UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

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

REPLY MEMORANDUM OF DEFENDANT PAUL RAINWATER IN SUPPORT OF HIS MOTION TO DISMISS AND MOTION TO TRANSFER

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Defendant Paul Rainwater respectfully submits this memorandum of law in support of his Motions to Dismiss and Motion to Transfer (Dkt. 28) and to reply to Plaintiffs' Opposition to Defendants' Motions to Dismiss and Motion to Transfer (Dkt. 34) and to Defendant U.S. Department of Housing and Urban Development's Response to Motion to Dismiss and Motion to Transfer by Paul Rainwater in His Official Capacity as Executive Director, Louisiana Recovery Authority (Dkt. 33).

I. The Relief Sought by Plaintiffs Falls Outside the Scope of the *Ex Parte Young* Exception to The Eleventh Amendment's General Prohibition of Suits Against a State by its Own Citizens

Although *Ex Parte Young*, 209 U.S. 123 (1908), provides an exception to Eleventh Amendment immunity in suits involving the actions of state officials, it is well settled that "[t]he Eleventh Amendment bars a suit against state officials when the state is the real, substantial party in interest." *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 101–02 (1984). In this case, Rainwater cannot be the real party in interest because he lacked authority over The Road Home compensation grant formula that is the alleged source of Plaintiffs' damages. As will be demonstrated by statute and by Plaintiffs' own admissions, the Louisiana Recovery Authority ("LRA") was solely responsible for the development and implementation of The Road Home compensation grant formula at issue in this litigation. As such, *Ex Parte Young* cannot permit Plaintiffs to circumvent the Eleventh Amendment.

Plaintiffs, in their Opposition Memorandum, concede the LRA is the real party in interest in this action and not Rainwater, stating:

> The Louisiana Recovery Authority ("LRA") is a Louisiana state agency created to administer funds for recovery from Hurricanes Katrina and Rita, including CDBG Disaster Recovery Grant Funds. Defendant, Paul Rainwater, is the LRA's Executive Director.

(Complaint, Dkt. 1, ¶ 19; Plaintiffs' Opposition, Dkt. 34, p. 4.)

Plaintiffs further concede the LRA, and not Rainwater, is responsible for proposing and developing the Road Home grant formula and details of The Road Home program that is at issue in this lawsuit. Plaintiffs admit "the LRA proposed and developed the Road Home grant formula and details the Road Home program in consultation with HUD and subject to HUD's on-going approval and oversight." (Complaint, Dkt. 1, ¶¶ 49-51, Plaintiffs' Opposition, Dkt.. 34, p. 4.)[1] Finally, Plaintiffs again ignore the language contained in their Exhibit A to the Opposition Memorandum, which provides that "[t]he Louisiana Recovery Authority ("LRA") has been charged by the Governor and Louisiana legislature with statutory responsibility for developing policy and the required actions." (Plaintiffs' Opposition, Dkt. 34-3, p. 3.)[2]

The declaration of Jesse Handforth Kome submitted in support of the Defendant HUD's Motion to Dismiss further bolsters Rainwater's contention that the LRA is solely responsible for the development and implementation of the Road Home grant formula. (Kome Declaration, Dkt. 22-2.) Ms. Kome is the Deputy Director, Office of Block Grant Assistance ("OBGA"), Office of Community Planning and Development ("CPD"), U.S. Department of Housing and Urban Development ("HUD"). (Kome Declaration, Dkt. 22-2, ¶1.) Ms. Kome submits the following:

> *The Road Home Program is administered by the State of Louisiana through the Louisiana Office of Community Development and the Louisiana Recovery Authority and is funded by HUD through the CDBG Program. The State of Louisiana is responsible for the implementation, design, and administration of the Road Home Program in conformance with the applicable CDBG Program requirements set by HUD.*

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1 "Homeowners who agree to use Road Home funds to rebuild or repair their homes are eligible for grants of up to $150,000." (Complaint, Dkt. 1, ¶¶ 45-46.) "The grant amount is calculated using the lower of two baseline values: the home's pre-storm or the cost of damage to the home." (Complaint, Dkt. 1, ¶ 47.)

2 "Governor Kathleen Babineaux Blanco has prioritized housing redevelopment, infrastructure rehabilitation, and economic development as the primary uses of the two supplemental appropriations. The supplement CDBG recovery funds are available to the state subject to HUD approval of action plans, which describe how the funds will be used … Louisiana Office of Community Development, the agency that administers the state's annual CDBG program, would administer the supplemental CDBG recovery program." (Plaintiffs' Opposition, Dkt. 34-3, p. 3.)

> As it developed, the Road Home Program, 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 the compensation and incentive grants on the lower of the pre-storm, fair market value of the home, or the cost to repair the home.

(Kome Declaration, Dkt. 22-2, ¶18.) (emphasis added).

The fact that a senior government official with HUD has confirmed that "[t]he State of Louisiana is responsible for the implementation, design, and administration of the Road Home program," and not Rainwater, further corroborates that Rainwater had no authority in the creation and implementation of the Road Home grant formula. (Kome Declaration, Dkt. 22-2, ¶15.) Thus, Plaintiffs' claims are only against Rainwater in name and against the LRA and the State of Louisiana in actuality.

Plaintiffs cannot pierce the shield of the Eleventh Amendment immunity simply by naming as defendant a party other than the State. Looking to substance rather than form, the Supreme Court has decided that such immunity should not depend on "the mere names of the titular parties but (on) the essential nature and effect of the proceeding, as it appears from the entire record." *Sheuer v. Rhodes,* 416 U.S. 232, 237 (1974), *overruled on other grounds, Davis v. Scherer,* 468 U.S. 183 (1984)(*citing Ex Parte New York*, 256 U.S. 490, 500 (1921)). "The Eleventh Amendment bars a suit against state officials when "the state is the real, substantial party in interest." *Pennhurst State Sch. & Hosp.,* 465 U.S. at 101–02 (*citing Ford Motor Co. v. Department of Treasury,* 323 U.S. 459, 464 (1945). The United States Supreme Court has "previously held that the nature of a suit as one against the state is to be determined by the essential nature and effect of the proceeding." *Ford Motor Co.*, 323 U.S. at 463–64. The LRA, not Rainwater, is the real, substantial party in interest in this case.

"The general rule is that relief sought nominally against an officer is in fact against the sovereign if the decree would operate against the latter." ***Vann v. Kempthorne***, 534 F.3d 741, 754–55 n.5 (D.C. Cir. 2008) (*citing State of Hawaii v. Gordon,* 373 U.S. 57, 58 (1963)). "[A] suit is against the sovereign if the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration, or if the effect of the judgment would be 'to restrain the Government from acting, or to compel it to act." ***Id.*** (*citing Pennhurst State Sch. & **Hosp.***, 465 U.S. at 101 n. 11). Plaintiffs' claims against Rainwater create analogous concerns.

The relief Plaintiffs seek would clearly operate against the State of Louisiana through the LRA. The Federal Government provided Louisiana with Community Development Block Grant (CDBG) funds. These funds were distributed by the LRA to hurricane affected residents of Louisiana. Plaintiffs' lawsuit will significantly interfere with Louisiana's administration of the funds provided by the Federal Government to aid its residents. Further, the effect of a judgment in favor of Plaintiffs would be to compel the state government, through the LRA, to act because it is the statutory responsibility of the LRA, not Rainwater, to administer Road Home grant funds.

Plaintiffs contend that *Ex Parte Young* provides no shield for a state official confronted by a claim that he deprived another of a federal right under the color of state law. However, the instant case is distinguishable from *Ex Parte Young,* where the Supreme Court observed:

> In making an officer of the state a party defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional, it is plain that such officer must have *some connection with the enforcement of the act, or else it is merely making him a party as a representative of the state and, thereby attempting to make the state a party.*
>
> * * *
>
> The fact that the state officer, by virtue of his office, has some connection with the enforcement of the act, is the important and material fact, and whether it arises out of the general law, or is

> specially created by the act itself, is not material so long as it exists.

Ex Parte Young, 209 U.S. at 157 (emphasis added). Therefore, unless the state officer has some responsibility to enforce the statute or provision at issue, the "fiction" of *Ex Parte Young* cannot operate.

In *Children's Health Care is a Legal Duty, Inc. v. Deters*, 92 F.3d 1412, 1422 (6th Cir. 1996), the Sixth Circuit held that absent enforcement or threatened enforcement by the Attorney General, an action against the Attorney General was precluded by the Eleventh Amendment. The court held:

> Consistent with the *Young* requirement of action on the part of the state official, we note that the phrase "some connection with the enforcement of the act" does not diminish the requirement that the official threatened and be about to commence proceedings.

Children's Health Care, 92 F3d at 1416 (citing *Ex Parte Young*, 209 U.S. at 155-56). "General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law." *1st Westco Corporation v. School District of Philadelphia,* 6 F.3d 108, 113 (3d Cir. 1993)(citations omitted). Holding that a state official's obligation to execute the laws is sufficient connection to the enforcement of a challenged statute would extend *Ex Parte Young* beyond what the Supreme Court has intended and held. *See Weinstein v. Edgar,* 826 F.Supp. 1165, 1167 (N.D. Ill. 1993); *Mendez v. Heller*, 530 F.2d 457, 460 (2d Cir. 1976) (holding an attorney general's duty to support the constitutionality of challenged state statutes and his duty to defend actions in which the state is interested do not constitute enforcement of the statute in question); s*ee also, Shell Oil Co. v. Noel,* 608 F.2d 208, 211 (1st Cir. 1979) (*citing Gras v. Stevens,* 415 F.Supp. 1148, 1152 (S.D.NY 1976))(holding the mere fact that a governor is under a general duty to enforce state law does not make him a proper party defendant in every action attacking the constitutionality of a state statute).

"Of critical importance are the nature of the statute and the state officer's connection with that statute." *Shell Oil Co. v. Noel*, 608 F.2d 208, 212 (1st Cir. 1979). In the instant case, Plaintiffs seek an injunction against a state officer, Rainwater, alleging that his actions violate several federal statutes. (Plaintiffs' Opposition, Dkt. 34, p. 31.) However, Rainwater did not have any responsibility or authority for the development and implementation of The Road Home compensation grant formula at issue. To the contrary, Plaintiffs admit this was the sole responsibility of the LRA. (Complaint, Dkt. 1, ¶¶ 49-51, Plaintiffs' Opposition, Dkt. 34, p. 4.) Moreover, unlike the Minnesota Attorney General in *Ex Parte Young*, Rainwater did not threaten to commence, and was not about to commence, proceedings against Plaintiffs much less proceedings to enforce an allegedly unconstitutional act. Plaintiffs allege that The Road Home's grant formula is discriminatory. But Rainwater is not the proper party to answer to this alleged discrimination because he was not responsible for the development or implementation of the formula.[3] Plaintiffs have "manufactured" a cause of action against Rainwater in a direct attempt to circumvent the Eleventh Amendment of the Constitution.

Rainwater's only connection to the development of the grant formula is derived from his general obligation as Executive Director of the Louisiana Recovery Authority. La. Rev. Stat. Ann. § 49:220.5(d). However, the U.S. Supreme Court in *Fitts v. McGhee*, 172 U.S. 516 (1899), rejected a threat of liability predicated on a governor's general obligations as a executive of the state and held this was insufficient to avoid the consequences of the Eleventh Amendment. *See*

[3] Paul Rainwater assumed the position of the Executive Director of the LRA in January 2008, after the design and implementation of The Road Home compensation grant program at issue had been completed. Further, Rainwater did not sign any applications or certifications for the receipt of CDBG funds; instead, all contracts with HUD were authorized and signed by the Division of Administration, an agency of the State of Louisiana.

also Akron Center for Reproductive Health v. Rosen, 633 F.Supp. 1123, 1129–30 (M.D. Ohio 1986), *reversed on other grounds,* 497 U.S. 502 (1990); *Hatfield v. Williams*, 376 F.Supp. 212, 214 (N.D. Iowa 1974)*; Sherman v. Community Consol. Sch. Dist. 21*, 980 F.2d 437, 441 (7th Cir. 1992), *cert. denied,* 508 U.S. 950 (1993) (holding attorney general's general supervisory power insufficient to establish the connection with enforcement required by *Ex Parte Young*); *Long v. Van De Camp*, 961 F.2d 151, 152 (9th Cir. 1992).

"[I]n *Fitts*, the Supreme Court articulated the requirement that there be a 'close' connection or a 'special relation' between the statute and the defendant state officer's duty before the Eleventh Amendment bar could be overcome." *Okpalobi v. Foster*, 244 F.3d 405, 413 (5th Cir. 2001)(*citing Fitts*, 172 U.S at 529–30). "*Fitts* illuminated the important precept that allowing state officers to be sued in lieu of the State absent some 'special connection' would permit the narrow exception to swallow the fundamental, constitutionally-based rule." *Id.*

The other case on which Plaintiffs rely, *Vann v. Kempthorne*, 534 F.3d 741 (D.C. Cir. 2008), is also distinguishable from the case at bar because the duties and responsibilities of the defendants in *Vann* are fundamentally different from duties and responsibilities of Rainwater. As recognized by this Court in *Vann*, *Ex Parte Young* only permits courts to "direct affirmative action where the [state] officer having some duty to perform not involving discretion, but merely ministerial in its nature, refuses or neglects to take such action." *Vann,* 534 F.3d at 752 (*citing Ex Parte Young*, 209 U.S. at 158). Unlike the Cherokee Chief and other tribal officers in *Vann*, Rainwater had no authority over or responsibility for the source of the Plaintiffs' injuries. In *Vann*, the plaintiff sought "an injunction preventing Chief Smith from holding further elections without a vote of all citizens, including [plaintiff]." *Vann*, 534 F.3d at 754. In this case, Plaintiffs seek to have The Road Home compensation grants recalculated. The duty for the compensation grant formula's creation and implementation falls squarely on the LRA, not Rainwater. La. Rev. Stat. Ann. § 49:220.4.[4] Thus, Plaintiffs' are not seeking to compel Rainwater to act. In actuality, Plaintiffs wish to compel the LRA to act.

As Executive Director of the LRA, Rainwater did not and does not have any responsibility for the design of The Road Home compensation grant formula. The statute empowering the LRA to implement the Road Home program only charges the Executive Director with general responsibility to the governor and the LRA board. *See* La. Rev. Stat. Ann. § 49:220.4. Rainwater has no special connection to the statute authorizing the LRA to create and implement The Road Home grant formula. Absent such a special connection, this Court should conclude that that the *Ex Parte Young* doctrine does not apply and find that the suit against Rainwater is barred by the Eleventh Amendment.

II. Plaintiffs' Complaint Fails to Establish a "Case or Controversy" Against Rainwater Under Article III of the United States Constitution

Under Article III of the Constitution, the federal courts have jurisdiction over a claim between a plaintiff and a defendant only if it presents a "case or controversy."[5] *Raines v. Byrd*, 521 U.S. 811, 818 (1997). In this way, the power granted to federal courts under Article III "is

[4] La. Rev. Stat. Ann. § 49:220.4 states 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.

[5] While the Eleventh Amendment is jurisdictional in the sense that it is a limitation on the federal court's judicial power, and, therefore, can be raised at any stage of the proceedings, the Supreme Court has recognized that it is not coextensive with the limitations on judicial power in Article III. *Calderon v. Ashmus*, 523 U.S. 740 n. 2 (1998) (*citing Idaho v. Coeur d'Alene Tribe of Idaho,* 521 U.S. 261, 267, (1997)); *Patsy v.Board of Regents of State of Florida,* 457 U.S. 496, 515 n. 19 (1982).

not an unconditioned authority to determine the constitutionality of legislative or executive acts." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 471 (1982).

In order to establish a "case or controversy" sufficient to give a federal court jurisdiction over their claims, Plaintiffs must satisfy three elements, which are said to constitute the "irreducible constitutional minimum" of Article III. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, they must show that they have suffered or are about to suffer "an injury in fact." Second, there must be a causal connection between the injury and the conduct complained of. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Id.* at 561. The party invoking federal jurisdiction bears the burden of establishing these three elements. *Id.* "These are not mere pleading requirements but an indispensable part of the plaintiff's case." *Id.* If any one of these three elements – injury, causation, redressability – is absent, Plaintiffs have no standing in federal court under Article III of the Constitution to assert their claim.

In *Lujan*, environmental groups filed suit against the Secretary of the Interior challenging certain provisions of the Endangered Species Act. *Id.* at 559. The Supreme Court held that the plaintiffs lacked standing and focused on the redressability prong of the "case or controversy" test. *Id.* at 569. The Court reasoned that since the plaintiffs attacked a decision of how to implement specific government programs instead of the decision to fund the particular programs causing them harm, the Secretary of the Interior had no controlling authority to redress the plaintiffs' injuries. *Id.* at 568–69.

In this case, Plaintiffs fail to satisfy the "redressability" requirement of the case or controversy analysis. Paul Rainwater as Executive Director of the LRA has no power to redress the asserted claims of Plaintiffs, just like the Secretary of the Interior had no authority to redress the ***Lujan*** plaintiffs' claims. ***Id.*** at 568-69. In fact, under Louisiana law, only the LRA has the authority to revise the grant formula and recalculate grants, the requested relief by the plaintiffs in their Complaint.[6] It is further clear that as Rainwater has no power to redress the injuries as alleged, Plaintiffs have no case or controversy with this defendant that will permit them to maintain this action in federal court. ***See Muskrat v. U.S.***, 219 U.S. 346 (1911); ***Simon v. E. Kentucky Welfare Rights Org.***, 426 U.S. 26, 41 (1976)(denying standing to indigent plaintiffs who alleged unfair hospital services but only sued Treasury officials who were not able to redress plaintiffs' injuries); ***Miami Bldg. & Const. Trades Council v. Secretary of Defense***, 493 F.3d 201, 205 (D.C. Cir. 2007)("[W]hether claims of economic injury would be redressed by a favorable decision depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict.").

Rainwater cannot be ordered to act in any way that is beyond his authority to act in the first place.

> When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted. This permits the courts to participate in law enforcement entrusted to administrative bodies only to the extent necessary to protect justiciable individual rights against administrative action fairly beyond the granted powers.

Lujan, 504 U.S. at 577 (***quoting Stark v. Wickard***, 321 U.S. 288, 309–10 (1944)). Thus, it logically follows that since the LRA proposed and developed the Road Home grant formula in

[6] This begs the question of why Rainwater, and not the LRA, is a party to this suit. ***See Ford Motor Co. v. Dept. of Treasury***, 323 U.S. 459, 464 (1945) (holding that when the State is the real, substantial party in interest, the State is allowed to invoke sovereign immunity). Here, Rainwater is not the real party in interest, and Plaintiffs' suit is purposefully crafted so as to avoid Eleventh Amendment immunity. Rainwater requests that this Court follow the Supreme Court's language in ***Edelman v. Jordan***: "It is also well established that even though a State is not named a party to the action, the suit may nonetheless be barred by the Eleventh Amendment." ***Edelman v. Jordan***, 415 U.S. 651, 663 (1974) (***citing Ford, supra***).

consultation with HUD, those are the parties vested with power by Congress to "revise" the Road Home formula and "recalculate" the awards. ***Lujan,*** 504 U.S. at 568–69. Rainwater retains no such authority to act beyond his granted powers to alter the formula. Plaintiffs urge Rainwater not only to act outside of the scope of his statutorily-granted authority but urge this Court to overstep the boundaries explicitly drawn by the Constitution—that Congress "define injuries…that will give rise to a case or controversy" and the Judiciary interpret the Congressional language. ***Lujan,*** 504 U.S. at 580.[7]

III. Sovereign Interests Are Implicated In This Case Through Louisiana's Road Home Program

Rainwater contends that the *Ex Parte* Young doctrine does not extend to this case because regulation of Louisiana's Road Home program is as much a core sovereign interest of Louisiana as regulating submerged land was for Idaho in *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261 (1997). In *Coeur d'Alene Tribe*, the Supreme Court held that *Ex Parte Young* doctrine did not authorize injunctive relief against state officials that would "diminish, even extinguish, the State's control over a vast reach of lands and waters long deemed by the state to be an integral part of its territory." *Id.* at 282.

In *Coeur d'Alene Tribe*, the Supreme Court reasoned that proper application of the *Ex Parte Young* doctrine requires a case by case analysis that carefully considers whether a state forum is available to vindicate the federal interests, the nature of the federal rights to be vindicated, and the competing sovereignty interests of the state. *Id.* at 270-80. Specifically, the Court "noted that even prospective relief…would be barred if the relief sought is the functional

[7] As the Supreme Court comments in *Lujan*, "[W]e must be sensitive to the articulation of new rights of action that do not have clear analogs in our common-law tradition. In exercising [its] power, however, Congress must at the very least identify the injury it seeks to vindicate and relate the injury to the class of persons entitled to bring suit." *Lujan,* 504 U.S. at 590. In our case, allowing Plaintiffs' suit to proceed would create a new right of action, pursuant to the FHA and the HCDA, to sue a state official with no authority to redress the alleged injuries. *See Wright v. Allen,* 468 U.S. 737, 752 (1984) (noting that adjudication of claim was proper only when consistent with separation of powers doctrine).

equivalent of relief otherwise barred by the Eleventh Amendment and 'special sovereignty interests' are implicated." ***Barton v. Summers***, 293 F.3d 944, 951 (6th Cir. 2002) (*citing Couer d'Alene Tribe*, 521 U.S. at 281).

This case does present a special sovereign interest that requires dismissal based upon Eleventh Amendment immunity. Although it involves the use of federal funds, this case, at its core, concerns a state-designed disaster recovery program implicating an important state interest.

> Created in the aftermath of Hurricane Katrina and Hurricane Rita in 2005, the Louisiana Recovery Authority (LRA) is the coordinating and planning body leading the most extensive rebuilding effort in American history. The central point for hurricane recovery in Louisiana, the LRA works closely with the Governor's office, Homeland Security and Emergency Preparedness Program (GOHSEP) and partners with state and federal agencies to oversee more than $20 billion worth of programs, speed the pace of rebuilding, remove hurdles and red tape and insures that Louisiana recovers safer and stronger than before.

See http://www.lra.louisiana.gov.

It is also significant that, in *Coeur d'Alene Tribe*, Chief Justice Rehnquist and Justice Kennedy "called for a 'fundamental reconceptualization' of *Ex Parte Young*." Wright, Miller, Cooper & Amar, FEDERAL PRACTICE AND PROCEDURE, ***Jurisdiction and Related Matters***, 17A FPP § 4232 (2009). These two justices "would have limited the ***Young*** 'exception' to Eleventh Amendment cases in which no state forum was available to decide whether federal laws entitled a plaintiff to injunctive relief." ***Id.*** (*citing Couer D'Alene Tribe*, 521 U.S. at 270-80 (Kennedy, J., joined by Rehnquist, C.J.)).[8]

[8] Rainwater recognizes that seven justices refused to join this portion of the opinion. Although *Verizon Maryland v. Public Service Commission of Maryland*, 535 U.S. 635 (2002), controls this issue, commentators have noted the "newly developing effect of *Coeur d'Alene Tribe*." *Hill v. Kemp*, 478 F.3d 1236, 1257 n. 25 (10th Cir. 2007).

Although this lawsuit does not involve state land,[9] the sovereign interests of the State of Louisiana are implicated through the disaster recovery program known as The Road Home program.[10] It is in Louisiana's sovereign interests that its residents be able to return to their homes as quickly as possible and through the mechanisms designed by the state's Road Home program. The Road Home program is certainly a sovereign interest of the State of Louisiana. Plaintiffs' suit implicates Louisiana's interest in administering the funds it was granted to aid of its residents. *See Couer D'Alene Tribe*, 521 U.S. at 282 ("Any contention that the State is not implicated by the suit in a manner having an immediate effect on jurisdictional control over important public lands is belied by the complaint itself."). If allowed to proceed, this action will significantly affect Louisiana's ability to rebuild its communities. *Id.*

IV. Louisiana Has Not Waived Its Sovereign Immunity Through Its Receipt Of Federal Funds Or Participation In A Federal Program

The U.S. Supreme Court has repeatedly held that waiver of a state's sovereign immunity requires an explicit, emphatic statement. That is, a state waives its immunity from suit in federal court only where that waiver is "stated by the most express language or by such overwhelming implications from text as will leave no room for any reasonable construction." *Edelman v. Jordan*, 415 U.S. 651, 653 (1974). The purpose of this "stringent" test is to "to be certain that the state in fact consents to suit." *College Savings Bank v. Florida Pre-Paid Post Secondary Education Expense Board*, 527 U.S. 666, 675, 680 (1999). Thus, we will not find "consent by implication or by use of ambiguous language." *Library of Congress v. Shaw*, 478 U.S. 310, 318 (1986).

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[9] Although not at issue in this lawsuit, under Option 3 of the Road Home program, Louisiana homeowners can elect to sell their homes to the state of Louisiana. http://www.road2la.org/homeowner/overview.htm. In this way, the Road Home program does involve state ownership of land, although Plaintiffs in this case did not exercise option 3. The State of Louisiana owns a substantial amount of property through Option 3 of The Road Home program.

[10] *See e.g., Cardenas v. Anza*, 311 F. 3d. 929, 941 (9th Cir. 2002) (O'Scanlain concurring) ("would hold plaintiff's claims to be barred under the *Coeur d'Alene* exception to *Ex Parte Young.*").

"A state does not waive its sovereign immunity through its mere receipt of federal funds or participation in a federal program." ***Atasendero State Hospital v. Scanlon***, 473 U.S. 234, 246–47 (1985). Instead, Congress must also express "a clear intent to condition participation . . . on a state's consent to waive its constitutional immunity." ***Id.*** at 247; ***Litman vs. George Mason University***, 186 F.3d 544, 554 (4th Cir. 1999) (recognizing Congress must "codify a clear, unambiguous and an unequivocal condition of waiver.")

Further, HUD's contention that 42 U.S.C. § 2000d-7(1) operates as a waiver of Louisiana's, and presumably Rainwater's, sovereign immunity under the Eleventh Amendment is misguided. As HUD asserts, 42 U.S.C. § 2000(d)-7(1) provides that a State is not immune from suits in federal court involving violations of "Title VI of the Civil Rights Act of 1964 or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance." 42 U.S.C. § 2000d-7(1).

Plaintiffs have not sued Rainwater under Title VI of the Civil Rights Act of 1964. Plaintiffs have asserted claims under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3604, 3605, and 3608 (the "Fair Housing Act" or "FHA"), and the Housing and Community Development Act of 1974, 42 U.S.C. § 5304 (the "HCDA"). (Complaint, Dkt. 1, ¶¶ 74-77; Plaintiffs' Opposition, Dkt. 34, p. 1.) Thus, Louisiana could not have waived its immunity on this basis because Plaintiffs' have not alleged a violation of Title VII of the Civil Rights Act of 1964.

It should also be noted that the cases on which HUD relies for the proposition that the Supreme Court has agreed that the receipt of Federal funds operates as a waiver of Eleventh Amendment immunity both involved claims under the Rehabilitation Act, 29 U.S.C. § 794, s*ee* ***Lane v. Peňa***, 518 U.S. 187 (1986), as did the case to which ***Lane*** was a response, ***See***

*Atascadero State Hospital v. Scanlon***,** 473 U.S. 234 (1985). 42 U.S.C. § 2000d-7(1) expressly lists the Rehabilitation Act as a statute under which a state waives its Eleventh Amendment immunity by the receipt of federal funds, but it does not list either the FHA or the HCDA.

In the instant case, this Court should reject HUD's flawed argument as neither the State of Louisiana nor Rainwater has consented to the jurisdiction of this Court for these claims by Plaintiffs through the receipt of federal funds in the Road Home program.[11]

V. "Revise" and "Recalculate" Equals Retrospective Relief

Through a tortured and disingenuous analysis, Plaintiffs conclude their request for injunctive relief to "revise" the grant formula and "recalculate" grants "falls comfortably on the prospective side of [the damages] line." (Plaintiffs' Opposition, Dkt. 34, p. 23.) However, any claim for retroactive monetary relief, under any name, is barred. *United States v. Yonkers Bd. Of Educ.*, 893 F.2d 498, 503 (2d Cir. 1990); *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 251–52 (1985).

"In determining whether the doctrine of *Ex Parte Young* avoids an Eleventh Amendment bar to suit, a court need only conduct a 'straight forward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.'" *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 296 (1997).

Here Plaintiffs seek declaratory relief to revise an alleged discriminatory grant formula. The primary objective of Plaintiffs' suit is to recalculate their respective Road Home compensation grants through a revision of the grant formula. Plaintiffs principally, and

[11] The fact that the LRA explicitly agreed to obey federal law in administering the program can hardly been deemed as an express waiver of Eleventh Amendment immunity. This agreement merely stated a customary condition for any participation in a federal program by the state, and *Edelman* already established that neither such participation in itself, nor a commitment to obey federal law, is sufficient to waive the protection of the Eleventh Amendment. *See Florida Dept. of Health and Rehabilitative Services v. Florida Nursing Home Assoc.*, 450 U.S. 147, 150 (1981)(*citing Edelman*, 415 U.S. at 673-674).

incorrectly, rely on *Bowen v. Massachusetts,* 487 U.S. 879 (1988), for the contention that the damages they seek here are not "money damages," but instead specific injunctive and declaratory relief. (Plaintiffs' Opposition, Dkt. 34, pp. 17-18.) *Bowen* is distinguishable because it dealt with Medicaid ***reimbursements*** to which the State was already ***entitled***, quite unlike the CDBG funds in this case which have already been appropriated. In this case, the relief sought is not a reimbursement already owed to Plaintiffs but additional money to which they are not entitled.[12] *See Bowen*, 487 U.S. at 892-93; *Green v. Mansour*, 474 U.S. 64, 73 (1985)("[I]ssuance of a declaratory judgment in these circumstances would have much the same effect as a full-fledged award of damages or restitution by the federal court, the latter kinds of relief of course being prohibited by the Eleventh Amendment."); *Barton v. Summers*, 293 F.3d 944, 950 (6th Cir. 2002) ("A court may enter a prospective injunction that costs the state money, but only if the monetary impact is ancillary, *i.e.,* not the primary purpose of the suit."). Rainwater maintains that the relief requested by Plaintiffs is entirely retrospective rather than prospective because revisions and recalculations of The Road Home formula will inevitably lead to a retrospective monetary award to Plaintiffs.

This case is analogous to the facts in *Florida Assoc. of Rehabilitative Facilities, Inc. v. State of Florida Dept. of Health and Rehabilitative Servs.*, 225 F. 3d 1208 (11th Cir. 2000). In that case, various operators of intermediate care facilities in Florida for developmentally disabled (ICF/DD) filed a Section 1983 action against the Florida Department of Health and Rehabilitation Services and state officials seeking injunctive and declaratory relief for alleged violations of Medicaid's reimbursement provisions. The Eleventh Circuit reversed the district

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[12] *Bowen* is additionally distinguishable because in *Bowen* the plaintiffs sued the Department of Health and Human Services, a party which could adequately redress the plaintiff's complaint for specific relief. Here, Plaintiffs have sued Rainwater, who has no authority to "revise" the Road Home formula and "recalculate" the previously allocated grants.

court's judgment and found that "it essentially required them to redress inequities in their past reimbursement payments from 1991 to date of final judgment (April 1999), and potentially to reimburse plaintiffs for those past deficiencies. The Eleventh Circuit found that there was "no way to distinguish the holding of *Edelman* which prohibits exactly this sort retroactive award." *Id.* at 1219. Thus, this Court should not be misled by the Plaintiffs as they seek to circumvent the *Edelman* holding when the claims they actually seek are retrospective by the plain language of their complaint.

VI. <u>Plaintiffs Fail to State a Claim under the Fair Housing Act</u>

A. The Federal Appropriations Acts Do Not Restrict the Use of CDBG funds to Housing Programs.

Plaintiffs suggest that the Federal Appropriations Acts contain provisions limiting the spending of the CDBG funds to housing-related activities which fall under the Fair Housing Act (FHA) and/or the Housing and Community Development Act of 1974 (HCDA). In fact, the Federal Appropriations Acts are clear that the CDBG funds can be used by the state for a variety of disaster recovery-related uses, and are specifically not restricted to housing or housing-related programs:

> For an additional amount for the 'Community development fund', for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of hurricanes in the Gulf of Mexico in 2005 in States for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in conjunction with Hurricane Katrina, Rita, or Wilma, ...

(See Pubic Laws 109-148 and 109-234, Dkt. 34-4.) In other words, the CDBG funds are available for various disaster recovery activities. According to the Federal Appropriations Acts, Louisiana was not required to develop or implement any "housing programs" for homeowners to governed by the FHA. To the contrary, Louisiana was given the freedom and flexibility to design and implement whatever programs it chose to distribute the CDBG funds. (Kome Declaration, Dkt. 22-2, ¶¶ 2, 9, 13, 16, 18, 23, 24.) Indeed, HUD's requirement was that Louisiana certify that activities funded "be for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the hurricane;" HUD did not require Louisiana to use the CDBG funds on housing programs or programs which would fall under the FHA. ***See*** 71 Fed. Reg. 7666, 7670 (Feb. 13, 2006); (Kome Declaration, Dkt. 22-2, ¶ 13.)

B. The State of Louisiana's Certifications Do Not Amount to a Consent that the Fair Housing Act Applies to the Compensation Grants.

Plaintiffs also argue the FHA provide them with a claim in this case because Paul Rainwater certified he would comply with the FHA in connection the State's application and contract to receive CDGB funds. First, Paul Rainwater personally did not sign any certifications to receive the CDBG funds at issue in this case; the certifications were signed by Jean S. Vandal, the Deputy Commissioner of Louisiana, Division of Administration. (Certifications, Exhibit D.)

Nevertheless, in these certifications, the State agreed to comply with various laws, including Title I of the Housing and Community Development Act of 1974, 42 USC § 5301, Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d and the FHA, 42 U.S.C. § 3601-3619. Indeed, some, but not all, of LRA's programs funded by CDBG money would arguably fall within the ambit of the FHA. For instance, Louisiana has used CDBG funds for operating subsidies for affordable rental housing and rental and utility payment expenses. (Kome Declaration, Dkt. 22-2, ¶¶ 24, 25.) In addition, the LRA established a First-Time Homeowners Program, a government subsidized mortgage program for low to moderate income, first-time homebuyers located in the

13 storm-impacted parishes; the First Time Homebuyers Program provides mortgage financing, funds for down payments, closing costs, and construction costs to eligible homebuyers. (See www.lra.louisiana.gov.) Likewise, the LRA also administers Rental Programs, which, in some cases, provide loans and financing to property owners who operate or agree to build affordable rental property. These programs may fall under the purview of the FHA because they are directly related to housing.

Therefore, some, but not all, of LRA's programs are governed by the FHA. Obviously, the State's certifications apply to the LRA programs which provide housing and are subject to the FHA. However, the program at issue in this case (The Road Home Option 1) does not provide housing. This program specifically does not involve the sale or rental of housing. Instead, this program awards compensation grants to homeowners based on eligibility criteria; the amount of the grant awards are dependant on various values, which take into account home values. (Kome Declaration, Dkt. 22-2, ¶¶ 16-20.)

Importantly, despite Plaintiff's erroneous description of the compensation grant program, the compensation grants are not restricted in their use to rebuilding or repairing housing.[13] (Exhibit A, Dkt. 28-3, § 2.1, p. 5.) Instead, applicants have "complete discretion" as to the use of the funds, meaning they are able to use the compensation grant money as they choose, and are not required to use the grant money for housing and/or rebuilding costs. (Exhibit A, Dkt 28-3, § 2.1, p. 5.) In other words, contrary to Plaintiff's unsupported allegations contained in the Complaint and opposition brief, homeowners who receive Road Home compensation grant do

[13] This Court need not accept inferences drawn by Plaintiffs if unsupported by the facts. ***Kowal v. MCI Communications Corp.***, 16 F.3d 1271, 1276 (D.C. Cir. 1994). In addition, this Court can consider facts contained in documents incorporated in Plaintiffs' complaint, matters in which the Court has taken judicial notice, and matters of public record. ***EEOC v. St. Francis Xavier Parochial Sch.***, 117 F.3d 621, 624 (D.C. Cir. 1997); ***Marshall County Health Care Auth. V. Shalala,*** 988 F.2d 1221, 1226 n.6 (D.C. Cir. 1993).

not have to agree to use the grant money to rebuild or repair their homes. (Exhibit A, Dkt. 28-3, § 2.1, p. 5.)

C. There is No Jurisprudence Which Dictates That The Fair Housing Act Applies to this Case.

First, the Plaintiffs have not cited any jurisprudence holding a state officers' certification contained in either an application for federal assistance or grant approval/ agreement is tantamount to a waiver of jurisdiction under any federal statute, including the FHA. Indeed, no such case exists. Simply put, the state's certification that it will comply with various laws is in no way an admission or consent that the laws actually apply or that a plaintiff can state a viable claim under the law[14]. *Cf. Edelman v. Jordan*, 415 U.S. 651, 673 (1974) (rejecting the concept that Illinois "constructively consented" to suit by agreeing to administer federal funds in compliance with federal law).

In addition, neither Plaintiffs nor HUD has cited any jurisprudence holding that a compensation program like the one developed, established and run by the LRA, is subject to the provisions of the FHA. Indeed, as previously stated, in Rainwater's Memorandum in Support of the Motion to Dismiss this is an issue of first impression.

The FHA forbids racial discrimination in respect to the sale or rental of a dwelling. 42 U.S.C. §§ 3604, 3605; *Meyer v. Holley*, 537 U.S. 280, 281 (2003). While the FHA is interpreted broadly, the statute is not limitless and does not pertain to any and every program merely because HUD is the appointed as the federal agency with oversight. In fact, as the court in *Gourlay v. Forest Lake Estates Civic Association*, 276 F.Supp. 2d 1222, 1232 (M.D. Fla.

[14] In fact, at the time Louisiana signed the CDBG application and agreement, it was considering a housing rehabilitation and reconstruction program. (Kome Declaration, Dkt. 22-2, ¶ 16.) However, Louisiana opted not to establish a housing program, but instead to develop a homeowners compensation program. (Kome Declaration Dkt. 22-2, ¶ 16.)

2003)[15], noted, ". . . the FHA was passed to ensure fairness and equality in housing . . . , not to become some all purpose civility code . . .." Further, the FHA should not be allowed to become "an all purpose cause of action, especially "when the dispute has little or no actual relation to housing discrimination." ***Id.*** at 1236. Likewise, the Seventh Circuit in deciding ***Halprin v. Prairie Single Family Homes***, 388 F.3d 327 (7th Cir. 2004), discussed the legislative history of the FHA and found it was geared at preventing discrimination in the context of sale or acquisition of housing only, and Congress never intended for it to become a catch all anti-discrimination law; the Court stated, "[W]e do not think that Congress wanted to covert every quarrel . . .. into a federal case." ***Id.*** at 330.

1. Plaintiff's Claims Under § 3604(a)

Plaintiffs sued under § 3604(a) of the FHA, and Plaintiffs and HUD argue that The Road Home program Option 1 formula "otherwise make[s] unavailable or den[ies], a dwelling to any person because of race . . .." 42 U.S.C. § 3604(a). Specifically, Plaintiffs and HUD argue the funding formula as applied to African American homeowners in Orleans Parish does not provide sufficient funds to rebuild their homes; Plaintiffs and HUD are requesting this Court to construe the phrase "otherwise make unavailable" contained in § 3604(a) broadly to fit their factual scenario. (Complaint, Dkt. 1, ¶ 4.)

However, courts have uniformly concluded the "otherwise make unavailable" language in § 3604(a) only prohibits discriminatory conduct that directly impacts a plaintiff's ability to locate in an area and/or secure housing. ***See Gourlay,*** 276 F.Supp. 2d at 1230 (holding §3604(a) applies only when a prohibited act makes a dwelling inaccessible for purchase, sale or rent); *Clifton Terrace Assoc., Ltd. v. United Technologies Corp.*, 929 F.2d 714, 719 (D.C. Cir. 1991)

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[15] After the *Gourlay* decision was published, it was withdrawn as a condition of settlement. *See Gourlay v. Forest Lake States Civil Ass'n*, 2003 WL 22149660 (M.D. Fla. September 16, 2003).

(holding the FHA addresses problems of housing availability and not problems of housing habitability); *Southend Neighborhood Improvement Assoc. v. St. Clair County*, 743 F.2d 1207, 1210 (7th Cir. 1984) (holding the FHA does not protect "intangible interests in . . . already owned property."). As the court in *Gourlay* noted, HUD's regulations support this interpretation. HUD's regulations interpreting § 3604(a) include a list of examples of prohibited conduct. 24 C.F.R. § 100.70(c)-(d). While the list is not exhaustive, none of the prohibited activities listed in the regulation deals with a protected persons use or enjoyment of a dwelling ***after purchase***. 24 C.F.R. § 100.70(c)-(d).

To be sure, Rainwater and the LRA have not made any dwelling "unavailable" for sale or rental in violation of § 3604(a). Instead, to be eligible for The Road Home program, applicants had to be homeowners within the thirty-seven (37) parish region at the time of Hurricanes Katrina and Rita. In other words, it is stipulated the Plaintiffs all owned homes at the time of the hurricanes. (Complaint, Dkt. 1, ¶¶ 13-17, 21.)

Plaintiffs argue Rainwater made their homes "unavailable," because, without funding from The Road Home program, they are unable to complete renovations to their home. (Complaint, Dkt. 1, ¶¶ 61-65.) However, Plaintiffs' home renovations affect the habitability not availability to purchase their homes, and, thus this Circuit's holding in *Clifton Terrace* is directly on point. *Clifton Terrace*, 929 F.2d at 719 (holding no § 3604 violation in refusing to repair elevator as the FHA addresses problems of housing availability and not problems of housing habitability). In other words, completing renovations would make Plaintiff's homes more habitable; but home renovations do not affect the Plaintiffs ability to become homeowners in the first place as they already owned their homes (and had to own their homes to meet eligibility requirements for the program).

Plaintiffs' Complaint demonstrates that their FHA claim is based on habitability instead of access to buy or rent a home. (Complaint, Dkt. 1, ¶¶ 61- 65.) For instance, Plaintiff Daphne Jones alleges because of application of The Road Home Option 1 formula, she "has not been able to complete all needed repairs to her home, and has had to utilize personal savings and volunteer labor to make the home livable." (Complaint, Dkt. 1, ¶ 64.) Plaintiff Jones' home is "livable," but more CDBG funds would presumably have made her home nicer. (Complaint, Dkt. 1, ¶ 64.) Likewise, Plaintiff Rhonda Dents "is living in a modular home of poorer construction quality and smaller size on the same property." (Complaint, Dkt. 1, ¶ 62.) Again, the LRA has not prevented Plaintiff Jones from owning a home; her complaint instead goes to the habitability, ***i.e.***, with more CDBG funds she could have owned a larger home made with better construction materials. Finally, in their opposition brief, Plaintiffs argue that the FHA applies when conduct places a plaintiff "at risk of losing their property." However, there are no allegations in the Complaint that any of the Plaintiffs are at risk of losing their properties. Indeed, Plaintiffs in this case are not at risk of losing their property, and certainly are not at risk of losing property because of any action of Rainwater and/or the LRA. Therefore, Plaintiffs reliance on that jurisprudence is misplaced and unconvincing.

2. Plaintiff's Claims Under § 3605(a)

Plaintiffs also sued under § 3605(a) of the FHA, which provides that it is unlawful for any person or 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. Again, Plaintiffs ask this Court to read the FHA too broadly as they argue Rainwater and/or HUD violated § 3605(a) by providing "financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling." However, neither Rainwater or the LRA were engaged in any real estate transactions with Plaintiffs and Plaintiffs have failed to allege that Rainwater engaged in any real estate transactions with Plaintiffs in the Complaint.

This Court's prior rulings interpreting § 3605(a) make it clear that The Road Home compensation grants do not fall within the purview of § 3605(a). Indeed, in *National Fair Housing Alliance, Inc. v. Prudential Insurance Company of America*, 208 F.Supp. 2d 46 (D.D.C. 2002), this Court held the practice of redlining homeowners insurance products constituted "other financial assistance" under §3605(a). However, in doing so, this Court noted homeowners are typically required to have homeowners' insurance coverage in order to qualify for a mortgage or home equity loan, and must maintain insurance as a condition of the loan. *Prudential*, 208 F.Supp.2d at 49. Notably, this Court stated:

> It is undisputed that individuals are often unable to purchase or to maintain financing for homes without homeowners insurance. Without property insurance, most homeowners are unable to repair their homes when and if disaster should strike. For these reasons, insurance provides the financial assistance necessary to maintain a dwelling. As such, it is reasonable to conclude the Congress intended that homeowners insurance fall within the scope of 3605's protection.

Prudential, 208 F.Supp. 2d at 58.

Unlike in the ***Prudential*** case, in this case, compensation grants awarded by the LRA to eligible homeowners are not a condition or pre-requisite to obtaining a home loan and, by extension, a home. The Road Home compensation grants are in no way tied to the financing of a dwelling, and the funds are not restricted or required to be used for the purchasing, constructing, improving, repairing or maintaining of a dwelling. Again, the eligible recipients of the grants were already homeowners and The Road Home funds can be used by the homeowners in any way they please with no accounting, documentation, oversight or certification required by the LRA or HUD. The compensation grant funds are not an entitlement, and, instead are considered a one-time benefit to homeowners affected by Hurricanes Katrina and/or Rita. (Exhibit A, Dkt. 28-3, § 2.4.1, p. 8.)

3. Plaintiff's Claims Under §3608(d)(5)

Finally, in their opposition brief, Plaintiffs clarified that they are asserting a claim against Rainwater under § 3608(d)(5) of the FHA. Plaintiffs argue § 3608(d)(5) applies to "state grantees" under "three decades of case law." (Plaintiffs' Opposition, Dkt. 34, p. 29.) However, there is not one case from this district holding the provisions of § 3608 apply to a state agency and/or the executive director of a state agency. By its terms and a plain reading of the statute, § 3608(d) applies only to the Secretary of Housing and Urban Development and executive departments and Federal agencies. Further, this Court has previously ruled that a plaintiff does not have an implied private right of action to enforce the provisions of § 3608(d). *Jones v. Office of the Comptroller of the Currency*, 983 F.Supp. 197 (D.D.C. 1997), *aff'd,* 1998 WL 315581 (D.C. Cir. May 12, 1998). Therefore, Plaintiffs claim against Rainwater under this provision of the FHA is not cognizable.

VII. Plaintiffs Cannot Maintain a Claim Against Rainwater Under the Housing and Community Development Act

Plaintiffs assert they have a private right of action to enforce § 5304(b)(2) of the Housing and Community Development Act (HCDA). In support of their argument, Plaintiffs allege there is express legislative intent indicating Congress intended private citizens to pursue claims individually under the HCDA. (Plaintiffs' Opposition, Dkt. 34, p. 31.) In order to establish Congressional intent, Plaintiffs rely on a 1987 House Report. Further, Plaintiffs rely on the case of *Montgomery Improvement Association, Inc. v. HUD*, 645 F.2d 291 (5th Cir. 1981). However, neither the House Report or the *Montgomery* case are persuasive.

First, in an attempt to establish Congressional intent, Plaintiffs cite a House Report to the 1987 amendments to the HCDA. However, Plaintiffs citation is misleading, to say the least. The quotation offered by Plaintiffs relates to a portion of the bill pertaining to rental assistance payments made pursuant to the National Housing Act, 12 U.S.C. § 1701, *et seq*., and rent supplemental payments pursuant to the Housing and Urban Development Act of 1965, 12 U.S.C. § 1701s, *et seq*. In other words, the provision cited by Plaintiffs do not relate to the HCDA. Instead, the provision cited by the Plaintiffs support a private right of action for the beneficiaries of rent subsidies under the National Housing Act and Housing and Urban Development Act. The complete quotation clarifies this:

> The Committee bill provides for full funding for state financed Sec. 236 projects of additional rental assistance payments (RAP), made pursuant to Sec. 236(f)(2) of the National Housing Act, and of rent supplemental payments, made pursuant to Sec. 101(a) of the Housing and Urban Development Act of 1965, when tenant rent payments plus existing assistance payments are insufficient to cover the total rent of units occupied by low-income tenants. State projects would thus be treated in the same manner as federally insured projects which under present law receive 100% funding of the shortfall. The Committee believes that not only is the present law which limits state projects to 90% funding of the rent shortfall

> inequitable, but the absence of full funding limits the ability of those projects to accommodate the entire spectrum of low-income tenants.
>
> The provisions of this bill are intended to benefit applicants and tenants. The assisted housing programs have been created specifically to assure lower income households have greater access to decent and affordable housing than their limited incomes would otherwise permit. The Committee intents, and has always intended, that applicants and tenants who are adversely affected by violations of these statutory provisions should have a cause of action to enforce the statute in federal court. In the past, such causes of action were not explicitly specified in the statute because program beneficiaries were thought to be able to protect their interest under the Administrative Procedure Act, Sec. 1983, and the implied cause of action doctrine. Because the courts have been somewhat unreceptive to private causes of action, the Committee wishes to clarify its long-standing intention in favor of private enforcement. This clarification is not intended to weaken any rights of program beneficiaries or the Department of Housing and Urban Development to enforce statutes previously or in the future.

H.R. Rep. No. 100-122(I), at 52–53 (1987), *as reprinted in* 1987 U.S.C.C.A.N. 3317, 3368–69. Plaintiffs are mistaken and disingenuous in suggesting that this provision stands for the proposition that Congress intended citizens to have a private right of action for enforcement of the HCDA. This provision of the House Report does not stand for that proposition at all, and, in fact, there is no published Congressional intent for a private right of action to enforce the HCDA.

Plaintiffs also rely on the Fifth Circuit *Montgomery* case. First, the *Montgomery* case has not been adopted by this Circuit and appears to be an abrogation. *See Latinos Unidos de Chelsea v. Secretary of Housing*, 799 F.2d 774, 795 (1st Cir. 1986) ("Congress did not intend to create a private right of action under the HCDA."); *Dotson v. Pacific Gas and Electric Co.*, 1993 WL 248644 (N.D. Cal. June 25. 1993), *aff'd*, 46 F.3d 1140 (9th Cir. 1995); *Milsap v. HUD*, 1990 WL 157516 (D. Minn. October 18, 1990), *aff'd*, 42 F.3d 1394 (8th Cir. 1994), *Pleune v. Pierce*, 697 F.Supp. 113, 119 (E.D.N.Y. 1988); *Nabke v. HUD*, 520 F.Supp. 5 (W.D. Mich. 1981); *People's*

Housing Development Corp. v. City of Poukepsie, 425 F.Supp. 482, 491 (S.D.N.Y. 1976). Further, while this Circuit has never directly ruled on whether the HCDA provides a private cause of action, it has considered whether other federal statutes provide a private cause of action and held plaintiffs did not have a cause of action to enforce federal funds recipients' compliance with proscriptions against discrimination. *See Women's Equity Action League v. Cavazos*, 906 F.2d 742 (D.C. Cir. 1990).

Additionally, the *Montgomery* court relied on cases that have been effectively overruled, or if not technically overruled, at least are no longer precedent. Specifically, the *Montgomery* court relied heavily upon two Supreme Court cases, *Canon v. The University of Chicago*, 441 U.S. 677 (1979) and *Cort v. Ash*, 422 U.S. 66 (1975), which are no longer good law. In the same year as the *Canon* decision, and after the *Canon* decision was rendered, the Supreme Court issued its ruling in *Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979). In *Touche Ross*, the Court adopted Justice Powell's position as stated in his dissenting opinion in *Cannon*; specifically, in *Touche Ross*, the Court held federal courts will create a private right of action only if there is affirmative evidence of Congress' intent to create a private right of action. In other words the four factor test of *Cort v. Ash* no longer applies; although the Supreme Court in *Touche Ross* did not expressly discard *Cort v. Ash*, it articulated an unmistakable departure in methodology. Justice Scalia, joined by Justice O'Conner, also stated *Touche Ross* has effectively overruled *Cort* in *Thompson v. Thompson*, 484 U.S. 174, 199 (1988). Therefore, because the *Montgomery* court relied on the *Cort* and *Canon* cases, its opinion now does not hold the weight of precedent. Therefore, under *Touche Ross*, without affirmative evidence of Congressional intent to create a private right of action, there is no private right of action. Simply put, there is no affirmative evidence, explicit or implied, that Congress intended to create a private right of action for the enforcement of provision in the HCDA. No congressional intent to create a private cause of action "appear[s] implicitly in the language or structure of the statute, or in the circumstances of its enactment." *Thompson*, 484 U.S. at 94. Therefore, Plaintiffs should not be allowed to proceed with their claims against Rainwater under the HCDA.

VIII. <u>Rainwater Has Met His Burden Under 28 U.S.C. 1404(a)</u>

A. The Threshold Inquiry is Met

The threshold inquiry under 28 U.S.C. §1404(a) is whether this case could have been brought in Middle District of Louisiana. Plaintiffs concede the Middle District of Louisiana is a proper venue for this action. HUD offers no evidence refuting the Middle District would be a proper venue. Notwithstanding, Rainwater has satisfied this threshold inquiry. Rainwater and the LRA reside and/or are domiciled in the Middle District and a substantial part of the events giving rise to the Plaintiffs' claims arose in the Middle District. The LRA Action Plan, its challenged formula and the Road Home program were all created and implemented in Baton Rouge, Louisiana - within the Middle District. The injuries Plaintiffs seek to redress took place in Louisiana and involve Louisiana residents. Accordingly, pursuant to § 1404(a), Plaintiffs could have brought their case in the Middle District of Louisiana.

B. Venue Can be Considered Before Subject Matter Jurisdiction is Established

HUD's contention this court must first decide the issue of subject matter jurisdiction before transfer is incorrect.[16] There are no fixed rules on when cases should be transferred. *SEC v. Savoy Industries*, Inc., 587 F.2d 1149, 1154 (D.C. Cir. 1978). Instead, courts must adjudicate motions to transfer on an individualized, case-by-case basis, giving due consideration to

[16] Notably, Plaintiffs have not opposed this Court considering the matter of venue before subject matter jurisdiction.

convenience and fairness. *Stewart Org., Inc., v. Ricoh Corp.*, 487 U.S. 22, 27 (1988). Such considerations warrant transfer of this case to the Middle District of Louisiana.

In *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422 (2007), the Supreme Court held that a court can immediately take up the question of *forum non conveniens* under § 1404(a), and need not first consider whether it has subject matter or personal jurisdiction. Courts in this District have adopted and applied *Sinochem's* rationale when addressing motions to transfer under § 1404(a).

In *Miller v. Toyota Motor Corporation*, 2009 WL 1531658, at * 6-8 (D.D.C. June 2, 2009), the defendant filed a motion to dismiss on several grounds, including *forum non conveniens* and lack of personal jurisdiction. Relying on *Sinochem*, the court first considered the defendant's motion to dismiss on grounds of *forum non conveniens* before deciding whether it had personal or subject matter jurisdiction. The court *sua sponte* transferred the case under § 1404(a) to the Middle District of Florida citing private and public interest factors, including, the plaintiff's home forum, higher costs of litigating the matter in District of Columbia, conservation of judicial resources; location of evidence and witnesses; existence of companion cases; and the District of Columbia's lack of interest in the case.

Similarly, in *Kazenercom TOO v. Turan Petroleum, Inc.*, 590 F.Supp.2d 153 (D.D.C. 2008), the defendants moved to dismiss the case on several grounds including FRCP 12(b)(1), (2), (3), (5) and (6), and alternatively, to transfer the case under §§ 1404(a), 1406(a) or 1631, and to strike certain allegations under Rule 12(f)(2). Relying on *Sinochem*, the court *immediately* took up the issue of *forum non conveniens* before personal and subject matter jurisdiction, and transferred the case under § 1404 to the Central District of California, citing several factors favoring transfer, including the fact that plaintiffs (sellers) resided outside the District of

Columbia, the defendant's (buyer) headquarters were located in California and locus of significant activities relating to the claims were in California.

In *Cheney v. IPD Analytics, LLC*, 583 F.Supp. 2d 108 (D.D.C. 2008), defendants filed a motion to dismiss the former employee's action under ERISA for improper venue, or alternatively, to transfer the case. Again, relying on *Sinochem*, the court noted its *discretion* to resolve issues such as venue that do not affect the merits of the case without first deciding personal jurisdiction. The court held the interests of judicial economy and prudential concerns weighed in favor of resolving venue at the outset. Even if it were to sort through the complex personal jurisdictional issues raised by the defendants, the court would have had to address transfer under § 1404(a) given the presence of a forum selection clause in the employee's employment agreement and the strong connection of the case to the state of Florida. Although finding the forum selection clause enforceable, the Court still addressed the balancing factors under § 1404(a). Considering the totality of the circumstances the Court transferred the case to Florida.

In *Focus Enterprises, Inc. v. Zassi Medical Evolutions, Inc.*, 2007 WL 1577844, * 1, fn. 1 (D.D.C. May 31, 2007), relying on *Sinochem*, the court first considered the issue of venue and did not reach the question of personal jurisdiction. The court observed "a federal court has leeway to choose among threshold grounds for denying an audience to a case on the merits." After considering the private and public interest factors, the court transferred the case to the Middle District of Florida. Although the plaintiff resided in the District of Columbia, most of the witnesses were located in Florida.

Under *Sinochem*, this Court can consider venue *before* subject matter jurisdiction. Although HUD cites several cases in support of its position, none of the cases are in this district, the majority involve removal actions,[17] and all but one predates *Sinochem.* HUD ignores the broad discretion given this Court by *Sinochem* to consider venue before any other jurisdictional question.

C. HUD'S Position is Inconsistent

In seeking dismissal of Plaintiff's lawsuit, HUD claimed its involvement in the Road Home program was "limited" to an advisory role and that the State of Louisiana bore "ultimate responsibility" in implementing, designing and administrating the Road Home program. Specifically, HUD stated in pertinent part:

> …HUD's role is *confined* (emphasis added) to ensuring that the state's interpretation of the statutory and regulatory requirements "are not plainly inconsistent with the Act." 24 C.F.R.§ 570.480(c) (giving "maximum feasible deference" to a state's interpretation of these requirements)
>
> …HUD's *technical assistance* (emphasis added) typically involves consultation with the grantee to determine the grantee's objectives and its proposed program designs. HUD then provides advice, training, or program models that will ensure the grantee will be able to comply with CDBG program requirements while carrying out its purposes and implementing its programs.
>
> HUD's review of the applicant's plan is *limited...* (emphasis added)
>
> …The Road Home program is administered by the State of Louisiana through the Louisiana Office of Community Development and the Louisiana Recovery Authority and is funded by HUD through the CDBG program. The State of Louisiana is responsible for the implementation,

[17] *DiPilato v. Commonwealth Ass'n of School Administrators, Local 502*, 588 F.Supp.2d 631 (E.D. Pa. 2008) (remanding case when federal question jurisdiction absent on face of complaint.); *Marotta Gund Budd & Dzera, LLC v. Costa*, 340 B.R. 661 (D.N.H. 2006)(addressing issue of subject matter jurisdiction to determine pending motion to remand); *Morongo Band of Mission Indians v. California State Board of Equalization*, 858 F.2d 1376 (9th Cir. 1988) ruling district court did not have subject matter jurisdiction over original interpleader action. There were no issues of transfer involved.); *Atlantic Ship Rigging Co., Inc. v. McLellan,* 288 F.2d 589 (3d Cir. 1961)(reviewing compensation order under Section 921(b) of Longshoreman's and Harbor Worker's Compensation Act, court held section 921(b) was jurisdictional and not a venue provision, claim could not have been brought in New York Court under the statute*.); O'Quinn v. CNH America, LLC*, 457 F.Supp.2d 678 (E.D. Va. 2006)(holding in a removal action, removal statute must be strictly construed for purposes of determining remand, remanded case for lack of subject matter jurisdiction. Lower court had already addressed motion to transfer but had not yet issued order when party removed case to district court.)

> design, and administration of the Road Home program in conformance with the applicable CDBG program requirements set by HUD.
>
> …In designing the Road Home homeowner compensation and incentives program, Louisiana requested, and HUD provided, some technical assistance…. HUD did not make *any* of the state's program decisions or set *any* funding strategies in the Road Home Program. Most of HUD's technical assistance was provided by telephone.
>
> As it developed the Road Home Program, Louisiana ultimately chose to provide compensation and incentive grants to eligible homeowners affected by Hurricanes Rita or Katrina of up to $150,000. Louisiana decided to base the amount of the compensation and incentives grant on the lower of the pre-storm, fair-market value of the home, or the cost to repair the home.

(Kome Declaration, Dkt. 22-2, ¶¶ 3, 8, 9, 15, 16, 18.)

Now, in opposing Rainwater's Motion to Transfer, HUD claims this matter must remain in the District of Columbia because all of HUD's challenged actions occurred here, including its consultation, approval and "continuing oversight" of Louisiana's Road Home program. Interestingly, HUD concedes, ***despite the presence of organizational plaintiff National Fair Housing Alliance in the District of Columbia***,[18] Plaintiffs' interest in this Court hearing their suit may be diminished if HUD is no longer a party to the litigation. This is precisely the type of case *Cameron v. Thornburgh*, 983 F.2d 253 (D.C. Cir. 1993) addressed. Plaintiffs' naming of governmental officials (such as HUD), solely to bring their suit in the District of Columbia, when the action should be pursued elsewhere (the Middle District of Louisiana), warrants transfer of this case out of this District.

[18] Plaintiffs and HUD cite the location of the National Fair Housing Alliance in the District of Columbia in opposing transfer.

D. Private Interest and Public Interest Factors Favor Transfer of this Case to the Middle District of Louisiana.

1. Private Interest Factors: Parties' Choice of Forum; Where the Claim Arose; Convenience of Parties/Witnesses

Private interest factors favor transfer of this case to the Middle District of Louisiana. While a plaintiff's choice of forum generally merits deference, "the strong presumption against disturbing plaintiff['s] initial forum of choice . . . is weakened . . . when the forum is not plaintiff's home forum and most of the relevant events occurred elsewhere." ***Great Socialist People's Libyan Arab Jamahiriya v. Miski***, 496 F.Supp. 2d 137, 144-45 (D.D.C. 2007); ***Demery v. Montgomery County, MD***, 602 F.Supp. 2d 206, 210 (D.D.C. 2009) (***quoting Hunter v. Johanns***, 517 F.Supp. 2d 340, 344 (D.D.C. 2007)). It is undisputed that none of the named Plaintiffs, nor any potential class member, reside in this District.

Although Plaintiffs and HUD cite the presence of organizational Plaintiff, National Fair Housing Alliance (NFHA), whose main office is located in the District of Columbia, to oppose transfer, what Plaintiffs and HUD fail to address is that the Greater New Orleans Fair Housing Action Center (GNOFHAC), which maintains its main office in New Orleans, Louisiana, is a ***member organization*** of National Fair Housing Alliance. According to NFHA's website, GNOFHAC is a "full service non-profit fair housing organization providing education, outreach, and enforcement with respect to the fair housing laws in order to create equal housing opportunities in Louisiana and to combat housing discrimination." ***See*** NFHA website: www.nationalfairhousing.org. GNOFHAC has an "Operating Membership" status within the NFHA, "a status reserved for private, non-profit, full service fair housing organizations." ***Id.*** As a operating member, GNOFHAC receives special access to educational and training resources through the NFHA. NFHA also provides assistance to GNOFHAC with methodology development, public policy initiatives, education and outreach strategies, and administrative, personnel and financial functions. *Id*. As a member of NFHA, GNOFHAC is undoubtedly representing NFHA's interests in this litigation. Accordingly, the location of NFHA should not be a factor precluding transfer of this case and Plaintiffs' choice of forum in this instance is diminished.

When the events at issue occur in more than one district, a court can consider which jurisdiction has the ***stronger factual nexus*** to the claims. *Miller v. Insulation Contractors, Inc*., 608 F.Supp.2d 97, 101–02 (D.D.C. 2009) (*citing O'Shea v. Int'l Broth. of Teamsters,* 2005 WL 486143, at *3 (D.D.C. March 2, 2005)). There is no dispute the "factual nexus" of this case is more closely tied to the State of Louisiana than the District of Columbia. Most of the relevant events occurred in Louisiana. The LRA was created in the Middle District. The challenged Action Plan – the centerpiece of this litigation - was created and implemented in the Middle District. The Road Home compensation grant program (Option 1) was created and implemented in the Middle District. All of the named Plaintiffs' (and the potential class members') applications were processed in the Middle District. All of the property evaluated under the Action Plan is located in Louisiana. As HUD's representative stated:

> The State of Louisiana is responsible for the implementation, design, and administration of the Road Home program in conformance with the applicable CDBG program requirements set by HUD.

(Kome Declaration, Dkt. 22-2, ¶ 15.)

While HUD's oversight and/or involvement, regardless of the extent thereof, may have taken place in or from this District, and HUD's record may be located here, most of the relevant *events* underlying Plaintiffs' claims occurred in Louisiana, not the District of Columbia. Further, all of the evidence, including the LRA's record is located in the Middle District of Louisiana.

This matter involves Louisiana property and Louisiana residents. The District of Columbia has no interest in this case and its citizens should not be burdened with this litigation. ***Miller v. Toyota Motor Corp.**, supra*. Conversely, the State of Louisiana – in particular, the Middle District - has a significant interest in providing redress to the alleged injuries sustained by the named Plaintiffs (and potential class members)– all of whom are Louisiana residents.

Further, it should be noted, the parties have not agreed or stipulated at this time this case would involve solely the administrative record. Therefore, convenience of witnesses remains a relevant factor at this stage. *See **Demery***, 602 F.Supp. 2d at 210; ***Montgomery v. STG Intern.***, 532 F.Supp. 2d 29, 33 n. 5 (D.D.C. 2008) (holding convenience of the witnesses refers to the possibility of having their live testimony at trial). There is no dispute the Middle District of Louisiana would be a more convenient forum for witnesses. The named Plaintiffs reside in Louisiana. Potential class members likely reside in the State of Louisiana. LRA officials and employees are in Louisiana. Defendant, Paul Rainwater, is a Louisiana resident. The documents relative to the Plaintiffs' Road Home grants, applications, grant amounts, disbursements are all located in Louisiana. Although HUD contends "all of its witnesses and documents" are in this District, there can be no comparison to the number of individuals from Louisiana, including Rainwater, who would be required to travel at considerable expense, hardship and inconvenience to litigate this case or for trial. Accordingly, private interest factors warrant transfer of this case to the Middle District of Louisiana.

2. Public Interest Factors

In addition, public interest factors favor transfer of this case to the Middle District, or alternatively, the Eastern District of Louisiana.[19] There is a presumption the Middle District of

[19] See *Otay Mesa Property L.P. v U.S. Department of Interior*, 584 F.Supp.2d 122, 126 (D.D.C. 2008) (identifying public interest factors).

Louisiana is equally familiar with the federal laws at issue. Although this case may not involve issues of Louisiana state law, it involves Louisiana residents and Louisiana property, factors invoking a substantially stronger local interest with the Middle District of Louisiana, rather than the District of Columbia. The challenged decision of the LRA was made in the Middle District of Louisiana. The LRA's decision concerning grant amounts directly affected citizens of Louisiana – not citizens of the District of Columbia. The underlying controversy involves Louisiana citizens suing to redress alleged injuries occurring in Louisiana. While there may be no issue concerning local property laws, it is undisputed this matter involves property located in the State of Louisiana, not the District of Columbia.

Finally, Plaintiffs have not alleged personal involvement by an individual of HUD located in the District of Columbia, but have named individually, Paul Rainwater, a citizen and resident of the State of Louisiana. Although HUD contends this controversy "could" affect its administration of the CDBG program in the "future," such vague possibilities do not warrant litigating these particular claims in the District of Columbia.

3. Balance of Private and Public Interest Factors Favor Transfer of This Litigation Involving Louisiana Properties

In *Southern Utah Wilderness Alliance v. Norton*, 315 F.Supp. 2d 82 (D.D.C. 2004), plaintiffs opposed the transfer of the case to the District of Utah, contending the controversy was substantially tied to Washington D.C. ("D.C.") because the wilderness policy changes at issue made by D.C. senior officials had a direct impact on lease sales in Utah. Plaintiffs relied on evidence establishing such ties, including an email and paper trail an employee in the Bureau of Land Management's (BLM) Utah state office sent to its D.C. headquarters, as well as a two-day workshop BLM headquarters conducted in Utah instructing Utah BLM personnel on leasing the lands in dispute. Plaintiffs also claimed one BLM official in D.C. was "intimately involved" with the National Energy Policy and emailed staff in BLM's Utah office ten times regarding lease sales. Defendants argued there was no “special oversight” by D.C. of BLM's mineral leasing program - BLM's Utah office administered the public lands at issue, BLM's Utah Director had authority to issue oil and gas leases, and the lease sale occurred in Utah under the direction of BLM's Utah office. BLM's headquarters officials involvement stemmed from the wilderness policy change, and the resulting guidance to BLM's Utah state office was meant to ensure such change occurred.

This Court noted although extensive involvement by headquarters has, in some instances, justified keeping a case in the District of Columbia, “mere involvement on the part of federal agencies, or some federal officials who are located in Washington, D.C., is not determinative.” *Southern Utah Wilderness Alliance*, 315 F.Supp. 2d at 87 *(citing Shawnee Tribe v. United States*, 298 F.Supp. 2d 21, 25–26 (D.D.C. 2002). This Court further held neither party would be significantly inconvenienced by litigating the case in Utah. Although plaintiff had offices in D.C., it was headquartered in Salt Lake City and one of plaintiffs' attorneys resided in Utah. Finally, this Court observed that even if the case involved a review of the administrative record, the location of the record was afforded little weight. *Southern Utah Wilderness Alliance*, 315 F.Supp. 2d at 88 (*citing Air Line Pilots Ass'n v. Eastern Air Lines*, 672 F.Supp. 525, 527 (D.D.C. 1987) (holding location of administrative record afforded little weight). Because the issues primarily involved decisions of officials in Utah, and no relevant records or witnesses were available ***exclusively*** in the District of Columbia jurisdiction, the private interests of the parties favored transfer to the District of Utah.

This Court also found public interest factors favored transfer. The controversy was localized because it involved Utah lands – affording a strong local interest in having this case heard in Utah. Notwithstanding the national attention of the issue, the dispute was focused on 21 parcels of land in Utah. This Court noted land is a localized interest because its management directly touches local citizens. *Id. citing Sierra Club v. Flowers*, 276 F.Supp. 2d 62, 71 (D.D.C. 2003) (granting motion to transfer suit involving the Florida Everglades in part because of the "depth and extent of Florida's interest"); *Trout Unlimited v. U.S. Dep't of Agriculture*, 944 F.Supp. 13, 17 (granting motion to transfer to Colorado a suit involving the United States Forest Service's decision to issue an easement for the operation of a dam and reservoir on public lands because of the "impact that the resolution of this action will have upon the affected lands, waters, wildlife and people of that state"). This Court further noted "it makes sense that these alleged consequences would be most particularly felt in Utah, and thus that the courts of Utah would have a clear interest in resolving the dispute." *Southern Utah Wilderness Alliance*, 315 F.Supp.2d at 89 (*citing*, *Trout Unlimited*, 944 F.Supp. at 20 (it is appropriate to consider "those whose rights and interests are in fact most vitally affected by the suit") (*citing Adams v. Bell*, 711 F.2d 161, 167 n. 34 (D.C. Cir. 1983)). Accordingly, this Court held Utah's interest in the case was substantial, outweighed any interest in litigating in D.C., and found transfer appropriate at the early stage of litigation because the dispute would have the greatest impact on the citizens of Utah.

The balance of private and public interest factors favor transfer of this case to the Middle District of Louisiana. The consequences of Plaintiffs' lawsuit would be most particularly felt in the State of Louisiana – not the District of Columbia. Louisiana's interest in litigating claims involving Louisiana property far outweighs any interest the District of Columbia has in adjudicating such matters. Regardless of the extent of HUD's involvement, the underlying controversy affects and involves the State of Louisiana, its residents and its property. The connection to the District of Columbia is too attenuated to justify using the judicial resources of this Court. The balance of private and public interest factors weigh in favor of transferring this case at this early stage, and Defendant, Rainwater respectfully asks this Court to transfer this matter to the Middle District of Louisiana.

IX. Conclusion

For the foregoing reasons, this Court should grant Defendant Paul Rainwater's Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), or, alternatively, transfer this case to federal district courts in either Baton Rouge or New Orleans, Louisiana.

Respectfully submitted,

/s/ RENEE CULOTTA
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ATTORNEYS FOR PAUL RAINWATER, EXECUTIVE DIRECTOR OF THE LOUISIANA RECOVERY AUTHORITY

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2009, a copy of the foregoing document was filed electronically via the Court's ECF system, through which a notice of the filing will be sent to:

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Llezlie Green Coleman, Esq.
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Attorneys for U.S. Department of
Housing and Urban Development

/s/ RENEE CULOTTA

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

1. TYPE OF SUBMISSION: Application ☐ Construction ☑ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	**2. DATE SUBMITTED** 4/13/06	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name: State of Louisiana	**Organizational Unit:**
	Department: Division of Administration
Organizational DUNS: 958093296	Division: Office of Community Development/Disaster Recovery Unit
Address:	**Name and telephone number of person to be contacted on matters involving this application (give area code)**
Street: 1201 North 3rd Street, Suite 7-270	Prefix: / First Name: Susan
City: Baton Rouge	Middle Name
County: East Baton Rouge Parish	Last Name Elkins
State: LA / Zip Code 70802	Suffix:
Country: USA	Email: suzie.elkins@la.gov
6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: 72-6000720	Phone Number (give area code) 225-342-7412 / Fax Number (give area code) 225-342-1947
8. TYPE OF APPLICATION: ☑ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) State Other (specify)
	9. NAME OF FEDERAL AGENCY: U. S. Department of Housing & Urban Development
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program): Community Development Block Grant Disaster Recovery	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:** Disaster Recovery Activities
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*: State of Louisiana	
13. PROPOSED PROJECT Start Date: 4/20/06 / Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant / b. Project 1-8

15. ESTIMATED FUNDING:

a. Federal	$ 4,210,000,000 .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ 2,137,500,000 .00
f. Program Income	$ .00
g. TOTAL	$ 8,347,500,000 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE:

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative		
Prefix	First Name Jean	Middle Name S.
Last Name Vandal		Suffix
b. Title Deputy Commissioner of Administration		c. Telephone Number (give area code) 225-342-7000
d. Signature of Authorized Representative Jean S. Vandal		e. Date Signed 4/13/06

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

EXHIBIT D

STATE CERTIFICATIONS

a. The state certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See 24 CFR 570.487(b)(2)(ii).)

b. The state certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

c. The state certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

d. The state certifies that the Action Plan for Disaster Recovery is authorized under state law and that the state, and any entity or entities designated by the State, possesses the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

e. The state certifies that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for this grant.

f. The state certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

g. The state certifies that it is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local government that is receiving assistance from the state is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

h. The state certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the nonentitlement, entitlement and tribal areas of the state in determining the method of distribution of funding;

i. The state certifies that it is complying with each of the following criteria:

(1) Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the Gulf Coast hurricanes of 2005 in communities included in Presidential disaster declarations.

(2) With respect to activities expected to be assisted with CDBG disaster recovery funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low-and moderate-income families.

(3) The aggregate use of CDBG disaster recovery funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent of the amount is expended for activities that benefit such persons during the designated period.

(4) The state will not attempt to recover any capital costs of public improvements assisted with CDBG disaster recovery grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless (A) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (A).

j. The state certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations.

k. The state certifies that it has and that it will require units of general local government that receive grant funds to certify that they have adopted and are enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(2) A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

l. The state certifies that each state grant recipient or administering entity has the capacity to carry out disaster recovery activities in a timely manner, or the state has a plan to increase the capacity of any state grant recipient or administering entity who lacks such capacity.

m. The state certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR part 55.

n. The State certifies that it will comply with applicable laws.

Jean S. Vandal

Jean S. Vandal
Deputy Commissioner of Administration

Version 7/03

APPLICATION FOR FEDERAL ASSISTANCE

	2. DATE SUBMITTED 1/26/07	Applicant Identifier
1. TYPE OF SUBMISSION: Application: ☐ Construction ☑ Non-Construction; Pre-application: ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

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Legal Name: State of Louisiana	**Organizational Unit:**
	Department: Division of Administration
Organizational DUNS: 958093296	Division: Office of Community Development/Disaster Recovery Unit
Address:	**Name and telephone number of person to be contacted on matters involving this application (give area code)**
Street: 1201 North 3rd Street, Suite 7-270	Prefix: / First Name: Susan
City: Baton Rouge	Middle Name
County: East Baton Rouge Parish	Last Name: Elkins
State: LA / Zip Code: 70802	Suffix:
Country: USA	Email: suzie.elkins@la.gov
6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: 72-6000720	Phone Number (give area code): 225-342-7412 / Fax Number (give area code): 225-342-1947
8. TYPE OF APPLICATION: ☑ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) State Other (specify)
	9. NAME OF FEDERAL AGENCY: U.S. Department of Housing and Urban Development
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:** Disaster Recovery Activities
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*: State of Louisiana	
13. PROPOSED PROJECT Start Date: 1/26/07 / Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant / b. Project 1-8

15. ESTIMATED FUNDING:	
a. Federal	$ 4,200,000,000 .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 4,200,000,000 .00

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a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE:

b. No. ☑ PROGRAM IS NOT COVERED BY E. O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes" attach an explanation. ☑ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative		
Prefix	First Name: Jean	Middle Name: S.
Last Name: Vandal		Suffix
b. Title: Deputy Commissioner of Administration		c. Telephone Number (give area code): 225-342-7000
d. Signature of Authorized Representative: Jean S. Vandal		e. Date Signed: 1/26/07

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

KATHLEEN BABINEAUX BLANCO
GOVERNOR

State of Louisiana
OFFICE OF THE GOVERNOR
Baton Rouge
70804-9004

POST OFFICE BOX 94004
(225) 342-7015

January 18, 2007

The Honorable Secretary Alphonso Jackson
Secretary, U.S. Department of Housing
and Urban Development
Room 10000
451 7th Street S.W.
Washington, DC 20410

Dear Secretary Jackson:

As in the past, again we wish to express our sincere appreciation for cooperation and commitment your staff has demonstrated to us as we proceed forward with the recovery efforts in the devastated areas of our state.

Attached for your review and approval are the Proposed Changes to the Small Firm Loan and Grant and Long Term Loan Guarantee Programs (Amendment No. 8) and Proposed Action Plan for the Use of Disaster Recovery Funds Allocated by P.L. 109-234. We are very excited about Louisiana's Disaster Recovery programs. We look forward to a continued working relationship with you and your staff as we proceed to implement the program outlined in the attached document.

Should you have any questions or wish to discuss this Amendment or Action Plan in more detail, please do not hesitate to call me or have your staff call Susan Elkins at 225-342-7412.

Sincerely,

Kathleen Babineaux Blanco

Kathleen Babineaux Blanco
Governor

Attachments

TB

State of Louisiana
DIVISION OF ADMINISTRATION

OFFICE OF COMMUNITY DEVELOPMENT

Kathleen Babineaux Blanco
GOVERNOR

Jerry Luke LeBlanc
COMMISSIONER OF ADMINISTRATION

June 12, 2007

Mr. Clifford Taffet, Director
Disaster Recovery and Special Issues Division
U. S. Dept. of Housing and Urban Development
451 Seventh Street S.W., Room 7286
Washington, D.C. 20410

Dear Mr. Taffet:

Enclosed are 2 signed copies of Louisiana's Grant agreement. Forms 27054 were previously submitted with the first Action Plan authorizing Belinda Olivier (Belinda.Olivier@LA.GOV), Diane Brown (Diane.Brown@LA.GOV) and Anita Minor (Anita.Minor@LA.GOV) to access our line of credit.

Thank you and your staff for your assistance in expediting Louisiana's grant agreement. We look forward to continue working with you and your staff as we implement Louisiana's Disaster Recovery Program.

Sincerely,

Susan Elkinson

Michael Taylor, Director
OCD/Disaster Recovery Unit

MT/al

P.O. Box 94095, Baton Rouge, LA 70804-9095
Claiborne Building, Suite 7-270
(225) 342-7412 • Fax (225) 342-1947 • 1-800-354-9548
An Equal Opportunity Employer

Funding Approval/Agreement

Title I of the Housing and Community Development Act (Public Law 930383)

U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Community Development Block Grant Program

HI-00515R of 20515R

1. Name of Grantee (as shown in item 5 of Standard Form 424) State of Louisiana	3. Grantee's 9-digit Tax ID Number 72-6000720	4. Date use of funds may begin (mm/dd/yyyy)
2. Grantee's Complete Address (as shown in item 5 of Standard Form 424) 1201 North 3rd Street, Suite 7-270 Baton Rouge, LA 70802	5a. Project/Grant No. 1 B-06-DG-22-0002	6a. Amount Approved $4,200,000,000
	5b. Project/Grant No. 2	6b. Amount Approved
	5c. Project/Grant No. 3	6c. Amount Approved

Grant Agreement: This Grant Agreement between the Department of Housing and Urban Development (HUD) and the above named Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 et seq.). The Grantee's submissions for Title I assistance, the HUD regulations at 24 CFR Part 570 (as now in effect and as may be amended from time to time), and this Funding Approval, including any special conditions, constitute part of the Agreement. Subject to the provisions of this Grant Agreement, HUD will make the funding assistance specified here available to the Grantee upon execution of the Agreement by the parties. The funding assistance specified in the Funding Approval may be used to pay costs incurred after the date specified in item 4 above provided the activities to which such costs are related are carried out in compliance with all applicable requirements. Pre-agreement costs may not be paid with funding assistance specified here unless they are authorized in HUD regulations or approved by waiver and listed in the special conditions to the Funding Approval. The Grantee agrees to assume all of the responsibilities for environmental review, decision making, and actions, as specified and required in regulations issued by the Secretary pursuant to Section 104(g) of Title I and published in 24 CFR Part 58. The Grantee further acknowledges its responsibility for adherence to the Agreement by sub-recipient entities to which it makes funding assistance hereunder available.

U.S. Department of Housing and Urban Development (By Name) Pamela H. Patenaude		Grantee Name Jean S. Vandal	
Title Assistant Secretary of Community Planning and Development		Title Deputy Commissioner of Administration	
Signature Pamela H. Patenaude	Date (mm/dd/yyyy) 6/7/07	Signature Jean S. Vandal	Date (mm/dd/yyyy) 06/12/200

7. Category of Title I Assistance for this Funding Action (check only one)
- [ ] a. Entitlement, Sec 106(b)
- [x] b. State-Administered, Sec ~~106(d)(1)~~ a
- [ ] c. HUD-Administered Small Cities, Sec 106(d)(2)(B)
- [ ] d. Indian CDBG Programs, Sec 106(a)(1)
- [ ] e. Surplus Urban Renewal Funds, Sec 112(b)
- [ ] f. Special Purpose Grants, Sec 107
- [ ] g. Loan Guarantee, Sec 108

8. Special Conditions (check one)
- [ ] None
- [x] Attached

9a. Date HUD Received Submission (mm/dd/yyyy) 2-17-2007

9b. Date Grantee Notified (mm/dd/yyyy)

9c. Date of Start of Program Year (mm/dd/yyyy) N/A

10. check one
- [x] a. Orig. Funding Approval
- [ ] b. Amendment Amendment Number

11. Amount of Community Development Block Grant	FY (2006)	FY ( )	FY ( )
a. Funds Reserved for this Grantee	4200000000		
b. Funds now being Approved	4200000000		
c. Reservation to be Cancelled (11a minus 11b)			

12a. Amount of Loan Guarantee Commitment now being Approved

Loan Guarantee Acceptance Provisions for Designated Agencies:
The public agency hereby accepts the Grant Agreement executed by the Department of Housing and Urban Development on the above date with respect to the above grant number(s) as Grantee designated to receive loan guarantee assistance, and agrees to comply with the terms and conditions of the Agreement, applicable regulations, and other requirements of HUD now or hereafter in effect, pertaining to the assistance provided it.

12b. Name and complete Address of Public Agency

12c. Name of Authorized Official for Designated Public Agency

Title

Signature

HUD Accounting use Only

Batch	TAC	Program	Y	A	Reg	Area	Document No.	Project Number	Category	Amount	Effective Date (mm/dd/yyyy)	F
	153											
	176											

Y	Project Number	Amount

Y	Project Number	Amount

Date Entered PAS (mm/dd/yyyy)	Date Entered LOCCS (mm/dd/yyyy)	Batch Number	Transaction Code	Entered By	Verified By

Special Contract Conditions for

HUD Grant No. B-06-DG-22-0002

CDBG Gulf Coast Disaster Recovery Assistance

1. The grantee must use these Community Development Block Grant (CDBG) funds as provided by the Public Law 109-234: Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, Public Law 109-234 at 120 Stat. 472).

2. The grantee must comply with all waivers and alternative requirements previously and subsequently issued by the U.S. Department of Housing and Urban Development with respect to this grant. Waivers and alternative requirements were published in the *Federal Register* October 30, 2006, at 71 FR 63337.

3. The grantee must comply with all applicable requirements of the Housing and Community Development Act of 1974, as amended, and the Cranston-Gonzalez National Affordable Housing Act, as amended, and other statutes, regulations, notices, and Office of Management and Budget (OMB) circulars, except as provided for in conditons 1 and 2, above. The grantee is advised to pay particular attention to: regulations at 24 CFR part 58 pertaining to environmental review requirements; labor standards requirements of 42 U.S.C. 5310; and OMB Circular A-87 pertaining to cost principles.

4. The State shall notify HUD in writing of any changes it intends to make in the use of funds described in its funded action plan, or parts thereof, at least five days before it implements any such changes or amendments. This applies whether or not it is a substantial change or amendment requiring public notice and opportunity for comments.

5. The State shall use at least 19.33 percent of funds provided under the second CDBG Supplement (P.L. 109-234) for repair, rehabilitation, and reconstruction (including demolition, site clearance and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas.

6. None of the awarded funds may be used by the State or a locality toward a matching requirement, share, or contribution for any other Federal program.

Funding Approval/Agreement

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U.S. Department of Housing and Urban Development
Office of Community Planning and Development
Community Development Block Grant Program

HI-00515R of 20515R

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U.S. Department of Housing and Urban Development (By Name) Pamela H. Patenaude		Grantee Name Jean S. Vandal	
Title Assistant Secretary of Community Planning and Development		Title Deputy Commissioner of Administration	
Signature Pamela H. Patenaude	Date (mm/dd/yyyy) 6-7-07	Signature Jean S. Vandal	Date (mm/dd/yyyy) 06/12/2007

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- ☐ f. Special Purpose Grants, Sec 107
- ☐ g. Loan Guarantee, Sec 108

8. Special Conditions (check one)
- ☐ None
- ☒ Attached

9a. Date HUD Received Submission (mm/dd/yyyy) 2-17-2007

9b. Date Grantee Notified (mm/dd/yyyy)

9c. Date of Start of Program Year (mm/dd/yyyy) N/A

10. check one
- ☒ a. Orig. Funding Approval
- ☐ b. Amendment
  Amendment Number

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12b. Name and complete Address of Public Agency

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Signature

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6. None of the awarded funds may be used by the State or a locality toward a matching requirement, share, or contribution for any other Federal program.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-7000

OFFICE OF COMMUNITY PLANNING
AND DEVELOPMENT

JUN - 7 2007

Ms. Suzie Elkins, Executive Director
Office of Community Development
State of Louisiana
1201 N. Third Street, Suite 7-270
Baton Rouge, LA 70802-9095

On May 24, 2007, The Department of Housing and Urban Development (HUD) awarded the State of Louisiana $4,200,000,000 in Community Development Block Grant (CDBG) funds (grant number B-06-DG-22-0002). Of this amount, HUD approved and made available $3,650,000,000 for activities described in the State's action plan. The remaining funds will be made available as the State submits approvable amendments to its action plan. These funds must be used for recovery assistance in the areas impacted by Hurricanes Katrina and Rita in 2005.

Please execute the three enclosed copies of the grant agreement, retain one copy for your files, and return the other two copies with original signatures to Clifford Taffet, Acting Director, Disaster Recovery and Special Issues Division, 451 7th Street, SW, Room 7162, Washington, DC 20410. Please note that enclosed with the grant agreement are special contract conditions for the use of funds under the agreement. We will establish the State's line of credit account for this grant upon receipt of the executed copies of the agreement. Please provide the names and email addresses of the State staff that will need access to the line of credit.

Two quarterly reports are required: 1) a Financial Cash Transaction Report (SF-272) (which is a paper-based report); and 2) a program accomplishments report through HUD's web-based Disaster Recovery Grant Reporting (DRGR) system.

I want to thank you and your staff for your outstanding work accomplished under very trying circumstances. My staff and I look forward to continuing to work with you to achieve long-term recovery in Louisiana. If you or members of your staff have any questions concerning this award, do not hesitate to contact Cliff Taffet at 202-402-4589.

Sincerely,

Pamela H. Patenaude

Pamela H. Patenaude
Assistant Secretary

Enclosure