WRITTEN STATEMENT OF REILLY MORSE
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UNITED STATES SENATE HEARING OF
AD HOC SUBCOMMITTEE ON DISASTER RECOVERY
"THE ROLE OF THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM IN DISASTER RECOVERY"

May 20, 2009

I. INTRODUCTION[1]

Good afternoon. 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 Senator Landrieu, Ranking Member Senator Graham, and the members of the subcommittee for holding this hearing on state-managed housing programs created in the aftermath of hurricanes along the Gulf Coast. I also thank the U. S. Department of Housing and Urban Development (HUD) and the Federal Emergency Management Agency (FEMA) for their efforts to house Gulf Coast residents following emergencies and natural disasters.

The Mississippi Center for Justice ("MCJ") is a nonpartisan, nonprofit, civil rights legal organization that was founded in 2003. It was formed to provide a home-grown means to advance racial and economic justice in Mississippi. In 2005, MCJ became the Deep South affiliate of the Lawyers' Committee for Civil Rights Under Law ("Lawyer's Committee"), a national civil rights legal organization formed in 1963 at the request of President John F. Kennedy to harness the private bar's resources to remedy racial discrimination. In the wake of Hurricane Katrina, MCJ opened a Katrina Recovery office in Biloxi, where we joined forces with the Lawyers' Committee as well as attorneys and law students from across the nation to provide free legal representation to all kinds of people, but especially low income people. In that state of crisis we helped devastated Mississippians get emergency shelter and temporary housing; access to FEMA trailers for disabled victims of the storm; protection of basic tenants' rights in eviction proceedings from both public and private housing; greater access to disaster recovery grants and loans for homeowners; and protection for homeowners faced with inequitable foreclosures, insurance company stonewalling, contractor fraud, and heir title problems.[2]

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[1] I express appreciation for their assistance and support in preparing this testimony to Joe Rich and Thomas Silverstein at the Lawyers' Committee for Civil Rights Under Law, Karen Lash, Martha Ertman, visiting students from Columbia School of Law, Catholic University of America, and to Gulf Coast housing advocates for their research and advice.

[2] MCJ's responses draw in part upon our experiences in partnership with the Lawyers' Committtee for Civil Rights Under Law, which is described in Jonathan P. Hooks, Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 California Western Law Review 21 (Fall 2006).

MCJ and the Lawyers' Committee achieved these results by conducting direct service clinics, research, surveys, and policy advocacy on behalf of lower-income and minority hurricane victims and communities in the region. Appendix A to this testimony contains additional information.

I am the third-generation of my family to practice law in Gulfport, Mississippi. I served a term as a municipal judge, worked as a city prosecutor, and later hung out a shingle as a solo practitioner. In October, 2005, I joined the Mississippi Center for Justice, Katrina having reduced my law office to a slab, left me nothing to salvage but that shingle, and nothing to do but take bankruptcy. My parents and grandparents weathered the two major hurricanes of their day, the 1947 storm and Camille. I experienced Camille as a seventh grader, and faced. then as now, the demands of rebuilding lives after catastrophe. My family and our home survived Katrina, but the clients I represent here today were not so fortunate. On behalf of those clients, I come with two requests. First, I urge you to support efforts to accomplish the important and still-unfinished task to restore safe, decent, and affordable housing to thousands of residents who deserve, but have been denied, the benefit of Mississippi's CDBG-funded disaster recovery programs. Second, I urge reforms in disaster CDBG legislation so that future disaster victims will experience a more prompt, fair, and consistent recovery response.

II. SUMMARY

A. Low-Income Mississippians Disproportionately Impacted by the Storm -- and Also Disproportionately Left out of the State's Recovery Programs

Hurricane Katrina "had a particularly devastating impact on low-wealth residents who lacked an economic safety net," according to the Mississippi Governor's Commission, creating a "unique opportunity to correct decades of inequitable development."[3] Congress concurred, requiring the states to spend at least 50% of the $11.5 billion in CDBG disaster recovery funds to benefit people of low and moderate income (LMI).[4] The U. S. Department of Housing and Urban Development's (HUD) regulations acknowledged Congress's intent that the appropriated CDBG funds be "used toward meeting unmet housing needs in areas of concentrated distress." [5] and implemented the LMI requirement.[6] Yet Mississippi, with the nation's largest per capita poverty population, was the only state to request and receive waivers from this requirement. Over the three and a half years after Katrina, HUD granted all five waivers requested by

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

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

[5] 71 Fed. Reg. 7666 (Feb. 13, 2006).

6 "[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.

Mississippi with the result that $4 billion out of the $5.481 billion awarded to the state was exempted from any obligation to assist LMI households.

B. Thousands of Mississippians Excluded From Mississippi Recovery Programs Because they Lost Their Homes to Wind – Not Water

Last summer, I told a House committee about Joe Stevens, whose home in the Lyman community was destroyed by a tornado spun from Hurricane Katrina but whose application for a housing grant was denied because Mississippi refused to compensate for wind damage. Stevens drew the attention of some Jackson-area businessmen who pooled charitable resources to do what the state should have done -- house this fisherman who lost his legs to diabetes, his daughter to suicide, and his house to Katrina.[7] Individual charity, while laudable, is not an appropriate solution when Mississippi still sits on over half the $5.481 billion Congress gave us to recover from this catastrophe.

Earlier this month, I met James Johnson, 74, who was forced by gout to retire shortly before Katrina, after fifty-six years working at Newman Lumber Company. Mr. Johnson, who is African American, saw Hurricane Katrina's winds destroy the residence he had built and lived in for sixty years on Landon Road. After staying for a while in his brother's damaged mobile home on the adjacent lot, Mr. Johnson received a FEMA trailer that he has occupied since. He lives on a monthly Social Security check of $1,350. Last week, FEMA demanded that Mr. Johnson vacate the trailer, leaving him with no alternative to moving into a tent on his barren property. Two miles from Mr. Johnson's trailer is a staging area with over 600 unoccupied pastel-colored Mississippi Cottages. But the cost of purchasing and insuring a cottage is out of Mr. Johnson's reach.

Our state deems Mr. Johnson to be too financially irresponsible to receive relief for having failed to insure a house he owned outright against storm damage. But Mississippi has rewarded moral hazard within the business community. The state has awarded hundreds of millions of dollars in CDBG grants and other subsidies to utilities, state-owned ports, and other large enterprises whose losses on the coast or far inland exceeded their own insurance. Between 2000 and 2500 families considered hardship cases, are left to scrap over a belated $15 million CDBG contribution for repairs administerd by charitable housing resource centers. Mississippi must, as it rebuilds its roads, bridges, ports, schools and businesses back better than before, also rebuild homes to house workers, customers, and children traveling those highways and through those buildings. And in the process, it must remedy generations of neglect and deprivation in my State.

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[7] Chris Joyner, "One Family Filled with Hope," Clarion Ledger, December 1, 2008, A-1.

C. Mississippi Has Spent Only 21% of its CDBG Funds to LMI Mississippians and Less than 2% of its CDBG funds to Address the Coast's Highest Need for Subsidized Rentals for the Working Poor

Today, many Mississippians still have been unable to return to safe permanent and affordable housing. Overall, 220,384 housing units in Mississippi received some damage from Hurricane Katrina. An estimated 61,386 dwellings (owner-occupied or rental) suffered major damage or were destroyed, and another 159,008 suffered lesser damage, according to inspections by FEMA as of February 12, 2006.[8] 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."[9] (emphasis added) However, using conservative estimates, all of Mississippi's programs combined (home grants, LIHTC, small rental, long term workforce housing, and cottages) would rebuild, replace or repair about 45,505 of the total housing with major to severe damage, and none of the 151,012 with lesser damage.[10]

Mississippi has allocated almost $3 billion dollars, only 54 percent of its CDBG funds to programs for direct housing recovery.[11] In comparison, Louisiana has allocated over $10 billion or 85 percent of its CDBG disaster funds to housing programs.[12] Expenditures for LMI households in Mississippi is worse. A generous estimate of Mississippi's current overall benefit percentage for LMI households would be 21 percent of the $2,603 billion spent, compared to an estimated 53% in Louisiana.[13] Allocations for lower-income renters are even more dismal. Only $362 million of the almost $3 billion allocated to housing, or about 12%, is targeted to the two subsidized rental programs -- small rental and public housing programs.

Not surprisingly, given the impact of the storm on LMI households, extremely high demand for subsidized rentals continues to match very low supply. Therefore, MCJ urges state officials to reallocate substantial additional CDBG funds over and above current commitments to increase the supply of subsidized rental units. Otherwise, Mississippi's request for 5,000 additional housing choice vouchers will not solve the problem for working poor renters residing in coastal Mississippi.

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[8] Housing Unit Damage Report, February 12, 2006, FEMA ("FEMA February 2006 Report"). http://gnocdc.s3.amazonaws.com/reports/Katrina_Rita_Wilma_Damage_2_12_06___revised.pdf

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

[10] See calculation attached as Exhibit "A"

[11] Mississippi Center for Justice Analysis of MDA CDBG Programs, attached as Exhibit "B."

[12] Comparison of Louisiana and Mississippi CDBG programs attached as Exhibit "C."

[13] MDA's Disaster Recovery Grant Report, 4th Quarter 2008 inaccurately shows an overall benefit percentage at 0.02 percent. http://www.msdisasterrecovery.com/reports/documents/QPRsDec2008.pdf

Over three and half years after Katrina, Mississippi has spent over $2 billion of its CDBG funds in homeowner's assistance programs but only $30 million on subsidized rentals, less than 2 percent of its total housing funds. Very high demand for subsidized rentals continues to match very low supply. Therefore, MCJ urges state officials to reallocate substantial additional CDBG funds over and above current commitments to increase the supply of subsidized rental units. Otherwise, Mississippi's request for 5,000 additional housing choice vouchers will not solve the problem for working poor renters residing in coastal Mississippi.

The evidence is clear that Mississippi's programs do not come close to meeting fully the needs of small rental, very-low-income rental, or homeowners who suffered serious wind damage from Hurricane Katrina.

- Phase I and II homeowner assistance grants will restore about 26,000 storm surge damaged houses, but ignore 7,302 households with major to severe wind damage, of which 2,156 were without insurance.[14]
- The Small Rental Assistance Program ("SRAP") is underfunded - only 6,300 small rental units were forecast to be built, leaving 7,500 unrepaired.[15] The SRAP gap likely will increase because the program now expects to produce as few as 4,800 units.
- As many as 1,494 GO Zone tax-credit funded developments in the the coastal counties will not be built due to the tax-credit market debacle, according to MCJ interviews with developers. Another 1,147 units are financed with CDBG and LIHTC, which reduces Mississippi's projection of 5,823 units to 3,182, well below what is required to make up for shortfalls in small rental housing.[16]
- Mississippi's $30 million gap financing is dramatically under-sized and the new Tax Credit Exchange Fund legislation does not allow exchange of GO Zone credits for cash, according to the U. S. Treasury.
- There currently are 693 fewer units directly owned by public housing authorities than immediately before Hurricane Katrina.

The prospects for financing these housing needs was made nearly impossible by HUD's approval of the diversion of $600 million which could have been used to meet affordable housing needs to a costly and non-hurricane-recovery related major expansion of the Port of Gulfport. It is necessary that HUD revisit the 2007 and 2008 approvals of this diversion. Secretary Jackson's rationale for this decision was that HUD had 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 thought 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 little or no discretion to review the State's submitted proposals

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[14] Table of wind-damaged houses in coastal counties attached as Exhibit "D"

[15] Exhibit "A". See also news account at footnote 31.

[16] Results of LIHTC Research attached as Exhibit "E"

is erroneous both with respect to the requirement that the proposal certify that it meet the 50% LMI requirement and the non-waivable certification that the proposal will affirmatively further fair housing.[17] 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 -- 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 and HUD to:

- use all possible means to ensure that Mississippi cures the deficiencies and shortfalls in its housing programs outlined in this testimony;
- reverse the diversion of housing funds to finance the expansion of the State Port at Gulfport and require Mississippi to finish housing first.
- institute appropriate reforms to strengthen current and future emergency CDBG appropriations against excessive use of waivers of important federal requirements;
- increase public accountability and transparency in both policy development and implementation stages of disaster recovery programs funded with CDBG dollars;
- require greater federal uniformity in disaster recovery programs between states; and
- 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.

III. MISSISSIPPI'S CDBG HOUSING PROGRAMS

A. Disproportionate Impact Upon Poor and Minorities

Lower-income households faced difficulty finding affordable housing before Hurricane Katrina arrived. A 2008 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.[18] These estimates, according to Rand, "almost certainly underestimate the scale of the affordability problem post-Katrina."[19] MCJ agrees that the Rand estimate substantially understates the actual losses of affordable housing in the area.

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[17] See discussion page 15.

[18] 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/

[19] 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.

At the time Hurricane Katrina struck coastal Mississippi, the region was more than ten years into an economic transformation following the legalization of dockside gaming. However, industry growth did not necessarily translate into high-wage jobs, because service industry jobs such as hotel housekeepers, desk clerks, and casino dealers paid on average about $20,000 per year.[20] By 2000, between 30 and 40 percent of residents of coastal counties earned below 200% of the federal poverty limit.[21] Besides wages, home equity is the most common source of household wealth for most Americans. Whether residents have assets and insurance heavily influences their hurricane rebuilding and recovery. Rates of homeownership and home values in the Biloxi and Gulfport region lagged national rates, according to the Governor's Commission report, and so "many of the Gulf Region's residents possessed limited assets on the eve of the storm."

The economic picture was disproportionately worse for African American residents in coastal Mississippi, who were substantially more likely to have lower homeownership and wage-earning rates and higher poverty rates.[22] On average, median incomes for African Americans in coastal counties are between $9,000 to $15,000 below median incomes for whites.[23] While segregation nationally has generally decreased between 1990 and 2000, the Biloxi-Gulfport-Pascagoula area was among only 19 out of 291 metropolitan areas with increasing racial segregation.[24] Given the correlation between lower-income, assets and race, one may safely infer that African Americans on the Mississippi coast faced greater difficulty rebuilding and recovering from Hurricane Katrina, and were especially burdened by policies and programs that failed to address lower-income needs.

Hurricane Katrina had a "particularly devastating impact on low-wealth residents who lacked an economic safety net," and so the Governor's Commission recommended, "Investments in housing strategies that target low-wealth resdents will stimulate asset development, and the Gulf will emerge as a stronger, more equitable region."[25] Mississippi did not take this recommendation to heart.

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[20] Governor's Commission Report, p. 50; see also Occupational Wages, Mississippi Employment Security Commission, Biloxi-Gulfport MSA, 2008.

[21] "Increasing the Return: Investing in Mississippi's Working Families," Mississippi Economic Policy Institute, p. 6.

[22] 2000 Census data collected in "Recovering States? - The Gulf Coast Six Months After Katrina," Oxfam America Briefing Paper, February, 2006, p. 8; Marianne Hill,"The Economic Status of African Americans in Mississippi," Center for Policy Research and Planning, February, 2008, p. 2.

[23] "A Portrait of Mississippi," Mississippi Human Development Report, American Human Development Project, 2009, p. 20.

[24] "Racial Segregation in the 2000 Census-Promising News," Brookings Institution Center on Urban and Metropolitan Policy, April, 2001, p. 9.

[25] Governor's Commission Report, p. 51

B. Programs Left Out, Under-Resourced, or Delayed Relief to LMI Households

Generally speaking, Mississippi's programs for homeowners were more quickly proposed, better funded, and and resulted in earlier payments than its programs to restore affordable rental housing. Programs targeting lower-income homeowners were more slowly proposed, less generous, and slower to close. Since lower-income residents were more likely to be renters, Mississippi's program decisions and implementation has adversely affected their ability to find permanent replacement rental housing.

Phase I Homeowners' Assistance - Mississippi's first, largest, and most generous homeowner assistance program, known as Phase I, was approved in September, 2006. It provided up to $150,000 in compensation to insured homeowners located above the FEMA flood plain, who were damaged by Katrina's tidal surge. This program was originally allocated $3.2 billion, representing over half the total disaster recovery funds appropriated by Congress.[26] HUD granted Mississippi's request for a waiver of the 50 percent LMI waiver on the justification that it anticipated that Mississippi would come close to meeting the target. In fact, Phase I fell far short of the mark. Over 73 percent of applicants were wealthier residents and only 27 percent of applicants were LMI residents. Mississippi awarded $396 million or 28 percent of $1.394 billion to LMI households. The State substantially completed this program in December, 2008. Even after reductions to fund other programs, Phase I is larger than all the remaining CDBG housing programs added together. Phase I is the only program where the number of awards substantially matched the applicable category of housing units damaged according to FEMA's estimates. However, Phase I refused to cover wind damage, which meant that over 7,300 coastal households with major to severe wind damage were left out of the program.

Phase II Homeowners' Assistance - The second homeowner's assistance plan, known as Phase II was proposed after intense pressure and criticism over Phase I.[27] This program originally proposed to pay no more than $50,000 in compensation to homeowners earning up to 120% of AMI who experienced surge damage, regardless of insurance or location in or out of the flood plain. After extensive pressure from housing advocates, Phase II was modified to increase compensation up to $100,000 and eliminate any penalty for uninsured homeowners with special needs (elderly, disabled, or with earnings less than 60 percent of AMI). Ultimately, $473 million or 84 percent out of the $565 million total was awarded to LMI families. This program complied with the 50 percent LMI benefit requirement. Phase II was approved in December, 2006.

Public Housing - Mississippi proposed a $105 million dollar Public Housing program to cover uninsured losses to over 2,500 units of housing owned by six public housing authorities. This program complied with the LMI benefit requirement and was approved on August 31, 2006.

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[26] Diversions from this fund are described in text accompanying footnotes 36-39.

[27] Mississippi received public comment on Phase I for a nine-day period, and coastal residents sent in over 1,756 comments and objections, the majority of which protested the LMI waiver and the eligibility restrictions. See Mississippi Homeowner Assistance Program Final Plan, p. 18. September 11, 2006.

However, the rate of expenditure on this program has been extremely slow, with only $18 million in grants awarded by the end of 2008. The lengthy delay in implementing this program has burdened the area's most vulnerable residents, extremely low income persons. In addition, the program did not increase public housing capacity to absorb pre-Katrina demand for extremely low-income housing. At the beginning of 2005, coastal public housing authorities had over 3,500 households on waiting lists, nearly all of which earned less than 30 percent of AMI.[28] The Public Housing program supported the right of public housing tenants to return to units that have been rehabilitated. Current estimates indicate that 693 fewer public housing authority-owned units are presently available compared to before Katrina. Some PHAs have aggressively divested themselves of properties and shifted to tenant voucher based models that pressure returning tenants into relocating away from their original community. An estimated 1,147 units were repaired or built using a combination of tax credits and CDBG funds.

Small Rental Assistance -The Small Rental Assistance Program was originally proposed in February, 2007, more than eighteen months after Katrina. The SRAP offered forgivable loans to owners of small rental properties in the coastal counties in return for agreeing to rent to tenants earning up to 120 percent of AMI for a period of five years. The original program was $131.5 million and was increased in April, 2007 to $262.5 million. The program complied with the 50 percent LMI benefit requirement. However, like the Public Housing program, SRAP has been extremely slow to spend funds and produce rental housing. As of the end of 2008, SRAP had spent only $12 million on SRAP projects and forecast production of only 4,800 units, 2,700 fewer than originally projected. However, the demand to participate in this program remains high, as shown by applications for 11,000 units in the final round. This program is fundamentally under-funded and poorly matched to serve the recovery of small landlords.

Workforce Housing - The Long Term Workforce Housing Program (LTWF) was proposed in June, 2007. This program began with $150 million and was increased to $350 million in January, 2008. This program offered loans to develop affordable rental or homeowner housing opportunities for coastal residents in the workforce. This program is not restricted to persons who had actually received hurricane damage to their residence; out-of-state workers who moved to coastal Mississippi could apply for benefits. The program was developed through rounds of requests for proposals. Mississippi originally forecast spectacular benefits from this program, between 11,000 and 12,500 units, but as the activities have progressed, it has become clear that far fewer housing units will be developed or purchased through LTWF programs. Under current rounds funded with $250 million, LTWF grantees propose to provide support for a total of 6,800-6,900 units.[29] One of the largest programs, $40 million awarded to Gulf Coast

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[28] MCJ tabulation of PHA annual report data to HUD from Region VIII, Biloxi, Long Beach, Bay St. Louis and Waveland Public Housing Authorities. Exhibit "F".

[29] This calculation excludes foreclosure prevention and design assistance, neither of which represent units produced but services provided to eligible program beneficiaries. This calculation also adjusts the Gulf Coast Renaissance estimate to reflect current participation. See calculation attached as Exhibit "G."

Renaissance Corporation for employer assisted housing has scaled back its forecast of 2,000 units to less than 700.[30]

Subsidized Apartments - Mississippi maintains that it need not spend as much on its CDBG rental housing programs because the GO Zone Low Income Housing Tax Credit (LIHTC) program will produce a surplus of subsidized and public housing rental units. However, the LIHTC allocations have not translated into the number of rental units forecast by the State. About 2496 units will be open as of Katrina's fourth anniversary while another 1494 are stalled and unlikely to be constructed. Mississippi's prior reports have double counted at least 1,147 units financed under both the Public Housing and LIHTC programs.[31] Deep demand for rentals affordable at no more 60 percent of AMI is confirmed by unusually high occupancy rates and rapid absorption of LIHTC units completed in 2008,[32] and continues to hold true in 2009. The failure of 1,494 units of LIHTC apartments to close is explained by increased construction, insurance, and land costs, the collapse of demand for tax credits in the wake of the financial debacles of Fannie Mae, major banks, and insurers, and pervasive NIMBYism in local jurisdictions.

C. Human Consequences

About 1900 households like James Johnson remain in temporary FEMA housing programs in coastal Mississippi, which expired on May 1, 2009. Notices to vacate, termination of utilities, and physical removal of tenants and their possessions is taking place now. Another 2000 households occupy Mississippi Cottages, a federally-funded pilot program to devise a sturdier, healthier, and more humane alternative to the FEMA cottage. This program is due to expire on May 31, 2009. Mississippi forecasts that about 1,500 units will be permanently placed using $20 million from CDBG LTWF housing.[33] MCJ welcomes this initiative and has aggressively litigated to set aside illegal local zoning restrictions.[34] However, the supply of cottages is too small and the financial and local zoning hurdles remain difficult,[35] casting doubt on the ability of this new program to stave off imminent homelessness. In addition to those in transitional housing, thousands of households have sought financial assistance for housing repair and construction pending from the four Housing Resource Centers (HRCs) in coastal Mississippi. For a year or more, case managers and the Gulf Coast Business Council have recommended that Mississippi allocate substantial resources to the HRCs. This month,

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[30] Anita Lee, "Katrina Housing Programs Updated." Sun Herald, May 14, 2009.

[31] See Exhibit "E."

[32] Mississippi Gulf Coast Apartment Survey, W. S. Loper and Associates, April 2008, p. 14.

[33] See footnote 30.

[34] ***Gambrell v. City of Waveland Board of Aldermen***, No. 09-0089 (Circuit Court, Hancock County)

[35] Group site developments of Mississippi cottages have been blocked by local zoning decisions. See ***Habitat for Humanity Gulf Coast v. Jackson County Board of Supervisors***, No 2008-00542 (Circuit Court, Jackson County)

Mississippi announced it would provide $15 million to finance this need, but this amount is dramatically below what would be required.

In summary, Mississippi's CDBG and LIHTC financed housing programs have delivered more relief more quickly to wealthier homeowners and produced less benefit more slowly for lower income homeowners and renters. Thousands of wind-damaged homeowners have been categorically excluded. Significant unmet needs still remain that require Mississippi to reallocate substantial CDBG resources back to housing.

D. Housing Resources Diverted to Economic Development- and Back Again

Mississippi has followed a consistent practice of diverting CDBG funds initially allocated to housing recovery programs to non-housing programs through a series of partial action plans. In doing so, Mississippi thwarted for three and a half years any public evaluation of Mississippi's overall priorities. The following demonstrates this pattern:

- In August, 2007, the State requested (and HUD approved) diverting $150 million from the homeowner assistance Phase I program to the economic development program, bringing the total amount for economic development to $650 million.[36]

- In September, 2007 the State proposed (and HUD approved) diverting $600 million from the Phase I housing assistance program to expand the State Port at Gulfport.[37]

- In April 2008, the State requested (and HUD approved) diverting $241 million from one of few housing programs targeted to assist hurricane-damaged LMI homeowners to a workforce housing program for individuals who were not required to have suffered hurricane-related housing damage.[38]

- In July, 2008 the State requested (and HUD approved) the diversion of $200 million from homeowners's assistance programs,to a new Hancock County Ground Zero program that was all for non-housing purposes -- primarily economic development and community amenities, such as a new marina.[39]

Recently Mississippi, for the first time, was forced to reallocate $181 million in economic development funds back into homeowners' assistance programs to cover shortfalls in grant

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[36] Mississippi Development Authority Economic Development Program, Amendment 4, Modification 1, June 18, 2007 p. 2.

[37] Mississippi Development Authority Port of Gulfport Restoration Program, Amendment 5, September 7, 2007.

[38] Mississippi Development Authority Long-Term Workforce Housing Program, June 14, 2007.

[39] Mississippi Development Authority Hancock County Long Term Recovery Program, Amendment 7, June 9, 2008.

awards. While this program ensured the State kept pre-existing commitments, it did nothing to solve other unmet housing needs. Nevertheless, this sets a precedent for Mississippi to make other reallocations to fund the needs identified in this testimony. Earlier this year, Governor Barbour warned coast businessmen and local officials to start spending the economic development and community revitalization money or risk having it taken back.[40] MCJ encourages the State to critically re-evaluate its program priorities and reallocate funds in stalled economic development programs to housing.

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

1. Funds Diverted from "More Pressing 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 a vast expansion of the State Port at Gulfport.[41] 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."[42]

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.'"[43] A few weeks, later, on March 11, 2008, Secretary Jackson was even more emphatic, telling the House Committee on Financial Services that, "If I had the authority or the flexibility, I probably would have said no" to the Port Restoration Program proposal. Congressman Frank, the Chairman of the House Appropriations Committee that oversees HUD appropriations, agreed: "We want to make it very clear that this [Port Project] is not what CDBG was mean to do, and we don't want to set the precedent that this is an appropriate use of Community Development Block Grant funds." Following oversight hearings, twelve Congressman expressed their disapproval of the Port project in a letter to the Chairman of the House Appropriations Committee, stating that "this

[40] Melissa Scallan, "Mississippi Governor Wants $2.8 billion in Katrina aid spent," Sun Herald, March 5, 2009.

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

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

[43] 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

transfer is unreasonable in light of the fact that the State has not met all of its umet housing needs."

2. Expansion, Not Restoration

The planned expansion, which was conceived two years before Hurricane Katrina,[44] 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[45] – which are already largely covered by insurance and other sources.[46] The $600 million does not buy mere channel improvements. The original proposal would have created a controversial new land form in the Mississippi Sound, an inland terminal and causeway that would import traffic, pollution, and hazards to North Gulfport, an African American neighborhood, and finally it would have opened 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."[47] The Port has $108 million in insurance,[48] up to $54 million in FEMA funds pending insurance,[49] and was sitting on $82 million in insurance proceeds and other unencumbered cash,[50] 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.[51]

In September of 2008, the State Port released a revised plan[52] that withdrew the inland terminal in response to environmental justice objections from North Gulfport. However, the revised plan did not result in any surplus; instead, the price tag rose above the available CDBG funds. At this point, Mississippi appears bent on tapping even more federal dollars to realize this

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[44] JWD Group, Mississippi State Port Authority at Gulfport, Master Plan Update, 2003. This report runs to 123 pages, with appendices and is available upon request from the witness.

[45] 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.

[46] 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

[47] DMJM Harris, Gulfport Master Plan Update 2007, Mississippi State Port Authority, pp. 30-37. This report runs to 134 pages and is available upon request from the witness.

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

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

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

[51] See footnote 49.

[52] See http://portofthefuture.com .

extraordinary plan, including having the port designated as a Strategic Port. MCJ encourages Mississippi to look to other federal funding sources to replace all or part of the improperly diverted CDBG funds.

3. State Diverted Housing Funds After Congress Turned Down Port

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 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.[53] (emphasis added)

Mississippi's efforts to win additional funds failed after budget-conscious lawmakers derided the relocation of the rail line as wasteful.[54] 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.[55] Two years after Katrina, Governor Barbour proposed to redirect $600 million of housing recovery funds into the expansion of the State Port at Gulfport.

In response to public outcry over the diversion of housing funds to expansion of the State Port at Gulfport, Governor Haley Barbour was interviewed in February, 2008, 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

[53] 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

[54] 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

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

> the port itself and another $100 million for channel improvements. **The Port of Gulfport has been in our plan from the very, very beginning.**[56] (emphasis added)

This assertion is contradicted by Governor Barbour's own testimony before the Senate Appropriations Committee, and by HUD Secretary Jackson's letter stating that this does indeed represent a diversion of housing funds.

4. Legal Deficiencies

Mississippi's submission fails to comply with the Disaster CDBG statute and regulations as follows:

- The program did not provide a "limited clientele benefit," within the meaning of 24 C.F.R. §570.483(b)(2). Nor did it provide an "area benefit activity," within the meaning of 24 C.F.R. 24 C.F.R. §570.483(b)(1) – the area in which it was located was not populated by a majority of LMI persons. The current configuration abandoned earlier proposals for condominiums, and so it would not qualify as a "housing activity" for the benefit of LMI persons, within the meaning of 24 C.F.R. §570.483(b)(3). And finally, the Port Restoration Program couldn't qualify as a "job creation or retention activity," within the meaning of 24 C.F.R. §570.483(b)(4), because only about 10% of the Port's jobs had historically been held by LMI persons, and there was nothing in the Port Restoration Program proposal to indicate that the "restored" Port could or would drastically change that proportion.

- Mississippi did not certify, but only projected, that the Port project would create the requisite 50% LMI jobs. If Mississippi spends all $600 million of the funds and fails to generate the necessary jobs to comply, the horse will be out of the barn.

- The Port Restoration Program could not qualify for a waiver of the LMI benefit requirement because Mississippi could not say that it currently had a "compelling need" to spend $600 million of federal taxpayer money – the only significant, unallocated portion of its $5.5 billion CDBG grant – on port expansion (not hurricane damage repair) for which the state had been in search of funding for at least two years before Hurricane Katrina loomed over the horizon. Consequently, Mississippi did not even ask HUD for a waiver of the LMI benefit requirement. And, other than stating – without any supporting evidence – that "MDA will qualify this program under the low to moderate national objective," the Port Restoration proposal did nothing to certify the Program's compliance with the LMI benefit requirement, or to excuse its non-compliance.

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

- Mississippi did not certify compliance with federal fair housing law in connection with this proposal. Also, it has not completed an Analysis of Impediments required by such a certification even though it promised to do in its first submission to HUD in March 2006.

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. 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.

IV. CDBG AS MEANS TO SUPPORT DISASTER RECOVERY

Mississippi's use of CDBG funds for disaster recovery raises the question whether or not CDBG is a suitable vehicle to support disaster recovery. The policies and structure of the CDBG program generally accord with what is needed following a national catastrophe. But disasters pose special challenges for CDBG-based appropriations, including appropriations formulas, consistency and equity in state-administered programs, public input, and checks and balances.

The Housing and Community Development Act of 1974 established the CDBG program. The CDBG program was designed to provide greater local influence, discretion, and control than other federal programs such as Urban Development Action Grants, in which federal planners would decide where and how funds would be spent. In the CDBG program,state and local governments identify needs, solicit ideas for projects and plans from citizens and local organizations to meet those needs, and then submit a consolidated plan to HUD for approval. The uses of CDBG funds must be consistent with one of three national priorities:

1. activities that benefit low- and moderate-income persons
2. the prevention or elimination of slums or blight, or to
3. address an urgent threat to health or safety.

As CDBG programs got under way, complaints arose that CDBG funds in Southern cities were spent in affluent neighborhoods. Congress expressed a policy that the majority of CDBG funds, 70 percent, should be used to further the first priority, benefits to persons of low and moderate income. In subsequent authorizations, Congress instituted allocation formulas to strengthen controls on how money was spent and to better target communities with different types of problems.

Requiring that the majority of disaster CDBG funds be used to assist persons of low and moderate income matches well with the disproportionately greater burden of recovery for low-wealth communities. Using funds to prevent or eliminate slums or blight also addresses the acceleration of those trends after a disaster in poorer communities with older construction, less property insurance, and greater deferred maintenance.. Finally, the goal to address an urgent threat to health or safety, on its face, corresponds to society's needs following a catastrophe.

The 2005 disaster CDBG appropriations followed no discernible formula. Instead, the first disaster CDBG allocation contained an arbitrary condition that no state shall receive more than 56% of the overall $11 billion allocated. This was widely recognized as an inequitable division of disaster recovery funds for the most heavily damaged state of Louisiana. It took three subsequent appropriations to obtain a roughly adequate funding for Louisiana. Congress should adapt one or more allocation formulas similar to those used in conventional CDBG appropriations to achieve greater equity for all American citizens affected by a national catastrophe.

In both regular and disaster CDBG programs, serious questions arise whether the scope of allowed activities under CDBG is too broad, making it difficult to measure the effectiveness of the expenditures in achieving the goals.

To grant state authorities significant discretion and control over disaster CDBG funds may or may not have merit, given some of the differences in the way Hurricanes Katrina and Rita affected the adjacent states, and the priorities chosen by the states. Fundamentally, however, there are more similarities than differences in need and solutions. Common guidelines would eliminate inconsistencies and inequity from separately-developed state plans. Similarly situated citizens, regardless of which state they live in, should receive a generally equivalent level of relief from a federal recovery from a national disaster funded from the US Treasury. The disaster CDBG program should be revisited to assess whether certain overall standards should be adopted, such as balances between housing recovery and economic development; uniformity in award caps and eligibility requirements in compensation programs; and parallel and simultaneous efforts to address the needs of renters as well as homeowners.

In regular CDBG programs, public input and influence over use of the funds occurs through the Consolidated Plan process. After a natural disaster, the opportunity for meaningful community input is nil. State legislatures cannot be counted upon to exercise replacement oversight or accountability. In Louisiana, the state legislature and Governor Blanco debated and developed a comprehensive plan for use of the CDBG funds. In Mississippi, there was no such debate. The Governor's office chose not to develop an overall allocation, but instead rolled out a series of partial action plans over the course of 3 years. Whatever may be the merits of this approach, it deprived the affected population and the Mississippi legislature, a co-equal branch of government, the opportunity to influence the most fundamental and far-reaching issue of their lives: the overall balance of priorities between housing, economic development and infrastructure . When the amount in question is equivalent to Mississippi's annual budget, fundamental fairness requires meaningful opportunity to influence this subject. In the first partial action plan, only one week was allowed for the public to comment on a homeowners' assistance program costing $3.2 billion dollars, almost sixty percent of Mississippi's total allocation. Regardless of whether legislatures should be permitted to review and approve a proposed disaster CDBG plan, the law should require state officials to release a broad outline of overall uses of CDBG disaster funds for public comment early in the recovery process.

V. RECOMMENDATIONS

A. Regarding Mississippi's Use of CDBG funds

1. Mississippi should critically re-evaluate all housing and economic development programs and priorities and redirect CDBG funds to the following housing needs:
   a. increase the size of the Small Rental Assistance Program, given the dramatic recent oversubscription of the final round of this program.
   b. increase piggy-back support for LIHTC-financed properties.
   c. provide compensation for lower-income wind-damaged homeowners in the three coastal counties, using the federal requirement to serve areas of concentrated damage as justification for a geographical limitation.
   d. provide substantial increased support to Housing Resource Centers to fund their backlog of unmet needs.
   e. subsidize the purchase, permanent placement, and escrow costs of Mississippi cottages on an income-need basis.
2. Mississippi should seek alternative financing for the State Port at Gulfport, including federal stimulus money, programs for Strategic Ports, to replace the improperly diverted CDBG funds.

B. Regarding future disaster CDBG appropriations

1. Eliminate the on-demand waiver of the low- and moderate-income benefit requirement from disaster appropriations
2. Adapt an allocation formula to determine disaster CDBG appropriations similar to those used for conventional CDBG appropriations to ensure greater fairness between states.
3. More carefully define the scope of allowable activities under CDBG programs to better measure effectiveness, especially as to claims of job-creation and LMI benefit.
4. Develop common guidelines on uses of CDBG disaster funds to eliminate inconsistencies and inequities from separately-developed state plans including
   a. overall allocations between housing, infrastructure, and economic development

b. greater uniformity in program design and eligibility for compensation programs
c. requirements to proceed simultaneously with renter and homeowner housing recovery programs.
d. early disclosure and public comment of overall uses of disaster CDBG funds.
e. requirement of an overall allocation plan, based upon public or legislative input, as a predicate for approval of any partial action plan.

5. Require local governments to cooperate in housing recovery programs as a condition of receiving federal disaster assistance, as a means to discourage NIMBYism.

Thank you for your consideration of this testimony and recommendations.

Very Truly Yours

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