds through state actions that deprived them of federally-protected rights. Plaintiffs aver that, pursuant to Rules 12(b)(1) and 12(b)6, they have stated a claim for which relief could be granted in this Court.

Accordingly, defendants' Motion to Dismiss should be DENIED in its entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carl Bernofsky", is written over a horizontal line.

CARL BERNOFSKY

In propria persona

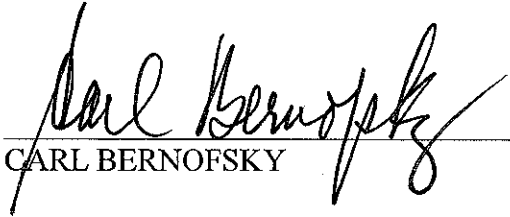
SHIRLEY G. BERNOFSKY

In propria persona

109 Southfield Road, Apt. 51H
Shreveport, Louisiana 71105
Tel: (318) 869-3871

CERTIFICATE OF SERVICE

The undersigned certifies that on this 15th day of March 2010, a copy of the above and foregoing was delivered to the Clerk of Court for use in the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing upon all CM/ECF registrants.


CARL BERNOFSKY

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION IN OPPOSITION TO
DEFENDANT LRA'S AND DEFENDANT OCD'S MOTION TO DISMISS**

NOW INTO COURT, *in propria persona*, come plaintiffs Carl Bernofsky and Shirley G. Bernofsky (collectively, Bernofsky), who respectfully oppose the Motion to Dismiss by defendants, the Louisiana Recovery Authority (LRA) and the Louisiana Division of Administration through the Office of Community Development, (OCD).

Introduction

Following Hurricanes Katrina and Rita in 2005, the Federal Government provided the State of Louisiana with an initial \$6.2 billion dollars in Community Development Block Grants (CDBG) for disaster recovery and rebuilding efforts. The CDBG program was created in 1974 by the Housing and Community Development Act and is administered by the Department of Housing and Urban Development (HUD), which has ultimate authority over its application through the mechanism of Action Plans. Subsequent awards of \$4.2 billion and \$3 billion in CDBG funds brought the total amount awarded to Louisiana to \$13.4 billion.¹

In response to the hurricanes, Louisiana Governor Kathleen Babineaux Blanco created a new state agency within the Division of Administration: the Louisiana Recovery Authority (LRA), which was a planning and coordinating body designed to have oversight authority over the State's recovery efforts. [Exhibit A]²

The Office of Community Development (OCD) is a standing agency within the Department of Administration that has the responsibility for administering annual CDBG awards from HUD. A special unit of the OCD was assigned the task of dispensing the supplemental CDBG funds earmarked for hurricane disaster relief and recovery. [Exhibit B]³ The OCD ultimately contracted with ICF Emergency Management Services, LLC (ICF) for assistance in

¹See the Opening Statement of Senator Mary Landrieu, Chairman, Subcommittee on Disaster Recovery, "The Role of the Community Development Block Grant Program in Disaster Recovery," May 20, 2009. Her remarks are available at http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=f7448914-51a5-41dc-8f75-1e820a008a80 (delete space).

²Louisiana R.S. 49 §220.4 and R.S. 40 §600.62.

³OCD Disaster Recovery Unit,
<http://www.doa.louisiana.gov/cdbg/DR/Reports/KatrinaRitaRecovery.pdf>.

implementing this responsibility.⁴ The combined efforts of these agencies comprised the “Road Home” program, which operated according to an Action Plan that required the approval of HUD and was frequently amended as the recovery process progressed. The LRA was responsible for developing and amending this Action Plan, which controlled the policies and procedures for the eligibility, disbursement and administration of CDBG funds. Louisiana was given considerable discretion and authority to determine the proposed use of these funds and the most prudent means of disbursing them.⁵

The LRA’s Action Plan Qualifies Plaintiffs for Benefits

According to LRA’s Action Plan of November 5, 2008 [Exhibit C], elderly homeowners who sold their homes and chose to remain in the state and did not purchase a home would be entitled to compensation based on 100% of the pre-storm value of their homes as outlined in Figure 2, Page 9 of the Action Plan. This describes precisely the plaintiffs’ present circumstances, and the LRA and OCD should be compelled to adhere to the purpose of its Action Plan.

⁴These proceedings, Doc. 24-3, Exhibit A.

⁵Prior to the initial obligation of CDBG funds, Louisiana was required to submit an Action Plan to HUD detailing the proposed use of these funds for its Road Home program, including criteria for eligibility and how the use of the funds would address long-term recovery. The amended Road Home Action Plans are available at <http://www.doa.louisiana.gov/CDBG/dractionplans.htm>.

**Applicants Who Missed the Statutory Deadline Are Not Precluded
From Receiving Road Home Assistance**

With regard to the flexibility accorded state authorities, Section 301 of the Stafford Act [Exhibit D] provides:⁶

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, **modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance** under such programs if the inability to meet such conditions is a result of the major disaster. [Emphasis Added]

Thus, waiver of a condition that would prevent the giving of assistance appears to be available to the State upon request, notwithstanding the assertions of LRA and OCD defendants that it was not possible to accommodate the plaintiffs' appeal for assistance. HUD has approved numerous requests by LRA for the resetting of various deadlines, but as explained in a letter to LRA, it would not consider approving a request that could violate a federal statute.

In that letter of May 8, 2009 from HUD to LRA Executive Director Paul Rainwater about the provisions of Federal Register Notice 72 FR 70472,⁷ HUD informs the LRA and OCD about the statutory July 31, 2007 deadline for filing an application for Road Home payments from funds specifically allocated for homeowner assistance. However, the same letter also states:

The Notice would not prevent the state from re-budgeting funds from another activity, such as infrastructure, to add to those funds already budgeted, **and it would not prevent those additional funds from being used to provide assistance to applicants who missed the appointment deadline.** [Emphasis Added]

⁶Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended June, 2007 (FEMA 592), http://fema.gov/pdf/about/stafford_act.pdf. See also 42 U.S.C. § 5141.

⁷See defendants' Exhibit G, these proceedings, Doc. No. 19-8.

Thus, as late as May 8, 2009, it was (and still is) possible for the LRA and OCD to make an accommodation to the plaintiffs, as requested by Senator Landrieu, to remedy ICF's negligence by providing plaintiffs with an application for the Road Home assistance for which they had properly registered on May 7, 2006,⁸ and about which they made formal inquiries starting August 1, 2008.⁹ Note that the State has not exhausted its resources: unexpended CDBG funds still available for hurricane relief were recently estimated to be between \$1.4 billion [Exhibit E] and \$3 billion.¹⁰ Furthermore, the flexibility of the LRA to move funds from one Road Home activity to another is exemplified by its recent concern over finding alternative uses for its "left over hazard mitigation cash." [Exhibit F]

As early as the first appropriation of disaster relief funds on December 30, 2005, [Exhibit G] Congress had already provided for flexibility in their allocation:¹¹

[T]he Secretary of Housing and Urban Development **shall waive, or specify alternative requirements** for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds or guarantees . . . **upon a request by the State that such waiver is required** to facilitate the use of such funds or guarantees... [Emphasis added]

Thus, subject to HUD approval, the LRA has broad authority to set, alter and extend time lines for the various Road Home activities it oversees. To cite one example, on August 20, 2009,

⁸Complaint, Exhibit A.

⁹Complaint, Exhibit E.

¹⁰These proceedings, Doc. No. 24-5, p. 10, Exhibit S.

¹¹Public Law 109-148, December 30, 2005.

LRA announced a three (3) year deadline extension to homeowners who needed more time to rebuild. [Exhibit H].

Plaintiffs Explicitly Excluded Intellectual Property as a Recoverable Loss

Defendants LRA and OCD misrepresented the facts by stating: “Plaintiffs’ request for compensation in this lawsuit extends to losses not covered and/or excluded by the Road Home program, i.e., to loss of contents and “intellectual property” contained in their home at the time of Hurricane Katrina.” (These proceedings, Doc. No. 19-1, Page 3)

Firstly, in discussing the loss of intellectual property, plaintiffs stated: **“No attempt is made here to assign or claim a monetary value for that loss.”** (Complaint, Page 10, ¶ 30, Emphasis added) Moreover, in plaintiffs’ detailed description of their uncompensated losses, there is no entry for the loss of intellectual property. [Complaint, Exhibit S]

Secondly, plaintiffs did not request compensation for the loss of contents. Rather, plaintiffs requested benefits **only for losses that were not compensated by insurance or from any other source.** (Complaint, Page 9, ¶ 29 and Complaint, Exhibit S). Not only were plaintiffs forthcoming and honest in detailing their uncompensated losses, they cited a minimal figure for the value of the house they had lost.

Plaintiffs Are Third-Party Beneficiaries of OCD's Contract with ICF

Every homeowner who registered with the Road Home program was an intended third-party beneficiary of the State's contract with ICF for the distribution of CBDG funds, subject to verification of their qualifications. OCD's contract with ICF mandated the latter to contact homeowners who had registered for benefits, and examine their claims through the application process.¹²

A third party beneficiary is a person benefitting from a contract made between two parties, where the two contracting parties intended to benefit the third party beneficiary. The third party beneficiary is not a party to the contract but has rights under the contract since it was made with an intent to benefit him.¹³

The principal reason that OCD entered into a contract with ICF was to enable the State to find and compensate all legitimate third-party beneficiaries who had suffered losses as a result of the hurricanes. Plaintiffs were subjected to disparate treatment and improperly deprived of due process because they were never contacted or invited to present their claim through the application process, even though they were properly registered with the Road Home program.¹⁴

Louisiana Civil Code Art. 1981 states: "The stipulation gives the third party beneficiary the right to demand performance from the promisor. Also, the stipulator, **for the benefit of the third party**, may demand performance from the promisor." [Emphasis added]. This statute acknowledges plaintiffs' right to seek relief from ICF, and it recognizes the responsibility of

¹²These proceedings, Doc. No. 24-3, Exhibit A.

¹³Legal Encyclopedia, Cornell Legal Information Institute, Definition of "third party beneficiary," <http://www.law.cornell.edu/search/index.html>.

¹⁴Complaint, Exhibit A.

OCD to exercise its oversight authority to insure that ICF was fulfilling its obligations to all Road Home registrants.

Plaintiffs' Claims for Relief Are Not Prescribed

This lawsuit follows the refusal of defendants to acknowledge and follow the recommendation of Senator Mary Landrieu, Chair of the Subcommittee on Disaster Recovery,¹⁵ which provides congressional oversight into the manner in which federal disaster funds are used. Congress is responsible for funding the Road Home program and has the authority to evaluate the program's compliance to its rules and efficacy in practice.

On August 6, 2009, Senator Landrieu informed plaintiffs of her request to the OCD, that Bernofsky be allowed to complete an application.¹⁶ Landrieu later verified to Bernofsky that an "OCD Exception form" had been forwarded to the Office of Community Development.¹⁷ This procedure was intended as a remedy to accommodate plaintiffs for ICF's failure to incorporate them into the Road Home program for which plaintiffs had properly registered. The refusal of OCD to follow through on Landrieu's request contributed to the deprivation of plaintiffs' rights and was in defiance of a U.S. senator's recommendation. In a telephone conversation with Ms. Judy Johnson-White of the Road Home program on July 28, 2009, Bernofsky was informed that OCD was the proper entity with which to negotiate.

¹⁵See FN #1.

¹⁶Complaint, Exhibit N.

¹⁷Complaint, Exhibit O.

Whereas OCD is responsible for handling the finances of the Road Home program, the LRA is responsible for developing the program's policies. The LRA has set, altered and made exceptions to various deadlines, and it has announced the Road Home "program's final closing deadline of June 10, 2010, and that extensions will be given on a case-by-case basis..."¹⁸ On January 5, 2010, John Georges, a New Orleans mayoral candidate and former member of the Louisiana Board of Regents, noted that \$3 billion in federal recovery grants remain in the coffers of the LRA.¹⁹

Despite earlier telephone conversations with Road Home representatives, it was not until Bernofsky received the written notice of rejection, dated October 30, 2009, that plaintiffs were able to act on that information. This lawsuit was filed on November 13, 2009, at a time when LRA is still engaged in related activities, and well before the program's final closing deadline of June 10, 2010.

The Louisiana Recovery Authority Has No Immunity from Suit

By statute, the State of Louisiana has abrogated immunity for the LRA, and, by extension, its subordinate agencies are similarly liable. As shown in Exhibit A, Louisiana R.S. 49: §220.4 (A)(1) provides, in pertinent part:

The Louisiana Recovery Authority is hereby created as a state agency within the office of the governor, division of administration. **The authority shall be a body corporate with power to sue and be sued.** [Emphasis added]

¹⁸These proceedings, Doc. 24-5, Page 8, Exhibit R.

¹⁹These proceedings, Doc. 24-5, Page 10, Exhibit S.

This statute essentially precludes further discourse on whether the LRA can be sued, for clearly that is the intention of Louisiana State legislators. The state law notwithstanding, plaintiffs will additionally demonstrate that the Fifth Circuit has embraced the concept that state agencies who accept federal funds lose any immunity they may have had when they engage in actions that are discriminatory against citizens in violation of federal civil rights statutes.

Even in the absence of specific state statutes that abrogate immunity, state agencies are not entitled to immunity where injury to person **or property** is concerned. In *Rhodes v. State of Louisiana*, the plaintiffs alleged negligence and liability on the part of the Department of Transportation and Development and the Department of Public Safety and Corrections in connection with an incident that resulted in an automobile accident. Upon appeal, the Louisiana Supreme Court ruled²⁰ that the state's invocation of sovereign immunity was unconstitutional because La. Const. art. 12, § 10 provides:

§ 10. Suits Against the State

Section 10. **(A) No Immunity in Contract and Tort.** Neither the state, a state agency or a political subdivision shall be immune from suit and liability in contract or for injury to person or property. [Emphasis in original]

Thus, defendants' claims that they are protected from suit by state immunity are baseless.

Notification and Publicity

As shown by documents furnished by defendants, there was one primary Web site that repeatedly furnished new information about the Road Home program, and on which it published its own news releases. Defendants' Exhibit D (Doc. No. 19-5), dated October 3, 2006, directs:

²⁰See www.lasc.org/opinions/95ca1848.opn.pdf. Also, *Rhodes v. State, DOTD*, 95-1848 (La. 5/21/96); 674 So.2d 239.

“Homeowners who received a letter from *The Road Home* program instructing them to do so may now call 1-888-ROAD2LA to schedule an appointment at any of the 10 Housing Assistance Centers located across Louisiana.” . . . **“Only homeowners who have received a letter inviting them to schedule an appointment should call.”** [Emphasis in the original] Plaintiffs never received a letter, were never contacted by the Road Home program and, at the time, they were unaware of the particular Web site bearing these news releases.

The Road Home Housing Registry, with which plaintiffs properly registered on May 7, 2006 states: “We will be in contact with you as soon as the program begins.” [Complaint, Exhibit A]. Unlike other Road Home registrants who were properly notified and who progressed through the application process and ultimately received awards to which they were entitled, plaintiffs were disadvantaged because of their disparate treatment of never having been contacted for the application process. The implication by defendants that plaintiffs would deliberately fail to participate in the application process, or knowingly ignore a statutory deadline, is clearly absurd.

The Constitution Is the Highest Law of the Land

The Supremacy Clause of the U.S. Constitution establishes the Constitution as the supreme law of the land:²¹

This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

²¹U.S. Constitution, Article VI, Clause 2.

With all due respect, judges who take a solemn oath to uphold the Constitution have a duty not to be swayed by judicial dicta that subordinate that responsibility to alternative interests. Not only do dicta not rise to the level of stare decisis in most cases, but there is much cause to justify the discretion that judges possess to independently consider cases before them, based on their individual merits as well as applicable laws.

Issues of sovereign immunity, in particular, have been controversial and must be considered with care. In the instant proceeding, defendants persist in asserting that they are endowed with Eleventh Amendment immunity. Such entitlement would, in effect, provide defendants license to engage in activities that could deprive citizens of their rights, while they remain shielded from liability.

The Eleventh Amendment states:²²

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

The language of the Eleventh Amendment is silent about whether a state can be sued by citizens of the same state, and interpretations to the contrary should be considered as mere dicta, despite the frequency with which such proclamations have been cited and their drift toward the appearance of law. Nevertheless, the Constitution, which overrides all the laws of the states and invalidates any contrary laws, also supercedes all judicial dicta, including those that have been propagated through repetition.

²²Cornell Legal Information Institute, <http://topics.law.cornell.edu/constitution/amendmentxi>.

It was never the intention of Congress to allow any law that would permit the states to violate federal law with impunity, and Congress has expressly forbidden states to pass laws that violate this principle. This is articulated in the Privileges and Immunities Clause of the Fourteenth Amendment, which states:²³

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Courts Have Upheld the Privileges and Immunities Clause of the Fourteenth Amendment

In *Strauder v. West Virginia*²⁴ the U.S. Supreme Court acknowledged the authority of Congress to enforce the provisions of the the Fourteenth Amendment when it stated:

The Fourteenth Amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality of legal protection, either for life, liberty, or property.

* * *

If, however, the States did not conform their laws to [the Fourteenth Amendment's] requirements, then, by the fifth section of the article of amendment, Congress was authorized to enforce it by suitable legislation.

These principles were reinforced by the U.S. Supreme Court in 1908 when it ruled in *Ex parte Young*, that private individuals had the authority to sue state officials who violated their federal rights.²⁵

The state has no power to impart to [its officer] any immunity from responsibility to the supreme authority of the United States.

²³Cornell Legal Information Institute, <http://topics.law.cornell.edu/constitution/amendmentxiv>.

²⁴*Strauder v. West Virginia*, 100 U.S. 303 (1879).

²⁵*Ex parte Young*, 209 U.S. 123, 160 (1908).

Moreover, 42 U.S.C. Section 1983 provides, in pertinent part:²⁶

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

Clearly, Section 1983, above, provides immunity to no one when it describes potential defendants in terms of “Every person” acting “under color of any statute.”

Finally, the Equal Protection Clause of the Fourteenth Amendment states:²⁷

[N]or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Thus, the Fourteenth Amendment affords no immunity to states who would deprive any person of “property without due process,” or deny any person “the equal protection of the laws.” Moreover, the due process clause applies equally to “legal persons” who comprise corporate personhood as well as to individuals.²⁸

²⁶Cornell Legal Information Institute, http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00001983----000-.html.

²⁷Cornell Legal Information Institute, <http://topics.law.cornell.edu/constitution/amendmentxiv>.

²⁸See Justice Scalia’s remarks in *Citizens United v. Federal Election Commission*, 558 U.S. ____ (2010). Quoted in these proceedings, Doc. No. 24-1, Page 10, ¶ 17.

Special Protections to Those Affected by Disasters

In addition to the above civil rights protections, to those who have been affected by disasters, Title 42 Section 5121(b)(6) provides:²⁹

(b) It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by:

* * *

(6) providing Federal assistance programs for both public and private losses sustained in disasters.

Clearly, it is the intent of Congress to assist the public with its losses from disasters through state and local governments, and to alleviate the suffering and damage caused by disasters, rather than exacerbate it through inept management of federally-funded assistance programs. To the extent that defendant OCR failed to meet its oversight obligation to insure that plaintiffs were contacted after they had properly registered with the State-operated Road Home program, OCR was in violation of 42 U.S.C. §5121(b)(6).

Furthermore, the Nondiscrimination in Disaster Assistance Act provides:³⁰

(a) Regulations for equitable and impartial relief operations

The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, **the processing of applications, and other relief and assistance activities**

²⁹Cornell Legal Information Institute,
http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00005121----000-.html.

³⁰USC 42 Section 5151. See Cornell Legal Information Institute,
http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00005151----000-.html.

shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status. [Emphasis added]

(b) Compliance with regulations as prerequisite to participation by other bodies in relief operations

As a condition of participation in the distribution of assistance or supplies under this chapter or of receiving assistance under this chapter, **governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination** promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts. [Emphasis added]

In the wake of the Katrina disaster, plaintiffs had every expectation to be treated by government agencies in a nondiscriminatory fashion, and plaintiffs have asserted that, “defendants’ actions violated 42 U.S.C. Section 1983 of the Civil Rights Act because defendants’ disparate treatment of plaintiffs constitutes a violation of plaintiffs’ rights by those acting under of color of law.”³¹

**The Fifth Circuit Has Repeatedly Ruled that State Actors
Have no Guaranteed Entitlement to Immunity**

Plaintiffs Ella Rogers and Michael Jones were injured on September 8, 2005, when their vehicle was rear-ended by a vehicle driven by State Trooper John C. Nelson, who had fallen asleep at the wheel. Defendants, the State of Louisiana, through the Department of Corrections,

³¹Complaint, Page 8, ¶ 28.

and the State Trooper appealed a judgement rendered in favor of plaintiffs, claiming Eleventh Amendment immunity.³²

In its opinion, the Appellate Court stated: “The question that we must answer is whether the immunity provisions of the Louisiana Homeland Security and Emergency Assistance and Disaster Act and/or the statute granting immunity to the State and its employees for operational activities conducted in the aftermath of Hurricane Katrina are properly classified as affirmative defenses. ... If not, we must consider Plaintiffs’ assertion that the conduct of Trooper Nelson rose to the level of gross negligence or willful misconduct, **thus triggering exceptions to the claimed immunities.**” [Emphasis added] The Appellate Court concluded by affirming the judgment of the trial court in favor of plaintiffs.

In the matter presently under consideration, defendant ICF was similarly “asleep at the wheel” when it injured plaintiffs by its failure to service plaintiffs’ Road Home registration. Moreover, the conduct of the LRA and OCD rose to the level of willful misconduct through their refusal to grant Louisiana Senator Mary Landrieu’s proposal that plaintiffs be given an opportunity to complete an application as a remedy for ICF’s failure to incorporate plaintiffs into the Road Home program, for which plaintiffs had properly registered.

In *Pace v. Bogalusa City School Board*,³³ the Fifth Circuit concluded in 2005 that the state had waived its right to immunity under the Eleventh Amendment, and that the state

³²The case is *Ella Rogers, et al v. State of Louisiana, Through the Department of Public Safety and Corrections, et al*, Case No. 07-1060, (La.App. 3 Cir. 2008).

³³*Pace v. Bogalusa City School Board*, 403 F.3d 272, (5th Cir. 2005).

defendants were not entitled to immunity from Pace's claims under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The Fifth Circuit's ruling is in accordance with the Civil Rights Remedies Equalization Act (below), **which specifically conditions a state's receipt of federal funds on the state's waiver of Eleventh Amendment immunity to actions under federal anti-discrimination statutes:**³⁴

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973, title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, **or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.** [Emphasis added]

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation **to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.** [Emphasis added]

The Fifth Circuit's ruling in *Pace* is consistent with an earlier ruling in *Pederson v. Louisiana State University*,³⁵ in which the Court similarly stripped the State of immunity over its receipt of federal funds. In 1994, Louisiana State University was sued by five (5) female students for violation of Title IX of the 1972 Education Act that requires equal access to athletics. LSU invoked the Eleventh Amendment immunity defense and claimed that the

³⁴42 U.S.C. § 2000d-7, Cornell Legal Information Institute, http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00002000---d007-.html.

³⁵*Pederson v. Louisiana State Univ.*, 213 F.3d 858 (5th Cir. 2000).

discrimination was not intentional. The Fifth Circuit dismissed LSU's immunity defense and ruled that LSU had waived such immunity by accepting federal funds.

Intervening for the United States on behalf of the plaintiffs in *Pederson*, attorneys for the Department of Justice had argued:³⁶

Appellees [LSU et al.] contend that the district court lacked subject matter jurisdiction to consider Appellants' claims because Appellees are immune from suit pursuant to the Eleventh Amendment. Appellants, and the United States as Intervenor, counter that the Eleventh Amendment does not bar Appellants' suit because (1) Congress validly abrogated the States' Eleventh Amendment immunity for purposes of Title IX, (2) LSU waived its Eleventh Amendment immunity when it accepted federal funding for its educational institutions, or (3) jurisdiction properly lies under the doctrine of *Ex Parte Young*. The district court held that Eleventh Amendment immunity did not deprive the court of subject matter jurisdiction. See 912 F.Supp. at 901. The district court's ruling on Appellees' Eleventh Amendment immunity is subject to de novo review. See *Seminole Tribe v. Florida*, 11 F.3d 1016, 1021 (11th Cir. 1994), *aff'd*, 517 U.S. 44 (1996).

In order to abrogate a State's sovereign immunity, Congress must (1) have "unequivocally expresse[d] its intent to abrogate the immunity," and (2) have "acted pursuant to a valid exercise of power." *Seminole Tribe*, 517 U.S. at 55 (internal quotations omitted).

There is no dispute that Congress unequivocally has expressed its intent to abrogate the States' sovereign immunity in the context of Title IX. In response to *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234 (1985), Congress enacted the Civil Rights Remedies Equalization Act ("CRREA") as part of the Rehabilitation Act Amendments of 1986, 1003, Pub. L. No. 99-506, 100 Stat. 1845 (codified at 42 U.S.C. 2000d-7). Section 2000d-7 provides:

A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, 42 U.S.C. 6101 et

³⁶*Ibid.*, 201 F.3d 388 (5th Cir. 2000).

seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., **or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.** [Footnotes omitted, Emphasis added]

In *Garrett v. Univ. of Alabama*,³⁷ a case involving a disabled nurse, the Eleventh Circuit concurred that state agencies waived their Eleventh Amendment immunity by accepting federal funds, stating: “Congress had abrogated the state’s immunity to suits under the ADA and section 504 of the Rehabilitation Act.” Intervening on behalf of the plaintiff, attorneys for the U.S. Department of Justice had argued that acceptance of federal funds in the face of the clear conditions of 42 U.S.C. 2000d-7 constituted a knowing waiver of Eleventh Amendment immunity to private suits under section 504.³⁸

Similarly, in 2005, the Fifth Circuit found that the University of Houston did not have Eleventh Amendment immunity in a case brought by a disabled student claiming a violation of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.³⁹ The Court ruled that the University’s “eligibility for federal financial assistance is conditional upon waiver of Eleventh Amendment immunity to discrimination suits under the identified statutes.”

³⁷*Garrett v. Univ. of Alabama*, Civil Action No. 02-16078, (11th Cir. 2003).

³⁸*Ibid.*, Civil Action No. 02-16078-GG (11th Cir. 2003).

³⁹*Thomas v. University of Houston*, Case No. 02-20988 (5th Cir. 2005).

Inasmuch as the matter presently under consideration also involves the state's receipt and distribution of federal funds, and plaintiffs have claimed violations of Fourteenth Amendment and Section 1983 anti-discrimination laws, the present defendants have no claim to immunity.

In a 1964 discrimination suit against the state, Justice John Minor Wisdom speaking for the Fifth Circuit remarked:⁴⁰

Six times in recent years the Attorney General of Louisiana has contended in a "school segregation" case that the Eleventh Amendment shields the State and its agencies from being sued without the consent of the State. *Ex parte Young*, 1908, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714, is no stranger to the Attorney General of Louisiana, but he takes the stand that the *Ex parte Young* doctrine is limited to actions against individual public officials and does not apply to an action against a State agency. Again we reject this notion. **We hold that the Eleventh Amendment provides no haven for a state agency when it violates federally protected constitutional rights.**

* * *

State immunity from suit under the Eleventh Amendment is an untidy area of the law. The time may even have come when it would be well to admit the realities, face up to the fact that in these actions against a state agency or public official the party at interest is the State, **and hold that the Eleventh Amendment does not contemplate a suit based on state action contrary to the United States Constitution.**

In 2003, the U.S. Supreme Court ruled in *Nevada v. Hibbs*⁴¹ that an individual may sue a state for money damages in federal court for violation of the Family and Medical Leave Act of 1993 (FMLA), a federal law. The Court reasoned that Congress clearly stated its intention to abrogate the state's Eleventh Amendment immunity from suit in federal court under the FMLA and acted within its authority under Section 5 of the Fourteenth Amendment by enacting such

⁴⁰*Louisiana State Board of Education v. Baker*, 339 F.2d 911.

⁴¹*Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721 (2003)

“prophylactic” legislation that would counter a state’s unconstitutional participation in discriminatory actions in the administration of family leave benefits.

In *Fitzpatrick v. Bitzer*,⁴² the U.S. Supreme Court reversed a Second Circuit, Appellate Court’s ruling in Case No. 75-251 that barred petitioners from receiving an award of monetary damages because of Eleventh Amendment immunity claimed by the State of Connecticut. The high court reversed on the basis that petitioners’ Fourteenth Amendment claims were enforceable by Congress, thereby allowing a citizen to sue his state employer. The opening paragraphs of this landmark case are reprinted as follows:⁴³

Present and retired male employees of the State of Connecticut (petitioners in No. 75-251) brought this class action alleging, inter alia, that certain provisions of the State’s statutory retirement benefit plan discriminated against them because of their sex, in violation of Title VII of the Civil Rights Act of 1964, which, as amended, extends coverage to the States as employers. The District Court ruled in their favor and entered prospective injunctive relief against respondent state officials. But the court denied petitioners’ request for an award of retroactive retirement benefits as compensation for losses caused by the State’s discrimination, as well as “a reasonable attorney’s fee as part of the costs,” as provided in Title VII, holding that both would constitute recovery of money damages from the State’s treasury and were thus precluded by the Eleventh Amendment and by this Court’s decision in *Edelman v. Jordan*, 415 U.S. 651, where the District Court’s award for welfare benefits wrongfully withheld was held to violate that Amendment, there being no authorization in the Social Security Act for a citizen to sue a State. The Court of Appeals reversed in the matter of attorneys’ fees, the award of which was deemed to have only an “ancillary effect” on the state treasury of the sort permitted by *Edelman*, but otherwise affirmed. *Held:*

⁴²*Fitzpatrick v. Bitzer*, 427 U.S. 445 (1976).

⁴³Reprinted from Findlaw, <http://laws.findlaw.com/us/427/445.html>.

1. The Eleventh Amendment does not bar a backpay award to petitioners in No. 75-251, since that Amendment and the principle of state sovereignty that it embodies are limited by the enforcement provisions of 5 of the Fourteenth Amendment, which grants Congress authority to enforce "by appropriate [427 U.S. 445, 446] legislation" the substantive provisions of the Fourteenth Amendment, which themselves embody significant limitations on state authority. Congress in determining what legislation is appropriate for enforcing the Fourteenth Amendment may, as it has done in Title VII, provide for suits against States that are constitutionally impermissible in other contexts. The "threshold fact of congressional authorization" for a citizen to sue his state employer, which was absent in *Edelman*, supra, is thus present here.

2. Congress' exercise of power in allowing reasonable attorneys' fees is similarly not barred by the Eleventh Amendment.

Justice Rehnquist, in delivering the opinion of the Court, noted in footnotes that thirteen (13) briefs of amici curiae were filed urging reversal in No. 75-251. None urging affirmation of No. 75-251 were filed. His opinion follows:

In the 1972 Amendments to Title VII of the Civil Rights Act of 1964, Congress, acting under 5 of the Fourteenth Amendment, authorized federal courts to award money damages in favor of a private individual against a state government found to have subjected that person to employment discrimination on the basis of [427 U.S. 445, 448] "race, color, religion, sex, or national origin." The principal question presented by these cases is whether, as against the shield of sovereign immunity afforded the State by the Eleventh Amendment, *Edelman v. Jordan*, 415 U.S. 651 (1974), Congress has the power to authorize federal courts to enter such an award against the State as a means of enforcing the substantive guarantees of the Fourteenth Amendment. The Court of Appeals for the Second Circuit held that the effect of our decision in *Edelman* was to foreclose Congress' power. We granted certiorari to resolve this important constitutional question. 423 U.S. 1031 (1975). We reverse. [Footnotes omitted]

Violations of the Due Process Clause of the Fifth Amendment Are Actionable

The property of which plaintiffs were deprived was the monetary benefit for uncompensated damages to which they might be entitled but for the negligence of defendant ICF toward them and the callous disregard of defendants LRA and OCD to plaintiffs' appeals that had the support of Senator Landrieu. Plaintiffs have asserted that among their federal claims of discrimination was their disparate treatment by defendants, which deprived them of their due process rights.⁴⁴

The Fifth Amendment provides, in pertinent part:

No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

Davis v. Passman, 442 U.S. 228 (1979), was an employment discrimination case that turned on a deprivation of the plaintiff's due process rights. The Fifth Circuit did not find for the plaintiff.⁴⁵ However, upon appeal, the U.S. Supreme Court reversed the Fifth Circuit and ruled:

A cause of action and damages remedy can be implied directly under the Constitution when the Due Process Clause of the Fifth Amendment is violated. *Cf. Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388; *Butz v. Economou*, 438 U. S. 478.

* * *

The issue presented for decision in this case is whether a cause of action and a damages remedy can also be implied directly under the Constitution when the Due Process Clause of the Fifth Amendment is violated. The Court of Appeals for the Fifth Circuit, en banc, concluded that "no civil action for damages" can be thus implied. 571 F.2d 793, 801 (1978). We granted certiorari, 439 U.S. 925 (1978), **and we now reverse.** [Emphasis Added]

⁴⁴These proceedings, Doc. No. 29, Page 4.

⁴⁵On appeal from U.S. District Court for the Western District of Louisiana. See 571 F.2d 793.

Payment of Money Wrongfully Denied is Injury to Property

Plaintiffs aver that they are entitled to have access to the monetary benefits made available through CDBG grants to qualified homeowners who, like themselves, suffered hurricane related losses. On the basis that a monetary benefit, like money, is property, plaintiffs have been improperly denied access to property under color of law in violation of the due process clause of the Fifth Amendment. The U.S. Supreme Court has implied (see below) that a person whose property is diminished by a payment of money wrongfully denied is injured in his property.

In *Chattanooga Foundry v. Atlanta*, 203 U.S. 390 (1906), the Supreme Court undertook a consideration of whether money is property, and ruled in the affirmative. In that case, the city of Atlanta, Georgia, had been improperly overcharged for the purchase of iron water pipe for its waterworks system, and the resulting dispute was litigated in the Sixth Circuit before progressing to the Supreme Court. Justice Oliver Wendell Holmes delivered the opinion of the Court and stated:

The city was a person within the meaning of § 7 [of the Sherman Antitrust Act, 26 Stat. 209 (1890)] by the provision of § 8. It was injured in its property, at least, if not in its business of furnishing water, by being led to pay more than the worth of the pipe. **A person whose property is diminished by a payment of money wrongfully induced is injured in his property.** [Emphasis added]

In 1968, the U.S. Supreme Court reaffirmed the decision reached in *Chattanooga* that equated money with property when it found for the plaintiff in *Hanover Shoe v. United Shoe Mach.*, 392 U.S. 481 (1968). United had forced Hanover to rent its unique shoemaking

machinery at costs that far exceeded the purchase price and refused to sell the equipment to Hanover. Justice Byron White delivered the opinion of the Supreme Court and stated:

Section 4 of the Clayton Act, 38 Stat. 731, 15 U.S.C. § 15, provides that any person "who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor * * * and shall recover threefold the damages by him sustained * * *." We think it sound to hold that when a buyer shows that the price paid by him for materials purchased for use in his business is illegally high and also shows the amount of the overcharge, he has made out a prima facie case of injury and damage within the meaning of § 4.

If in the face of the overcharge the buyer does nothing and absorbs the loss, he is entitled to treble damages. This much seems conceded. The reason is that **he has paid more than he should and his property has been illegally diminished**, for had the price paid been lower his profits would have been higher. [Emphasis added]

42 U.S.C. Section 1983 Claims Against OCD and ICF for Deprivation of Rights

As OCD contractor for the State of Louisiana, ICF was obligated to provide equal treatment to all Katrina victims who were duly registered with the state's Road Home program, and OCD was obligated through its oversight authority to insure that the contractor met its obligations. The failure of ICF to act on Bernofsky's registration in accordance with its mandate, or to respond to Bernofsky's later inquiries, constitutes disparate treatment. To the extent that OCD and ICF acted under color of law, they also deprived plaintiffs of rights and privileges in violation of 42 U.S.C. Section 1983 of the Civil Rights Act, which states, in pertinent part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party

injured in an action at law, suit in equity, or other proper proceeding for redress...⁴⁶

By April 13, 2006, about 65,000 homeowners had registered for the Road Home program.⁴⁷ Bernofsky registered on May 7, 2006,⁴⁸ and by the time ICF's contract with the state ended on June 11, 2009, approximately 124,000 homeowners, including those who had registered via the Internet, received their grants.⁴⁹ These facts serve to highlight the inequitable treatment of plaintiffs by defendants, who not only neglected to follow through on their obligation to plaintiffs, but acted with wanton disregard to their inquiries and rights. LRA was fully aware of ICF's many deficiencies when they fined them.⁵⁰ Nevertheless, no attempt was made to rectify or accommodate Bernofsky.

Joinder and Supplemental Jurisdiction

Defendant ICF raised the issue of joinder, which thereby requires this Court to consider the matter of supplemental jurisdiction.⁵¹ 28 U.S.C. Section 1367 provides, in pertinent part:⁵²

[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they

⁴⁶Cornell Legal Information Institute,
http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00001983----000-.html.

⁴⁷These proceedings, Doc. 24-4, Page 9, Exhibit G.

⁴⁸Complaint, Exhibit A.

⁴⁹These proceedings, Doc. 24-4, Page 4, Exhibit E.

⁵⁰These proceedings, Doc. 24-1, Page 11.

⁵¹These proceedings, Doc. 20-1, Pages 11-16.

⁵²28 U.S.C. § 1367, Cornell Legal Information Institute,
http://www.law.cornell.edu/uscode/html/uscode28/usc_sec_28_00001367----000-.html.

form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

The issue of joinder turns upon the degree of liability that should be assigned to each of the defendants: LRA, the policy-making agency of the state; OCD, the state agency charged with the responsibility of distributing federal CDBG funds for hurricane relief; and ICF, the corporation with which OCD contracted to implement the latter's obligation to benefit qualified homeowners who sustained hurricane related losses.

The argument by ICF in favor of joinder pursuant to FRCP Rule 19 (Required Joinder of Parties) appears designed to deflect the burden of liability away from itself. Rule 19(a) states, in pertinent part:⁵³

(a) Persons Required to Be Joined if Feasible.

(1) Required Party.

A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

⁵³Quoted from: Cornell University Legal Information Institute,
<http://www.law.cornell.edu/rules/frcp/Rule19.htm>.

As attested to by the caption to this lawsuit, the joinder of ICF with an entity of the State of Louisiana is feasible. However, joinder is not a necessary condition upon which relief can be sought if defendant ICF alone is considered wholly responsible for plaintiffs' damages. ICF has indemnified the state for certain liabilities including, but not limited to, its failure to obtain, maintain and secure information from Road Home registrants as required by the terms of its contract with the state.⁵⁴ Excluding the other defendants would not impede the ability of LRA and OCD to protect their interests, while joinder itself would not relieve defendant ICF of liability in the instant matter.

LRA and OCD argue that this Court should decline supplemental jurisdiction.⁵⁵ This argument appears to be an attempt by these defendants to avoid liability by moving plaintiffs' claims against them into State Court, where they may perceive greater advantage. Inasmuch as plaintiffs' claims against the LRA and OCD primarily involve violations of federal law, plaintiffs are of the opinion that, to the extent that any state law may be involved, this Court should consider accepting supplemental jurisdiction.

- Defendants have acted in a manner that unlawfully denied plaintiffs access to federal benefits to which they may be entitled.
- Defendants are both grantees and agents of federal funds and were obligated to use those funds to deliver monetary relief to qualified homeowners who had sustained hurricane related losses.

⁵⁴These proceedings, Doc. 24-3, Exhibit A

⁵⁵These proceedings, Doc. 19-1, Pages 21-22.

- Defendants deprived plaintiffs of their federally-protected rights.
- Defendants are not protected from liability by immunity.

Plaintiffs respectfully request an appropriate and just remedy. The motion by LRA and OCD to dismiss should be denied.

Respectfully submitted,

CARL BERNOFSKY

In propria persona

SHIRLEY G. BERNOFSKY

In propria persona

109 Southfield Road, Apt. 51H
Shreveport, Louisiana 71105
Tel: (318) 869-3871

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA

CARL BERNOFSKY and
SHIRLEY G. BERNOFSKY

VERSUS

THE ROAD HOME CORPORATION,
ICF EMERGENCY MANAGEMENT
SERVICES, LLC, LOUISIANA RECOVERY
AUTHORITY, and LOUISIANA DIVISION
OF ADMINISTRATION THROUGH THE
OFFICE OF COMMUNITY DEVELOPMENT

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CIVIL ACTION NO.

5:09-CV-01919-TS-MLH

ORDER

After considering the *Motion in Opposition to Defendant LRA's and Defendant OCD's Motion to Dismiss*, filed *in propria persona* by plaintiffs Carl Bernofsky and Shirley G. Bernofsky:

IT IS HEREBY ORDERED that the Motion to Dismiss by defendants, the Louisiana Recovery Authority (LRA) and the Louisiana Division of Administration through the Office of Community Development, (OCD) is **DENIED**.

Shreveport, Louisiana, this _____ day of March, 2010.

UNITED STATES MAGISTRATE JUDGE

**Attachments to Memorandum in Support of Plaintiff's
Opposition to LRA's & OCD's Motion to Dismiss**

RECEIVED Civil Action No. 5:09cv01919

Exhibit	MAR 15 2010 TONY R. MOORE, CLERK WESTERN DISTRICT OF LOUISIANA SHREVEPORT, LOUISIANA	Description
A		Louisiana R.S. 49 §220.4 and R.S. 40 §600.62
B		OCD, Disaster Recovery Unit, Monthly Program Update, April 1, 2009
C		LRA, Proposed Action Plan, Amendment 31, November 5, 2008
D		Sec. 301, Stafford Disaster Relief and Emergency Assistance Act, amended June, 2007
E		Advocate, Baton Rouge, December 9, 2009, Capitol News Bureau, Page 16A
F		Times-Picayune, New Orleans, March 8, 2010, Metro, Page B1
G		Department of Housing and Urban Development, Public Law 109-148, Dec. 30, 2005, 119 Stat. 2780
H		Times-Picayune, New Orleans, August 21, 2009, National, Page 1

§220.4. Louisiana Recovery Authority; creation; executive director; board

NOTE: Repealed by Acts 2006, 1st Ex. Sess., No. 5, §4, eff. June 30, 2016; Acts 2008, No. 831, §5, changed the repeal date to July 1, 2010.

A.(1) The Louisiana Recovery Authority is hereby created as a state agency within the office of the governor, division of administration. The authority shall be a body corporate with power to sue and be sued. The domicile of the authority shall be in the parish of East Baton Rouge. The purpose of the authority shall be to recommend policy, planning, and resource allocation affecting programs and services for the recovery, to implement programs and provide services to the recovery, and to identify duplication of services relative to the recovery where appropriate. The authority shall carry out its functions to support the most efficient and effective use of resources for the recovery.

(2) The board shall provide leadership and oversight for the activities of the authority.

(3) The authority shall have an executive director who shall be appointed by the governor and subject to confirmation by the Senate. The executive director shall serve at the pleasure of the governor and shall be paid a salary which shall be fixed by the governor. The executive director shall be responsible to the governor and the board.

B.(1)(a) The board shall be composed of no more than seventeen members. Thirteen members shall be appointed by and serve at the pleasure of the governor and subject to confirmation by the Senate and four ex officio members shall serve as provided in Paragraph (4) of this Subsection. Of the thirteen members appointed by the governor, no less than one member shall be appointed from each congressional district. The board shall be composed of members who reflect the diversity of the state as to race and gender to the greatest extent practicable.

(b) Notwithstanding any provision of law to the contrary, any member of the board of the Louisiana Recovery Authority who is appointed to or remains appointed to the board of the authority as established in this Part shall be subject to the confirmation of the Senate.

(2) The appointed members of the board shall serve terms that expire when statutory authority for the Louisiana Recovery Authority ceases on July 1, 2010.

(3) A vacancy in the office of an appointed member shall be filled in the manner of the original appointment for the remainder of the term.

(4) In addition to the appointed members, the speaker and speaker pro tempore of the House of Representatives and the president and president pro tempore of the Senate or their respective designees shall be members of the board. Such designees shall be members of the Louisiana Legislature. If the speaker of the House of Representatives, speaker pro tempore of the House of Representatives, president of the Senate, or president pro tempore of the Senate desires to have a designee serve on his behalf, he shall provide written notice of the name of such designee to the chairman of the board. Such written notice shall name the member of the Louisiana Legislature who shall be the official designee until the speaker of the House of Representatives, speaker pro tempore of the House of Representatives, president of the Senate, or president pro tempore of the Senate revokes such designation.

(5) Official action of the board shall require action by a majority of a quorum. A quorum shall be not less than a majority of the number of voting members authorized by law.

(6) All appointed members of the board shall serve without additional compensation; however, subject to the approval of the chairman of the board, such members shall be entitled to reasonable and necessary travel expenses in accordance with state travel policy for state employees. An ex officio member of the board may seek per diem and mileage reimbursement in accordance with rules of his respective house of the legislature.

(7)(a) The chairman and vice chairman of the board shall be selected by the governor.

(b) The board may elect other officers as it deems necessary.

(c) The board shall meet according to a schedule established by the board. Meetings shall also be held on call of the chairman or as otherwise provided by the board.

(8) The board shall encourage and provide for input from all stakeholders in the recovery, both public and private.

C. The authority, and the board, shall be subject to the Code of Governmental Ethics, the laws relative to public records and open meetings, the laws relative to public bid and procurement, and all other provisions of law applicable to state agencies.



D. All funding received, expended, or disbursed by the authority shall be subject to audit, review, and examination by the independent accounting firm or firms engaged by the state or any agency of the state to oversee the receipt and disbursement of funds as well as audit by the legislative auditor pursuant to R.S. 24:513.

Acts 2006, 1st Ex. Sess., No. 5, §2, eff. Feb. 23, 2006, and §4, eff. June 30, 2016; Acts 2008, No. 639, §1, eff. July 1, 2008; Acts 2008, No. 831, §§3 and 5, eff. July 1, 2008.

§600.62. Definitions

As used in this Chapter, the following words and terms shall have the following meanings, unless the context clearly indicates or requires another or different meaning or intent:

(1) "Division of administration" means the division of administration created within the office of the governor by Title 39 of the Louisiana Revised Statutes of 1950.

(2) "Project" collectively means the acquisition, disposition, purchase, renovation, improvement, leasing, or expansion of housing stock, including but not limited to housing stock as described in action plans for The Road Home Program, for the purposes set forth therein, as such action plan may hereafter be amended, supplemented, or otherwise modified, by the corporation. The project may be financed with funds provided in whole or in part from the United States Department of Housing and Urban Development's Community Development Block Grant Program, as administered by the Louisiana office of community development of the division of administration.

(3) "Road Home Corporation" means the nonprofit corporation authorized to be formed by this Chapter, or any corporation succeeding to the principal functions thereof or to which the powers conferred upon the corporation by this Chapter shall be given by law. Such corporation may amend its articles of incorporation to change its name to Louisiana Land Trust. It is further declared that any such corporation shall not constitute a state agency, board, or commission; nor shall it constitute an instrumentality of the state or of any political subdivision.

(4) "State" means the state of Louisiana or any agency or instrumentality thereof.

Acts 2006, No. 654, §1, eff. June 29, 2006; Acts 2009, No. 428, §1, eff. July 7, 2009.



DISASTER RECOVERY UNIT MONTHLY PROGRAM UPDATE

April 1, 2009

PROGRAM DESCRIPTION		PROGRAM UPDATE	
INTERNAL PROGRAMS			
Administration and Technical Assistance (SAAD, SAAC, SATA)	The Disaster Recovery Unit (DRU) of the Office of Community Development (OCD), Division of Administration (DOA), was created in the aftermath of the 2005 hurricanes Katrina and Rita. The DRU administers the CDBG Disaster Recovery funds approved by Congress on December 23, 2005; June 30, 2007; and January 15, 2008. Personnel were hired from around the United States, as well as within Louisiana, with experience in all aspects of CDBG programs. Managers and staff were retained in the areas of homeownership housing; multifamily, rental, and supportive housing; infrastructure; economic development; policy and reporting; legal; and financial and auditing. Experienced employees of the OCD-CDBG Program provide training as needed to newly hired. In addition, the OCD continues to supply CDBG training in partnership with the Council of State Community Development Agencies and ICF International. The DOA's resources are available to augment the DRU with expertise in budgeting, accounting, contract review, and legal matters. The DRU is in close contact with the Louisiana Legislative Auditors. Currently, there are 3 separate teams from the LLA assigned to the DRU, with approximately 30 employees. At the close of this quarter, the OCD-DRU had 60 full-time employees, 4 part-time employees, and 3 student workers. The LRA had 25 full-time employees and 2 student workers. The Katrina Cottages program has 1 employee. The DRU received approval in September, 2006, to raise the total number of staff to 74. The administrative budget is used to fund salaries and related benefits, travel expenses, operating supplies and services, professional services, and inter-agency transfers. As the OCD-DRU further develops and implements program monitoring plans this quarter, travel expenses remain steady. The state follows the State Procurement Code. All sub-recipients are required to follow Title 24 Part 84 and Part 85. Monitoring plans are still being developed for the new disaster recovery activities funded under this program.		
Budgeted			
\$191,300,000			
Expended			
\$26,696,792			
Start Date			
5/9/2006			
Proposed End Date			
5/9/2016			

PROGRAM DESCRIPTION

Governor Blanco established the Louisiana Recovery Authority (LRA) with Executive Order KBB 2005-63 on October 17, 2005. The LRA coordinates, leverages, and targets these newly committed resources with existing state and federal resources to improve their efficiency and effectiveness and to avoid duplication of efforts. The LRA leads long-term community and regional planning efforts and works to ensure transparency and accountability. It also assists coordination of resource allocations as it pertains to issues that may include, but are not limited to: 1) economic and workforce development; 2) environmental quality and review; 3) temporary and permanent housing; 4) healthcare; 5) infrastructure and transportation; 6) education; 7) fiscal stability; 8) family services; and 9) law and order. On November 9, 2007, HUD approved *Action Plan One, Amendment 16*, which increased funding for this program by \$3,000,000. On May 28, 2008, HUD approved *Action Plan One, Amendment 22*, which increased funding for this program by another \$3,000,000 by once again moving funds from the *Technical Assistance Program*.

HOUSING PROGRAMS**Homeowners**

Assistance
(HAAO, H2OO,
H3OO)

Budgeted
\$8,986,716,525

Expend

\$8,381,563,503

Start Date

5/30/2006

Proposed End Date

5/30/2016

HUD approved the release of funds for the *Homeowners Assistance Program*, outlined in *Action Plan One (API)*, on May 9, 2006, to compensate homeowners whose homes sustained severe or major damage due to hurricanes Katrina and Rita. Louisiana homeowners were provided three options: to rebuild, relocate in the state of LA, or relocate outside the state, with a 40 percent penalty. HUD approved the release of funds in lump-sum disbursements in *API, Amendment 14* on May 15, 2007; *API, Amendment 15* on November 9, 2007; *API, Amendment 17* on December 20, 2007; *Action Plan Two, Amendment 4* on November 11, 2007; and \$2,000,000,000 from Appropriation 3 as of December, 2008.

PROGRAM UPDATE

In the first quarter of 2009, the Louisiana Recovery Authority continued to educate local, state and federal leaders about the progress of Louisiana's recovery from hurricanes Katrina and Rita.

The state was honored to host HUD Secretary Donovan, along with Department of Homeland Security Secretary Napolitano, as they toured parts of New Orleans and St. Bernard Parish in early March. It was important for the Secretaries to see both the progress that has been made and the work that remains to be done following the 2005 storms.

After HUD announced in February that it was allowing a six-month transition period for citizens enrolled in the Disaster Housing Assistance Program, LRA staff began working to find housing solutions for the near 17,000 families still enrolled in DHAP at that time. Residents who are eligible have been encouraged to take advantage of the Housing Choice Voucher Program (HCV). To ensure a proper safety net for families ineligible for HCV, the LRA agreed to HUD's request to administer the case management component of the transition. While working with providers, partners and the families still in DHAP has taken tremendous coordination, the state is confident that our vulnerable families will be in a much better place after the end of this transition period.

The LRA decided to divide the remaining functions of the Road Home Program among several companies so that each would be easier to manage. To that end, this quarter the LRA announced that Hammerman and Gainer, Inc., was chosen to run the homeowner portion, ACS State and Local Solutions, Inc. will manage the Small Rental Program and CGI Technologies and Solutions, Inc. will oversee the IT services. To ensure that homeowners and landlords have continuous service, the state is transitioning the management of these programs from ICF International, whose contract expires in June. All contracts will have performance measures to hold contractors accountable.

Another Road Home contract soon to be awarded will be for the *Piggyback Program*, which saw great progress in the first quarter of 2009. See section on the *Piggyback Program* for details.

Finally, CDBG infrastructure funds supported improvements to schools and recreational facilities, as well as new medical facilities. Nearly \$4-million was approved through the LRA's Primary and Secondary Education Program for projects in St. Bernard and Iberia Parishes, while more than \$21 million in Long Term Community Recovery dollars were approved for work in Orleans, St. Bernard and Vermilion Parishes.

By the end of the first quarter of 2009, 166,094 of the 185,113 recorded Road Home applicants had been through the first appointment process to discuss disaster grant options. After extensive evaluation, 153,257 of the applicants were sent benefit option letters ranging in amounts from 0\$ - \$150,000. There are 15 homeowners appealing ineligibility. Of those eligible, 123,807 or 80.8% have closed on some type of a Road Home grant. Of those awarded a grant amount, 189 are appealing the award amount. The total amount disbursed by the Office of Community Development Disaster Recovery Unit (OCD-DRU) for closings occurring as of 3/31/2009 was \$7,924,115,064.59. The low-to-moderate income families in Louisiana are receiving \$4,136,585,525.03 or 52.2 % of this amount. The homeowners receiving grants in the New Orleans Metro Area total 96,087 and are receiving a total of \$6,792,747,194.69. -calculations done on data in the eGrants Reporting Database

Disaster Recovery Initiative
U.S. Department of Housing and Urban Development (HUD)

[Docket No. FR-5051-N-01]

Federal Register / Volume 71, Number 29

Department of Defense Appropriations Act, 2006

**Louisiana Office of Community Development,
Division of Administration**

Louisiana Recovery Authority

***Proposed Action Plan Amendment 31 (First Allocation) –
Extension of Deadline for Homeowners Who Have Sold Their
Homes***

November 5th, 2008



Bobby Jindal
Governor

Mitch Landrieu
Lieutenant Governor

Angele Davis
Commissioner of Administration

David Voelker
Chairman, LRA Board

Office of Community Development
150 N. 3rd Street, Suite 700
Baton Rouge, LA 70801
P.O. Box 94095

Baton Rouge, LA 70804-9095

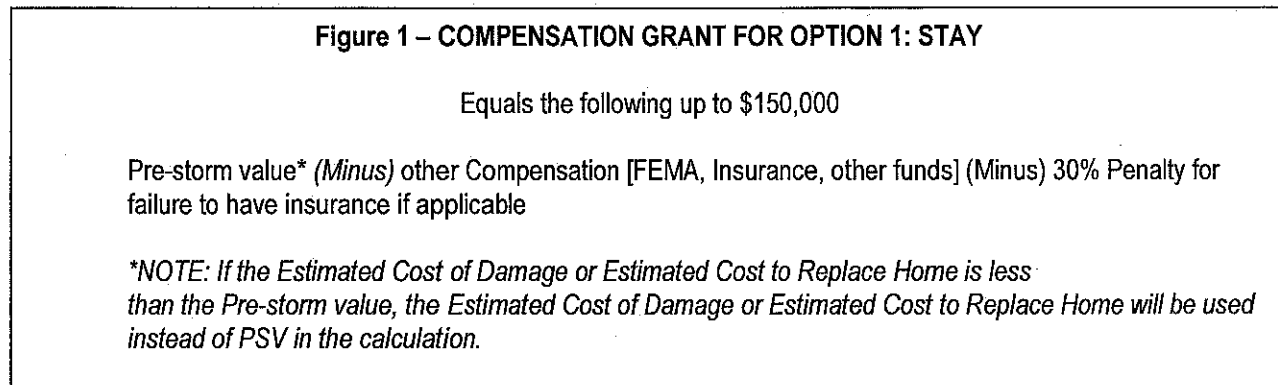
<http://www.doa.louisiana.gov/cdbg/cdbg.htm>

Exhibit C

Bernofsky v. Road Home

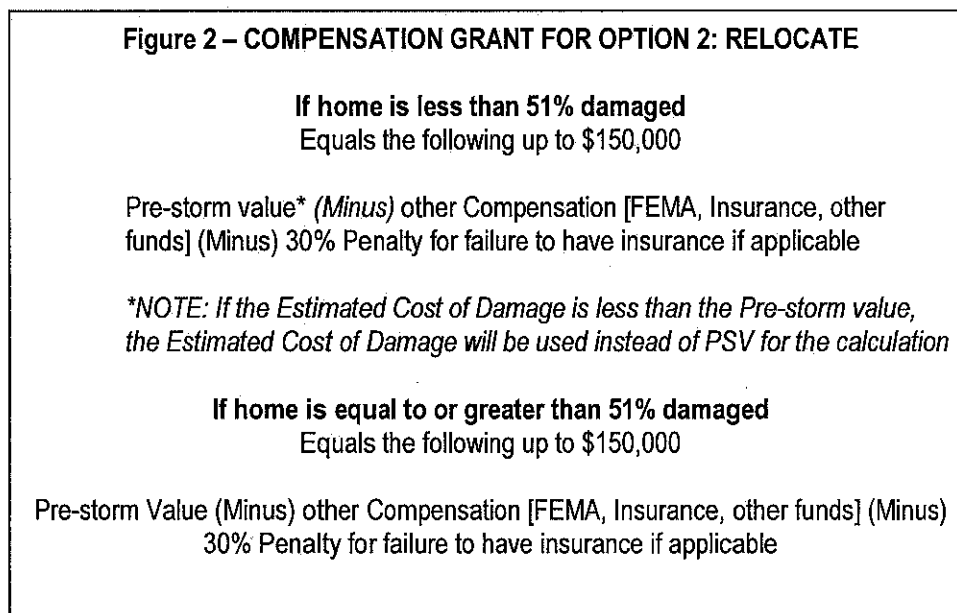


Figure 1 provides a summary of the basic calculations that the *Road Home* program will use to determine compensation benefits.



2.4.5 Option 2: Relocate

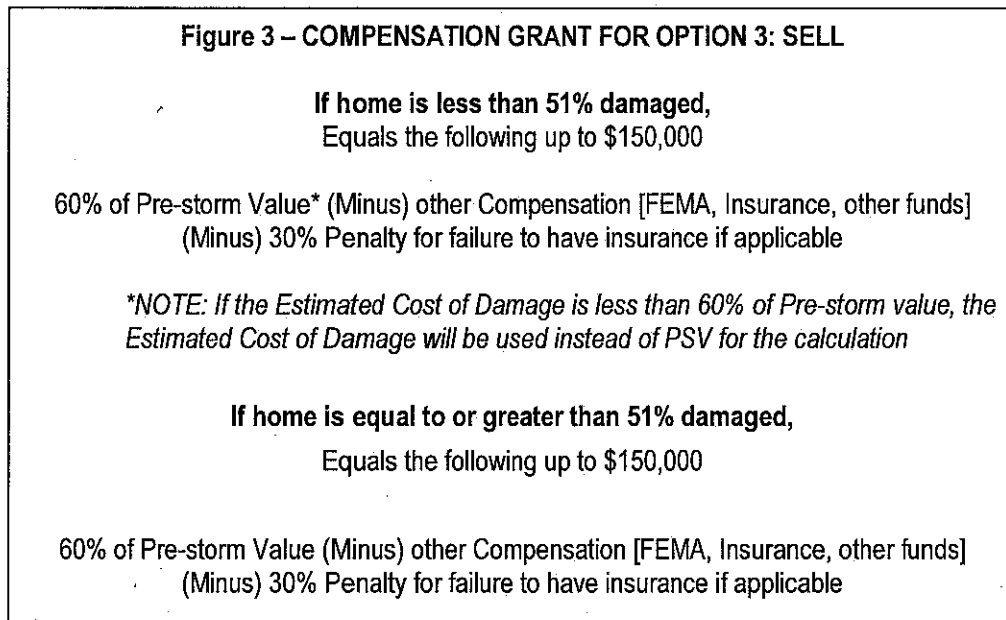
A homeowner who elects to stay in Louisiana as an owner, but not in the same home will be able to sell their property to the State. **Figure 2** provides a summary of the basic calculations that the *Road Home* program will use to determine compensation benefits. Depending on the percentage damage to the home, the State will compensate the homeowner based on the home's pre-storm value or the Estimated Cost of Damage.



2.4.6 Option 3: Sell

Homeowners may elect to forego homeownership in the State. They may choose to sell their property to the State and relocate outside of Louisiana or remain in the State but choose not to purchase a home. Depending on the percentage damage to the home,

the State will compensate the homeowner based on 60% of the home's pre-storm value or the Estimated Cost of Damage. For elderly households and military personnel called to duty, calculations for compensation will be based on **100%** Pre-storm Value and will follow the calculations in **Figure 2** above. **Figure 3** provides a summary of the basic calculations that the *Road Home* program will use to determine compensation benefits.



2.5 Redevelopment of Purchased Property

The publicly chartered nonprofit *The Road Home* Corporation will take title to properties purchased by the *Road Home* Homeowner Assistance Program. Properties purchased by the program and held by *The Road Home* Corporation will be redeveloped and returned to commerce or preserved as green space, in a manner which is consistent with local land use plans and direction. Pursuant to a primary goal of the Homeowner Assistance Program, purchased land will not be left to blight and disrepair⁷.

The *Road Home* Corporation will work with local and parish governments to decide on the disposition of purchased properties. Working with local and parish governments, *The Road Home* Corporation may among other things:

- *Develop* properties by packaging the properties for redevelopment, offering them for redevelopment through competitive bids, and overseeing the redevelopment of the property consistent with local and regional plans that have been approved by the LRA and in adherence to the policy guidelines for rebuilding, recovery, and land use management set forth by the LRA. Any proceeds derived through

⁷ Any required environmental compliance review will be conducted on the proposed redevelopment re-use, once the re-use has been established and prior to any commitment to redevelop or preserve as permanent open space.

homeowner would have been required to meet to qualify and receive assistance under the Program.

Death or Infirmary of Eligible Owner: Some homeowners have died since the time of the storms. In such event, an heir who has been placed into legal possession of the property under applicable law will be eligible for homeowner assistance in place of the deceased owner. If a homeowner is incapacitated due to illness or other infirmity, any person legally authorized to act on behalf of such a person, such as is provided by a power of attorney, is eligible to apply for assistance on behalf of the homeowner.

If a homeowner who has received assistance from *The Road Home* dies after receiving assistance and signing the required legally binding agreements to ensure compliance with the Program requirements, the agreements will continue to apply to the property.

Owner-Occupants Who Have Sold Their Principal Residence Without Assistance from *The Road Home*: Some homeowners may have chosen to sell their homes without assistance from the *Road Home* Homeowner Assistance Program. It is the goal of *The Road Home* to ensure that damaged properties qualifying under the Homeowner Assistance Program do not remain blighted and undeveloped. Homeowners who have sold their homes prior to August 29th, 2007 may be eligible if the goals of the Program are met, and a homeowner can demonstrate that he or she remains in a loss situation after selling the damaged property to another party, such homeowners may receive assistance under the Program to compensate for remaining losses in accordance with the Program requirements. Assistance for these homeowners is subject to the availability of funds.

Owners Who Have Received Other Assistance: Policies will be set for discounting compensation amounts for any grants or below-market interest rate loans from government agencies that may have been received by an owner for these purposes. Pursuant to federal statute, assistance from *The Road Home* must be used to repay any loans from the Small Business Administration (SBA) that a homeowner has received in compensation for the same losses.

Owners of Homes Located on Leased Land: Owners of a site built home, manufactured home or mobile homes may also be eligible for assistance regardless of whether they own the land on which the damaged home was located, to be determined by criteria developed in order to ensure ownership and immobilization of the structure.

Appeals: Any homeowner has the right to appeal decisions made by the *Road Home* program including eligibility decisions and calculation amounts used to determine funding assistance awards. To appeal a *Road Home* award, call 1-888-Road2LA (1-888-762-3252) for instructions or check the web site at Road2la.org. TTY callers use 711 relay or 1-800-846-5277.

**Robert T. Stafford Disaster Relief and Emergency Assistance Act,
Public Law 93-288, as amended, 42 U.S.C. 5121-5207,
and Related Authorities**

**UNITED STATES CODE
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 68. DISASTER RELIEF**

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- (l) Report on Federal and State Administration - Not later than Oct. 30, 2000, the President, in consultation with State and local governments, shall submit to Congress a report evaluating efforts to implement this section and recommending a process for transferring greater authority and responsibility for administering the assistance program established under this section to capable States.
- (m) Termination of Authority - The authority provided by this section terminates September 30, 2008.

Sec. 204. Interagency Task Force (42 U.S.C. 5134)

- (a) In General - The President shall establish a Federal interagency task force for the purpose of coordinating the implementation of predisaster hazard mitigation programs administered by the Federal Government.
- (b) Chairperson - The Director of the Federal Emergency Management Agency shall serve as the chairperson of the task force.
- (c) Membership - The membership of the task force shall include representatives of
 - (1) relevant Federal agencies;
 - (2) State and local government organizations (including Indian tribes); and
 - (3) the American Red Cross.

Title III -- Major Disaster and Emergency Assistance Administration

Sec. 301. Waiver of Administrative Conditions (42 U.S.C. 5141)

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

Sec. 302. Coordinating Officers (42 U.S.C. 5143)*

- (a) Appointment of Federal coordinating officer - Immediately upon his declaration of a major disaster or emergency, the President shall appoint a Federal coordinating officer to operate in the affected area.

Lawmakers look at surplus of storm funds

Advocate, The (Baton Rouge, LA) - Wednesday, December 9, 2009

Author: SARAH CHACKO

Legislators questioned Tuesday where money expected to be left over in the state's largest storm recovery program will go.

Louisiana Recovery Authority Executive Director Paul Rainwater said of the \$1.4 billion remaining in the Road Home program, about \$320 million is projected to be left for unmet housing needs.

"The question is on whether we'll be able to use that money or not," Rainwater said.

Rainwater said U.S. Department of Housing and Urban Development Secretary Shaun Donovan is supportive of directing leftover funds to community programs. Rainwater said he wants to use some of the money to remove blighted structures in neighborhoods.

But the federal budget office will probably want the money back, he said.

The Road Home program was created in 2005 to help homeowners rebuild after Hurricane Katrina.

Rainwater gave an overview of the LRA's program to a joint meeting of the Louisiana House and Senate municipal affairs committees.

Rainwater said he does not support moving funds out of existing programs to other areas. However, if projects fail to get off the ground before the deadline on the funds in June, that money could be reallocated, he said. The U.S. Congress would have to allow the LRA to use money for other purposes, Rainwater said.

"You've got folks who want to use it for other things," he said. "If we're focused on using it for housing, I think we'll be able to use it for housing."

The limitation on recovery dollars has recently become an issue as state officials try to help homeowners who used tainted drywall to rebuild their homes.

The LRA set aside, at the state's request, \$5 million in recovery dollars to help affected families. However, the money can only be used for people who participated in the Road Home program.

State officials and homeowners have complained that many people who rebuilt with the tainted drywall were not Road Home recipients.

State Sen. Lydia Jackson, D-Shreveport, emphasized that despite any flexibility the state receives for use of the funds, the money should only be used for those affected by the hurricanes.

"I don't expect one dime or dollar of this money to be reallocated to an area outside a storm impacted area," Jackson said. "If we think we're there, we're not even close."

LRA deputy director Robin Keegan said if permission is given to use funds for more than Road Home applicants, the money would still only go to people and programs affected by the hurricanes.

A large portion of the \$320 million is expected to go to the remediation of blighted property, Keegan said.

Nonprofit groups urged state officials to use the remaining money to continue programs that have brought affordable housing options to affected areas.

Amber Seely with the Renaissance Neighborhood Development Corp. in New Orleans said removing blight and building affordable housing do not always have to be separate projects with separate pots of money. Many groups rebuilding in the area, including her organization, get rid of blight by replacing it with affordable housing, she said.

Jessica Venegas with UNITY of Greater New Orleans requested \$33 million to build housing units for people who need support services, such as veterans, youth aging out of foster care and disabled residents.

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Deadline looms for elevation grants - Money available for flood mitigation

Times-Picayune, The (New Orleans, LA) - Monday, March 8, 2010

Author: *David Hammer Staff writer*

Road Home recipients have until Wednesday to tell state officials whether they want additional money to help with elevating their houses or protecting windows, roofs or large household equipment against future storms.

So far, about 40,000 homeowners have expressed interest in the Hazard Mitigation Grant Program, a state-run, FEMA-financed effort to help homeowners rebuild safer and stronger from Hurricanes Katrina and Rita. But only 293 participants have been paid so far, and all but 16 of them have received just part of their payments after midpoint inspections.

The state has managed to spend only \$6.7 million of the \$750 million allotted for the program. The vast majority has been given to property owners who are raising their home, while a handful of applicants have received money for other kinds of reconstruction work.

Eligible homeowners can receive up to \$100,000 for elevation or reconstruction and as much as \$7,500 for other storm-proofing measures. The money is for Road Home recipients only, but it is awarded separately and is not included in Road Home's \$150,000 cap.

The state is asking anyone who received a Road Home rebuilding grant and is interested in the additional reconstruction and mitigation money to return voluntary participation forms sent out in 2008. If a Road Home participant believes he or she should have received the forms but didn't, that person can call the state's toll-free mitigation hotline at 877.824.8312.

The Louisiana Recovery Authority, which sets policy for this and other programs, says it will continue to accept statements of interest after Thursday, but only on a first-come, first-served basis, suggesting that the agency wants to get a final count on how many people will be seeking the money before finding other uses for any leftover hazard mitigation cash.

And it appears there will be plenty of that.

It took nearly two years after Katrina hit for the state and FEMA to agree on a use for the \$1.2 billion for hazard mitigation. This allotment was in addition to the more than \$10 billion the state received from U.S. Housing and Urban Development to run the Road Home program.

It took another two years for the state to give hazard mitigation grants to qualified applicants, during which time it realized it could find only enough eligible and interested recipients for about two-thirds of the money FEMA originally offered.

Late last year, the state eased some of its rules related to elevating or reconstructing properties to move more of the money, adding the option for up-front payments, easing limits on the size of rebuilt homes and allowing applicants to collect money to make up for aid they previously lost to documented contractor fraud.

The state also launched a program that would pay up to \$7,500 for storm-proofing measures, using the same pot of hazard mitigation money. That money -- set aside for storm shutters, roof tie-downs, elevating heating and air-conditioning units and other mitigation measures -- was originally supposed to come from the Road Home, but was shifted under the FEMA effort last year.

The storm-proofing effort has had its own difficulties getting off the ground. Some interested homeowners say they were put off by program advisers when they called the hotline and can't get anything in writing to document their desire to participate.

Program officials have been meeting regularly with a number of certified contractors since launching the program in November, but the contractors report confusion over ever-shifting rules.

For example, some companies wrote agreements with applicants months ago to cover as many windows with storm-grade shutters as a full \$7,500 mitigation award would buy. But then in February, FEMA ruled that all windows in the house had to be covered for a grant to be paid, regardless of the out-of-pocket cost to the homeowner.

The state initially said there would be a "work-around" in which some windows could be covered with shutters and others with cheaper material, such as a film that keeps the glass from being blown out by high winds. Then, a week ago, contractors were informed that, too, was not possible under the program.

.....

Homeowners with mitigation questions can call 877.824.8312.

David Hammer can be reached at dhammer@timespicayune.com or 504.826.3322.

Section: METRO

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Record Number: 425138197

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PUBLIC LAW 109-148—DEC. 30, 2005

119 STAT. 2779

MARITIME ADMINISTRATION

OPERATIONS AND TRAINING

For an additional amount for "Operations and training", \$7,500,000, to remain available until September 30, 2007, for necessary expenses related to the consequences of hurricanes in the Gulf of Mexico during calendar year 2005: *Provided*, That the amount provided under this heading is designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

TENANT-BASED RENTAL ASSISTANCE

For an additional amount for housing vouchers for households within the area declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 et seq.) resulting from hurricanes in the Gulf of Mexico during calendar year 2005, \$390,299,500, to remain available until September 30, 2007: *Provided*, That such households shall be limited to those which, prior to Hurricanes Katrina or Rita, received assistance under section 8 or 9 of the United States Housing Act of 1937 (Public Law 93-383), section 801 or 811 of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625), the AIDS Housing Opportunity Act (Public Law 101-625), or the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77); or those which were homeless or in emergency shelters in the declared disaster area prior to Hurricanes Katrina or Rita: *Provided further*, That these funds are available for assistance, under section 8(o) of the United States Housing Act of 1937: *Provided further*, That in administering assistance under this heading the Secretary of Housing and Urban Development may waive requirements for income eligibility and tenant contribution under section 8 of such Act for up to 18 months: *Provided further*, That all households receiving housing vouchers under this heading shall be eligible to reoccupy their previous assisted housing, if and when it becomes available: *Provided further*, That the amount provided under this heading is designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006.

Vouchers.

COMMUNITY PLANNING AND DEVELOPMENT

COMMUNITY DEVELOPMENT FUND

For an additional amount for the "Community development fund", for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of hurricanes in the Gulf of Mexico in 2005 in States for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in conjunction with Hurricane Katrina, Rita, or Wilma, \$11,500,000,000, to remain available until expended, for activities

Exhibit G

Bernofsky v. Road Home

119 STAT. 2780

PUBLIC LAW 109-148—DEC. 30, 2005

authorized under title I of the Housing and Community Development Act of 1974 (Public Law 93-383): *Provided*, That no State shall receive more than 54 percent of the amount provided under this heading: *Provided further*, That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each State: *Provided further*, That such funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency or the Army Corps of Engineers: *Provided further*, That funds allocated under this heading shall not adversely affect the amount of any formula assistance received by a State under this heading: *Provided further*, That each State may use up to five percent of its allocation for administrative costs: *Provided further*, That Louisiana and Mississippi may each use up to \$20,000,000 (with up to \$400,000 each for technical assistance) from funds made available under this heading for LISC and the Enterprise Foundation for activities authorized by section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, and for activities authorized under section 11 of the Housing Opportunity Program Extension Act of 1996, including demolition, site clearance and remediation, and program administration: *Provided further*, That in administering the funds under this heading, the Secretary of Housing and Urban Development shall waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of these funds or guarantees (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a request by the State that such waiver is required to facilitate the use of such funds or guarantees, and a finding by the Secretary that such waiver would not be inconsistent with the overall purpose of the statute, as modified: *Provided further*, That the Secretary may waive the requirement that activities benefit persons of low and moderate income, except that at least 50 percent of the funds made available under this heading must benefit primarily persons of low and moderate income unless the Secretary otherwise makes a finding of compelling need: *Provided further*, That the Secretary shall publish in the Federal Register any waiver of any statute or regulation that the Secretary administers pursuant to title I of the Housing and Community Development Act of 1974 no later than 5 days before the effective date of such waiver: *Provided further*, That every waiver made by the Secretary must be reconsidered according to the three previous provisos on the two-year anniversary of the day the Secretary published the waiver in the Federal Register: *Provided further*, That prior to the obligation of funds each State shall submit a plan to the Secretary detailing the proposed use of all funds, including criteria for eligibility and how the use of these funds will address long-term recovery and restoration of infrastructure: *Provided further*, That each State will report quarterly to the Committees on Appropriations on all awards and uses of funds made available under this heading, including specifically identifying all awards of sole-source contracts and the rationale for making the award on a sole-source basis: *Provided further*, That the Secretary shall notify the Committees on Appropriations on any proposed allocation of any funds and any related waivers made pursuant to these provisions under this

Federal Register,
publication.
Deadline.

Reports.

Notification.

PUBLIC LAW 109-148—DEC. 30, 2005

119 STAT. 2781

heading no later than 5 days before such waiver is made: *Provided further*, That the Secretary shall establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading including duplication of benefits: *Provided further*, That the amounts provided under this heading are designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006. Reports.

ADMINISTRATIVE PROVISIONS

SEC. 901. Notwithstanding provisions of the United States Housing Act of 1937 (Public Law 93-383), in order to assist public housing agencies located within the most heavily impacted areas of Louisiana and Mississippi that are subject to a declaration by the President of a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in connection with Hurricane Katrina or Rita, the Secretary for calendar year 2006 may authorize a public housing agency to combine assistance provided under sections 9(d) and (e) of the United States Housing Act of 1937 and assistance provided under section 8(o) of such Act, for the purpose of facilitating the prompt, flexible and efficient use of funds provided under these sections of the Act to assist families who were receiving housing assistance under the Act immediately prior to Hurricane Katrina or Rita and were displaced from their housing by the hurricanes.

SEC. 902. To the extent feasible the Secretary of Housing and Urban Development shall preserve all housing within the area declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5121 et seq.) resulting from Hurricane Katrina or Rita that received project-based assistance under section 8 or 9 of the United States Housing Act of 1937, section 801 or 811 of the Cranston-Gonzalez National Affordable Housing Act, the AIDS Housing Opportunity Act, or the Stewart B. McKinney Homeless Assistance Act: *Provided*, That the Secretary shall report to the Committees on Appropriations on the status of all such housing, including costs associated with any repair or rehabilitation, within 120 days of enactment of this Act. Reports. Deadline.

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For an additional amount for "Salaries and expenses, Courts of Appeals, District Courts, and Other Judicial Services", \$18,000,000, to remain available until expended, for necessary expenses related to the consequences of hurricanes in the Gulf of Mexico during calendar year 2005: *Provided*, That notwithstanding any other provision of law such sums shall be available for transfer to accounts within the Judiciary subject to approval of the Judiciary operating plan: *Provided further*, That the amount



Road Home approves rebuilding extension - LRA chief says he'll try to offer more cash

Times-Picayune, The (New Orleans, LA) - Friday, August 21, 2009

Author: *David Hammer Staff writer*

Just before a high-temperature congressional hearing on the Road Home program Thursday, the head of the Louisiana Recovery Authority announced that changes have been made to two major rules affecting recipients who are still having trouble rebuilding.

LRA Executive Director Paul Rainwater said a change has already been approved to extend a three-year time limit for grant recipients who can show they need more time to rebuild.

Rainwater also said he would seek approval from his board next month to offer more money to about 20,000 low- to moderate-income homeowners who qualify. He plans to make \$600 million available for that purpose, which would mean an average grant of \$30,000.

A few hours later, at a congressional field hearing at Dillard University, U.S. Rep. Maxine Waters, D-Calif., urged the state to use about \$1.5 billion left in the Road Home's \$10.3 billion budget simply to give all eligible applicants a flat additional payment.

Sitting before a tough-talking Waters and a partisan audience, Rainwater said he was ready to help.

"We can't tell you how much (to give), but we don't want another set of rules to put these people through a thousand hoops," Waters said. "Don't you bring me any \$2,000, OK? It has to be significant to help people who are struggling."

"Congresswoman, I will send out the money faster than . . ." Rainwater said as the audience drowned him out in cheers.

But after his testimony, he said in an interview that Waters' suggestion would require massive changes to federal laws that the state has been trying to change for years.

He also said Waters' plan to give a flat amount to every qualified Road Home applicant, regardless of their financial situation, would actually undermine the effort to help poorer families. To make flat payments, Rainwater said the state would likely have to seek a waiver so it would no longer have to give at least half of the Road Home dollars to low- or moderate-income families.

To make the extra money available, Rainwater wants to eliminate the \$50,000 cap on the Road Home's Additional Compensation Grants. Such grants have been offered to low- to moderate-income families as a way to cover some of the gap between home values and rebuilding costs.

However, a recent study by demographer Greg Rigamer found the additional grants were falling far short of making up the difference. The analysis showed the total gap between the cost of rebuilding and the combined Road Home and insurance proceeds of 125,000 grant recipients is between \$1.6 billion and \$2.3 billion.

The problem was exemplified at Thursday's hearing by the story of Lillian Baker, an octogenarian whose home in Pontchartrain Park was destroyed. The Road Home said her estimated damage was \$209,000, but her prestorm value was only \$84,000, and based on that figure, her final grant was \$54,000.

"The Road Home program was supposed to help us get back into our home, but it only created more stress at a time when stress wasn't needed," Baker wrote in testimony read by her daughter, Shari Baker.

For the families who had received Additional Compensation Grants alone, the gap remained \$600 million, Rigamer found.

Rainwater's plan is to use \$600 million of leftover Road Home money to pay additional grants. Doing so will require an action plan approved by the LRA board and approval from the U.S. Department of Housing and Urban Development.

The \$600 million became available when the LRA decided to use money from another source to finance up to \$7,500 to Road Home applicants for storm shutters, roof tie-downs and other mitigation measures. That program still hasn't begun and won't be ready until at least October, Rainwater said.

The Times-Picayune reported more than a year ago that many recipients got far less than what they needed because the Road Home grant formula is based on prestorm values rather than rebuilding costs.

Waters' alternative, in addition to requiring changes to the federal Stafford Act and other legislation, would likely disrupt the LRA's current plans for nearly all the remaining \$1.5 billion in the Road Home budget.

In addition to the \$600 million he wants to distribute to cover rebuilding costs, Rainwater said Thursday that he expects \$500 million to go to a few thousand applicants who are still waiting for grants, another \$85 million to go to applicants who sold their home in the first two years after the storm, and \$245 million toward demolishing thousands of blighted homes that applicants sold to the Road Home.

The covenant extension, already implemented, offers grant recipients up to two more years to rebuild their homes. The original grants set a three-year limit.

"We're coming up on three years of some of the (first) covenants that were signed," Rainwater said. "But there are still significant gaps in funding out there. That's why we're looking at individual covenant waivers on a case-by-case basis, and raising the cap on the ACG -- to get real money into real people's hands."

Rainwater acknowledged that enforcing the three-year time limit to rebuild is difficult for the state. But he denied that offering people a chance to ask for up to two yearlong extensions was a backdoor way of figuring out who is not rebuilding.

"I have no desire to enforce a covenant on someone who is really trying," he said. "But we all know that some people took the money and moved away. We want to help people work through issues, but in some cases we need to enforce the covenants."

.....
David Hammer can be reached at dhammer@timespicayune.com or 504.826.3322.

Section: NATIONAL

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