

Testimony of James Perry
Executive Director,
Greater New Orleans Fair Housing Action Center and President of the Louisiana
Housing Alliance presented to the
United States House of Representatives' Financial Services Subcommittee on
Housing and Community Opportunity
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Congresswoman Waters, Ranking Member Capito, and members of the Committee, thank you for the opportunity to testify today on the use of CDBG funds in Gulf Coast communities.

I am James Perry, Executive Director of the Greater New Orleans Fair Housing Action Center, a private non-profit that works to eradicate housing discrimination in New Orleans. We are the only full service fair housing organization in the state of Louisiana. I also serve as President of the Louisiana Housing Alliance, a statewide coalition of housing advocates, non-profit housing providers, homeless service providers, advocacy organizations and local housing coalitions. We work to insure adequate affordable and low-income housing opportunities in Louisiana.

There are several goals and mandates within the Community Development Block Grant program. Most importantly, CDBG is supposed to provide housing opportunities for low-income Americans, cause development in poor communities and affirmatively further fair housing. I regret to inform you, however, that CDBG allocations have not been successful on these fronts.

CDBG Allocation Process

Lack of oversight - Members of Congress will recall that when CDBG funding was initially allocated to Gulf Coast communities, some of the stringent program requirements were reduced or stripped from the allocation. The goal was to make the program expansive since a large cross-section of citizens suffered in the 2005 storms. In particular, the obligation that 70% of funds go to assist low-income residents was significantly weakened. Only 50% of funds were required to be used in a fashion that would assist low-income families. The result is that the majority of CDBG funding has been used to assist middle and upper income families, rather than low-income citizens.

For example, post-hurricane, Louisiana created the Road Home program. The program was designed to help both homeowners and renters. However, 86.2% of CDBG funding allocated by the state has gone exclusively to homeownership programs, which help citizens regardless of income. Only 13.1% went to affordable rental housing. This defies CDBG program goals since the majority of New Orleanians and particularly, low-income

New Orleanians and Louisianans were renters. Any attempt to assist low-income citizens must focus a major portion of its efforts on affordable rental. This scant allocation of funds makes it inherently difficult for CDBG dollars to benefit low-income citizens. In fact the situation remains that the Road Home Small Rental program, has to date provided only 13 units, when the state of Louisiana estimates a need for as many as 80,000 units.

The effect of the short falling is demonstrated in reports by Unity for the Homeless, a New Orleans non-profit. The organization estimates that prior to Hurricane Katrina there were approximately 6000 homeless residents. There are now more than 12,000 homeless citizens in New Orleans. If the Road Home Small Rental program were properly funded and managed, the number of homeless citizens would be significantly less. Better oversight of the use of CDBG funding could have prevented this failure.

The problem is exacerbated by the liberal nature of CDBG funding. The United States Department of Housing and Urban Development (HUD), charged with monitoring and managing CDBG, has little oversight and/or authority over CDBG grantees. In each case that post-storm CDBG grantees presented plans that didn't achieve CDBG goals or asked for waivers from the CDBG low-income requirement, HUD has simply granted the waivers regardless of whether the plan affirmatively furthered fair housing or provided adequate housing assistance to low-income citizens.

The matter was clearly exemplified in Mississippi recently. Consider the unfortunate decision by Mississippi to allocate \$600 million of its CDBG funding to a port development program that would offer little or no assistance to low-income citizens. Secretary Jackson of HUD stated in casual conversation that he believed the allocation to be a poor use of CDBG funding. He indicated that if he had the authority to reverse the decision, he would have done so.

The matter was again exemplified in Alabama. The millions of dollars allocated to the state to assist Hurricane affected evacuees have yet to be expended nearly three years after Hurricanes Katrina and Rita. Better oversight would force local and state officials to allocate CDBG funding in a timely manner.

Recommendations

- *The problem of CDBG allocations being used for purposes other than assisting low-income residents is a national problem. Communities look for ways to use the funding that don't necessarily help the poorest citizens or affirmatively further fair housing. In fact, studies indicate that most CDBG assistance inures to the benefit of moderate and middle-income citizens. Congress should refrain from removing the 70% low-income requirement on CDBG funding. In addition to the overall 70% low-income cap, 40% of CDBG funds should be required to be used exclusively to benefit citizens at or below 50% of median income. These rules should remain consistent both in normal operations and in times of disaster.*

- *Congress should increase HUD's oversight of CDBG funding and make it easier for HUD to revoke or limit funding when CDBG grantees fail to assist low-income citizens, remove blight in poor communities, or affirmatively further fair housing.*
- *Hurricane affected states have not been forthcoming in releasing reports on CDBG allocations or HUD's grading of their use of the allocations. Congress should strengthen reporting requirements so that all CDBG reports must be provided on the Internet and at the immediate request of citizens as soon as they are available.*
- *Congress should immediately account for the short fall that left many renter families without shelter by immediately allocating money for and approving 3000 permanent supportive housing vouchers. The Senate Appropriations Committee will vote on such funds today, as part of its supplemental budget package. The House should also include funding for these vouchers in its supplemental budget bill.*

Fair Allocation of CDBG Dollars

After Hurricanes Katrina and Rita, the 109th Congress capped Louisiana's share of CDBG funding at 54% of the allocation despite the fact that Louisiana suffered nearly 80% of all the housing damage. Louisiana had more than four times the damage suffered in Mississippi, yet Louisiana received less than twice the amount of funding received by Mississippi. We support the recovery of our neighbors in Mississippi, but the disparity in allocation left needs in Louisiana significantly unmet.

If Louisiana had received the more than \$20 billion that is proportional to the amount Mississippi received, the status of recovery might have been very different. More affordable rental units would be funded and more low-income citizens might have been helped. However, with scant federal resources available, the state was required to pick and choose who received help. In such circumstances, low-income citizens and citizens with special needs are rarely successful. Such has been the case in Louisiana. In addition, Louisiana has been placed in the undesirable position of having to consistently beg the Federal government for additional resources.

Recommendation

- *It is important that in the future, funding must be allocated exclusively according to proportional need. In addition, Congress should reconsider whether current funding in Louisiana and Alabama has met the need. If not, Congress should allocate additional CDBG assistance.*

Road Home Housing Program

Failure to Affirmatively Further Fair Housing/Discriminatory Practices - Another area that demonstrates the need for better federal oversight of CDBG fund usage is the Louisiana Road Home Homeownership Program. The program fails from a fair housing standpoint because it has a disparate discriminatory impact on African-Americans and other historically segregated communities of color. The program uses pre-storm home values to calculate renovation grant amounts. In communities of color that have historically low property values due to historic patterns of segregation, residents are paid lower grant amounts than their counterparts in majority white communities where comparable properties have higher values. Road Home grant payouts should be based exclusively on home replacement/repair costs rather than property value. This process would be less discriminatory and better enable citizens to rebuild.

The State of Louisiana, ICF International (the Road Home contractor) and the Louisiana Recovery Authority (LRA) have all been made aware of the discriminatory impact of the program, yet the problem persists. Some advocates have suggested that an aspect of Louisiana's decision to ignore the problem may stem from the lack of a clear enforcement mechanism in the CDBG "affirmatively further fair housing," clause. Some Grantees have treated the language as dicta rather than a legal requirement. Advocates may be forced to pursue litigation to correct the problem.

Recommendations

- *Congress should use any authority available to force the Road Home Homeownership Program to adopt a less discriminatory process for awarding grants.*
- *Congress should provide more tools and language to enforce the "affirmatively further fair housing," provisions of CDBG laws and regulations.*
- *Congress should hold hearings on the discriminatory effect of the Road Home Homeownership Program*

Poor Use of Funds - The Road Home program has increased performance since the fourth quarter of 2007. It has awarded more grants at a more frequent rate. However, significant problems in the Road Home program persist. The problems are too numerous to enumerate in this testimony. However, I will provide some exemplary issues.

LRA has unnecessarily shifted CDBG funds intended for Road Home homeowner grants to a home elevation program that most homeowners will not and have not been able to take advantage of because it does not provide enough money to actually raise an average house in Louisiana.

The Road Home program lacks a fair and efficient appeals program. Advocates assisting Road Home grant recipients with appeals have found that the appeals process is nearly

impossible to navigate because: Road Home officials are slow to release internal information related to clients' grant calculations; the appeals process and procedure is not clearly enumerated or publicized; conflicting Road Home policies thwart the appeals process; processing delays slow the appeals process; the appeals process is not firmly related to basic legal and administrative principles for deciding appeals; and appeals are not decided by a disinterested independent party.

The Additional Compensation Grant portion of the Road Home, which is meant to help low and moderate income homeowners rebuild, does not provide enough money to eligible applicants to make up for the gap between their homes' pre-storm value and actual repair/replacement costs. The result is that a large numbers of low-income citizens have received only part of the money necessary to rebuild. The national credit crunch combined with the fact that credit ratings of Gulf Coast citizens suffered during the months after the Hurricanes have made it difficult for low-income citizens to use the private lending market to fill the gap left open by the Road Home program's inefficiency. The result is that numerous citizens are left with partially renovated homes and no financial means to complete the renovations.

Finally, the Road Home and individual parishes have vague plans on how they intend to dispose of storm-damaged properties acquired by the Road Home program. The lack of clarity on the future of these properties limits citizens' ability to make informed decisions about their communities.

In spite of these failures, the State of Louisiana increased payments to ICF International (the contractor that manages the Road Home program) despite documented evidence of massive contractor error.

Recommendations

- *Again, Congress should increase federal oversight of CDBG funding to insure efficiency.*
- *In the planning process, CDBG grantees should be required to provide exhaustive details of how CDBG funding will be spent. Louisiana's plan for the expenditure of more than \$12 billion dollars of CDBG money was less than 20 pages long. The result is that few people, including state officials, have a clear understanding of how program dollars are being spent.*

Road Home Rental Program

The Road Home Small Landlord program has failed to have any relevant effect on Louisiana's recovery. The program is simply not replacing lost rental housing stock. To date, the state has received applications to restore 12,800 units but a mere 13 units have been restored in the more than 2 ½ years since Hurricane Katrina.

The program requires that property owners get private financing and fully complete repairs prior to receiving funding. Of course, if landlords were able to get private funding, they would have no need for the program's assistance. The requirement that renovation be complete before any funding is allocated has caused the complete failure of the program. The LRA, not understanding the cause of the failure, has sought to redirect program funding to other areas. The problem is extremely important since LRA estimates that the state needs an additional 60,000 to 80,000 rental units to complete its recovery. The failure of this program exacerbates the affordable rental housing problems in Louisiana and prevents thousands of renters from returning to their communities. LRA must revamp this program to make it more lucrative and provide some upfront funding to landlords.

Recommendations

- *Again, Congress should increase federal oversight of CDBG funding to insure efficiency.*

Discrimination by Municipalities that Receive CDBG funding

Many of the rental units scheduled to be redeveloped are using the Low-Income Housing Tax Credit (LIHTC) and CDBG funding. The process of rebuilding affordable rental housing has been extremely difficult, because Louisiana municipalities have sought to limit the construction of affordable housing. Anti-affordable housing efforts, often termed "not in my backyard" (NIMBY) have slowed and in some instances stopped the development process.

One example occurred in Jefferson Parish where the Parish engaged in discriminatory zoning efforts that made it impossible for the Volunteers of America to build an apartment complex to replace a complex lost in the storm. The would-be occupants of the new complex were low-income elderly New Orleanians, most of whom are African-American. The Parish passed a resolution expressly requesting that no LIHTC developments be constructed on the westbank of Jefferson Parish. It later engaged in a land-use study at the site of the proposed development, timed to kill the project. The project is now dead and the low-income elderly, mostly African-American residents, for whom the project was intended, have been left without an affordable housing option. During the same period, the Parish approved and championed a high-end, market rate, multi-family complex for elderly citizens. The actions taken by the Parish certainly demonstrate a failure to affirmatively further fair housing. In fact, they likely constitute illegal discrimination under the federal Fair Housing Act.

Kenner City, located in Jefferson Parish, recently passed a moratorium on the construction of any multi-family housing in the City. The ordinance, which we are aggressively advocating against, prevents any LIHTC construction in the City. The talk

of the ordinance came up after residents raised concerns about a storm damaged apartment complex that housed mostly Latinos and families with children. The moratorium on multi-family housing is likely illegal discrimination under the federal Fair Housing Act.

In similar fashion, a city council person for New Orleans East sought to prohibit the construction or renovation of any multi-family housing with two or more units in her district. The district housed a large portion of the City's affordable rental housing. African-Americans, people with disabilities and families with children comprise a large portion of the number of people who rely on the apartment housing in New Orleans East. The proposed ban was withdrawn prior to being voted on by the Orleans City Council. It however demonstrates discriminatory intent by the Council member.

In the Fall of 2007, St. Bernard Parish passed an ordinance making it illegal to rent single-family homes to people not related by blood to the owner. 93% of homeowners in St. Bernard are white. As a result, few if any minorities would be able to rent housing in St. Bernard. My organization, the Greater New Orleans Fair Housing Action Center, sued the St. Bernard Parish Council to force them to overturn the ordinance. The litigation resulted in the successful reversal of the ordinance. The ordinance was illegal discrimination under the federal Fair Housing Act and certainly failed to affirmatively further fair housing.

The State of Louisiana, post-Hurricane adopted a new building code but removed all the provisions that would have forced developers to build multi-family units in a manner that was accessible for people with physical disabilities. This is a failure to affirmatively further fair housing.

These examples are a mere sampling of post-Hurricane discrimination by municipalities that benefit from CDBG funding. When considered with the previously demonstrated racially discriminatory formula used by the state of Louisiana to determine Road Home homeownership grant amounts, it is clear that CDBG funding is not being used in a manner that affirmatively furthers fair housing. In fact, each entity is likely liable for violating federal fair housing laws.

This is exacerbated by the fact that the state of Louisiana, and nearly all municipalities (except Baton Rouge) have failed to engage in any fair housing related activities. None of the entities have supported any fair housing related activities, trainings, workshops, events, enforcement or fair housing organizations. The sole voice of the fair housing movement in Louisiana has been the six-person staff of the Greater New Orleans Fair Housing Action Center through its enforcement work and outreach efforts with partners such as the Urban Restoration Enhancement Corporation, the Louisiana Disaster Recovery Foundation, HUD, and an upcoming anti-NIMBY campaign with the Louisiana Housing Finance Agency.

It is important to note that the case is similar in Texas, Mississippi and Alabama. None of these states have engaged in any activities that affirmatively further fair housing. In

Mississippi, one municipality has bucked the trend by providing funding to the Mississippi Gulf Coast Fair Housing Center.

Recommendations

- *Congress should immediately strengthen the affirmatively further fair housing language in the CDBG regulations and laws so that municipalities can be fined and otherwise penalized for failing to affirmatively further fair housing.*
- *Congress should immediately strengthen CDBG requirements so that municipalities found liable to for illegal housing discrimination will be forced to forfeit CDBG funding.*
- *Congress should strengthen HUD's ability to enforce fair housing related CDBG regulations.*
- *Congress should require HUD to strengthen its enforcement of CDBG related fair housing laws.*
- *Congress should require municipalities to engage in specific activities that further fair housing.*
- *Congress should require CDBG grantees to fund private fair housing enforcement non-profits.*
- *Congress should require all staff of all municipalities that will manage CDBG funding to participate in fair housing law trainings.*
- *Members of Congress should conduct hearings to investigate the extent of illegal discrimination by CDBG grantees along the Gulf Coast.*

Additional Recommendations

- *Passage of an Affordable Housing Fund to support the production and preservation of rental housing affordable to extremely low income families and direct the resources to states where the housing supply has been affected by the Gulf Coast hurricanes for the first year.*
- *An additional allocation of GO Zone tax credits of \$30 million annually for a period of five years to fund projects in the GO Zone;*
- *An increase in the State's annual allocation of Per Capita Tax Credits from \$8.6 million annually to \$18 million annually for a period of five years to fund projects in rural and metropolitan areas of the state affected by GO Zone out-migration;*

- *An allocation of \$500 million of GO Zone Mortgage Revenue Bonds to promote ownership and rental housing in the GO Zone;*
- *Authority to use Single-Family Mortgage Revenue Bonds to refinance mortgage loans that are at risk of foreclosure;*
- *An increase from \$15 million annually to \$30 million annually for five years in its annual allotment of HOME funds to fund homeownership and affordable rental opportunities in GO Zone and non-GO Zone areas for persons earning less than 80% of AMI. 50% of the allocation would be reserved for citizens earning less than 30% of median income.*
- *\$30 million in annual allotments of CDBG funds for five years to fund homeownership and affordable rental opportunities for persons in GO Zone and non-GO Zone areas earning from 0% to 100% of AMI. 33% of the allocation would be reserved for citizens earning less than 30% of median income.*
- *Additional federal funds for Regional Planning, and Community Development Training.*

- Respectfully submitted by James Perry