

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

|                                  |   |                      |
|----------------------------------|---|----------------------|
| GREATER NEW ORLEANS FAIR HOUSING | ) |                      |
| ACTION CENTER, <i>et al.</i>     | ) |                      |
|                                  | ) |                      |
| Plaintiffs,                      | ) |                      |
|                                  | ) | No. 1:08-cv-1938-HHK |
| v.                               | ) |                      |
|                                  | ) |                      |
| U.S. DEPARTMENT OF HOUSING AND   | ) |                      |
| URBAN DEVELOPMENT, <i>et al.</i> | ) |                      |
|                                  | ) |                      |
| Defendants.                      | ) |                      |

**DEFENDANT PAUL RAINWATER'S MOTION TO DISMISS**  
**AND MOTION TO TRANSFER**

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) and Local Rule 7, Defendant, Paul Rainwater, moves this Court to dismiss with prejudice Plaintiffs' Complaint for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

In addition, pursuant to 28 U.S.C. § 1404(a), Defendant, Paul Rainwater, moves this Court to transfer of this matter to the United States District Court for the Middle District of Louisiana, located in Baton Rouge, Louisiana, or alternatively, the United States District Court for the Eastern District of Louisiana, located in New Orleans, Louisiana. In accordance with Local Rule 7(m), counsel for Defendant has discussed the motion to transfer with opposing counsel by telephone. Accordingly, Plaintiffs do not consent to the motion to transfer and U.S. Department of Housing and Urban Development takes no position regarding the motion to transfer at this time.

A memorandum in support setting forth Defendant's statement of points and authorities in support of Defendant's Motion to Dismiss and Motion to Transfer is attached. Defendant has also attached a proposed order for each motion presented herein.

Respectfully submitted,

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|                                  | ) |                      |
| Defendants.                      | ) |                      |

**DEFENDANT PAUL RAINWATER’S MEMORANDUM IN SUPPORT OF HIS  
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## I. PRELIMINARY STATEMENT

Plaintiffs' claims against Defendant, Paul Rainwater, Executive Director of the Louisiana Recovery Authority, (hereinafter "Rainwater"), should be dismissed for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted.

Plaintiffs have filed this civil action against Defendants, U.S. Department of Housing and Urban Development (hereinafter "HUD")<sup>1</sup> and Rainwater on November 12, 2008. (Complaint, ¶¶ 18-19.) Neither the State of Louisiana nor the Louisiana Recovery Authority ("LRA"), the Louisiana state agency responsible for designing and administering the Road Home, are named as Defendants. Plaintiffs filed this suit as a class action pursuant to Fed. R. Civ. P. 23 and propose a class that consists of "all African American homeowners in New Orleans who participated in the Road Home Program or who will participate by the first day of trial, whose grant amounts were calculated or will be calculated based on the pre-storm value of their homes, and who have selected or will select the program's option of using the funds to repair or rebuild their homes." (Complaint, ¶ 21.) Plaintiffs allege that more than twenty thousand (20,000) African American homeowners in New Orleans are members of the putative class. (Complaint, ¶ 1.)

Plaintiffs contend that the formula developed and used by the LRA and the Road Home program<sup>2</sup> in determining and awarding compensation and incentive grants to homeowners whose homes were damaged or destroyed by Hurricanes Katrina and/or Rita and who chose to receive grant awards under "Option 1," imposes a disparate impact on African Americans in violation of the Fair Housing Act ("FHA"), 42 U.S.C. § 3601, *et seq.*, and the Housing and Community

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<sup>1</sup> Rainwater adopts and incorporates by reference HUD's statement of facts contained in the Background, Section II (D)(1-4). (HUD's Memorandum in Support of Motion to Dismiss, Rec. Doc.22, pp. 9-14.)

<sup>2</sup> Plaintiffs do not allege Rainwater, as Executive Director, designed or administered the Road Home Program or the challenged formula for receiving Option 1 grants.

Development Act of 1974 (“HCDA”), 42 U.S.C. § 5301, *et seq.* (Complaint, ¶¶ 1, 74-77.) The challenged formula is criticized by Plaintiffs as it begins with the pre-storm value of the home as the basis for the formula, unless the estimated cost of damage or estimated cost to replace the home is less than the pre-storm value, in which case the formula uses the lower of these figures as the basis of the calculation. (Complaint, ¶ 3.) Plaintiffs seek this Court to declare the Defendants’ acts and policy discriminatory, order all appropriate injunctive relief, and to remedy the effects of Defendants’ violations, including “*recalculating Road Home homeowner grants*” in a non-discriminatory manner. (Complaint, Request for Relief, p. 17.)(emphasis added).

Plaintiffs allege subject matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343(a)(3-4) and 42 U.S.C. § 3613(a). (Complaint, ¶ 8.) Plaintiffs also seek declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202. (Complaint, ¶ 9.) Rainwater contends that this Court lacks subject matter jurisdiction over Plaintiffs’ claims against him because he is entitled to immunity under the Eleventh Amendment to the United States Constitution. Rainwater asserts that the doctrine of *Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908) (allowing suits for prospective injunctive relief against state officials in their official capacity), is not applicable in this case and does not permit the retrospective declaratory and injunctive relief requested by Plaintiffs.

Further, Plaintiffs have failed to state a claim upon which relief can be granted against Rainwater under the FHA and/or HCDA. The Road Home program was designed and intended to serve as a compensation program, not a housing program, to those Louisiana homeowners impacted by Hurricanes Katrina and Rita. Therefore, because Option 1 of the Road Home program is a compensation program to provide unrestricted funds to citizens who are already homeowners, the Fair Housing Act does not apply. Further, the HCDA does not apply as the

exclusive remedy under the HCDA is through HUD's enforcement mechanisms as specifically outlined by Congress in 42 U.S.C. § 5311. Indeed, HUD approved LRA's action plans and, thus assured that LRA's policies were in compliance with all applicable rules and regulations for receiving Community Development Block Grants. Simply stated, HUD has not deemed that Louisiana is in violation of any provision of the HCDA, and Plaintiffs have no private right of action against Defendant Rainwater under the HCDA.

Nevertheless, this Court need not reach these substantive issues as Defendant, Rainwater, moves this Honorable Court to transfer this matter pursuant to 28 U.S.C. § 1404 to the Middle District of Louisiana or, alternatively, to the Eastern District of Louisiana, for further resolution. Mr. Rainwater and the Louisiana Recovery Authority are located in Baton Rouge, Louisiana. Most of the witnesses and documents will be located in Baton Rouge, Louisiana. Moreover, the five named Plaintiffs, twenty thousand putative class members and the Greater New Orleans Fair Housing Action Center are located in New Orleans, Louisiana. Therefore, for the convenience of the parties and witnesses and in the interest of justice, Rainwater requests this case be transferred to Louisiana.

## **II. THIS CASE AGAINST PAUL RAINWATER, IN HIS OFFICIAL CAPACITY AS THE EXECUTIVE DIRECTOR OF THE LOUISIANA RECOVERY AUTHORITY, IS BARRED BY THE ELEVENTH AMENDMENT**

### **A. Standard of Review for a Motion to Dismiss Under Fed.R.Civ.P. 12(b)(1)**

Federal courts have limited jurisdiction. They may hear only those cases entrusted to them by a grant of power contained in either the Constitution or in an Act of Congress. *City of Kenosha v. Bruno*, 412 U.S. 507, 511, 93 S. Ct. 2222, 37 L. Ed. 2d 109 (1973); *Loughlin v. United States*, 393 F.3d 155, 170 (D.C. Cir. 2004). It is the plaintiffs' burden of proof to establish that the court has subject matter jurisdiction to hear the case. *Brady Campaign to*

*Prevent Gun Violence United with the Million Mom March v. Ashcroft*, 339 F.Supp.2d 68, 72 (D.C. Cir. 2004); *In re: Swine Flu Immunization Prods. Liab. Litig.*, 880 F.2d 1439, 1442-43 (D.C. Cir. 1989). A court may accept all of the factual allegations in the complaint as true when evaluating a motion to dismiss for lack of subject matter jurisdiction, *United States v. Gaubert*, 499 U.S. 315, 322, 111 S.Ct. 1267, 113 L.Ed. 2d 335 (1991), it may also consider certain materials beyond the pleadings in considering a motion to dismiss under Rule 12(b)(1). See *Jerome Stevens Pharmaceuticals, Inc. v. Food and Drug Admin.*, 402 F.3d 1249, 1253-54 (D.C. Cir. 2005). For example, “[t]he court may consider the complaint supplemented by undisputed facts evidenced in the record, or the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” *Herbert v. Nat’l. Acad. of Sciences*, 974 F.2d 192, 197 (D.C. Cir. 1992).

**B. The State of Louisiana and The Louisiana Recovery Authority Are the Real Parties in Interest, Not Paul Rainwater**

The question of whether federal jurisdiction exists is not always free from doubt, and a federal court may have to examine and determine the facts and the law before concluding whether jurisdiction is appropriate. “Thus, it follows that a court has jurisdiction to determine its own jurisdiction. *United States v. United Mine Workers of America*, 330 U.S. 258, 292, 67 S.Ct. 677, 91 L.Ed. 884 (1947).

The essential inquiry in an Eleventh Amendment challenge is whether the state, although not named in the action, is the real party in interest. *Edelman v. Jordan*, 415 U.S. 651, 663, 94 S. Ct. 1347, 39 L.Ed.2d 662 (1974). A state may be the party with a substantiated interest when enforcement of the court’s decree would effect the state’s political or property rights. *Hopkins v. Clemson Agricultural College of South Carolina*, 221 U.S. 636, 642, 31 S. Ct. 654, 55 L.Ed. 890 (1911). In order to safeguard such rights, sovereign immunity bars suits whose direct outcome



will diminish the public treasury through the award of retroactive damages. *Ford Motor Co. v. Dept of Treasury*, 323 U.S. 459, 464, 65 S. Ct. 347, 89 L.Ed. 389 (1945) (“...[W]hen the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants.”), *overruled on other grounds by, Lapides v. Board of Regents of the University System of Georgia*, 555 U.S. 613, 122 S.Ct. 1640, 152 L.Ed.2d 806 (2002). Such suits involve compensatory or deterrent’s interest that are insufficient to overcome the compelling justifications for a state’s sovereign immunity.

Plaintiffs in this case challenge the Road Home formula design, claiming it “disproportionately burdens African American homeowners and hinders their ability to return to their homes compared to white families.” (Complaint, ¶ 58.) However, this Court needs to look no further than paragraphs 49 and 51 of Plaintiffs’ Complaint to ascertain that the LRA, and not its Executive Director, Paul Rainwater, is responsible for the Road Home design and grant formula. Plaintiffs admit the following facts:

49. The LRA, in consultation with HUD, proposed and developed the Road Home grant formula and the details of the Road Home Program.

51. The LRA administers the Road Home Program subject to ongoing oversight and continuing approval by HUD.

(Complaint, ¶¶ 49, 51.)

Thus, Plaintiffs have named Paul Rainwater, in his official capacity as Executive Director of the Louisiana Recovery Authority, as a nominal defendant in an attempt to avail themselves of the legal fiction of *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908). Although cited in the Complaint, Plaintiffs ignore the express statutory provisions which created the LRA in 2006, by the Louisiana legislature in the wake of Hurricanes Katrina and Rita. This Louisiana

statute provides that the LRA, not its Executive Director, has the authority to establish a “clear and effective process for the implementation of action plans for the CDBG program.” All of the action plans must be approved by the Joint Legislative Committee on the Budget, a majority of the elected members of each house of the Louisiana legislature, the Governor, and HUD.

La. Rev. Stat. Ann. § 49:220.4 provides in pertinent part:

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

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

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

La. Rev. Stat. Ann. § 49:220.4.

La. Rev. Stat. Ann. § 49:220.5 outlines the powers, duties and functions of the LRA and its Executive Director, and provides a comprehensive approval process for adopting policies and procedures for receiving Community Development Block Grants (CDBG). Under this statutory scheme, the LRA has the initial authority and responsibility to develop proposals related to Louisiana’s recovery from Hurricanes Katrina and Rita, including CDBG proposals, action plans, partial action plans, amendments to action plans or partial action plans. La. Rev. Stat. Ann.

§ 44:220.5(C)(1)(a). After developing and approving a proposal or action plan, the LRA then sends the it to the Louisiana Governor for approval. *Id.* If the Governor approves the proposal or action plan, it is then submitted to the Joint Legislative Committee on the Budget for review and approval, and, simultaneously submitted for review to the appropriate oversight committees of the Louisiana House of Representatives and the Senate. *Id.* If a proposal amounts to ten million dollars (\$10,000,000.00) or more, the proposal or action plan must also be approved by a majority of elected members of each house of the legislature. La. Rev. Stat. Ann. § 49:220.5(C)(1)(b). Once these steps are taken, the Louisiana Governor then submits the proposal or action plan to HUD for approval. La. Rev. Stat. Ann. § 49:220.5(C)(1)(c). Action plans and other policies and procedures for procuring CDBG funds undergo rigorous, multi-step processes, with multiple avenues of input and review, before they are finally approved by the State and HUD. In other words, Paul Rainwater, as the Executive Director of the LRA, does not have the sole or final authority to develop policies and procedures as related to action plans; instead, this is a collaborative process with multiple layers of review.

**C. Plaintiffs Fail to Allege a Waiver of Sovereign Immunity by Rainwater, the Louisiana Recovery Authority or the State of Louisiana**

Plaintiffs fail to address the issue of sovereign immunity in their Complaint. Further, Plaintiffs fail to invoke the doctrine of *Ex parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L.Ed 714 (1908), in their Complaint. These fatal omissions can only lead this Court to conclude that the Eleventh Amendment bars Plaintiffs from pursuing their claims against Rainwater in federal court.

The Eleventh Amendment to the United States Constitution provides:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted

against on the United States by Citizens of another State, or by  
Citizens or subjects of any Foreign State.

U.S. Const. amend. XI.

The Eleventh Amendment not only bars suits against the state by citizens of another state, but also applies equally to suits against a state initiated by that state's own citizens. *Edelman v. Jordan*, 414 U.S. 651, 663, 94 S. Ct. 1347, 39 L.Ed.2d 662 (1974); *Hans v. Louisiana*, 134 U.S. 1, 13-15, 10 S. Ct. 504, 33 L.Ed. 842 (1890). For example, if a lawsuit seeks to order the state officer to pay funds directly from the state treasury for the wrongful acts of the state, then the state is the real party in interests and the Eleventh Amendment bars the suit. *Edelman*, 415 U.S. at 663. Moreover, the Eleventh Amendment prohibits suits against states officials where the state is, in fact, the real party in interest. *See Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 101-02, 104 S.Ct. 900, 79 L.Ed.2d 67 (1984).

The Court in *Pennhurst* noted:

When the suit is brought only against state officials, a question arises as to whether that suit is a suit against the State itself. Although prior decisions of this Court have not been entirely consistent on this issue, certain principles are well established. The Eleventh Amendment bars a suit against state officials when "the state is the real, substantial party in interest." *Ford Motor Co. v. Department of the Treasury*, 323 U.S. 459, 464, 65 S.Ct. 347, 350, 89 L.Ed 389 (1945). Thus, "[t]he general rule is that relief sought nominally against an officer is, in fact, against the sovereign if the decree would operate against the latter." *Hawaii v. Gordon*, 373 U.S. 57, 58, 83 S.Ct. 1052, 1053, 10 L.Ed2d 191 (1963)(*per curiam*). And, when the state itself is named as the defendant, a suit against state officials that is in fact a suit against the State is barred regardless of whether it seeks damages or injunctive relief.

*Pennhurst*, 465 U.S. at 101-102.

Eleventh Amendment immunity is, however, subject to three primary exceptions:

- (1) Congressional abrogation;

- (2) Waiver by the state; and,
- (3) Suits against individual state officers for prospective injunctive and declaratory relief to end an ongoing violation of federal law.

*Pennsylvania Fed'n of Sportsmen's Clubs, Inc. v. Hess*, 297 F.3d 310, 323 (3d Cir. 2002).

Under the first prong of the abrogation test, in order for Congress to abrogate the state's sovereign immunity as granted by the Eleventh Amendment, Congress must (1) intend to do so unequivocally and (2) act under a validate grant under of Congressional authority. *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356, 363-64, 121 S.Ct. 955, 148 L.Ed.2d 866 (2001). The Supreme Court in *Edelman* held that a court will find waiver only where it is stated "by the most express language or by such overwhelming implications from the text as [will] leave no room for any other reasonable construction." *Edelman*, 415 U.S. at 673.

Plaintiffs in this case brought suit under the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, and the Housing and Community Development Act of 1974, 42 U.S.C. § 5301, *et seq.* There is no express waiver of the State of Louisiana's sovereign immunity in the Fair Housing Act or in the Housing and Community Development Act. *See Gregory v. South Carolina Dept. of Transportation*, 289 F.Supp.2d 721 (D.S.C. 2003), *aff'd*, 114 Fed. Appx. 87 (4<sup>th</sup> Cir. 2004), *cert. denied*, 544 U.S. 999, 125 S.Ct. 1932, 161 L.Ed.2d 773 (2005).

As for the second prong, the State of Louisiana has in no way waived its Eleventh Amendment immunity in this case. By statute, Louisiana has refused any such waiver of its Eleventh Amendment sovereign immunity regarding suits in federal courts. La. Rev. Stat. Ann. § 13:5106(A); *Cozzo v. Tangipahoa Parish Council-President Government*, 279 F.3d 273, 280-81 (5<sup>th</sup> Cir. 2002). Moreover, the State of Louisiana has not consented to be sued in federal court.

Instead, in the instant case, Plaintiffs are presumably proceeding under the third prong. However, it is important to note that this lawsuit does not challenge the constitutionality of Mr. Rainwater's actions as Executive Director of the LRA. Instead, Plaintiffs have focused only on the alleged disparate impact of LRA's formula for calculating Road Home benefits under Option 1 for African American homeowners in New Orleans.

**D. The *Ex parte Young* Exception Is Inapplicable**

In the landmark case of *Ex parte Young*, 209 U.S. 123, 28, S.Ct. 441, 52 L.Ed 714, 932 (1908), the U.S. Supreme Court reviewed the jailing of the Minnesota Attorney General who had been enjoined by a federal court for imposing what stockholders of a railroad believed onerous rates on railroads in that state. The plaintiff argued that the state law constituted a confiscation of property without due process and, therefore, was unconstitutional. Obviously, if the court issued the injunction it would have the effect of stopping the state from enforcing its statute. That would constitute a judgment against the state, and arguably it would run afoul of the Eleventh Amendment.

The Supreme Court concluded that the Eleventh Amendment did not bar an action against a state officer to restrain unconstitutional conduct on his part under color of state law. Accordingly, the case could proceed in federal court. The Court noted that a state could not instruct its officer to act in an illegal way. If an officer acted illegally, as the Attorney General of Minnesota was alleged to have done, he would be stripped of any representative character and of the constitutional immunity that otherwise would protect that conduct. In other words, when the officer acts illegally, he is no longer acting for the state and is thus not entitled to the state's Eleventh Amendment immunity. *Ex parte Young*, 209 U.S. at 159-60. "The *Young* doctrine recognizes that if a state official violates federal law, he is stripped of his official or

representative character and may be personally liable for his conduct; the state cannot cloak the officer in its sovereign immunity.” *Idaho v. Coeur d’Alene Tribe of Idaho*, 521 U.S. 261, 288, 117 S.Ct. 2028, 2043, 138 L.Ed.2d 438 (1997) (O’Connor, J. joined by Scalia and Thomas, J.J., concurring in part and concurring in judgment).

Whether a litigant’s claim falls under the *Ex parte Young* exception to the Eleventh Amendment which bars against suing a state is a “straightforward inquiry” that “asks whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” *Verizon Maryland, Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 645, 122 S. Ct. 1753, 152 L.Ed. 2d 871 (2002). The court has also identified other relevant considerations. In *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 76, 116 S.Ct. 1114, 1133, 134 L.Ed.2d 252 (1996), for example, the Supreme Court has held that *Ex parte Young* is inapplicable where Congress has devised a comprehensive remedial scheme that prevents the federal courts from fashioning an appropriate equitable remedy. More recently, the court concluded in *Coeur d’Alene* that the *Ex parte Young* fiction cannot be employed where certain sovereignty interests are present, as they are when the administration and ownership of state land is threatened. *See, Coeur d’Alene*, 521 U.S. at 281, 287.

In the instant case, the *Ex parte Young* exception does not apply since Plaintiffs, by their own admission in the Complaint, acknowledge the LRA, and not Paul Rainwater in his official capacity as Executive Director of the LRA, was responsible for proposing, developing and designing the Road Home Option 1 grant formula<sup>3</sup>. (Complaint, ¶¶ 49, 51.) Thus, the facts of

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<sup>3</sup>Rainwater specifically rejects HUD’s argument that Plaintiffs can maintain their claims for declaratory and injunctive relief under the FHA and HCDA directly against Rainwater under the doctrine of *Ex parte Young*. (HUD’s Memorandum in Support of Motion to Dismiss, Rec. Doc. 22, pp. 32-33.)

the instant case can easily be distinguished from the facts of *Ex parte Young* where a state official allegedly violated state law.

The Supreme Court has subsequently applied this principle in several cases allowing federal courts to give injunctive or “prospective” relief against state officers, even in instances where compliance with the injunction would require expenditures from the state treasury. *See, Edelman, supra*, (articulating a prospective-retroactive relief distinction and allowing federal courts to order future compliance by state officials while forbidding those courts from ordering those courts payment of compensatory damages for past harms); *see also, Quern v. Jordan*, 440 U.S. 332, 99 S.Ct. 1139, 59 L.Ed.2d 358 (1979); *Milliken v. Bradley*, 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977). In *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 104 S. Ct. 900, 79 L.Ed. 2d 67 (1984), the U.S. Supreme Court summarized,

When a plaintiff sues a state official alleging a violation of federal law, the federal court may award an injunction that governs the official’s future conduct but not one that awards retroactive monetary relief. Under the theory of *Young*, such a suit would not be one against the state since the federal-law allegation would strip the state officer of his official authority.

*Pennhurst*, 465 U.S. at 102-103.

In *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974), the plaintiff brought a class action for injunctive and declaratory relief against Illinois officials administering the federal-state benefit program of aid to the aged, blind and disabled. Federal regulations required eligibility determinations to be made by states within thirty days of receipt of application for benefits to the aged and blind and within forty-five days within receipt of the application for benefits to the disabled. The complaint charged that Illinois officials were not processing applications within these requirements and were authorizing benefits to commence within the month the application was approved and not including prior months of eligibility



during which an applicant was entitled to benefits. The district court granted a permanent injunction requiring compliance with the federal time limits and ordering the officials to pay the benefits wrongfully withheld. The Court of Appeals affirmed.

The U.S. Supreme Court, however, reversed that portion of the court of appeals' decision affirming the district court's ordering requiring the payment of benefits. *Edelman*, 415 U.S. at 658-59. The Court held that *Ex parte Young* "does not extend so far as to permit a suit which seeks the award of an accrued monetary liability which must be met from the general revenues of a State...." *Edelman*, 415 U.S. at 664. The Court held that the district court's order requiring the payment of money which should have been paid, but was not,

. . . [I]s in practical effect indistinguishable in many aspects from an award of damages against the State. It will to a virtual certainty be paid from state funds, and not from the pockets of the individual state officials who were the defendants in this action. It is measured in terms of a monetary loss resulting from a past breach of a legal duty on the part of the defendant state officials.

*Edelman*, 415 U.S. at 668. The fact that the relief requested was an injunction rather than damages was irrelevant because the Court did "not read *Ex parte Young* . . . to indicate that any form of relief may be awarded against a state officer, no matter how closely it may in practice resemble a money judgment payable out of the state treasury, so long as the relief may be labeled 'equitable' in nature." *Edelman*, 415 U.S. at 666.

In *Papasan v. Allain*, 478 U.S. 265, 278, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986), school children and local schools brought suit against Mississippi officials claiming the sale of federal school land grants had violated the state's reported trust obligation to hold the land for the benefit of school children in perpetuity. The plaintiffs sought a declaration that the sale of the land was void and an order requiring the establishment of a fund be held in trust for their benefit. The plaintiffs argued that this relief was permissible under *Ex parte Young* because they only

sought to enforce the officials' continuing obligation to make appropriate payments for the benefit of the school children. The district court dismissed the plaintiffs' trust claim, which the Supreme Court found was identical to their impairment of contractual obligation claim, as barred by the Eleventh Amendment. *Papasan*, 478 U.S. at 274, n.8. The Court of Appeals affirmed and the Supreme Court upheld this part of the district court's decision.

In describing the types of relief allowed by *Ex parte Young*, the Supreme Court in *Papasan* stated:

Relief that in essence serves to compensate a party injured in the past by an action of a state official in his official capacity that was illegal under federal law is barred even when the state official is the named defendant. This is true if the relief is expressly denominated as damages. It is also true if the relief is tantamount to an award of damages for a past violation of federal law, even though styled as something else.

*Papasan*, 478 U.S. at 278. The Court in *Papasan* held that the plaintiffs "distinction between a continuing obligation on the part of the trustee and an ongoing liability for the breach of trust is essentially a formal distinction of the sort we rejected in *Edelman*." *Papasan*, 478 U.S. at 280. The Court reasoned that the plaintiffs' requested relief for the officials' breach of their continuing obligation to comply with the trust payment obligations was "in substance the award, as continuing income rather than as a lump sum, of an 'accrued monetary liability'." *Papasan*, 478 U.S. at 281.

In this case, Defendant Rainwater is a state official within the ambit of the Eleventh Amendment, and is being sued in his official capacity. Moreover, the Complaint purports to seek only retrospective, injunctive relief, requesting this Court in the Request for Relief to:

- a) Certify this action as a class action on behalf of the proposed class pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure;

- b) Declare that Defendant's acts, practices, policies and omissions have deprived Plaintiffs of their rights under the Fair Housing Act of 1968 and Title I of the Housing and Community Development Act of 1974;
- c) Order all appropriate injunctive relief as warranted, including but not limited to ordering Defendants to cease immediately their violations of Plaintiffs' rights, and to remedy the invidious effects of their violations by recalculating Road Home homeowner grants in a non-discriminatory manner;
- d) Order reasonable attorneys' fees and costs to be paid by Defendants pursuant to 28 U.S.C. § 2412 and 42 U.S.C. §§ 1988, 3613; and
- e. Grant such other and further relief as the Court deems just and equitable.

(Complaint, Request for Relief, pp. 17-18.)

The last day to apply to the Road Home Program was July 31, 2007, and the last day to complete an interview appointment was December 15, 2007. *See* [www.road2la.org/homeowner/overview:htm](http://www.road2la.org/homeowner/overview:htm). The injunctive relief sought by the plaintiffs that is “. . . recalculating Road Home homeowner grants” is a thinly-veiled attempt to recover retrospective relief in the form of money damages and, therefore, barred under the Eleventh Amendment.

In distinguishing between permissible prospective and impermissible retrospective relief, “attempts to seize upon a state's ‘continuing income’ by means of an prospective injunction have been held by the Supreme Court to be attempts to obtain compensation for an ‘accrued monetary liability.’” *Papasan*, 478 U.S. at 281.

What the plaintiffs were seeking in *Edelman* was a “reparation for the past,” which would be “measured in terms of a monetary loss resulting from a past breach of a legal duty on the part of the defendant state officials.” *Edelman*, 414 U.S. at 665, 668. The retroactive award that so

concerned the *Edelman* court was compensation intended to repair harm caused by past acts is the same relief requested by the plaintiffs in this case, and is identical to that sought in *Edelman*.

For purposes of the Eleventh Amendment, this Court must decide whether the relief being sought by Plaintiffs is prospective or retrospective, and the fact that Plaintiffs seek to recalculate grants after the deadline to apply for compensation grants has expired nearly two years ago should be dispositive of this issue.

**E. The *Coeur d'Alene* Exception Is Applicable**

There is also a final layer of sovereign immunity analysis that also blocks Plaintiffs' suit. The Supreme Court in *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 117 S. Ct. 2028, 138 L.Ed.2d 438 (1997) held that even prospective relief (in *Coeur d'Alene* declaratory judgment) would be barred if the relief sought is the functional equivalent of relief otherwise barred by the Eleventh Amendment and "special sovereignty interests" are implicated. *Coeur d'Alene*, 521 U.S. at 281. In *Coeur d'Alene*, the plaintiffs sought a declaratory judgment establishing their rights to certain lands. The court found that the suit was a "functional equivalent of a quiet title action which implicated special sovereign interests." *Coeur d'Alene*, 521 U.S. at 281-82.

In this case, as it developed the Road Home program, the State of Louisiana ultimately chose to provide compensation and incentive grants to eligible homeowners affected by Hurricanes Katrina or Rita of up to \$150,000. Louisiana decided to base the amount of compensation and incentives grants on the lower of the pre-storm, fair-market value of the home or the cost to repair or replace the home. (Declaration of Jesse Handforth Kome, Rec. Doc. 22-2, ¶ 18.)

The State of Louisiana also provides additional compensation grants of up to \$50,000 for certain homeowners. Total compensation and incentive grants are still capped at \$150,000. Louisiana offers additional compensation and incentive grants to applicants with household incomes 80% and below the medium income in the parish where the house was located. In addition to the additional compensation, Louisiana also provides compensation and incentive grants to homeowners via individual mitigation measures and elevation incentives. Individual mitigation measures provide incentive grants to homeowners to install home “hardening” features that will protect homes from future storm damage, including storm shutters and roof tiedowns. Elevation incentives are grants to elevate site-built homes and mobile to meet FEMA’s current advisory base flood elevation or base flood elevation levels to protect against future floods. (Kome Declaration, Rec. Doc. 22-2, ¶ 21.)

In this case, the allocation of state funds by the State of Louisiana to provide compensation and incentive grants to those citizens damaged by Hurricanes Katrina and Rita is an important state interest. Plaintiffs’ attempts to compel the recalculation of homeowner grants is an interference with a ‘special sovereign interest’ under *Coeur d’Alene* thus barring Plaintiffs’ claims under the Eleventh Amendment against Rainwater.

The Sixth Circuit in *Barton v. Summers*, 293 F.3d 944 (6<sup>th</sup> Cir. 2002), rejected an attempt by Medicaid recipients with tobacco-related illnesses to intercept tobacco settlement money due to Kentucky and Tennessee under a Master Settlement Agreement. The court held that “. . . the interest of a sovereign in allocating state funds is a ‘very serious’ one.” *Barton*, 293 F.3d at 951, citing *Kelly v. Metropolitan County Bd. Of Education of Nashville and Davidson County, Tenn.*, 836 F.2d 986, 995 (6<sup>th</sup> Cir. 1987). “Interference with the allocation of state funds, where

Congress has expressly enacted that states may allocate such funds as they please, is an interference with a ‘special sovereign interest’ under *Coeur d’Alene*.” *Id.*

Further, in *Coeur d’Alene*, the Court noted that questions will arise as to the proper scope and application of *Ex parte Young*. The Court cautioned against an expanded scope of the *Young* exception as suggested in this case.

To interpret *Young* to permit a federal-court action to proceed in every case where prospective declaratory and injunctive relief is sought against an officer, named in his individual capacity, would be to adhere to empty formalism and to undermine the principle, reaffirmed just last term, in *Seminole Tribe*, that Eleventh Amendment immunity represents a real limitation on the federal court’s federal-question jurisdiction. The real interests served by the Eleventh Amendment are not to be sacrificed to elementary mechanics of captions and pleadings. Application of the *Young* exception must reflect a proper understanding of its role in our federal system and respect for state courts instead of reflexive reliance on an obvious fiction. See, e.g. *Pennhurst*, *supra* at 102-103, 114, n. 25, 104 S.Ct. at 909, 915 n. 25 (explaining that the limitation in *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974), of *Young* to prospective relief representing a refusal to apply the fiction in every conceivable circumstance).

*Coeur d’Alene*, 521 U.S. at 270.

Plaintiffs’ claims against Rainwater are barred by the Eleventh Amendment and do not fall within the *Ex parte Young* exception to immunity. Therefore, Rainwater’s Motion to Dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure should be granted accordingly.

### **III. PLAINTIFFS FAIL TO STATE A CLAIM UNDER THE FAIR HOUSING ACT**

#### **A. Standard for Motion to Dismiss Under Fed.R.Civ. P. 12(b)(6)**

On a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), this Court must dismiss a claim if the plaintiff fails to plead “enough facts to state a claim for relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550

U.S. 544, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007). The Court will construe the allegations and facts in the complaint in the light most favorable to the plaintiff and must grant the plaintiff the benefit of all inferences that can be derived from the facts alleged. *Barr v. Clinton*, 370 F.3d 1196, 1199 (D.C. Cir. 2004); *Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994). However, the Court need not accept asserted inferences or conclusory allegations that are unsupported by the facts set forth in the complaint. *Kowal*, 16 F.3d at 1276.

**B. Option 1 of The Road Home's Homeowner Assistance Program Provides Compensation Grants to Eligible Homeowners**

The Louisiana Road Home program is a grant program created by the Louisiana legislature, funded by Community Development Block Grants provided by the HUD, and operated by the LRA to provide compensation to those who sustained unreimbursed damage to their homes during Hurricanes Katrina and Rita. *Grobby v. Davis*, 575 F.Supp.2d 762 (E.D. La. 2008). In the wake of Hurricanes Katrina and Rita, Congress appropriated funds for disaster relief to be administered through HUD's Community Development Block Grant Program. HUD distributed some of these funds to Louisiana, which in turn created the Road Home program to distribute these funds as grants to homeowners in thirty-seven (37) parishes (counties)<sup>4</sup>. *See In re Katrina Canal Breaches Consolidated Litigation*, 2009 WL 546660, at \*1 (E.D. La. March 5, 2009). Road Home grants are designed to compensate homeowners up to \$150,000 for structural damage, exclusive of contents damages, cause by Hurricanes Katrina or Rita. *Id.*

In the Complaint, Plaintiffs Gloria Burns, Rhonda Dents, Almarie Ford, Daphne Jones and Edward Randolph all stipulate that they were homeowners as of August 29, 2005, and thus

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<sup>4</sup> The thirty-seven (37) parishes (counties) are: Acadia, Allen, Ascension, Assumption, Calcasieu, Cameron, Beauregard, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Landry, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebone, Vermillion, Vernon, Washington, West Baton Rouge and West Feliciana.

were eligible to receive compensation grants pursuant to the Road Home requirements; all five named Plaintiffs likewise chose Option 1, i.e., to remain in the homes. (Complaint, ¶¶ 13-17, 21.) Plaintiffs are contesting only one aspect of the Road Home Program—the formula used to calculate grants to homeowners who choose Option 1 under the homeowner’s program, entitled “Option 1: Stay” or, alternatively, “Option 1: Homeowner Staying in Home.” (Complaint, ¶ 21: Action Plan, Seventh Amendment, attached Ex. A, §§ 2.4.2, 2.4.4, pp. 8,10.) In particular, Plaintiffs allege that the formula, which requires using the lesser of either the pre-storm value of the home or the estimated cost to repair or replace the home, creates a discriminatory disparate impact for African American homeowners in Orleans Parish. (Complaint, ¶ 3; Ex. A, §2.4.4, p. 10)

In fact, the Road Home program at issue (Option 1) is not a housing program and in no way involves residential real estate transactions. Instead, the challenged Road Home program is solely a compensation program. (Kome Declaration, Rec. Doc. 22-2, ¶ 18.) (“As it developed the Road Home program, Louisiana ultimately chose to provide *compensation and incentive grants* to eligible homeowners . . .”) (emphasis added). In fact, as Kome testifies and attests, the LRA considered implementing a traditional housing rehabilitation and reconstruction program, but due to costs and technical requirements associated with a housing program, the LRA opted instead for a compensation and grant program. (Kome Declaration, Rec. Doc. 22-2, ¶ 16.)

The Road Home compensation program is fully explained and defined in the LRA’s Action Plan, Seventh Amendment, dated November 30, 2006, which is referred to by Plaintiffs in their Complaint. (Complaint, ¶ 44; Ex. A.) This Action Plan clearly and unequivocally designates the program as a compensation program. (Exhibit A.) Option 1 of compensation program does not provide housing or otherwise engage in residential real estate transactions. (Ex.



A, §2.2, p. 5.) Section 1.1 of the Action Plan outlines the goals of the Road Home Housing Programs, including to:

- Provide *compensation* to homeowners for damages to their homes related to Hurricane Katrina and Hurricane Rita

(Ex. A, §1.1, p. 3)(emphasis added). In summarizing the various programs, the Action Plan states:

The homeowner assistance activities consist of the following:

- Funds provided to homeowners as (i) *compensation* grants for hurricane damage to their home, without limitations with respect to income, and additional *compensation* in the form of affordable compensation loans for eligible homeowners (i.e., those whose household income are less than are [sic] equal to 80% of median income for the affected area) . . . Homeowners can elect to receive their assistance (i.e., as *compensation* for losses if they elect to retain their home . . .). After certain deductions, the homeowner has complete discretion as to the use of the *compensation grant* funds received, as allowable by State and Federal law, as they work through their personal disaster recovery situation.

(Ex. A, § 2.1, pp. 4-5)(emphasis added). This provision clearly provides that the compensation funds do not necessarily need to be spent on housing and/or housing repairs; instead, the homeowners have “complete discretion as to the use of the compensation grants.” (Ex. A, § 2.1, p.5; *see also* § 2.1, p.5, “The covenants do not require program funds to be used to meet these conditions.”)

The Action Plan also explains that the compensation grants are not designed to cover 100% of the rebuilding costs for each homeowner. (Ex. A, § 2.4.1, p. 8.) Likewise, the compensation grants are not annually funded entitlement programs, and thus cannot go over budget. (Ex. A, § 2.4.1, p. 8.)

Though it is the intent of the program that homeowners have sufficient resources to get back in to a home, not every homeowner is necessarily entitled to the maximum amount of financial assistance. In many cases, the Road Home will not provide 100% of the resources the homeowner needs to recover from the losses suffered as a result of Hurricane Rita or Hurricane Katrina. This is true for many reasons, such as the fact that assistance is capped at \$150,000, labor and material costs in Louisiana are very high, and assistance is reduced by any hazard insurance, flood insurance, FEMA benefits and other compensation payments received by the homeowner for the losses due to Hurricane Katrina and Hurricane Rita.

Note that Road Home is not an annually funded entitlement program and cannot go over budget. If costs exceed budgeted projections, grant assistance to homeowners may have to be reduced and the Program may be required to pro-rate remaining benefits for homeowners who have not received funds from the program.

(Ex. A, § 2.4.1, p. 8.)

The Action Plan also explains the formula under Option 1 of the homeowners assistance program:

**Figure 1- COMPENSATION GRANT FOR OPTION 1: STAY**

Equals the following up to \$150,000

Pre-Storm value\* (Minus) other Compensation [FEMA, Insurance, other funds](Minus) 30% Penalty for failure to have insurance if applicable

\*Note: If the Estimated Cost of Damage or Estimated Cost to Replace Home is less than the Pre-Store value, the Estimated Cost of Damage/Estimated Cost to Replace Home will be used instead of PSV in the calculation.

(Ex. A, § 2.4.4, p. 10.) In other words, the Action Plan presumes that the pre-storm value of the home will be the basis for the grant calculation, unless the estimated cost of damage or estimated cost to replace the home is less than the pre-storm value of the home, in which case the estimated cost of damage/ estimated cost to replace will be used as the basis for the formula. (Ex. A, §

2.4.4, p. 10.) Appendix 1 to the Action Plan provides examples of how hypothetical households might be assisted under Option 1 and how the formula would be applied. (Ex.A, Appendix 1, pp. 16-21.)

Further, Action Plan Amendment 14 dated May 17, 2007, clarifies the previous action plans to clearly and unequivocally designate the program as a compensation program. Indeed, the Introduction<sup>5</sup> states: *“These changes are being submitted to resolve HUD’s concern that Louisiana’s program did not comply with the requirements of a true compensation program.”* (Action Plan Amendment 14, Ex. B, § 1, p. 1.)(emphasis added). In other words, in case there was any doubt or confusion, the LRA clarified that its program was and is a “true compensation program.” (Ex. B, §1, p. 1.)

Although Amendment 14 does not substantively change the program, it adds provisions to clarify the intent of the LRA that the program be a true compensation program. For instance, § 2.4.2 adds the four types of benefits available for under Option 1, including:

1. Compensation grants—To cover uninsured, uncompensated damages incurred by the homeowner as a result of Hurricane Katrina or Hurricane Rita.
2. Elevation Assistance
  - Elevation Compensation for those homeowners who select Option 1 and whose property is subject to the latest available FEMA guidance for base flood elevations . . .;
- \* \* \*
3. Additional Compensation Grant—Funding of up to \$50,000 for homeowners with income at or below 80% of area median income.

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<sup>5</sup>The Introduction also explains that Amendment 14 “is to be considered current policy upon its publication” and supercedes all other Action Plans.

4. Mitigation Grants of up to \$7,500 may be available to complete other mitigating measures. Funding of this program is dependent on other available funding.

Finally, at the time the Plaintiffs received their compensation grants from the Road Home program, they each signed the Road Home Program Grant Agreement<sup>6</sup>. (Ex. C.) The Grant Agreement provides that the purpose of the grant is “to provide *compensation* for damages incurred by the Homeowner(s) due to Hurricanes Katrina in August 2005 and/or Rita in September 2005.” (Ex. C.)(emphasis added).

### **C. Plaintiffs’ Claims Under the Fair Housing Act**

In the Complaint, Plaintiffs characterize the Road Home program and the compensation grants awarded to homeowners under Option 1 as a “housing redevelopment program.” (Complaint, ¶¶ 1, 2, 42, 44, 45.) Again, as the action plans and Declaration of Jessie Handforth Kome clearly demonstrate, the homeowner assistance program at issue is not a housing program, does not provide housing to anyone, does not involve real estate transactions, and instead only awards compensation grants to homeowners. (Exs. A-C; Kome Declaration, Rec.Doc. 22-2, ¶18). As for Plaintiffs’ claims under the Fair Housing Act (FHA), they allege (1) Defendants “denied housing” to African American homeowners because of their race in violation of the Fair Housing Act, 42 U.S.C. § 3604(a); (2) Defendants discriminated against African American homeowners because of their race “in the availability of, and in the terms and conditions of, real estate-related

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<sup>6</sup>Plaintiffs also signed a waiver of rights and liability contained in the Grant Agreement. (Grant Agreements for Gloria Burns, Rhonda Dents, Almarie Ford, Daphne Jones and Edward Randolph, attached as Ex. C *in globo*.) The Grant Agreement was drafted and executed in Louisiana, and thus Louisiana law applies. The waiver in the Grant Agreement clearly, unequivocally and unambiguously provides that grant recipients will not “hold the State of Louisiana, United States or any other branch or agency of the state or federal government liable for their actions relating to this Grant.” (Ex.C.) Instead, recipients agree to participate and resolve their disputes through the resolution and appeal process provided by the Road Home program and Office of Community Development. (Ex. C.) Finally, the Grant Agreement provides if the homeowners attempt to take legal action, the State will have the right to recover attorneys’ fees and expenses. (Ex.C.) Therefore, the named Plaintiffs are barred from suing the State, its agents or agencies as they have waived their right to sue. (Ex. C.) See La. Civ. Code Ann. art. 2046.

transactions” in violation of the Fair Housing Act, 42 U.S.C. § 3605(a); and, (3) Defendants “failed to administer housing-related programs and activities in a manner that affirmatively furthers fair housing” in violation of the Fair Housing Act, 42 U.S.C. § 3608(d), (e)(5)<sup>7</sup>. (Complaint, ¶¶ 74-76.)

**D. The Fair Housing Act Does Not Apply to The Road Home Compensation Grant Program to Eligible Homeowners**

Section 3604(a) of the FHA provides that it shall be unlawful:

To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

Likewise, § 3605(a) of the FHA also provides:

It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

The issue of whether the FHA, and in particular §§ 3604(a) and 3605(a) of the FHA, applies to a compensation grant program falling under the auspices of HUD, seems to be one of first impression. Although HUD has funded other compensation programs using Community Development Block Grants (i.e., the compensation and incentive grants following September 11, 2001, and loan payments to homeowners in Grand Forks, North Dakota after flooding in 1997), no court has ever been called upon to determine whether plaintiffs can state a claim under the FHA for alleged disparate impact discrimination as a result of the formula used to determine the amount of compensation grants awarded to eligible individuals. (See Kome Declaration, Rec. Doc. 22-2, ¶ 17.) In addition, no Court has ever determined whether compensation grants

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<sup>7</sup>Sections 3608(d) and 3608(e)(5) apply exclusively to HUD’s duties under the FHA, and thus do not apply to Defendant Rainwater.

provided by a state to a homeowner has any effect on the “availability of housing” or is considered a “residential real estate transaction” under the FHA.

Generally, in order to state a claim under the FHA, “the alleged illegal actions must lead to discriminatory effects on the availability of housing.” *Ficken v. Golden*, 2005 WL 692019 at \*5 (D.D.C. March 24, 2005) (holding plaintiff failed to state a claim under FHA §§ 3604(a) or 3605(a) because defendants did not have the ability to refuse to sell or rent a dwelling and were not in the real estate-related business as contemplated by the FHA). This has been a basic and longstanding requirement of this and other courts. For instance, in *Clifton Terrace Associates, Ltd. v. United Technologies Corporation*, 929 F.2d 714, 719 (D.C. Cir. 1991), this Court held that by the plain terms of § 3604(a), the FHA reaches only “discrimination that adversely affects the availability of housing.” Therefore, it is fundamental that in order for the FHA to apply, the challenged conduct must impact the “availability of housing.”

Although the language of § 3604(a) seems all encompassing, its scope is not limitless. *Cox v. City of Dallas*, 430 F.3d 734, 740 (5<sup>th</sup> Cir. 2005), *cert. denied*, 547 U.S. 1130, 126 S.Ct. 2039, 164 L.Ed.2d 783 (2006). The *Cox* court noted that although the FHA is meant to have a broad reach, failing to enforce the clear language of the statute “pushes the FHA into a general anti-discrimination pose, creating rights for any discriminatory act which impacts property values....” *Cox*, 430 F.3d at 746. Instead, “while sweeping widely, the FHA does so in the *housing field* and remains a *housing statute*—the focus of congressional concern. That the corrosive bite of racial discrimination may soak into all facets of black lives cannot be gainsaid, but [the FHA] targets only *housing*.” *Cox*, 430 F.3d at 746 (emphasis added).

In fact, in *Cox*, the plaintiffs complained that the City of Dallas violated § 3604(a) because it allowed the construction of a dump near the plaintiffs’ homes, which made it more

difficult for the plaintiffs to sell their homes and lowered the property values of their homes. *Id.* The Fifth Circuit rejected the plaintiffs claims holding § 3604(a) affords no right of action to current homeowners claiming that the value or “habitability” of their property has decreased due to discrimination in the delivery of protective city services. *Cox*, 430 F.3d at 742-43. The court stated: “To affect the availability of housing within the meaning of the FHA, the discriminatory actions must have a direct impact on plaintiffs’ ability, as potential homebuyers or renters, to locate in a particular area or to secure housing.” *Cox*, 430 F.3d at 740, *citing Cox v. City of Dallas*, 2004 WL 370242 at \*6 (N.D. Tex. Feb. 24, 2004). Indeed, to recover under § 3604(a), the plaintiffs must prove that the defendant has made unavailable or denied them dwellings; section 3604(a) protects the right of individuals to live where they choose, it does not protect intangible interest in already-owned property, such as habitability or value. *Id.* Therefore, the Fifth Circuit held that because the plaintiffs were already homeowners and were not denied housing, the FHA did not apply to their claims. *Id.*

The *Cox* case is not an anomaly; courts have consistently held that not every act or conduct tangentially related to housing is actionable under the Fair Housing Act. *Jersey Heights Neighborhood Assn. v. Glendening*, 174 F.3d 180,192 (4<sup>th</sup> Cir. 1999)(holding the State’s decision in selecting a location for a new highway through predominately African-American neighborhood did not otherwise make housing unavailable); *see also Edwards v. Johnston County Health Dept.*, 885 F.2d 1215, 1221 (4<sup>th</sup> Cir. 1989)(holding the county’s actions in issuing permits for establishment of substandard housing for predominately non-white migrant farm workers did not make housing unavailable).

For instance, the court in *Jersey Heights* dismissed a plaintiff neighborhood association’s claim that the State of Maryland’s process and decision to build a new highway just south of its

borders had a disparate adverse impact on their African American community. *Jersey Heights*, 174 F.3d at 184-85. Among other things, the court reasoned that the process and eventual site selection was too remotely related to the housing interests protected by the FHA. *Jersey Heights*, 174 F.3d at 192. The court stated that situations involving racial steering by real estate agents provided a closer causal link between housing and a disputed action than the highway selection site process. *Id.* Likewise, the court also found that the highway site selection did not make housing “unavailable” and did not deny a dwelling to anyone. *Jersey Heights*, 174 F.3d 192-93. The Plaintiff neighborhood association, thus, did not state a claim under the Fair Housing Act. *Id.*

The Seventh Circuit reached the same result in the case of *Southend Neighborhood Improvement Assoc. v. St. Clair County*, 743 F.2d 1207, 1210 (7<sup>th</sup> Cir. 1984). The court considered plaintiff’s claim that the county’s discriminatory refusal to properly manage the properties it owned damaged their interests in neighboring properties. *Id.* The court noted plaintiff’s claim was “quite different from most of the practices that courts have deemed illegal under § 3604(a).” *Id.* The court held that since plaintiffs failed to allege that they had been hindered in an effort to “acquire a dwelling,” they did not state a claim under the FHA. Specifically, the court reasoned:

We hold that the County’s actions here could not have affected the availability of housing in a manner implicating Section 3604(a) of the Fair Housing Act. Section 3604(a) is designed to ensure that no one is denied the right to live where they choose for discriminatory reasons, but it does not protect the intangible interests in the already-owned property raised by the plaintiffs allegations.

*Southend*, 743 F.2d at 1210.

The Seventh Circuit revisited the issue in *Halprin v. The Prairie Single Family Homes of Dearborn Park Assoc.*, 388 F.3d 327 (7<sup>th</sup> Cir. 2004), in which the plaintiff, a Jewish homeowner,



filed suit against the homeowners' association and others claiming they harassed him because of his religion, by, among other things, writing an obscenity on and vandalizing his property. *Halprin*, 388 F.3d at 328. The Court noted that the plaintiffs were complaining not about being prevented from acquiring property, but about being harassed by other property owners in the same subdivision. *Halprin*, 388 F.3d at 329. The court held that the plaintiff failed to state a claim under § 3604(a) of the FHA, reasoning:

Title VII protects the job holder as well as the job applicant, so an employer who resorts to harassment to force an employee to quit is engaged in job discrimination within the meaning of the Act. The Fair Housing Act contains no hint either in its language or its legislative history of a concern with anything but access to housing. . . . Since the focus [of Congress] was on [minority's] exclusion, the problem of how they were treated when they were included, that is, when they were allowed to own or rent homes in such areas, was not at the forefront of congressional thinking.

*Halprin*, 388 F.3d at 329.

Finally, as these cases illustrate, discriminatory practices alleged by current homeowners who are plaintiffs are quite unlike the discriminatory practices in other cases allowed under the FHA-- for example, "racial steering," locking out of owners of one race but not another, mortgage redlining, insurance redlining, exclusionary zoning-- where the availability of housing for prospective owners or tenants is implicated. *See Cox*, 430 F.3d 734 at 741-42.

The same is true in the case at bar. In this case, the challenged Road Home compensation grants were only available to homeowners as of the date of Hurricane Katrina, August 29, 2005 and/or Hurricane Rita, September 24, 2005. In fact, each named Plaintiff owned their home at the time of Hurricane Katrina and continued to own their homes at the time of their application and award of compensation grants under the Road Home program. (Complaint, ¶¶ 13-17.) Thus, Paul Rainwater and/or the LRA did not deny Plaintiffs access to housing and Plaintiffs have not

in any way been hindered in acquiring a dwelling. Again, home ownership was a pre-requisite to participate in the Road Home program. (Exs. A, B.)

Further, Option 1 of the Road Home Program was not and is not a housing program in that it did not and does not place or assist citizens in housing; instead, it simply gave citizens compensation grants based on either the pre-store value of their homes or the cost to repair or rebuild their homes. (Exs. A, B.) Utilizing home values in the formula to determine the amount of grant awards is simply not enough to equate or convert Option 1 of the Road Home Program to a housing program. Further, the LRA acknowledged that the compensation grants would not be designed to provide 100% of the resources the homeowner may need to recover from the losses suffered as a result of the hurricanes. (Exs. A, B.) In addition, grant recipients are not required to use the Road Home compensation grant funds to repair their houses; instead, the homeowners are free to use the compensation grants in any way they choose. (Exs. A, B.) Therefore, Plaintiffs cannot assert that the lack of funding or their inability to receive larger grants denied them the ability to access their houses. In truth, the compensation grants did not guarantee any homeowner that they would be able to resume living in their house as a result of receiving the funds.

**E. Option 1 of the Homeowners Assistance Program Does Not Involve Residential Real Estate Transactions**

In addition, the challenged formula for grants under Option 1 of the Road Home program has nothing to do with “residential real estate-related transactions” as defined in § 3605(a) or HUD regulations interpreting § 3605(a), 24 CFR § 100.115, *et seq.* In fact, even if the Option 1 grants constitute “other financial assistance,” the compensation grants were not solely designated for “purchasing, constructing, improving, repairing, or maintaining a dwelling” and the grants were not “secured by residential real estate.” 24 CFR § 110.115(a)(1), (a)(2). Again,

compensation grant recipients were allowed to use the funds from the compensation grants in any way they chose, and were not required to use the funds to rebuild or repair their homes. (Exs. A, B.) In addition, Paul Rainwater, the LRA and/or the Road Home were not in the business of engaging in residential real estate, especially as it concerned Option 1 grants. Indeed, Plaintiffs have not alleged Rainwater, the LRA or the Road Home sold, brokered, or appraised residential real estate property. *See* 24 CFR § 100.115(b).

Likewise, the list of prohibited practices under § 3605(a) include such acts such as failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or financial assistance, application requirements, procedures or standard for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided to others because of race. 24 CFR § 100.120(b). Other prohibited practices include using different policies, practices or procedures in evaluating or determining creditworthiness or determining the type of loan or financial assistance, interest rate, duration or other term of the loan/ financial assistance because of race. 24 CFR § 100.130(b)(1), (b)(2). Plaintiffs have not alleged that Rainwater engaged in any of these prohibited practices. In fact, as these prohibited practices demonstrate, neither Rainwater, the LRA and/or the Road Home were engaged the type of activities considered and contemplated as being a part of residential real estate transactions under §3605(a). Instead, the formula for determining Option 1 compensation grants did not involve any real estate transactions. Thus, Plaintiffs fail to state a claim for relief under this section.

**F. Plaintiffs Fail to State a Claim Under the Fair Housing Act Because They Have Not Alleged Proper Comparators**

Finally, Plaintiffs have failed to state a claim under the FHA, not only because the FHA does not apply to a true compensation program for people who are already homeowners and

because the compensation program did not involve real estate-related transactions, but also because Plaintiffs failed to allege sufficient facts to maintain a discrimination claim under the FHA. Importantly, Plaintiffs have utterly failed to allege that they have treated differently than comparable or substantially similar white homeowners.<sup>8</sup> See e.g., *2922 Sherman Avenue Tenants' Assoc. v. District of Columbia*, 444 F.3d 673 (D.C. Cir. 2006); *Anderson v. Zubieta*, 180 F.3d 329, 342 (D.C. Cir. 1999)(holding plaintiffs in Title VII disparate impact case must demonstrate that they were treated less well than other employees who were *similarly situated*)(emphasis added). In other words, Plaintiffs failed to allege that they were treated differently than white homeowners with the same or substantially the same pre-storm value and/or estimated costs of damage for their homes. In fact, Plaintiffs do not contest that the formula at issue applied the same to all applicants having the same valuation of property, i.e., applicants who were similarly situated.

For instance, as a hypothetical, if a plaintiff's pre-storm value of his or her home was \$127,000 and estimated cost of damage to the home was \$212,730, in order to maintain a discrimination claim, plaintiffs must allege that a similarly situated white homeowner (i.e., a white homeowner with a pre-storm value of \$127,00 and/or an estimated cost of damage of \$212,730) was treated more favorably, presumably because of their race. Specifically in order to maintain a disparate impact discrimination claim under the FHA, plaintiffs must allege that a neutral policy caused African American homeowners to be treated less favorably than similarly situated white homeowners; again, however, the pre-storm value and/or the estimated cost of damage for both white and African American homeowners must be substantially the same in order to make a meaningful and accurate comparison.

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<sup>8</sup>Rainwater also adopts by reference HUD's argument on this issue. (HUD's Memorandum in Support of its Motion to Dismiss, Rec. Doc. 22, pp. 42-43.)

In this case, Plaintiffs have not and cannot allege that African American and white homeowners with substantially similar home values were treated differently or suffered a significantly discriminatory impact because of the application of the Option 1 formula. Instead, in a convoluted and strained argument, Plaintiffs allege that African American homeowners and white homeowners with the same square footage (but not the same home values) were treated differently. (Complaint, ¶¶ 53-60.) Plaintiffs argue that “comparable homes” (meaning homes with the same amount of square footage) have lower values in African American communities than in predominantly white communities. (Complaint, ¶ 53.) However, Paul Rainwater, the LRA and/or the Road Home are not to blame and cannot be held liable or at fault for different valuation of homes with the same square footage based on location; there are many reasons and factors which determine home values, none of which were developed or determined by Rainwater, the LRA or the Road Home and not all of which are discriminatory. However, that is beyond the scope of this lawsuit. Instead, in order to state a cognizable claim, Plaintiffs must allege that there was a disparate impact in the granting of compensation awards for African American homeowners as compared to white homeowners who owned substantially similar homes (meaning homes with substantially the same property value). Plaintiffs have utterly failed to allege this, and, therefore, their claims should be dismissed.

#### **IV. PLAINTIFFS HAVE NO CLAIM FOR REMEDIES UNDER THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

In Count Two of the their Complaint, Plaintiffs allege Defendants failed to administer the CDBG program in a manner that affirmatively furthers fair housing, in violation of Title I of the Housing and Community Development Act of 1974, 42 U.S.C. § 5304 (b)(2), (HCDA). Section 5304(b)(2) reads:

(b) Certification of enumerated criteria by grantee to Secretary

Any grant under section 5306 of this title shall be made only if the grantee certifies to the satisfaction of the Secretary that—

\* \* \*

(2) the grant will be conducted and administered in conformity with the Civil Rights Act of 1964 [42 U.S.C.A. § 2000a et seq.] and the Fair Housing Act [42 U.S.C.A. § 3601 et seq.] and the grantee will affirmatively further fair housing.

First, § 5304(b)(2) of the HCDA requires that a grantee make certifications that, among other things, the grant will be conducted in conformity with the Civil Rights Act and Fair Housing Act. Plaintiffs have not alleged that Paul Rainwater, the LRA or the Road Home failed to make these certifications. In fact, the LRA did comply with § 5304(b)(2) by making the certifications to the satisfaction of HUD in the action plans. (Kome Declaration, Rec. Doc. 22-2, ¶ 14.) (“Louisiana submitted its first action plan in early 2006 and made all required alternative certifications at that time, including the certification that the state would affirmatively further fair housing. . . . Louisiana later made the same certifications to obtain funds from the second and third appropriations.”) HUD deemed the LRA to be fully in compliance with § 5304(b)(2), and released the funds accordingly. In fact, neither the LRA nor any other state agency, entity or person involved with the grants at issue in this suit has never been cited or deemed in violation by HUD of these certifications. HUD has taken no adverse action toward the State, its agencies or employees, in connection with the CDBG funds.

In any event, the sole remedies for breach of § 5304(b)(2) are contained in 42 U.S.C. § 5311. Section 5311 of the HCDA provides that if the Secretary of HUD finds a recipient of assistance failed to comply with, among other things, § 5304(b)(2), then the Secretary has the authority to terminate, reduce, or limit the availability of the grant payments. 42 U.S.C. § 5311 (a). In addition, the Secretary may also refer the matter to the Attorney General of the United States with a recommendation that civil action be instituted. 42 U.S.C. § 5311(b)(1). Thereafter,

the Attorney General may bring a civil action in any United States district court having venue, including an action to recover the amount of grant previously distributed and/or for injunctive relief. 42 U.S.C. § 5311(b)(2). However, these are the sole remedies for violation of the HCDA. In other words, the HCDA does not provide for a private cause of action for Plaintiffs to seek remedies against Paul Rainwater, the LRA or the Road Home for violations under this chapter.

The court in *People's Housing Development Corporation v. City of Poughkeepsie*, 425 F.Supp. 482 (S.D. N.Y. 1976), considered the issue of whether the HCDA allows a private cause of action and reached the conclusion that the HCDA did not allow such a private right of action. In *People's*, the plaintiff, a not-for-profit corporation, sued a municipality under the HCDA for cancelling its contract to establish and administer a program of acquisition, rehabilitation, and home ownership grants concerning properties within the municipality. *People's*, 425 F.Supp. at 484. The court dismissed the suit holding the HCDA did not allow plaintiff to maintain a private claim. The court noted that there is nothing in either the legislative history of the HCDA, nor in the language of legislation itself which would militate towards a finding of congressional intent to supply anyone, whether a principal or secondary beneficiary, a private cause of action under the Act. *People's*, 425 F.Supp. at 484. Instead, the plain language of the statute itself speaks only of the procedures and remedies which the Secretary of HUD may pursue. *Id.* Therefore, the court presumes that Congress did to some degree consider the enforcement of terms and conditions of the Act, and obviously felt that the administrative agency should have the major, if not exclusive, responsibility for compliance under the Act. *Id.* The Court concluded that the case came into the directive of *National Railroad Passenger Corp.v. National Ass'n of Railroad Passengers*, 414 U.S. 453, 94 S.Ct. 690, 38 L.Ed.2d 646 (1974):

[W]hen legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to

subsume other remedies. ‘When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode.’ *Botany Worsted Mills v. United States*, 278 U.S. 282, 289, 49 S.Ct. 129, 132, 73 L.Ed. 379 (1929).

*People’s*, 425 F. Supp. at 484.

The court also reasoned that when Congress vests enforcement responsibilities in the government agency with expertise in the particular area, agency enforcement should be regarded as exclusive. In addition, the court noted that it disfavors the fragmented approaches to the problems in question which may result when the lower federal courts, lacking the agency’s expertise, respond to private actions. *People’s*, 425 F.Supp. at 492. Ultimately, the court concluded that HUD has a wide variety of sanctions to invoke against a recipient of Act-generated funds, and there was no basis for the court to assume that the agency would not apply them in an appropriate case. *People’s*, 425 F.Supp. at 493. The Court noted:

[T]he federal grants which sponsor these urban redevelopment programs are based on detailed and comprehensive plans, which, when fully implemented over the entire course of the program may entail substantial alterations . . . . To view, as courts responding to individual cases must, each alleged incident of discrimination in its own isolated context could lead to faulty conclusions. Because HUD has studied and approved each community’s long-term plan, it should be better equipped than the courts to determine whether the alteration or termination of a single segment of that plan will hinder realization of its long-range goals as set by the comprehensive plan. Again, because the agency is well acquainted with said plan, it should have a high degree of competence in discerning whether, within the context of the overall program, an individual incident represents the existence of . . . discrimination.

*People’s*, 425 F.Supp. at 493. Therefore, the court concluded that the HCDA did not endow plaintiff with a private remedy. *See also Payne v. United States Department of Housing and Urban Development*, 551 F.Supp. 1113 (S.D. Ohio 1982)(holding a plaintiff’s sole remedy is through the procedures outlined in 42 U.S.C. § 5311).



Indeed, the Supreme Court has been especially reluctant to imply private rights in cases enacted under Congress' spending powers. See *Guilford County Community Action Program, Inc. v. Wilson*, 348 F.Supp.2d 548, 554-55 (M.D.N.C. 2004). In *Pennhurst State School & Hosp. v. Halderman*, *supra*, the court explained that "[i]n legislation enacted pursuant to the spending power, the typical remedy for state noncompliance with federally imposed conditions is not a private cause of action for noncompliance but rather action by the Federal Government to terminate funds to the State." *Pennhurst State School & Hosp. v. Halderman*, 451 U.S. 1, 28, 101 S.Ct. 1531, 1545, 67 L.Ed.2d 694 (1981). Since *Pennhurst*, the Court has remained reluctant to find that spending legislation gave a private right of action. *Guilford*, 348 F.Supp.2d at 555. In fact, no court has found that the HCDA affords a private cause of action; instead, the exclusive remedy for violation of the HCDA's provision rests with the statutory remedies contained in 42 U.S.C. § 5311.

This case presents no reason to abrogate from the generally accepted premise that there is no private cause of action for violations of the HCDA. In fact, the same analysis and conclusions are true for this suit as was the *People's* case. See also *Chan v. City of New York*, 1 F.3d 96, 101-102 (2<sup>nd</sup> Cir. 1993) (holding the HCDA did not create a private right of action to the plaintiffs and, further, stating, "The mere fact that plaintiffs are intended beneficiaries of the statute does not mean that Congress intended the statute to grant them a private right of action to secure that benefit.")

Indeed, it has been over thirty years since the *People's* case announced a prohibition of private suits under the HCDA, and Congress has done nothing to amend the HCDA to allow for a private cause of action. Again, there is nothing in the legislative history or HCDA itself which would indicate in any way that Congress intended private citizens to pursue claims individually

under the Act. *See Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 100 S.Ct. 242, 62 L.Ed.2d 146 (1979). Finally, as the *People's* court aptly noted, HUD is in the superior position to enforce the provisions of the HCDA, as HUD has hands-on, intimate knowledge of the grants and Action Plans at issue in this case. Therefore, because there is no private cause of action under the HCDA, Plaintiffs' claims against Rainwater for violating the HCDA must be dismissed.

## **V. THIS CASE SHOULD BE TRANSFERRED TO LOUISIANA**

Pursuant to 28 U.S.C. § 1404(a), Defendant seeks transfer of this matter to the United States District Court for the Middle District of Louisiana, located in Baton Rouge, Louisiana, or alternatively, the United States District Court for the Eastern District of Louisiana, located in New Orleans, Louisiana. The Court can consider this issue at any time, including before ruling on Rainwater's motions to dismiss. *Affab v. Gonzalez*, 597 F.Supp.2d 76 (D.D.C. 2009), *citing Sinochem Int'l Co., Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 127 S.Ct. 1184, 167 L.Ed.2d 15 (2007).

### **A. Standard for Change of Venue Under 28 U.S.C. § 1404(a)**

Section 1404(a) of Title 28 of the U.S. Code permits the Court to transfer this case to "any other district or division where it might have been brought" for the "convenience of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a); *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 253, 102 S.Ct. 252, 70 L.Ed.2d 419 (1981). In analyzing a motion to transfer, a court must first determine whether the action could have been brought in the district to which transfer is sought. *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29, 108 S.Ct. 2239, 101 L.Ed.2d 22 (1988), *citing Van Dusen v. Barrack*, 84 S.Ct. 805, 376 U.S. 612, 613, 11 L.Ed.2d 945 (1964). The Court must conduct a case-by-case analysis, balancing the private interests of the parties and

public interests such as efficiency and fairness. *Id.* at 29; *Atfab v. Gonzalez*, 597 F.Supp.2d 76 (D.D.C. 2009).

In conducting its interests analysis, when, as here, the plaintiffs' choice of venue appears to relate solely on the federal agency defendant's (HUD) presence in Washington D.C., a court should carefully consider whether venue is proper. *Cameron v. Thornburgh*, 983 F.2d 253, 256 (D.C. Cir. 1993) (holding "[c]ourts in this circuit must examine challenges to . . . venue carefully to guard against the danger that a plaintiff might manufacture venue in the District of Columbia. By naming high government officials as defendants, a plaintiff could bring a suit here that properly should be pursued elsewhere."). This standard of close scrutiny has resulted in courts in the District of Columbia invoking their transfer authority under § 1404(a) and transferring cases to a district having a *closer connection* to the parties' dispute. *See Al-Ahmed v. Chertoff*, 564 F.Supp.2d 16, 19 (D.D.C. 2008)("[W]hen the only real connection [the] lawsuit has to the District of Columbia is that a federal agency headquartered here is charged with generally regulating and overseeing the [administrative] process, venue is not appropriate in the District of Columbia.").

**B. The Middle District of Louisiana is a More Convenient and Appropriate Venue for This Suit**

This case should be transferred pursuant to 28 U.S.C. §1404 to the Middle District of Louisiana. The LRA is domiciled by statute and located in Parish of East Baton Rouge, located within the United States District Court for the Middle District of Louisiana ("Middle District"). La. Rev. Stat. Ann. § 49:220.4. Defendant Paul Rainwater's office and residence is in Baton Rouge, Louisiana. Further, most, if not all, of LRA's witnesses and documents are located in Baton Rouge, Louisiana, in the Middle District. The challenged formula was designed in Baton

Rouge. Of the five named Plaintiffs, one currently resides in Baton Rouge, Louisiana. (Complaint, ¶ 13.)

The only link between this action and the District of Columbia is that the offices of co-defendant, HUD, are located in the District of Columbia, along with the offices for Plaintiffs' lead counsel. *There are no other ties to this District.* The events giving rise to Plaintiffs' Complaint, such as the processing of their Road Home grant applications, the creation of the formula used in awarding the Road Home grants, and the disbursing and calculating of funds relative to the Plaintiffs' grant applications, all occurred in the State of Louisiana, principally in Baton Rouge, Louisiana, located in the Middle District. The Middle District is a far more appropriate forum for this case than the District of Columbia, and the interests of justice support transfer at this initial stage of this action.

**C. This Action Could Have Been Brought in the Middle District of Louisiana**

This case is governed by the general venue statute, 28 U.S.C. § 1391, which establishes default rules for venue that apply to federal lawsuits where underlying statutes do not specify venue rules. Under § 1391, there are three possible bases for venue for claims against federal government officials and/or or agencies. They include: (1) where a defendant in the action resides; (2) the district where a substantial part of the events (or omissions) giving rise to the claim occurred; or, (3) where "the plaintiff resides, if no real property is involved in the action." *See* 28 U.S.C. § 1391(e).

As a threshold matter, under § 1391, Plaintiffs clearly could have brought this case in the Middle District or the Eastern District of Louisiana. Defendant Paul Rainwater and the LRA reside and are domiciled in Baton Rouge, Louisiana, in the Middle District of Louisiana. Second, a substantial part, if not all, of the events giving rise to the Plaintiffs' claims occurred in the

Middle District of Louisiana at the offices of the LRA. The LRA was created by Louisiana government and statutory law. The challenged LRA action plan and formula were created in Baton Rouge, Louisiana. The Road Home program was created and implemented in Louisiana. Plaintiffs' Road Home grant applications were processed in Baton Rouge, Louisiana, in the Middle District.<sup>9</sup> The funds were distributed by the LRA in Baton Rouge, Louisiana, in the Middle District. The approval and/or denials and/or appeal decisions for Plaintiff's Road Home grant applications were made in Baton Rouge, Louisiana, in the Middle District. In sum, the Road Home grant program and the adjudication of Plaintiffs' Road Home grant applications at issue in this action all took place in Baton Rouge, Louisiana within the Middle District. Finally, one of five named Plaintiffs the plaintiffs reside in the Parish of Baton Rouge, located in the Middle District. No Plaintiffs reside outside the State of Louisiana, or specifically in the District of Columbia. Accordingly, under 28 U.S.C. § 1391 venue is proper in the Middle District of Louisiana, or alternatively in the Eastern District of Louisiana.

**D. Private Interests Favor Transfer of This Case to the Middle District of Louisiana**

Private interests favor transfer of this case to the Middle District of Louisiana. Such interest factors typically include: (1) the parties' choice of forum; (2) where the claim arose; (3) the convenience of the parties; (4) the convenience of the witnesses, particularly if important witnesses may be unavailable to give live testimony in one of the trial districts; and, (5) the ease of access to sources of proof." *Atfab, supra*, 597 F.Supp.2d at 80, *citing, Montgomery v. STG Int'l, Inc.*, 532 F.Supp.2d 29, 32-33 (D.D.C. 2008). Each of these factors weighs in favor of transferring this case to the Middle District, or alternatively, the Eastern District of Louisiana.

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<sup>9</sup>The properties for which the grants were sought are all located in the Parish of Orleans, within the Eastern District of Louisiana.

In this case, Plaintiffs' choice of forum deserves little deference. Although courts generally accord deference to a plaintiff's choice of forum, such deference is weakened when the forum chosen is not the plaintiff's home forum and most of the relevant events occurred elsewhere. *Id. citing Hunter v. Johanns*, 517 F.Supp.2d 340, 344 (D.D.C. 2007); *see also Kafack v. Primerica Life Ins. Co.*, 934 F.Supp. 3, 6-7 (D.D.C. 1996) (granting transfer when "the material events that constitute the factual predicate for the plaintiff's claims occurred" in the transferee district); *See also, Islamic Republic of Iran v. Boeing Co.*, 477 F.Supp. 142, 144 (D.D.C. 1979) (holding plaintiff's choice of forum is accorded "diminished consideration" where the forum "has no meaningful ties to the controversy and no particular interest in the parties or subject matter."). In this case, none of the named Plaintiffs reside in the District of Columbia. In fact, all five Plaintiffs reside in the State of Louisiana, either the Middle District or Eastern District of Louisiana.<sup>10</sup> Defendant Rainwater and the LRA are located in the Middle District. Most, if not all, of the relevant events concerning Plaintiffs' Road Home grant applications and grant awards took place in Baton Rouge, Louisiana. The only "residential" link in this litigation to the District of Columbia is the office location of HUD and Plaintiffs' counsel. This is insufficient to support litigation of this case in the District of Columbia.

Additionally, the Middle District has strong connections to Plaintiffs' case. Primarily, Plaintiffs' claim arose from alleged acts occurring in the Middle District. The LRA was created and is located in the Middle District, the Road Home grant program was implemented in the Middle District and Plaintiffs' Road Home applications were processed in the Middle District.

Finally, the Middle District (or the Eastern District of Louisiana) is more convenient than the District of Columbia. Again, the Plaintiffs are located in Louisiana. Defendant, the LRA, and

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<sup>10</sup>Plaintiff Gloria Burns resides in Baton Rouge, Louisiana; Plaintiff Rhonda Dents resides in New Orleans, Louisiana; Plaintiff Almarie Ford resides in New Orleans, Louisiana; Plaintiff Daphne Jones resides in New Orleans, Louisiana; Plaintiff Edward Randolph resides in Luling, Louisiana. (See Complaint, ¶¶13-17.)

its employees are all located in Baton Rouge, Louisiana. Documents and materials concerning Plaintiff's Road Home grant applications are located in Baton Rouge, Louisiana, in the Middle District.

**E. Public Interests Favor Transfer to the Middle District of Louisiana**

Public interests also favor transfer of this case to the Middle District, or alternatively, the Eastern District of Louisiana. Public interest considerations include: the transferee district's familiarity with governing laws, relative congestion of the calendars of the potential transferee and transferor courts, and local interests in deciding local controversies at home. *Atfab, supra*. 597 F.Supp.2d at 83, *citing Liban v. Churchey Group II, L.L.C.*, 305 F.Supp.2d 136, 143 (D.D.C. 2004). The Middle District of Louisiana is presumed to be equally familiar with the federal laws governing the Plaintiffs' claims. *Atfab*, 597 F.Supp.2d at 83. There is no evidence Plaintiffs' case would proceed more quickly in the District of Columbia. Finally, the Middle District has a stronger local interest in resolving this matter.<sup>11</sup> Plaintiffs are challenging the LRA's formula and action plan, both created in Louisiana; the LRA's alleged decisions affected all Louisiana citizens - no citizens of the District of Columbia were involved; the controversy stems from the impact of Hurricanes Katrina and Rita on the State of Louisiana; and the controversy relates to the valuation of properties *all* of which are located in the State of Louisiana. Simply stated, there are no significant ties to the District of Columbia and this District has no local interest in resolving this case. *See Abusadeh v. Chertoff*, 2007 WL 2111036, at \*8 (D.D.C., July 23, 2007) (“[T]here is a local interest in having localized controversies decided at home.”) The case

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<sup>11</sup>To determine whether a controversy is local in nature, courts can consider a “wide variety” of factors, including, but not limited to, where the challenged decision was made, whether the decision directly affected citizens of the transferee state; the location of the controversy; whether the issue involved federal constitutional issues or local property laws; whether the controversy involved state law issues, whether the controversy has national significance and whether there was personal involvement by a District of Columbia official. *Atfab, supra* at 84, *citing Otay Mesa Property L.P. v U.S. Department of Interior*, 584 F.Supp.2d 122, 126 (D.D.C. 2008).

involves *Louisiana* residents and parties. It involves *Louisiana* Recovery Authority and the *Louisiana* Road Home Program. It involves *Louisiana* properties. It is a Louisiana controversy that would be better resolved by a court in the State of Louisiana. Accordingly, Defendant's motion to transfer this action to the United States District Court for the Middle District of Louisiana (or alternatively, the United States District Court for the Eastern District of Louisiana) pursuant to 28 U.S.C. § 1404(a) should be granted.

Respectfully submitted,

/s/ Renee Culotta

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**CERTIFICATE OF SERVICE**

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

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

*Federal Register / Volume 71, Number 29*

**Department of Defense Appropriations Act, 2006**

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

**Louisiana Recovery Authority**

**Further Changes and Clarifications  
to Road Home Program (Amendment No. 7)**

**November 30th, 2006**



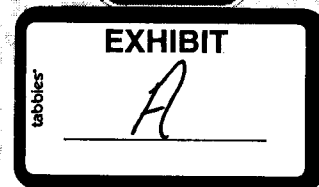
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## 1. Introduction

Hurricane Katrina hit the State of Louisiana on August 29, 2005, and Rita slammed into the state on September 24, 2005. They were the second and third Category 5 hurricanes of the 2005 hurricane season. The storms were deadly and costly to communities throughout the Gulf and particularly destructive to Louisiana. More than 1,100 persons lost their lives in Louisiana; approximately 18,000 businesses were destroyed; roads, schools, public facilities, medical services were washed away; and thousands of people were forced to relocate.

The storms destroyed or severely damaged an unprecedented number of properties.

- 123,000 homes were destroyed or suffered major damage.
- 82,000 rental properties were destroyed or suffered major damaged.
- Housing repair costs are estimated at \$32 billion. Some, but not all, of this was insured.
- Of the rental and owner occupied units that are now uninhabitable, a substantial portion were occupied by low income households.

The US Congress has appropriated funds for recovery in two public laws. The first supplemental appropriation, PL 109-148 provided \$11.5 billion to the states of Mississippi, Louisiana, Alabama, Florida and Texas through the U.S. Department of Housing and Urban Development's Community Development Block Grant (CDBG) Program. Louisiana received \$6.2 billion of those funds. The second supplemental appropriation, PL 109-234, provided an additional \$4.2 billion in CDBG for Louisiana.

Governor Kathleen Babineaux Blanco has prioritized housing redevelopment, infrastructure rehabilitation, and economic development as the primary uses of the two supplemental appropriations. The supplemental CDBG recovery funds are available to the State subject to HUD approval of Action Plans which describe how the funds will be used. The Louisiana Recovery Authority (LRA) has been charged by the Governor and Louisiana Legislature with statutory responsibility for developing policy and the required action plans. The Louisiana Office of Community Development, the agency that administers the State's annual CDBG Program, will administer the supplemental CDBG recovery program.

This Action Plan amendment describes *The Road Home* Housing Programs, consisting of four sets of programs for the restoration of Louisiana's housing stock and its communities: *Homeowner Assistance Program*, *Workforce and Affordable Rental Housing Programs*, *Homeless Housing Programs*, and *Developer Incentives*. The purpose of this Action Plan Amendment is to clarify and update the housing program descriptions previously published in an Action Plan Amendment on April 6, 2006. This amendment replaces pages 1-17 and Appendix 2 of the *Road Home* Housing Plan. Future Action Plan amendments will describe other aspects of the State's supplemental CDBG recovery program.

To promote sound short- and long-term recovery planning at the state and local levels that impact land use decisions that reflect the need for responsible flood plain management and growth, the State, through the LRA, is leading community planning efforts in the most affected parishes. Dubbed *Louisiana Speaks*, this effort is a multifaceted planning process to develop a sustainable, long-term vision for South Louisiana in the wake of the destruction caused by Hurricanes Katrina and Rita. The plans developed locally through *Louisiana Speaks* will be supported by CDBG allocations. The redevelopment of communities will be guided by the plans derived through *Louisiana Speaks* and other local planning efforts. Homeowners receiving assistance through the *Road Home* program will undoubtedly factor these plans into their personal decisions about whether to remain in their home or relocate, but assistance to individual homeowners under this program will not be dependent on the adoption of such plans by state or local authorities.

### **1.1 Goals of *The Road Home* Housing Programs**

*The Road Home* Housing Programs have several goals. They will:

- Provide compensation to homeowners for damages to their homes related to Hurricane Katrina and Hurricane Rita;
- Help restore pre-storm value to homeowners who want to return to Louisiana;
- Provide affordable rental housing opportunities for displaced residents; and
- Provide housing for the return of critical workforce.

*The Road Home* Housing Programs will achieve their goals by ensuring, among other things, that:

- Neighborhoods are rebuilt pursuant to locally driven plans that emphasize safety and reduce risks in rebuilding;
- Homes are rebuilt in ways that ensure safer and smarter construction and meet the State's codes and the latest available flood elevation guidance from FEMA
- Neighborhoods are rebuilt in a manner that promotes mixed income communities; and
- Households with special needs such as the elderly and those with disabilities are provided housing opportunities

### **1.2 Basis for Recommendations**

*The Road Home* Housing Programs have been designed based on the best available information on housing needs, housing costs, potential public funding and the ability of the programs to leverage private resources. This Action Plan Amendment describes *The Road Home* Housing Programs to be supported with Community Development Block Grant funds appropriated under PL 109-148. A separate Action Plan Amendment will be prepared to describe the programs to be supported with funds appropriated under PL 109-234

The CDBG funds directed to workforce and affordable rental housing will supplement an estimated \$1.7 billion in private equity investments derived from Low Income Housing Tax Credits allotted to Louisiana through the federal Gulf Opportunity Zone legislation. In addition, the State will supplement assistance to owner-occupants with an estimated \$1.17 billion in housing-related Hazard Mitigation Grant Program funds.

The damage from Hurricanes Katrina and Rita disproportionately impacted families with low to moderate incomes. HUD therefore requires that at least fifty percent of the supplemental CDBG funds allocated to Louisiana for recovery be invested in programs that directly support those families. Accordingly the great majority of funds will go to low- and moderate-income families.

If federal agencies require changes to the proposed Action Plan Amendment or program costs exceed projections and available funding, Louisiana will be required to modify this proposed Action Plan Amendment.

## **2. Assistance to Homeowners<sup>1</sup>**

### **2.1 Overview of the Homeowner Assistance Program**

In the aftermath of Hurricanes Katrina and Rita, an estimated 123,000 owner-occupied homes were destroyed or suffered major damage, according to FEMA. In response to this unprecedented disaster, Louisiana will use \$8,080,000,000 of the supplemental CDBG funds and an additional \$1.17 billion of funds from the FEMA Hazard Mitigation Grant program for the *The Road Home* programs.

The overarching purpose of *The Road Home* is to rebuild Louisiana's impacted communities. Devastated communities will be blighted by abandoned homes, clouded land titles, and disinvestments if a large portion of the financial assistance is not provided to homeowners as compensation for their losses and as incentives for homeowners to remain in the affected areas. Therefore, the most comprehensive financial and technical assistance packages will be made available to those pre-Katrina and Rita homeowners who make the effort and take the risks to move back to play a part in rebuilding Louisiana. The homeowner assistance activities consist of the following:

- Funds provided to homeowners as (i) compensation grants for hurricane damage to their home, without limitations with respect to income, and additional compensation in the form of affordable compensation loans for eligible homeowners (i.e., those whose household income are less than are equal to 80% of median income for the affected area); or (ii) payment for the acquisition of their homes by the State ("Buyout/Relocate" or "Sale" Programs). Homeowners

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<sup>1</sup> For the purpose of this Action Plan amendment homeowner and owner occupant are used interchangeably.

can elect how to receive their assistance (i.e., as compensation for losses if they elect to retain their home or as payment for the sale of their homes to the State). After certain deductions, the homeowner has complete discretion as to the use of compensation grant funds received, as allowable by State and Federal law, as they work through their personal disaster recovery situation.

- The state will require that a homeowner who elects to keep his/her home allows covenants be placed on it. The covenants ensure that the homeowner is returning to the neighborhood and helping to rebuild the community by requiring owner occupancy for three years. The covenants also help ensure that homes are better able to withstand storms by requiring that the home to be occupied meets Uniform Construction Code or local codes if amended, is elevated if required to do so to meet the FEMA's latest flood elevation guidance, and that the home is insured against hazards. The covenants do not require program funds to be used to meet these conditions.
- To ensure that the *Road Home*'s goals are achieved and the covenants satisfied, the State has worked with lenders to gain their consent to subordinate their mortgage liens to the covenants. A homeowner should expect that the first mortgage lender, in exchange for the subordination of the mortgage lien, will ask that payments received by the homeowner be deposited in a disbursement account for the benefit of the borrower. The homeowner and the first mortgage lender will be able to jointly manage the funds in the account.
- A homeowner without a mortgage who elects not to sell a home to the State will also sign the covenants to ensure that the program requirements are met. Payments may be made to such homeowners by the State in full or in installments to ensure compliance with the covenants.
- A homeowner may elect to use funds received to reinvest in the State and relocate to another home within the State. Alternatively, an owner may choose to no longer remain a homeowner within the State by either moving outside of the State or remaining in the State and becoming a renter. The payment provided will be less than the payment available if the owner elects to remain and reinvest in the State.
- An elderly homeowner (persons 65 or older as of December 31, 2005) will not be penalized for electing to no longer remain a homeowner within the State.

## **2.2 Eligibility for Homeowner Assistance**

To be eligible for the Homeowner Assistance Program:

- The homeowner must be able to prove that he or she owned and occupied the property as a primary residence at the time of the Katrina/Rita disasters, prior to August 29, 2005;



- The owner must have registered for FEMA Individual Assistance and FEMA must have categorized the home as having been “destroyed” or having suffered “major” damage. In certain cases, owners may not have been able to register with FEMA or an owner may have registered with FEMA but the FEMA records do not reflect their registration. These homeowners may still be eligible for assistance if the damage to their home meets the FEMA damage classification as destroyed or suffering major damage as a result of the storm and verified by the State through alternative means.
- The home must be in a single-unit or double-unit structure to apply to the Homeowner Assistance Program for compensation. An owner-occupant of a double-unit structure may apply to the Homeowner Assistance Program. The full double-unit structure will serve as the basis for calculation of assistance up to the program cap of \$150,000.
- The owner-occupant landlord is eligible for funding under both the Homeowner Assistance Program and the Small Rental Repair Program. An owner- occupant of a three- or four-unit structure must first submit an application through the Small Rental Repair Program. The homeowner’s compensation will be a pro-rated amount of the total structure with compensation available up to \$150,000 for the owner occupied unit.

Applicants must meet all of the above requirements to receive assistance. Homeowners that believe they have suffered major or severe damage, but did not qualify for FEMA assistance will be able to appeal their eligibility for *The Road Home*. Homeowners who believe they will be eligible for the program are encouraged to apply with *The Road Home* program at [www.road2la.org](http://www.road2la.org) or by calling 1-888-ROAD-2-LA.

During the process of reviewing applications to *The Road Home*, the LRA in collaboration with OCD will make available information about the preferences of homeowners to retain their homes or relocate so the choices can inform local planning processes. In areas where a high proportion of homeowners are choosing not to remain in an area, state or local authorities may limit the use of assistance only to purchase of properties.

### **2.3 Requirements for Receiving *Road Home* Homeowner Assistance**

To accomplish the State’s goal to resurrect damaged communities, the State proposes to encourage investment in Louisiana. The homeowner will be required to demonstrate his or her commitment to the State by signing legally binding agreements and covenants to ensure that the *Road Home* Housing Program goals are met. The program agreements and commitments include, but are not limited to, assurances that:

- An occupied home meets the legal requirements under the State Uniform Construction Code,<sup>2</sup> complies with local zoning codes, and if located in a special flood hazard zone, complies with the latest available FEMA guidance for base flood elevations, unless exceptions are granted by the LRA based on reasonable alternatives where safety is not minimized;<sup>3</sup>
- If staying in the state, a home will remain an owner-occupied primary residence for at least three years after final receipt of funds from *Road Home* (original owner can sell to a buyer who assumes this responsibility);
- If staying in the state and the homeowner also receives an affordable compensation loan, the owner must retain the home as the primary residence for five years after final receipt of funds from *Road Home* (owner does not have option of buyer assuming this responsibility).;
- A home will be covered by a residential hazard insurance for three years if receiving only the compensation grant and five years if receiving the additional affordable compensation loan;
- A home must remain covered by flood insurance if the home was previously flooded and located in a special hazard flood zone;
- Claims for unpaid and outstanding insurance payments and other reimbursements that may duplicate program benefits will be subrogated back to the *Road Home*.

Homeowners making application to the program must be willing to:

- Sign a release so that information required to approve the application can be verified by *Road Home*;
- Agree to verification of their ownership status, the amount of disaster related damage to the home, and its pre-storm value;
- Swear to the accuracy and completeness of all information provided to the Program under penalty of law.

While homeowners are not required by the *Road Home* to clear their properties prior to a sale to the program, they are encouraged to contact their local government to obtain clearance assistance from the Army Corp of Engineers. Similarly, homeowners whose homes were flood damaged and who carried flood insurance are urged to contact their insurance agent to obtain information about eligibility for clearance through the Increased Cost of Compliance (ICC) benefits available under their insurance policy.

Homeowners that fail to meet all of the program's requirements may not receive benefits or may be required to repay all or some compensation received back to the *Road Home* program.

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<sup>2</sup> A number of communities have not yet adopted or implemented the State Uniform Construction Code. Pursuant to the State's commitment to rebuild safer and stronger communities, homeowner assistance provided by *The Road Home* will be contingent upon local enforcement of and individual compliance with all legal requirements under the code.

<sup>3</sup> Federal and state law may require homes in historic districts to meet additional standards.

## **2.4 Amounts and Forms of Homeowner Assistance**

### **2.4.1 Maximum Assistance**

The maximum financial assistance from all Program resources for owner occupants is up to \$150,000. The proposed ceiling assumes that estimates of likely demand for assistance derived from HUD, FEMA and SBA data are accurate.

Though it is the intent of the program that homeowners have sufficient resources to get back in to a home, not every homeowner is necessarily entitled to the maximum amount of financial assistance. In many cases the *Road Home* will not provide 100% of the resources the homeowner needs to recover from the losses suffered as result of Hurricane Rita or Hurricane Katrina. This is true for many reasons, such as the fact that assistance is capped at \$150,000, labor and material costs in Louisiana are very high, and assistance is reduced by any hazard insurance, flood insurance, FEMA benefits and other compensation payments received by the homeowner for the losses due to Hurricane Katrina and Hurricane Rita.<sup>4</sup>

Note that *Road Home* is not an annually funded entitlement program and cannot go over budget. If costs exceed budgeted projections, grant assistance to homeowners may have to be reduced and the Program may be required to pro-rate remaining benefits for homeowners who have not received funds from the program.

### **2.4.2 Financial Assistance for Homeowners - Overview**

The Program will provide compensation for three types of homeowners:

- Homeowners that want to stay in their homes (referred to as "Option 1: Stay")
- Homeowners that want to sell the home they occupied as of the date of the storms to the state, but remain homeowners in Louisiana (referred to as "Option 2: Relocate")
- Homeowners that want to sell the home they occupied as of the date of the storms to the state, and either move out of the state or remain in the state but as a renter (referred to as "Option 3: Sell").

Compensation is provided in exchange for acceptance of legal agreements described in Section 2.3. Homeowners that want to stay in their home or relocate will be eligible for compensation calculated in three tiers:

- compensation grant to cover uninsured, uncompensated damages by the homeowner as a result of Hurricane Katrina or Hurricane Rita.
- mitigation allowances; and<sup>5</sup>

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<sup>4</sup> The reduction of *Road Home* benefits by the amount of compensation received from other sources is a requirement imposed by federal funders to eliminate duplication of benefits.

<sup>5</sup> Mitigation grants are generally available to pay for costs of elevation in order to meet Advisory Base Flood Elevations and for post repair mitigation measures. Funding of up to \$30,000 is available for the elevation allowance (additional funds may be available with affordable loan) and up to \$7,500 is available to complete other mitigation measures.

- additional affordable compensation loan of up to \$50,000 for homeowners with income at or below 80% of area median income which will be forgiven over a period of 5 years.

The calculation of compensation payments takes into account the cost of replacement housing, whether or not the home was more than 51% damaged, the value of a home before the storm, and other payments received by the homeowner as compensation for losses. The compensation grant for homeowners who did not carry hazard insurance and homeowners who were living in the flood zone and did not carry flood insurance will be reduced by thirty percent.

### **2.4.3. Factors Used to Calculate Benefits**

#### **Estimated Cost of Damage or Estimated Cost to Replace Home**

It is the State's Policy that participants in the *Road Home* Homeowner Assistance Program deserve a fair and independent estimate of the cost of damages from the storms regardless of the cause of the damage. Therefore, the *Road Home* program staff will provide evaluations that identify the costs of damage to the home or the estimated cost to replace the home. The *Road Home* Program reserves the right to use damage estimates prepared by others such as FEMA, the Small Business Administration, and insurance companies where those estimates are deemed reliable.

- If the home is less than 51% damaged, the *Estimated Cost of Damage* will be used in determining homeowner compensation.
- If the home is more than 51% damaged, the *Estimated Cost to Replace the home* will be used in determining the homeowner compensation.
- A determination of the percentage damage will be calculated using the following calculation:

$$[\text{Estimated Cost of Damage (divided by) Estimated Cost to Replace}] * 100 = \% \text{ Damage}$$

#### **Pre-Storm Value**

To accurately calculate compensation, the *Road Home* Program must base assistance on a fair and equitable pre-storm value of the home. The pre-storm value is based on one of four methods:

- A third party appraisal conducted before the storm but after January 1, 2000;
- An Automatic Valuation Method (AVM);
- A Broker's Opinion of Value (BOV); or
- In absence of any of the above, a third party appraisal conducted by the *Road Home*.

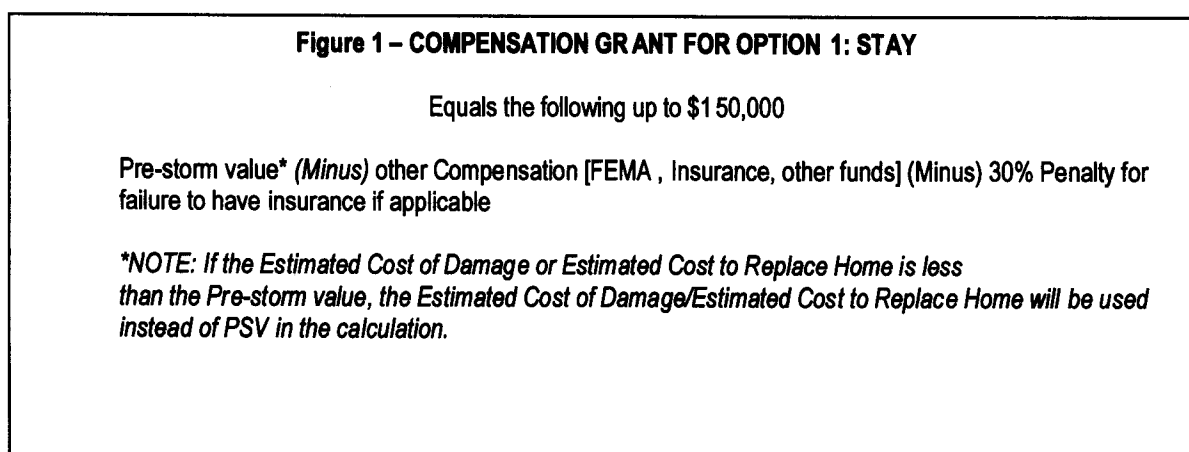
#### **Duplication of Benefits**

Pursuant to federal statute and HUD requirement for the CDBG program, homeowner assistance may not duplicate any benefits from any source, received by the homeowner as a result of damages incurred during Hurricanes Katrina and Rita. Therefore,

compensation from other sources such as FEMA and insurance payments for damages must be deducted from *Road Home* compensation. Legal fees associated with obtaining insurance benefits will not be deducted as duplication of benefits. Homeowner must be able to adequately document these costs.

#### **2.4.4 Option 1: Homeowner Staying in Home**

**Figure 1** provides a summary of the basic calculations that the *Road Home* program will use to determine compensation benefits. **Appendix 2** provides examples of how hypothetical households might be assisted.



#### **2.4.5 Option 2: Relocate**

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

**Figure 2 – COMPENSATION GRANT FOR OPTION 2: RELOCATE**

**If home is less than 51% damaged**  
 Equals the following up to \$150,000

Pre-storm value\* (Minus) other Compensation [FEMA, Insurance, other funds] (Minus) 30% Penalty for failure to have insurance if applicable

*\*NOTE: If the Estimated Cost of Damage is less than the Pre-storm value, the Estimated Cost of Damage will be used instead of PSV for the calculation*

**If home is equal to or greater than 51% damaged**  
 Equals the following up to \$150,000

Pre-storm Value (Minus) other Compensation [FEMA, Insurance, other funds] (Minus) 30% Penalty for failure to have insurance if applicable

**2.4.6 Option 3: Sell**

Homeowners may elect to forego homeownership in the State. They may choose to sell their property to the State and relocate outside of Louisiana or remain in the State but choose not to purchase a home. Depending on the percentage damage to the home, the State will compensate the homeowner based on 60% of the home's pre-storm value or the Estimated Cost of Damage. For elderly households, calculations for compensation will be based on **100%** Pre-storm Value and will follow the calculations in Figure 2 above. **Figure 3** provides a summary of the basic calculations that the *Road Home* program will use to determine compensation benefits. **Appendix 2** provides examples of how hypothetical households might be assisted.

**Figure 3 – COMPENSATION GRANT FOR OPTION 3: SELL**

**If home is less than 51% damaged,**  
 Equals the following up to \$150,000

60% of Pre-storm Value\* (Minus) other Compensation [FEMA, Insurance, other funds] (Minus) 30% Penalty for failure to have insurance if applicable

*\*NOTE: If the Estimated Cost of Damage is less than 60% of Pre-storm value, the Estimated Cost of Damage will be used instead of PSV for the calculation*

**If home is equal to or greater than 51% damaged,**  
 Equals the following up to \$150,000

60% of Pre-storm Value (Minus) other Compensation [FEMA, Insurance, other funds] (Minus) 30% Penalty for failure to have insurance if applicable

## **2.5 Redevelopment of Purchased Property**

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

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

- *Develop* properties by packaging the properties for redevelopment, offering them for redevelopment through competitive bids, and overseeing the redevelopment of the property consistent with local and regional plans that have been approved by the LRA and in adherence to the policy guidelines for rebuilding, recovery, and land use management set forth by the LRA. Any proceeds derived through the sale of these properties would be program income and would be used to fund eligible CDBG activities.
- *Transferring* properties from the state to a local redevelopment agency upon approval by the LRA of redevelopment plans that takes into account local land use guidelines. The local agency would package the properties, offer them up for redevelopment through competitive bids, and oversee the redevelopment of the property. Any proceeds derived through the sale of these properties would be considered as program income and will be used for eligible CDBG activities.
- *Maintaining* properties as permanent green space as a result of a decision by local authorities by transferring the properties to an appropriate local land management agency which will operate and maintain them.

The LRA has endorsed the findings and recommendations of the American Institute of Architects and the American Planning Association planning conference held on behalf of the LRA in November 2005. Consistent with those recommendations, for properties that are acquired by the *Road Home* Homeowner Assistance Program or other land assembled by the State for redevelopment, the State will insure that 25% of the properties are used for affordable housing according to HUD guidelines for the HOME program.

Whether properties are managed by a state agency or local redevelopment authority, the properties acquired by the *Road Home* Program or other land assembly programs must retain affordability requirements to be defined by the *Road Home* Corporation after their transfer. The State will monitor the property to assure the requirements are met and maintained.

The LRA recognizes the potential for a significant return on investment in property redevelopment, a scenario demonstrated with research in a recent report of the Gerson Lehrman Group. The LRA is committed to reinvesting these proceeds in the comprehensive community redevelopment activities already supported by supplemental CDBG funds allocated through state programs, including *The Road Home*. The priorities of recycled funds shall include housing restoration, affordable housing for homeowners and renters, infrastructure enhancements, and economic development activities designed to help recreate strong communities which are closely tied to transit, jobs, and public services.

## **2.6 Treatment of Homeowners with Special Circumstances**

Assignability: After the launch of *The Road Home*, the State will prepare policies that allow a homeowner to sell his or her home on the open market and to assign rights to Program assistance to the new buyer. Assigned grants will require the new buyer to meet the same requirements the original homeowner would have been required to meet to qualify and receive assistance under the Program.

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

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

Owner-Occupants Who Have Already Sold Their Principal Residence: Some homeowners may have chosen to sell their homes prior to launch of the *Road Home* Homeowner Assistance Program on August 29, 2006. It is the goal of *The Road Home* to ensure that damaged properties qualifying under the Homeowner Assistance Program do not remain blighted and undeveloped. If the development goals of the Program are met for the damaged property, and a homeowner can demonstrate that he or she remains in a loss situation after selling the damaged property to another party, such homeowner may receive assistance under the Program to compensate for remaining losses in accordance with the Program requirements.

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



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

Appeals: Any homeowner has the right to appeal decisions made by the *Road Home* program including eligibility decisions and calculation amounts used to determine funding assistance awards. To appeal, call 1-800-Road2LA (1-800-762-3252).

## **2.7 Accounts for Receipt of Funds**

The state will employ a closing agent to disburse compensation to homeowners who elect to stay in their storm damaged home. The closing agent will ensure that legal agreements are signed and covenants recorded. Compensation payments may be paid to the homeowner by either (1) payment to a two-party joint account controlled by the homeowner and his or her first mortgage lender, when a first mortgage lender is involved; or (2) on a periodic basis as evidence of compliance with Program requirements is provided to the State by the homeowner or others, where a first mortgage lender is not involved. The Program administrator or its designated agent will coordinate the execution of documents by the homeowner as necessary or required by the Program to receive the payments, and to ensure that the Program requirements are met.

If the homeowner elects to sell his or her property to the State, the funds may be paid to a closing agent (i.e., such as a title insurance company or a licensed Louisiana attorney acting as title agent or closing agent for the transaction), who will disburse the funds under separate instruction from the State and in accordance with a closing statement or other disbursement statement approved by the State, to ensure that existing mortgage and other liens are paid and satisfied at or after closing with respect to the property purchased by the State, and to ensure that Program requirements are satisfied with respect to such homeowner.

## **2.8 Homeowner Assistance Centers – Process for Receiving Assistance**

*The Road Home's* Call Center is available to assist anyone with questions regarding *The Road Home* program, including general questions about the program as well as specific questions on the application process.

Homeowners interested in participating in *The Road Home* program must complete an application online, submit a hard copy to a housing assistance center, or complete an application over the phone by calling 1-888-Road 2 LA (1-888-762-3252). To apply online, visit [www.road2LA.org](http://www.road2LA.org). TTY callers use 711 relay or 800.846.5277.

Once an application has been received, *The Road Home* team will review the application. The homeowner will then receive a letter in the mail with detailed instructions on how to call to schedule an appointment.

Appointments held at *The Road Home's* Housing Assistance Centers will help homeowners navigate through a maze of obstacles such as negotiating insurance settlements, dealing with mortgage issues, understanding the implications of new flood maps, and dealing with building contractors as they rebuild. An owner will have to make decisions on whether to stay in their homes, buyout and relocate in Louisiana, or to sell their home and move out of State. While some homeowners can overcome these barriers themselves, many homeowners will need expert, trustworthy advisors, in addition to receiving financial assistance.

*The Road Home* program's Housing Assistance Centers are designed to respond to these needs. These Centers serve as the places where eligible homeowners with scheduled appointments can speak one-on-one with trained housing advisors who will guide homeowners through the process and help them make informed decisions about their options. During a homeowner's initial appointment, housing advisors will collect records about ownership, flood and homeowners' insurance, and recovery estimates. This information and any other personal information will be stored at a secured data center and will be protected for privacy.

Advisors will provide information that helps a homeowner:

- Evaluate his or her personal disaster recovery situation;
- Deal with mortgage and refinancing issues;
- Select professional services providers such as home inspectors, architects, surveyors (for replacement homes) to design and prepare for repairing or replacing homes;
- Make informed decisions about selection of repair contractors, homebuilders and manufactured housing companies; and
- Obtain advice about fair housing and protections against housing discrimination.

The Housing Assistance Centers will help mitigate the potential for misunderstanding and abuse by providing standardized, structured, and guided relationships between homeowners and service providers. In addition, *The Road Home* program will provide a Professional Rebuild Registry that connects homeowners with professional service providers and building contractors.

## APPENDIX 1 SAMPLE BENEFIT CALCULATIONS

### Example 1

A couple owns a home with a pre-storm value of \$100,000. Their home was severely damaged and the *Road Home* evaluation determined that the percent damage was equal to or greater than 51%. The *Road Home* determined that the estimated cost to replace their home is \$140,000. The home is in a flood plain and the local municipality determined the home was 60% damaged and therefore requires elevation to meet the Advisory Base Flood Elevations (ABFEs). They received \$30,000 from their insurance company and \$10,000 in FEMA Assistance. Their mortgage runs for another 8 years and the monthly payments are modest. What are their options under the *Road Home* housing plan?

### Homeowner Summary

|                                 |                 |
|---------------------------------|-----------------|
| Pre-storm Value:                | \$100,000       |
| Estimated Cost to Replace Home: | \$140,000       |
| Prior Compensation              |                 |
| Insurance:                      | \$30,000        |
| FEMA Assistance:                | <u>\$10,000</u> |
|                                 | \$40,000        |

|  |          |
|--|----------|
| Estimated elevation cost based on <i>Road Home</i> evaluation: | \$60,000 |
| NFIP Increased Cost of Compliance (ICC) Funding to elevate:    | \$30,000 |

### What if the couple wants to stay in their house?

#### Option 1: Stay

|  |                   |
|--|-------------------|
| Uncompensated replacement costs: (\$140,000-\$40,000)        | = \$100,000       |
| Uncompensated loss: (\$100,000-\$40,000)                     | = \$60,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$60,000</b> |
| Uncompensated elevation cost (\$60,000-\$30,000)             | = \$30,000        |
| <b>Elevation allowance is above up to \$30,000 cap</b>       | <b>= \$30,000</b> |
| <b>TOTAL ASSISTANCE</b>                                      | <b>= \$90,000</b> |

### What if the couple wants to sell their home and buy another in the State?

#### Option 2: Relocate

|  |  |
|--|--|
| Uncompensated loss: (\$100,000-\$40,000)                     | = \$60,000                               |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$60,000</b>                        |
| Allowance to elevate to meet ABFE (\$30,000 cap)             | = Not required (new home<br>not in ABFE) |
| <b>TOTAL ASSISTANCE</b>                                      | <b>= \$60,000</b>                        |

The full \$60,000 may not go directly to the couple since they will have to pay off the mortgage and any other liens on their home at the time of settlement. They may be eligible for additional mitigation assistance if their new home requires elevation or individual mitigation measures.

### What if the couple wants to sell their home and move outside of Louisiana?

#### Option 3: Sell

|  |                   |
|--|-------------------|
| 60% of Pre-Storm Value: (\$100,000 X .60)                    | = \$60,000        |
| Minus Other Compensation                                     | = \$40,000        |
| Uncompensated loss: (\$60,000-\$40,000)                      | = \$20,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

**TOTAL ASSISTANCE = \$20,000**

**What if the couple is in their seventies and chooses Option 3: Sell?**

**Option 3: Sell**

Since the couple was 65 years of age or older as of December 31, 2005, the couple is exempt from the penalty associated with Option 3: Sell.

|  |                   |
|--|-------------------|
| Uncompensated loss: (\$100,000-\$40,000)                     | = \$60,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$60,000</b> |

**TOTAL ASSISTANCE = \$60,000**

**What if the couple did not carry hazard or flood insurance?**

**Option 1: Stay**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$60,000        |
| Minus 30% insurance penalty        | = (\$18,000)      |
| <b>Compensation grant</b>          | <b>= \$42,000</b> |

**Elevation allowance to meet ABFE = \$30,000**

**TOTAL ASSISTANCE = \$72,000**

**Option 2: Relocate**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$60,000        |
| Minus 30% insurance penalty        | = (\$18,000)      |
| <b>Compensation grant</b>          | <b>= \$42,000</b> |

Allowance to elevate to meet ABFE (\$30,000 cap) = Not required (new home not in ABFE)

**TOTAL ASSISTANCE = \$42,000**

**Option 3: Sell**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$20,000        |
| Minus 30% insurance penalty        | = (\$6,000)       |
| <b>Compensation grant</b>          | <b>= \$14,000</b> |

**TOTAL ASSISTANCE = \$14,000**

**What if the couple was insured and their household income is at or below 80% Area Median Income (AMI)?**

**Option 1: Stay**

|   |             |
|---|-------------|
| Uncompensated replacement costs: (\$140,000-\$40,000) | = \$100,000 |
| Uncompensated loss: (\$100,000-\$40,000)              | = \$60,000  |

**Compensation grant is lesser of above up to \$150,000 = \$60,000**

Uncompensated elevation cost (\$60,000-\$30,000) = \$30,000  
**Elevation allowance is above up to \$30,000 cap = \$30,000**

Estimated Cost to Replace Home = \$140,000  
 Minus Compensation Grant = (\$60,000)  
 Minus Other Compensation = (\$40,000)  
**Affordable Compensation Loan up to \$50,000 cap = \$40,000**

**TOTAL ASSISTANCE = \$130,000**

**Option 2: Relocate**

Uncompensated loss: (\$100,000-\$40,000) = \$60,000  
**Compensation grant is lesser of above up to \$150,000 = \$60,000**

Allowance to elevate to meet ABFE (\$30,000 cap) = Not required (new home not in ABFE)

Estimated Cost to Replace Home = \$140,000  
 Minus Compensation Grant = (\$60,000)  
 Minus Other Compensation = (\$40,000)  
**Affordable Compensation Loan (up to \$50,000 cap) = \$40,000**

**TOTAL ASSISTANCE = \$100,000**

**Option 3: Sell**

60% of Pre-Storm Value: (\$100,000 X .60) = \$60,000  
 Minus Other Compensation = \$40,000  
 Uncompensated loss: (\$60,000-\$40,000) = \$20,000  
**Compensation grant is lesser of above up to \$150,000 = \$20,000**

**TOTAL ASSISTANCE = \$20,000**

**Example 2**

A family bought their home 15 years ago. The home has appreciated in value and the family has upgraded their insurance policy over the years though not enough to pay for all the replacement costs from the damages that were incurred. The *Road Home* evaluation determined that the estimated cost to replace the home is \$110,000 and the estimated cost of damage is \$40,000. Based on the following calculation, the *Road Home* determined that the percent damage was less than 51%:

$$(\$40,000/\$110,000) * 100 = 36\% \text{ damage}$$

The pre-storm value is \$100,000. The family's insurance policy paid for \$20,000 in repair costs. The home is not in an area that requires elevation to meet ABFEs.

**Homeowner Summary**

|                                 |           |
|---------------------------------|-----------|
| Pre-storm Value:                | \$100,000 |
| Estimated Cost of Damage:       | \$40,000  |
| Estimated Cost to Replace Home: | \$110,000 |

**Prior Compensation**

|                 |             |
|-----------------|-------------|
| Insurance:      | \$20,000    |
| FEMA Assistance | <u>\$ 0</u> |
|                 | \$20,000    |

Allowance to elevate home to meet ABFEs: = \$0 (home not in ABFE)

**What if the family wants to stay in their house?****Option 1: Stay**

|  |                   |
|--|-------------------|
| Uncompensated damage costs: (\$40,000-\$20,000)              | = \$20,000        |
| Uncompensated loss: (\$100,000-\$20,000)                     | = \$80,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

Allowance to elevate to meet ABFE (\$30,000 cap) = Not eligible (home not in ABFE)

**TOTAL ASSISTANCE = \$20,000**

**What if the family wants to sell their home and buy another in the State?****Option 2: Relocate**

|  |                   |
|--|-------------------|
| Uncompensated damage costs: (\$40,000-\$20,000)              | = \$20,000        |
| Uncompensated loss: (\$100,000-\$20,000)                     | = \$80,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

Allowance to elevate to meet ABFE (\$30,000 cap) = Not required (new home not in ABFE)

**TOTAL ASSISTANCE = \$20,000**

Couple 2 will not necessarily receive the full \$20,000 since they will have to pay off the mortgage and any other liens on their home at the time of settlement. They may be eligible for additional mitigation assistance if their new home requires elevation.

**What if the family wants to sell their home and move outside of Louisiana?****Option 3: Sell**

|  |                   |
|--|-------------------|
| Uncompensated damage costs: (\$40,000-\$20,000)              | = \$20,000        |
| 60% of Pre-Storm Value: (\$100,000 X .60)                    | = \$60,000        |
| Minus Other Compensation                                     | = (\$20,000)      |
| Uncompensated loss: (\$60,000-\$20,000)                      | = \$40,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

**TOTAL ASSISTANCE = \$20,000**

**What if a member of the family is elderly and the family chooses Option 3: Sell?****Option 3: Sell**

Since one of the owner-occupants was 65 years of age or older as of December 31, 2005, the family is exempt from the penalty associated with **Option 3: Sell**.

|  |                   |
|--|-------------------|
| Uncompensated damage costs: (\$40,000-\$20,000)              | = \$20,000        |
| Uncompensated loss: (\$100,000-\$20,000)                     | = \$80,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$20,000</b> |
|-------------------------|-------------------|

**What if the family did not carry hazard insurance?****Option 1: Stay**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$20,000        |
| Minus 30% insurance penalty        | = (\$6,000)       |
| <b>Compensation grant</b>          | <b>= \$14,000</b> |

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$14,000</b> |
|-------------------------|-------------------|

**Option 2: Relocate**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$20,000        |
| Minus 30% insurance penalty        | = (\$6,000)       |
| <b>Compensation grant</b>          | <b>= \$14,000</b> |

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$14,000</b> |
|-------------------------|-------------------|

**Option 3: Sell**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$20,000        |
| Minus 30% insurance penalty        | = (\$6,000)       |
| <b>Compensation grant</b>          | <b>= \$14,000</b> |

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$14,000</b> |
|-------------------------|-------------------|

**What if the family is insured and their household income is at or below 80% Area Median Income (AMI)?****Option 1: Stay**

|  |                   |
|--|-------------------|
| Uncompensated damage costs: (\$40,000-\$20,000)              | = \$20,000        |
| Uncompensated loss: (\$100,000-\$20,000)                     | = \$80,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

|  |                |
|--|----------------|
| Allowance to elevate to meet ABFE (\$30,000 cap) | = Not eligible |
|--|----------------|

|  |              |
|--|--------------|
| Estimated Cost of Damage                                 | = \$40,000   |
| Minus Compensation Grant                                 | = (\$20,000) |
| Minus Other Compensation                                 | = (\$20,000) |
| <b>Affordable Compensation Loan (up to \$50,000 cap)</b> | <b>= \$0</b> |

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$20,000</b> |
|-------------------------|-------------------|

**Option 2: Relocate**

|  |                   |
|--|-------------------|
| Uncompensated damage costs: (\$40,000-\$20,000)              | = \$20,000        |
| Uncompensated loss: (\$100,000-\$20,000)                     | = \$80,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

|  |  |
|--|--|
| Allowance to elevate to meet ABFE (\$30,000 cap)         | = Not required (new home<br>not in ABFE) |
| Estimated Cost to Replace Home*                          | = \$110,000                              |
| Minus Compensation Grant                                 | = (\$20,000)                             |
| Minus Other Compensation                                 | = (\$20,000)                             |
| <b>Affordable Compensation Loan (up to \$50,000 cap)</b> | <b>= \$50,000</b>                        |
| <b>TOTAL ASSISTANCE</b>                                  | <b>= \$70,000</b>                        |

\*Note: The Affordable Compensation Loan calculation for homeowners choosing Option 2: Relocate is based on the Estimated Cost to Replace Home.

**Option 3: Sell**

|  |                   |
|--|-------------------|
| Uncompensated damage costs: (\$40,000-\$20,000)              | = \$20,000        |
| 60% of Pre-Storm Value: (\$100,000 X .60)                    | = \$60,000        |
| Minus Other Compensation                                     | = (\$20,000)      |
| Uncompensated loss: (\$60,000-\$20,000)                      | = \$40,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |
| <b>TOTAL ASSISTANCE</b>                                      | <b>= \$20,000</b> |



## **APPENDIX 2**

### **Non-Housing Clarifications for the Action Plan**

#### **Infrastructure Programs**

This section clarifies the use of funds under the Local Government Emergency Infrastructure Program, funded at the level of \$395 million. Projects to be considered for funding in this category may include funds for permanent improvements for public transportation systems including improvements to the existing right of way and purchase of replacement of storm damaged equipment.

#### **Planning Activities**

Section 7 of the *Road Home* Plan (Amendment 1) replace the wording:

“With this amendment, the State is requesting \$9.5 million of which \$0 was requested in the first action plan.”

to reflect purpose of funding by inserting the following statement:

“With this amendment, the State is requesting \$9.5 million to sponsor planning activities to be carried out by the LRA, OCD, and other local organizations designated for this purpose.”

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

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

*Federal Register / Volume 71, Number 29*

**Department of Defense Appropriations Act, 2006**

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

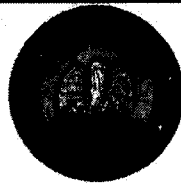
**Louisiana Recovery Authority**

**Action Plan Amendment 14 (First Allocation) – Road Home  
Homeowner Compensation Plan**

**Original Submission: May 7<sup>th</sup>, 2007**

**Revised: May 11<sup>th</sup>, 2007**

**May 14<sup>th</sup>, 2007**



**Kathleen Babineaux Blanco  
Governor**

**Mitch Landrieu  
Lieutenant Governor**

**Jerry Luke LeBlanc  
Commissioner of Administration**

**Dr. Norman Francis  
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**EXHIBIT**

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## **1. Introduction**

This Action Plan Amendment describes *The Road Home* Homeowner Assistance Program. The purpose of this Action Plan Amendment is to clarify and implement the most recent policy guidance by the LRA in response to HUD's request for changes in the current Homeowner Assistance policy. These changes are being submitted to resolve HUD's concern that Louisiana's program did not comply with the requirements of a true compensation program. This Amendment replaces program descriptions previously published in Action Plan Amendment 1, the Action Plan Amendment titled 'Substantial Clarifications to the Road Home' and Action Plan Amendment 7 entitled 'Further Road Home Clarifications.' This Amendment replaces Sections 1.1 through Section 2 of the *Road Home* Housing Plan and is to be considered current policy upon its publication.

### **1.1 Goals of *The Road Home* Housing Programs**

*The Road Home* Housing Programs have several goals. They will:

- Provide compensation to homeowners for damages to their homes related to Hurricane Katrina and Hurricane Rita;
- Help restore pre-storm value to homeowners who want to return to Louisiana;
- Provide affordable rental housing opportunities for displaced residents; and
- Provide housing for the return of critical workforce.

*The Road Home* Housing Programs will achieve their goals by encouraging, among other things, that:

- Neighborhoods are rebuilt pursuant to locally driven plans that emphasize safety and reduce risks in rebuilding;
- Homes are rebuilt in ways that ensure safer and smarter construction and meet the State's codes and the latest available flood elevation guidance from FEMA
- Neighborhoods are rebuilt in a manner that promotes mixed income communities; and
- Households with special needs such as the elderly and those with disabilities are provided housing opportunities

### **1.2 Basis for Recommendations**

*The Road Home* Housing Programs have been designed based on the best available information on housing needs, housing costs, potential public funding and the ability of the programs to leverage private resources. This Action Plan Amendment describes *The Road Home* Housing Programs to be supported with Community Development Block Grant funds appropriated under PL 109-148. A separate Action Plan Amendment

will be prepared to describe the programs to be supported with funds appropriated under PL 109-234

The CDBG funds directed to workforce and affordable rental housing will supplement an estimated \$1.7 billion in private equity investments derived from Low Income Housing Tax Credits allotted to Louisiana through the federal Gulf Opportunity Zone legislation. In addition, the State will supplement assistance to owner-occupants with an estimated \$1.147 billion in housing-related Hazard Mitigation Grant Program funds to the extent feasible according FEMA rules and regulations.

The damage from Hurricanes Katrina and Rita disproportionately impacted families with low to moderate incomes. HUD therefore requires that at least fifty percent of the supplemental CDBG funds allocated to Louisiana for recovery be invested in programs that directly support those families. It is anticipated that the majority of funds will go to low- and moderate-income families.

If federal agencies require changes to the proposed Action Plan Amendment or program costs exceed projections and available funding, Louisiana will be required to modify this proposed Action Plan Amendment.

## **2. Assistance to Homeowners<sup>1</sup>**

### **2.1 Overview of the Homeowner Assistance Program**

In the aftermath of Hurricanes Katrina and Rita, an estimated 123,000 owner-occupied homes were destroyed or suffered major damage, according to FEMA. In response to this unprecedented disaster, Louisiana will use \$8,080,000,000 of the supplemental CDBG funds and an additional \$1.147 billion of funds from the FEMA Hazard Mitigation Grant program for the *The Road Home* programs to the extent feasible according FEMA rules and regulations.

The overarching purpose of *The Road Home* is to restore Louisiana's impacted communities. Devastated communities will be blighted by abandoned homes, clouded land titles, and disinvestments if a large portion of the financial assistance is not provided to homeowners as compensation for their losses and as incentives for homeowners to remain in the affected areas. Therefore, the most comprehensive financial and technical assistance packages will be made available to those pre-Katrina and Rita homeowners who make the effort and take the risks to move back and re-occupy housing in Louisiana. The homeowner assistance activities consist of the following:

- Funds provided to homeowners as (i) compensation grants for hurricane damage to their home, without limitations with respect to income, and additional

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<sup>1</sup> For the purpose of this Action Plan amendment homeowner and owner occupant are used interchangeably.

compensation in the form of compensation grants for eligible homeowners (i.e., those whose household income are less than or equal to 80% of median income for the affected area); or (ii) payment for the acquisition of their homes by the State ("Buyout/Relocate" or "Sell" Programs). Homeowners can elect how to receive their assistance (i.e., as compensation for losses if they elect to retain their home or as payment for the sale of their homes to the State). After certain deductions, the homeowner has complete discretion as to the use of compensation grant funds received, as allowable by State and Federal law, as they work through their personal disaster recovery situation.

- The State will require that a homeowner who elects to keep his/her home will sign a grant agreement and accompanying covenants that promote the homeowner's return to the neighborhood and help to re-occupy housing in Louisiana by requiring that the home be owner-occupied within three years of receiving their compensation. The covenants also help ensure that the home is insured against hazards. The covenants do not require program funds to be used to meet these conditions. The covenants will be signed by the persons disclosed by the grant applicant and through confirmation process described below as having an ownership interest.
- A homeowner may elect to sell their damaged home to the State and relocate as an owner-occupant to another home within the State. Alternatively, an owner may choose to no longer remain a homeowner within the State by either moving outside of the State or remaining in the State and becoming a renter. The payment provided in the latter situation will be less than the payment available if the owner elects to remain and reinvest in a home within the State.
- An elderly homeowner (persons 65 or older as of December 31, 2005) and military personnel, including the Coast Guard, who have been required to move out of state through Permanent Change of Station (PCS) orders will not be penalized for electing to no longer remain a homeowner within the State.

## **2.2 Eligibility for Homeowner Assistance**

To be eligible for the Homeowner Assistance Program:

- The homeowner must be able to prove that he or she owned and occupied the property as a primary residence at the time of the Katrina/Rita disasters, prior to August 29, 2005. The homeowner must be able to prove that he/she had an ownership interest, direct or indirect<sup>2</sup>, in whole or indivision, in the property at that time. Evidence of a homestead exemption for the property indicating the homeowner's ownership interest and the parish property tax rolls, combined with

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<sup>2</sup> "Indirect" ownership includes the rights of (i) an heir/legatee of a deceased ancestor in title in the absence of a judgment of possession, (ii) a beneficiary of an estate planning trust or similar instrument, and (iii) other categories as determined by the Office of Community Development.

the affidavit of the grant recipient attesting to his/her interest, may be acceptable forms of proof for homeowners choosing Option 1. Other proof will be used when a homestead exemption/tax rolls are not available or do not satisfy the requirements;

- The owner must have registered for FEMA Individual Assistance and FEMA must have categorized the home as having been “destroyed” or having suffered “major” damage. In certain cases, owners may not have been able to register with FEMA or an owner may have registered with FEMA but the FEMA records do not reflect their registration. These homeowners may still be eligible for assistance if the damage to their home meets the FEMA damage classification as destroyed or suffering major damage as a result of the storm and verified by the State through alternative means. Owners with properties who are not eligible based on their FEMA inspection, but whose damage is found by *The Road Home* to meet the FEMA criteria of “destroyed” or having suffered “major” damage, will be eligible for the program..
- The home must be in a single-unit or double-unit structure to apply to the Homeowner Assistance Program for compensation. If an owner-occupant of a double-unit structure applies through the Homeowner Assistance Program, the full double-unit structure will serve as the basis for calculation of assistance up to the program cap of \$150,000.
- Owner-occupant landlords of a double-unit structure may choose to apply for a competitive award through the Small Rental Property Program, but in that case, that owner would not be eligible to receive any assistance through the Homeowners Program. i.e. These owners must choose which of the two programs they will participate in and will be required to give up any claims to assistance in one program before they can receive assistance in the one they choose. If they elect to participate in the Small Rental property program, they will be limited to receiving awards on their eligible rental unit(s) based on the affordable rents they are committing to provide. Note: For the Rental Program they may elect not to resettle in the property and instead apply for rental awards on both units.
- Owner- occupants of a three- or four-unit property are not eligible for assistance through the Homeowner Program but they are eligible to apply for an award through the Small Rental Property Program. These applicants will receive the highest priority for the competitive funding that is being offered through the SRPP. Through this program, they will be eligible to receive a separate award on the unit they live in as well as a rental award for all of the eligible rental units on their property – based on the affordable rents they are committing to provide. The award from the Small Rental Property Program for their owner-occupied unit will be a pro-rated amount of the total property, with assistance available up to \$150,000 for that unit.

Applicants must meet all of the applicable requirements above to receive assistance. Homeowners who believe they will be eligible for the program are encouraged to apply with *The Road Home* program at [www.road2la.org](http://www.road2la.org) or by calling 1-888-ROAD-2-LA.

During the process of reviewing applications to *The Road Home*, the LRA in collaboration with OCD will make available information about the preferences of homeowners to retain their homes or relocate so the choices can inform local planning processes. In areas where a high proportion of homeowners are choosing not to remain in an area, state or local authorities may limit the use of assistance only to purchase of properties.

### **2.3 Requirements for Receiving *Road Home* Homeowner Assistance**

To accomplish the State's goal to restore damaged communities, the State proposes to encourage investment in Louisiana. The homeowner will be required to demonstrate his or her commitment to the State by signing legally binding agreements and/or covenants to ensure that the *Road Home* Housing Program goals are met. The program agreements and commitments along with local requirements include, but are not limited to, assurances that:

- If choosing Option 1, a home will become owner-occupied within three years of receipt of funds from *Road Home* (original owner can sell to a buyer who assumes this responsibility);
- If choosing Option 1, an occupied home will be covered by residential hazard insurance throughout the period of the covenant ;
- The home will be covered by obtainable flood insurance if the home is located in a Special Hazard Flood Zone;
- Any new construction or repair on the property must comply with State and local building codes;
- Claims for unpaid and outstanding insurance payments and other reimbursements that may duplicate program benefits will be subrogated back to the *Road Home*.

Homeowners making application to the program must be willing to:

- Sign a release so that information required to approve the application can be verified by *Road Home*;
- Agree to verification of their ownership status, the amount of disaster related damage to the home, and its pre-storm value;
- Swear to the accuracy and completeness of all information provided to the Program under penalty of law.

While homeowners are not required by the *Road Home* to clear their properties prior to a sale to the program, they may contact their local government to obtain clearance assistance from the Army Corp of Engineers. Similarly, homeowners whose homes were flood damaged and who carried flood insurance are urged to contact their insurance agent to obtain information about eligibility for clearance and/or elevation through the Increased Cost of Compliance (ICC) benefits available under their insurance policy.

Homeowners that fail to meet all of the program's requirements may not receive benefits or may be required to repay all or some compensation received back to the *Road Home* program.

## **2.4 Amounts and Forms of Homeowner Assistance**

### **2.4.1 Maximum Assistance**

The maximum financial assistance from all Program resources for owner occupants is up to \$150,000. The \$150,000 ceiling assumes that estimates of likely demand for assistance derived from HUD, FEMA and SBA data are accurate.

Though it is the intent of the program that homeowners have sufficient resources to get back in to a home, not every homeowner is necessarily entitled to the maximum amount of financial assistance. In many cases the *Road Home* will not provide 100% of the resources the homeowner needs to recover from the losses suffered as result of Hurricane Rita or Hurricane Katrina. This is true for many reasons, such as the fact that assistance is capped at \$150,000, labor and material costs in Louisiana are very high, and assistance is reduced by any hazard insurance, flood insurance, FEMA benefits and other compensation payments received by the homeowner for the losses due to Hurricane Katrina and Hurricane Rita.<sup>3</sup>

Note that *Road Home* is not an annually funded entitlement program and cannot go over budget. If costs exceed budgeted projections, grant assistance to homeowners may have to be reduced and the Program may be required to pro-rate remaining benefits for homeowners who have not received funds from the Program.

### **2.4.2 Financial Assistance for Homeowners – Overview**

The Program will provide compensation for three types of homeowners:

- Homeowners that want to stay in their homes (referred to as "Option 1: Stay")
- Homeowners that want to sell the home they occupied as of the date of the storms to the state, but remain homeowners in Louisiana (referred to as "Option 2: Relocate")
- Homeowners that want to sell the home they occupied as of the date of the storms to the state, and either move out of the state or remain in the state but as a renter (referred to as "Option 3: Sell").

Compensation is provided in exchange for acceptance of legal agreements described in Section 2.3. Homeowners that want to stay in their home or relocate will be eligible for four types of benefits:

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<sup>3</sup> The reduction of *Road Home* benefits by the amount of compensation received from other sources is a requirement imposed by federal regulations to eliminate duplication of benefits.



1. Compensation grants - To cover uninsured, uncompensated damages incurred by the homeowner as a result of Hurricane Katrina or Hurricane Rita.
2. Elevation Assistance
  - Elevation Compensation for those homeowners who select Option 1 and whose property is subject to the latest available FEMA guidance for base flood elevations<sup>4</sup>;
  - Elevation Grants for those homeowners who select Option 2 and whose replacement homes require elevation to meet the latest available FEMA guidance for base flood elevations when mandated to be elevated by the local parish or governing local jurisdiction. This program will be a traditional rehabilitation program and is subject to Environmental and other federal regulations and documentation of receipts<sup>5</sup>.
3. Additional Compensation Grant – Funding of up to \$50,000 for homeowners with income at or below 80% of area median income.
4. Mitigation Grants of up to \$7,500 may be available to complete other mitigation measures. Funding of this program is dependent on available funding<sup>6</sup>.

The calculation of compensation payments takes into account the cost of replacement housing, whether or not the home was more than 51% damaged, the value of a home before the storm, and other payments received by the homeowner as compensation for losses. The compensation grant for homeowners who did not carry hazard insurance and/or homeowners who were living in the flood zone and did not carry flood insurance will be reduced by thirty percent.

#### **2.4.3. Factors Used to Calculate Benefits**

##### **Estimated Cost of Damage or Estimated Cost to Replace Home**

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<sup>4</sup>. Elevation Compensation up to a maximum of \$30,000 may be awarded to compensate a homeowner for the loss of equity caused by the higher flood elevation standards for new construction and rebuilding. Funding of this program is dependent on available funding.

<sup>5</sup> Elevation Grants up to a maximum of \$30,000 may be awarded in the form of a rehabilitation grant to homeowners who choose Option 2 to elevate their replacement home. Environmental regulations and all other HUD regulations that apply to a traditional rehabilitation construction program will apply to this program. A homeowner's replacement home must have a cleared Environmental Review before the homeowner is awarded funds. Funding of this program is dependent on available funding.

<sup>6</sup> Up to \$7,500.00 may be available to complete the mitigation measures. Funding of this program is dependent on available funding.

It is the State's policy that participants in the *Road Home* Homeowner Assistance Program deserve a fair and independent estimate of the cost of damages from the storms. Therefore, the *Road Home* program staff will provide evaluations that identify the costs of damage to the home or the estimated cost to replace the home. The *Road Home* Program reserves the right to use damage estimates prepared by others such as FEMA, the Small Business Administration, and insurance companies where those estimates are deemed reliable.

- If the home is less than 51% damaged, the *Estimated Cost of Damage* will be used in determining homeowner compensation.
- If the home is more than 51% damaged, the *Estimated Cost to Replace the home* will be used in determining the homeowner compensation.
- A determination of the percentage damage will be calculated using the following calculation:

$$[\text{Estimated Cost of Damage (divided by) Estimated Cost to Replace}] * 100 = \% \text{ Damage}$$

### **Pre-Storm Value**

To accurately calculate compensation, the *Road Home* Program must base assistance on a fair and equitable pre-storm value of the home. The pre-storm value is based on one of four methods listed below in order of importance:

- Homeowner-provided appraisal of pre-storm value performed by a Louisiana certified and licensed appraiser that was completed since January 1, 2000 (including appraisals completed post-storm). These appraisals will be adjusted, if necessary, to reflect the market rate as of the 2<sup>nd</sup> quarter of 2005 using figures released by Office of Federal Housing Enterprise Oversight ([www.ofheo.gov](http://www.ofheo.gov)). If the appraisal provided by the homeowner is a post-storm appraisal of pre-storm value the valuation will be verified by the Road Home.
- FNMA (Fannie Mae), Freddie Mac, FHA, VA, USDA, or SBA Appraisal that was completed since January 1, 2000. If there is more than one source available, the *Road Home* will use the most recent appraisal available. These appraisals will be adjusted to reflect the market rate as of the 2<sup>nd</sup> quarter of 2005 using figures released by Office of Federal Housing Enterprise Oversight ([www.ofheo.gov](http://www.ofheo.gov)).
- A pre-storm market analysis that is obtained by *The Road Home* program from a Louisiana certified and licensed appraiser
- A BPO of pre-storm value that is obtained by *The Road Home* program from a Louisiana licensed Realtor. *The Road Home* program will coordinate with home evaluation team to obtain square footage of home and any other information about the home necessary for the Realtor to prepare a valid BPO. The BPO will involve a drive-by of the property to view the neighborhood and the subject property's land and structures.

### **Duplication of Benefits**

Pursuant to federal statute and HUD requirement for the CDBG program, homeowner assistance may not duplicate any benefits from any source, received by the homeowner as a result of damages incurred during Hurricanes Katrina and Rita. Therefore, compensation from other sources such as FEMA and insurance payments for damages must be deducted from *Road Home* compensation. Legal fees associated with obtaining insurance benefits will not be deducted as duplication of benefits. Homeowner must be able to adequately document these costs.

#### **2.4.4 Option 1: Homeowner Staying in Home**

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

##### **Figure 1 – COMPENSATION GRANT FOR OPTION 1: STAY**

Equals the following up to \$150,000

Pre-storm value\* (Minus) other Compensation [FEMA, Insurance, other funds] (Minus) 30% Penalty for failure to have insurance if applicable

*\*NOTE: If the Estimated Cost of Damage or Estimated Cost to Replace Home is less than the Pre-storm value, the Estimated Cost of Damage or Estimated Cost to Replace Home will be used instead of PSV in the calculation.*

#### **2.4.5 Option 2: Relocate**

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

##### **Figure 2 – COMPENSATION GRANT FOR OPTION 2: RELOCATE**

###### **If home is less than 51% damaged**

Equals the following up to \$150,000

Pre-storm value\* (Minus) other Compensation [FEMA, Insurance, other funds] (Minus) 30% Penalty for failure to have insurance if applicable

*\*NOTE: If the Estimated Cost of Damage is less than the Pre-storm value, the Estimated Cost of Damage will be used instead of PSV for the calculation*

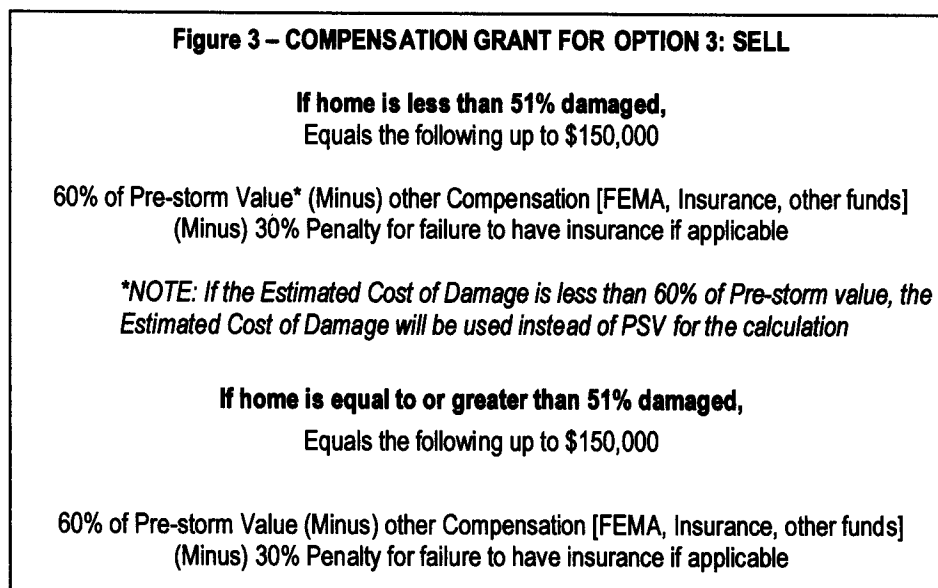
###### **If home is equal to or greater than 51% damaged**

Equals the following up to \$150,000

Pre-storm Value (Minus) other Compensation [FEMA, Insurance, other funds] (Minus) 30% Penalty for failure to have insurance if applicable

### **2.4.6 Option 3: Sell**

Homeowners may elect to forego homeownership in the State. They may choose to sell their property to the State and relocate outside of Louisiana or remain in the State but choose not to purchase a home. Depending on the percentage damage to the home, the State will compensate the homeowner based on 60% of the home's pre-storm value or the Estimated Cost of Damage. For elderly households and military personnel called to duty, calculations for compensation will be based on **100%** Pre-storm Value and will follow the calculations in Figure 2 above. **Figure 3** provides a summary of the basic calculations that the *Road Home* program will use to determine compensation benefits.



## **2.5 Redevelopment of Purchased Property**

The publicly chartered nonprofit The *Road Home* Corporation will take title to properties purchased by the *Road Home* Homeowner Assistance Program. Properties purchased by the program and held by The *Road Home* Corporation will be redeveloped and returned to commerce or preserved as green space, in a manner which is consistent with local land use plans and direction. Pursuant to a primary goal of the Homeowner Assistance Program, purchased land will not be left to blight and disrepair<sup>7</sup>.

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

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

- *Develop* properties by packaging the properties for redevelopment, offering them for redevelopment through competitive bids, and overseeing the redevelopment of the property consistent with local and regional plans that have been approved by the LRA and in adherence to the policy guidelines for rebuilding, recovery, and land use management set forth by the LRA. Any proceeds derived through the sale of these properties would be program income and would be used to fund eligible CDBG Disaster activities.
- *Transferring* properties from the state to a local redevelopment agency upon approval by the LRA of redevelopment plans that takes into account local land use guidelines. The local agency would package the properties, offer them up for redevelopment through competitive bids, and oversee the redevelopment of the property. Any proceeds derived through the sale of these properties would be considered as program income and will be used for eligible CDBG Disaster activities.
- *Maintaining* properties as permanent green space as a result of a decision by local authorities by transferring the properties to an appropriate local land management agency which will maintain them.

The LRA has endorsed the findings and recommendations of the American Institute of Architects and the American Planning Association planning conference held on behalf of the LRA in November 2005. Consistent with those recommendations, for properties that are acquired by the *Road Home* Homeowner Assistance Program or other land assembled by the State for redevelopment, the State will insure that 25% of the properties are used for affordable housing according to HUD guidelines for the HOME program.

Whether properties are managed by a state agency or local redevelopment authority, the properties acquired by the *Road Home* Program or other land assembly programs must retain affordability requirements to be defined by the *Road Home* Corporation after their transfer. The State will monitor the property to assure the requirements are met and maintained.

The LRA recognizes the potential for a significant return on investment in property redevelopment, a scenario demonstrated with research in a report of the Gerson Lehrman Group. The LRA is committed to reinvesting these proceeds in the comprehensive community redevelopment activities already supported by supplemental CDBG funds allocated through state programs, including *The Road Home*. The priorities of recycled funds shall include housing restoration, affordable housing for homeowners and renters, infrastructure and economic development activities designed to help recreate strong communities which are closely tied to transit, jobs, and public services.

## **2.6 Treatment of Homeowners with Special Circumstances**

**Assignability:** The State has prepared policies that allow a homeowner to sell his or her home on the open market and to assign rights to Program assistance to the new buyer. Assigned grants will require the new buyer to meet the same requirements the original homeowner would have been required to meet to qualify and receive assistance under the Program.

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

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

**Owner-Occupants Who Have Already Sold Their Principal Residence:** Some homeowners may have chosen to sell their homes prior to launch of the *Road Home* Homeowner Assistance Program on August 29, 2006. It is the goal of *The Road Home* to ensure that damaged properties qualifying under the Homeowner Assistance Program do not remain blighted and undeveloped. If the goals of the Program are met, and a homeowner can demonstrate that he or she remains in a loss situation after selling the damaged property to another party, such homeowner may receive assistance under the Program to compensate for remaining losses in accordance with the Program requirements. Assistance for these homeowners is subject to the availability of funds.

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

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

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

## **2.7 Accounts for Receipt of Funds**

The state will employ a closing agent to disburse compensation to homeowners who elect to stay in their storm damaged home. The closing agent will ensure that legal agreements are signed and covenants recorded. The homeowner will receive their compensation in the form of a check or electronic funds transfer, shortly after closing.

If the homeowner elects to sell his or her property to the State, the funds may be paid to a closing agent (i.e., such as a title insurance company or a licensed Louisiana attorney acting as title agent or closing agent for the transaction), who will disburse the funds under separate instruction from the State and in accordance with a closing statement or other disbursement statement approved by the State, to ensure that existing mortgage and other liens are paid and satisfied at or after closing with respect to the property purchased by the State, and to ensure that Program requirements are satisfied with respect to such homeowner.

## **2.8 Homeowner Assistance Centers – Process for Receiving Assistance**

*The Road Home's* Call Center is available to assist anyone with questions regarding *The Road Home* program, including general questions about the program as well as specific questions on the application process.

Homeowners interested in participating in *The Road Home* program must complete an application online, submit a hard copy to a housing assistance center, or complete an application over the phone by calling 1-888-Road 2 LA (1-888-762-3252). To apply online, visit [www.road2LA.org](http://www.road2LA.org). TTY callers use 711 relay or 800.846.5277.

Once an application has been received, *The Road Home* team will review the application. The homeowner will then receive a letter in the mail with detailed instructions on how to call to schedule an appointment.

Appointments held at *The Road Home's* Housing Assistance Centers will help homeowners navigate through a maze of obstacles such as negotiating insurance settlements, dealing with mortgage issues, understanding the implications of new flood maps, and dealing with building contractors if they rebuild. An owner will have to make decisions on whether to stay in their homes, buyout and relocate in Louisiana, or to sell their home and move out of State. While some homeowners can overcome these barriers themselves, many homeowners will need assistance from advisors, in addition to receiving financial assistance.

*The Road Home* program's Housing Assistance Centers are designed to respond to these needs. These Centers serve as the places where eligible homeowners with scheduled appointments can speak one-on-one with trained housing advisors who will guide homeowners through the process and help them make informed decisions about their options. During a homeowner's initial appointment, housing advisors will collect

records about ownership, flood and homeowners' insurance, and recovery estimates. This information and any other personal information will be stored at a secured data center and will be protected for privacy.

Advisors will provide information that helps a homeowner:

- Evaluate his or her personal disaster recovery situation;
- Deal with mortgage and refinancing issues;
- Select professional services providers such as home inspectors, architects, surveyors (for replacement homes) to design and prepare for repairing or replacing homes;
- Make informed decisions about selection of repair contractors, homebuilders and manufactured housing companies; and
- Obtain advice about fair housing and protections against housing discrimination.

The Housing Assistance Centers will help mitigate the potential for misunderstanding and abuse by providing standardized, structured, and guided relationships between homeowners and service providers. In addition, *The Road Home* program will provide a Professional Rebuild Registry that connects homeowners with professional service providers and building contractors.



## APPENDIX 1 SAMPLE BENEFIT CALCULATIONS

### Example 1

A couple owns a home with a pre-storm value of \$100,000. Their home was severely damaged and the *Road Home* evaluation determined that the percent damage was equal to or greater than 51%. The *Road Home* determined that the estimated cost to replace their home is \$140,000. The damaged residence is located in an area subject to Advisory Base Flood Elevations (ABFEs). They received \$30,000 from their insurance company and \$10,000 in FEMA Assistance. Their mortgage runs for another 8 years and the monthly payments are modest. What are their options under the *Road Home* housing plan?

### Homeowner Summary

|                                       |           |
|---------------------------------------|-----------|
| Pre-storm Value (PSV):                | \$100,000 |
| Estimated Cost to Replace Home (ECR): | \$140,000 |

### Prior Compensation (PC)

|                  |                 |
|------------------|-----------------|
| Insurance:       | \$30,000        |
| FEMA Assistance: | <u>\$10,000</u> |
|                  | \$40,000        |

|  |          |
|--|----------|
| Estimated elevation cost based on <i>Road Home</i> evaluation (ECE): | \$60,000 |
| NFIP Increased Cost of Compliance (ICC) Funding to elevate (ICC):    | \$30,000 |

### What if the couple wants to stay in their house and accept elevation compensation?

#### Option 1: Stay:

|   |                       |
|---|-----------------------|
| Uncompensated replacement costs: (ECR-PC)                                 | = \$100,000           |
| Uncompensated loss: (PSV-PC)  | = \$60,000            |
| <b>Compensation grant is lesser of above up to \$150,000</b>              | <b>= \$60,000</b>     |
| <br>Uncompensated elevation loss due to new elevation standards (ECE-ICC) | <br>= \$30,000        |
| <b>Elevation compensation for loss is above up to \$30,000 cap</b>        | <b>= \$30,000</b>     |
| <br><b>TOTAL ASSISTANCE</b>   | <br><b>= \$90,000</b> |

### What if the couple wants to stay in their house and do not accept elevation compensation?

#### Option 1: Stay:

|  |                       |
|--|-----------------------|
| Uncompensated replacement costs: (ECR-PC)                    | = \$100,000           |
| Uncompensated loss: (PSV-PC)                                 | = \$60,000            |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$60,000</b>     |
| <br><b>TOTAL ASSISTANCE</b>                                  | <br><b>= \$60,000</b> |

### What if the couple wants to sell their home and buy another in the State?

#### Option 2: Relocate

|                              |            |
|------------------------------|------------|
| Uncompensated loss: (PSV-PC) | = \$60,000 |
| <b>Compensation grant</b>    |            |

|   |                   |
|---|-------------------|
| <b>(damaged home is greater than 51% damaged)</b> | <b>= \$60,000</b> |
| <b>TOTAL ASSISTANCE</b>                           | <b>= \$60,000</b> |

The couple may be eligible for an elevation grant up to \$30,000 if their replacement home is mandated to be elevated by the local parish. The elevation grant program is a traditional rehabilitation program and subject to environmental and other federal regulations. Receipts will be required for reimbursement.

**What if the couple wants to sell their home and move outside of Louisiana?**

**Option 3: Sell**

|  |                   |
|--|-------------------|
| 60% of Pre-Storm Value: (PSV X .60)                          | = \$60,000        |
| Minus Other Compensation                                     | = \$40,000        |
| Uncompensated loss: (60% of PSV-PC)                          | = \$20,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |
| <b>TOTAL ASSISTANCE</b>                                      | <b>= \$20,000</b> |

**What if the couple is in their seventies and chooses Option 3: Sell?**

**Option 3: Sell**

Since the couple was 65 years of age or older as of December 31, 2005, the couple is exempt from the penalty associated with Option 3: Sell.

|  |                   |
|--|-------------------|
| Uncompensated loss: (PSV-PC)                                 | = \$60,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$60,000</b> |
| <b>TOTAL ASSISTANCE</b>                                      | <b>= \$60,000</b> |

**What if the couple did not carry hazard or flood insurance?**

If the couple choose **Option 1: Stay** and accept Elevation Compensation:

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$60,000        |
| Minus 30% insurance penalty        | = (\$18,000)      |
| <b>Compensation grant</b>          | <b>= \$42,000</b> |
| <b>Elevation compensation</b>      | <b>= \$30,000</b> |
| <b>TOTAL ASSISTANCE</b>            | <b>= \$72,000</b> |

**Option 2: Relocate**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$60,000        |
| Minus 30% insurance penalty        | = (\$18,000)      |
| <b>Compensation grant</b>          | <b>= \$42,000</b> |
| <b>TOTAL ASSISTANCE</b>            | <b>= \$42,000</b> |

The couple may be eligible for an elevation grant up to \$30,000 if their replacement home is mandated to be elevated by the local parish. The elevation grant program is a

traditional rehabilitation program and subject to environmental and other federal regulations. Receipts will be required for reimbursement.

**Option 3: Sell**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$20,000        |
| Minus 30% insurance penalty        | = (\$6,000)       |
| <b>Compensation grant</b>          | <b>= \$14,000</b> |

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$14,000</b> |
|-------------------------|-------------------|

**What if the couple was insured and their household income is at or below 80% Area Median Income (AMI)?**

If the couple choose **Option 1: Stay** and accept Elevation Compensation:

|  |                   |
|--|-------------------|
| Uncompensated replacement costs:<br>(ECR-PC)                 | = \$100,000       |
| Uncompensated loss: (PSV-PC)                                 | = \$60,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$60,000</b> |

|  |                   |
|--|-------------------|
| Uncompensated loss due to new elevation standards<br>(ECE-ICC) | = \$30,000        |
| <b>Elevation compensation is above up to \$30,000 cap</b>      | <b>= \$30,000</b> |

|   |                   |
|---|-------------------|
| Estimated Cost to Replace Home                          | = \$140,000       |
| Minus Compensation Grant                                | = (\$60,000)      |
| Minus Other Compensation                                | = (\$40,000)      |
| <b>Additional Compensation Grant up to \$50,000 cap</b> | <b>= \$40,000</b> |

|                         |                    |
|-------------------------|--------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$130,000</b> |
|-------------------------|--------------------|

**Option 2: Relocate**

|  |                   |
|--|-------------------|
| Uncompensated loss: (PSV-PC)                                 | = \$60,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$60,000</b> |
| Estimated Cost to Replace Home                               | = \$140,000       |
| Minus Compensation Grant                                     | = (\$60,000)      |
| Minus Other Compensation                                     | = (\$40,000)      |
| <b>Additional Compensation Grant (up to \$50,000 cap)</b>    | <b>= \$40,000</b> |

|                         |                    |
|-------------------------|--------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$100,000</b> |
|-------------------------|--------------------|

The couple may be eligible for an elevation grant up to \$30,000 if their replacement home is mandated to be elevated by the local parish. The elevation grant program is a traditional rehabilitation program and subject to environmental and other federal regulations. Receipts will be required for reimbursement.

**Option 3: Sell**

|  |                   |
|--|-------------------|
| 60% of Pre-Storm Value: (PSV X .60)                          | = \$60,000        |
| Minus Other Compensation                                     | = \$40,000        |
| Uncompensated loss: (60% of PSV-PC)                          | = \$20,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

**TOTAL ASSISTANCE****= \$20,000****Example 2**

A family bought their home 15 years ago. The home has appreciated in value and the family has upgraded their insurance policy over the years though not enough to pay for all the replacement costs from the damages that were incurred. The *Road Home* evaluation determined that the estimated cost to replace the home is \$110,000 and the estimated cost of damage is \$40,000. Based on the following calculation, the *Road Home* determined that the percent damage was less than 51%:

$$(\$40,000/\$110,000) * 100 = 36\% \text{ damage}$$

The pre-storm value is \$100,000. The family's insurance policy paid for \$20,000 in repair costs. The home is not in the ABFE area and therefore is not eligible for elevation compensation.

**Homeowner Summary**

|                                       |           |
|---------------------------------------|-----------|
| Pre-storm Value (PSV):                | \$100,000 |
| Estimated Cost of Damage (ECD):       | \$40,000  |
| Estimated Cost to Replace Home (ECH): | \$110,000 |

**Prior Compensation (PC)**

|                 |             |
|-----------------|-------------|
| Insurance:      | \$20,000    |
| FEMA Assistance | \$ <u>0</u> |
|                 | \$20,000    |

**Elevation**

compensation for loss due to new elevation standards: = \$0 (home not in ABFE)

**What if the family wants to stay in their house?****Option 1: Stay**

|  |                   |
|--|-------------------|
| Uncompensated damage costs:                                  |                   |
| (ECD-PC)   | = \$20,000        |
| Uncompensated loss: (PSV-PC)                                 | = \$80,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

|  |                                   |
|--|-----------------------------------|
| Elevation  |                                   |
| compensation for loss due to new elevation standards |                                   |
| (\$30,000 cap)                                       | = Not eligible (home not in ABFE) |

**TOTAL ASSISTANCE****= \$20,000****What if the family wants to sell their home and buy another in the State?****Option 2: Relocate**

|  |                   |
|--|-------------------|
| Uncompensated damage costs:                                  |                   |
| (ECD-PC)   | = \$20,000        |
| Uncompensated loss: (PSV-PC)                                 | = \$80,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

|                                |  |
|--------------------------------|--|
| Elevation Grant (\$30,000 cap) | = Not eligible (new home<br>not in ABFE) |
|--------------------------------|--|

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$20,000</b> |
|-------------------------|-------------------|

Couple 2 may be eligible for an additional mitigation or elevation grant. The couple may be eligible for an elevation grant up to \$30,000 if their replacement home is mandated to be elevated by the local parish. The elevation grant program is a traditional rehabilitation program and subject to environmental and other federal regulations. Receipts will be required for reimbursement.

**What if the family wants to sell their home and move outside of Louisiana?**

**Option 3: Sell**

|  |                   |
|--|-------------------|
| Uncompensated damage costs:<br>(ECD-PC)                      | = \$20,000        |
| 60% of Pre-Storm Value: (PSV X .60)                          | = \$60,000        |
| Minus Other Compensation                                     | = (\$20,000)      |
| Uncompensated loss: (60% of PSV-PC)                          | = \$40,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$20,000</b> |
|-------------------------|-------------------|

**What if a member of the family is elderly and the family chooses Option 3: Sell?**

**Option 3: Sell**

Since one of the owner-occupants was 65 years of age or older as of December 31, 2005, the family is exempt from the penalty associated with **Option 3: Sell**.

|  |                   |
|--|-------------------|
| Uncompensated damage costs:<br>(ECD-PC)                      | = \$20,000        |
| Uncompensated loss: (PSV-PC)                                 | = \$80,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$20,000</b> |
|-------------------------|-------------------|

**What if the family did not carry hazard insurance?**

**Option 1: Stay**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$20,000        |
| Minus 30% insurance penalty        | = (\$6,000)       |
| <b>Compensation grant</b>          | <b>= \$14,000</b> |

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$14,000</b> |
|-------------------------|-------------------|

**Option 2: Relocate**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$20,000        |
| Minus 30% insurance penalty        | = (\$6,000)       |
| <b>Compensation grant</b>          | <b>= \$14,000</b> |

|                         |                   |
|-------------------------|-------------------|
| <b>TOTAL ASSISTANCE</b> | <b>= \$14,000</b> |
|-------------------------|-------------------|

**Option 3: Sell**

|                                    |                   |
|------------------------------------|-------------------|
| Compensation grant without penalty | = \$20,000        |
| Minus 30% insurance penalty        | = (\$6,000)       |
| <b>Compensation grant</b>          | <b>= \$14,000</b> |

**TOTAL ASSISTANCE = \$14,000**

**What if the family is insured and their household income is at or below 80% Area Median Income (AMI)?**

**Option 1: Stay**

|  |                   |
|--|-------------------|
| Uncompensated damage costs:<br>(ECD-PC)                      | = \$20,000        |
| Uncompensated loss: (PSV-PC)                                 | = \$80,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

Elevation  
compensation for loss due to new elevation standards  
(\$30,000 cap) = Not eligible

|   |              |
|---|--------------|
| Estimated Cost of Damage                                      | = \$40,000   |
| Minus Compensation Grant                                      | = (\$20,000) |
| Minus Other Compensation                                      | = (\$20,000) |
| <b>Additional Compensation Grant<br/>(up to \$50,000 cap)</b> | <b>= \$0</b> |

**TOTAL ASSISTANCE = \$20,000**

**Option 2: Relocate**

|  |                   |
|--|-------------------|
| Uncompensated damage costs:<br>(ECD-PC)                      | = \$20,000        |
| Uncompensated loss: (PSV-PC)                                 | = \$80,000        |
| <b>Compensation grant is lesser of above up to \$150,000</b> | <b>= \$20,000</b> |

Elevation Grant  
(\$30,000 cap) = Not eligible (new home  
not in ABFE)

|   |                   |
|---|-------------------|
| Estimated Cost to Replace Home*                               | = \$110,000       |
| Minus Compensation Grant                                      | = (\$20,000)      |
| Minus Other Compensation                                      | = (\$20,000)      |
| <b>Additional Compensation Grant<br/>(up to \$50,000 cap)</b> | <b>= \$50,000</b> |

**TOTAL ASSISTANCE = \$70,000**

\*Note: The Additional Compensation Grant calculation for homeowners choosing Option 2: Relocate is based on the Estimated Cost to Replace Home.

**Option 3: Sell**

|   |                   |
|---|-------------------|
| Uncompensated damage costs: (\$40,000-\$20,000)       | = \$20,000        |
| 60% of Pre-Storm Value: (\$100,000 X .60)             | = \$60,000        |
| Minus Other Compensation                              | = (\$20,000)      |
| Uncompensated loss: (\$60,000-\$20,000)               | = \$40,000        |
| Compensation grant is lesser of above up to \$150,000 | = \$20,000        |
| <b>TOTAL ASSISTANCE</b>                               | <b>= \$20,000</b> |

**STATE OF LOUISIANA DIVISION OF ADMINISTRATION  
OFFICE OF COMMUNITY DEVELOPMENT (OCD)  
THE ROAD HOME PROGRAM GRANT AGREEMENT**

**SECTION 1: HOMEOWNER INFORMATION**

|   |   |
|---|---|
| <b>1. HOMEOWNER:</b>  | <b>2. CO-HOMEOWNER:</b>   |
| <b>a. Name:</b><br>GLORIA BURNS   | <b>a. Name:</b><br>AUTHUR BURNS JR  |
| <b>b. Property Address:</b><br>2000 -2002 PAINTERS ST<br>NEW ORLEANS, Louisiana | <b>b. Property Address:</b><br>2000 -2002 PAINTERS ST<br>NEW ORLEANS, Louisiana |
| <b>c. Mailing Address</b> (if different from Physical Address):                 | <b>c. Mailing Address</b> (if different from Physical Address):                 |
| <b>d. Phone Number:</b><br>(504) 970-0996                                       | <b>d. Phone Number:</b><br>(504) 970-0996                                       |
| <b>e. Email Address:</b>  | <b>e. Email Address:</b>  |
| <b>f. Social Security Number:</b>   | <b>f. Social Security Number:</b>   |
| <b>g. Government Issued Identification Number:</b>                              | <b>g. Government Issued Identification Number:</b>                              |

**SECTION II: GRANT INFORMATION****3. CLOSING DATE:**

6/25/07

**4. PURPOSE AND SOURCE OF FUNDS:** The purpose of this Grant Agreement is to provide compensation for damages incurred by the Homeowner(s) due to Hurricanes Katrina in August 2005 and/or Rita in September 2005. Funding for this grant comes from the Community Development Block Grant (CDBG) program administered through the U.S. Department of Housing and Urban Development. CDBG funds have been allocated to the State of Louisiana's Office of Community Development and are being provided to eligible residents of the State through *The Road Home* program.

**5. GRANT PROVISIONS:** Homeowner(s) agree(s) to the filing of certain covenants to run with the land on the property for which this Grant is awarded requiring generally as follows: flood insurance to be maintained if located in Special Flood Hazard Area and restraints on use, occupancy and alienation of the Property. The actual covenants are contained in the instrument to be executed by Homeowner(s) and recorded in the land records of the parish where the Property for which this Grant is awarded and located. The covenant will become effective on the grant closing date ("Effective Date").

**6. OCCUPANCY OF PROPERTY:** Homeowner(s) agree(s) to commence occupying the Property as his/her primary residence within three (3) years after the Closing Date. This provision is a material consideration without which the Homeowner(s) would have received a lesser amount under *The Road Home* Program. Homeowner(s) will be required to repay the Grant in the event of a violation of this Section 6. An Extension of the period for compliance with this provision may be granted by OCD to Owner upon request by Owner to extend the compliance period based on good cause and circumstances beyond Homeowner's control that precluded compliance with the provisions of this Section 6. OCD may require that the Homeowner(s) execute a corresponding extension of the term of the covenants. OCD may on its own, upon evidence of reasonable efforts made by Homeowner to occupy the property, grant an extension of the period to comply with this provision.

**7. DISBURSEMENT OF FUNDS:** The proceeds of the Grant will be disbursed in one lump sum directly to the Homeowner(s).

**8. LIABILITY:** Homeowner(s) agree not to hold the Closing Agent, if any, liable for any actions taken by the Closing Agent relating to this Grant so long as such actions are taken at the direction of the OCD. Homeowner(s) further agree(s) not to hold the State of Louisiana, United States or any other branch or agency of the state or federal government liable for their actions relating to this Grant; provided, however, Homeowner(s) may accept the proceeds from the Grant without prejudicing their rights to subsequently contest the amount of the Grant provided to the Homeowner(s) by OCD, in good faith through resolution and appeal processes provided by *The Road Home* Program and OCD. Decisions by OCD or its designee on appeal are final non-appealable determinations of benefits under *The Road Home* Program. If Homeowner(s) attempt to take legal action against Disbursement Agent, the State of Louisiana, United States or any other branch or agency of the state or federal government, such entity will have the right to recover from Homeowner(s) the attorneys' fees and other expenses incurred in connection with such action in the event of adverse judgment against Homeowner(s).

**EXHIBIT****C**



**SECTION III: FRAUD ACKNOWLEDGEMENT**

9. Homeowner(s) asserts, certifies and reaffirms that all information on the application, documents provided and closing documents are true to the best of my/our knowledge and Homeowner(s) acknowledges that such have been relied on by OCD to provide disaster assistance. Homeowner(s) certifies that all damages claimed in connection with Homeowner(s) application for grant proceeds were a direct result of the declared disaster, and that Homeowner(s) have disclosed to OCD all insurance proceeds and other funds received from governmental agencies as compensation for damages as a result of the declared disaster in the application process. Homeowner(s) acknowledge that Homeowner(s) may be prosecuted by Federal, State and/or local authorities in the event that Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents.

Homeowner(s) agree to repay the Grant in the event Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents. Homeowner(s) acknowledges notice of the danger of fraud and scams perpetrated by unscrupulous individuals, contractors and businesses and that the State has provided an Office of Fraud to address such issues.

**SECTION IV: SIGNATURES**  
**HOMEOWNER**

*Gloria M. Burns*

Name: GLORIA BURNS

**CO-HOMEOWNER**

*Arthur Burns Jr*

Name: AUTHUR BURNS JR

**STATE OF LOUISIANA DIVISION OF ADMINISTRATION  
OFFICE OF COMMUNITY DEVELOPMENT (OCD)  
THE ROAD HOME PROGRAM GRANT AGREEMENT HOMEOWNERS  
GRANT NO: 06HH005088**

**SECTION I: HOMEOWNER INFORMATION**

|  |   |
|--|---|
| <b>1. HOMEOWNER:</b>   | <b>2. CO-HOMEOWNER:</b>   |
| a. Name:<br>RHONDA LORETTA DENTS   | a. Name:  |
| b. Property Address:<br>5816 Marigny St<br>New Orleans, Louisiana 70122  | b. Property Address:<br>5816 Marigny St<br>New Orleans, Louisiana 70122 |
| c. Mailing Address (if different from Physical Address):<br>P.O. Box 976, 290 1st Street<br>St. Rose, LA 70087 | c. Mailing Address (if different from Physical Address):                |
| d. Phone Number:<br>(504)466-1945  | d. Phone Number:  |
| e. Email Address:<br>rhondadents@cox.net   | e. Email Address:   |
| f. Social Security Number:<br>[REDACTED]   | f. Social Security Number:  |
| g. Governmental Issued Identification Number:<br>[REDACTED]  | g. Governmental Issued Identification Number:                           |

**SECTION II: GRANT INFORMATION**

**3. CLOSING DATE:** May 21, 2007

**4. PURPOSE AND SOURCE OF FUNDS:** The purpose of this Grant Agreement is to provide compensation for damages incurred by the Homeowner(s) due to Hurricanes Katrina in August 2005 and/or Rita in September 2005. Funding for this grant comes from the Community Development Block Grant (CDBG) program administered through the U.S. Department of Housing and Urban Development. CDBG funds have been allocated to the State of Louisiana's Office of Community Development and are being provided to eligible residents of the State through *The Road Home* program.

**5. GRANT PROVISIONS:** Homeowner(s) agree(s) to the filing of certain covenants to run with the land on the property for which this Grant is awarded requiring generally as follows: flood insurance to be maintained if located in Special Flood Hazard Area and restraints on use, occupancy and alienation of the Property. The actual covenants are contained in the instrument to be executed by Homeowner(s) and recorded in the land records of the parish where the Property for which this Grant is awarded and located. The covenant will become effective on the grant closing date ("Effective Date").

**6. OCCUPANCY OF PROPERTY:** Homeowner(s) agree(s) to commence occupying the Property as his/her primary residence within three (3) years after the Closing Date. This provision is a material consideration without which the Homeowner(s) would have received a lesser amount under the Road Home Program. Homeowner(s) will be required to repay the Grant in the event of a violation of this Section 6. An Extension of the period for compliance with this provision may be granted by OCD to Owner upon request by Owner to extend the compliance period based on good cause and circumstances beyond Homeowner's control that precluded compliance with the provisions of this Section 6. OCD may require that the Homeowner(s) execute a corresponding extension of the term of the covenants. OCD may on its own, upon evidence of reasonable efforts made by Homeowner to occupy the property, grant an extension of the period to comply with this provision.

**7. DISBURSEMENT OF FUNDS:** The proceeds of the Grant will be disbursed in one lump sum directly to the Homeowner(s).

**8. LIABILITY:** Homeowner(s) agree not to hold the Closing Agent, if any, liable for any actions taken by the Closing Agent relating to this Grant so long as such actions are taken at the direction of the OCD. Homeowner(s) further agree(s) not to hold the State of Louisiana, United States or any other branch or agency of the state or federal government liable for their actions relating to this Grant; provided, however, Homeowner(s) may accept the proceeds from the Grant without prejudicing their rights to subsequently contest the amount of the Grant provided to the Homeowner(s) by OCD, in good faith through resolution and appeal processes provided by *the Road Home* Program and OCD. Decisions by OCD or its designee on appeal are final non-appealable determinations of benefits under *the Road Home* Program. If Homeowner(s) attempt to take legal action against Disbursement Agent, the State of Louisiana, United States, or any other branch or agency of the state or federal

**SECTION III: FRAUD ACKNOWLEDGEMENT**

9. Homeowner(s) asserts, certifies and reaffirms that all information on the application, documents provided and closing documents are true to the best of my/our knowledge and Homeowner(s) acknowledges that such have been relied on by OCD to provide disaster assistance. Homeowner(s) certifies that all damages claimed in connection with Homeowner(s) application for grant proceeds were a direct result of the declared disaster, and that Homeowner(s) have disclosed to OCD all insurance proceeds and other funds received from governmental agencies as compensation for damages as a result of the declared disaster in the application process. Homeowner(s) acknowledge that Homeowner(s) may be prosecuted by Federal, State and/or local authorities in the event that Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents. Homeowner(s) agree to repay the Grant in the event Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents. Homeowner(s) acknowledges notice of the danger of fraud and scams perpetrated by unscrupulous individuals, contractors and businesses and that the State has provided an Office of Fraud to address such issues.

**SECTION V: SIGNATURES****HOMEOWNER:****CO-HOMEOWNER**

Name: RHONDA LORETTA DENTS

Name:

Signature:

*Rhonda Loretta Dents*

Signature:

**STATE OF LOUISIANA DIVISION OF ADMINISTRATION  
OFFICE OF COMMUNITY DEVELOPMENT (OCD)  
THE ROAD HOME PROGRAM GRANT AGREEMENT HOMEOWNERS  
GRANT NO: 06HH065050**

**SECTION I: HOMEOWNER INFORMATION**

|   |  |
|---|--|
| <b>1. HOMEOWNER:</b>  | <b>2. CO-HOMEOWNER:</b>  |
| a. Name:<br>ALMARIE FORD  | a. Name:   |
| b. Property Address:<br>7071 RIDGEFIELD DR<br>NEW ORLEANS, Louisiana 70128  | b. Property Address:<br>7071 RIDGEFIELD DR<br>NEW ORLEANS, Louisiana 70128 |
| c. Mailing Address (if different from Physical Address):<br>5116 Highland Road, Apt # 65<br>Baton Rouge, LA 70808 | c. Mailing Address (if different from Physical Address):                   |
| d. Phone Number:<br>(504)450-4324   | d. Phone Number:   |
| e. Email Address:<br>alford@dhh.la.gov  | e. Email Address:  |
| f. Social Security Number:<br>[REDACTED]  | f. Social Security Number:   |
| g. Governmental Issued Identification Number:<br>[REDACTED]   | g. Governmental Issued Identification Number:                              |

**SECTION II: GRANT INFORMATION**

**3. CLOSING DATE:** July 23, 2007

**4. PURPOSE AND SOURCE OF FUNDS:** The purpose of this Grant Agreement is to provide compensation for damages incurred by the Homeowner(s) due to Hurricanes Katrina in August 2005 and/or Rita in September 2005. Funding for this grant comes from the Community Development Block Grant (CDBG) program administered through the U.S. Department of Housing and Urban Development. CDBG funds have been allocated to the State of Louisiana's Office of Community Development and are being provided to eligible residents of the State through *The Road Home* program.

**5. GRANT PROVISIONS:** Homeowner(s) agree(s) to the filing of certain covenants to run with the land on the property for which this Grant is awarded requiring generally as follows: flood insurance to be maintained if located in Special Flood Hazard Area and restraints on use, occupancy and alienation of the Property. The actual covenants are contained in the instrument to be executed by Homeowner(s) and recorded in the land records of the parish where the Property for which this Grant is awarded and located. The covenant will become effective on the grant closing date ("Effective Date").

**6. OCCUPANCY OF PROPERTY:** Homeowner(s) agree(s) to commence occupying the Property as his/her primary residence within three (3) years after the Closing Date. This provision is a material consideration without which the Homeowner(s) would have received a lesser amount under the Road Home Program. Homeowner(s) will be required to repay the Grant in the event of a violation of this Section 6. An Extension of the period for compliance with this provision may be granted by OCD to Owner upon request by Owner to extend the compliance period based on good cause and circumstances beyond Homeowner's control that precluded compliance with the provisions of this Section 6. OCD may require that the Homeowner(s) execute a corresponding extension of the term of the covenants. OCD may on its own, upon evidence of reasonable efforts made by Homeowner to occupy the property, grant an extension of the period to comply with this provision.

**7. DISBURSEMENT OF FUNDS:** The proceeds of the Grant will be disbursed in one lump sum directly to the Homeowner(s).

**8. LIABILITY:** Homeowner(s) agree not to hold the Closing Agent, if any, liable for any actions taken by the Closing Agent relating to this Grant so long as such actions are taken at the direction of the OCD. Homeowner(s) further agree(s) not to hold the State of Louisiana, United States or any other branch or agency of the state or federal government liable for their actions relating to this Grant; provided, however, Homeowner(s) may accept the proceeds from the Grant without prejudicing their rights to subsequently contest the amount of the Grant provided to the Homeowner(s) by OCD, in good faith through resolution and appeal processes provided by *The Road Home* Program and OCD. Decisions by OCD or its designee on appeal are final non-appealable determinations of benefits under *The Road Home* Program. If Homeowner(s) attempt to take legal action against Disbursement Agent, the State of Louisiana, United States or any other branch or agency of the state or federal

**SECTION III: FRAUD ACKNOWLEDGEMENT**

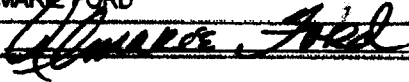
9. Homeowner(s) asserts, certifies and reaffirms that all information on the application, documents provided and closing documents are true to the best of my/our knowledge and Homeowner(s) acknowledges that such have been relied on by OCD to provide disaster assistance. Homeowner(s) certifies that all damages claimed in connection with Homeowner(s) application for grant proceeds were a direct result of the declared disaster, and that Homeowner(s) have disclosed to OCD all insurance proceeds and other funds received from governmental agencies as compensation for damages as a result of the declared disaster in the application process. Homeowner(s) acknowledge that Homeowner(s) may be prosecuted by Federal, State and/or local authorities in the event that Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents. Homeowner(s) agree to repay the Grant in the event Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents. Homeowner(s) acknowledges notice of the danger of fraud and scams perpetrated by unscrupulous individuals, contractors and businesses and that the State has provided an Office of Fraud to address such issues.

**SECTION V: SIGNATURES****HOMEOWNER:****CO-HOMEOWNER**

Name: ALMARIE FORD

Name:

Signature:



Signature:

**STATE OF LOUISIANA DIVISION OF ADMINISTRATION  
OFFICE OF COMMUNITY DEVELOPMENT (OCD)  
THE ROAD HOME PROGRAM GRANT AGREEMENT HOMEOWNERS  
GRANT NO: 06HH013912**

**SECTION I: HOMEOWNER INFORMATION**

|   |  |
|---|--|
| <b>1. HOMEOWNER:</b>  | <b>2. CO-HOMEOWNER:</b>  |
| a. Name:<br>DAPHNE R JONES  | a. Name:   |
| b. Property Address:<br>2531 Delery St<br>New Orleans, Louisiana 70117                              | b. Property Address:<br>2531 Delery St<br>New Orleans, Louisiana 70117 |
| c. Mailing Address (if different from Physical Address):<br>P.O.Box 771071<br>New Orleans, LA 70177 | c. Mailing Address (if different from Physical Address):               |
| d. Phone Number:<br>(504)554-1283   | d. Phone Number:   |
| e. Email Address:   | e. Email Address:  |
| f. Social Security Number:<br>[REDACTED]  | f. Social Security Number:   |
| g. Governmental Issued Identification Number:<br>[REDACTED]   | g. Governmental Issued Identification Number:                          |

**SECTION II: GRANT INFORMATION**

**3. CLOSING DATE:** August 30, 2007

**4. PURPOSE AND SOURCE OF FUNDS:** The purpose of this Grant Agreement is to provide compensation for damages incurred by the Homeowner(s) due to Hurricanes Katrina in August 2005 and/or Rita in September 2005. Funding for this grant comes from the Community Development Block Grant (CDBG) program administered through the U.S. Department of Housing and Urban Development. CDBG funds have been allocated to the State of Louisiana's Office of Community Development and are being provided to eligible residents of the State through The Road Home program.

**5. GRANT PROVISIONS:** Homeowner(s) agree(s) to the filing of certain covenants to run with the land on the property for which this Grant is awarded requiring generally as follows: flood insurance to be maintained if located in Special Flood Hazard Area and restraints on use, occupancy and alienation of the Property. The actual covenants are contained in the instrument to be executed by Homeowner(s) and recorded in the land records of the parish where the Property for which this Grant is awarded and located. The covenant will become effective on the grant closing date ("Effective Date").

**6. OCCUPANCY OF PROPERTY:** Homeowner(s) agree(s) to commence occupying the Property as his/her primary residence within three (3) years after the Closing Date. This provision is a material consideration without which the Homeowner(s) would have received a lesser amount under the Road Home Program. Homeowner(s) will be required to repay the Grant in the event of a violation of this Section 6. An Extension of the period for compliance with this provision may be granted by OCD to Owner upon request by Owner to extend the compliance period based on good cause and circumstances beyond Homeowner's control that precluded compliance with the provisions of this Section 6. OCD may require that the Homeowner(s) execute a corresponding extension of the term of the covenants. OCD may on its own, upon evidence of reasonable efforts made by Homeowner to occupy the property, grant an extension of the period to comply with this provision.

**7. DISBURSEMENT OF FUNDS:** The proceeds of the Grant will be disbursed in one lump sum directly to the Homeowner(s).

**8. LIABILITY:** Homeowner(s) agree not to hold the Closing Agent, if any, liable for any actions taken by the Closing Agent relating to this Grant so long as such actions are taken at the direction of the OCD. Homeowner(s) further agree(s) not to hold the State of Louisiana, United States or any other branch or agency of the state or federal government liable for their actions relating to this Grant; provided, however, Homeowner(s) may accept the proceeds from the Grant without prejudicing their rights to subsequently contest the amount of the Grant provided to the Homeowner(s) by OCD, in good faith through resolution and appeal processes provided by the Road Home Program and OCD. Decisions by OCD or its designee on appeal are final non-appealable determinations of benefits under the Road Home Program. If Homeowner(s) attempt to take legal action against Disbursement Agent, the State of Louisiana, United States or any other branch or agency of the state or federal

**SECTION III: FRAUD ACKNOWLEDGEMENT**

9. Homeowner(s) asserts, certifies and reaffirms that all information on the application, documents provided and closing documents are true to the best of my/our knowledge and Homeowner(s) acknowledges that such have been relied on by OCD to provide disaster assistance. Homeowner(s) certifies that all damages claimed in connection with Homeowner(s) application for grant proceeds were a direct result of the declared disaster, and that Homeowner(s) have disclosed to OCD all insurance proceeds and other funds received from governmental agencies as compensation for damages as a result of the declared disaster in the application process. Homeowner(s) acknowledge that Homeowner(s) may be prosecuted by Federal, State and/or local authorities in the event that Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents. Homeowner(s) agree to repay the Grant in the event Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents. Homeowner(s) acknowledges notice of the danger of fraud and scams perpetrated by unscrupulous individuals, contractors and businesses and that the State has provided an Office of Fraud to address such issues.

**SECTION V: SIGNATURES****HOMEOWNER:****CO-HOMEOWNER****Name:** DAPHNE R JONES**Name:****Signature:** *Daphne R. Jones***Signature:**

**STATE OF LOUISIANA DIVISION OF ADMINISTRATION  
OFFICE OF COMMUNITY DEVELOPMENT (OCD)  
THE ROAD HOME PROGRAM GRANT AGREEMENT**

**SECTION 1: HOMEOWNER INFORMATION**

|   |   |
|---|---|
| <b>1. HOMEOWNER:</b>  | <b>2. CO-HOMEOWNER:</b>   |
| <b>a. Name:</b><br>EDWARD RANDOLPH  | <b>a. Name:</b>   |
| <b>b. Property Address:</b><br>8851 8853 GERVAIS ST<br>NEW ORLEANS, Louisiana | <b>b. Property Address:</b>                                     |
| <b>c. Mailing Address (if different from Physical Address):</b>               | <b>c. Mailing Address (if different from Physical Address):</b> |
| <b>d. Phone Number:</b><br>(504) 430-4769                                     | <b>d. Phone Number:</b>   |
| <b>e. Email Address:</b><br>erandolph3@cox.net                                | <b>e. Email Address:</b>  |
| <b>f. Social Security Number:</b><br>[REDACTED]                               | <b>f. Social Security Number:</b>                               |
| <b>g. Government issued Identification Number:</b>                            | <b>g. Government issued Identification Number:</b>              |

**SECTION II: GRANT INFORMATION****3. CLOSING DATE:**

7/27/07

**4. PURPOSE AND SOURCE OF FUNDS:** The purpose of this Grant Agreement is to provide compensation for damages incurred by the Homeowner(s) due to Hurricanes Katrina in August 2005 and/or Rita in September 2005. Funding for this grant comes from the Community Development Block Grant (CDBG) program administered through the U.S. Department of Housing and Urban Development. CDBG funds have been allocated to the State of Louisiana's Office of Community Development and are being provided to eligible residents of the State through *The Road Home* program.

**5. GRANT PROVISIONS:** Homeowner(s) agree(s) to the filing of certain covenants to run with the land on the property for which this Grant is awarded requiring generally as follows: flood insurance to be maintained if located in Special Flood Hazard Area and restraints on use, occupancy and alienation of the Property. The actual covenants are contained in the instrument to be executed by Homeowner(s) and recorded in the land records of the parish where the Property for which this Grant is awarded and located. The covenant will become effective on the grant closing date ("Effective Date").

**6. OCCUPANCY OF PROPERTY:** Homeowner(s) agree(s) to commence occupying the Property as his/her primary residence within three (3) years after the Closing Date. This provision is a material consideration without which the Homeowner(s) would have received a lesser amount under *The Road Home* Program. Homeowner(s) will be required to repay the Grant in the event of a violation of this Section 6. An Extension of the period for compliance with this provision may be granted by OCD to Owner upon request by Owner to extend the compliance period based on good cause and circumstances beyond Homeowner's control that precluded compliance with the provisions of this Section 6. OCD may require that the Homeowner(s) execute a corresponding extension of the term of the covenants. OCD may on its own, upon evidence of reasonable efforts made by Homeowner to occupy the property, grant an extension of the period to comply with this provision.

**7. DISBURSEMENT OF FUNDS:** The proceeds of the Grant will be disbursed in one lump sum directly to the Homeowner(s).

**8. LIABILITY:** Homeowner(s) agree not to hold the Closing Agent, if any, liable for any actions taken by the Closing Agent relating to this Grant so long as such actions are taken at the direction of the OCD. Homeowner(s) further agree(s) not to hold the State of Louisiana, United States or any other branch or agency of the state or federal government liable for their actions relating to this Grant; provided, however, Homeowner(s) may accept the proceeds from the Grant without prejudicing their rights to subsequently contest the amount of the Grant provided to the Homeowner(s) by OCD, in good faith through resolution and appeal processes provided by *The Road Home* Program and OCD. Decisions by OCD or its designee on appeal are final non-appealable determinations of benefits under *The Road Home* Program. If Homeowner(s) attempt to take legal action against Disbursement Agent, the State of Louisiana, United States or any other branch or agency of the state or federal government, such entity will have the right to recover from Homeowner(s) the attorneys' fees and other expenses incurred in connection with such action in the event of adverse judgment against Homeowner(s).



**SECTION III: FRAUD ACKNOWLEDGEMENT**

9. Homeowner(s) asserts, certifies and reaffirms that all information on the application, documents provided and closing documents are true to the best of my/our knowledge and Homeowner(s) acknowledges that such have been relied on by OCD to provide disaster assistance. Homeowner(s) certifies that all damages claimed in connection with Homeowner(s) application for grant proceeds were a direct result of the declared disaster, and that Homeowner(s) have disclosed to OCD all insurance proceeds and other funds received from governmental agencies as compensation for damages as a result of the declared disaster in the application process. Homeowner(s) acknowledge that Homeowner(s) may be prosecuted by Federal, State and/or local authorities in the event that Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents.

Homeowner(s) agree to repay the Grant in the event Homeowner(s) make or file false, misleading and/or incomplete statements and/or documents. Homeowner(s) acknowledges notice of the danger of fraud and scams perpetrated by unscrupulous individuals, contractors and businesses and that the State has provided an Office of Fraud to address such issues.

**SECTION IV: SIGNATURES**  
**HOMEOWNER**

  
Name: EDWARD RANDOLPH

**CO-HOMEOWNER**

Name: \_\_\_\_\_

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GREATER NEW ORLEANS FAIR HOUSING )  
ACTION CENTER, *et al.* )

Plaintiffs, )

v. )

U.S. DEPARTMENT OF HOUSING AND )  
URBAN DEVELOPMENT, *et al.*, )

Defendants. )

No. 1:08-cv-1938-HHK

**ORDER GRANTING DEFENDANT PAUL RAINWATER'S MOTION TO DISMISS**

Before this Court is the Motion to Dismiss for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted filed by Defendant, Paul Rainwater. After considering Defendant's motion, statement of points and authorities in support thereof, and the entire record herein, it is hereby ordered that the Motion to Dismiss filed by Defendant, Paul Rainwater, is GRANTED.

IT IS FURTHER ORDERED that Plaintiffs' Complaint against Defendant, Paul Rainwater, is hereby DISMISSED with prejudice.

Dated: \_\_\_\_\_

\_\_\_\_\_  
HENRY H. KENNEDY  
United States District Court Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

GREATER NEW ORLEANS FAIR HOUSING )  
ACTION CENTER, *et al.* )

Plaintiffs, )

v. )

U.S. DEPARTMENT OF HOUSING AND )  
URBAN DEVELOPMENT, *et al.*, )

Defendants. )

No. 1:08-cv-1938-HHK

**ORDER GRANTING DEFENDANT PAUL RAINWATER'S MOTION TO TRANSFER**

Before this Court is the Motion to Transfer venue filed by Defendant, Paul Rainwater. After considering Defendant's motion, statement of points and authorities in support thereof, and the entire record herein, it is hereby ordered that the Motion to Transfer filed by Defendant, Paul Rainwater, is GRANTED.

IT IS FURTHER ORDERED that this matter is hereby transferred to the United States District Court for the Middle District of Louisiana, located in Baton Rouge, Louisiana.

Dated: \_\_\_\_\_

\_\_\_\_\_  
HENRY H. KENNEDY  
United States District Court Judge