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May 5, 2011

BY E-MAIL

Paul Rainwater
Commissioner of Administration
Office of Community Development
150 N. 3rd Street, Suite 700
Baton Rouge, LA 70801

Dear Commissioner Rainwater:

On behalf of the National Fair Housing Alliance (“NFHA”) and the Greater New Orleans Fair Housing Action Center (“GNOFHAC”), we submit the following comments on the proposed Action Plan Amendment No. 51 (“APA 51”), known as the Homeowner Blight Reduction Grant Adjustment (“BRGA”).

In 2008, NFHA, GNOFHAC and five African-American homeowners filed a federal class action lawsuit challenging the Road Home Program’s use of pre-storm home value (“PSV”) to determine the size of rebuilding grants under Option 1 of the program.¹ In our complaint, we alleged that because the Road Home Program used PSV to calculate rebuilding grants, African-American homeowners were more likely to receive smaller grant awards than their white counterparts and they were more likely to have large gaps in the resources needed to rebuild.

We recognize that many homeowners—of all backgrounds—have faced significant obstacles in their efforts to return home, including shortfalls in rebuilding resources. But for homeowners who received grants based on PSV, rather than the cost of repairing their homes, the Road Home *guaranteed* that they would not have adequate resources to repair their homes. African-American families, in particular, were disadvantaged by the Road Home program’s decision to link rebuilding assistance to pre-storm home values because in New Orleans, like many cities throughout this country, homes in predominantly black communities have lower values than those in predominantly white communities. This is true even when the condition, style, and quality of the homes are comparable. Consequently, from the very outset the Road Home program made it much harder for African-American families to recover from the storms because

African-American families were more likely to receive rebuilding grants that were capped by PSV.

Program officials often have stated that the Road Home was not designed to make every homeowner whole due to the limited federal funding of over \$11 billion. Even so, the program should have been designed to treat every homeowner fairly, regardless of the location of the home or the race of the homeowner.

In October 2009 (about a year after we filed our lawsuit), the State took a major step to reduce the negative impact of using PSV to determine rebuilding grants through the adoption of Action Plan Amendment 39 (“APA 39”). APA 39 guaranteed that low and moderate income (“LMI”) homeowners would receive Compensation Grants based on the full cost of rebuilding their homes up to \$150,000, ensuring that PSV would no longer artificially constrain these homeowners’ rebuilding grants. To date, just over 13,000 LMI homeowners have received Additional Compensation Grants worth nearly \$470 million. See page 5 of <http://www.road2la.org/Docs/pipeline/week250pipeline.pdf>.

As we did in 2009, we applaud the State for adopting APA 39.¹ However, as the State acknowledges, APA 39 did nothing to address the disparities faced by well over 10,000 middle-class homeowners who received rebuilding grants based on PSV. These homeowners continue their struggle to rebuild, despite lacking the resources they need to return home.¹

In our view, proposed Action Plan Amendment 51 takes another step in the right direction by alleviating *in part* the disparities faced by about 2,000 middle-class homeowners who received smaller grants due to the use of PSV. Nevertheless, we write to articulate several concerns regarding the proposed amendment and to offer recommendations that, if adopted, would better assist a larger number of homeowners who were disadvantaged by the use of pre-storm home value.

Concerns & Recommendations:

First, the unjustifiably short public comment period of just five days is simply not enough time for important stakeholders to digest and prepare comments that would result in a fairer program better-tailored to assist the very people it is designed to help. While the standard notice-and-comment requirements have been waived for the Road Home program, the Office of Community Development (“OCD”) is nonetheless mandated to ensure a “reasonable opportunity for citizen comment.” Allocations and Common Application and Reporting Waivers Granted to and Alternative Requirements for CDBG Disaster Recovery Grantees, 71 Fed. Reg. 7666. 7668-69 (Feb. 13, 2006). Providing an unduly short, five-day public comment period is grossly unfair and highly troubling, as it is unlikely that homeowners *who have not been able to return*—the very individuals whom APA 51 is specifically designed to assist—will have an opportunity to meaningfully review the amendment and provide commentary.

Recommendation: Extend the public comment period to no less than 30 days.

Second, APA 51 leaves ambiguous a number of its key provisions that substantially impact the fairness and efficacy of the Blight Reduction Grant Adjustments, and make it difficult for the public to evaluate the amendment. Currently, APA 51 does not address the following issues, for which we offer recommendations:

- 1. How will OCD determine and verify which homeowners have “not been able to return to their homes,” *i.e.*, that “the homeowner has been unable to complete repairs and return to their damaged property or has returned and [the home] is uninhabitable under the applicable codes and ordinances of the local jurisdiction.”**

Recommendation: Any verification process should be straightforward and simple for homeowners to satisfy, and should use an objective standard that can be easily applied. Those who have been displaced have been living uprooted lives for almost six years. A cumbersome verification process will slow down the flow of desperately needed funds to those who have struggled the most to return.

- 2. Is there a deadline for eligible homeowners to contact the Office of Community Development in order to receive a BRGA? If there is a deadline, what is it, and will there be an extension if good cause is shown for missing the deadline?**

Recommendation: OCD should provide displaced homeowners ample time to learn about and apply for the BRGA, particularly since the program is primarily intended to assist homeowners who have not yet returned to their homes. We recommend that homeowners have at least 90 days from the date the program is publicly announced to respond and that the announcement be widely disseminated to interested parties, including organizations working regularly with families displaced by Hurricanes Katrina and Rita and regional media outlets in the Gulf region (including minority media outlets).

- 3. How will BRGAs be calculated if the program is oversubscribed and grants to all eligible homeowners based on the proposed formula would exceed the remaining federal funds available to the Road Home Program?**

Recommendation: We recommend that OCD revise APA 51 to provide contingencies in the event that the program is oversubscribed to ensure that all eligible homeowners receive a BRGA. If the remaining federal funds are insufficient to provide full BRGAs based on the proposed formula, we recommend reducing the maximum amount of BRGAs so that each eligible homeowner may still receive a BRGA. (The proposed maximum BRGA is currently \$50,000).

- 4. How will BRGA recipients demonstrate fulfillment of the requirement to participate in the Construction Advisory Program?**

Recommendation: We recommend that participation be made optional not mandatory, or that homeowners be permitted to choose from authorized designated “Construction Advisors.” The reasons that homeowners have not yet been able to return are varied. While many undoubtedly have been unable to complete repairs because of incompetent or

unscrupulous contractors, other homeowners have obtained affordable quality construction services and simply need the funds to complete the work. Requiring them to participate in the Construction Advisory Program will only slow their ability to complete repairs and return home. It will also unnecessarily diminish the dollars available for Blight Reduction Grant Adjustments.

Third, APA 51 should set forth what will happen to the remaining federal funds available to the Road Home program, given that the State estimates that it will spend only \$62 million on the proposed APA 51. OCD has publicly stated that, after all of its current outstanding obligations, the Road Home program will have more than \$100 million in federal funds that must be spent on Road Home recipients. In addition, in proposed APA 51, OCD states that it believes the proposed amendment will cost about \$62 million, leaving tens of millions of federal funds uncommitted.

We believe that the \$100 million-plus in remaining federal funds should be spent to assist homeowners who were disadvantaged by the use of PSV, and should be spent as quickly as possible since these homeowners are still struggling to rebuild nearly six years after Hurricane Katrina. Accordingly, we urge OCD to modify proposed APA 51 to state that, once BGRAs have been provided to eligible homeowners—hopefully within six months—that the balance of the federal Road Home funds will be spent to directly provide rebuilding services to *non* low- and moderate-income homeowners who (a) are ineligible for a BGRA, (b) received awards based on PSV, (c) have not completed their repairs, and (d) live in one of the four parishes already targeted by APA 51. We propose that OCD establish a non-profit rebuilding program to assist these homeowners, similar to the Louisiana Recovery Authority / OCD's non-profit pilot program.

We strongly urge you to revise the proposed APA 51 consistent with the recommendations set forth above. As the Road Home program winds down, we hope that you take these steps to further address the inequity that resulted from the use of PSV—inequity that you and other program administrators have acknowledged and begun to address. By adopting our recommendations, the State of Louisiana can help ensure that a greater number of families can finally rebuild and return to their homes.

Respectfully submitted,

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