WRITTEN STATEMENT OF REILLY MORSE
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UNITED STATES HOUSE OF REPRESENTATIVES
JOINT HEARING OF
HOUSE FINANCIAL SERVICES SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
AND
HOUSE HOMELAND SECURITY SUBCOMMITTEE ON EMERGENCY COMMUNICATIONS, PREPAREDNESS AND RESPONSE
"EXAMINING THE ROLES AND RESPONSIBILITIES OF HUD AND FEMA IN RESPONDING TO THE AFFORDABLE HOUSING NEEDS OF GULF COAST STATES FOLLOWING EMERGENCIES AND NATURAL DISASTERS"

June 4, 2008

INTRODUCTION

Good morning, I am Reilly Morse, a senior attorney in the Katrina Recovery Office of the Mississippi Center for Justice in Biloxi, Mississippi. I thank Madam Chair Waters, Ranking Member Capito, and the members of the subcommittees for holding this hearing to examine the roles and responsibilities of the U. S. Department of Housing and Urban Development (HUD) and the Federal Emergency Management Agency (FEMA) in responding to the affordable housing needs of the Gulf Coast States following emergencies and natural disasters.

The Mississippi Center for Justice ("MCJ") is a nonpartisan, nonprofit, civil rights legal organization that was founded in 2003 in Jackson, Mississippi. It was formed to provide a home-grown and home-owned legal capacity to advance racial and economic justice in the state of Mississippi. In 2005, MCJ became the deep south affiliate of the Lawyers' Committee for Civil Rights Under Law, a national civil rights legal organization formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. Shortly after Hurricane Katrina struck the region, MCJ opened a Katrina Recovery office in Biloxi, from which we have partnered with the Lawyers' Committee and a wide variety of pro bono volunteers to provide free legal representation to individuals and community groups who are seeking disaster recovery assistance. MCJ and the Lawyers' Committee also have provided research and policy advocacy support on behalf of lower-income and minority hurricane victims and communities in the region.

I am a third-generation Mississippi coast lawyer, a former municipal judge and municipal prosecutor for the city of Gulfport. I started with the Mississippi Center for Justice in October, 2005, after the obliteration of my law office and practice, and after taking personal bankruptcy. My focus is affordable housing policy advocacy and community development. For nine years

prior to Hurricane Katrina, I had a solo civil practice with a specialty in public interest environmental and environmental justice litigation. For eleven years prior to that, I was in Gulf Coast law firms where I practiced commercial, insurance defense, and maritime litigation.

Three major hurricanes -the 1947 storm, Camille, and Katrina- have struck each of the generations of my family, but the damage from Hurricane Katrina was of a much higher order of magnitude. My family and I rode out Katrina and my home was safe, so I am fortunate compared to the clients I represent here today. On behalf of those clients, I am here to tell you that, in too many respects, HUD and FEMA have fallen short of their responsibilities to respond to the affordable housing needs of storm victims in Mississippi.

EXECUTIVE SUMMARY

Hurricane Katrina "had a particularly devastating impact on low-wealth residents who lacked an economic safety net" but the disaster also "presented a unique opportunity to correct decades of inequitable development," according to the Mississippi Governor's Commission.[1] Sharing these concerns, Congress required the states to spend at least 50% of the $11.5 billion in CDBG disaster recovery funds to benefit primarily persons of low and moderate income (LMI).[2] The U. S. Department of Housing and Urban Development (HUD) adopted regulations implementing the LMI requirement.[3] Yet Mississippi, with the nation's largest per capita poverty population, was the only state to request and receive waivers from this requirement. All told, HUD carved $4 billion out of the $5.481 billion allocated to Mississippi for uses other than to assist LMI households. As a result, Mississippi now has turned its back on the opportunity to broadly uplift the housing conditions of its most vulnerable storm victims in favor of other priorities.[4]

Overall, 241,283 housing units received some damage from Hurricane Katrina. 90,271 dwellings (owner-occupied or rental) suffered major damage or were destroyed, and another 151,012 suffered lesser damage, according to inspections by FEMA as of March 30, 2006.[5] In its

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[1] Governor's Commission on Recovery, Rebuilding, and Renewal, "After Katrina: Building Back Better Than Ever", pp. 60-61.

[2] Department of Defense Appropriations Act, 2006, Public Law 109-148, December 30, 2005, 119 Stat. 2680, 2780.

[3] "[T]he aggregate use of CDBG Disaster Recovery funds shall principally benefit low and moderate income families in a manner that insures that at least 50% of the amount is expended for activities that benefit such persons." U. S. Department of Housing and Urban Development, February 13, 2006, 71 FR at 7671.

[4] "More Housing Woes for Mississippi," New York Times editorial, September 27, 2007, http://www.nytimes.com/2007/09/27/opinion/27thur2.html?_r=1&ref=opinion&oref=slogin

[5] Housing Unit Damage Report, July 12, 2006, FEMA ("FEMA July 2006 Report"). A copy is attached to this testimony as Exhibit "A." It also is available at the following link. http://www.stepscoalition.org/downloads/news/reports/HUD_MDA_FEMAdamage_estimates.pdf See discussion of this report at text accompanying footnotes 22-33.

first application for CDBG funds, Mississippi Development Authority ("MDA") wrote, "The sheer number of homes damaged or destroyed is one reason **the Governor considers the replacement of housing as a number one priority** in rebuilding the Mississippi Gulf Coast."[6] (emphasis added) However, using conservative estimates, all of Mississippi's programs combined (home grants, LIHTC, small rental, long term workforce housing, and HOME mortgage) would rebuild little better than half (47,458) of the total housing with major to severe damage, and none of the 151,012 with lesser damage.[7]

An earlier damage estimate dated February 12, 2006, by FEMA and HUD placed the total number of units with damage at 220,384, and those with major to severe damage at 61,386. The State of Mississippi considers the February, 2006 estimate to be reliable, and asserts that the July, 2006 report has been retracted. As detailed below, however, the July, 2006 report more nearly matched the actual count of damaged housing units in the largest housing program to date, and so is considered by MCJ to be more reliable than the February, 2006 study.

So far, Mississippi has devoted only about $3 billion dollars or 55 percent of CDBG funds to programs for direct housing recovery.[8] Mississippi has obligated or disbursed $513 million in homeowner assistance grants for persons of low and moderate income, and spent $10 million towards public housing as of February 28, 2008.[9] According to Mississippi's latest Disaster Recovery Grant Report, for the period ending December 31, 2007, Mississippi's cumulative overall benefit percentage is only 13.2 percent.[10]

Two and half years after Katrina, Mississippi has paid out over $1.2 billion to homeowners, but has not opened a single CDBG-financed rental unit.

Mississippi's programs do not address half the needs of small rental, very-low-income rental, or homeowners who suffered moderate to severe damage from Hurricane Katrina.

- MDA's Small Rental plan will restore 6,300 small rental units, leaving 7,500 unrepaired.[11]

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[6] Mississippi Development Authority Homeowner Assistance Program Partial Action Plan, September 11, 1006, p. 3.

[7] Mississippi Disaster Recovery Program Summary, February 28, 2008, p. 3. Mississippi's higher estimate of 58,107 units likely overstates the total number of units restored and therefore is not used.

[8] Mississippi Disaster Recovery Program Summary, February 20, 2008, Exhibit "B" Mississippi Center for Justice Analysis of MDA CDBG Programs, attached as Exhibit "C."

[9] Mississippi Center for Justice analysis of Mississippi Development Authority, Low/Mod Summary as of February 28, 2008, Exhibit "D".

[10] MDA Disaster Recovery Grant Report, 4th Quarter 2007, http://www.mississippi.org/UserFiles/File/Home_Owners_Assistance_Program/DRGR-12-2007.pdf

[11] FEMA and HUD, "Current Housing Unit Damage Estimates - Hurricanes Katrina, Rita and Wilma," February 12, 2006, Exhibit "E". p. 12.

- GO Zone and regular tax-credit funded developments will restore 1,023 very-low-income apartment units, leaving 8,023 unrepaired. In the six coastal counties, these programs will restore 5,632 low-income units, leaving 9,825 unrepaired.[12]
- Phase I and II homeowner assistance grants will restore about 25,000 storm surge damaged houses, leaving 33,885 wind-damaged units (estimated 16,942 LMI households) unrepaired. [13]

The prospects for financing the remainder of these housing needs have worsened as a result of HUD Secretary Alphonso Jackson's authorization of Mississippi's diversion of $600 million in housing funds into a costly and non-hurricane-recovery related expansion of the State Port at Gulfport. Secretary Jackson's rationale for this decision was that HUD had little or no discretion to question the State of Mississippi's decision to divert this money from housing needs. In fact, he testified before this Committee on March 11 that if he would have had discretion to reject this proposal he would have done so.[14] A careful analysis of the legislation and requirements of the CDBG program indicates that HUD's conclusion that it had little or no discretion to review the State's submitted proposals is in error. Without discretionary authority, there would be no oversight and no assurance that Congressional intent was being implemented or subverted. We respectfully believe Congress meant what it said -- and that low and moderate income families would be at the front, not the back of the line for federal aid.

Mississippi Center for Justice urges this subcommittee to re-examine the waivers two years after they were granted by HUD Secretary Jackson, as required by Public Law 109-148; to institute appropriate reforms to strengthen current and future emergency CDBG appropriations against excessive use of waivers of important federal requirements; to increase public accountability and transparency in both policy development and implementation stages of programs funded with CDBG dollars; to require greater federal uniformity in disaster recovery programs between states, and to condition access to emergency CDBG funds offered to municipalities and counties upon their undertaking to affirmatively remove barriers to affordable housing, including public, subsidized, and transitional housing after natural disasters.

I. What are the Affordable Housing Needs in the Gulf Coast States, particularly in light of the devastation caused by the 2005 hurricanes?

Reliable data on the damage to the affordable housing stock and income level of the occupants is a prerequisite to effective oversight by this Joint Committee. Unfortunately, I do not believe any such estimate exists for both homeowners and renters covering the Gulf Coast states impacted by the 2005 hurricanes. A February, 2006, FEMA/HUD housing damage estimate

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[12] Exhibit "A, p. 5, "Mississippi Home Corp LIHTC-finance report, attached as Exhibit "F."

[13] Exhibit "A", p. 5.

[14] See text accompanying footnote 73.

provides an overview of the damage done by housing tenure (owner-occupied or rental), location, and severity.[15] However, this data provides no income level information for the affected homeowners or renters. A federal affordable housing damage estimate ought to have been required to ensure uniform measurement of affordable housing needs and proper use by the states of emergency disaster recovery funds to restore affordable housing.

At a May 8, 2008, Financial Services Subcommittee on Housing and Community Opportunity, the HUD representative reported no statistics of affordable housing damage for the affected areas, only funding levels for affordable rental housing.[16] Louisiana confessed that "assessing the true demand for housing in the wake of this unprecedented disaster is nearly impossible."[17] Texas officials generally described damage levels but provided no systematic look at affordable housing losses.[18] Mississippi relied upon the February, 2006 estimates and announced that -33 months after Katrina struck, and after virtually all its funds had been allocated- it was contracting to collect and present housing needs data.[19] Alabama -likely the recipient of the least CDBG funding in the region- found sufficient funds to complete an independent housing needs assessment and concluded its principal target group was low and moderate income households, but its damage statistics were not broken down by income level.[20] Florida reported that Hurricane Wilma damaged 119,038 housing units occupied by persons earning incomes at or below $30,000, and limited use of its CDBG funds to "units occupied by low-and-moderate income persons since this population group traditionally does not have the personal resources and insurance needed to recover from the loss of their homes."[21]

A. Housing Damage Estimates by Income Level are Required to Assess Mississippi's Affordable Housing Needs.

Governor Barbour and MDA have published no single comprehensive housing damage assessment by location, severity of damage, tenure, and income level, despite having been urged

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[15] A state-by-state comparison of this data is attached as Exhibit "G".

[16] Testimony of Stanley Gimont, Acting Director of Office of Block Grant Assistance, p.7. Link to testimony at http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr050808.shtml Mississippi had the second lowest percentage of rental funding out of its total grant, at 9.4 percent.

[17] Testimony of David Bowman, Director, Research and Special Projects, Louisiana Recovery Authority, p. 2. Link to testimony at footnote 16.

[18] Testimony of William Dally, Deputy Executive Director of Texas Department of Housing and Community Affairs, p. 3. Link to testimony at footnote 16.

[19] Testimony of Jack Norris, Executive Director, Governor's Office of Recovery and Renewal, p. 4. Link to testimony at footnote 16.

[20] Testimony of Bill Johnson, Director of Alabama Department of Economic and Community Affairs, pp. 2-4. Link to testimony at footnote 16.

[21] Testimony of Gail Stafford, Administrator of Florida CDBG Disaster Recovery Programs, pp. 4-5. Link to testimony at footnote 16.

to accomplish this task first,[22] and despite having ample resources to fund it.[23] This has hampered policy development, public debate, and accountability.[24]

The February, 2006, FEMA /HUD housing damage estimate counted a total of 220,384 housing units damaged in Mississippi as of February 12, 2006, of which 61,386 suffered major to severe damage. [25] Governor Barbour requested FEMA and HUD to prepare another housing damage estimate, but this report -dated July 12, 2006- was not publicly released. The July, 2007 report counted a total of 241,283 housing units damaged as of March 30, 2006, of which a total of 90,270 suffered major to severe damage. HUD and FEMA used the same methodology of direct inspection, valuation, and precautions against double counting. The author of both estimates is believed to be the same person.[26] The two estimates are compared in the table below.

Table 1. Two Housing Damage Estimates Compared

	owner		**renter**		**total**	
	Feb	**July**	**Feb**	**July**	**Feb**	**July**
minor	117,407	107,344	41,591	43,669	158,998	151,013
major	30,889	38,166	14,887	19,342	45,776	57,508
severe	9,618	24,157	5,992	8,605	15,610	32,762
total	157,914	169,667	62,470	71,616	220,384	241,283
% July/Feb		7.44%		14.64%		9.48%
major+severe	40,507	62,323	20,879	27,947	61,386	90,270
% July/Feb		53.86%		33.85%		47.05%

In the May 8, 2008, oversight hearing of the Financial Services Subcommittee on Housing and Community Opportunity, Jack Norris, Executive Director of the Governor's Office of Recovery and Renewal, testified that "the inspection data conducted by FEMA and the Small Business Administration released on February 12, 2006, is the most reliable source of damage estimates."[27] Mr. Norris added that HUD has since retracted the July, 2006 report on the basis

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[22] Governor's Commission on Recovery, Rebuilding, and Renewal, "After Katrina: Building Back Better Than Ever," December 30, 2005,("After Katrina") p. 55.

[23] The Governor's Commission estimated the cost of a housing needs assessment, including residential demographics at $1 million. ***Id.*** Mississippi has allocated $112 million for state administrative activity, but has only spent $6 million as of December 31, 2007. CDBG Disaster Recovery Expenditure Overview, "State Administration." Exhibit "H."

[24] Editorial, Biloxi Sun Herald, "We Need Housing Numbers We Can Crunch With Confidence," December 19, 2007, p C-4. Attached as Exhibit "I."

[25] Exhibit "E" p. 6.

[26] Todd Richardson, HUD Program Evaluation Division.

[27] Jack Norris testimony, p. 4.

that the data contained a number of duplicate entries.[28] However, Mississippi cited figures from that report in their Small Rental Program Action Program Final Plan and its Long Term Workforce Housing Program Action Plan both of which HUD approved without adverse comment on the underlying data.[29]

The July, 2006 report is the only statewide rental housing damage assessment broken down by tenant income level - HUD assisted, very-low-income market rate, and all others.[30] If, as MCJ believes, the July, 2006 rental damage estimate is reliable, then Mississippi's contention that its existing programs will meet all affordable housing needs is clearly erroneous.[31] Even if the February, 2006, report were used, Mississippi's rental housing programs still will fall far short of meeting the need.[32]

One indication that the July, 2006 is more accurate than the February, 2006 report is that the July report more closely approaches actual units eligible in the largest program nearing completion: Mississippi's Homeowner Assistance Phase I grant program.[33] In the table below, the total for each report is the total number of homes outside the flood plain that received flood damage, reduced by the total without insurance. The July report shows 16,848, which is closer than the February report to the Phase I total eligible units of 19,738.

Table 2: Estimates for Phase I-eligible households compared to actual total.

	Feb	July
total	18,690	19,787
no insurance	2,752	2,939
eligible	15,938	16,848
Phase I total eligible units		19,378

[28] ***Id.***, p. 5.

[29] Mississippi Development Authority's Small Rental Program Action Plan, and Long Term Workforce Housing Action Plan, both at p. 3, state that 71,116 renter-occupied housing units statewide were damaged or destroyed by Hurricane Katrina. The July, 2006 report shows a total of 71,616 damaged rental units statewide.

[30] Exhibit "A", pp. 3-4.

[31] See text accompanying footnotes 42-44.

[32] See text accompanying footnote 47.

[33] To qualify for this grant, a homeowner had to suffer storm flood damage, reside outside the 100 year flood plain, and have insurance on the residence. A small number of homeowners located inside the flood plain qualify under Phase I if they provide a FEMA standard elevation certificate. MDA Homeowner Assistance Program Modification No. 8- Phase I Elevation Certificates. http://www.mississippi.org/UserFiles/File/Home_Owners_Assistance_Program/HAPModification8June26.pdf Even subtracting this small number of units, the Phase I totals likely will remain at or above the July, 2006 totals.

Also, the two reports do not differ as conspicuously on pure counting of units as they do on the severity of damage. The July total is 9.5% higher than the February total for all housing units, 7.4% higher for owner-occupied units, and 14.6% higher for rental units. For housing with major to severe damage, however, the July total is 47% higher than the February total for all housing, 53.8% higher for owner-occupied units, and 33.8% higher for rental units. Increases over time in the number of units with major to severe damage would be consistent with our extensive personal observations of worsening damage in housing units from continued leakage, mold infestation, and deterioration. This committee should require HUD to explain the basis for retracting the data, given the relatively small differences in the overall count compared to the relatively large differences in the degree of damage.

B. Recommendations on Needs Assessments

MCJ urges this Joint Committee to require HUD and FEMA to do the following in furtherance of its oversight responsibilities concerning emergency CDBG funds and the continued unmet need of FEMA trailer occupants.

1. Determine whether or not the July, 2006 report is reliable.

2. If reliable, then use this data to conduct the statutorily-required re-examination[34] of HUD's June 14, 2006 waiver of the overall benefit requirement particularly the condition "that the state must give reasonable priority for the balance of its funds to activities which will primarily benefit persons of low and moderate income."[35]

3. If not reliable, then use the 2-year re-examination of waivers to prohibit Mississippi from reprogramming (or obligating in the case of the $600 million diversion of housing funds to the State Port at Gulfport) any emergency CDBG funds to non-housing purposes until HUD completes and releases a housing damage estimate by tenure, geography, rental housing unit type, and ***income level.*** This is justified, given HUD Secretary Jackson's testimony that not all "has been provided to low and moderate income people that should be provided for housing," to explain his reluctance to approve Mississippi's diversion of $600 million in housing recovery funds to expand the State Port at Gulfport. [36]

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[34] Public Law 109-148, 119 Stat. 2680, 2780.

[35] 71 Federal Register 34457, June 14, 2006, 2006 WL 1622293.

[36] See text accompanying footnote 74.

C. Review of Programs

For purposes of the following discussion, the July, 2006, data is treated as reliable. However, in some instances, such as the small rental program, it is possible to use the February, 2006 data.

1. Unmet Affordable Rental Needs are Estimated to be at least 28,000 units.

Lower-income households faced difficulty finding affordable housing before Hurricane Katrina arrived. A recent report by the Rand Gulf States Policy Institute conservatively estimates that the pre-Katrina demand for affordable housing in the three coastal counties was close to 38,000 units, the supply was 25,000 units, and the loss of units from the Hurricane was 6,000 units.[37] Rand concedes that these estimates "almost certainly underestimate the scale of the affordability problem post-Katrina."[38] MCJ agrees that these estimates dramatically underestimate the need for affordable housing. Excluding public housing, Katrina damaged over 34,000 HUD-assisted and very-low-income (VLI) market rate rental units in Mississippi, and severely damaged or destroyed about 11,500 units, according the July, 2006 report.[39]

A pre-Katrina 2005 report by the Mississippi Regional Housing Authority VIII counted 3,054 households on a Section 8 voucher waiting list, of which 2,446 were extremely low income.[40] This is an income level for clients MCJ routinely has seen since Hurricane Katrina, such as a full time fast food preparation worker, a veterinary assistant with one child, and a pharmacy aide with spouse and one child.[41]

Katrina damaged 2,534 out of 2,695 units of public housing in South Mississippi, and destroyed 316 units, according to direct inspections by HUD representatives.[42] Mississippi's

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[37] Kevin McCarthy and Mark Hanson, "Post-Katrina Recovery of the Housing Market Along the Mississippi Gulf Coast," Rand Gulf States Policy Institute, 2008 ("Rand 2008 Report"), pp. 19, 30-31. http://www.rand.org/pubs/technical_reports/TR511/

[38] Id., p. 61. Rand's data is based upon correlations and extrapolations of several sets of damage and demographic data at the census block level. ***Id.***, at 76-77. MCJ considers to be more reliable the data gathered by direct inspection of housing units, such as the FEMA and HUD reports cited elsewhere in this testimony. MCJ considers the Rand data to underestimate the actual damage done to the Mississippi coast housing stock.

[39] Exhibit "A," p. 5. Persons earning no more than 50% of area median income are considered "very low income." In south Mississippi, this would include a single fire fighter, a medical assistant with one child, and two child care workers with one child. Back Bay Mission "Who Lives in Affordable Housing?" Affordable Housing Conference 2007, Biloxi, MS. The 11,500 figure for major and severe damage is reached by adding the Assisted and VLI units with major damage and then subtracting out 400 public housing units with major/severe damage. (10,004 +1910)-400=11,514)

[40] Mississippi Regional Housing Authority VIII FY 2005 Annual Plan, p. 7.

[41] Back Bay Mission, "Who Lives in Affordable Housing?" Affordable Housing Conference, 2007, Biloxi, MS.

[42] Mississippi Development Authority Public Housing Program CDBG Disaster Recovery Action Plan, Amendment 1 approved August 31, 2007, p. 3.

CDBG public housing plan proposes to repair or restore 2,000 to 3,200 units, but this will not absorb the 3,000-household waiting list prior to Katrina. Mississippi's public housing authority reconstruction is moving at an extremely slow pace. A January, 2008, survey by the Mississippi Center for Justice found that several of the apartment complexes currently occupied by tenants have been severely infested with mold.

Since Hurricane Katrina, Mississippi has asserted that low income housing tax credit ("LIHTC") financed construction would restore these segments of the rental housing market without the use of CDBG funds. But Mississippi's 1,981 units offered at VLI rates will restore only 7 percent of the 29,869 VLI-damaged units and only 20 percent of the 10,004 with major to severe damage.[43] Mississippi's 9,168 LIHTC-financed units will not restore the 11,500 HUD-assisted and VLI units with major to severe damage.[44] Only 5,915 of the LIHTC-funded tax credits are located in the 6 coastal counties.[45] Low-moderate income persons earning between 50 and 80 percent area median incomes are among those who lived in other market rate rentals, which suffered damage to 34,511 units, and major to severe damage to 16,033 units, according to the July, 2006 report.

Some of the affordable rental housing needs, the projected production, and unmet needs are summarized in the table below. This summary is intended to be illustrative only. In reality, not all 9,168 LIHTC-funded rental units will be applied to HUD assisted or VLI rentals, because local housing authorities will use LIHTC financing to restore some of the capacity lost from damaged public housing units. So, unmet HUD-assisted and VLI needs will increase by each LIHTC-financed unit occupied by Public Housing residents.[46] Also, this unmet needs estimate likely understates actual demand since it fails to include pre-existing demand for affordable rentals besides public housing, additional demand due to worsening economic situations since Hurricane Katrina, through job loss, increased cost of living, decreased wages, increased costs of homeownership, or other financial or regulatory barriers to rebuilding. Subject to these limitations, one may estimate the remaining unmet affordable rental housing need to be approximately 28,000 units.

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[43] Exhibit "F" for LIHTC-funded awards; Exhibit "A" for figures on Assisted and VLI rentals with major to severe damage.

[44] Exhibit "F."

[45] Mississippi Home Corporation data on LIHTC-funded awards, April 1, 2008, on file with author, copy attached as Exhibit "J."

[46] Mississippi Regional Housing Authority VIII, through its non-profit subsidiary, is using LIHTC financing to replace public housing formerly known as Charles Warner in Pascagoula, and formerly known as Camelot in Gulfport.

Table 3: Some Unmet Rental Housing Needs

type	number of damaged units	estimated number from MS program	unmet need
public housing damaged units	2,534	2,000-3,200	534
public housing waiting list	3,054	666	2,388
HUD assisted rental	4,702	9,168	0
VLI market rate rental	29,869	4,466	25,403
total			28,325

2. Mississippi's Small Rental Program Will Fail to Restore 6,300 to 7,500 Units with Major to Severe Damage.

Hurricane Katrina damaged 47,013 units in small rental sites (less than 10 units), and inflicted major to severe damage upon almost 13,800 units, including over 12,170 single family units.[47] But Mississippi's small rental program will restore only 6,300 to 7,500 units in the lower four counties, or 45 to 54 percent of those with major to severe damage, leaving another 6,300 to 7,500 units unrepaired. The program will restore only 13 to 16 percent of damaged small rentals overall. It bears emphasis that this shortfall is calculated using the Governor's projections and the February, 2006, report that Mississippi considers to be the "most reliable source for damage estimates." By program design, only 51 percent of units constructed under the Small Rental program must be rented to low-moderate income persons. It should be noted that the unmet small rental need cannot be added to the unmet need identified in the preceding section.

3. Mississippi's LIHTC program will fail to restore 6,200 apartment units.

Hurricane Katrina damaged 15,457 units in apartment complexes, and caused major to severe damage to 7,081 units. But Mississippi's LIHTC program is forecast to produce 9,168 apartments, leaving 6,2789 units unrepaired. This shortfall, like the Small Rental calculation, rests on Mississippi's most optimistic forecast and the February, 2006 damage estimate. Also, this unmet need cannot be added to that which is calculated from the July, 2006 report.

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[47] Exhibit "E". Current Housing Unit Damage Estimates - Hurricanes Katrina, Rita and Wilma," FEMA/HUD, February 12, 2006, p. 12.

4. Long Term Work Force Housing Will Not Significantly Remedy the Affordable Rental Shortfall.

Mississippi's Long Term Work Force Housing (LTWF) program continues Mississippi's over-weighting of owner-occupied housing programs and cannot be counted on to produce a significant number of rental housing units. For example, the largest grant in the first round went to an employer-assisted housing program that will allocate the majority of its funds to employees who wish to purchase housing.[48] Another large development funded by the LTWF program is the redevelopment of the east bank of the Pascagoula River. The majority of the units proposed for this location will be owner-occupied. In addition, the LTWF program is available to non-Katrina damaged persons, which places new employee housing needs ahead of the unmet rental housing needs of existing residents. In a post-Katrina inflation environment, it is not financially feasible for many low and moderate income persons to transition from renting to home-ownership.

5. 33,885 Badly Wind-Damaged Homeowners Ineligible for Grants

As in many communities across America, the principal railroad track in Coastal Mississippi functions as a racial line of demarcation in coastal Mississippi. Due to decades of inequitable development, many impoverished minority enclaves remain immediately north of the rail bed, including Soria City, the Quarters, and Gaston Point, to name a few in Gulfport, the coast's largest city. Hurricane Katrina's category 3 velocity winds struck these communities with virtually identical intensity as the predominantly white residential beach-front areas only a few blocks to the south. But these communities, and thousands of other households with major to severe damage, both white and black, were denied housing disaster assistance grants because the rail bed held back the tidal surge, or they were on higher ground.[49] Looking to the lower 10 counties who experienced Katrina's most intense winds, the number of households with major to severe damage is 11,951.[50] Inadequate insurance settlements have left these households at the mercy of long term recovery organizations, as described below.

Louisiana offered a single program that covered both flood- and wind-damaged homeowners, with a single $150,000 cap. Mississippi has denied all grant support to those with only wind damage and has created a two-tier system in which predominantly wealthier Phase I grantees receive up to $150,000 above insurance, while lower-income households are eligible for only up to a $100,000 grant. These illogical and arbitrary disparities in relief programs between United States citizens struck by the nation's worst natural disaster should not be

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[48] Gulf Coast Renaissance Corporation, Response to Request for Proposal to Provide Long Term Work Force Housing provides that the program is limited to owner-occupied primary residences, with a small set aside for rental programs. p. 7.

[49] Reilly Morse, "Environmental Justice Through the Eye of Hurricane Katrina," Joint Center for Political and Economic Studies, May, 2008, p. 13.

[50] Table of wind-damaged households in lower 10 counties compiled from FEMA February, 2007 report, attached as Exhibit "K."

permitted to exist. If federal funds are used to help these citizens recover, then the basic eligibility and amount of recovery ought not to depend on one's state citizenship.

One indirect measure of unmet need is that Mississippi's county long term recovery organizations (LTRs) currently have 8,956 open files statewide, with another 6,638 on waiting lists for services.[51] Two thirds are working poor who are homeowners; one third are renters. They include homeowners with uncompensated wind damage. Another segment will be renters seeking assistance with furnishings and personal effects. The LTRs also have 5,778 closed files, which include households who received no relief due to budget constraints. Currently, the LTRs are publicly seeking to raise $300 million in additional funds to "Finish The Job."[52]

6. Temporary and Transitional Housing Continues to Have Serious Problems

As of April 18, 2008. Mississippi has 7,574 households (20,450 individuals) currently in FEMA direct housing assistance and 1,680 households (4,536 individuals) receiving rental assistance. housing programs. All told, 81 percent of individuals are in FEMA trailers. These figures cumulatively represent approximately 24,986 displaced individuals. [53] Eighty-two percent of households in FEMA trailers or receiving other direct assistance are LMI households, yet only 1.1 percent of those who still remain in trailers ever received federal housing assistance prior to Katrina. Nearly half (48 percent) of those receiving direct assistance were renters before the storm and 34 percent of these residents are over the age of 60 and/or have a disability.

Ninety-three percent of the 1,680 households receiving rental subsidy assistance are LMI households. Eighty-eight percent of households receiving subsidies were renters before Katrina, but only seven percent received any federal housing assistance before Katrina. Eleven percent of these households include elderly and/or persons with disabilities.

On November 19, 2007, HUD announced that it was taking over the rental housing assistance program from FEMA, "since HUD [not FEMA] is in the long term housing business,"[54] HUD announced that 375 Public Housing Authorities and 12,000 landlords would be participating in the new program run by HUD, the Disaster Housing Assistance Program (DHAP). HUD Secretary Jackson stated that "all hands are on deck to make this transition as

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[51] Mississippi Long Term Recovery Case Management Survey Results, January, 2008, http://www.msidtf.org/index.php?option=com_docman&task=cat_view&gid=40&Itemid=16

[52] See www.finishthejobfund.org .

[53] FEMA, Mississippi 1604, GCRO, IA Global Report No. 37 : http://www.fema.gov/pdf/hazard/hurricane/2005katrina/ms_iag.pdf . See Statistical Highlights compiled by Steps Coalition, http://www.stepscoalition.org/downloads/news/reports/April_08_FEMA_Stats.pdf

[54] HUD Secretary Alphonso Jackson in "HUD TO TAKE OVER RENTAL HOUSING ASSISTANCE FOR NEARLY 30,000 RESIDENTS AFFECTED BY 2005 HURRICANES," November 19, 2007: http://www.hud.gov/news/release.cfm?content=pr07-171.cfm

seamless as possible for these families who have already been through so much….We have built a coalition that…will not rest until every eligible family has a roof over their head."[55]

One unpublicized problem with the transition is that all landlords participating in FEMA's rental assistance program would be given the option to either continue receiving subsidies for FEMA eligible tenants under HUD's new DHAP program or to, as of December 1, 2007, opt out of the program entirely. This transition from FEMA to HUD's DHAP has left many families vulnerable to homelessness.

In its most recent Global Report, FEMA identified only 1,204 rental units available at fair market rate in the entire State of Mississippi.[56] The number of all eligible rental units statewide totals 2,512 units.[57]

Mississippi's MEMA cottage pilot program, which was supported by a special allocation of CDBG funds expects to produce a total of 3,100 small cottages to eligible applicants by June, 2008.[58] At present, nearly 2,887 units have been place or are awaiting placement, and another 200 are reserved for Region VIII Housing authority, leaving a remainder of 13 units.[59] Until recently, these cottages had been viewed as a postive and beneficial addition to the affordable housing needs of the area. In May, 2008, new tests of these cottages have reveal potentially unsafe levels of formaldehyde.[60]

As FEMA closes its trailer parks, tenants are confronted with a variety of misinformation.[61] In a recent survey of 114 residents in 10 FEMA trailer parks, MCJ found that tenants were told conflicting information about when they had to leave their trailer.[62] Some were told that if they did not leave by May 31, 2008, their door would be locked and the trailer destroyed. Others were pressured to take hotel housing, but feared their rights to temporary housing would terminate prematurely if they did so. Tenants often still cannot find affordable rental housing that will accept FEMA rental assistance. Those who found a willing landlord often still could not move in, due to the inability to cover the deposits for rent and electricity. The

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[55] ***Id.***

[56] FEMA, Mississippi 1604, GCRO, IA Global Report No. 41.0, Report Date: May 21, 2008 http://www.fema.gov/pdf/hazard/hurricane/2005katrina/ms_iag.pdf

[57] ***Id***.

[58] Personal Communication between MCJ and Keith Campbell, May 8, 2008.

[59] ***Id.***

[60] "WLOX Investigation Questions Formaldehyde Levels in Mississippi Cottages," May 22, 2008, http://www.wlox.com/Global/story.asp?s=8368342

[61] Chris Joyner, "Katrina Victims will lose homes when FEMA ends temporary housing efforts," Clarion Ledger, June 1, 2008.

[62] Mississippi Center for Justice, FEMA Trailer Findings as of May 16, 2008, attached as Exhibit "L".

survey includes five case studies of the types of problems faced by FEMA tenants. These conflicting messages and misinformation were corroborated in local news articles.[63]

As the hardest to house FEMA residents are being removed from trailers and dispersed across a variety of programs administered by more than one agency, FEMA or HUD, with differing terms and conditions, these tenants will increasingly become lost and invisible. It is necessary for Congress to require HUD and/or FEMA to provide a single common yardstick to measure the current status of displaced storm victims and track progress.

7. Special Needs Populations

The 2000 Census population for persons with disabilities is 607,570 statewide in Mississippi and 76,650 in the three coastal counties. In addition to being the state with the greatest poverty rate in the nation, Mississippi has the largest per capita population of people with disabilities, the majority of whose incomes fall below the 80% area median income (AMI) category. Persons with disabilities tend to have less income because many are on fixed income, but most also have substantial disability-related expenses not borne by the non-disabled population on fixed income.[64] Only 413 of the LIHTC-funded rental units in the 6 coastal counties are elderly-disabled compatible.[65]

D. Mississippi's Excessive Use of Waivers Aggravated the Affordable Housing Needs of the State.

Public Law 109-148 prohibits the Secretary of HUD from waiving compliance with requirements relating to fair housing and non-discrimination.[66] Title VIII of the Civil Rights Act of 1968 prohibits housing discrimination on the basis of race, color, religion, sex, national origin, familial status and disability. There are widely accepted correlations of lower income to race, sex, familial status and disability. For example, 24% of African-Americans live in poverty in Harrison County, Mississippi compared to 11.2% of whites.[67] By ignoring or underemphasizing the needs of low to moderate income individuals, Mississippi's overall disaster recovery plan fails to affirmatively further fair housing. For example, Mississippi's Phase I homeowner's

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[63] Michael Bell, "Katrina Victims Face June 1 FEMA Evictions," Sun Herald, May 15, 2008; Michael Bell, "FEMA: People won't be thrown out of Trailer Parks," Sun Herald, May 16, 2008, ("Housing advisers should not be telling residents in FEMA trailer parks they will be evicted June 1 when the temporary housing program ends, the federal agency said Thursday.")

[64] Statistical analysis supplied by Mississippi Coalition for Citizens With Disabilities and Living Independently For Everyone, two Mississippi non-profit disability rights organizations.

[65] Mississippi Home Corporation, April 1, 2008, LIHTC-funded data, Exhibit "M."

[66] Department of Defense Appropriations Act, 109 Public Law 148, 119 Stat. at 2780.

[67] 2006 American Community Survey, Poverty Status, African Americans in Poverty to Total African American Population (9,117/37,839) Whites in Poverty To Total White Population (13,385/118,577).

assistance program has paid out over $1 billion in grants, but a disproportionately low $255 million to about 5,835 LMI applicants, who are statistically more likely to be African American.[68]

Mississippi sought excessive waivers of the low-moderate income benefit requirement, covering $4 billion out of $5.481 billion of disaster recovery funds. The result of this misallocation is that fewer CDBG dollars are available to restore critically-needed affordable rental and owner-occupied housing than otherwise would have been the case without the waivers. As of the last Disaster Recovery Grant Report filed by the State of Mississippi, only 13.2 percent of the $5.058 billion in emergency CDBG funds was spent on programs that adhere to the LMI benefit requirement.[69]

Apart from its public housing proposal, Mississippi has delayed for eighteen months or more after Katrina in proposing and implementing any broad programs to restore low-income rental housing.[70] This delay has disproportionately adversely affected members of classes protected under the Fair Housing Act, who were more likely to be renters than their white counterparts. These include racial minorities, female-headed households, and families with children.[71]

Mississippi's Phase I housing grant program failed to require applicants to provide their race and ethnicity in the Phase I Homeowners Assistance program, thereby thwarting a specific record-keeping mandate intended to track compliance with the Fair Housing Act.[72] Furthermore, to our knowledge Mississippi has made no funding available to fair housing organizations in Mississippi. Finally, it is our understanding that HUD's most recent review of the Mississippi's

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[68] Mississippi Development Authority DRGR Report, December 31, 2007, Grantee Activity ID 05R-Homeowner L/M Phase I, http://www.mississippi.org/content.aspx?url=/page/3707&

[69] Mississippi Development Authority, Disaster Recovery Grant Report, December 31, 2007. Until three days before this Oversight Hearing, Mississippi was three quarters behind in filing applicable quarterly reporting requirements. At present, there are no approved filings posted for the third quarter of 2007 or the first quarter of 2008. See 71 Federal Register 7666, at 7670. *Reporting 14.b.* "Each grantee must submit a quarterly performance report, as HUD prescribes no later than 30 days following each calendar quarter... . Each quarterly report will include... performance measures such as numbers of low-and moderate- income persons or households benefitting." MCJ believes that HUD has in fact made a finding of non-compliance for Mississippi's failure to file reports as described above, or for late filings. HUD appears unwilling to impose any sanction upon Mississippi for its delayed and inaccurate filings.

[70] Mississippi's Public Housing action plan was proposed in the spring of 2006 and approved on August 31, 2006. The small rental and work force housing programs were not published for comment until the spring and fall of 2007, respectively.

[71] Memorandum from Debby Goldberg, Hurricane Relief Project, National Fair Housing Alliance, to Gail Laster, House Financial Services Committee, February 19, 2008, Exhibit "M", Tables 1-5, pp. 3-5.

[72] See 71 Federal Register 7666, at 7670. *Recordkeeping* "For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants form, participants in, or beneficiaries of the program." MCJ requested public records on these data and were told that MDA understood that HUD did not require record keeping on racial and ethnic characteristics, and so MDA failed to require applicants to report race and ethnicity. See letter from Melissa Medley to Reilly Morse, September 6, 2007, Exhibit "N" p. 5.

actions to affirmatively further fair housing at the end of February resulted in a continuation of earlier conclusions that there were serious shortcomings in the Mississippi program in meeting this requirement.

The Fair Housing Act requires more than that HUD or its grantees "do more than simply not discriminate itself; it reflects the desire to have HUD use its grant programs to assist in ending discrimination and segregation, to the point where the supply of genuinely open housing increases." ***NAACP v. HUD,*** 817 F.2d 149, 155 (1st Cir. 1987). Entrenched areas of racial segregation remain on the Mississippi Gulf Coast, reinforced by generations of inequitable development. Mississippi's decision to build back bridges, sewage and water systems, roads, public structures, and a state-owned port better than before, continues rather than corrects a decades-long pattern of inequitable development, and is at odds with the letter and spirit of the Fair Housing Law.

E. Mississippi's diversion of $600 million to the expansion of the State Port at Gulfport aggravates the State's affordable housing needs.

On January 25, 2008, Mississippi received approval from HUD Secretary Alphonso Jackson for a controversial proposal to divert $600 million in housing funds into the repair and vast expansion of the State Port at Gulfport.[73] HUD Secretary Alphonso Jackson took the unusual step of personally writing Governor Barbour about the approval to explain that he had "little discretion" in the matter, and to voice concerns that "this expansion does indeed divert emergency federal funding from other, more pressing recovery needs, most notably affordable housing."[74]

In testimony before the House Financial Services Committee on March 11, 2008, Secretary Jackson explained his position, stating "I don't think that everything has been provided to low and moderate income people that should be provided for housing or infrastructure, ... but had I had my druthers, I probably would have said, 'Sir, I don't think we should be using this money and I would not approve it, but I didn't have that kind of authority.'"[75]

The reasons for the controversy are straightforward. The planned expansion, which was conceived two years before Hurricane Katrina,[76] would be the single largest expenditure of

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[73] Mike Stuckey, "Feds OK Mississippi's Katrina Grant Diversion," January 25, 2008, http://today.msnbc.msn.com/id/22805282/

[74] Letter from HUD Secretary Alphonso Jackson to Mississippi Governor Haley Barbour, January 25, 2008, attached as Exhibit "O."

[75] House Financial Services Committee, Oversight Hearing of the Department of Housing and Urban Development, March 11, 2008, examination by Rep. Capuano. http://www.house.gov/apps/list/hearing/financialsvcs_dem/hr031108.shtml

[76] JWD Group, Mississippi State Port Authority at Gulfport, Master Plan Update, 2003. This report runs to 123 pages, with appendices and will be submitted electronically.

taxpayer funds on any state enterprise in the history of Mississippi. The amount is more than ten times that necessary to pay for hurricane related damages[77] – which are already largely covered by insurance and other sources.[78] The $600 million does not buy mere channel improvements - it creates a controversial new land form in the Mississippi Sound, an inland terminal and causeway that will import traffic, pollution, and hazards to North Gulfport, an African American neighborhood, and finally it would open up 60 waterfront acres in the center of the port for a luxury hotel, condominium and casino development to be known as the "Village at Gulfport."[79] The Port has $108 million in insurance,[80] up to $54 million in FEMA funds pending insurance,[81] and $82 million in unencumbered cash,[82] far more than adequate to cover the estimated $50 million in damages to a port with an asset value of $127 million at the time Hurricane Katrina struck.[83] This extraordinary and unprecedented expenditure[84] diverts critical funds from dire housing recovery needs on the Gulf Coast.

On March 7, 2006, three months after Congress had voted to give Mississippi $5.05 billion in emergency CDBG funds, Governor Barbour returned to Congress and testified in a hearing on Gulf Coast Hurricane Recovery before the Senate Appropriations committee:

> **There were three projects for which we did not request funding last fall**, simply because they weren't ready and our policy is we're not going ask you to give us money for something what we're not prepared to do, and show you exactly how we're going to do it and how we're going to be accountable for it. Since then two of those projects have further developed and I ask Congress and the committee to consider them. Both are integral transportation projects dealing with hazard mitigation, safety, and economic and community development. **The first is for the rebuilding and the redevelopment of the**

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[77] The State Port at Gulfport's asset value prior to Hurricane Katrina was $127,573,778, and its damage assessment from the storm was $50,556,175. Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER) Report #487, "The Impact of Hurricane Katrina on Mississippi's Commercial Public Ports and Opportunities for Expansion of the Ports, June 20, 2006, p. 23.

[78] Janet Nodar, "Cloudy Forecast-Skies Still Not Clear Over Gulfport," Gulf Shipper, July 7, 2007, (reporting the port was insured for $108 million, including business interruption, received almost $60 million so far, settlement still under way); FEMA July 2007 Summary of PA Funding and Project Worksheet Data, http://www.fema.gov/pdf/media/2007/ms_global_report.pdf

[79] DMJM Harris, Gulfport Master Plan Update 2007, Mississippi State Port Authority, pp. 30-37. This report runs to 134 pages and will be submitted electronically.

[80] Janet Nodar, "Cloudy Forecast," Gulf Shipper, July 9, 2007.

[81] FEMA Public Assistance Global Report, July, 2007, p. 7. http://www.fema.gov/pdf/media/2007/ms_global_report.pdf

[82] Recap of State Port at Gulfport's Budget Request for Fiscal Year Ending June 30, 2009, attached as Exhibit "P."

[83] See footnote 74.

[84] MCJ has prepared a financial analysis of the State Port at Gulfport's proposal and submits it as Exhibit "Q."

> **Port of Gulfport,** the entire infrastructure of which was devastated. The second is to move a railroad from right on the coast to move it farther inland.[85] (emphasis added)

Mississippi's efforts to win additional funds failed after budget-conscious lawmakers derided the relocation of the rail line as wasteful.[86] In July, 2006, HUD awarded nearly all of the second disaster recovery allocation to Louisiana, and left Mississippi without funds for the reconstruction of the port.[87] Two years after Katrina, Governor Barbour proposed to redirect $600 million of housing recovery funds into the expansion of the State Port at Gulfport.

Almost two years later, on February 20, 2008, in response to public outcry over the diversion of housing funds to expansion of the State Port at Gulfport, Governor Haley Barbour was interviewed on videotape at the Biloxi Sun Herald:

> We immediately went to work on a Mississippi proposal which we gave to Congress on November 1, 2005. And in that proposal was $600 million for the port, $500 million for the port itself and another $100 million for channel improvements. **The Port of Gulfport has been in our plan from the very, very beginning.**[88] (emphasis added)

Mississippi's decision to redirect $600 million from housing to a massive expansion of the State Port at Gulfport removes any hope for thousands of low-income homeowners and renters displaced by Hurricane Katrina of return to safe and affordable housing.

Between 6,300 and 7,500 households who occupied small rental sites that suffered major to severe damage from Katrina no longer may expect that their landlord will repair or rebuild the residences they occupied. The cost to cover this unmet need is $250 million.

Very-low-income households whose market rate or voucher-subsidized rental housing had major to severe damage from Katrina will face an even longer wait for the return of deeply affordable rental housing without CDBG support for LIHTC-financed apartment complexes.

Lower-income wind-damaged homeowners, who might otherwise benefit from an extension of the Homeowners Assistance Grant Phase II, will have to seek charitable assistance to repair or rebuild their dwellings.

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[85] Senate Appropriations Committee hearing, March 7, 2006, Gulf Coast Hurricane Recovery, C-SPAN link, http://www.c-spanarchives.org/library/index.php?main_page=product_video_info&products_id=191498-1&highlight=recovery

[86] Jonathan Weisman, "Mississippi Senators' Rail Plan Challenged," Washington Post, April 26, 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/04/17/AR2006041701551.html

[87] Ana Radelat, "Mississippi Still Without Funds to Fix Port," Jackson, Mississippi, Clarion Ledger, A-1, July 12, 2006.

[88] Governor Barbour at the Sun Herald, February 20, 2008, http://videos.sunherald.com/vmix_hosted_apps/p/media?id=1729323

II. Recommendations

The program has been weakened in Mississippi by the excessive grant of waivers of the low-moderate income benefit requirement. The piecemeal granting of waivers has substantially accomplished indirectly what HUD refused to do directly, namely grant Mississippi a blanket waiver for all $5.481 billion of the emergency CDBG funds.

HUD's affirmative responsibility to ensure that affordable housing is restored by the programs presented to it. Whatever may have been the conditions in the six to twelve months after Katrina, it simply is not sufficient for HUD to treat applications for the use of emergency CDBG funds more than 2 years later with the same deference as in the weeks or months immediately following the disaster. As time passes, more information about the conditions and unmet needs surfaces (or should surface), and HUD has a responsibility to require MS to fulfill the requirements HUD placed on MS when it originally granted the June 14, 2006, waiver.

Mississippi also delayed for almost a year the posting of Disaster Recovery Grant Reports and, had failed to make publicly available three quarters' worth of disaster recovery grant reports, from September 2007 through March 2008 until mid-day on May 5, 2008, only hours before testimony was due to be filed for previous oversight hearing of the Financial Services Subcommittee on Housing and Community Development, Mississippi. As of this writing, Mississippi now has posted the September and December, 2007 quarterly reports, but has failed to publish its March, 2008 report, now two months overdue.

Mississippi's strategy of submitting a series of partial action plans also thwarted effective public debate over policy development. Mississippi never publicly laid out a global plan for use of its emergency CDBG funds, and so there was no framework for assessing whether the Governor's Office and MDA were identifying and prioritizing correctly the competing needs. As programs evolved, and funds began to be shifted from one program to another, the public's ability to track and assess the overall recovery plan became impossible to accurately track.

For low-income homeowners displaced by Katrina, the home grant programs have generally been viewed as excessively complex, difficult to access due to extremely centralized service centers, poorly publicized through media that do not target the community in need of assistance, and fundamentally inadequate in provision of funds. There is a sense among many of MCJ's clients who have sought homeowners' assistance that Reznick, the MDA service contractor is unresponsive, arbitrary, staffed with non-lawyers who take excessively legalistic approaches to all problems, and fundamentally disinterested in providing adequate assistance.

For low-income renters, the viewpoint is that Mississippi considers renters to be inferior citizens, less economically responsible, and less deserving of assistance. These views arise from the pronounced delays by Mississippi in developing and implementing any programs to restore

affordable rental housing, while hundreds of millions, if not billions, of dollars are paid out to homeowners, utilities, insurance companies, and local governments.

These perceptions influence the willingness of housing-challenged storm victims to participate and continue in programs that seem indifferent or even hostile to their needs, and result in persons needing housing assistance simply giving up. So the problems and challenges for Mississippi and its contractors going forward are to accelerate the progress in restoring affordable housing and to treat those storm victims still without repaired or rebuilt housing with greater respect.

Municipal and county governments have abused their zoning power to prevent the lawful construction of affordable rental housing. The City of Gulfport in particular refused a long line of LIHTC-financed apartment complexes in 2007, and triggered a formal complaint by the Mississippi Regional Housing Authority VIII charging the City with discrimination. Gulfport and other municipalities have modified their zoning to discourage new construction of duplexes under the small rental program. And several cities have resisted the permanent placement of MEMA cottages.

Mississippi also placed excessive reliance upon market based solutions even though these same markets have failed to fairly treat minority and low-income communities, whether in the realm of credit, land sales, insurance, or business opportunity. Mississippi needs to place greater dependence upon non-profit organizations capable of working in harmony with these communities.

Overall, Mississippi's housing programs have unduly neglected the needs of lower-income renters. As of the end of 2007, Mississippi had paid out over $1 billion in CDBG funds to homeowners, but not one dollar to any fund actual construction of any affordable rental housing. The vast majority of programs targeted for lower income housing were not even submitted by the state until 18 months or more after the hurricane, and MDA had to be pressured heavily to increase the size of these programs, despite clear evidence of the inadequacy of the size of the programs. HUD had an affirmative responsibility to ensure that Mississippi would fulfill the conditions of the Phase I waiver. However, HUD has failed to act with sufficient force to restore Mississippi's use of CDBG funds to a path that will fully serve the unmet affordable housing needs.

Housing programs in Mississippi account for about 55% of the overall emergency CDBG expenditure,[89] up from about 49% in the summer of 2007, but still substantially below Louisiana's 72% funding of housing programs.[90] Mississippi has actually spent only about $500

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[89] See footnote 8.

[90] Reilly Morse, Environmental Justice Through the Eye of Hurricane Katrina, Joint Center on Political and Economic Studies, May, 2008, p 20, Figure 14. http://www.jointcenter.org/publications_recent_publications/environmental_projects/environmental_justice_through_the_eye_of_hurricane_katrina

million out of $2 billion so far on lower income housing.[91] MDA cannot legitimately score general programs such as windpool and ratepayer subsidies, infrastructure, and building grants as housing programs, because they benefit commercial and industrial customers as well as residential customers.[92] Mississippi's latest overall low-moderate income percentage is only 13.2 percent, well below Louisiana.[93]

Mississippi Center for Justice recommends the following actions and reforms:

1. Carefully review the language and requirements of the Emergerncy CDBG legislation Public Law 109-148, passed on December 30, 2005. Such a review will demonstrate that HUD has adequate discretion to reject the State's proposals for use of these emergency grants. **Congress should urge HUD to reconsider its approval of the diversion of $600 million from housing programs to expansion of the Port of Gulfport.** HUD should reject the proposal for the reasons stated in former Secretary Jackson's January 25, 2008 letter and in his March 11, 2008 testimony.
2. **For future emergency CDBG allocations, provide both Congressional and HUD discretion to veto a state's action plan** if the state's overall use of CDBG funds has strayed from the Congressional purposes and requirements.
3. **Eliminate or more severely restrict the use of waivers** of federal low-moderate income requirements or CDBG dollars per job created requirements that was done in the last Disaster Recovery legislation.
4. **Require states to present for public comment a comprehensive, global plan for use of emergency CDBG funds**. This will ensure a fairer and more balanced effort in designing the recovery, and will prevent situations such as Mississippi's in which homeowner recovery was the exclusive focus of emergency CDBG programs for two years.
5. **Tie municipal and county receipt of CDBG or FEMA funds to requirements to affirmatively remove barriers to affordable housing** and discourage NIMBYism during the disaster recovery period. Include "clawback" provisions to ensure compliance.
6. **Require greater federal substantive uniformity in design and use of emergency CDBG funds** that affect more than one state, such as per-capita funding, basic minimum standards for disaster relief eligibility, uniformity in non-duplication of benefit rules.
7. **Require states early in the planning process to prepare, publicly release, and provide updates of housing damage assessments by county and city, with sufficient demographic information to assess the impact of the disaster and recovery efforts on members of protected classes.** A disaster the magnitude of Katrina completely disrupts the housing

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[91] See footnote 9.

[92] For example, the Mississippi Ratepayer program included $50 million for residential rates and $30 million for commercial rates. Mississippi Development Authority Ratepayer and Windpool Mitigation Program Recovery Action Plan Amendment 3 - Modification 1, p. 2, February 12, 2007. MDA must subtract the commercial coverage and adjust the residential by a representative percentage.

[93] Mississippi Development Authority DRGR Report, December 31, 2007, p. 1, http://www.mississippi.org/content.aspx?url=/page/3707&

market in the area. In order to affirmatively further fair housing in such a situation, it is critical to know how members of protected classes were affected. Without such an analysis, a jurisdiction cannot know what their needs are, what barriers they face, and how to overcome them.

(a) One of the first steps should be updating the jurisdiction's Analysis of Impediments to Fair Housing Choice ("AI"). Louisiana is just doing this now. Mississippi updated its AI last year, but HUD has rejected it and its current status is unclear. It does not appear that Alabama has even thought about this obligation.

(b) It is important to look at all the protected classes. Families with children and people with disabilities have not gotten much attention in this process.

(c) Do not confuse race (or membership in another protected class) and income. Providing assistance to low and moderate income people is not sufficient to meet fair housing obligations because race, etc. and income are not always synonymous.

(d) Prepare a housing damage assessment that counts damaged houses by direct inspection, and categorizes the housing losses by tenure, type of structure, and income level.

8. **Conduct aggressive outreach.** Once they know who the members of protected classes are and what kind of assistance they need, jurisdictions must reach out aggressively to make sure residents know about the assistance available and have a meaningful opportunity to apply. In Mississippi, the State did little outreach for its Phase II homeowner assistance program, despite persistent demands by the Steps Coalition, MCJ and others to decentralize the intake process. Mississippi's complex eligibility criteria, which changed over time, left many protected classes confused and discouraged about participation. MCJ spent considerable effort to dispel numerous false assumptions about eligibility, but MDA did not do anything to address this sort of dilemma.

9. **Design recovery in ways that eliminates or reduces legacy of discrimination**. In Mississippi, one consideration in the formula for homeowner assistance is the pre-storm value of the home, since this is the basis on which the insured value is set. A comparable home is worth much less in a community of color than in a white community, even though the repair costs are the same, so this formula disadvantages owners in communities of color. In Mississippi, racial segregation led to communities of color being located north of the railroad tracks in Harrison County. They experienced the same hurricane force winds as their more southerly neighbors, but were protected from some of the storm surge (flood). Mississippi's assistance program is limited to homes that experienced damage from storm surge and unfairly excludes those communities of color. Find ways to reverse the legacy of inequitable development in these communities, using land trusts, and other targeted solutions.

10. **Make rebuilding rental housing as high a priority as assisting homeowners.** A higher percentage of members of protected classes live in rental housing than their non-protected counterparts. Yet, it appears that all across the region, the rebuilding of affordable rental housing is lagging behind other parts of the housing market. More funding should have been

allocated for this purpose. Another problem is that many rental units, including units that were affordable but not subsidized, were in single family homes or duplexes owned by small landlords. To be effective, rental housing rebuilding programs must be tailored to the needs of these landlords, which may be very different from those of large, sophisticated owners. Do not repeat the experience of Mississippi in which only homeowners are the beneficiaries of emergency CDBG funds for two or more years.

11. **Monitor and Prevent NIMBYism more aggressively using HUD and the Department of Justice.** All across the Gulf, communities have tried to block the rebuilding of affordable rental housing through zoning restrictions and other means. HUD and DOJ should be monitoring this situation and intervening to prevent such actions, which prevent members of protected classes from returning to the region or relegate them to substandard housing. Where jurisdictions are violating the law through these actions, appropriate sanctions should be applied, including rescinding federal assistance if necessary.

12. **Provide more transparency and accountability in the rebuilding process.** The current reporting system has not worked well. As a result, the public has not had access to accurate and timely information on how the federal funds are being spent to benefit low- and moderate-income people. In addition, Congress should require that CDBG grantees collect information on the extent to which the funds are benefitting members of all protected classes under the Fair Housing Act. This information should also be readily available to the public. Currently, grantees only have to collect information on some protected classes for HUD's benefit alone, but do not have to disclose it to the public.

13. **Congress should make sure that federally-funded elevation programs promote accessibility.** Neither the National Flood Insurance Program nor (in our understanding) FEMA's Hazard Mitigation Grant Program allows funds to be used to build ramps or provide other means of access to elevated properties for homeowners in wheelchairs or with limited mobility. This appears inconsistent with the requirements of Section 504 of the Rehabilitation Act of 1973, and should be changed. This is a particular problem in the Gulf, where the rate of disability in the population is higher than the national average. (For example, before the storm, the disability rate in Mississippi was 25% compared to the national average of 20%.)