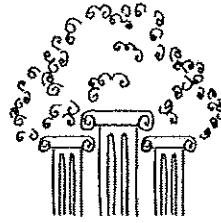


Appleseed



Statement of

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Concerning

**“Emergency Community Block Grant Funds in the Gulf Coast:
Uses, Challenges and Lessons for the Future”**

Before

**Hon. Maxine Waters, Chair
Subcommittee on Housing and Community Opportunity
Committee on Financial Services
United States House of Representatives**

**May 8, 2008
Washington, DC**

Good morning, Chairwoman Waters, Ranking Member Capito, and subcommittee members. Chairwoman Waters is among the few leaders in our government who have not hidden behind “Katrina fatigue,” but who has pushed her colleagues and the rest of us, to maintain our support for our neighbors on Katrina’s Gulf Coast just as we continue our support for the victims of 9/11 on the Atlantic Coast.

My name is Craig H. Baab¹ and I am the Katrina Advocacy Fellow with the Alabama Appleseed Center for Law & Justice, Inc, in Montgomery, Alabama, one of 16 autonomous legal policy centers throughout the United States and Mexico.²

The national office of Appleseed and the Centers in Alabama, Georgia, Texas and Louisiana last year published a sweeping study of how Katrina and Rita survivors were treated in the various cities to which they fled – Atlanta, Birmingham, Houston, Baton Rouge and San Antonio. That report, **A Continuing Storm: The On-Going Struggles of Hurricane Katrina Evacuees – A Review of Needs, Best Practices, and Recommendations**, (www.appleseeds.net) tells how thousands of Americans provided immediate support and assistance both faster and often with greater competence than larger groups and governments. That report, which I ask be included in the record, contains important lessons as we look to how better to fashion the essential work of Community Development Block Grants.

I join my colleagues on this panel in commending you for convening this oversight hearing about the post-Katrina and Rita experience with the federal Community Development Block Grant (CDBG) program, not just in one or two of the states most affected by those storms, but appropriately into all of the states so affected – which is to say a regional look, just as Katrina was a regional catastrophe.

¹ Mr. Baab earned a BA in political science from Elmhurst College in Elmhurst, IL and earned his law degree from The Washington College of Law at the American University in Washington, DC. He is admitted to practice law in Washington, DC. For 19 years he served in various capacities in the Governmental Relations Office of the American Bar Association. He was responsible for a wide range of issues, including the reauthorization of the Voting Rights Act, the establishment of the State Justice Institute, and numerous other issues in the areas of regulatory reform, election law, military and national security law and a number of international law issues, including US ratification of the UN Genocide Convention and other human rights treaties. He was the General Counsel of the Armenian Assembly of America, and served in the Center for Democracy and Governance at the US Agency for International Development. He led missions investigating the rule of law in the Democratic Republic of the Congo, Malawi, former Soviet republics and the referendum on independence in the Republic of Armenia. He was the Chief of Party for the Palestinian Rule of Law Project in the West Bank and Gaza Strip prior to the beginning of the 2000 Intefada.

² Alabama Appleseed is a non-profit, non-partisan legal policy center working to identify the root causes of inequity and inequality in Alabama and seeking systemic changes in law and policy that will improve the lives of all Alabamians. Each of the other Appleseed Centers likewise is autonomous, focusing on needed law changes in that state, but also working in collaboration with some or all of the other Centers on broader challenges, such as those posed in the aftermath of Hurricane Katrina, which require state, regional and national solutions.

This approach is particularly important to help relieve the detrimental practice witnessed since the storms of one state pitted against another state, or one county competing against another county, over who gets the most money or who can get more than the most money. The truth is that there is not near enough funding in many jurisdictions for many pressing needs. Perhaps the time has arrived for local, state and national officials to focus closer attention to the regional rebuilding needs post-Katrina, and less on what they bring home to "their" people.

Katrina and Rita paid scant attention to state or local political borders, and for us to continue to do so simply perpetuate the storms' impact on all its survivors.

Summary: Today in Alabama

I will begin with a short summary of how Alabama's Katrina survivors are faring today and how the federal government's CDBG program is helping rebuild the storm's destruction. Our senior senator, Richard Shelby, the Ranking Member on the counterpart full Senate committee, thoughtfully and succinctly summarized at hearings last September 25, what our goal should be. He observed that a way to honor the memories of the nearly 2000 souls who perished in Katrina's wrath was, "... by insuring that the Gulf area is rebuilt not as it was, but as it should be."

Sen. Shelby got it just right, and his statement also is a good summary of the real purpose of Community Development Block Grants -- to develop our communities as we want them to be. It is not a federal program intended simply to return our communities to their prior condition, and certainly should not be viewed as some financial band aid being applied to cover over, and not renew, our ruined communities.

Today's reality in coastal Alabama is sobering. That reality continues to be a marginal existence for thousands of our coastal neighbors still breathing the fumes in FEMA trailers, living with neighbors because the insurance paid off the mortgage, but left nothing with which to rebuild and wondering why they have not received the CDBG assistance for which they applied 15 months ago. We are grateful to Sen. Sessions for coming to Mobile last week to meet with so many of his supporters who remain without the help he recently told me is too long coming.

Alabama has received to date a total of \$95,613,574.00 in CDBG funds of which \$19,811,267 has been spent. Of that total, the amounts awarded by the state to units of local government for housing total \$31,513,606. Total housing expenditures as of May 6, 2008, are \$5,819,474. That investment has resulted in building 40 modular homes and ordering 22 surplus mobile homes

The 400,000 inhabitants of Mobile County were allocated \$18.9 million in total CDBG funds solely for the purpose of building or rehabilitating homes and rental units impacted by Katrina. Of that money, not a cent has yet resulted in a storm survivor moving into a new home. Part of that \$18.9 million -- the second supplemental CDBG allocation of approximately \$8.5 million for housing -- is not even under contract. So, not only has the initial \$10.5 million moved no one into a new home, the second supplemental, while available, is not even in play.

1. The affordable housing needs of Alabama citizens have not been met with emergency CDBG funding.

In the absence of a comprehensive, professional needs assessment it is difficult to know with any clarity what housing needs exist, much less if they have been fulfilled. However, a comparison of emergency CDBG funds received in Alabama with how much of that funding has been spent, does begin to paint a picture -- a small percentage of the affordable housing needs of Katrina survivors have been met. Only \$5.8 million of the total state-wide housing allocation of \$31.5 million has been spent, broken down as follows:³

Initial Funding:

Bayou La Batre – \$7,308,694. Spent: \$5,262,607. Built: 40 modular homes

Mobile County – \$10,459,588. Spent: \$441,559. Built: 0

Washington County – \$1,177,500. Spent: \$115,308. Built: 0. Ordered: 22 mobile homes

Supplemental Funding:

City of Mobile – \$4,103,146. Spent: \$0

Mobile County – \$8,464,678. Spent: No contract awarded

Thus, of the 24 Alabama counties that were damaged by Katrina, only Mobile and Washington Counties received emergency CDBG housing assistance, and Mobile County's needs and funding are by far the greatest. If a comprehensive needs assessment had been undertaken throughout Mobile County, and particularly the unincorporated coastal towns including Coden, it would have identified far greater housing damage requiring millions more in CDBG funding than has been provided.

If that appropriate level of funding had been provided in a more timely fashion Mobile County's decisional process of how to spend that funding would not be as seriously hamstrung as it is, by devoting inordinate amounts of time trying to decide how to spread the available money among perhaps 7% of the qualified homeowners and renters. Freed of those otherwise unnecessary constraints, Mobile County would have been less inclined to disqualify low-income homeowners because they had the misfortune to live in sub-standard, aging housing before the storm hit, or because they live on "heir property" and have difficulty proving clear title to their land.

Substantial and valid attention is paid to thwarting CDBG fraud and abuse, and prosecuting such cases when found. Arguably, however, poor planning or no planning results in greater amounts of money wasted, time squandered and Katrina survivors still without homes, as outlined above.

After continuing calls for a meaningful needs analysis, led by Alabama Arise, Mobile Fair Housing Center, the South Bay Communities Alliance, Appleseed and other citizen groups, went unanswered by ADECA and Mobile County, Appleseed decided to gather what data it could. With the cooperation and assistance of Mobile County's CDBG contractor, Roth, McHugh & Associates, LLC, Appleseed staff and volunteer law students from Jones School of Law distilled data that Roth, McHugh had compiled from

³ Appleseed has not been able to obtain more detailed information on the income level of those assisted, and whether they are renters, homeowners or FEMA or other manufactured housing occupants.

CDBG applicants. Piecemeal as it was, the resulting information allowed for the first time a clearer view as to who was to be served with emergency CDBG funds, and what was the level of their need.

Based on information gleaned from the 1179 applicants who timely applied for CDBG funding early in 2007, Appleseed found:

- *39% have annual household incomes of \$15,000 or less;
- *average household income was \$19,202;⁴
- *at least 552 people with disabilities live in 363 households (31% of total);
- *166 of these households are headed by an elderly person;
- *58% of households have one or more minor children, often headed by a single parent (or grandparent).

Furthermore, Appleseed totaled the various estimates of damage conducted in May – July, 2007 by a Roth, McHugh contractor on approximately 700 of the applicant properties, and extrapolated those results across all applicants to reach very rough, minimum estimates of costs for various repairs. These conclusions:

- *exterior estimate to repair houses not completely destroyed: \$35,220,560
- *approximately 171 homes were destroyed and needed to be rebuilt (based on average cost of \$148,500 for recently built homes): \$25,393,500
- *replacement/repair of waste disposal systems in 440 homes @ established program ceiling of \$18,000: \$7,920,000
- *raising 766 homes (65%) @ maximum program cost of \$30,000: \$22,990,500

The total of these category costs, which are rough and very conservative, is \$91,524,560, a figure based entirely on an exterior review, and not including any interior repairs or replacements. Consequently, that amount is tripled in order to arrive at a more realistic total of \$274,573,680. Thus, the current emergency CDBG allocation for housing in Mobile County of \$18.9 million would meet perhaps 7% of the estimated need of nearly \$275 million.

Earlier damage assessments, including housing and other infrastructure costs, appear in hindsight wholly unrealistic. One projected state-wide Katrina damage at \$139.7 million.⁵ Woods Research, Inc. had been retained by ADECA in 2006 to prepare a comprehensive evaluation of the damage and projected repair costs.⁶ The resulting data reported on Mobile City municipality estimates of hundreds of millions of dollars in housing costs. However, Woods Research's final report, in listing various priority projects and associated expenditures, did not rely on existing FEMA or Mobile City estimates, but rather recommended that a comprehensive needs assessment be undertaken for housing in Mobile County. The projected value of this work was "high," and the estimated cost was \$10,000.

⁴ 12 household incomes ranging from \$75,000 to over \$2 million were excluded from the total of 1179 so as not to skew average household incomes of the otherwise low-income communities represented.

⁵ Economic recovery Strategy for Alabama Counties Impacted by Hurricane Katrina, ADECA, March 2007

⁶ A Post-Katrina Housing & Needs Analysis for The Mobile, Alabama MSA, Woods Research, Inc., Columbia, SC, June 2006.

Two years after the Woods' report recommendation, and at the persistent urging of the community organizations, Mobile County/ADECA contracted with a regional government consortium to prepare a "needs assessment" for a small portion of largely unincorporated southern Mobile County, at a cost of \$15,000. The result was quietly published late in 2007, and is useless.

Recommendation: ADECA promptly should undertake a comprehensive, professional assessment of the housing conditions and needs of Mobile County residents.

Mobile County has insisted on imposing on CDBG applicants a standard of qualification for assistance found no where in the CDBG law or regulations, that of "deferred maintenance." The County recently amended its Procedures to require that any structure with Katrina damage less than 50% the pre-Katrina value of the house, must meet a very high standard of imminent danger to health to receive any CDBG assistance. Huge amounts of time and money for home inspectors, attempting to discern how much of an old house was direct storm damage, and how much merely was existing frailties of a low-income person's old house. The attitude behind this thinking is exemplified by a Mobile County employee working on CDBG home rebuilding: "Just because someone doesn't keep up their house the way the rest of us do, and then is lucky enough to be hit by a hurricane, why should we then repair their house?"

Recommendation: Congress should urge HUD to explicitly state that pre-existing house damage may be included in CDBG repairs if to do so would improve the person's home and the condition of the community.

2. The use or distribution of emergency CDBG funds does not appear to have affirmatively furthered fair housing in Alabama for Katrina survivors.

Nearly two years after the storm, and long after the approval of Alabama's Action Plans by HUD, the approval of all CDBG funds and the acceptance by Mobile County of the work plan of its successful contractor, the staff of the Alabama Department of Community and Economic Affairs posed the following question to the contractor to consider as possible objectives of the housing assistance program:

Is a program objective to give priority to elderly, disabled, families with children, people residing in FEMA trailers or otherwise displaced, etc?

While the answer is "yes," it is the asking that is instructive. The HUD-approved action plans⁷ prepared by Alabama's Department of Economic & Community Affairs – the agency responsible for directing CDBG programs -- contained no reference to the use of CDBG funds for the purpose of providing fair housing services under the federal Fair Housing Act, nor did it suggest as an element of Alabama's action plans the analysis and determination of the impact of Katrina on classes of people protected under the Fair

⁷ *Hurricane Katrina Action Plan for Disaster Recovery Funds, March 2006 and Hurricane Katrina Action Plan for Supplemental Disaster Recovery Funds, December 2006*, both at Community Development Block Grant Program, State of Alabama, Alabama Department of Economic and Community Affairs (www.adeca.alabama.gov)

Housing Act. There was no reference to the Fair Housing Act at all. Little wonder that an ADECA employee should ask if CDBG funds should be prioritized to those persons protected under the Fair Housing Act, such as people with disabilities and families with children.

As noted above, Appleseed undertook an informal analysis of data from the 1179 CDBG applicants, and found a substantial population of households with minor children, with disabled occupants and elderly-headed households. Appleseed was not able to quantify the racial makeup of the applicants as this information had not been requested in the application form.

Key elements of furthering fair housing understanding and compliance are public education and outreach. The Policy & Procedures adopted by Mobile County to govern the CDBG process included a commitment that all public notices and related notices of meetings would be published in English, Spanish, Vietnamese, Laotian and Cambodian. There have been no reports that any such notices ever were published in any language but English. Roth, McHugh did retain a Vietnamese translator to translate program documents. However, in practice the person so hired found it easier simply to meet with the non-English speaker and complete any required forms in English himself.

Finally, Appleseed has confirmed a troubling example of misinformation. Leaders of a 1500-household community comprised of 94% African-Americans in northern Mobile County were told that their citizens did not qualify to apply for CDBG rebuilding grants. Some 200 households were damaged in the storm. As a result of this guidance, by one appointed member and one elected member of the Mobile County Commission, those citizens, who in fact were fully qualified to seek CDBG funds, did not apply within the required time period early in 2007.

While the community did what so many on the coast did, and raised over \$250,000 to help put a roof or otherwise fix up some 140 damaged homes, 60 households still remain without assistance, and are expected to seek to reopen the application process.

3. Other information resulting from Alabama Appleseed's experience with the emergency CDBG program.

As noted above during the identification of clouded property title as a constraint to CDBG payments, the underlying problem of heir property is significant. Almost by definition owners of heir property are low-wealth individuals and families, and those living on heir property damaged by Katrina continue to require legal assistance to qualify for CDBG funding. Alabama Appleseed, with the support of the AARP Foundation, and in partnership with the Alabama State Bar and the Mobile County Bar's Volunteer Lawyer Program, has undertaken to fashion a network of pro bono lawyers to assist these people. Others have asked for assistance through offices of the Legal Services Corporation.

ADECA has indicated in its public hearings on the initial CDBG allocation that it appeared legal and other assistance helping people with heir property problems was well within the mandate of CDBG. We agree and would urge that a more regional and

national consideration of solutions be found for owners of this land who often are low-wealth, African American with little access to or trust in our legal system. Indeed, Both Texas Appleseed and South Carolina Appleseed are continuing to seek solutions, and in Alabama we are partnering with Extension Agents to present public education programs to low-wealth, rural communities. Louisiana Appleseed, in the wake of the serious heir property problem in New Orleans has persuaded the state legislature to establish a study commission to come up with proposals by next year.

Alabama may be the only state that does not fund civil legal services for low-income people through its annual legislative appropriation. Congress does not include in its Legal Services Corporation appropriations a line item for disaster legal services contingencies; the congressional effort post Katrina to enact a special disaster assistance appropriation for the Legal Services Corporation for all affected states was not successful.

Thus, while the burden on selected legal services offices in Alabama was not overwhelming, it was still an unbudgeted and unfunded cost. By comparison, an estimated 25,000 low-income families own heir property in New Orleans, and Louisiana's legal services offices have been inundated by these and other Katrina-related cases without adequate funding.

Louisiana CDBG funds have been used to fund these essential legal services by Southeast Louisiana Legal Services and others, but recent obstacles have halted this funding. In response, Brian Sullivan, a HUD spokesman, observed that, "We're confident the state will restart this valuable program so the people who need these services can get these services." Alabama's Department of Economic and Community Affairs also has provided limited funding for Legal Services Alabama.

Recommendation: Congress should amend the Community Development Block Grant and/or the Legal Services Corporation laws to direct that, for disaster emergency appropriations, no less than a certain percentage (as determined by each state) of the grant shall be allocated to support the delivery of legal services for low-income persons. Congress might indicate such funding is both to "affirmatively further fair housing" as well as to render what other legal services are required to assist eligible disaster victims qualify for CDBG assistance.

I thank this Subcommittee and look forward to continuing this conversation.