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UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY
"EMERGENCY CDBG FUNDS IN THE GULF COAST: USES, CHALLENGES, AND LESSONS FOR THE FUTURE"

May 8, 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 Chairwoman Waters, Ranking Member Capito, and the members of the subcommittee for holding this hearing to assess the use of emergency Community Development Block Grant ("CDBG") funds in the Gulf Coast.

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. 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 higher order of magnitude. My family and I rode out Katrina, and although it obliterated my business, 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, the state of Mississippi has fallen short of restoring an adequate supply of affordable housing.

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, the lowest-income state in the nation, 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 direct inspections by FEMA.[5] In its 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

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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 Less than 24 hours before the deadline to file this testimony, the Governor's Office notified Congressional Staff that it did not consider this data reliable. Given the late notice, I request permission to amend my written testimony depending upon the comments from the Governor's Office at the hearing.

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

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]

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] Adding in programs that Mississippi claims are exclusively housing, but which in fact benefit commercial and residential customers,[10] Mississippi's total is $741 million, which amounts to a 16.9 percent overall low and moderate benefit out of the $5.481 billion allocated by Congress to Mississippi. According to Mississippi's latest Disaster Recovery Grant Report, however, Mississippi's cumulative overall benefit percentage is only 13.2 percent.[11]

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, if ultimately completed, will not address much more than 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 6,000 small rental units, leaving 7,798 unrepaired[12]
- GO Zone and regular tax-credit funded developments will restore 1,023 very-low-income apartment units, leaving 10,891 unrepaired. In the six coastal counties, these programs will restore 5,632 low-income units, leaving 9,825 unrepaired.[13]

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[7] Mississippi Disaster Recovery Program Summary, February 28, 2008, p. 3. Exhibit "B." Mississippi's higher estimate of 58,107 units likely overstates the total number of units restored and therefore is not used. For example, the aggregate totals for small rental and long term work force housing do not break out the number of units rented to LMI households. Also, there is a likelihood of double counting, such as counting 500-1,000 units of public housing under CDBG public housing units and counting the same number again under low income housing tax credits used to partially finance some of the public housing conversions.

[8] 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, attached as Exhibit "D".

[10] These include ratepayer/windpool subsidies, building code inspectors, economic development, community revitalization, and fraud investigation. ***Id.***

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

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

[13] Mississippi Home Corp LIHTC-finance report, On file with author, available upon request; FEMA July 2006 report, p. 5.

- 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. [14]

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 had he concluded that if he had discretion to reject this proposal, he would have done so. A careful analysis of the legislation and requirements of the CDBG program indicates that HUD's conclusion that it had 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 require the incoming HUD Secretary to re-evaluate Secretary Jackson's decision; to re-examine the other waivers on their second anniversary, as required by Public Law109-148; 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. How have the affordable housing needs of Mississippi been addressed or not addressed with emergency CDBG funding?

A. Overview of Mississippi's use of CDBG funding

Overall, Mississippi's housing programs, particularly in their implementation, have placed undue priorities on homeowners and unduly neglected renters. As of the end of 2007, Mississippi had paid out over $1 billion in CDBG funds to homeowners, but not one one-tenth of one percent of that amount to fund actual construction of affordable rental housing. Mississippi's overall priorities have shunned lower income housing needs. 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.

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[14] FEMA July 2006 report, p. 5.

Housing programs in Mississippi account for about 55% of the overall emergency CDBG expenditure,[15] up from about 49% in the summer of 2007, but still substantially below Louisiana's 72% funding of housing programs.[16] Mississippi has actually spent only about $500 million out of $2 billion so far on lower income housing, virtually all on homeowner grants.[17] 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.[18] Mississippi's latest overall low-moderate income percentage is only 13.2 percent, well below Louisiana.[19]

Mississippi has strayed from housing and Katrina recovery as the remaining funds are spent down and surpluses appear. As described in Section III, the State Port at Gulfport expansion is not a Katrina recovery activity. A less well known but similar example was the diversion of Katrina related Medicaid funds to build a road to a Toyota plant in North Mississippi. [20]

B. Review of Programs

1. Renters Have Been Ignored and Under-Resourced

Lower-income households faced difficulty finding affordable housing before Hurricane Katrina arrived. A recent report by the Rand Gulf States Policy Institute very 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.[21] Rand concedes that these estimates "almost certainly underestimate the scale of the

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[15] See footnote 8.

[16] Reilly Morse, Environmental Justice Through the Eye of Hurricane Katrina, Joint Center on Political and Economic Studies, May, 2008, p 20, Figure 14. A copy of this table is attached as Exhibit "E"

[17] See footnote 9.

[18] 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.

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

[20] Mike Stuckey, "Mississippi Wants to Divert More Hurricane Funds," MSNBC, February 13, 2008, http://www.msnbc.msn.com/id/23072024/

[21] 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/

affordability problem post-Katrina."[22] MCJ asserts that the Rand figures substantially understate the actual losses of affordable housing in the area, and considers the HUD-FEMA figures from February and July, 2006 to be more nearly representative of the actual losses.

A 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.[23] 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.[24]

Katrina damaged 2,534 out of 2,695 units of public housing in South Mississippi, according to direct inspections by HUD representatives.[25] Mississippi's CDBG public housing plan proposes to restore 2,000 to 3,200 units, but this will not absorb the pre-Katrina backlog.

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 to direct inspections by FEMA.[26] For over a year and a half, Mississippi maintained 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 VLI losses and only 20 percent of those with major to severe damage. Mississippi's 9,168 LIHTC-financed units will not restore the 11,500 HUD-assisted and VLI units with major to severe damage.[27] Only 5,915 of the LIHTC-funded tax credits are located in the 6 coastal counties.[28]

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22 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.

23 Mississippi Regional Housing Authority VIII FY 2005 Annual Plan, p. 7.

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

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

26 FEMA July, 2006 Report, 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.

27 Mississippi Home Corporation Report on LIHTC-funded awards, September 12, 2007, on file with author, copy available upon request.

28 Mississippi Home Corporation data on LIHTC-funded awards, April 1, 2008, on file with author, copy available upon request.

Deeply affordable rental units are returning significantly more slowly than the remaining segments of the housing market, according to a recent Rand report.[29] Only one GO Zone LIHTC-financed development with 165 low income units open for occupancy is situated in one of the lower three counties. The remaining apartment complexes available for occupancy are located away from the areas of greatest need. Persistent local objections upheld by local governments have blocked reconstruction of most low-income apartment complexes.

Mississippi should augment its Tax Credit programs with CDBG funds in a similar manner to the so-called "piggyback" formula used in Louisiana. Over 11,000 units affordable to populations earning under 60% AMI will be funded as a result of Louisiana's program. Using LIHTC and CDBG funds together could enable Mississippi to reduce the gap between supply and demand for low and very low income rental property. This solution also could help bridge the financing gap for developers whose tax credits have fallen 20 percent[30] in value in recent months due to financial market turmoil.

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, with over 12,170 single family units.[31] But Mississippi's small rental program will restore only 6,300 to 7,500 units, or 45 to 54 percent of those with major to severe damage, and only 13 to 16 percent of damaged small rentals overall.

The Small Rental program has almost exclusively attracted new construction by professional real estate developers, who find the combination of forgivable loans, GO Zone tax credits, and accelerated depreciation to be "one helluva investment."[32] Permitting and construction will delay the availability of new units, and zoning disputes can delay or even block new development. An approach MDA so far has not pursued is to repair small rental units owned by non-professional local landlords with limited damage. Such a program will have less cost per unit and no zoning delays. Non-professional landlords also may qualify for volunteer labor assistance. This alternative will leverage MDA support, reopen small rental units to LMI persons, and repair the fabric of existing residential communities more quickly than new construction.

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[29] Kevin McCarthy, Mark Hanson ***Post Katrina Recovery of the Housing Market Along the Mississippi Gulf Coast***, Rand Gulf States Policy Institute, p. 72 (finding affordable housing will be "particularly severe for lower-income renters")

[30] Source for drop in value of tax credit is personal communication with Dr. Ben Mokry, Senior Vice President of Research and Development, Mississippi Home Corporation, May 2, 2008.

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

[32] Scott Allen, "MDA Small Rental Assistance Program - Second Round," E-Zine, http://ezinearticles.com/?MDA-Small-Rental-Assistance-Program---Second-Round&id=944891

MDA should develop or else provide funding to non-profits who have case-managed a Small Rental program targeting non-professional landlords. One example is the Rental Relief Program operated by Lutheran Episcopal Services in Mississippi with support from the Mississippi Association of Realtors. In return for a cash payment of up to $10,000 from LESM to cover materials, the landlord entered into an agreement to rent the apartment at pre-Katrina rates for one year. MDA should provide flexibility in the grant amounts and affordability term to match the landlord's needs. The estimated cost will depend upon the grant size and participation, but an additional $250 million in $20,000 grants could repair and reopen 12,500 units. MDA should consult with housing advocates about solutions that would enable non-professional landlords whose damaged units are currently occupied to qualify for the grant.

2. Wind-damaged Homeowners Arbitrarily Excluded from Recovery

Like many communities across America, the railroad tracks function as a racial line of demarcation in coastal Mississippi. Due to decades of inequitable development, many established 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. 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.[33] 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[34]. 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 lower-income households are eligible for a smaller grant than those who were eligible under Phase I. These illogical and arbitrary disparities in relief programs between United States citizens struck by the nation's worst natural disaster should not be 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.

Mississippi's county long term recovery organizations (LTRs) currently have 8,956 open files statewide, with another 6,638 on waiting lists for services.[35] Two thirds are working poor

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[33] Reilly Morse, "Environmental Justice Through the Eye of Hurricane Katrina," p. 8, Joint Center for Political and Economic Studies, May, 2008.

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

[35] 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

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."[36]

If Mississippi does not expand Phase II to include wind-damaged low-income homeowners, Mississippi should substantially fund the county LTRs to enable them to cover uncompensated losses to hurricane-damaged homeowners, regardless of the cause of the loss. Mississippi has an opportunity to leverage the millions of dollars of volunteer funds, materials, and labor brought into our community by faith-based and civic groups. Both funds and labor flow through the LTRs. However charitable funds and volunteers are dwindling, putting at risk of loss this important partner in recovery. The need for funding for many who had no insurance on their homes is so great that LTROs have taken the initiative to raise $300 million to be used at the LTROs.

Mississippi's Long Term Work Force Housing (LTWF) program tilts more heavily towards providing owner-occupied housing 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.[37] 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 are owner-occupied.

3. Temporary and Transitional Housing

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. All told, 81 percent of individuals still receiving assistance are in FEMA trailers. These figures cumulatively represent approximately 24,986 displaced individuals. [38] 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 housing assistance were renters before the storm and 34 percent of these residents are over the age of 60 and/or have a disability.

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[36] See www.finishthejobfund.org .

[37] 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.

[38] 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

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.

Mississippi's MEMA cottage pilot program, which was supported by a special allocation of CDBG funds expects to produce a total of 3,250 small cottages to eligible applicants by June, 2008. At present, nearly 2,400 households have been moved from temporary FEMA housing into MEMA cottages.[39] In general, these cottages are a positive and beneficial addition to the affordable housing needs of the area, but local governments resist the permanent placement of these cottages. This opposition is preventing access to a useful, healthy, and strong form of transitional housing that may in the future be purchased by the occupant.

4. Special Needs Populations Are Badly Neglected

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.[40] Only 413 of the LIHTC-funded rental units in the 6 coastal counties are elderly disabled compatible.[41]

II. Mississippi's use or distribution of emergency CDBG funds did not affirmatively further fair housing.

Public Law 109-148 prohibits the Secretary of HUD from waiving compliance with requirements relating to fair housing and non-discrimination.[42] 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

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[39] FEMA Hurricane Katrina Mississippi Recovery Update: April 2008 http://www.fema.gov/news/newsrelease.fema?id=43367

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

[41] Mississippi Home Corporation, April 1, 2008, LIHTC-funded data, on file with author, available upon request.

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

Harrison County, Mississippi compared to 11.2% of whites.[43] 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 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.[44]

Mississippi's handling of emergency CDBG funds did not affirmatively further fair housing in the following respects.

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.[45]

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.[46] 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.[47]

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

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[43] 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).

[44] 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&

[45] 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.

[46] 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.

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

record-keeping mandate intended to track compliance with the Fair Housing Act.[48] 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 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.

III. Mississippi's transfer of $600 million to the restoration of the port of Gulfport will make it even more difficult to provide affordable housing.

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.[49] 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."[50]

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

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[48] 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, attached as Exhibit "H."

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

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

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.'"[51]

The reasons for the controversy are straightforward. The planned expansion, which was conceived two years before Hurricane Katrina,[52] would be the single largest expenditure of 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[53] – which are already largely covered by insurance and other sources.[54] The funds would expand not only commercial port facilities but provide the infrastructure for a luxury condominium and casino development to be known as the "Village at Gulfport."[55] This extraordinary and unprecedented expenditure[56] 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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[51] 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

[52] 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.

[53] 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.

[54] 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

[55] 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.

56 MCJ has prepared a financial analysis of the State Port at Gulfport's proposal and submits it as Exhibit "J"

> **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.[57] (emphasis added)

Mississippi's efforts to win additional funds failed after budget-conscious lawmakers derided the relocation of the rail line as wasteful.[58] 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.[59] Two years after Katrina, Governor Barbour proposed to redirect $600 million of Phase I 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 and told a very different story than in his Congressional testimony:

> 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.**[60] (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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[57] 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

[58] 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

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

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

IV. Mississippi's programs have problems and challenges in providing affordable housing but legislative and regulatory reforms can redress these inequities.

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 $5.085 billion of the first installment of emergency CDBG funds.

Reliable data on the damage to the affordable housing stock is a prerequisite to determine whether Mississippi's use of emergency CDBG funds has met the needs created by Hurricane Katrina. Regrettably, Governor Barbour and MDA have published no single comprehensive housing damage assessment, despite having been urged to accomplish this task first,[61] and despite having ample resources to fund it.[62] This has hampered policy development, public debate, and accountability.[63]

Instead, advocates struggle with lack of accountability from the Governor's Office and MDA. For example, the Governor's Office and MDA provided MCJ with the July, 2006 HUD-FEMA damage estimate and affirmed its reliability, even citing figures from that report in their Small Rental Program Action Program Final Plan.[64] Yet, one day before the deadline to file testimony for this hearing, the Governor's Office notified Congressional Staff that MDA does not work off the July, 2006 HUD-FEMA information and that HUD had reportedly retracted these estimates.[65]

Mississippi also delayed for almost a year the posting of Disaster Recovery Grant Reports and, until mid-day on May 5, 2008, only hours before Congressional Oversight hearing testimony was due to be filed, Mississippi had failed to make publicly available three quarters' worth of disaster recovery grant reports, from September 2007 through March 2008. At present, the State has filed one report, the December, 2007 report.

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

[62] 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 $5.4 million as of September 30, 2007. Mississippi Development Authority, September 30, 2007 Federal Disaster Grant Recovery Expenditure Overview, http://www.mississippi.org/UserFiles/File/Home_Owners_Assistance_Program/093007%20DRGR%20Summary%20Report.pdf

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

[64] Mississippi Development Authority Small Rental Program Action Plan, p. 3, states 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.

[65] Email from Jack Norris to Charla Ouertatani May 5, 2008, 12:25 pm. This retraction has never been made public.

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 lack of transparency thwarted the public's ability to track and assess the overall recovery plan.

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 fuel the unwillingness 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 with greater respect those storm victims still without repaired or rebuilt housing.

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 applications for 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 and secure fair commercial treatment of protected classes in housing matters.

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 require the incoming HUD Secretary 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 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 Missisippi, 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, MEMA cottages, 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%.)