

TESTIMONY FOR THE RECORD SUBMITTED BY:

**Consumer Mortgage Coalition
Financial Services Roundtable
Mortgage Bankers Association**

**AD HOC SUBCOMMITTEE ON DISASTER RECOVERY
COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

**“The Road Home? An Examination of the Goals, Costs,
Management and Impediments Facing Louisiana’s
Road Home Program”**

May 24, 2007

The Consumer Mortgage Coalition, the Financial Services Roundtable and Mortgage Bankers Association appreciate the opportunity to submit testimony concerning the issues still facing the residents of Louisiana as a result of Hurricanes Katrina and Rita.

In considering the problem and impact of, and possible responses to, the issues still facing homeowners in Louisiana, we emphasize the following key points:

- ***FHA insurance claims should be paid on hurricane-damaged homes that can not economically be made marketable.*** We support enactment of H.R. 1227, which would require the Federal Housing Administration (FHA) to pay insurance benefits on homes damaged in Hurricanes Katrina and Rita without requiring those homes to be restored to conveyance condition or marketability;
- ***Road Home money should be restricted to rebuilding and repairing homes.*** We support eliminating federal red tape that, in effect, prohibits the Road Home from requiring that homeowner grants be used specifically for home repair and rebuilding;
- ***Public welfare investment should be permitted.*** We support enactment of H.R. 1066, which would restore the preexisting, longstanding authority of banks to make a variety of public welfare investments; and
- ***Road Home funding support.*** We support continued federal backing for Louisiana's Road Home Program.

We commend the Subcommittee for its attention to the issues facing homeowners in Louisiana. We are particularly concerned because the damage caused by these hurricanes has affected thousands of homeowners and has the potential to disrupt the ability of lenders to service the affected communities. We support the goal of allowing lenders to help in revitalizing these areas through public welfare investments. We share the Subcommittee's objective of ensuring that residents of Louisiana can continue to have access to all of the benefits of home ownership.

I. Remove Property Condition Requirements for Collecting FHA Insurance Proceeds in Katrina and Rita-Impacted Areas

The devastation caused by Hurricanes Katrina and Rita dealt a crushing blow to tens of thousands of homeowners living along the Gulf Coast. While our members have worked hard to help homeowners repair and rebuild their homes, many homes have been abandoned and the owners have defaulted on their loans. Although this is a multifaceted problem, one issue would be resolved by Section 501 of H.R. 1227 (as passed by the House of Representatives), which would allow FHA insurance claims to be paid on properties that were damaged by these hurricanes even if the property is not restored to marketable condition. Payments would only be made if the lender required the borrower to purchase and maintain hazard insurance consistent with the requirements of the loan documents, and flood insurance coverage to the extent required under federal law. We strongly support this provision.

FHA generally does not pay a lender's mortgage insurance claim until the property has been put into marketable condition. This is a sensible policy when it is applied to an area with an active real-estate market because it places responsibility on the lender to ensure that defaulted properties are maintained or restored to conveyance or marketable condition, allowing FHA to promptly resell the property after it pays the claim and takes possession.

However, the devastation caused by Hurricane Katrina resulted in an unprecedented number of abandoned homes in a concentrated area. Many of these properties were uninsured due to the faulty government flood maps that placed the properties outside of Special Flood Hazard Areas. Other borrowers have no funds to make repairs or the cost to repair will exceed the fair market value of the property improved. Moreover, because the Department of Housing and Urban Development (HUD) required the state of Louisiana to remove any requirements that Road Home grants be used to repair damaged properties, a significant number of homes will remain damaged without any near term prospect of being repaired or conveyed to the state for redevelopment.

According to the Congressional Budget Office (CBO), lenders have not been able to restore these properties because the cost of doing so "would most likely exceed the FHA claims payments."¹ We believe that, in many cases, because real-estate prices in these areas are extremely depressed, the cost of repairs would not be fully reflected in increased market value. By conveying these properties to HUD in damaged condition, HUD can consolidate these properties for redevelopment rather than have them languish.

FHA loan programs play an important role in expanding homeownership for low- to moderate-income Americans. To ensure continued public confidence in the integrity of the FHA guarantee and avoid discouraging lenders from offering FHA financing in areas that are at high risk of natural disaster, it is important that the FHA honor its insurance policies on these loans. The H.R. 1227 provision only applies to lenders that complied with all insurance requirements mandated by their loan documents and federal law, and only in areas that were affected by the catastrophic devastation of Hurricanes Katrina and Rita. If the provisions of H.R. 1227 are not enacted, hundreds of properties will remain un-repaired and will represent a continued drag on neighborhood recovery efforts.

II. Road Home Money Should Be Restricted to Rebuilding and Repairing Homes

One of the objectives of Congress must be to promote regional recovery and rebuilding of the devastated area. We believe the state ultimately shares the same objective. Unfortunately, there are several obstacles that impede the state's ability to impose important restrictions on how Community Development Block Grant (CDBG) funds can be used. As a result, the state has been forced to develop a grant program that, while based on the damage to the home, does not obligate the grant recipient to rebuild or repair the home. Rather, the funds can be used for any purpose. We have been extremely troubled by this problem since the inception of the Road Home program. We are concerned that without "use restrictions" on CDBG funds, the hardest

¹ CBO, Cost Estimate for H.R. 1227 at 6 (April 30, 2007)

hit parishes will not recover, neighborhoods will not return, businesses will not reopen and ultimately the state will not reap the benefits of federally appropriated funds.

The greatest obstacle to ensuring rebuilding has been the National Environmental Policy Act (NEPA). NEPA effectively hamstrung the state into how it could design their grant distribution program. Here is the problem: NEPA requires that “every federal agency evaluate the potential environmental impacts of major federal actions significantly affecting the quality of the human environment.”² CDBG grants are subject to NEPA and other environmental laws contained therein, including historic preservation, floodplain management and wetland protection, coastal zone management, sole source aquifers, endangered species, wild and scenic rivers, air quality, farmland protection, HUD environmental criteria and standards and environmental justice.

What this means is that HUD or its “designee” (the state) cannot specify the use of CDBG funds specifically for *rebuilding*, for example, without performing environmental assessments on each and every property indicating any impact of rebuilding (the “federal action”) on historic preservation, floodplain management and wetland protection, coastal zone management, sole source aquifers, endangered species, wild and scenic rivers, air quality, farmland protection, HUD environmental criteria and standards, and environmental justice. While these are laudable goals, damaged properties are pre-existing and thus the impact of rebuilding pre-existing housing would have no significant *new* impact on these particular concerns or such concerns could be addressed locally, in the case of historic preservation.

NEPA, in this context, has little to do with clean up of hazardous substances caused by hurricane damage or ensuring the safety of citizens before they repair or rebuild. What is even more troubling is that there are broad exemptions and exclusions offered under NEPA for national disasters, yet HUD and the state did not apply them. Effectively there are no guidelines on how to “activate” these exemptions on a broad scale such as that required after Hurricanes Katrina and Rita. At one time, the industry considered requesting that each agency responsible for enforcing these environmental laws officially “activate” the exemptions and exclusions, but the industry quickly determined such a task was futile. Time was of the essence and this was just too time-consuming. Ultimately the state could not impose any requirements on the use of the funds.

We recommend that specific language be inserted into future legislation that clarifies that the state can impose use requirements on recipients of federally provided CDBG funds, when such funds are appropriated as a result of a disaster; and furthermore, that imposing a “use” requirement does not violate NEPA, but is specifically covered by existing exemptions. Alternatively, Congress could create a mechanism that would allow the President of the United States or another appropriate government entity to “activate” the NEPA exemptions and exclusions or otherwise waive NEPA for the purpose of rebuilding pre-existing housing after a disaster.

² 42 U.S.C. § 4332(2)(C)

Other obstacles the state faces are the monitoring and reporting obligations under the Appropriations Act passed on December 30, 2005³ and implementing HUD regulations. The reporting obligations were interpreted to require extensive monitoring and reporting if grantees were restricted to rebuilding or repairing their homes with the funds. The reporting and monitoring obligation were viewed as so extensive that the cost to perform these functions would absorb a significant percentage of the total CDBG award to the state, and ultimately homeowners. However, if the state did not impose any use requirements on the grant funds, there would be no obligation to determine if the funds were used for their stated purpose, thus significantly lowering monitoring and reporting obligation. Unfortunately it also means there are few if any controls placed on the funds. Some efforts should be made to streamline the reporting obligations in future situations to encourage monitoring and reporting for fraud, abuse of funds and uses not intended by Congress. It should also be made clear that the state can subcontract or *delegate* this monitoring and reporting function to private or public third parties.

Any effort to address these concerns should be applicable to funds previously appropriated.

III. Allow Broader Public Welfare Investment Legislation

Due to the unintended effects of a change in wording, the Financial Services Regulatory Relief Act of 2006⁴ restricted the authority of national banks and state banks to make public welfare investments. The Regulatory Relief Act limited these public welfare investments to outlays that benefit primarily low- and moderate-income communities and families. Prior to 2006, the public welfare authority extended to a wide range of beneficial projects, which included but were not limited to projects benefiting low- or moderate-income communities and families. The consequences of this change—which appears to have been unintentional—are substantial. H.R. 1066, the Depository Institution Community Development Investments Enhancement Act, would correct this problem. This legislation would restore the preexisting, longstanding authority of national and state banks and federal savings associations to make a variety of public welfare investments. H.R. 1066 is supported by the Office of the Comptroller of the Currency and was passed by the House by voice vote.

Returning to this standard will restore several major categories of public welfare investments in locations determined by federal, state and local governments to be in need of such investments. The amended language in the Financial Services Regulatory Relief Act of 2006 disqualifies banks from making several major categories of direct public welfare investments, including investments that:

- revitalize or stabilize designated disaster areas, such as the GO Zone (hurricane-devastated areas that are targeted for redevelopment), that do not serve communities that were low- or moderate-income prior to the disaster;
- do not primarily benefit low- or moderate-income populations but are located in rural middle-income underserved or distressed communities; and

³ P.L. 109-148 (Dec. 30, 2005).

⁴ P.L. 109-351 (Oct. 12, 2006).

- provide mixed-income affordable housing in government areas targeted for revitalization.

Prior to enactment of the Financial Services Regulatory Relief Act of 2006, banks could make these investments under the public welfare test. We know, for example, of a bank that would like to make a large investment in the GO Zone, but cannot do so because of the restrictive language that was inadvertently applied to public welfare investments.

H.R. 1066 remedies these restrictions by permitting banks and thrifts “to make investments, each of which is designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families (such as by providing housing, services or jobs).” Communities will be the ultimate beneficiaries of this revised language because banks will be able to work with their community partners on projects to help build affordable housing and make other direct investments that are currently prohibited.

From 1992 to 2006, the previous standard permitted, for example, national bank community development investments in every state totaling over \$16 billion. Public welfare investments are publicized by the federal regulators and are subject to key regulatory controls designed to protect against risks to the safety and soundness of the bank and to the deposit insurance fund.

Restoring the previously qualifying categories of investments, in combination with the recent increase in allowable investments to 15 percent of capital and surplus, can potentially generate as much as \$30 billion in investments just by national banks, as well as additional investments by thrifts and state banks, which will help revitalize local communities across the nation—without the use of any taxpayer funds.

IV. Extend FEMA Assistance for Cleanup of Damaged Areas

We also encourage FEMA to work with the Louisiana Recovery Authority (LRA) to ensure that homeowners affected by the storms—especially those in hardest-hit Louisiana—receive adequate funds to repair their homes and communities. As it currently stands, the LRA, through its “Road Home” program, projects a \$1 to \$3 billion shortfall in funds to help flood-wrecked homes. More than 133,000 property owners have applied for aid through the Road Home program, but only 15,000 have received grants. Many homeowners are worried that the program will run out of money before they receive anything. Up to 40,000 homeowners could be left out if the current disbursement rate of about \$75,000 per claim continues.

Even though the federal government through FEMA has contributed \$7.5 billion to the program, the best way to ensure that Louisiana homeowners are protected would be for FEMA to guarantee a substantial portion, if not all, of the shortfall. Homeowners who are unsure whether they will receive the recovery grants promised to them are naturally reluctant to invest in repairing their homes for fear that they might not wind up being able to afford to stay in their homes after construction is completed. One of the primary engines of economic growth in Louisiana has been the rejuvenation of the homeownership market. This growth, however, is jeopardized by this projected shortfall. We note that continued investment in Gulf Coast housing

benefits homeowners and the entire community. FEMA should play a role in ensuring that this investment does not come up short.

We appreciate the opportunity to submit its views on the issues facing Louisiana's "Road Home" program. Our associations stand ready to work with the Subcommittee to ensure that Louisiana is repaired, re-built and re-vitalized.