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Tuesday, August 05, 2008

Governor Bobby Jindal
Office of the Governor
P.O. Box 94004
Baton Rouge, LA 70804-9004

By Fax and Email Only

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Paul Rainwater
Louisiana Recovery Authority
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Baton Rouge, Louisiana 70801

By Fax and Email Only

1 (225) 342-1726

RE: Road Home Deadline

Dear Governor Jindal and Mr. Rainwater:

We are writing to ask that you take action to preserve the rights of thousands of Louisiana Homeowners to participate in the Road Home program. We request immediate rescission of the deadline established last week, requiring that applicants for the Road Home Program complete the documentation of their eligibility by September. This deadline flies in the face of the enormity of the task facing many Road Home applicants, including completing successions of long deceased relatives, interdicting legally incompetent co-owners, and reversing illegal tax sales. Many of the applicants cannot do this legal work without the help of non-profit legal services providers, who are slowed by a shortage of resources and staff. ICF recently signed a contract in June 2008 for these non profits to provide legal services at least through December 2008. Thousands of other applicants are still moving slowly through the application process, having been hampered by ICF's initial lack of trained personnel and constant policy changes. The sudden imposition of a one month deadline makes no sense in this situation.

Through this letter we ask that the policy at issue be rescinded *this week*. We are open to meeting with you to discuss the details of this policy. However, we request written assurance by Monday, August 11 regarding global rescission of the policy because failure to do so will force us to seek recourse elsewhere for affected homeowners.

Based on news reports and a Road Home July 30 press release (copy attached), the LRA appears to have created an exceedingly short statute of limitation, now just one month away, for applicants to complete submissions on their claims.



Because this limitation will unlawfully cut out those in desperate need to receive their share of federal rebuilding funds, including our clients, we request your immediate attention to correct this issue. Even if, as was recently suggested to Loyola Law Clinic, the deadline were somewhat longer and extensions are allowed case-by-case, it would still eliminate the ability of hundreds or thousands to rebuild, and therefore any such proposal is inadequate.¹

A. Summary of Detrimental Impact

Leaving applicants with just 30 days to complete submissions is inadequate given how poorly ICF has implemented the Road Home Program and also because this kind of deadline would violate federal and state laws. Most cut off by this arbitrary deadline are African American, usually of low income, elderly, and/or disabled.

The pending deadline will cut out applicants in a number of obvious circumstances: persons attempting to clear title to their property either through successions, other court proceedings, or other means; persons whose claims have been delayed by the Road Home appeal proceedings, on which the ICF and OCD have not been complying with the 90 day deadlines for resolving appeals; and persons for whom ICF and OCD failed to ever give written response to disputes and/or appeals.

B. Absence of Any Immediate Need to Terminate Access to Assistance

Further, the action is wholly arbitrary in that ICF, the state's contractor, is still backlogged in processing claims that have already been submitted. OCD recently fined its own contractor for failing to meet program milestones. While recognizing that the contractor cannot meet its duties, the agency is now creating a rush for no useful purpose even while it is already clear that the contractor cannot meet even the current application processing milestones. Further, the contract with ICF provides for applications to be processed through June, 2010. Imposing a deadline on the applicants now, so far in advance of that is wholly arbitrary—it will hurt identifiable persons, but serves no corresponding productive purpose. Imposing a deadline on all situations is not the right solution if the real concern is some specific situations, like failure to reply to "Options" letters.

C. Proposed Policy is Illegal

This precipitous change in the rules affecting applicants is illegal on a number of counts, and so should be rescinded.

1. Disparate Impact on Minority Groups.

¹ Despite Loyola Law Clinic's requests, administrators of the Road Home Program continue to enact new policies without public disclosure. Like other changes in policy, all details of this new deadline should have been distributed to the public upon passage. We request that all details regarding this new policy be immediately provided to us.

In our experience, about 90% of the homeowners with difficult succession matters are African American. Nowhere near 90% of the homeowners affected by Katrina were African American. As a result, it is clear that the impact of this change would disproportionately disqualify African Americans from participating in the program. Yet as noted above, this disproportionate disqualification serves no useful or necessary purpose.

Such disparate impact in the effect of eligibility criteria violates the U.S. Justice Department and HUD regulations barring eligibility criteria with disparate negative impact on minority groups. 28 CFR § 42.104(b)(2);² 24 C.F.R. § 6.4(a)(1)(ix).³ Similarly, the federal Fair Housing Act, 42 U.S.C. § 3604(b) makes it unlawful to discriminate against any person “in the provision of services or facilities in connection with” a dwelling because of race. This provision has been applied against provision of government services in ways having disparate impact on minorities.

2. Failure to Follow Administrative Procedure Act in Promulgating the New Eligibility Requirement.

The LRA has been authorized to promulgate rules and regulations. La.R.S. 49:220.5(A)(11); 49:951(2). A deadline such as the impending cutoff for submissions qualifies under the state Administrative Procedure Act as a rule, since it is an “agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency ... which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency... includ[ing] ...the criteria or qualifications for licensure or certification by an agency.” La. R.S. 49:951(6).

Any rule must be promulgated through the process specified in the Administrative Procedure Act, and is without legal effect if it has not been. La. R.S. 49:954(A). Because this proposed rule has not passed through the required process, the new policy is illegal and cannot be enforced.

3. Illegal Delegation of Legislative Functions.

The Louisiana Constitution requires that powers be properly separated among the three branches of government. Article 2, §1. By delegating carte blanche for the LRA to create the eligibility criteria, the Legislature has abdicated its responsibility and its accountability. Here the legislature set no criteria, allowing administrative agencies total control over the substantive eligibility criteria. Now the agency is using this authority to set a wholly arbitrary deadline that will terminate eligibility for thousands.

² “A recipient, in determining... the class of individuals to whom, or the situations in which, [assistance] will be provided under any ... program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which ... have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”

³ Prohibiting “criteria or methods of administration that ... have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, religion, or sex.”

This violates the constitutional separation of powers. As articulated by the state Supreme Court:

When the delegated authority is unfettered as here, its exercise becomes legislative, not administrative, in nature, and contravenes the mandate of Article 2, Section 2 of the Louisiana Constitution.

State v. Taylor, 479 So.2d 339, 343 (La.,1985)(invalidating statute).

To validly delegate authority to agencies, statutes must: “(1) contain[] a clear expression of legislative policy, (2) prescribe[] sufficient standards to guide the agency in the execution of that policy, and (3) [be] accompanied by adequate procedural safeguards to protect against abuse of discretion by the agency...” *State v. All Pro Paint & Body Shop, Inc.*, 639 So.2d 707, 712 (La.,1994.) (citations omitted). This test “insist[s] that” legislators “make the difficult policy choices for which they are accountable to the public through the democratic process” and “guards against delegations of unbridled legislative discretion and the danger of “delegation running riot” and facilitates both “public participation and judicial review.” *Id.*, at 712-13. Here the tests are not met, and there is no accountability for this action that will preclude thousands from participating in the recovery.

D. Any Exceptions Process Would be Inadequate

The pending deadline will have widespread detrimental impact. Not all of the situations affected can fairly be anticipated. Relying on any “exceptions” procedure to correct the mistake of creating a deadline will predictably deny meritorious cases because:

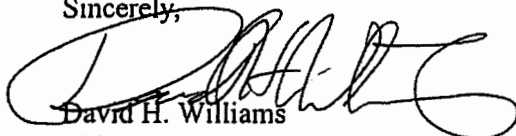
- Many clients will not understand the need to apply for extension, or even more importantly, how to explain their circumstances well enough to justify the extension. While LRA has planned some in person events to deal with this, these are one-day events, which clients may not hear of or be able to attend, particularly if coordinating a work schedule and public transportation. It also is not yet known whether ICF will be explaining extensions at this event or just trying to get people to submit whatever is outstanding.
- ICF has understood and administered other program rules so poorly that *many who should qualify for an exception will no doubt be turned away by its staff, instead of getting to apply for an exception.*
- The limited mobility of the affected population, who by definition remain displaced from their residences, guarantees that many will miss or experience delays in receiving mailings (including certified mailings) and information regarding deadlines. This includes missing the chance to request an exception to a deadline that is now just one month away.
- It can safely be anticipated that there will be thousands needing extensions. Attempting to sort through these in granting extensions is an unnecessary use of time and resources, particularly given that people will not know what information needs to be submitted to warrant an extension.

- Many of the 3,100 who have not returned Benefit Selection letters may never have received them, and so do not have them to return, or simply do not understand them. This requires case management, not a termination of all rights, and certainly does not call for a deadline that covers so many other situations.

We have been deeply concerned about other deadlines imposed by the Road Home, but have not challenged them, because they did not necessarily cut out the clients we serve. Over the last months, Loyola Law Clinic has attempted to engage in conversations with Mr. Rainwater and various members of the LRA regarding numerous, serious problems with the Road Home Program for our low income clients including, but not limited to, those issues discussed in this letter. LRA's response has been limited and has failed to provide relief to our clients on most issues.

The September deadline cannot be met and violates the law. An exceptions process would not change that or provide adequate protection. As a result, we are requesting that the agency voluntarily rescind all suggestions that such a deadline will be imposed, and also request your response by Monday.

Sincerely,



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Enc. 7/30/08 Road Home Press release

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For Immediate Release

Louisiana Announces Critical *Road Home* Deadline in September

BATON ROUGE, La., July 30, 2008 – *Road Home* applicants who have not decided whether they will rebuild or sell their homes, who have not returned necessary documents or who have not provided proof of occupancy must do so by September 5, 2008, the state of Louisiana announced Wednesday.

Affected homeowners are being notified by letters beginning this week. This deadline affects several groups of homeowners:

- 3,100 who have not completed and returned a “Benefit Selection Form,” commonly called the “yellow letter;”
- 1,800 who have yet to provide documents proving they occupied their homes at the time of the storms;
- 3,000 who have yet to provide ownership documents;
- 500 whose files are missing other documents, such as social security cards.

“Though *The Road Home* has served more than 115,000 families since 2006, we have a few thousand who have not moved forward in the program. We want to help these homeowners take the next step toward receiving the rebuilding money they need, but we need their help to do this,” said Paul Rainwater, executive director of the Louisiana Recovery Authority. “Homeowners should know that while this September 5 deadline is a reality, we will have *Road Home* staff travelling the state hosting information meetings during the month of August to assist them with moving forward.”

“We want each applicant to get the rebuilding money he or she is eligible for under the *Road Home* program, which is why these deadlines and this outreach is necessary. In our quest to improve customer service in the program as we move through its final year, we will be offering hands-on assistance to homeowners in the month of August to ensure that no homeowner who wants to continue to move forward is unable to do so,” Rainwater said.

Each homeowner group will receive a letter outlining the action they need to complete by September 5, 2008. The largest group affected is those who have not yet notified the program of what they wish to do with their homes by returning a benefit selection form to the program. Homeowners have three options:

- Option 1 - To stay in their home and rebuild;
- Option 2 - To sell their home to the state and purchase a new home within the state of Louisiana.
- Option 3 - To sell their home to the state.

Several hundred homeowners who have not yet received their Benefit Selections Form will not be affected by this deadline. They will have a full 60 days from the time they receive their Benefit Selections Form to return it to the program and will be notified of such in a letter.

Homeowners who have not yet returned documents to the program have been notified multiple times in writing and by their *Road Home* representatives. Applicants with questions about which documents the program still needs from them should contact their *Road Home* representative or *The Road Home* hotline at 1-888-762-3252 (TTY: 1-800-566-4224).

In addition to the letters, *The Road Home* will host outreach sessions across south Louisiana during the month of August. During the sessions applicants can turn in documents, complete benefit selection forms and ask questions directly of program staff, without scheduling an appointment, on a first-come, first-served basis.

Applicants should watch the newspaper for announcements of dates, locations and times for these outreach events. *The Road Home* will also send reminder post cards with information about outreach events.

Applicants with questions can contact *The Road Home* at 1-888-762-3252 (TTY: 1-800-566-4224).