

**FINAL BREAKTHROUGH
ON THE BILLION DOLLAR
KATRINA INFRASTRUCTURE
LOGJAM: HOW IS IT WORKING?**

(111-63)

HEARING

BEFORE THE

SUBCOMMITTEE ON
ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND
EMERGENCY MANAGEMENT

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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September 28, 2009

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Economic Development, Public Buildings, and Emergency Management

FROM: Subcommittee on Economic Development, Public Buildings and Emergency Management Staff

SUBJECT: Hearing on the "Final Breakthrough on the Billion Dollar Katrina Infrastructure Logjam: How is it Working?"

PURPOSE OF THE HEARING

The Subcommittee on Economic Development, Public Buildings, and Emergency Management will meet on Tuesday, September 29, 2009, at 2:00 p.m., in room 2167 of the Rayburn House Office Building to receive testimony on the status of the recovery from Hurricanes Katrina and Rita in the Gulf Coast. The hearing will focus on the statutes of the rebuilding of infrastructure overall disaster recovery programs being provided through the Public Assistance Programs of the Federal Emergency Management Agency (FEMA).

BACKGROUND

Hurricane Katrina made landfall on August 29, 2005, and proved to be the costliest natural disaster in American history. The storm had a massive physical impact on the land, affecting 90,000 square miles, which is an area the size of Great Britain. Under the authority granted to the President in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), then President Bush declared a Major Disaster in the states of Louisiana and Mississippi on the date the storm made landfall.

I. FEMA's Recovery Programs

FEMA's Public Assistance Program is authorized primarily by sections 403, 406, and 407 of the Stafford Act.¹ This program reimburses state and local emergency response costs and provides grants to State and local governments as well as certain private non-profits to rebuild facilities.

In light of the many lessons learned from Hurricane Katrina, Congress made significant changes to the Stafford Act in the Post Katrina Emergency Management Reform Act (Title VI of P.L. 109-295). However, these changes were not retroactive to Hurricane Katrina and, as a result, do not provide for additional assistance for the recovery from Hurricane Katrina in Louisiana or Mississippi.

To address the outstanding recovery needs, in the 110th Congress, the Committee on Transportation and Infrastructure reported H.R. 3247, the "Hurricanes Katrina and Rita Recovery Facilitation Act of 2007", which passed the House on October 29, 2007. H.R. 3247 addressed concerns raised in testimony at the Subcommittee on Economic Development, Public Buildings, and Emergency Management hearing on May 10, 2007, "Legislative Fixes for Lingering Problems that Hinder Katrina Recovery" from Members of the Mississippi and Louisiana delegations. H.R. 3247 provided additional Federal relief targeted to those states and, if enacted, would have been applicable to the relief efforts in both Louisiana and Mississippi.

Specifically, this bill: increased the Federal in-lieu contribution for alternate projects from the current level of 75 percent to 90 percent; allowed the FEMA Administrator to include Gulf Coast recovery efforts under a public assistance pilot project authorized by the Post-Katrina Emergency Management Reform Act (P.L. 109-295); permitted the use of third parties to review and expedite public assistance appeals through the use of alternative dispute resolution procedures; allowed the use of temporary housing for volunteers assisting in the recovery and reconstruction efforts in the Gulf Coast; allowed FEMA to use a simplified procedure, under which small projects are permitted to proceed based on estimates, for projects costing up to \$100,000, which was an increase from \$55,000; authorized re-interment of remains in private cemeteries; and waived the requirement that certain certifications in the hazard mitigation grant program occur prior to commencing projects.

The Senate failed to pass H.R. 3247 in the 110th Congress. Even though Hurricanes Katrina and Rita struck more than four years ago, some believe that many of the provisions in H.R. 3247, if enacted, would still help speed the recovery from these storms.

In previous hearings, the Subcommittee heard concerns from state and local officials of the Gulf Coast about the difficulties with FEMA's Public Assistance program as it was being implemented in the recovery from Hurricanes Katrina and Rita. In particular, concerns were raised about FEMA's appeal process. To address these concerns, H.R. 3247, as reported by the Committee and passed by the House, specifically "authorized and encouraged" FEMA to use alternate dispute resolution.² Notwithstanding this language, FEMA was already authorized to use alternate dispute resolution under the Stafford Act³ and the Administrative Dispute Resolution Act

¹ 42 U.S.C. §§ 5170b, 5172 and 5173.

² Section 3(c) of H.R. 3247 from the 110th Congress.

³ Section 423 of the Stafford Act, 42 U.S.C. § 5189a.

of 1996.⁴ Despite this authority and concerns raised about the pace of recovery in the Gulf Coast, the previous Administration refused to implement any meaningful alternate dispute resolution procedures. FEMA was even reluctant to admit that there were any problems with the appeals process for the Public Assistance Program.⁵

Both state and Federal officials have indicated that the implementation of the public assistance program is improving in the Gulf Coast since January. One small but important indication of the change from the previous Administration was an acknowledgment by the current Administrator of FEMA that there have been problems that need to be addressed.⁶ FEMA's reluctance to initiate alternate dispute resolution on its own forced Congress to require FEMA to implement an arbitration program in the American Recovery and Reinvestment Act of 2009 (P.L. 111-5)(ARRA).⁷ Section 601 of ARRA specifically provided:

Notwithstanding any other provision of law, the President shall establish an arbitration panel under the Federal Emergency Management Agency public assistance program to expedite the recovery efforts from Hurricanes Katrina and Rita within the Gulf Coast Region. The arbitration panel shall have sufficient authority regarding the award or denial of disputed public assistance applications for covered hurricane damage under section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5170b, 5172, or 5173) for a project the total amount of which is more than \$500,000.

To implement this provision, FEMA promulgated regulations on August 31, 2009.⁸ Under those regulations, FEMA has limited these appeals to projects that have not received a final written decision of a second appeal by the date of enactment (February 17, 2009).⁹ Further, applicants must not have failed to file a timely appeal¹⁰ and must elect arbitration in lieu of filing an appeal under FEMA's regular appeals process.¹¹

The arbitration panels will be comprised of three current or senior administrative law judges and other similar officials. The program will be administered by the Civilian Board of Contract Appeals, an independent entity housed within the General Services Administration. The appeals have not yet begun, but are expected to begin soon, and FEMA held an arbitration workshop on September 24, 2009 at Louisiana State University for interested officials.

While the language of section 601 of ARRA requires FEMA to offer arbitrations for disputes above \$500,000, there is nothing in the ARRA that prohibits FEMA from implementing a similar program for smaller disputes, such as an alternative dispute resolution, which FEMA is

⁴ 5 U.S.C. § 572.

⁵ *Post-Katrina Disaster Response and Recovery: Evaluating FEMA's Continuing Efforts in the Gulf Coast and Response to Recent Disasters*, 111th Cong. (February 25, 2009) (statement of David Garratt, Acting Deputy Administrator, Federal Emergency Management Agency).

⁶ *Post Katrina: What it Takes to Cut the Bureaucracy*, 111th Cong. (July 27, 2009)(statement of Craig Fugate, Administrator, Federal Emergency Management Agency).

⁷ Public Law 111-5.

⁸ 44 C.F.R. 206.209; 74 Fed. Reg. 167 (August 31, 2009).

⁹ 44 C.F.R. 206.209(d)(2).

¹⁰ *Id.*

¹¹ 44 CFR 206.209(d)(1).

already authorized under other statutes to execute. Therefore, FEMA should expand the availability of arbitration panels to disputes under \$500,000.

In addition, ARRA does not preclude FEMA from implementing other programs to resolve disputes or difficulties with Public Assistance projects. Since January, FEMA has been using new procedures to review these projects, including the appointment of the "Joint Expediting Team" and the "Unified Public Assistance Project Team". Witnesses at this hearing are expected to provide testimony on improvements in the public assistance program in the Gulf Coast since January including the use of these "decision teams".

II. Status of Recovery

Louisiana

The Gulf Coast is still recovering from Hurricanes Katrina and Rita. By September 2009, according to FEMA, the agency has obligated approximately \$7.8 billion in Public Assistance funding. Louisiana has distributed about \$4.6 billion of that amount. The remainder (\$3.2 billion) is still available to be drawn down by the eligible applicants.

Since January 2009, FEMA has obligated over \$1.35 billion in total Public Assistance funding in the following sectors:

- Education: \$531 million;
- Public Works: \$153 million;
- Public Safety and Protection: \$82 million;
- Health Care: \$70 million;
- Public Infrastructure: \$478 million; and
- Debris Removal/Emergency Protective Measures: \$43 million.

Mississippi

By September 2009, according to FEMA, the agency has obligated approximately \$2.9 billion in Public Assistance funding. Mississippi has distributed about \$2.1 billion of that amount. The remainder (\$1.7 billion) is still available to be drawn down by the eligible applicants.

Since January 2009, FEMA has obligated over \$170 million in total Public Assistance funding in the following sectors:

- Roads and Bridges: \$24.4 million;
- Public Buildings: \$44 million;
- Public Utilities: \$36.5 million;
- Parks/Recreation Facilities: \$23.4 million; and
- Debris Removal/Emergency Protective Measures: \$24.6 million.

PRIOR LEGISLATIVE AND OVERSIGHT ACTIVITY

The Committee and Subcommittee have held numerous hearings dealing with Hurricane Katrina recovery issues:

- “Post Katrina: What it Takes to Cut the Bureaucracy” (July 2009)
- “Still Post-Katrina: How FEMA Decides When Housing Responsibilities End” (May 2009)
- “Post-Katrina Disaster Response and Recovery: Evaluating FEMA’s Continuing Efforts in the Gulf Coast and Response to Recent Disasters” (February 2009)
- “FEMA’s Response to the 2008 Hurricane Season and the National Housing Strategy” (September 2008)
- “Moving Mississippi Forward: Ongoing Progress and Remaining Problems” (June 2008)
- “Legislative Fixes for Lingering Problems that Hinder Katrina Recovery” (May 2007)
- “FEMA’s Preparedness and Response to ALL Hazards” (April 2007)
- “FEMA’s Emergency Food Supply System” (April 2007)
- “Post-Katrina Temporary Housing: Dilemmas and Solutions” (March 2007)
- “Disasters and the Department of Homeland Security: Where Do We Go From Here?” (February 2006)
- “Legislative Proposals in Response to Hurricane Katrina” (November 2005)
- “A Vision and Strategy for Rebuilding New Orleans” (October 2005)
- “Recovering after Katrina: Ensuring that FEMA is up to the Task” (October 2005)

In the 110th Congress, the Committee reported H.R. 1144, the “Hurricanes Katrina and Rita Federal Match Relief Act of 2007”, to provide significant relief for communities devastated by Hurricanes Katrina, Rita, and Wilma. In addition, the bill focused on unaddressed concerns since the occurrence of these disasters. An amended form of the legislation was included in the Emergency Supplemental Appropriations bill that was signed by the President on May 25, 2007 (P.L. 110-28). The Committee reported H.R. 3247, the “Katrina and Rita Recovery Facilitation Act of 2007”, which passed the House on October 29, 2007, but the Senate took no action on the bill. The Subcommittee also collaborated with the Committee on Financial Services on H.R. 1227, the “Gulf Coast Hurricane Housing Recovery Act of 2007”, to ensure Louisiana’s ability to use its Hazard Mitigation Grant Program funds for its Road Home program. This bill passed the House on March 21, 2007, but the Senate took no action on the bill.

WITNESSES

Stephen Daniels
Chairman
Civilian Board of Contract Appeals

David Garratt
Acting Deputy Administrator
Federal Emergency Management Agency

Charles R. Axton
FEMA Lead
Unified Public Assistance Project Decision Team
Gulf Coast Recovery Office
Federal Emergency Management Agency

Paul Rainwater
Executive Director
Louisiana Recovery Authority

Craig Taffaro
President
St. Bernard Parish, Louisiana

FINAL BREAKTHROUGH ON THE BILLION-DOLLAR KATRINA INFRASTRUCTURE LOG-JAM: HOW IS IT WORKING?

Tuesday, September 29, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC
BUILDINGS AND EMERGENCY MANAGEMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:00 p.m., in Room 2167, Rayburn House Office Building, Hon. Eleanor Holmes Norton [Chair of the Subcommittee] presiding.

Ms. NORTON. The Ranking Member is on his way, but has asked that I start, so I am pleased to open this hearing and to welcome our witnesses to another in a series of hearings our Subcommittee is holding to oversee and evaluate the efforts of the Federal Emergency Management Agency, or FEMA, as well as the effect of State and local governments to proceed more rapidly with their work on the long 4-year recovery from Hurricanes Katrina and Rita.

Today we will hear specifically how the new arbitration program mandated in the American Recovery and Reinvestment Act, as well as hear about how that program operates, as well as about other steps that the new leadership at FEMA and at the Department of Homeland Security are taking to improve the pace and the quality of the recovery efforts in the Gulf Coast.

At a hearing earlier this year, we were astonished to uncover almost \$3.5 billion caught in a stalemate between FEMA and the State of Louisiana from which neither could extricate themselves. Based on today's testimony, as well as on numerous meetings and discussions that Members and staff have had with officials at all levels of government in the Gulf Coast, it appears that progress may have begun since President Obama, Secretary Napolitano and Administrator Fugate took office. However, it is exasperating to this Subcommittee to have to note that many of the improvements now being implemented are not new ideas. Some that have been proposed by this Subcommittee for 2-1/2 years are just now coming on line.

During the last administration, FEMA resisted efforts to break the logjam, preferring its own traditional devices. Seeing little progress 2 years ago, this committee reported H.R. 3247, which the House passed in October of 2007, encouraging the use of third parties to review and expedite public assistance appeals, as well as to simplify procedures under which small projects would be permitted

to proceed on estimates for projects up to \$100,000. We passed this bill, which also raised the Federal contribution for certain projects from 75 percent to 90 percent, not once but twice, as well as a similar bill in September 2008. It is unfortunate that the Senate was never able to pass this legislation or, for that matter, that FEMA did not take from this legislation what needed to be done after the House had spoken.

However, even if the H.R. 3247 procedures permitting third-party review had been enacted, FEMA appeared unwilling to choose an effective third-party process. The past FEMA leadership never faced the structural impediments that obstructed agreements for the unprecedented Gulf Coast disasters.

Given the huge funding amounts at stake, each State has built-in impulses, FEMA to resist approving more than it theoretically should and, therefore, to parse its analysis to require State responsibility; and the State of Louisiana to insist on more funds and urge Federal responsibility in light of the State's devastation. Neither side has had much incentive or leadership to negotiate with any efficiency or goals except for its own caged views. Considering the unprecedented challenge of enormous amounts of money and complexity, it should have been clear that, without deadlines, the State and FEMA would continue to engage in negotiations at will for as long as they desired. Now all involved have exhausted the available alternatives and are left with a record of unnecessarily delayed recovery in Louisiana.

The residents of that State are suffering through the greatest economic crisis most have experienced, an add-on crisis because of the so-called "Great Recession," while billions of dollars have been left on the proverbial table for years, waiting to be spent on the construction of the new Charity Hospital and other vital infrastructure. The accumulated hardship on Louisiana residents demands immediate attention. It is hard to overestimate the hardship that has accumulated. Only mandated third-party intervention or negotiations on a timeline are left as acceptable.

As a result of the new arbitration program authorized by the Congress in the Recovery Act, FEMA has entered into an agreement with the Civilian Board of Contract Appeals, or the CBCA, a part of the General Services Administration, which also comes under this Subcommittee's jurisdiction. The CBCA's expertise in resolving disputes in Federal construction contracts should prove invaluable, if fully used, with determined leadership and without delay.

It is unfortunate, indeed, that new legislative language has been necessary to get action, particularly since it has been clear to the Subcommittee that FEMA had sufficient existing authority without new law to implement this or similar programs using third-party dispute resolution even before the Subcommittee put FEMA-specific dispute resolution into law.

Even today while the arbitration provision of the Recovery Act is mandated for projects exceeding \$500,000, nothing prohibits FEMA from offering arbitration for smaller projects, nor does legislation prevent FEMA from using other types of alternative dispute resolution.

If efficient and timely results are not produced, resistance to using time-limited alternative resolution on Gulf Coast recovery will not be tolerated by this Subcommittee. For example, should simplified procedures permitting small projects from \$55,000 to \$100,000 or a possibly higher figure be permitted to proceed based on estimates? During this Great Recession, as it has been called, has the usual State match for infrastructure construction been affected by congressional failure to pass the provision of H.R. 3247 that would have raised the Federal match from 75 percent to 90 percent?

Again, we thank our FEMA representatives, our witnesses from the Civilian Board of Contract Appeals, and witnesses from Louisiana for preparing testimony today to help the Subcommittee better understand how to ensure that the recovery efforts in the Gulf Coast continue to improve.

I am very pleased to ask our Ranking Member Mr. Diaz-Balart if he has any opening statement.

Mr. DIAZ-BALART. Thank you very much, Madam Chairwoman. I want to thank you for holding this hearing today and for the progress made on FEMA's public assistance projects backlog related to Hurricanes Katrina and Rita.

As the Chairwoman knows, as a Representative from a State that has, unfortunately, experienced a number of hurricanes and storms, I have experienced working with FEMA, have seen some great success and also, obviously, some of the delays that may have occurred in receiving assistance. We all know that addressing the delays in public assistance funding is critical in the recovery process following a major disaster like a hurricane. Unfortunately, the delays have plagued the recovery process in Louisiana and also in other States, frankly, that were impacted by Katrina and Rita.

It has been now 4 years since Hurricane Katrina hit the Gulf Coast and devastated parts of Louisiana, Texas, Alabama and Mississippi. Since that time Congress has taken a number of important steps to strengthen FEMA and to try to ensure that Louisiana and particularly in other States impacted by that storm can recover. Some steps have been taken. Now, unfortunately, delays continue to persist, and obviously a lot of work is still undone.

I want to recognize—and he is on his way here. I know that he is flying in now. I want to recognize the efforts of Congressman Cao of Louisiana, who has worked tirelessly on this important issue, as well as others on this committee.

At his request the Ranking Member, Mr. Mica of Florida, hosted two roundtables involving Members of Congress, FEMA, State, and local officials to discuss and find ways in which the process, frankly, can hopefully move along much quicker.

In response to the ongoing delays, FEMA established the Public Assistance Project Decision Team to work through many of those projects in Louisiana and to work with Louisiana on those projects. To date, \$7.8 billion has been obligated for public assistance projects in Louisiana with over \$1.2 billion provided since February of this year alone. A new arbitration process has been established pursuant to language included in the Recovery Act. It is something that the Chairwoman of this Subcommittee has been a great leader on and has been pushing for.

The ability of FEMA and State and local officials to work through, frankly, issues like eligibility has clearly improved, and I think you are seeing that. I think we are all pleased with that.

So, while progress has been made, there are still a number of outstanding projects that have yet to be resolved. Some of them are larger; some of them are smaller. This, obviously, is not an issue that is only important to Louisiana, but to all States, particularly to those that may see disasters. We are hoping that we never will, but we know that they will be coming in the future, disasters like Katrina, Florida being one of those, but any State on the coast is subject to those.

The project-by-project process for public assistance funding may not provide the needed flexibility to expedite recovery from a disaster that would be to the scale of something like Katrina, so I believe it is important for this Subcommittee to examine this issue closely so that we can ensure that FEMA has the proper tools to address similar disasters in the future, disasters that we, unfortunately, know one day will come.

We had a request also from Congressman Scalise to submit testimony for this hearing. If it would be appropriate, Madam Chairwoman, at this time, I ask unanimous consent for his statement to be entered into the record.

Ms. NORTON. So ordered.
[The information follows:]

**Final Breakthrough on the Billion Dollar Katrina Infrastructure Logjam:
How is it Working?**

**Testimony of Congressman Steve Scalise
to the
Subcommittee on Economic Development, Public Buildings, and Emergency Management
Committee on Transportation and Infrastructure**

September 29, 2009

Ms. Norton and Mr. Diaz-Balart, thank you for having this hearing today and for allowing me to submit this testimony. This subcommittee has held numerous hearings on a wide variety of issues concerning our recovery. On behalf of my constituents, I thank you for your hard work and commitment to Gulf Coast hurricane recovery.

I also want to thank Paul Rainwater with the Louisiana Recovery Authority, St. Bernard Parish President Craig Taffaro, and the other officials from the Federal Emergency Management Agency (FEMA) and the Civilian Board of Contract Appeals who are here today. Mr. Rainwater and President Taffaro know firsthand what state and local governments must go through following a disaster, as well as what problems the infrastructure logjams have caused. I look forward to working with the witnesses at today's hearing as we try to break through these logjams that are delaying Louisiana's recovery and make the necessary reforms that will improve disaster recovery, including FEMA's Public Assistance (PA) program, in the future.

Over the past several months, there have been hearings and roundtables on Katrina and Rita recovery in which myself and members of the Transportation and Infrastructure Committee have participated. These hearings have shed light on the delays and red tape that have delayed our recovery and caused problems for State and local governments and other public entities. They have also focused much needed resources and attention on completing PA projects and breaking through the infrastructure logjams.

As a result, we have seen positive results come out of these hearings, including new leadership in FEMA's New Orleans office, the appointment of the Public Assistance Project Decision Team, and the closeout of many outstanding Project Worksheets. In addition, FEMA has released draft loan forgiveness guidelines for Hurricane Katrina Community Disaster Loans (CDL) and announced plans for the arbitration panel that will help resolve some of the remaining PA projects.

All of these steps have been encouraging and will help us break through the logjams that have prevented us from solving many of the recovery projects that have been stuck in FEMA's bureaucracy. I appreciate the work that has been done over the last several months to speed up our recovery. But even with these positive steps, I think we can all agree that we still have a long way to go before our recovery is complete.

Louisiana and FEMA officials must get on the same page over the exact number of outstanding PA projects. We can't expect to break through the logjam of PA projects if both sides do not agree on what projects are in dispute. Congressmen Mica and Cao and I have pushed for this, and we will continue to do so until both parties can come to a solution.

We must also continue to break through the red tape and eliminate the funding delays that are hurting our recovery and the ability of local governments and other entities that serve the public to budget and plan for the future. One key step to do this will be the issuance of the final rules for CDL forgiveness. Our local governments, fire departments, universities, and hospitals have been waiting on these rules for more than two years. Most of them have continued to face large debts and continue to struggle with their recovery as a result. It is imperative that the rules are finalized as soon as possible.

We must also continue to speed up our recovery and identify reforms that must be made to prevent the delays Louisiana has faced from happening in the future. That's why I introduced H.R. 3453, the Disaster Recover Improvement Act. This legislation will make reforms to the Stafford Act that will expedite disaster recovery and provide incentives for state and local governments to plan ahead for future disasters. I am committed to working with the Members of this subcommittee on H.R. 3453, and I look forward to enacting the policies that are in my legislation.

As I stated before, we have seen positive results out of the previous hearings and meetings. I hope that trend continues after today. We must build on the steps that have been taken over the last several months and continue to improve and expedite our recovery. We must identify solutions, and we must see results. It has been over four years since Hurricanes Katrina and Rita...the citizens of Louisiana should not have to wait any longer. I appreciate your assistance in helping resolve these issues.

Mr. DIAZ-BALART. Thank you, Madam Chairwoman.

Again, I look forward to the hearing. I want to thank all of you for being here and for your service. I, once again, want to thank the Chairwoman for her leadership on this very important issue.

Thank you, Madam Chairwoman.

Ms. NORTON. Thank you, Mr. Diaz-Balart.

We have put all of the witnesses at the table in order to try to get the needed interaction so that we can understand and can learn something.

Mr. Axton is here, I take it, with Mr. Garratt. It is Mr. Garratt who is offering the testimony. So I would like to hear from Mr. Garratt for the Federal Government; then to hear from Mr. Rainwater for the State of Louisiana; and from Mr. Taffaro from a subdivision of Louisiana; and finally to hear from Mr. Daniels, the Chairman of the Board of Contract Appeals at the GSA.

Would you proceed, Mr. Garratt?

TESTIMONY OF DAVID GARRATT, ACTING DEPUTY ADMINISTRATOR, FEDERAL EMERGENCY MANAGEMENT AGENCY, ACCOMPANIED BY CHARLES R. AXTON, FEMA LEAD, UNIFIED PUBLIC ASSISTANCE PROJECT DECISION TEAM, GULF COAST RECOVERY OFFICE, FEDERAL EMERGENCY MANAGEMENT AGENCY; PAUL RAINWATER, EXECUTIVE DIRECTOR, LOUISIANA RECOVERY AUTHORITY; CRAIG TAFFARO, PRESIDENT, ST. BERNARD PARISH, LOUISIANA; AND STEPHEN DANIELS, CHAIRMAN, CIVILIAN BOARD OF CONTRACT APPEALS

Mr. GARRATT. Thank you, Chairwoman Norton and Ranking Member Diaz-Balart. It is our privilege to appear before you today.

Joining me at the witness table, as you indicated, is Mr. Charlie Axton. Mr. Axton, day to day, is the Director of the Disaster Assistance Division in FEMA Region 10. He is currently detailed to FEMA headquarters as the Acting Deputy Assistant Administrator for Disaster Assistance. Mr. Axton is one of our brightest and most forward-thinking disaster assistance employees. He has a great mind for public assistance, and it is one of the reasons that Mr. Axton was sent down to the Gulf Coast and to the State of Louisiana to lead the Unified Public Assistance Decision Team that Congressman Diaz-Balart just referred to. That is one of the innovations that was announced by Secretary Napolitano a number of months ago, along with the Joint Expediting Review Team. These are two innovations that FEMA, in conjunction with our partners at the State, have jointly initiated to help deal with disputes that exist within the public assistance arena.

We have enjoyed some success in that regard. As Congressman Diaz-Balart indicated, since we appeared before you in late February, over 2,117 project worksheets and revisions to project worksheets have been processed and obligated, amounting to over \$1.2 billion. That is quite an uptick in terms of the numbers and pace of public assistance approvals, and we are proud of that success.

That said, we are by no means at the point where we can say, "Mission accomplished." We recognize that there is still much to do, and we intend to continue to work with our partners to make that happen.

I am very happy that you have asked the State of Louisiana and a parish representative to appear at this table today. Not only do we need to hear from them, but it helps reinforce what we believe is very important, and that is the teamwork which moves us forward and enables us to make progress.

Since Tony Russell was appointed the Director of the Transitional Recovery Office, we have seen a remarkable turnaround in our partnership with the State and with the local parish representatives. We have made a great deal of progress in restoring and re-forging that relationship, and we are very proud of the partnership that we now have with our colleagues and partners from the State.

Again, I would like to personally thank the leadership of Mr. Paul Rainwater and the gentleman sitting behind him, Mr. Mark Riley. They have been excellent partners with us in helping improve how we do business in the State of Louisiana and, again, in helping us improve the pace of obligations.

At the end of the table is Mr. Craig Taffaro from the St. Bernard Parish. He has also been an excellent partner. We are continuing to work with Mr. Taffaro, with his parish and with the other parishes to further empower and improve how we do business with those parishes and to become more customer-focused.

Again, while we are not at the point where we can say "mission accomplished" with any of the parishes, we have made a considerable amount of progress, and we respect and appreciate the partnership that we, with the State, have been able to forge with our parish leaders.

So thank you for having us all here. We look forward to discussing the issues that you have been talking about, Madam Chair.

Ms. NORTON. Thank you very much, Mr. Garratt.

Mr. Rainwater. Now, Mr. Rainwater, let me just identify you: Paul Rainwater, executive director of the Louisiana Recovery Authority.

Mr. RAINWATER. Thank you, Madam Chairwoman and Ranking Member Diaz-Balart. We appreciate the opportunity to come to you in this forum, and it has been very helpful and constructive as we work through recovering from Hurricanes Katrina and Rita.

I serve as Governor Jindal's chief hurricane and recovery adviser. The Governor has given me broad oversight for more than \$20 billion worth of Federal recovery funds, including more than \$8.5 billion in public assistance funding obligated to the State of Louisiana. Currently we have reimbursed more than \$5 billion to recovering communities. It takes our staff somewhere between 5 to 10 days to pay that request for reimbursement to applicants or to have the express pay process that we started back in 2008 to speed up the recovery.

We have made a lot of progress since February. There is no doubt about it. We have seen an increase in the amount of funds obligated for projects, including several high-profile projects that often were used to exemplify the disagreements between FEMA and the State of Louisiana, but we were able to work through that.

I want to give credit where credit is due. Since President Obama took office, and under the new FEMA leadership, FEMA has obligated more than \$1 billion in additional funding to Louisiana projects. That credit goes to Charlie Axton, to Tony Russell and to

Bill Vogel, who came down as part of the decision teams, which was a very creative process to get down and to work with our staff—and the gentleman sitting behind me, Mark Riley—who have literally just gutted through, you know, thousands of projects worksheets.

Several of those large projects that come to mind and that we actually used in testimony to you, Madam Chairwoman, included about \$16 million that recently got obligated to Tulane University. We fought for over 3 years over that project, which basically was a library that housed Federal documents. Those documents have been housed in trailers with temporary HVAC systems, which is not a very efficient way to house Federal documents. This is in addition to another \$32 million obligated just weeks before to reconcile for Katrina-related repair work across the campus at Tulane.

In August, Secretary Napolitano and FEMA Administrator Craig Fugate visited the campus of the Southern University at New Orleans to announce an additional \$32 million of recovery money for the campus. In total, it took 4 years to get to \$92 million, but I will tell you that Chancellor Ukpolo, who was at that ceremony, was amazingly happy and pleased about the future of his campus because it had been called into question because of the delays in coming up with the dollars and the arguments between State and FEMA and SUNO. But Tony Russell and Charlie Axton sat down with us at a table, and we worked it out. That is the way it should be.

There are additional issues, though, as we have stated. We have still got about 4,000 project worksheets that are in some process of being reverted. We have been talking to FEMA about how to make that process much more efficient, and we are committed to being partners with the Federal Emergency Management Agency to do that.

The only complaint that I have about FEMA is that we do not have more Tony Russells, Charlie Axtons and Bill Vogels to spread around the country. The reality of it is Tony and Charlie are very busy because of the lingering disputes that have been out there for quite some time. They work many long hours. Obviously, the more we can grow the pipe, the better, and the easier it will be to push those dollars through that pipe.

There are two important things that the State of Louisiana needs from FEMA to speed up its recovery: more experienced FEMA staff and a streamlined versioning process.

Now, there are things that FEMA needs from the State as well. You know, we started our express pay program, and we knew going forward we would need to tweak it, and we are committed to doing that. We are adding an additional 55 personnel to the Governor's Office of Homeland Security and Emergency Preparedness to work that process, to get more efficient with that process, and to send more folks out into the field to work those project worksheets and to work that reversioning piece.

We are also providing ideas to FEMA about how we can organize jointly in a more efficient manner. As I said in our first hearing, we will continue to be partners and will synchronize as efficiently as possible between local, State and the Federal Government to kind of take that veil down as best we possibly can. Obviously, as

you have said, Madam Chairwoman, we all have our roles to play here, but we want to do it in a way that is productive and constructive.

Thank you.

Ms. NORTON. Thank you, Mr. Rainwater.

Next, Craig Taffaro, the president of St. Bernard Parish, Louisiana.

Mr. TAFFARO. Thank you, Madam Chairwoman and Ranking Member Diaz-Balart. We appreciate the opportunity to be here.

We believe that we present a unique perspective, having been involved in the aftermath of Hurricane Katrina from day 1 from the local level. Oftentimes the day-to-day struggles and challenges and obstacles that we face on the local level sometimes get lost in the larger system of FEMA bureaucracy or in the coordination between the Federal and State levels.

We have enjoyed, however, the transition from being a council member at the local level and beginning an administrative post in January of 2008. We are committed to revamping the relationship between St. Bernard Parish, the State of Louisiana and the FEMA office, both in the local and the Federal offices.

We believe that that was a major, important step because what we saw was that the relationships that existed at the local level with the other agencies had fallen aside, and the needs and concerns of those people representing the 68,000 residents who lost their livelihoods and their properties as a result of Katrina, Hurricane Katrina, were left basically unrepresented.

Over the last 20 months, we have made significant progress. St. Bernard Parish stands as the first- or second-ranked municipality in the Gulf Coast region in virtually every category of recovery, so we believe we stand as a unique member of the recovery effort not so much because we have done this on our own, but because we have basically pushed the model that recovery could no longer wait. As you know, we were ground zero, which meant that every business, every church, every school; and single-digit homes were spared from the wrath of Hurricane Katrina.

What we have found over the last 20 months in particular, which has worked most effectively—we have to give credit to the express pay system that has released dollars to the local municipalities as we have pushed forward the recovery. St. Bernard Parish, being as devastated as we were, was left without a great deal of our tax revenue, both in terms of sales tax and ad valorem support. So we were in a position where either we had to wait and allow the system to catch up with us or to guide us, or we had to take it on as a mission of our own to push our recovery. We were fortunate to have a bond issue at the local level, and we have used that basically to substantiate and pay for the services of the vendors in our recovery.

Unfortunately, that well has run dry, and we are faced with a situation that without changes to expedite the versioning process so that the projects that are identified as "eligible" and "noncontroversial" can move through the FEMA approval system much more readily, making the State ready to disburse those funds to St. Bernard Parish as well as to other local municipalities.

To put it in perspective, as we speak today, we have 29 project worksheets pending. Those 29 project worksheets roughly equate to \$100 million to \$108 million of work. We have 166 versions to project worksheets that are also pending, and that number changes daily. We changed from 131 on Friday to 166 as of yesterday. Those project worksheet version requests amount to another \$114 million. Based on our roll-ups and our anticipated continued work, we anticipate another 300 to 500 version requests being submitted in the near term, which will account for nearly another \$220 million.

So, by the way, just in St. Bernard, the magnitude of our destruction and devastation would constitute a major disaster in and of itself for just the Parish of St. Bernard, so we are looking at nearly \$440 million of remaining recovery money. Now, keep in mind that these figures only refer to permanent work and not to debris work.

So what we are asking for is a continued partnership with FEMA and increased manpower to provide the support for the people on the ground, who are doing an absolutely wonderful job, so that that money can be freed up in an expedited manner.

Thank you.

Ms. NORTON. Thank you very much, Mr. Taffaro.

Now, Mr. Daniels, you have heard all of this. We put you last on purpose.

So we are going to ask Stephen Daniels, who is the Chair of the Civilian Board of Contract Appeals, to testify at this time.

Mr. DANIELS. Thank you very much, Madam Chair and Members of the Subcommittee.

As you have explained, the Civilian Board of Contract Appeals is a quasi-judicial tribunal, which is housed within the General Services Administration but functions entirely independently of that agency. The Board currently consists of 15 administrative judges. Our principal mission is to resolve contract disputes between civilian agencies of the government and their contractors.

The members of the board and I are honored to take on the responsibility of arbitrating disputes regarding FEMA public assistance grants stemming from damage caused by Hurricanes Katrina and Rita. The assignment constitutes an extension of our work in arbitrating disputes between government agencies and the entities with which they do business. We understand the need for resolving the disputes fully and promptly so that the people of the Gulf Coast region can complete their recovery efforts and can get back to the normal routines of their lives.

We pledge to the Secretary of Homeland Security and we pledge to the Congress, to do our utmost to resolve these disputes in the same way we approach our contract cases, as fairly and at the same time as informally, expeditiously and inexpensively as possible.

On August 31, FEMA published in the Federal Register regulations which govern our arbitration of these disputes. FEMA consulted with the Board in drafting these regulations, and the rules appear fair to us. Applicants seeking grants of \$500,000 or more - State or local governments or eligible private nonprofit agencies-

- may now choose arbitrations by three-judge panels of the Board as an alternative to the standard FEMA appeals process.

Under FEMA's regulations, if an applicant's appeal was pending with FEMA on August 31, or if FEMA had issued a determination on or after February 17, 2009, an applicant could elect the arbitration process no later than October 30. Otherwise, an applicant can elect this process within 30 calendar days after it receives FEMA's determination. Election is made by sending a request to the Board's clerk along with supporting documentation.

Let me take just a minute to outline the process under which we will hear these cases. When the clerk receives a request for arbitration, she will assign it a docket number. She will select one of our judges in rotational order to coordinate activities regarding the matter and two other judges at random to work with the coordinating judge on the panel. She will also inform the relevant State government that it may within 15 calendar days submit comments on the merits of the application. At the same time, she will inform FEMA that it shall within 30 calendar days submit its own comments along with supporting documentation.

Within 10 business days of receiving FEMA's comments, the coordinating judge will convene a telephone conference with the parties to address preliminary matters such as a clarification of the issues and to schedule further proceedings. An applicant can choose to have the panel decide the case on the basis of the written record or on the basis of that record plus an informal hearing.

If the applicant chooses a decision on the basis of the written record, the panel will make every effort to issue its decision within 60 calendar days of the date on which we receive FEMA's comments. If the applicant chooses a hearing, the panel will conduct such a proceeding without a court reporter. It will, if at all possible, conduct the hearing within 60 calendar days of the date of the conference, and it will make every effort to issue the decision within 60 calendar days of the end of the hearing. Decisions will be in writing, but they will also be short. They will announce a result and explain its basis, but it will not contain expositions of legal reasoning.

Madam Chair, the Board has not yet received any requests for arbitration of FEMA determinations, but I can assure you that, when cases arrive, we will look forward to working with the parties to resolve the disputes as quickly and as fairly as we possibly can.

Ms. NORTON. Thank you, Mr. Daniels. I think the very presence of the Board may have already had some effect. We will see.

I think it is an indication of the importance of this hearing and the impatience of the Full Committee as well as of the Subcommittee. The word "progress" simply cannot be written yet until we are through with this hearing and are satisfied of the progress. With the 4-year journey, frustrating journey, of little or no process until recently, frankly, for the larger projects, nothing could indicate, I think, the importance—that being yesterday and this being tomorrow—of the presence of our Full Committee Chairman, who has dropped by despite being in one of the busiest periods of the life of the committee as I speak.

I will ask him, Chairman Oberstar, Chairman Jim Oberstar, if he has any opening remarks for us.

Mr. OBERSTAR. Well, thank you, Madam Chair. I greatly appreciate your persistence in following through on the after effects of Hurricane Katrina, which are a lesson for all of America—for all areas that have been stricken by disaster. The continued follow-through that you are doing, along with Mr. Mario Diaz-Balart, is important to the future of our promise.

There are a great many lessons to be learned and some, I know, even in my district that have not yet been fully learned, such as the interoperability of communications in the aftermath of a huge forest fire on the eastern edge of the boundary waters/canoe area of the Superior National Forest. The firefighters could not communicate with the Forest Service. They could not communicate with the county sheriff because they had not received the adequate funding for the equipment they needed. This was one of the great lessons of September 11, a lesson further learned in Katrina—just one of many.

So, as I am sure you have pointed out in your opening remarks, Katrina is our costliest natural disaster in history. We want to continue these oversight hearings, and want to make sure that no others approach this cost in whatever way that we can accomplish. So I look forward to continuing the testimony of the panel.

Thank you.

Ms. NORTON. Thank you very much, Chairman Oberstar.

Mr. Cao, who represents a district in Louisiana, have you any opening remarks, sir?

Mr. CAO. Thank you, Madam Chair, and thank you very much for holding this hearing. I appreciate your continuing effort to be focused in the district and that you push the recovery process.

I would like to thank Chairman Oberstar for his willingness and openness to look at all of the issues that we are facing down at the district and to somehow revise the Stafford Act to allow the State, city as well as other agencies the flexibility to better recover from Katrina. I also would like to thank the Chairman for his emphasis on the recovery process after a disaster or something similar to Katrina. So, again, thank you, Mr. Chairman, for your continuing efforts in our recovery process.

I missed some of the statements from the panelists, but I am very familiar with all of the issues that you presented, and I hope to question you a little bit later on some of the questions that I still have. Thank you very much.

Mr. OBERSTAR. Will the gentleman yield?

Mr. CAO. Yes, sir.

Mr. OBERSTAR. I would like to express my respect for the gentleman's persistence on this issue. He has brought to me, to the Chair and to the Ranking Member numerous issues of concern to the people of his district and of New Orleans, and I do have to confess to a particular interest: My wife is from New Orleans. Some of her family still lives there, her extended family. Everybody in New Orleans, I think, is related in some way. They are still there.

I have traveled several times to various points of the stricken city, in particular to St. Bernard Parish, which was affected in a way no one could imagine. Homes were overtopped with the floodwaters. Whole structures were floated away from their moorings,

and one in particular stopped only when it ran into another house that did not move.

I remember talking to that homeowner. He had sued for collision damage. I said, Why did you bring suit for collision damage? He said, Well, no one else was helping. The Corps was not doing anything. FEMA was not doing anything. What else are we supposed to do 6 months into this tragedy? So we brought a lawsuit.

Well, that is the ultimate in despair and should not happen, and I will always be haunted by the signs that read: Hold the Corps accountable.

Well, it is not just the Corps; it is FEMA and everyone else that is associated with it. So the gentleman is doing his role, and the Chair is doing her role. We want to hear what lessons are learned and how we can prevent mistakes from happening in the future.

Thank you.

Ms. NORTON. The gentleman closes. The gentleman has yielded.

Now, you will find this Chair impatient with the ABCs of the Federal bureaucracy, so maybe, if I get to know what they are and what the differences among them are, I can rest assured.

Now let me go to Mr. Axton since he has been the man on the ground.

Maybe you could help me understand. You know, the last thing we are about is creating new "theres" in the over-layered Federal Government, and watch out for Federal officials. Better than anything else, they know how to name what they are doing. If two people are doing it, they have a name for it. If 1,000 people are doing it, they have a name for it. Pretty soon they will have a name for it if only one person is doing it. So, before I understand all of these things which I hope are not layers, the first thing I have got to understand is the difference between something called the Joint Expediting Team and the Unified Public Assistance Project Decision Team.

Why aren't they all on the same team? How many teams does it take to get something done on the Gulf Coast?

Mr. AXTON. Chairwoman Norton, that is a very good question. I think, when I first arrived down there at the end of February or at the beginning of March, on the first day, I had a meeting with Mark Riley and some of his team. The original vision for the decision team was to review the final field-level disputes and to make decisions on them in essentially a binary fashion.

What I found very quickly is that the efforts of the State and that the efforts of FEMA, whether it be an expediting team or a project decision team—was that the real need back in those days was to just improve our ability to work together and to work efficiently towards a common goal, and so our focus collectively has been toward that, and a lot of those efforts—

Ms. NORTON. Excuse me. There are different players on these teams or the same players? I still don't understand. The Joint Expediting Team, did it have different players than the Unified Public Assistance Project Team?

Mr. AXTON. Yes. Yes.

Ms. NORTON. What is the difference in the players?

Mr. AXTON. The decision team was a small group of people from FEMA, which I was the lead of, and a small group from the State, the State's leadership.

The expediting team was kind of a broader team that existed of FEMA officials who were working in the existing Transitional Recovery Office with the existing partnerships they had with their State counterparts. The theory was if those teams were not able to resolve issues on the ground, then they would have one final field-level review by the decision team.

Ms. NORTON. How does it work? Does it work that way still?

Mr. AXTON. In the past 7 or 8 months since we stood this effort up, what we have concluded collectively, really between the FEMA officials and the State officials, is that overall we have done a lot to improve our partnership, to improve our ability to work together, to improve the timeliness of our decisions, and a unity of effort—setting goals together, setting priorities together. So many of those efforts that we are seeing are becoming complementary and have merged again towards that common goal that has been set by Mr. Russell—the FEMA Director of the Transitional Recovery Office—and the senior State officials. So we have seen an evolution of all of those efforts in the past 6 to 8 months.

Ms. NORTON. It is still two teams. Will they work more together? It sounds to me like you always have to have some people on the ground. Is there a time frame if they do not reach a decision that it goes to somebody else—zap? What is the purpose of having two teams, one at a higher level? It sounds to me as though, you know, if one court does not do it, let us have another court in between.

So all I am trying to find out is how long does that team have to play with the issue before some team which can make a decision gets the issue? That is really what we are after, Mr. Axton.

Mr. AXTON. No. I understand, and it is a great question, Chairwoman Norton.

It really boils down to the complexity of the issue that is being faced. In some of the cases, it was a single situation where a local official was proposing a mitigation, which is an investment that could be made to avoid future losses that was deemed ineligible. That was a very clear case that was made, and we were able to rule on whether it, in fact, could be deemed eligible.

In other cases it was a series of buildings that had a whole series of unknowns that were related to what were the damages? What were the impacts? What are the future design requirements? So it just really depended on the nature of the issue.

Ms. NORTON. I do not mean at all to simplify what I understand to be a complex process. All I know is what we have seen.

Mr. AXTON. Right.

Ms. NORTON. Today FEMA and Louisiana would still be at the table, fiddling with each other, if the Congress had not forced a new strategy on them. I use the word "forced" because it took statutes, statutory authority, to do what they already could do.

Mr. Taffaro, do you see the streamlined effect? You are at the level of where there would be the felt need.

Mr. TAFFARO. Madam Chair, when Mr. Axton first arrived on the ground, he arrived in a different role, and the role was, if we were not able to resolve our issues with our local FEMA department at

the TRO, that Mr. Axton would step in and basically resolve that conflict. That quickly changed, but what you are hearing is the crux of the matter.

The Stafford Act makes projects eligible or ineligible. The problem is getting something from eligible to ineligible sometimes depends on who is looking at it and is not based on some objective criteria.

As you heard, and as Chairman Oberstar—thank you for your visit to St. Bernard. I remember when you came.

The fact of the matter is when you deal with a community in the Gulf Coast region where we had nearly 20 feet of water across our entire parish and 3 feet of gulf sludge, there are very few things that would be ineligible to be repaired. Yet we still, after 4 years, on the ground have to prove that there was damage created by such an event, because once it is eligible, there should be no more obstacles. It is eligible. Make the project worksheet fit the work that is required. Release the funds. The State now can disburse those funds, and it is a simple process.

Ma'am, you are not oversimplifying it. You are hitting it on the head.

Ms. NORTON. Mr. Taffaro, we have heard these brain-numbing notions that something was already in disrepair. Now, quote, how much of the disrepair was the storm responsible for?

It is mind-numbing because it is clear that neither Mr. Daniels, nor any other administrative law judge, unless he has word from on high, can make that kind of separation. It would take common-sense notions that you could put on paper when you reach such issues, because it is going to be the case with lots of things. Nothing was brand new when the storm hit. So therefore, since it just went up, we now know how much it should cost.

Mr. Axton, you hear Mr. Taffaro not being entirely satisfied that there is a decisionmaker in the process. Even given the fact that I say and that Mr. Taffaro says, no, I should not factor in the complexity that I know about—and I do know about the complexity—I am, among others on this panel, the guardian of Federal funds. I also know it is not beyond human intelligence to figure ways within certain parameters to help decisionmakers say yea or nay, and I do not hear that those ways have yet been transcribed so that Mr. Taffaro would know whether he is in or out without several appeals going up—and I call them "appeals"—several decision levels.

If you streamline the process, why not describe to me how you have streamlined the process. Then I will ask Mr. Taffaro if he has felt it. If you streamline the process, you ought to be able to say—I have some evidence that you have. You have moved \$1.3 billion since January, you say.

Who said that?

Mr. GARRATT. Yes, ma'am, since February.

Ms. NORTON. How much is left in the pipeline, Mr. Garratt?

Mr. GARRATT. Oh, let us see.

Ms. NORTON. Because \$1.2 billion or \$3 billion since January does say to me there has been movement.

Now, if you will just tell the Subcommittee how the movement takes place, I will grant you the complexity, because I have been

sitting with this issue as long as you have been in recovery, but if we cannot speak in any definitive terms about how the streamlining has occurred, how one gets to go within that complexity and recognizing that complexity, then we are not yet convinced that, one, streamlining has occurred and, two, that the timeline which has been speeded up will continue.

What has been streamlined?

There are still two of these teams. Mr. Taffaro still complains that it is not clear, after you are eligible, whether you can still go forward. Therefore, the Subcommittee, or at least this Member, does not understand.

You or Mr. Rainwater or anybody may answer who thinks he can clarify this issue for us.

Mr. RAINWATER. Yes, Chairwoman. I think I can a little bit.

They talked about the expediting team basically as a team that works, you know, with the applicants. A project will go to this team. We will give them a time period to work through it.

Ms. NORTON. For example?

Mr. RAINWATER. Yes, ma'am.

Ms. NORTON. Give me some successes.

Mr. RAINWATER. The Southern University at New Orleans, let us use that. We were \$32 million off. We gave it to the team. We said, you know, you have got about—you know, it is just depending on—you know, it was building to building. It was a pretty large project, so they had about 90 days to work through it. We actually got together as—what happened is once the team submitted its progress report, we got together as a leadership team—myself, Charlie Axton, Mark Riley, and Tony Russell—a State joint and Federal team, and we went through the process. Now, I will tell you—

Ms. NORTON. Wait a minute. That is a joint expediting—

Mr. RAINWATER. The expediting team is made up of engineers on both sides.

Ms. NORTON. And the unified public, they all got together on this one?

Mr. RAINWATER. Yes, ma'am.

So the engineers and the architects get together this Joint Expediting Team. They get together and work through the process. They go into the buildings, you know. You know, you hit it just right. The mind-numbing process of looking at windows, you know, the ceiling tiles, the floors, the whole 9 yards. Then they bring to us the report. Literally, we get the expediting team together and the decision team. We have a conversation, and then the expediting team leaves, and then the leadership team debates about what the number is. In this particular case, we submitted evidence that we thought that one of the buildings was over 51 percent, and they accepted that. So it helped move the process forward.

Ms. NORTON. Okay. This is good to have this example.

Was that project above \$500,000?

Mr. RAINWATER. The total was \$92 million. When you add up what we worked out at the end of the day, the \$32 million that Secretary Napolitano announced in August, the total was \$92 million for the whole campus. So it was a very large project, a very complex project that had been, you know, in the conversation.

Ms. NORTON. Based on the size of the project, it looks like the Joint Expediting Team and the Unified Public Assistance Project Team—forgive my laughter, but I wish you all would call yourselves something simpler to kind of send the message that it is not as complicated as their names.

It looks like, based on certain kinds of either complicated projects or high-cost projects, that the earlier the two teams get together, the more likely a final decision will be made. Is that true, sir?

Mr. RAINWATER. Yes, ma'am, that is what we have seen.

Ms. NORTON. Is there somebody in charge of picking those projects out and saying, look, these projects take a virtual joint decisionmaking, and they are high-cost. Let us go with those first. Have you any priorities like that?

Mr. TAFFARO. Madam Chair, in our experience, they are the projects that the local municipality pushes forward.

In Mr. Axton's short tenure, in his arrival, again, the system is if we cannot resolve it, he will take care of it or find a way to resolve it. He did that on two of our major issues before he moved on. To his credit, Mr. Axton was responsible for helping free up \$110 million worth of work, both of which were 12 months in the waiting of resolution in that time frame.

Ms. NORTON. So that means that you skipped over somebody in order to get to Mr. Axton.

Mr. TAFFARO. Well, no. We could not resolve it within the TRO structure. What happened was Mr. Axton—

Ms. NORTON. The what structure?

Mr. TAFFARO. In the local structure at the TRO, the Transitional Recovery Office.

Ms. NORTON. And you went to Mr. Axton?

Mr. TAFFARO. Mr. Axton was able to—

Ms. NORTON. Oh, is that all the teams together?

Mr. TAFFARO. He was responsible as the Joint Expediting Team member that we initially—

Ms. NORTON. So why do you need this other team, whatever it is called?

Mr. TAFFARO. The unified.

Ms. NORTON. Yes.

Mr. RAINWATER. Yes, ma'am.

Madam Chairwoman, we meet on Tuesday morning as a unified public assistance team, a leadership team, and we go through projects and we set priorities on what needs to happen that week with the expediting team so that they can get out there and get the architects and the engineers.

I mean, this was not happening before. Although the challenge—and I think one of the reasons you don't see larger numbers and greater progress is you need more teams; to be very frank with you, you need more architects and engineers.

Ms. NORTON. That is what Mr. Taffaro, I think, says in his testimony.

Given the enormous misery—it is the only word for it—on the Gulf Coast, what could be of greater priority than to put as many folks down there as you can spare?

Whose testimony said you need three times as many people? Was that you, Mr. Taffaro.

Mr. TAFFARO. Yes, Madam Chair.

Ms. NORTON. Do you disagree with that, Mr. Garrett, that you need three times as many people on the ground if you really are going to make progress on getting this money out in the middle of the Great Depression when people are looking for work and there is money lying on the table, waiting to be spent?

Why don't you have more people down there getting the work out?

Mr. GARRATT. Madam Chair, I can't speak specifically to Mr. Taffaro's contention that he needs three times as many people to help him in that—

Ms. NORTON. Do you need any more people, sir?

Mr. GARRATT. I would have to refer that question to Tony Russell, but Mr. Russell knows that he can get as many people as he needs to get the job done.

Ms. NORTON. Well, Mr. Axton, I want to ask you to answer. Do you think if you had a few more people you could do a better job?

Mr. AXTON. I think the first step to answer that question is really about taking the existing resources that we have and making sure that we are using them the most effectively.

Ms. NORTON. So you are not convinced that you are using the resources that are on the ground sufficiently to help Mr. Taffaro? You think there is more efficiency and work to be pulled out of the people on the ground before you get more personnel?

Mr. AXTON. Madam Chairwoman—

Ms. NORTON. Mr. Axton, where do you live? Are you from Louisiana?

Mr. AXTON. I am a resident of the city of Seattle, Washington.

Ms. NORTON. Well, what I am thinking about is: I am in Louisiana. The presence of this money waiting to be spent has an effect upon the stimulus funds. Why should we give any stimulus funds to Louisiana if the Federal Government and the State can't agree on money that is on the table, and FEMA testifies it doesn't need any more money to get money on the ground so that people can get work and Louisiana can get fixed?

Why should the Federal Government come up with one more cent for the State when you have got money on the table and you tell me you don't need any more people because you are not convinced that you are getting all the work and all the efficiency out of the people you have?

Mr. Rainwater?

Mr. RAINWATER. Madam Chairwoman, at the State level, we are adding an additional 55 personnel to our ranks to help speed up that process.

Ms. NORTON. So the State has added people?

Mr. RAINWATER. Yes, ma'am.

There is another factor I think that Mr. Axton is sort of trying to get to, and that is, we think that—one of the things we have been talking about, for example, is you streamline this process by being smart and allowing local governments to submit architectural and engineering documents to FEMA and the State, and we accept those documents as—

Ms. NORTON. Well, Mr. Taffaro, do you do that?

Mr. TAFFARO. Every project is confirmed by an architectural and engineering firm.

Ms. NORTON. So they are doing that, Mr. Rainwater, they are doing that? Are you doing that?

Mr. RAINWATER. Yes, ma'am. The challenge is, those aren't always accepted and sometimes work is done twice. And that is one of the things that—

Ms. NORTON. And why is work done twice, Mr. Rainwater?

Mr. RAINWATER. Because a local or State will submit a document to FEMA, and FEMA will hire their architects and engineers to look at the document to make sure that the document is fair and it is the right disbursement.

One of the things that we have talked about—

Ms. NORTON. Wait a minute. Excuse me.

Mr. Taffaro, look, we are going to get down to what actually happens: people. Mr. Taffaro has his engineers working. You have separate engineers working?

Mr. RAINWATER. No, ma'am.

Ms. NORTON. Okay. Mr. Taffaro's engineers work. Mr. Taffaro gives it to Mr. Axton. Mr. Axton's people look at it. Where does the twice come in?

Mr. RAINWATER. When there is a dispute between what either the State—the State and locals, we work out our problems ahead of time.

Ms. NORTON. Truly?

Mr. RAINWATER. Yes, ma'am. We take it to FEMA. We say, this is what the State and local government believes is the money due to the project. And then FEMA will, many times, hire their own architects and engineers to review the documents.

Ms. NORTON. Okay.

Mr. Axton, I can understand everybody has to check this work now—you are dealing with our money—but respond to the notion that there is double work going on here.

Mr. AXTON. Chairwoman Norton, I think when there are engineers who work on behalf of the local governments and then on behalf of FEMA, the goal on having an efficient partnership is to ensure that the engineers that are working for the locals are looking at the design, looking at how the parish or the city or the community has to rebuild that structure—what are the various design requirements and the costs, and then putting it out to bid—all the things that are required, irrespective of Federal funding; and then our team taking that and looking at it for the purposes of determining eligibility.

Ms. NORTON. Are you looking again at the design, for example?

Mr. AXTON. We look at the design—

Ms. NORTON. So you are looking at the whole project? They look at the whole project?

Mr. AXTON. And when things work as efficiently as they can—

Ms. NORTON. So you may decide that the project ought to be smaller, ought to be designed differently, and so forth; is that right?

Mr. AXTON. FEMA should not be making those kinds of decisions. We should.

Ms. NORTON. So why are you hiring your own folks then?

Mr. AXTON. The purpose of hiring the professional engineers—or architects or accountants, but on the engineering side is primarily to look at the design work that was performed by the applicant or by their hired engineering firm simply for the purposes of determining eligibility—

Ms. NORTON. Okay.

Then, Mr. Taffaro, that might put you back to ground zero, wouldn't it? I mean, they have looked at it, they disagree—"they," FEMA—with the State, which means you—

Mr. TAFFARO. Correct.

Ms. NORTON. Does that mean you have to redesign? What does that mean you have to do?

Mr. TAFFARO. Oftentimes what it means is, there is a dispute that then a second team will have to come and reexamine the initial project.

For example, we have had this with our fire stations, we have had this with our roadways, we have had this—

Ms. NORTON. A second team from where?

Mr. TAFFARO. From FEMA, FEMA will send out. And oftentimes it is different numbers.

Ms. NORTON. A second team after the first team has found an issue with what the State has introduced. And no streamlining has occurred in what Mr. Axton has given me.

You know, I don't know whether to cry now or after this hearing. It seems to me the dispute exists right then, Mr. Daniels—a dispute exists right then for FEMA to respond. The notion that they are going to respond other than in their own "best interests" has already been seen through 4 years of nonaction.

The reason that this Subcommittee said "as disputes occur, then—then let's get to it."

What is about to happen here is that we are going to have more or at least as much—unless you intervene all the time, Mr. Axton—as much play of expert on expert as we have had before.

How many experts does it take to know that FEMA has a structural reason not to agree and the State has a structural—I am not blaming any of you; I am just blaming you for not streamlining the process once a dispute exists. Yes—if you keep negotiating for another year, yes, you will come to a resolution.

What are the people who can't get jobs in Louisiana supposed to do while you keep negotiating for another year or, for that matter, another 3 months? When does somebody declare, Dispute exists; let's go on to the next stop instead of getting to another set of experts who will not—who have a structural reason to say to you, No, go back and make them do this, that or the other. And Mr. Rainwater and Mr. Taffaro have this built-in structural reason.

The impatience of the Subcommittee comes with not understanding that structural, that built-in way in which each party must operate. When each party must operate that way, when the demonstrated record is that they will operate that way, why do we go hire another set of experts to try to go at the experts that have just been heard from? Who does that aid and why is that not simply repeating what has exasperated this Subcommittee?

Why isn't that streamlined? Why shouldn't that go right now to appeal or to Mr. Daniels and his group?

Mr. GARRATT. Madam Chair, I need to go back, I think, and explain that the joint expediting team is in fact designed to be a streamlining enterprise. It is designed to—

Ms. NORTON. But you haven't told me how it streamlines, because the other experts are still going to—you are going to go out and hire another expert to refute what has just been found. We have had testimony here that there will be two sets of experts now involved on this project.

Mr. GARRATT. Madam Chair, I think you would agree with us that we do, as an organization, have a due diligence requirement, and there is a multilevel—

Ms. NORTON. You have already hired one set of experts. He has come to a different conclusion than the State's expert. Why isn't that the point that dispute resolution is necessary, either by appeal or in some other commonsense way to solve this? Why are you spending the government's money on another set of engineers and architects?

Mr. GARRATT. It may depend entirely on the characteristics and complexities of that particular project. But the bottom line is, if in fact as part of that review and reversioning process, they reach an impasse, it can go to the joint expediting team and that joint expediting team will attempt to push that thing through. And if they are unsuccessful, it will go to the unified decision team to make a final determination on that.

At that point, if the decision is unfavorable, it is now up to them, it is their opportunity to enter that into the appeal process or, now, the arbitration process.

Ms. NORTON. How many times can you get to do that before declaring a dispute exists? I mean, how successful has this been?

Is this how you got the \$1.3 million reduction? Is that how you did it?

Mr. RAINWATER. Yes, ma'am, that is how we did it.

Ms. NORTON. Mr. Taffaro says you still need three times as many people on the ground.

Mr. RAINWATER. Yes, ma'am, there is no doubt we do.

But as Mr. Axton—one of the things I wanted to get to, one of the things we have been talking about and putting on the table is that one of the things we could do is just allow—and the State would be very supportive of because there is risk involved in this, and we are at this point where we think it is time to take some more risk—and that is, you allow applicants to provide—the Federal Government is paying for the architect and the engineer at the local level—I know you already know that, Madam Chairwoman.

Ms. NORTON. That is why I said, why are you spending our money on multiple—

Mr. RAINWATER. So let's set an amount, let's say \$1 million. We have got 3,500 project worksheets that are valued at about \$1 million or less, 3,500 that need to be reversioned in some sense. Why not go ahead and set an amount and allow the local governments to submit the A&E, the architect and engineering, documents, and let's accept those. And then the State has the risk, if for some reason during the closeout the Federal Government could come back and say, We are the ones that messed up and we are willing to accept that, and we are willing to accept the responsibility—

Ms. NORTON. But why not transfer the risk, Mr. Axton—you know, as to this committee, spending the money on multiple experts or spending it on people on the ground—putting up Charity Hospital, no contest.

So we want to know why they are willing to accept the risk, you are not willing to give them the risk.

Mr. AXTON. Chairwoman Norton, I think the best solution on this, based on my experience, is to really take the various experts and have their efforts become complimentary.

Clearly, when the parish hires a professional engineer to design a facility in its reconstruction and its repair and replacement, we need to be working in concert with those professionals so that we can determine how the grant is written, the State can be involved in how the grant will be administered, and the applicant will be focused simply on the reconstruction and not so much on the program.

And so, if it works the way it can, it is a complimentary effort of professionals.

Ms. NORTON. It is complimentary, and something has happened to make it work, probably a new administration and a lot of pressure put on people on the ground, but I want to make sure it continues.

Mr. Rainwater, as I understand it, it is the local government's or the State government's—Mr. Taffaro, I don't know which decision it is as to when to stop the process and go to the next step. Why don't you just stop it?

Mr. RAINWATER. Typically, Madam Chairwoman, we do that in conjunction with local government. I mean, I talk to the parish presidents and the mayors quite often. When they have issues that come up or when a project has been stuck for quite some time, we do these Tuesday meetings, and—

Ms. NORTON. Look, it is in your court, sir. If it is in your court, you from your own folks.

Mr. Taffaro, would you call the question earlier, if it were your question to call, and get to some kind of appeal or arbitration to resolve the matter?

Mr. TAFFARO. Madam Chair, the issue of timing, of when we take it to an appeal process, is our call if and when we have a definitive decision made. If we do not have a definitive decision—

Ms. NORTON. From FEMA?

Mr. TAFFARO. From FEMA.

Ms. NORTON. So FEMA can make it impossible for you to go to the next step?

Mr. TAFFARO. By delaying a definitive position on eligibility or amount, that puts us in a situation of limbo.

Now, what Mr. Axton and Mr. Garratt have referred to in terms of a complimentary position, the additional personnel that I continue to refer to is not more people on the joint expediting team, but the actual people on the ground writing project worksheets, writing versions, so that that process can move forward at the very start. That is what holds us up. Even after we get an eligibility determination, a project worksheet or a version has to be written in order for that money to be obligated.

Ms. NORTON. Now, I am going to go to Mr. Cao, especially since Mr. Cao has indicated to me that far from expanding the number of people on the ground—

Mr. GARRATT. Chairwoman Norton, I am sorry to interrupt. We have just been notified that there has been a major, 7.9, earthquake near American Samoa and they have just been hit with a tsunami.

I need to go make a call. Would you excuse me?

Ms. NORTON. Well, certainly you are excused to do that, sir; that is your job. I am sure Mr. Axton can answer the question.

But as I give it to Mr. Cao, who has notified me that not only is FEMA not increasing, but it is reducing the number of people that would be available to Mr. Taffaro and Mr. Rainwater.

I will leave you to ask that question.

Mr. CAO. Thank you, Madam Chair.

And, Madam Chair, I can sense your frustration just sitting up here talking to the different agencies. Just imagine what kind of frustrations the people who are living in New Orleans have suffered for the past 4 years.

But with that being said, Madam Chair, I am very glad to hear that they have pushed out \$1.3 billion since February, because if you were to look at their progress the 2 prior years, it was much, much, much, much slower. So being on the ground, I must say that they have made tremendous, tremendous progress.

And I applaud the work of Mr. Tony Russell, the director of TRO, down there. He has worked extremely hard. He has been very cooperative to push all the recovery processes forward.

But at the same time, I am also concerned, if the information I have received is correct, that FEMA has started to reduce the number of people down at the district offices. Is that correct, Mr. Axton?

Mr. AXTON. My understanding of any sort of staff reductions is related to other areas outside of the public assistance program specifically. We have a number of functional areas that work inside of our field offices, and I believe that each of those, when it relates to reductions, is in other areas.

And I can speak specifically. I know—President Taffaro and I spoke just yesterday, and there was actually some programmatic staff that are being assigned out there. And I think we are even increasing in certain specific areas.

So let me double-check on that, and we will confirm the staffing levels that are in place currently. But I believe any sort of reductions are outside of the program.

Mr. CAO. My main concern here is with the status of the CDL. I know that the period to submit inputs expired since June. We were expecting the regulations to be released sometime in September, or it might have been August.

What we are hearing now is that it might not be available until next year.

This is the problem that we have, Mr. Axton: that you have city governments, you have agencies, you have people like the Orleans School Board who are waiting for these criteria to see whether or not they will be qualified for these CDL waivers because they have to work out their budgets.

I spoke with the Orleans Parish School Board, for instance, a couple weeks ago. They are having a problem with respect to their 700 or so retirees. The retirees—right now, they are receiving approximately—I am not sure the amount of money, but at this point they are spending more than half of their income on medical insurance expenses; and the only way for Orleans Parish School Board to help these 700 retirees is to use the amount of CDL money that they have still in limbo. They don't know what to do with it because they are fearful that eventually they will have to repay it; but at the same time, you have 700 or 800 or so Orleans school teachers who have retired, waiting to receive benefits from the Orleans School Board, and that is the only money that it can use.

So you have the Orleans School Parish, you have other municipalities. I am sure, Mr. Taffaro, you are having the same problem; is that correct?

Mr. TAFFARO. That is correct, Mr. Congressman.

Mr. CAO. So you have all these city governments, you have the Orleans Parish police superintendent, you have the Orleans sheriff, who are waiting for these criteria to be released.

I would like to know, what is the cause of the delay? Why is there a 3-, 4-, 5-month delay on the release of these regulations?

Mr. GARRATT. Congressman Cao, I am sorry for coming back in late for this, and I apologize for being a little distracted.

In terms of the CDLs, the regulations, unfortunately there is a rather protracted process that any regulatory effort has to undergo before those regulations are finalized. We are proceeding at pace with those, and we certainly wish we could tell you it could move faster and has moved faster through that process.

It has not, but it is not through lack of effort. You will see those regulations. If you would like, we will get back to you with some more specifics on exactly when we think those regulations will be promulgated.

Ms. NORTON. Within 30 days, sir. Within 30 days, submit to this committee the timeline for getting those regulations out, so we can inform the entire Subcommittee.

Mr. GARRATT. Ma'am, I think I can commit to you much faster than 30 days those timelines.

Ms. NORTON. Excellent.

Go ahead, sir.

Mr. CAO. Thank you, Madam Chair.

Mr. Garratt, I know that traditionally when you have disasters like this, CDLs are generally forgiven, so I don't know how you have a devastation that is the biggest in the history of the United States—a natural disaster that devastated 80 percent of the city of New Orleans and basically put the city out of commission for almost a year, I don't see why there is such a difficult decision in forgiving these loans. And I just want to know the reason for these different—or at least the discrepancies with respect to some of these decisions, where you have a smaller devastation where the loan is forgiven, but then you have a devastation like Katrina and the loans might not be forgiven.

So what is the rationale behind this?

Mr. GARRATT. There are actually two forms of community disaster loans. There is the form that has existed in the Stafford Act

for some period of time, and then there is the special CDL loan program that was enacted after Hurricane Katrina.

The CDL loan program that exists in the Stafford Act does have a forgiveness provision. That provision does not automatically kick in, but is in fact determined at some point following the loan, several years after, and it is based on the recovery of the jurisdiction that received that loan.

The special CDL provision did not authorize forgiveness, the legislation doesn't authorize forgiveness, and therefore, we were prevented, when that legislation was initially enacted, from forgiving those loans.

Mr. CAO. I just received information from my counsel that the law was changed later on to allow forgiveness.

Mr. GARRATT. Indeed. Initially, though—when that special CDL program was initially passed, that was the case; but that new process, or the special CDL program, in those loans is still evaluated, using basically the very same process that we use to evaluate the regular CDL program. And that is, based on some number of years after they have received that loan, if they have recovered to a sufficient point, then they are not eligible for loan forgiveness.

If they have not recovered to a specific point, then they are eligible for loan forgiveness. But it is going to depend on—the level and extent of their recovery will determine their eligibility for forgiveness under that program.

Mr. CAO. And, Mr. Garrett, if you don't mind my sharing the Chairwoman's frustration, it has been over 4 years. And if you look at the city of New Orleans, which has made great strides under the leadership of Mr. Taffaro—St. Bernard Parish has made great strides, as well as other areas.

Mr. Taffaro, can you please provide us with your input with respect to how critical it is for this loan to be forgiven and the pace that needs to be addressed in regard to this issue?

Mr. TAFFARO. Congressman, the obvious nature of our situation can be summed up in our current budgetary process where we are a small community operating on a \$40 million annual operational budget, and we are facing a \$7.4 million shortfall going into 2010.

The amount of CDL funds that we received from Hurricane Katrina is in the neighborhood of \$18 million. To have to begin to repay that would basically put us near bankruptcy.

Mr. CAO. So, basically, city governments like yours, a parish government like yours, they are pretty much in dire straits, and without some of these loans forgiven in a very expedient way, then there would be a tremendous burden for the people of your parish; is that correct?

Mr. TAFFARO. It would result in direct services being cut from the residents who suffered the most damage, yes.

Mr. CAO. So, Mr. Garratt, my question to you here is: How long does FEMA have to wait in order to decide whether or not a district has fully recovered to allow loans to be forgiven? I really don't understand. Is it 4 years, 5, 6, 7, 8, 9, 10 years?

Mr. GARRATT. I hesitate to guess. I believe that it is at the 3-year point that we start evaluating the return of revenue to the affected jurisdiction, or to the jurisdiction in which the applicant for that CDL resides.

But my preference would be, Congressman Cao, to allow us to provide a more fulsome and thorough answer to you following this hearing.

Mr. CAO. Now, let me read to you this—

Ms. NORTON. Within 30 days, please provide that answer to the Chair, and I will share it with the Subcommittee.

Mr. CAO. Madam Chair, if you will allow me to quickly read this provision belief quickly. It says here, under section 417 of 42 U.S.C. 5184, "Cancellation: Repayment of all or any part of such loan, to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be canceled."

Now, this sounds very clear to me; it requires you to look at the local government's 3-full-fiscal-year period following the major disaster. So my assumption is that it would begin immediately after the disaster happened and that it would extend for 3 years.

Well, the question that I have here now is, it has been over 4 years, so the time period that you have used in order to assess the situation has already expired over 1 year. So how much longer do you need in order to make this determination?

Mr. GARRATT. Congressman Cao, based on history, in fact, we have been able to make determinations about CDL forgiveness and whether jurisdictions that have previously received those have reached that revenue stream, that revenue capability to which you refer.

And you are exactly correct; this is a pretty objective determination, but it does require that the applicant of that CDL provide a substantial amount of documentation outlining exactly what the revenue capabilities are at that point.

I don't know the specifics of each the CDL applicants, but for each one of the applicants that believes that we have taken an undue amount of time to address that particular issue, I am happy to tackle that.

Mr. CAO. Mr. Taffaro, do you have documents to show to FEMA that after 3 years you are insufficient to meet the operating budget of your government?

Mr. TAFFARO. Congressman, we have documentation from 2006, 2007 and 2008 that would clearly indicate our revenue shortfalls for those periods.

Mr. CAO. So based on what the law states, Mr. Garratt, it says that the "character shall be canceled." There is the word "shall" in there that mandates the cancellation of a loan similar to what St. Bernard Parish is basically receiving; is that correct?

Mr. TAFFARO. That is correct.

Mr. CAO. It seems to me pretty clear, so I don't understand this process of reviewing the regulations and to release the regulations, and then have them to apply for a waiver or forgiveness which might—given FEMA and the pace that FEMA is moving, might take another 1, 2, 3, 4 years until you all decide whether or not to forgive these loans.

The law, it looks very clear to me; it says after 3 years if they can show you that they do not have sufficient money available, that

the loans shall be canceled. It cannot get any more clear to me than that. Can you explain this whole discrepancy?

Mr. GARRATT. What I can tell you, Congressman Cao, is that if, in fact, any jurisdiction meets that criteria, that their loan will be forgiven. That will happen.

Again, there is a process that this has to go through. They have to assemble their information; they provide it. And then that criteria is looked at the very same as any jurisdiction that has ever applied for one of these loans. Their criteria is looked at; it is a validation process.

I am not sure where these particular CDL forgiveness requests are in the queue, but as I indicated to Madam Chairman, we will follow up with you and provide you a status report on every single one of those and let you know when we expect them to be resolved.

Mr. CAO. Thank you very much.

I was speaking to Chairman Oberstar just last week about recovery, and his statement was that FEMA spends more money in recovery than it does preparation, and there needs to be a plan to help an area to recover after a devastation similar to Katrina.

My question to you here, Mr. Garratt, is this: After—4 years after Katrina, after all the lessons that we have learned from Katrina, does FEMA have a plan in place to help an area to recover? Or do we still have the agencies come in there, the Federal agencies, the different agencies go in there and just haphazardly do things without much coordination, without much assistance, or without much conversation with State and municipal governments?

Mr. GARRATT. Congressman Cao, I think it is important to reinforce the fact that the response to any disaster anywhere in the United States is in fact—the quality of that response is going to be directly proportional to the teamwork of all of the levels of government that are involved in that response. And the way to achieve teamwork is to set up and operate from a unified command perspective.

Mr. CAO. Do you have that plan in place, Mr. Garratt?

Mr. GARRATT. Absolutely.

Mr. CAO. Because a disaster can strike any day, and we want to know whether or not there is a plan in place to quickly implement, to help an area to recover. Because if those areas have to wait like the people of New Orleans, of Louisiana, have to wait after Katrina, after Texas had to wait after Hurricane Ike, then we have a problem. We have a problem that needs to be solved very, very quickly.

Mr. GARRATT. I agree, Congressman Cao. And I would suggest that the disasters that we have responded to, whether they are in North Dakota or Georgia, since Hurricane Katrina, have demonstrated that the Agency has come a long way in terms of re-forging and re-understanding and re-achieving the kind of unified Federal, State, and local level approach to disaster response and recovery that is necessary to begin that process right from the very beginning.

So, yes, sir, I think we have got a plan, and I think we are ready to go.

Mr. CAO. What is the status of this national recovery strategy?

Mr. GARRATT. The national disaster recovery—

Mr. CAO. You were saying that you, if I were to follow your last statement, that you have all these steps ready, you have all this great plan together. I need to know the status of it.

Mr. GARRATT. No. I was referring to the architecture that we have in place, by which we operate and respond to disasters whenever they occur, and that is called the National Response Framework. And that National Response Framework is not just limited to response—

Mr. CAO. Basically, you don't have one right now; is that correct?

Mr. GARRATT. No, sir, that is not correct. We do have a plan to respond to disasters.

Mr. CAO. What about a plan to help an area recover after a disaster? I was talking about a plan to help an area recover.

Mr. GARRATT. If what you are talking about is the National Disaster Recovery Strategy that was mandated by Congress, that effort is under way.

Mr. CAO. What is the status of that, Mr. Garratt?

Mr. GARRATT. Status in terms of?

Mr. CAO. The National Recovery Strategy.

Mr. GARRATT. The status is that it is under development, sir.

Mr. CAO. How far into this development is this plan, is this strategy? Would it be ready, if a hurricane were to come down into the Gulf in the next week or so, would it be ready to be implemented then and there?

Mr. GARRATT. No, sir. The plan will not be completed within the next couple of weeks; in fact, I would not expect the plan to be completed for a number of months. But that does not mean that the Federal Emergency Management Agency and our partners do not understand what is necessary to respond to and recover from a disaster.

For example, Emergency Support Function 14, the long-term community recovery function, is a key part of the national response framework, and that has been extremely successful in helping us—

Mr. CAO. Mr. Garratt, it has been 4 years for you all to devise a National Recovery Strategy. I don't understand how much longer you need in order to come up with a plan.

Madam Chair, it just baffles me that 4 years after Katrina, after that devastation, we still don't have a plan of recovery. So I don't really know what else we have to do in order to encourage FEMA to come up with a strategy.

Mr. GARRATT. One point I would like to make, Congressman, if you don't mind, is that a national strategy is one thing; but all disasters are unique and all disasters are different, and the real strategy that is going to support a fast and rapid recovery of any particular geographical area is going to be the strategy that is developed between the Federal Government, between the affected State, and between those jurisdictions within that State.

They need to come together. They need to figure out the unique characteristics of that disaster and their recovery. And they need to forge together a tailored recovery plan for that affected area.

That is the purpose of the SF-14, the Long-Term Community Recovery Annex. And they have been unusually successful in helping

forge those sorts of planning activities in States throughout this Nation.

Mr. CAO. If you can provide us with the status of this National Recovery Strategy, we would really appreciate it. Within the next week or so, or maybe 2 weeks, we just want the status. We just want to know where in this planning strategy you all are right at this present moment.

Now, there was a statement that was said a couple of months ago by—

Ms. NORTON. If the gentleman would yield, the National Disaster Strategy, Mr. Garratt, that you refer to for the Nation—which would include, of course, the Gulf Coast, is 2 years overdue, so you needn't cite it in response to the gentleman from Louisiana.

Go ahead, sir.

Mr. CAO. Thank you very much, Madam Chairman.

Basically it says that what the storm did not destroy, FEMA came later and destroyed it. And I am talking about some of this flood mapping that we have.

I know that in Louisiana people are suffering from high insurance rates. Flood insurance, for example, can run from \$2-, up to \$5-, \$6,000 in flood insurance.

I live in an area where I believe I pay, if I remember the numbers correctly, about \$4,000 for flood insurance per year because of this velocity zone. I know that we have a firehouse out there that was obligated by FEMA and then deobligated by FEMA after the flood maps came out.

Now, you have people that have homes, that have businesses that have been there for a number of years. And now, in order for them to get to the nearest firehouse, they have to travel 20, 30 miles to get to the nearest firehouse.

My question to you here is, sir, what is the rationale to obligate the repairs of these fire stations, and then deobligate them, based on these flood maps?

Mr. GARRATT. FEMA's obligation from a mitigation perspective is to identify risk and to reduce risk to citizens throughout this country. It is also to ensure that Federal funding does not go towards funding risky ventures. If, in fact, we are going to fund somebody building below flood level in an area that we have identified as a flood zone, in fact, we think—

Mr. CAO. So my question is basically, based on your rationale, then if a community were to return and it happens to be in a high-velocity zone, and based on the rationale that you are saying, that, Well, we are not going to give you a firehouse so that we can encourage you to move out of your neighborhood; or if you decide to live there, we are just going to go ahead and let your house burn down? Is that correct?

Mr. GARRATT. No, sir, that is absolutely not correct.

If you will allow me to finish, there are a couple of options available to that jurisdiction. One, if they are interested in building that firehouse and not elevating that above the flood risk, they are free to do so, but they won't get Federal funding to do that.

On the other hand, if they want to mitigate that firehouse to whatever risk they face, Federal funding may be available to them.

So the answer is that it is going to depend on what the jurisdiction and the applicant want to do. The Federal Government is interested in reducing risk to American citizens.

Mr. CAO. Paul, do you mind clarifying that for me?

Mr. RAINWATER. Yes, Congressman.

So there is no doubt that—the policy that FEMA sent down to the State and to the local governments basically said that we would look at it on a case-by-case basis, depending on what the damage to the facility was. There is no doubt that—we are in a dispute right now in Cameron Parish, for example, about a school, whether it will be rebuilt or not or whether the library will be rebuilt or not.

And as you said earlier, Congressman, it is important that—I mean, these are working communities. There is a reason they live along the Gulf Coast. There is a reason that myself and the Governor have been advocates for allowing people to live on the Gulf Coast.

Cameron Parish, just as an example, has two of the largest liquefied natural gas facilities in the country fueling the country. Twenty-five percent of fish and shrimp come from the Gulf Coast, as you know. So we are in dispute about some fire stations and some sheriff substations and some schools that are on the Gulf Coast, and also some roads in Grandolf, for example, and a fire station. So I don't think we have resolved it yet.

Obviously, we want to be smart about the way we rebuild in Louisiana, but I think that we can figure that out. And again, it goes back to the State taking—

Mr. CAO. But then by deobligating the project, basically it leaves you no recourse whatsoever; is that correct?

Mr. RAINWATER. Basically you either repair and take the risk that if it is damaged again—which I think most of us are willing to do that—we would get no Federal assistance, or you move the project outside of that area.

Mr. CAO. Madam Chair, I do have more questions, but I yield the floor back to you so you can resume your questions.

Ms. NORTON. Well, I think you have asked—and we will come back to a second round, but you have asked questions that have been informed by being on the ground. And you began your questioning by giving FEMA and the State their due by saying on the ground you have seen significant process.

And I do want to be understood to commend the State and FEMA for that progress. Any time I see that figure, \$1.2 or \$1.3 million in little more than 6 months, I know that something has been happening.

The problem I am having is finding out how it happened. And I think the way to avoid circular questioning is to say to you, Mr. Axton, because you were given much of the credit, you and your superior, I need within 30 days, inasmuch as Mr. Garratt mentioned on page 3 of his testimony that FEMA has eliminated a number of bureaucratic impediments, I need to know specifically what were those impediments.

Did the IG or any other oversight Committee concur with their elimination? What offices or procedures were consolidated? Were any employees affected?

There is something about having to put something in writing that disciplines the mind. To the extent that you see this, it will, in fact, begin to be understood and, it seems to me, may even begin to happen in a way that it has been hard for this Subcommittee to figure out from your testimony—in part, because of the complexity of explaining it.

For example, if I were to write this out, I would give specific examples. Mr. Garratt, on page 5, mentioned 32 previously—see, that is the kind of concreteness that I commend FEMA and the State, Mr. Rainwater, for—32 previously stalled projects in regard, Mr. Taffaro, they say to eligibility.

Within 30 days, I want the names of those 32 projects.

Believe me, I am not engaged in a paperwork project, but I just think if one outlines what I am talking about, without a whole, big 50-page response, that you will do quite enough for this Committee: names of the 32 previously stalled projects with regard to eligibility.

Underneath that, I would put in a paragraph—no less than that; it may take only a sentence—how the eligibility issue was resolved. If one sees that in black and white, one might then go to those procedures more readily.

Ms. NORTON. Mr. Daniels, as far as we are concerned, you are not a bystander to this project. The fact that FEMA and the State knew you were coming on board may have something to do with the progress that has already been made, and that is all right with us.

I guess the fact that there is a Supreme Court of the United States means that people work a little harder. Although the last thing I want to do as a lawyer who has practiced before the Supreme Court is to cite the courts as any example of what we would like to see replicated here.

How different, if at all, from the current practices do you see the Katrina arbitration process working? When should it click in in order for you to be useful at all?

Mr. DANIELS. Well, we would like to see it click in as soon as possible.

Ms. NORTON. So the more the parties can go back over one another, the less effective your process it is going to be. Because they see you there, if they can keep you out there, you know, better than not being there at all.

Mr. DANIELS. The process that I am most familiar with as far as dispute resolution is the Contract Disputes Act. And the triggering process in that act is the contractor submitting a claim to the contracting officer. If he doesn't get a decision within a certain period of time, he can file an appeal with the Board of Contract Appeals.

So it is incumbent on—

Ms. NORTON. Within a certain period of time. I realize that the contracts you deal with are not as complicated, but what time—just to give us some idea of how such a mechanism works?

Mr. DANIELS. Sixty days for a claim below \$100,000. For a claim above \$100,000, the contracting officer must respond within 60 days to give a date by which he will make a decision, and it must be a reasonable date.

Ms. NORTON. That sounds so rational to me. You handle some of the biggest appeals.

Now, do you handle some of these appeals from the Defense Department?

Mr. DANIELS. We do not do the Defense Department. That is the only Department we don't do.

Ms. NORTON. What is the biggest appeal you might handle?

Mr. DANIELS. We have had appeals up to \$100 million on construction projects for major buildings.

Ms. NORTON. That is good enough for me.

What is wrong with the process that Mr. Daniels has outlined? Mr. Rainwater, Mr. Axton, and Mr. Taffaro, what is missing here in terms of what you need in order to get to the point where you declare there is a dispute?

You heard him say—it would look like the ball would be in your court, Mr. Rainwater; or possibly Mr. Taffaro, although Mr. Taffaro seems to be more willing to get to a response than you, Mr. Rainwater, who is in this unified team and seem to be willing to keep the government hiring experts. Because that is what they are doing; on your dime they are hiring experts to refute you, sir.

Mr. RAINWATER. The organization I run goes away July 2010, so I am not looking for employment. Our job has been from Day One to push as quickly as possible—

Ms. NORTON. Excuse me, you have got to explain. What happens in 2010?

Mr. RAINWATER. Yes, ma'am. The Louisiana Recovery Authority, this consolidated organization that I run, the Community Development Block Grant dollars and the FEMA public assistance dollars expire July 2010.

Ms. NORTON. And then what happens?

Mr. RAINWATER. Well, hopefully we will be done with disputes, Madam Chairwoman. That is one of the things we were very excited about, about getting Tony Russell.

Ms. NORTON. How much is left on the table now? How much is in the pipeline now?

Mr. RAINWATER. Yes, ma'am. There are \$8 billion that have been obligated; we paid out about \$4 billion. We think we are going to get another \$3.5 to \$4 billion, depending on the versioning process. Now, half a billion of that is Charity Hospital which—the State is preparing that arbitration case, and we will be sending it either tomorrow—

Ms. NORTON. But we have called the question on Charity Hospital.

Mr. RAINWATER. Yes, ma'am.

Ms. NORTON. And that is going to go to whom?

Mr. RAINWATER. The judge.

Ms. NORTON. Is the time running on that one?

That would be the biggest news to come out of this hearing. Is the time running on Charity Hospital?

Mr. RAINWATER. We will send it no later than Friday, but possibly tomorrow. We did send our second appeal up just as a placeholder, made the decision to go with our arbitration panel. So we will send it to the arbitration panel, and hopefully we will get a decision within 60 days. That is the goal.

Ms. NORTON. Are you prepared for that, Mr. Daniels?

Mr. DANIELS. Yes, ma'am, we are.

Ms. NORTON. So Charity Hospital may be the biggest and the most desperate of the outstanding—

Mr. RAINWATER. Yes, ma'am. And then there are about 14 projects that are over about \$50 million, representing about \$1.4 billion.

Ms. NORTON. So you do feel that you can handle projects well below \$500,000 within this process that you have been using?

Mr. RAINWATER. Yes, ma'am, we believe we can.

There are going to be some others. There are about 30 projects that we have picked that will possibly go to arbitration.

Ms. NORTON. Before you run out of gas, how are you going to get all of that done, given the process of multiple—not appeals, interestingly—multiple steps with architects and engineers before you can get to the dispute stage?

Mr. RAINWATER. Well, ma'am, I think one of the things that we are trying to do—again, one of the things that we have created between the State and the Federal Emergency Management Agency is sort of this concept team to sit down, and if we can get to a point—for example, one of the ideas on the table is that FEMA would accept architectural and engineering reports at a certain amount.

Ms. NORTON. Let's remember, we are trying to make this a dispute resolution session in itself.

You have heard Mr. Rainwater say that—say it again, Mr. Rainwater, if FEMA were to accept what?

Mr. RAINWATER. If we could decide on an amount and FEMA would accept architectural and engineering local, State project worksheets at a certain amount—for example, we have about 3,000 that are under \$1 million—we could work through that process very quickly.

Ms. NORTON. If they were to accept it.

Does that relate to your earlier testimony about assuming the risk?

Mr. RAINWATER. Yes, ma'am, it does.

Ms. NORTON. If it costs more than that?

Mr. RAINWATER. Yes, ma'am.

Ms. NORTON. I have to ask, in light of the fact that, otherwise, the Federal Government would be spending money on more studies out of our own pocket and they are willing to assume the risk, why the Federal Government wouldn't just let them assume it, call it a day, sign off, and go on to the next project?

Mr. Garratt or Mr. Axton, whichever one of you wishes to—I don't need "depending on," everything depends on. You heard him say "under a certain amount." Here is our bid. Of course, we can continue with the architectural stuff and continue to go through all these appeals, all of which we pay for, but he is saying, We will assume the risk, that is how desperate we are.

You can imagine, Mr. Axton and Mr. Garratt, that the cost of labor, the cost of everything is much lower than it would have been 4 years ago. So I am not sure they are assuming so much risk. People are so anxious to work, small business and business in the State and throughout the region, so I am not sure that this isn't

anything but a win-win unless there is some bureaucratic sense that the Federal Government doesn't operate that way. Although, if we had any private parties in the room, I know what the answer would be.

Because I don't see where we lose. They may lose. Given my understanding of what it is like down there, I don't think they have much of a chance for losing; therefore, I see it as a win-win.

I want to know, Mr. Axton or Mr. Garratt, why that isn't a win-win for certain projects.

Mr. AXTON. I think the most important outcome that we are continually striving for with all the various local officials—and certainly with the State—is to, again, have the various professionals that are involved in each——

Ms. NORTON. You cannot come before this Committee without answering my question. You see, I didn't ask you about the professionals. See, 4 years I have been sitting here with the professionals.

I asked you a very specific question and, sir, I want a specific answer.

Mr. AXTON. Chairwoman Norton——

Ms. NORTON. I said, why isn't their willingness to assume the risk, holding the Federal Government liable for nothing further, given an estimate following the professionals having given that to you, based on their architects, engineers and the like, why isn't that a win for the government and, therefore, a win-win since they would agree to that?

Mr. Garratt? It may be unfair to ask Mr. Axton since he is not in charge.

I want to know why that ought to wind itself up before Mr. Daniels, who, I must tell you, being in touch with court suits, with settling court suits, having clerked for a Federal judge, I want to tell you that that is likely to be the outcome in the first place.

You don't need to say so, Mr. Daniels, I know the matter is before you, but I know how things work when a dispute resolver gets into the act.

Ms. NORTON. So I have to ask you, with some sense that there is nothing to lose here because you are able to sign off and report to this Subcommittee one last project due, with Mr. Rainwater saying it has been so long we are willing to accept the risk, why should that not be put into operation now with respect to certain projects?

Mr. GARRATT. It may very well be an outstanding idea, Madam Chair. I, personally, would like to know a little bit more about exactly what is being proposed here, but, conceptually, I think it sounds like a worthwhile idea.

Ms. NORTON. That is all I need to hear, because we cannot ask you to negotiate. I am sure this is not the first time it has ever come up.

Let me ask you this, Mr. Rainwater. I want you to set out what you just said you would propose—projects under what amount. I want you to get it to him quick enough so, within 30 days, we can see whether or not Mr. Garratt accepts that as a possible way to respond.

Mr. RAINWATER. Yes, ma'am.

Ms. NORTON. Let me say something about Mr. Cao's question.

You are not paying back this money that has been borrowed from FEMA, but let me tell you what is happening to Mr. Taffaro and to the State of Louisiana. If they are holding up to 25 percent of their budget in outstanding debts, that means that that has affected their bond rating, their ability to borrow on Wall Street. To the extent that it has affected their bond rating, do you know what that means? It means, as a result of no decision having been made on the borrowings that Mr. Cao indicated, that the people of Louisiana, 4 years after Katrina, are paying more to borrow money in the middle of a recession than they were paying 4 years ago in what were good times.

This is an additional outrage. You have got to borrow money, you are paying more to borrow money, and the Federal Government, because of the tardiness in dealing with these regulations, as Mr. Cao has pressed on, is responsible for lowering the bond ratings of the parishes and of the State itself. I mean, that is a shame and an outrage; and the timelines that we have indicated, particularly in light of the borrowings or the effect on borrowing that we are going to have to emphasize, we will hold you accountable for. We wanted to put on the record the effect it is having on a State that was already in worse state, given Katrina, than any other State.

Now, some of this I am just going to ask to be put in writing.

I want to deal with this question of applying people within FEMA to help the parishes get to the point that Mr. Taffaro indicated is a huge part of the problem. You have got to have a determination of eligibility which affects the pace of recovery in the first place.

Mr. Taffaro, you mentioned—I think it is on page 8—that FEMA has agreed to embed staff at St. Bernard Parish. Have they done this? Would they have sufficient authority to make the decisions necessary to speed recovery?

Mr. TAFFARO. Madam Chair, the information that we have received, in fact, as we were approaching the hearing today, is that there is a shift in personnel.

Ms. NORTON. You say you were hearing that today?

Mr. TAFFARO. Yes, Madam Chair. As of this morning, we were hearing confirmation that there would be personnel shifted to embed with St. Bernard Parish.

Ms. NORTON. Excellent. How many people do you expect to embed, Mr. Axton?

Mr. TAFFARO. Well, according to Mr. Russell, the director of the TRO, he indicated that there would be one lead and four additional personnel who would work out of the St. Bernard Parish government's office.

Ms. NORTON. So five people—

Mr. TAFFARO. Five.

Ms. NORTON. —embedded there?

Mr. TAFFARO. Correct.

Ms. NORTON. Mr. Garratt or Mr. Axton, how many people does FEMA have on the ground in Louisiana dedicated to the recovery effort right now, as I speak?

Mr. GARRATT. In the State of Louisiana as opposed to St. Bernard Parish?

Ms. NORTON. Yes, dedicated to recovery.

Mr. GARRATT. I do not have specific figures. Between 600 and 800.

Ms. NORTON. Within 30 days, the exact number and to what functions and where they are doing their work, please.

In preparing, Mr. Axton, your work, we asked you to do examples. For example, Mr. Rainwater points at the examples of resolution. I was very pleased to hear about the Tulane library and that it was not an easy project. You learn things not only by bold language about what we did but by example. Perhaps you could use Tulane as an example of how some breakthrough occurred. I need to know where these layers are, though.

How about appeal? Is that still in the process? I mean, the arbitration is pretty quick if we get to the point where you have no dispute, but we had this other appeal process. Whatever happened to it? Is it still in the picture? Why is it in the picture if there is an arbitration process?

Mr. GARRATT. Yes, ma'am. The appeal process still does exist. For those projects that were in appeal when the legislation implementing the arbitration process was promulgated, we suspended any unfavorable action on any of those appeals. We continue to review the appeals. In fact, if we found in favor of any of those, we notified and continue to notify—

Ms. NORTON. Is that still in use only for those projects that were in process then?

Mr. GARRATT. No, ma'am. The process is also available for new issues that arise. It is going to be up to the applicant to make the determination.

Ms. NORTON. All right. That is something you are going to have to tell this Subcommittee. We did not mean to impose another layer. Please forgive us. The process that we had concern about was not so much the appeals; it was getting to the point where a dispute was declared. Now I am all mixed up. We still have the appeal. Whereas, I thought, once we got to dispute and got to Mr. Daniels, we could solve the matter, and that is it. So what in the world is the appeal process there for in the first place, an old-fashioned traditional process for new matters?

Mr. GARRATT. The appeal process is what it is—these are complementary avenues for an applicant.

Ms. NORTON. So it is one or the other?

Mr. GARRATT. That is correct.

Ms. NORTON. Now, Mr. Rainwater and Mr. Taffaro, why do you need two processes that you can go to? Let me ask you this: After you go to appeal, can you still go to arbitration?

Mr. RAINWATER. No, ma'am, not as I understand it. I think you have to pick.

Ms. NORTON. Which process is quicker?

Mr. RAINWATER. Chairwoman, I think it depends on the complexity of it. I mean, when you look at Charity Hospital, it is just so complex—

Ms. NORTON. So you would prefer which process?

Mr. RAINWATER. Arbitration. Yes, ma'am.

I mean, one of the things that we have sort of been fighting for is this whole ideal of—you know, when we just hit heads to a point

where folks were bleeding in the room, it was time to bring in an independent panel.

Ms. NORTON. How does the appeal process work? Suppose you chose appeal, not for Charity but for some lesser project. What would that entail?

Mr. GARRATT. The applicant who is appealing the dispute would submit an appeal to the region that oversees that State. In this case, for Louisiana, it would be FEMA region 6. The regional administrator would review that appeal and render a decision. If it is unfavorable, then the appellant can re-appeal to FEMA headquarters. So they have two levels of appeal within that process.

Ms. NORTON. Now, Mr. Rainwater, with that process of appeal within appeal and then re-appeal, why would anybody choose that process, even for someone smaller than Charity Hospital's processes, if he simply wanted to get something done?

Mr. RAINWATER. Yes, ma'am.

Ms. NORTON. What is the difference between an ALJ's ability to solve a complex matter involving multimillions of dollars that they do every day and solving smaller projects of the kind you have indicated? Why would you rather go through these cumbersome appeals? Why would you ever choose that one?

Mr. RAINWATER. Well, why would we choose an appeals process?

Ms. NORTON. Yes.

Mr. RAINWATER. Well, simpler projects that either the applicant or the State just does not agree with. You know, FEMA's perspective at the transitional recovery—

Ms. NORTON. Wait a minute.

Mr. Garratt, what are the timelines on those multiple appeals and re-appeals? You heard what Mr. Daniels said. That is a pretty straightforward process. Even I can understand it in one telling. What are the timelines to appeal? Give me something comparable to what he said.

Mr. GARRATT. Both appeal levels have 90 days to render an appeal determination once they receive that appeal.

Ms. NORTON. Then, of course, there is another appeal.

Mr. GARRATT. That would be at either level. So, whether it is the first appeal or second appeal, they have 90 days to render a determination.

Ms. NORTON. Has FEMA ever met such a timeline? Is it meeting these timelines now?

Mr. GARRATT. We are not meeting the timelines universally, no, ma'am. Yes, we have. We meet a lot of timelines, but we are not meeting all of the timelines.

Ms. NORTON. Of course not, and you are overworked, and you have too few people even on the ground.

Mr. Daniels, are you meeting your timelines?

Mr. DANIELS. I cannot really say yet because—

Ms. NORTON. I am not talking about this project, sir. You have not got any for this project. I am talking about the timelines that you discussed for other projects.

Mr. DANIELS. Generally speaking, once a case gets to the board and it is ready for decision, we get that decision out within somewhere between 2 and 4 months.

Ms. NORTON. Having heard that, Mr. Rainwater, do you still prefer appeals up here to Washington?

Mr. RAINWATER. No, ma'am. I would rather resolve them down in the State.

What occurs, though, is that, eventually, you know, an applicant gets frustrated enough or especially early on. There are not any now, but there was a lot of distrust in the beginning to some of the issues that were occurring down at the Transitional Recovery Office, so applicants wanted the appeals to come to Washington, D.C. We actually worked it out with Mr. Garratt. In Mr. Garratt's work with us, we created an opportunity for applicants actually to come to Washington, D.C., and to do an oral presentation so that—

Ms. NORTON. So, Mr. Garratt, if they would ask for a hearing in Louisiana, would FEMA agree?

Mr. GARRATT. I think we have agreed in the past. I think our preference is, if they want a hearing, that we would agree to do that via video teleconference with them.

Ms. NORTON. Mr. Rainwater, I am having a hard time understanding, except that it is the way it has always been, why you would not go to arbitration. Do you really think that the bureaucrats in Washington are going to be more friendly to the States since you are choosing the forum?

Mr. RAINWATER. No, ma'am. That is why we fought for arbitration. That is why we supported it. We have 30 appeals right now that we are going to make a decision on whether or not—and we need to coordinate with the local—

Ms. NORTON. How long does an appeal take then, the next appeal?

Mr. Taffaro, some of these have been from the parish. What has been your experience with the appeal process, just the appeal process? You have finally got a decision. Now you have got to come to Washington with multiple appeals. You don't like that process?

Mr. TAFFARO. Madam Chair, I think it is important to note, from our standpoint, when the arbitration legislation was passed, that is what has now triggered the appeal to the region. Prior to that, the appeal was not heard at the regional level. So we had a direct appeal within the TRO and then to Washington. It is important—

Ms. NORTON. So you would prefer the appeal to the regional level?

Mr. TAFFARO. Well, let me put it in the context.

One of the things at the present local level we attempt to do is to resolve it. That trigger point of when we get to an appeal or move to arbitration is similar to being in a bad relationship. How long do you go before you break it up? That is what happens.

Ms. NORTON. I can understand, if you look at when arbitration occurs in labor disputes, that that would be the case. I want you to know that that was not the intent of this legislation. The intent of this legislation was to get a decision and to put it in the hands of somebody who was not caged in his own interest, because we did not see any reason here—we did not blame the State or FEMA, and that is why, in my opening statement, I said there are structural reasons why they cannot be expected to easily come to a decision. So we did not see this as patterned on the labor union process. We

saw it much more patterned on negotiation processes where people come together.

If I could just give you an example from my own experience: When I was appointed to Chair the Equal Employment Opportunity Commission back in the day in the Carter administration, I came to an agency that had a 100,000-person backlog. I decided that I was not going to allow them to continue to go to court or to somehow take all of these things through some very formal procedure.

So we did something that we call "rapid charge processing," which essentially was a negotiated process. Except the way we did it was, instead of using the investigator only to investigate the cases and then come back and say late in the process "we found this reason why you might be found liable" and to let us say to the complainant "this reason why you might not prevail up front," they would go into a room with the employer.

Let's take a discrimination complaint where a woman says, I was late 10 minutes, maybe, four or five times in the last 6 months, and I was dismissed, and I think they dismissed me because I was a woman.

We inform her, you know that they are going to put into evidence all of the people they have dismissed, and if we find some men have been dismissed in that amount of time, you are going to be out of luck because then you have not shown discrimination, and the burden is on you.

Now, he is going to say, we dismissed her because she was late—the other side does not even hear this—and we believed that it was time for her to go.

We are going to say, you know what? We are going to, as a matter of law, require you to show us what the late records were for men and for women during this 6-month time period.

Then, Mr. Rainwater, each is understanding that they have got a chance they are going to take. Are they going to spend their money hoping that they will come out on top once these records are produced, as a matter of due process, or are they going to cut their losses?

Let me tell you what. The employee who is mad and has alleged discrimination is ready to accept a settlement from the employer, which may be any kind of settlement. It may mean that she has been fired, and she does not come back. It may mean she got a little recovery. It may mean that, if she promises not to be tardy, she would be up for rehiring. Whatever it is, we are able then to negotiate the matter, because each feels some jeopardy in just waiting it out.

This is an example to say that I see the present process, especially with the appeals, putting jeopardy on both sides when I am interested on a win-win on both sides. Yet, to a certain degree, all of you seem locked into, well, we have done a little better in the appeals process now, and maybe we do not know what would happen in the arbitration process. You know, maybe the arbitrator comes out with a decision we do not like and is willing to accept Mr. Rainwater's notion: Just cut your losses right now and have FEMA accept the estimate.

I just want to get to a decision. That is why I told you that anecdote, to indicate that the appeal process carries that risk. I would like to eliminate the risk, which I regard as structural on each side, and would like to just get to a decision one way or the other, preferably through real shortcuts like Mr. Rainwater's.

I take it you endorse that kind of shortcut, the estimate.

Mr. RAINWATER. I do, Madam Chair.

Ms. NORTON. If not, I am amazed at anybody wanting to come to Washington, re-appeal and all the rest of it until you get the right answer, hoping you will get the right answer, rather than going to an arbitrator who would have to go through something like the process that I am going through. He would have to explain to each side what their jeopardy was, and their lawyers and the people who would be accompanying them would then, grownups that they are, decide if they are going to cut their losses or not, and the arbitrator may end up making no decision whatsoever, because it would be decided by the parties, in effect.

Mr. RAINWATER. Madam Chairwoman, if I could, there are some constricts with regards to the arbitration panel. As I understand it, it only will look at issues of construction and cost estimates, not policy. So there is a reason to still have the appeal processes, especially if we conflict on policy.

Ms. NORTON. Wait a minute. Excuse me. Oh, just a moment. Are you suggesting that the arbitrator could not decide the policy issue?

Mr. RAINWATER. As I understand it, unless I am mistaken, but that is as I understood it.

Ms. NORTON. Excuse me. I did not think we had a policy issue by that point. Really, if we can get all the way to the point where the architects and the engineers are down to what the amount should be and how it should be configured and a question of policy is raised, I do not know what this is all about or why the arbitrator, who is a lawyer and who must decide within the bounds of the law, the same law that the administrators who may or may not be lawyers and who therefore are giving it to people like the arbitrators to decide for them—I do not understand why—and if that is the case, then count on us to clarify that matter.

I want to know, Mr. Garratt, do you believe the arbitrator has no ability under the statute we pass to decide the question within the law, the full law, as it applies to FEMA and its regulations? Do you believe that is an impediment here?

Mr. GARRATT. I believe some clarification is in order, Madam Chair.

Certainly, the arbitration panel can decide issues affected by policy. In other words, policy says this is not eligible. We do not think it is eligible. The applicant does think it is eligible. Under that policy, the arbitration panel can render a decision on that. What the arbitration panel cannot do is make policy as part of that process. They are not charged with doing that. They are charged with interpreting existing policy.

Ms. NORTON. That is an important point.

My understanding is that, by the time we reach a dispute, call to question that it is a dispute, that the policy issues writ large—that word has to be reserved for matters where the statutory intent

is involved—should not be involved, and if they are, I need you all to tell me that right now.

Has this been a matter of law? That is what policy is, not discretion, but now a major policy matter is implicated. How much of this is due to that? How many projects on the ground, Mr. Taffaro, do you think have been because of policy matters that go to the law itself, to the ability of FEMA to make the decision? That is what a policy matter is. Otherwise, FEMA has enormous discretion, Mr. Rainwater.

Mr. TAFFARO. Madam Chair, our experience is that FEMA has had enormous discretion and that it has been a common discussion that ineligibility or eligibility determinations are often differentiated between statutory authority versus policy decisions. Oftentimes, it falls on the side that the FEMA policy would make something ineligible versus the statutory regulations allowing it.

Ms. NORTON. Mr. Rainwater is going to have to computize for me, by example, a policy matter that should not go to the arbitrator. Give me an example—or you, Mr. Axton. Somebody give me an example of that so I will know what you are talking about.

Mr. RAINWATER. One example would be the demolition of homes for economic recovery. This is a policy.

Mr. TAFFARO. That is a perfect example, Madam Chair.

Mr. RAINWATER. That is a policy. We asked the Federal Emergency Management Agency to demolish houses that were actually boarded up and that met the local codes. Under FEMA policy, you can demolish those homes for health and safety or for economic recovery. The decision was made, if a home were not considered a health and safety risk, that we could not demolish homes and get FEMA reimbursement under the economic recovery policy.

Ms. NORTON. Mr. Garratt, that is a matter for you to decide. Who decides that, if not FEMA?

Mr. GARRATT. That is correct, ma'am.

Ms. NORTON. But you are saying the arbitrator could not decide that matter. Are you saying that, Mr. Garratt? Is that a new issue? Would that be a new issue, for example?

Mr. RAINWATER. That has been an issue that we have been fighting—or pushing back on for quite some time. It affects President Taffaro's parish immensely.

Ms. NORTON. Well, Mr. Garratt, if there is a new issue—now, I accept that Mr. Taffaro and Mr. Rainwater will run into new issues because of the unique nature of Katrina. If there is a new policy issue like that, why isn't that matter separated out simply to get the policy determination so that the matter can go forward without being mixed in with the particular amount or with the particular parish, et cetera? Can you or can you not demolish homes? Have you made that decision?

Mr. GARRATT. We have made that decision, and we have demolished homes. So the determination has been made that those abandoned or damaged structures present an immediate threat to health and safety.

Ms. NORTON. So what is the policy issue, Mr. Rainwater?

Mr. RAINWATER. The policy is not to demolish homes under economic recovery.

Ms. NORTON. You said what?

Mr. RAINWATER. Not to demolish homes for economic recovery. That is blight. That is, we have blighted homes that people—you know, the parish government. You know, folks received their insurance and left the parish. So what we asked is that FEMA demolish those homes so that we would not have blight. We felt, in the Stafford Act, there is a provision to do this under economic recovery, and we asked for that.

Ms. NORTON. Okay. Let me read to you the law.

I am sorry. I have general, very broad language, but he is finding even the regulatory language. It is section 206-224 under Debris Removal and under Public Interest.

You know what? All it means is that somebody has got to bite the bullet.

Mr. DANIELS, were you in the practice of law?

Mr. DANIELS. I was in the practice of advising Congressmen, just like your counsel there, before I became a judge.

Ms. NORTON. How long have you been an ALJ, please?

Mr. DANIELS. Twenty-two years.

Ms. NORTON. You spent part of your career in the Congress of the United States, advising the Congress on or doing what, sir?

Mr. DANIELS. Advising the Congress on laws and investigations.

Ms. NORTON. And then you became an administrative law judge. You have been an administrative law judge for how long, sir?

Mr. DANIELS. Twenty-two years.

Ms. NORTON. During that time, you have had to construe the laws of which agencies?

Mr. DANIELS. For most of that period, the General Services Administration and about 20 other agencies and, for the last almost 3 years, all the agencies of the government other than the Defense Department, NASA, and the Postal Service.

Ms. NORTON. I lay that on the record, because section A of Public Interest clearly leaves FEMA extraordinarily broad discretion, all of that discretion, ultimately to ensure economic recovery of the affected community, to the benefit of the community at large or to mitigate the risks of life, et cetera—you know, broad, broad.

So I do not know why an administrator or multiple administrators in Washington are better equipped to interpret this language than are arbitrators who may have been interpreting even more difficult and complicated language for decades. So I do not understand that the fact that there is a policy matter makes who gets the appeal any different, given what Congress has mandated and this board has been mandated to make that decision.

ALJs are there to interpret the law of the particular agency, and they are equipped to read Federal law way across agency bounds. And they are very well-equipped, I submit to you better equipped, than any administrative agency, because they will be comparing how they have made similar decisions regarding other agencies.

So, right now, unless somebody at that table can tell me that there is a specific reason why—I am not indicating anything except that “multiple ways to go without any objective reason for knowing why” is not acceptable. I want to know why there should be multiple ways to go when one way involves multiple appeals and when the other way can get me an answer right away. Unless we have not disposed of the policy question, the notion that you have said

that the arbitrator is not empowered to answer that is false. That is the only word for it: "false." Under mandate of law and under his oath, he is required to make a decision in the very same manner and perhaps even more objectively because he is not involved—it is not his agency's money—than multiple appeals up the chain of command. That, my friends, is what the Congress had in mind when it said, "Go do it".

So the fact that you are playing off one against the other is a matter of huge concern to us. It violates the congressional intent. It says you cannot reach a decision. Go forward. Go to the arbitrator. Get it reached in the name of the people of Louisiana.

Mr. RAINWATER. Madam Chairwoman, if that is clear, I will send all of the appeals to arbitration. I want a quick process, but I was told that policy decisions could not be handled by the arbitrator.

Ms. NORTON. I want to correct that right now.

Now, if your counsel has a different interpretation as a lawyer, I am very open to hearing a different interpretation.

Hear me. I am reading from the statute. This is from the Congress of the United States, Public Law 111-5, February 17, 2009: "Notwithstanding"—when Congress really wants you to do something, it begins with "notwithstanding".

"Notwithstanding any other provision of law"—that would include multiple appeals to FEMA folks or to DHS folks—

"notwithstanding any other provision of law, the President shall establish an arbitration panel under the Federal Emergency Management Agency program. To expedite the recovery efforts from Hurricanes Katrina and Rita within the Gulf Coast region, the arbitrator shall"—"shall"—we always use those words when we say leaving no doubt—"shall have sufficient authority regarding the award or denial of disputed public assistance applications for covered hurricane damage under section 403 of the Stafford Act," et cetera.

I do not think we wrote the statute in any vague language. "Shall" have the authority. "Notwithstanding" whoever else is there. This after Congress was fed up with having pressed all kinds of discretionary dispute resolutions for which FEMA kept giving us the back of their hand.

This is a mandate, gentlemen. Go to these folks and settle it. So why would anyone want to fool with multiple appeals this way? We do not know, but I will tell you that is contrary to the statutory intent and language as I have just read to you.

If you disagree, I will hear your response.

Mr. GARRATT. Madam Chair, just to make this clear, anything that someone can appeal, they can submit for arbitration. Again, I want to repeat what I said—

Ms. NORTON. In other words, they can appeal and go to arbitration.

Mr. GARRATT. No, anything that they could appeal they can arbitrate or seek arbitration for.

Ms. NORTON. No, this said notwithstanding, Mr. Garratt. So why should they bother with appeals and going through a bureaucracy that is self-interested because it is within the agency?

Mr. GARRATT. They have an option, Madam Chair—

Ms. NORTON. I understand.

Mr. GARRATT. —as opposed to—

Ms. NORTON. No, you are right. They have an option, and Mr. Rainwater has still not clarified to me why he had you take that option except that you have said, if there is a policy matter, then it should go through this. I just read you the statute and asked you if you would disagree with the language I have just read that said, notwithstanding any other mechanism, they can go to an arbitrator.

Mr. GARRATT. I do not disagree with that. Notwithstanding any mechanism, they can go to an arbitrator. They may elect to go an arbitration route, rather than the formal appeal route.

Ms. NORTON. They may elect to do that. I understand that. I want to ask why you would want them to go through more of the administrative bureaucracy. They have been at the administrative bureaucracy at the lowest level. Why would you want them to continue through the administrative bureaucracy if you wanted to get something done? Why is that preferable ever than going to somebody who can decide the issue? If it is not policy, then what is it?

I think I have just eliminated that it is policy. If you disagree with that, then tell me: What is the policy? If it is something other than policy, then tell me what other than policy would lead one to want to go through the appeal process.

Mr. GARRATT. Well, Madam Chair, for the Gulf Coast, approximately a third of the appeals are being found in favor of the appellant. So I would suggest, for example, that if an appellant has submitted several appeals and has been successful in that process, he may very well want to continue to use the appeal process rather than trying something—

Ms. NORTON. All right. Mr. Rainwater, apparently, a third is good enough for him. Do you regard this third as being the quickest, best avenue for the State?

Mr. RAINWATER. No, ma'am. That is why we wanted an arbitration panel.

Again, Madam Chairwoman, as I understood it, the arbitration panel—and if I am wrong, I am wrong. I am fine with that. For example, could the demolition for economic recovery be decided by the arbitration panel? Is that something that the arbitration panel can overturn?

Ms. NORTON. Absolutely. I just read the language, and I heard nobody respond. If you want your lawyer to send me something, he has 10 days to get me a response to that, but I can read statutory language as well as he can, and there is no legislative history here except what we make in this process. I can tell you right now that anything in the legislative history, which was all the stuff you have tried, especially the appeal process, has been in the way. Get to a decision.

Mr. Taffaro, would you take your chances on arbitration?

Mr. TAFFARO. With the new, clarified information, it certainly would make us much more ready to choose that option, yes.

Ms. NORTON. We are not eliminating—this is a special circumstance. The statute says Gulf Coast region. So we are not saying that the appeals process, if you all like it that way, forever is gone. We say recovery for Hurricane Katrina or Rita. For God's sake, we are only talking about one delayed circumstance in the

middle of a recession with people unable to build even smaller projects and with us just getting to the legendary Charity Hospital.

So if you cannot get me within 10 days a legal response to why—hear me—why—except for matters in the appeal process now—why matters should not go to the arbitrator who does have built-in timelines that he most of the time meets, unlike the process up here—unless you can get me a legal reason why, this Committee expects that you will for new matters go to the arbitration process.

Mr. GARRATT. We will respond to you within the 10 days that you requested, Madam Chair.

I would like to state once again that our preference would be to give these applicants an option.

Ms. NORTON. You do not have a preference to help Mr. Rainwater out. You have a preference for your decision, as is the case two-thirds of the time, to be the decision of the administrator who actually is, of course, involved and who also has to be presumed to have some predisposition. You are not doing this as a favor to Mr. Rainwater, because he happens to prevail one-third of the time while you prevail two-thirds of the time. I mean, it is hard for me to accept that.

You just heard Mr. Taffaro and Mr. Rainwater say that, if they had their druthers, but for this policy obstacle they would go straight to the arbitrator. Well, you have got 10 days for a legal response, and then you are going to have language. Guess what? We know how to read a legal response. We are going to render our view within the same 10 days that I am giving FEMA to get me their view.

Mr. Cao.

Mr. CAO. Thank you, Madam Chair.

With your emphasis on the arbitration panel, Mr. Daniels, we do not want to overburden this arbitration process. It has just been established. How many cases will the arbitration panel be able to handle at one time?

Mr. DANIELS. That is a very good question, sir.

We have been given quite widely varying estimates by the people we have talked to at FEMA as to how many cases we would have. The initial estimate was somewhere between 50 and 60 cases. I think we would clearly have no problem handling that many cases. If the numbers start skyrocketing, we will have to look for ways of supplementing our numbers.

Mr. CAO. How many cases do you have right now?

Mr. DANIELS. We have right now about 500 cases.

Mr. CAO. And it was first—

Ms. NORTON. Will the gentleman yield for a moment?

Now, you do not have the same people on 500 cases, do you?

Mr. DANIELS. Well, we have the same 15 judges.

Ms. NORTON. You have 15 judges with cases divided among them?

Mr. DANIELS. That is correct.

Ms. NORTON. I yield back.

Mr. CAO. Thank you.

Mr. DANIELS. Those are not cases involving FEMA arbitrations. The FEMA arbitration cases will be additional. We will have no problem handling—

Ms. NORTON. Could I just clarify? The FEMA arbitration cases will be handled by how many judges?

Mr. DANIELS. By 15 administrative judges.

Ms. NORTON. Thank you.

Mr. CAO. But then you have 500 cases that you are doing which are outside of the FEMA arbitration process; is that correct?

Mr. DANIELS. Correct.

Mr. CAO. So your main focus is not solely on—

Ms. NORTON. Just a moment. Let's clarify that. Will these 15 judges be dedicated to FEMA cases?

Mr. DANIELS. No. No, they will not.

Ms. NORTON. Well, he is asking specifically how those judges will operate, given the caseloads they have.

Mr. DANIELS. We should have no problem adding some number of FEMA cases to the number of cases we have right now, using the same number of judges that we have right now.

Mr. CAO. So the intent of this arbitration process is to expedite the resolution of these disputes. It seems to me that you have 15 judges who are handling 500 cases that are outside of the FEMA dispute resolution process, and you have on top of that FEMA projects that you have to resolve. It seems to me that it just defeats the purpose of the arbitration panel.

Mr. DANIELS. Well, a difference between the cases we have now and the FEMA cases is that there is a considerable sense of urgency to the FEMA cases. Most of the other cases that we have right now proceed along at the pace that the lawyers wish to take the cases.

Mr. CAO. So, if the lawyer were to take 3, 4, 5, 6 months to prepare a case, then—

Mr. DANIELS. They well might. Most of those cases will settle without a need for judicial intervention to the extent of writing a decision. With regard to the FEMA cases, we will approach them, as I say, with a sense of urgency; so we will give them priority.

Mr. CAO. How many cases do you anticipate will go to arbitration?

Mr. RAINWATER. Somewhere possibly between 90 and 100, I suspect.

Mr. CAO. Between 90 and 100?

Mr. RAINWATER. Yes, depending on how well our teams do.

Mr. CAO. Now, you said previously, Paul, that there are about 3,000 cases that are under \$1 million; is that correct?

Mr. RAINWATER. Yes. There are a little bit over 3,000 project worksheets that represent about \$1 billion; and they are all less than \$1 million, actually.

Mr. CAO. So what is the difference between your figures and the figures that FEMA is willing to pay?

Mr. RAINWATER. Well, sir, we did a survey of applicants to see what they thought the dispute was on the estimation process. Now, the survey, itself—and remember, you know, that is local government and other State applicants. It is somewhere between \$3 billion to \$5 billion. We do not think it is \$5 billion. We think it is lower than that, obviously, because some of it will not reach, you know, the level—

Mr. CAO. We are just talking about the 3,000—

Mr. RAINWATER. I am sorry. \$1 billion. I apologize.

Mr. CAO. \$1 billion?

Mr. RAINWATER. Yes, \$1 billion.

Mr. CAO. What is the figure that FEMA has proposed?

Mr. RAINWATER. That is just what—I do not know what—I would have to take a look at that, Congressman.

Mr. CAO. If the difference is a few million dollars, why can't we just resolve those 3,000 PWs and get them done and over with instead of having to decide them case by case by case?

Mr. RAINWATER. Congressman, there are some examples where we have moved forward on—you know, with Charlie's help and Tony Russell's help, there was a dispute over \$10,000. Our point was, let's just move forward. I mean, if for some reason during the closeout we are \$10,000 off on that project, then the State will put up \$10,000. I mean, that is not a lot money to keep, you know, a project moving forward.

Mr. CAO. Based on my understanding then, the present law does not allow for these kinds of lump sum settlements—is that correct—or at least for FEMA's interpretation of the law.

Mr. RAINWATER. There is legislation that was passed with the help of Senator Landrieu and others, obviously, for the Recovery School District in New Orleans. We are actually in the process of preparing a lump sum settlement based off of—you know, for example, it costs about—we believe it costs about \$56,000 per student to build an entire school system.

Mr. CAO. But, at this point, the law only applies to the RSD?

Mr. RAINWATER. Yes, sir, that is right. That is correct.

Mr. CAO. So we need a legislative fix in order to apply the same procedure to other categories of—

Mr. RAINWATER. Yes, Congressman. You talked about fire and police or primary and secondary education or higher education. You would need legislation.

Well, now, I will say this: The rule does apply to the Recovery School District and to other primary and secondary education facilities in the impacted areas, but it does not apply to higher education universities, police and fire stations, public works, roads, and other things.

Mr. CAO. Now, Mr. Garratt, I spoke with the Inspector General; and he told me that the present recommendation, as interpreted by FEMA, is actually too narrow, that you all can basically go back and revise your recommendations to allow for this lump sum settlement procedure quite quickly. Do you dispute that?

Mr. GARRATT. I cannot dispute it, but it would certainly require that I go talk to the same individual you talked to, and I would like to discuss their basis for that. If that is the case, we are certainly willing to look at that, but I cannot comment on it without talking to the very same person you talked to.

Mr. CAO. Okay. I will get you both together in a room so you can talk out your differences.

Just a couple more questions.

With respect to H.R. 3247, which is the bill that got passed through the House and is now in the Senate, there is a provision that will provide alternative projects where the penalty, instead of

25 percent, is only 10 percent. How helpful do you see that provision is to the State?

Mr. RAINWATER. Very helpful.

In the language that was passed to help us with the lump sum penalty for the Recovery School District—well, actually, there were three provisions. One was with a lump sum, one was waiving the alternative penalty, and then the other was waiving the insurance penalty. Instead of building by building, it was done by campuses. Those provisions in total saved the State about \$600 million. The alternative project penalty saved about \$247 million, as I remember. So it is extremely important to local communities, and I think President Taffaro would agree that that would be helpful.

Mr. TAFFARO. I would, Congressman. In fact, on the NFIP mandatory deduction, we have been seeking the same relief that the criminal justice and educational systems were granted for one-time relief, which would recover almost \$5 million in eligible funding for St. Bernard Parish projects.

Mr. CAO. Now, I know that there was a lack of clarity with respect to outstanding numbers of projects that were still not resolved in our last hearing which was held before Ranking Member Mica. Do you have that number? How many project worksheets are still outstanding?

Mr. RAINWATER. As I understand it, we believe there are about 4,000 project worksheets that are going through some sort of reversioning process based off of the Governor's Office of Homeland Security and Emergency Preparedness numbers that they provided to us last week.

Mr. CAO. You said that the combined value would be between \$5 billion and \$6 billion.

Mr. RAINWATER. Between \$3 billion and \$5 billion, Congressman, although we all admit that we still have some work to do on our side to narrow that number and to get you a better number as well. That was based off of applicant surveys; and applicants were asked, are you satisfied with the versioning process? How many project worksheets do you have in dispute?

That is what the local government gave us.

Mr. CAO. So with these thousands of projects still outstanding, my question here is: Does Mr. Tony Russell have the resources to expediently resolve these issues? Because I have to say that he has done a wonderful job, and I hope that you can keep him there until this thing gets resolved, and I hope it will get resolved very, very quickly. So can you provide Mr. Russell with additional resources for him to do his job?

Mr. GARRATT. Thank you for the comments regarding Tony Russell. We share your view that he has done an outstanding job out there.

As I indicated earlier, we will provide to Mr. Russell whatever resources he needs to be effective in his role; and if he needs more personnel, then he knows that those are available to him.

Mr. CAO. I just have one last question. It concerns the Port of New Orleans.

I know that there is a dispute at the Port of New Orleans in regards to how much money they received from insurance versus how much money that FEMA is willing to provide the ports. Can you

provide me with a status of the Port of New Orleans maybe within a week or so?

Mr. AXTON. Yes. We met a few weeks ago—or probably 6, 7 weeks ago now—and there were a number of disputes that they presented within that—the Port did.

The two most significant disputes that I recollect were, one, the settlement amount that the Port negotiated with the insurance carrier, and I believe it was actually multiple carriers and that there was an ongoing disagreement. Really, I would say it was kind of a fundamental lack of good communication among the various folks about exactly how they came to that settlement and about how that related to the policy limits and all that.

Their position was the settlement amount under the circumstances and per their existing policy was, in fact, reasonable and should become the basis for our deductions that are required per statute. Since that meeting, that issue has been resolved.

Mr. CAO. I have two more questions. I am sorry, Madam Chair.

One concerns the Sewerage and Water Board of Orleans Parish. I know that they came to me and said that, based on their estimate, around \$800 million of damages was caused by Katrina. I am pretty sure that FEMA disputes that. What is the status with respect to the Sewerage and Water Board?

My second question is: Do you all have a prioritized plan where you are looking at some of these disputes and are saying we need to address this issue first, and then you go from there, or is it first come-first serve? What is the procedure?

So one is with respect to the Sewerage and Water Board. What is the status of that issue? Two, whether or not you have a plan of priority to address some of these needs.

I know that, for example, the Sewerage and Water Board has come to me and said that the city of New Orleans might go without water any day now. When you have a city that is going to have no water and no sewage, you will have chaos on your hands, and that is what we do not need at this moment.

Mr. RAINWATER. Yes, Congressman. I met with the Sewage and Water Board. We have provided some emergency funding for them to help repair some of the water lines and sewer lines through our Disaster Community Development Block Grant program. I have met with Marcia St. Martin. What we have said is that we will take that straight to the arbitration panel. We won't wait. We will not send it to appeals, we will send it straight to the arbitration panel and see if we can get that overturned.

Mr. CAO. How long will that take? How much longer will that issue take?

Mr. RAINWATER. Well, the first side of the queue is Charity Hospital, then second will be Sewage and Water Board. So if we send Charity Hospital this week, we will start working on Sewage and Water Board immediately.

Mr. CAO. And how long will that take?

Mr. RAINWATER. Fourteen days.

Mr. CAO. Because I don't want people, 300,000, 400,000 people, to be without water or sewage.

Mr. RAINWATER. Yes, sir, I understand that.

And then from the prioritization perspective, we meet on Tuesdays. We had originally set our goals last year around fire and police were a priority, wanted to get those done, public facilities, higher education. And I think we have seen—and as we have kind of worked through the queue there, I think you can see where we have hit some of those priorities. In other cases, like the Sewage and Water Board, we haven't, so—

Mr. CAO. That is all the questions I have, Madam Chair. Thank you very much.

Ms. NORTON. Thank you, Mr. Cao.

Just for the record, Mr. Rainwater and Mr. Taffaro, what is the unemployment rate in Louisiana, and what is it in St. Bernard Parish, please?

Mr. RAINWATER. I am sorry, Madam Chairwoman?

Ms. NORTON. The unemployment rate.

Mr. RAINWATER. Unemployment rate in Louisiana. You know, I will tell you that the southeast region was written up in the Economist magazine as one of the places where you could ride out the recession based on we are getting out about \$25 million a week in FEMA public assistance money and another \$7 million a week in Community Development Block Grant money. I don't remember, it is just one of those things. And obviously for Louisiana, what has happened is our unemployment is regional, but there have been a lot of construction jobs created through—I think what we did last year, towards the end of last year and then this year, we have been able to push dollars off fairly quickly.

There is some optimism, if we can get Charity settled, the Veterans Administration has committed to building a hospital. There is talk about a biomedical center in downtown New Orleans. We have been able to build about 12 large mixed-income communities in New Orleans, and so those have created jobs and optimism as well, although there are still areas that are hurting.

I think what has happened in Louisiana is that—not to belabor that answer, but what we have seen is that we are starting to see large chemical complexes that are beginning to lay off construction workers. I will have to find out what the exact number is.

Ms. NORTON. Well, I am going to ask Mr. Taffaro, too.

I am pleased to hear that the stimulus funds and the need to rebuild and the rebuilding that is going on has had an effect on the unemployment rate. By close of business tomorrow, which is, what, Wednesday, would you please submit to the Committee what the unemployment rate for the State of Louisiana is at the present time?

Mr. Taffaro, do you have that rate with you?

Mr. TAFFARO. I will confirm, Madam Chair. At the last check, we were at around 8 percent in St. Bernard.

Ms. NORTON. Have the stimulus funds been of use to you, even given the holdup of these projects that would have gone forward?

Mr. TAFFARO. Absolutely. The stimulus funding we continue to actually seek and put into action for many of our projects.

Ms. NORTON. You have an extra balance of stimulus because of this outstanding amount, and therefore, we are particularly mindful of it.

I have another question or so to get on the record. I understand you had a workshop on the arbitration process, is that right, in Louisiana?

Mr. RAINWATER. Yes, ma'am. There have been numerous workshops.

Ms. NORTON. Describe that. Who went to that? Mr. Daniels or Mr. Garrett, who knows about that?

Mr. GARRETT. We did conduct workshops in each of the States that had the opportunity to do this. We invited State and local leadership to attend those to answer their questions. So, yes, ma'am.

Ms. NORTON. So generally on the ground they understand how the arbitration process would operate if you came to that point; is that right, Mr. Axton?

Mr. AXTON. Yes. That was the purpose of the outreach efforts, and I believe it was last Thursday in Baton Rouge.

Mr. RAINWATER. We had about 50 applicants that attended the actual meeting.

Ms. NORTON. Well, I commend the State for proceeding on that.

Now, let me ask you another legal question. We were so concerned about the larger projects, ones that were a half million dollars and so. We thought that was colossally outrageous to have great big projects there that are stimulus-sized projects—beyond what most States could do with stimulus—outstanding. So we pressed for projects; we used the half-billion-dollar figure. One of the reasons we used that figure is because we believed it was already clear that you could have been using alternative dispute resolution all along, but it was in your discretion, and your discretion was not to use it. So I am going to look at what we were relying on, and I am going to ask you a question based on that, and on what it looks like you may already be considering or doing with projects under \$500,000.

Now, section—5 U.S.C., section 572 of the ADR Act, the Alternative Dispute Resolution Act of 1996, "An agency may use dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program if the parties agree to such proceeding."

Federal Government long ago has encouraged—we encouraged and moved to the mandatory process because encouragement didn't seem to work with FEMA. Now, it would appear that FEMA has sufficient authority, therefore, today to expand the present program, the arbitration program, to projects under \$500,000.

Do you agree that you have that authority, Mr. Garratt, at least that you have that authority under the language I just read?

Mr. GARRATT. I certainly agree with the legal citation that you just noted.

Ms. NORTON. Where is my statute? The most recent statute is not as permissive because it says, shall establish a panel, shall have the sufficient authority, and doesn't say anything about if both parties agree; it just says, do it.

Now, the reason I ask this question is because I want to be plain. You had authority under—it would appear under 5 U.S.C. 572 if parties agree to do over half-million-dollar projects, and certainly under that. Do you agree that the section I just read—I am asking

Mr. Garratt, Mr. Axton, Mr. Rainwater, Mr. Taffaro. Do you agree that you could give matters under \$500,000 to the arbitrator for a quick decision under the existing ADR Act if all parties agreed?

Mr. GARRATT. Speaking for FEMA, ma'am, I am not prepared to say I do necessarily agree with that.

Ms. NORTON. Within 10 days, Section 5 U.S.C. 572, I want to know whether counsel agrees that "if the parties agree to such proceeding," this section of the law authorizes any dispute resolution, including arbitration.

Now, I am not even into this kind of stuff anymore. I am now considering—I will put you on notice—language that will put everything under it and would give guidance as to what kinds of things would go under it. We don't see any other way to proceed. We think that the fact that the State and the parish was told that they could go to either one really was a way of circumventing the intent of the statute, which was for quick decision. We don't have a dime in that dollar in terms of how the decision was made. Congress is past the point of deciding how we want the decision to come out.

I want to ask Mr. Rainwater and Mr. Taffaro if they think projects under \$500,000, if parties agree, understanding that I see problems in that; and then I want to ask Mr. Daniels if we were to put more projects, whether or not, in light of Mr. Cao's questions, that would just put more on their shoulders than they have the capacity to bear.

So, first, Mr. Rainwater, Mr. Taffaro, would that be useful to be able to go for projects under \$500,000? I mean, aren't most projects under \$500,000?

Mr. RAINWATER. Chairwoman, the way the breakdown works, for example, we have about 14 projects over \$50 million; about 81 projects over 10-, but less than 50-; and then about 597 that range between \$1 million and \$10 million. And then, as I stated earlier, we have about 3,000 that are below the \$1 million mark. So there are a number of projects that are below \$500,000.

Ms. NORTON. So there are some that are too small to be worth it.

Mr. RAINWATER. Yes, ma'am. So we would support that.

Ms. NORTON. Because in your discretion, grown-up people who have been in this process for this long could, do you think, draw the line as to the kinds of projects we are talking about, given how broadly worded this ADR language is? You would agree that you wouldn't want to put every little thing before an arbitrator.

Mr. RAINWATER. Right.

Ms. NORTON. Mr. Garratt, you need to go to your counsel again to see what the plain language of the statute really means, whether it means what it says?

Mr. GARRATT. I do need to run that through our legal staff, yes, ma'am.

Ms. NORTON. Are you an attorney, sir?

Mr. GARRATT. I am not.

Ms. NORTON. Okay. We will give you a pass, then, on that. Tell the attorneys that they are dealing with an attorney as Chair, so if they are trying to circumvent, I don't need staff help. I will get it on reading the plain language of the statute. I am not saying

that you have to do anything, I just want to know what is in your authority to do.

Now, Mr. Daniels, clearly we are not trying to pile everything into arbitration. You and Mr. Rainwater indicate that there would have to be some—and it was good to hear him range just how small to large some of these are. You will understand why the Congress decided that over \$500,000 we just couldn't live with anymore. But suppose they were to go to those numbers between \$50 million and—what was that top number?

Mr. RAINWATER. Between \$50 million and—well, the one project we have over \$200 million is Charity Hospital, and that is going to be going this week.

Ms. NORTON. But there is only one project like that.

Mr. RAINWATER. Yes, ma'am, that is right. And then there are 14 that are right over the \$50 million range.

Ms. NORTON. I am sorry, I said \$500 million. Over \$500,000.

Mr. RAINWATER. Yes, ma'am. So we have got about 3,000 that would be either—and I don't have the exact numbers, but there are about 3,000 that are less than \$1 million; they are between that \$1 million all the way down to—I think we have one that is \$4,000, to be very honest with you. So if we took 3,000 of those—

Ms. NORTON. Mr. Daniels, you see how broad is the range. What do you think are the optimum cases that one would expect? Given the huge amounts you often are called upon to handle—and I suppose some smaller amounts as well—and given the range you have heard here, what do you think would be an optimum amount?

Mr. DANIELS. I think Congress was wise to start with the larger cases.

Ms. NORTON. Now, see, the larger ones, though, turn out to be, what is it, over \$500,000? And how many? Fourteen like that?

Mr. RAINWATER. We have 14 projects that are over \$50 million, and then about 81 projects between 10- and \$50 million, and then 597 that are between \$1 million and \$10 million, and then about 3,000 that are below \$1 million.

Ms. NORTON. So you think the larger amounts first?

Mr. DANIELS. Yes, because the resources we have at the moment are finite. As we proceed, we can supplement those resources. We will do whatever it takes to make the process work.

Ms. NORTON. And you would supplement resources. We are not going to require the Board to take on more than it should, but you are prepared to supplement the resources?

Mr. DANIELS. We could do that by making arrangements with other administrative boards, other administrative judges, to bring them into the process.

One thing I would say, though, about the numbers and the arbitration process is that, as we go along hearing evidence, issuing arbitration decisions, I think that the people in the State of Louisiana and the people at FEMA will be able to see how the cases are coming out, figure out which way the wind is blowing, and a lot of those disputes that have been brewing for a long time will begin to settle as parties take into consideration how the cases are being resolved.

Ms. NORTON. No question that is how it works. People get an idea of what it is likely to be. Much harder, I must tell you, in an

appeal process, because you are dealing with two-thirds are against you, one-third are for you, and you didn't have any alternative but to go to that process in the first place. I am sure it results in some settlements as well.

Mr. DANIELS. So it may be that even though we are looking at very large numbers of potential cases right now, that as we proceed along issuing decisions, that total number will start shrinking.

Ms. NORTON. Because there is a precedent being set, in effect.

Mr. DANIELS. Exactly.

Ms. NORTON. Gentlemen, I didn't begin these hearings with any bias except that the present processes of FEMA had not, in fact, served the public well. Congress has made a decision for projects over \$500,000, made a decision, mandated decision. It is a matter of law. So Congress is called to question on those projects, and we intend to have frequent hearings and to do whatever it takes to make the State and FEMA adhere to the law. That is what that is now.

We also will be monitoring the Contract Appeals Board, which also comes under our GSA jurisdiction. We are prepared to have more frequent hearings, and we are prepared to add language, mandatory language, to existing bills or to the appropriation bills if we find matters like we found today, that policy matters were making people go to appeals when the mandated language was arbitration for matters over \$500,000. I do not read that FEMA had the discretion to say, okay, if it is a policy matter, you go right up and do the same thing you have been doing for the last 4 years; and if not, then maybe you can go to the arbitrator. And by the way, we decide—we, who are involved in the appeal, decide if it is a policy matter. Outrageous.

Mr. GARRATT. Madam Chair, just one point of clarification, and that is FEMA does not decide who goes into appeal and who goes into arbitration. It is the applicant who decides which avenue they want to—

Ms. NORTON. Who decides if there is a policy matter involved, Mr. Garratt, at the moment?

Mr. GARRATT. Again, Madam Chair, as I have indicated, anything that they can appeal, they can seek arbitration for.

Ms. NORTON. All right. Just a moment. Right now—Mr. Rainwater, where did you get the idea that the policy matter had to be decided through the appeal process?

Mr. RAINWATER. In our conversations with our legal staff in our office that we would not—just in conversations with the Federal Emergency Management Agency that the arbitration panel would not be able to overturn FEMA policy.

Ms. NORTON. That was the view of your legal counsel in consultation with FEMA's legal counsel?

Mr. RAINWATER. Yes, ma'am. And indications from folks from both agencies that the arbitration panel would only look at construction and estimation-type disputes. But you have made it very clear, Madam Chairwoman, that that is not the case, and so we will send up some balloons.

Ms. NORTON. "Notwithstanding any other provision of law, the President shall establish"—for public assistance program—"to expedite recovery efforts from hurricanes named"—Katrina and Rita

are named—"place named within the Gulf Coast region. Arbitration panel shall have sufficient authority regarding the award or denial of disputed assistance applications for covered hurricane damage under section 403," et cetera.

I do not believe one has to be a lawyer to read the plain language there, and I do not see any wiggle room. And I am saying to you that whatever policy pronouncements have come from FEMA have been in violation of the statute on its face and has been in violation of what this Committee long ago had said it wanted, which was third-party intervention in order to hasten recovery on the Gulf Coast. The only words I haven't read is for a project the total amount of which is more than \$500,000.

I still am a tenured professional of law, which was my full-time occupation before being elected to Congress, at Georgetown University Law Center. I retain my tenure by teaching a course called Law Making and Statutory Interpretation, inspired by my experience as an administrator when I was in the Carter administration, and now as a Member of Congress and seeing how laws can be interpreted very differently from administrative agencies, from the courts and from the Congress, much of it based on poor wording in the statute.

This is optimal wording in the statute. Any court getting a matter of this kind—I don't suggest that this is the kind of matter that would go to court—would have no question, in my judgment, in my humble judgment, declaring that the plain words of the statute speak for themselves, and they don't even have to look to the legislative history, such as the hearings which produced this language.

So be on notice, Mr. Garratt, Mr. Axton, Mr. Rainwater, Mr. Taffaro. And be prepared, Mr. Daniels. Unless this matter proceeds as the statutory language says, and unless counsel is able to convince the Subcommittee and the Committee to the contrary, we expect these matters to go to arbitration based on your good-sense, commonsense notion of whatever the level should be. If necessary, this Subcommittee is prepared to put into the appropriation language as to the amount and reaffirming mandatory arbitration. We leave that to your good offices, recognizing that that has not worked in the past, but believing that we have been clear enough for you to understand what our intention is today.

Mr. Taffaro.

Mr. TAFFARO. Thank you, Madam Chair.

In light of your clarifications, there are a couple of items. One, I am pleased that you have expressed an interest in addressing projects under the \$500,000 mark since a community such as ours who would incur enormous amounts of operational budgetary obligations for those projects that would not be obligated.

But likewise, in terms of the interpretation and the mandate that the arbitration legislation dictates, there are statutory regulations that we are following within the disaster. FEMA releases administrative policies that are nonstatutory regulations. Are those also the intent of this Committee to be eligible for arbitration?

Ms. NORTON. For items \$500,000 and above at the moment? Or are you talking about—

Mr. TAFFARO. Well, obviously for the mandated legislation, but in the discussion under \$500,000 as well. In other words, what I am asking is—

Ms. NORTON. Well, under \$500,000, we are going by the ADR language where there would be agreement—I don't have any faith in that process whatsoever, so I am putting FEMA on notice right now. We said more than \$500,000. We understand that would envelop still a large number—I take it a large number in your—

Mr. TAFFARO. There are several that would be over the \$500,000. Many more would be under.

Ms. NORTON. Well, we are prepared, Mr. Taffaro, to receive advice from you and FEMA as to the application of such language for—give us the cutoff point, and to put language in law since we do not have confidence that you would get sign-off from FEMA, and the ADR language does require both parties to agree. We just don't think so. They were sending you through the appeal process in face of law to the contrary. So we have no doubt that if you took those under \$500,000 and you asked for them to agree to go to the arbitration process—which they could, that would be covered—we have no confidence that you would ever get their agreement. They tried to keep you from going, with respect to matters of policy already, to the arbitration process, even if you were within the amounts.

So we believe that more clarification is necessary, and we are prepared to do that. We are prepared to do it if we don't get answers that show us that we should not. And if we do, then we are going to put language in to clarify the law. We are not going to sit here and be outraged to hear—much as we appreciate that \$1.2 million has proceeded, we expected a new administration to take a new view and not to have this tied on its back. And we believe that is the view of this administration, but if it needs clarification, because Mr. Garratt was there before, and Mr. Garratt is there now, and he is doing the same thing he was doing before, he is going to get clarification. But we are not going to have another hearing where it is recited to me that FEMA says that there is a policy matter, for example, that keeps it from going to what the plain language of the statute says you must do.

That, it seems to me—and I will just say it to you straight out, Mr. Garratt, that is a violation on its face of the statute; not of the congressional intent, but of the plain words of the statute. It was designed to make sure that for certain projects, whichever you said were policy—and only you get to say that—would go up the same chain of command as they went up before. We think that is unfair. And if it is not unfair, it at least is inefficient, and it is contrary to the statute and contrary to our intention. I know I speak for the Senate as well when I say that I am sure any language we put in would get the cooperation of the two Senators from the State.

Thank you very much. This hearing is adjourned.

[Whereupon, at 5:30 p.m., the Subcommittee was adjourned.]



**OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (MO-03)
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS,
AND EMERGENCY MANAGEMENT**

**Hearing on
Final Breakthrough on the Billion Dollar Katrina Infrastructure Logjam: How is it
working?**

**Tuesday, September 29, 2009
2167 Rayburn House Office Building**

I want to thank Chairwoman Norton and Ranking Member Diaz-Balart for holding this important hearing to review the recovery efforts and progresses made in the gulf region past, present, and future, as well as understand FEMA's role or potential role at each point in time.

The hurricanes that struck the gulf coast in 2005 proved to be the costliest natural disaster in United States history. FEMA played a crucial role in responding to hurricanes Katrina and Rita. Through its public assistance program, it provided funds for relief costs with reimbursement and grant opportunities to local and state governments as well as allocated a number of grants for non-profit organizations. Unfortunately, these efforts were far from sufficient, forcing Congress to improve government disaster response should such events occur in the future.

Most notably, in 2007, the House passed H.R. 3247, which would improve future disaster relief programs as well as address the imperative rebuilding in the gulf region, where previous efforts had failed to do. Among the components of this legislation were actions to increase federal in-lieu contributions from 75 to 90% as well as expedite the appeals process for relief aid in an effort to rebuild more areas at an accelerated pace.

Unfortunately, the Senate did not follow our lead and pass H.R. 3247. Regardless of this however, there are still many areas in which we, as the House, can work to minimize damage and burden from future natural disasters.

Finally, it is important to note, that the gulf region, more than four years later, is still recovering from the storms, and is far from returning to its previous state. In fact, FEMA is still providing assistance, and has additional funds to continue to provide for the region. As of September 2009, more than \$6 billion in public assistance had been given to Louisiana and Mississippi with nearly \$5 billion still available for distribution.

In closing I want to thank our witnesses for joining us today and for offering their testimony. Thank you again, Chairman, for holding this important hearing.



STATEMENT OF
THE HONORABLE ELEANOR HOLMES NORTON
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY
MANAGEMENT

“FINAL BREAKTHROUGH ON THE BILLION DOLLAR KATRINA INFRASTRUCTURE LOGJAM:
HOW IS IT WORKING?”

SEPTEMBER 29, 2009

We are pleased to welcome our witnesses to another in a series of hearings our Subcommittee is holding to oversee and evaluate the efforts of the Federal Emergency Management Agency (FEMA), as well as the affected state and local governments, to proceed more rapidly with their work on the long four-year recovery from Hurricanes Katrina and Rita. Today we will hear specifically about how the new arbitration program, mandated in the American Recovery and Reinvestment Act (Recovery Act), as well as about other steps that the new leadership at FEMA and the Department of Homeland Security are taking, is working to improve the pace and quality of the recovery efforts in the Gulf Coast.

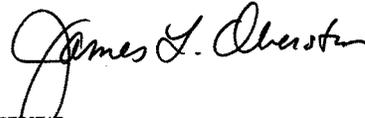
At a hearing early in this year, we were astonished to uncover almost \$3.5 billion caught in a stalemate between FEMA and the state of Louisiana, from which neither could extricate itself. Based on today's testimony, as well as numerous meetings and discussions that Members and staff have had with officials at all levels of government in the Gulf Coast, it appears that progress may have begun since President Obama, Secretary Napolitano and Administrator Fugate took office. However, it is exasperating to have to note that many of the improvements now being implemented are not new ideas. Some that have been proposed by this Subcommittee for two and a half years are just now coming on line. During the last administration, FEMA resisted efforts to break the logjam, preferring its own traditional devices. Seeing little progress two years ago, this Committee reported H.R. 3247, which the House passed in October 2007, encouraging the use of third parties to review and expedite public assistance appeals, as well as simplified procedures under which small projects would be permitted to proceed on estimates for projects up to \$100,000. We passed this bill, which also raised the Federal contribution for certain projects from 75% to 90%, not once, but twice, as well as a similar bill in September 2008. It is unfortunate that the Senate was never able to pass this legislation.

However, even if the H.R. 3247 procedures permitting third-party review had been enacted, FEMA appeared unwilling to choose an effective third-party process. The past FEMA leadership never faced the structural impediments that obstructed agreements for the unprecedented Gulf Coast disasters. Given the huge funding amounts at stake, each side has built in impulses – FEMA to resist approving more than it theoretically should and therefore to parse the analysis to require state responsibility, and the state of Louisiana to insist on more funds and urge federal responsibility in light of the state’s devastation. Neither side has had much incentive or leadership to negotiate with any efficiency or goals except for its own caged views. Considering the unprecedented challenge of enormous amounts of money and complexity, it should have been clear that without deadlines, the state and FEMA would continue to engage in negotiations for as long as they wanted. Now, all involved have exhausted the available alternatives and are left with a record of unnecessarily delayed recovery. Louisiana residents are suffering through the greatest economic crisis most have ever experienced, while billions of dollars have been left on the proverbial table for years, waiting to be spent on construction of the new Charity Hospital and other vital infrastructure. The accumulated hardship on Louisiana residents demands immediate action. Only mandated third-party intervention or negotiations on a timeline are left as acceptable.

As a result of the new arbitration program authorized by Congress in the Recovery Act, FEMA has entered into an agreement with the Civilian Board of Contract Appeals (CBCA), a part of the General Services Administration, which also comes under this subcommittee’s jurisdiction. The CBCA’s expertise in resolving disputes in Federal construction contracts should prove invaluable if fully used, with determined leadership, without delay.

It is unfortunate that new legislative language has been necessary to get action, particularly since it has been clear to the subcommittee that FEMA had sufficient existing authority to implement this or similar programs using third-party dispute resolution, even before this subcommittee put FEMA-specific dispute resolution into law. Even today, while the arbitration provision in the Recovery Act is mandated for projects exceeding \$500,000, nothing prohibits FEMA from offering arbitration for smaller projects. Nor does legislation prohibit FEMA from using other types of alternate dispute resolution. If efficient and timely results are not produced, resistance to using time-limited alternative dispute resolution on Gulf Coast recovery will not be tolerated. For example, should simplified procedures permitting small projects from \$55,000 to \$100,000, or a possibly higher figure, be permitted to proceed based on estimates? During this “Great Recession” has the usual state match for infrastructure construction been affected by Congressional failure to pass the provision in HR 3247 that would have raised the federal match from 75% to 90%?

Again, we thank our FEMA representatives, our witnesses from the Civilian Board of Contract Appeals and witnesses from Louisiana, for preparing testimony today to help the subcommittee better understand how to ensure that the recovery efforts in the Gulf Coast continue to improve.



STATEMENT OF
THE HONORABLE JAMES L. OBERSTAR
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS, AND EMERGENCY
MANAGEMENT
HEARING ON: "FINAL BREAKTHROUGH ON THE BILLION DOLLAR KATRINA
INFRASTRUCTURE LOGJAM: HOW IS IT WORKING?"
SEPTEMBER 29, 2009

Today, the Subcommittee will receive an update on community and infrastructure recovery through the Public Assistance program implemented by the Federal Emergency Management Agency (FEMA) in the aftermath of Hurricanes Katrina and Rita. It is unfortunate that more than four years after these devastating storms, we are still talking about how we can improve recovery efforts.

Previously, when our Nation faced large or unusual disasters, FEMA was quick to adapt and provide solutions to unique problems that would arise, often working with Congress on those solutions.

After Hurricane Katrina, things were very different. FEMA was an agency within the Department of Homeland Security (DHS), and not an independent agency that reported directly to the President and Congress. As I have said previously, FEMA's performance as an agency has suffered since its inclusion in the Department of Homeland Security in 2003.

Even long after the response to Hurricane Katrina, the agency's placement in DHS had a detrimental effect on the residents of the Gulf Coast. There were delays in decision making, which meant that delivery of critical assistance to citizens was delayed. I am still deeply concerned that, even with the new leadership at FEMA, if FEMA remains in DHS it will not be able to respond to disasters in the manner the Nation needs and expects.

Hurricane Katrina proved to be the costliest natural disaster in American history. The storm had a massive physical impact on the land, affecting 90,000 square miles, which is an area the size of Great Britain, and hundreds of thousands of citizens. We will hear today from Craig Taffaro, Parish President of St. Bernard Parish. I was in St. Bernard Parish shortly after the storm and saw the impact first hand. I was astounded to see homes that did not have water marks to indicate the level of flooding; because the flood waters had reached levels above their roofs.

We will also hear testimony that things are improving. There is new leadership at FEMA, and they are bringing solutions to lingering problems. Unfortunately, this is years too late as the last Administration refused to bring common sense solutions to problems, or in many instances, acknowledge that there were problems in recovery efforts. All of the recovery steps that we will hear about today, are items that FEMA

had the authority to implement four years ago, but was unable to do because of DHS bureaucracy.

While things may be improving, it should not stop us from trying to improve them further. Recently, I have had discussions with other Members of this Committee as to whether additional authority should be provided to FEMA to help facilitate the recovery from these storms. A good place to start may be H.R. 3247, the "Hurricanes Katrina and Rita Recovery Facilitation Act of 2007", which passed the House in October 2007. H.R. 3247 provides for a higher Federal contribution for alternate projects from the current level of 75 percent to 90 percent, increases the size of projects that can move forward on the basis of estimates, from \$55,000 to \$100,000 and for arbitration methods. While we could not get the Other Body to move that legislation in the last Congress, it may be possible to move a similar, more streamlined bill, in this Congress if such legislation might still prove constructive. We intend to inquire with our witnesses today their views on this subject.

I also hope what we hear today can serve as a lesson for future disasters, so that if the country is ever faced with such catastrophic storms again, we will not wait four years for common sense solutions to be implemented.

I welcome our witnesses and I am pleased that we will examine these important issues today.



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

STATEMENT OF STEPHEN M. DANIELS,
CHAIRMAN, CIVILIAN BOARD OF CONTRACT APPEALS
TO THE SUBCOMMITTEE ON ECONOMIC DEVELOPMENT,
PUBLIC BUILDINGS AND EMERGENCY MANAGEMENT
OF THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
UNITED STATES HOUSE OF REPRESENTATIVES
SEPTEMBER 29, 2009

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Madam Chair and Members of the Subcommittee:

As you may know, the Civilian Board of Contract Appeals is a quasi-judicial tribunal which is housed in the General Services Administration but functions entirely independently of that agency. The Board currently consists of fifteen administrative judges. Our principal mission is to resolve contract disputes between civilian agencies of the Government and their contractors. Our decisions are judicial in nature; appeals from them generally go to the Court of Appeals for the Federal Circuit.

Our goal, consistent with the statute which established us, is to resolve contract disputes as fairly -- and at the same time as informally, expeditiously, and inexpensively -- as possible. Toward that objective, our standard method of proceeding is to provide due process for the parties, but where the parties request that we employ alternative dispute resolution techniques, such as mediation or arbitration, we enthusiastically comply.

Section 601 of Public Law 111-5, the American Recovery and Reinvestment Act of 2009, directs the President to establish an arbitration panel under the Federal Emergency Management Agency public assistance program to expedite the recovery efforts from Hurricanes Katrina and Rita within the Gulf Coast Region. The President delegated his

authority in this regard to the Secretary of Homeland Security, and the Secretary has established the Civilian Board of Contract Appeals as that panel.

The members of the Board and I are honored to take on this responsibility, which constitutes an extension of our work in arbitrating disputes between Government agencies and the entities with which they do business. We understand the need for resolving the disputes fully and promptly so that the people of the Gulf Coast Region can complete their recovery efforts and get back to the normal routines of their lives. We have pledged to the Secretary, and we pledge to the Congress, to do our utmost to resolve these disputes in the same way in which we approach our contract cases -- as fairly, and at the same time as informally, expeditiously, and inexpensively, as possible.

On August 31, 2009, FEMA published in the Federal Register regulations which govern our arbitration of disputes regarding public assistance program grant determinations relating to Hurricanes Katrina and Rita. FEMA consulted with the Board in drafting these regulations, and the rules appear fair to us. Applicants seeking grants of \$500,000 or more -- State or local governments, or eligible private non-profit agencies -- may now choose arbitration by three-judge panels of the Board as an alternative to the standard FEMA appeals process.

Under FEMA's regulations, if an applicant's appeal was pending with FEMA on August 31, 2009, or if FEMA had issued a determination on or after February 17, 2009, an applicant can elect the arbitration process no later than October 30. Otherwise, an applicant can elect this process within 30 calendar days after it receives FEMA's determination or by September 30, whichever is later. Election is made by sending a request to the Board's clerk, along with supporting documentation.

Allow me to outline the process under which we will hear these cases. When the clerk receives a request for arbitration, she assigns it a docket number. She selects one of our judges, in rotational order, to coordinate activities regarding the matter, and two other judges, at random, to work with the coordinating judge on the panel. She also informs the relevant State government that it may, within 15 calendar days, submit comments on the merits of the application. At the same time, she informs FEMA that it shall, within 30 calendar days, submit its own comments, along with supporting documentation.

Within 10 business days of receiving FEMA's comments, the coordinating judge will convene a telephone conference with the parties to address preliminary matters, such as clarification of the issues, and to schedule further proceedings. An applicant can choose to have the panel decide the case on the basis of the written record or on the basis of that record and an informal hearing. If the applicant chooses a decision on the basis of the written

record, the panel will make every effort to issue its decision within 60 calendar days of the date on which we received FEMA's comments. If the applicant chooses a hearing, the panel will conduct such a proceeding, without a court reporter. It will, if at all possible, conduct the hearing within 60 calendar days of the date of the conference, and it will make every effort to issue the decision within 60 calendar days of the end of the hearing. Decisions will be in writing, but they will also be short -- they will announce a result and explain its basis, but will not contain expositions of legal reasoning.

Madam Chair, the Board has not yet received any requests for arbitration of FEMA determinations. When cases arrive, they will be docketed and assigned to three-judge panels. We will then await comments from States and FEMA as to these requests. We look forward to working with the parties to resolve these disputes as quickly and as fairly as possible.

Stephen Daniels
Chairman
Civilian Board of Contract Appeals

Will any of your hearings be held on site in the Gulf Coast?

According to the regulations issued by the Federal Emergency Management Agency (FEMA) which govern arbitrations pursuant to section 601 of the American Recovery and Reinvestment Act of 2009, "If an in-person hearing is authorized, it will be held at a hearing facility of the arbitration panel's choosing." 44 CFR 206.209(h)(2) (as added by 74 Fed. Reg. 44,761, 44,768 (Aug. 31, 2009)). FEMA explained, in issuing this regulation, that "the [arbitration] panel may choose to have the hearing in Washington, DC." 74 Fed. Reg. at 44,765.

FEMA has also stated, in a "frequently asked questions" document, "Most of the arbitration panels are expected to be located in Washington, D.C."

<<<http://www.fema.gov/news/newsrelease.fema?id=49243>>>.

Although the Board anticipates abiding by this answer, it also expects that where an arbitration panel believes that the panel's analysis of an application would be materially enhanced by holding a hearing at a location in the Gulf Coast area, the panel will do so.

If FEMA was to move forward on . . . a program [of expanding the arbitration program to projects under \$500,000,] would the CBCA be able to implement it?

As I stated at the hearing, if the program is expanded to include additional applications, the Board will take whatever steps are necessary to make the program a success. The Board does not have sufficient experience with the arbitration program for me to be able to say, at this time, whether we could implement an expanded program with our current resources or would have to supplement those resources to make the program work.

Do you have any views on the merits of expanding arbitration below \$500,000?

I believe that promoting faster and fair resolution of disputes is generally beneficial to parties involved in disputes. As indicated in response to the previous question, I cannot at this time offer an opinion as to how such an expansion could best be implemented.

Written Statement of

David Garratt

Acting Deputy Administrator
Federal Emergency Management Agency
Department of Homeland Security



FEMA

"Final Breakthrough on Billion
Dollar Katrina Infrastructure Logjam:
How is it Working?"

Before the

Subcommittee on Economic Development, Public
Buildings, and Emergency Management
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC

September 29, 2009

Introduction

Good afternoon, Chairwoman Norton, Ranking Member Diaz-Balart, and other distinguished members of the Committee. It is a privilege to appear before you today on behalf of the Department of Homeland Security (DHS) and the Federal Emergency Management Agency (FEMA). As always, we appreciate your interest in and continued support of emergency management, specifically FEMA's recovery and rebuilding operations in the Gulf Coast. A few months ago, I appeared before this Committee and committed to working through the challenges in the Katrina-Rita recovery process, and I look forward to discussing both the continuing challenges and progress we have made since that time.

As you know, the amount of work that has been required to rebuild the Gulf Coast following the devastation caused by hurricanes Katrina and Rita has been extensive. To date, FEMA has obligated over 38,000 project worksheets to help rebuild the public infrastructure throughout Alabama, Louisiana, Mississippi and Texas. Over 22,000 of these worksheets are for projects in Louisiana alone.

The sheer magnitude of the devastation to infrastructure required an intense and sustained rebuilding effort, and we recognized that there would be

many challenges. However, by working in partnership with state and local officials, and with other federal agencies, we have made substantial progress. We have resolved a number of previously undecided and stalled projects in recent months. I am pleased to report that to date, FEMA has obligated over \$11.3 billion in Public Assistance funding to Gulf Coast states for hurricanes Katrina and Rita (including \$7.8 billion to Louisiana, \$2.9 billion to Mississippi, \$112.5 million to Alabama and \$379.2 million to Texas).

We acknowledge, however, that more work remains to be done. With the continued help of our federal, state, and local partners, I am confident that, as a team, we can successfully and collaboratively continue to move recovery of the Gulf Coast forward.

Recent Steps to Move the Gulf Coast Recovery Process Forward

Soon after assuming office, both Secretary Napolitano and Administrator Fugate demonstrated their commitment to Gulf Coast recovery by visiting New Orleans to hear first-hand the concerns of state and local officials. Since then, FEMA has undertaken a number of actions to speed the resolution of disputes and the pace of federal funding to Gulf Coast communities. We have reduced or eliminated a number of bureaucratic impediments that were obstructing

progress, put new leadership in place, consolidated our offices to increase efficiency, and streamlined decision-making.

Among the key new leaders who have been leading the recovery are Janet Woodka, the Federal Coordinator of Rebuilding in the Gulf Coast Region, and Tony Russell, appointed Acting Director of the Louisiana Transitional Recovery Office. Under their leadership, the federal-state partnership has never been stronger, more collaborative, or more productive. We have also simplified and streamlined our organization in the field. In April 2009, Secretary Napolitano announced the dissolution of the Gulf Coast Recovery Office, a provisional organization established after hurricanes Katrina and Rita to oversee the FEMA Alabama, Mississippi, Louisiana and Texas Transitional Recovery Offices. The Louisiana Transitional Recovery Office continues to handle day-to-day issues, and reports directly to FEMA HQ.

During the February 25th, hearing before this committee, FEMA advised that the Louisiana Governor's Office of Homeland Security and Emergency Preparedness had disbursed \$4.1 billion of the \$7.5 billion FEMA has obligated to applicants. However, as a result of these initiatives, and the enhanced coordination and partnership between FEMA, the state and Public Assistance applicants, significant progress has been achieved. Since that time, over \$1.2 billion in additional Public Assistance funding has been provided to rebuild

public infrastructure across the State of Louisiana, where the bulk of the disputes originated.

Additional progress has resulted from two innovative, joint federal-state Public Assistance teams established by Secretary Napolitano in March 2009—the Joint Expediting Team and the Unified Public Assistance Project Decision Team.

To expedite decisions on pending Public Assistance projects, the State of Louisiana and FEMA's Louisiana Transitional Recovery Office established a Joint Expediting Team, which is composed of technical and policy experts focused on providing applicants quick and fair resolutions. The team's purpose is to review requests, quickly obtain necessary documentation, conduct joint assessments of projects, and collaboratively work to expedite eligibility determinations. This team has successfully resolved 32 previously stalled projects.

On March 11, 2009, Secretary Napolitano also created a Unified Public Assistance Project Decision Team to make final eligibility decisions for disputed projects. This effort has ensured close coordination between FEMA and the state to identify disputes, and has further improved the decision-making process as well as sped recovery. Members of the team review stalled projects, evaluate areas or issues of disagreement related to these projects, and make final determinations that allow these stalled projects to once again move forward. To date, this team has been able to resolve 44 previously disputed cases. In addition,

they set a series of precedents that have empowered field personnel to resolve numerous additional projects involving similar issues before they became disputes.

Together, FEMA and the state continue to work together in a coordinated effort to resolve any new disputes as quickly as they are identified. In addition, these teams have worked to collaboratively address unresolved issues before they become formal disputes.

Building Upon the Momentum

FEMA's formal appeal process has always offered Public Assistance applicants the opportunity to request reconsideration of any FEMA program determinations. Further, the process allows for two levels of appeal. The first level is to the FEMA Regional Administrator; and the second level appeal is to the FEMA Assistant Administrator of Disaster Assistance at FEMA headquarters. The American Recovery and Reinvestment Act of 2009 (ARRA) provided FEMA with the authority to try a new and innovative, but optional, dispute resolution process: an arbitration panel to expedite recovery efforts in the Gulf Coast for hurricanes Katrina and Rita. Accordingly, on Aug. 6, 2009, Secretary Napolitano announced a new arbitration process available to applicants as an alternative to FEMA's formal appeal process.

Pursuant to this new process, a panel of arbitrators will be available to review certain disputes involving Public Assistance projects in excess of \$500,000 from the states of Mississippi, Alabama, Texas, and Louisiana. Any eligible applicant for federal Public Assistance funding as a result of damage incurred from hurricanes Katrina or Rita who: a) disputes a FEMA project eligibility determination and/or amount of the project award, and b) is currently eligible to avail themselves of the FEMA appeals process, may instead request a binding resolution of that dispute by an independent three-person arbitration panel. Applicants that have appealed the Regional Offices initial decision may request a second level appeal, which is decided by the FEMA HQ. If applicants have already received that second level appeal decision, or have a decision pending after Feb. 17, 2009, also may request arbitration. By requesting arbitration under this new process, the applicant waives their right to second level appeals process currently in place, and may not avail themselves to this process at a later date.

To minimize delays in decision-making, multiple third-party neutral arbitration panels will be established as needed to meet the caseload demand. Each panel will consist of three judges, entirely independent of the Department of Homeland Security or FEMA, and drawn from a federal pool of administrative law judges or other similar officials who currently serve on boards, commissions, and agencies. The Federal Civilian Board of Contract Appeals (CBCA) has agreed

to provide and coordinate the primary pool of judges. The judges with the CBCA are particularly well suited for this work, because they regularly adjudicate disputes between federal agencies and contractors (often construction contractors), and these disputes often involve large dollar amounts. The Chief Judge of the CBCA is Judge Stephen Daniels, who has a wealth of arbitration experience and expertise and has been practicing law for 37 years.

FEMA published a regulation providing detailed procedural guidance on the arbitration process in the Federal Register on Aug. 31, 2009. The regulation may be found at 44 CFR § 206.209. In general, the process for requesting a review by one of these arbitration panels will require a written request to the arbitration administrator within 30 days of a FEMA eligibility determination and/or award. Within 15 days of an applicant's request, the state may also submit its own written recommendation regarding that request.

The designated arbitration panel will consider all written statements and supporting documentation from the applicant, the state and the FEMA Regional Administrator. It is anticipated that most arbitrations will be decided based on the written statements provided by the parties. However, if any of the parties requests an oral hearing, hearings may be convened telephonically, via video conference, or in-person at the venue where the arbitration panel is located (most likely in Washington, D.C.). Additionally, each arbitration panel may seek the

expertise and advice of independent scientific or technical subject matter experts, such as engineers and architects.

The arbitration panel is expected to make every effort to reach a decision – determined by a majority – within 60 days. The decision of the majority of the arbitration panel is a final decision, binding on all parties. The final decision is not subject to further administrative or judicial review, except for some very limited exceptions permitted under the Alternative Dispute Resolution Act, 9 U.S.C. § 10. Applicants were able to request review of their projects under the new arbitration guidelines as of August 31, 2009, and may expect decisions on most matters within 60 days.

Conclusion

Over the past eight months, nothing has proven more crucial to our success in supporting an improved pace of recovery than the collaborative working relationships we have re-forged with our state and local partners. Despite that improvement, and the progress we have made, the recovery of the Gulf Coast has, and will continue to be, a top priority for FEMA, the Department, and this Administration.

Challenges remain, but we and our state and local partners will face them as a team, and I am confident we will ultimately overcome them together.

Thank you. I look forward to your questions.

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Get backs:

- 1) Chairwoman Norton/Rep. Cao – Update on the number of personnel currently employed in the LATRO and their functions.**

See attached

- 2) Rep. Cao - Is staff in Public Assistance staff at the Louisiana TRO being reduced?**

Staffing at the Louisiana TRO is being adjusted in direct relation to workload and program requirements. The Public Assistance staff numbers at the TRO have increased consistent with program requirements and workload analysis.

- 3) Why can't FEMA accept the local applicant's A&E costs under a certain threshold and let the State take the risk as the costs will have to be reconciled at closeout?**

FEMA will work with the State of Louisiana to identify any additional opportunities to streamline the process based on the applicant's estimations. FEMA will verify all parties understand the request, the risks involved and the level of review needed prior to implementation due to regulatory requirements as stated below.

However, FEMA is still required to review any version requests received are within the eligible scope of work. Regulation sets out the criteria that permanent work must meet in order to be eligible for Public Assistance funding:

44 CFR Part 206, Subpart H-Public Assistance Eligibility, § 206.223 “General Work Eligibility”

- (a) “General. To be eligible for financial assistance, an item of work must:
- (1) Be required as the result of the major disaster event,
 - (2) Be located within a designated disaster area, and
 - (3) Be the legal responsibility of an eligible applicant.”

- 4) Rep. Cao - Update on status on the Special CDL waivers. Mr. Garratt committed that FEMA would provide a status report and expectation as to when they will be forgiven. Chairwoman Norton gave FEMA 30 days to provide an update on the status of our regulations.**

Below is a timeline on the CDL Forgiveness regulations:

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- Following Hurricanes Katrina and Rita, Congress provided additional loan authority to FEMA to assist communities impacted by those hurricanes. FEMA provided over \$1.27 billion in Special Community Disaster Loans (Special CDLs) under that authority to communities in Mississippi and Louisiana.
- At the time the loans were granted, Congress expressly prohibited FEMA from forgiving any Special CDLs.
- Those loans become due in November 2010.
- In 2007, under the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110-28, § 4502(a), 119 Stat. 2061 (May 25, 2007) (2007 Act), Congress removed the loan cancellation prohibitions contained in the 2005 and 2006 Acts.
- This statutory change did not automatically cancel all Special Community Disaster Loans, but instead provided FEMA discretionary authority, limited by the language in section 417(c)(1) of the Stafford Act (42 U.S.C. 5184), to establish a process and criteria for eligible communities to apply for cancellation of their obligations under Special CDLs.
- When an agency implements procedures or practice requirements of this sort, it is required by the Administrative Procedure Act to do so through rulemaking. See 5 U.S.C. 551(4). The rulemaking process requires a general notice of proposed rulemaking to be published in the Federal Register.
- After notice, the agency must give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation. See 5 U.S.C. §553.
- On April 3, 2009, FEMA published a Notice of Proposed Rulemaking that proposed to revise its regulations to include the same cancellation requirements and procedures for the Special Community Disaster Loan program as the agency has been using for the Community Disaster Loan program. See 74 FR 15228. This rule does not propose the automatic cancellation of all Special Community Disaster Loans.
- FEMA's authority to provide cancellation is limited to those communities whose revenues during the three full fiscal year period following the major disaster are insufficient to meet its operating budget, including additional disaster-related expenses of a municipal operation character. The proposed procedures are intended to provide sufficient information to FEMA to determine when cancellation of a Special Community Disaster Loan, in whole or in part, is warranted.

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- FEMA received 68 comments on the proposed rule from members of Congress, States, cities, parishes, public and private non-profit service providers, public and private organizations, utilities, a school board, and individual citizens.
- All of these comments are available for review at www.regulations.gov in Docket FEMA-2005-0051.
- Many of these comments were very technical in nature and involved complex issues of State and local taxation that have taken time to adequately consider in the drafting of the final rule.
- FEMA will work with OMB to issue a final rule in 2009 or early 2010, to provide sufficient time for communities seeking Special CDL cancellation to apply for such cancellation before any loans become due in November 2010.

5) Rep. Cao - Update on the development of FEMA's National Disaster Recovery Strategy.

Below is an update on National Disaster Response Framework efforts are as follows:

- After PKEMRA, FEMA worked with its partner agencies of the Emergency Support Functions Leaders Group to develop a draft document that addressed the basic requirements of the legislation and provides solid resource information about disaster recovery and the current organizational structure for disaster recovery operations under the National Response Framework.
- However, because such a national strategy must be overarching and comprehensive, reflecting the entire range of recovery activities, development of this initiative was put on hold while FEMA completed the development and publication of the National Disaster Housing Strategy, published in January 2009.
- Since that time, FEMA has been working with its interagency partners to research, scope, and develop an overall approach that engages stakeholders to shape a more collaborative national framework for disaster recovery management.
- Building on the relationships formed and lessons learned during the development of the NDHS, FEMA has assigned oversight of the development of this initiative to Beth Zimmerman, the Assistant Administrator for Disaster Assistance in August 2009.
- On Thursday, September 3, 2009, Ms. Zimmerman held an internal kick-off meeting with representatives from FEMA's regional offices and directorates who will assist in organizing and staffing the initiative.
- Next steps include a forthcoming announcement to Federal Partners and stakeholders to invite their participation in shaping the initiative, visits with Congressional committees, and an intensive stakeholder engagement process.

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- Curtis Carleton is the POC on this initiative for DAD. He is the Director of Program Coordination and Planning and also heads the interagency ESF-14, Long Term Community Recovery.
 - On September 16, 2009, FEMA sent letters to leaders of our authorization and appropriations committees to update them on our progress. Attached is a copy of the letter we sent to Rep. Norton. We will continue to keep Congress updated on our efforts.
- 6) **Chairwoman Norton cited the progress FEMA has made (\$1.3 billion in PA since January 2009) and would like to know how FEMA has eliminated bureaucratic impediments.**
- a) **What were they?**
 - b) **Did any of our oversight committees approve the activities?**
 - c) **Which procedures and/or offices were consulted?**
 - d) **Were employees affected?**

Soon after assuming office, both Secretary Napolitano and Administrator Fugate demonstrated their commitment to Gulf Coast recovery by visiting New Orleans to hear first-hand the concerns of state and local officials. FEMA has reduced or eliminated a number of bureaucratic impediments that were obstructing progress, put new leadership in place, consolidated our offices to increase efficiency, and streamlined decision-making.

FEMA has undertaken a number of actions to speed the resolution of disputes and the pace of federal funding to Gulf Coast communities. All of the efforts that have been effective in expediting the Public Assistance (PA) funding process have been associated with building a stronger partnership with the state and applicants and organizing necessary reviews and discussions so that they occur concurrently rather than in a linear fashion. When there are questions regarding the formulation and content of a PA project, the state and FEMA jointly address the issue. Previously, there had been two separate review processes with the State of Louisiana's Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) and FEMA which extended the timeline for project funding and many projects that had resulted in disagreements between FEMA, the state and applicants had been stalled as all parties were not able to come to resolution.

In addition, the Joint Expediting Team (JET) was established, consisting of technical and policy experts from FEMA and GOHSEP, to increase efficiency. Rather than conduct separate reviews of version requests for existing obligated Project Worksheets, FEMA and GOHSEP agreed to set up a joint team to work through version request packages received from PA applicants as well as any other significant project related issues. The team's purpose is to review requests, quickly obtain any necessary documentation, conduct joint assessments of projects and collaboratively work to expedite eligibility determinations.

If resolution of project issues cannot be reached by the JET, they can then be referred to the Unified Public Assistance Project Decision Team (Decision Team). The Decision Team is

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comprised of senior level GOHSEP and FEMA representatives and was created as a higher level review team to review stalled projects, work through the issues that relate to these projects (documentation, eligibility, etc.), and make final determinations to move the project forward. If the determination of the team is not in favor of the applicant's request, the applicant still has the option to appeal the decision through the formal appeals' process or arbitration.

Given the size of the event, this creative approach has been successful in streamlining the process for resolving and/or making final eligibility determinations. In the past, project funding may have been delayed due to disagreements by various parties over scope of work or cost. This often resulted in stalled projects. This new process has facilitated faster resolution as all parties are now coming together and collaborating on bringing issues to resolution. The streamlining of the PA process has led to an additional \$1.4 billion in Public Assistance funding being obligated since January 2009.

There were two major organizational changes implemented to further streamline the Gulf Coast recovery processes:

1. On March 23, 2009, U.S. Department of Homeland Security (DHS) Secretary Janet Napolitano transitioned management oversight of the Mississippi Transitional Recovery Office from Biloxi, Mississippi, to FEMA's regional office in Atlanta, Georgia.

This office consolidation led to faster decision making and smoother and more efficient operations. It was an important step to finish the rebuilding effort and assist residents with getting back on their feet quicker. While day-to-day operations are still being performed locally, the regional office team is best positioned to guide the process of securing permanent housing for affected families, and recovering their communities.

2. On April 9, 2009, the U.S. Department of Homeland Security announced a further realignment of offices in the Gulf Coast. The Gulf Coast Recovery Office, a provisional operation created after Hurricanes Katrina and Rita to oversee the multi-state FEMA operations of the Alabama, Mississippi, Louisiana and Texas Transition Recovery Offices (TRO), was dissolved. The Louisiana Transitional Recovery Office assumed operations of the Gulf Coast Recovery Office. New leadership was also appointed to serve in the Louisiana Transitional Recovery Office in order to build a more collaborative and productive federal-state partnership.

The Gulf Coast Recovery Office, a provisional operation created after Hurricanes Katrina and Rita to oversee the multi-state FEMA operations of the Alabama,

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Mississippi, Louisiana and Texas Transition Recovery Offices (TRO), was dissolved. The Louisiana Transitional Recovery Office assumed operations of the Gulf Coast Recovery Office. New leadership was also appointed to serve in the Louisiana Transitional Recovery Office to build a more collaborative and productive federal-state partnership.

These decisions represented the commitment to ensure that FEMA has the best operational structure to support the most effective recovery process for the Gulf Coast. There were no delays or disruption of work as a result of this transition. Supportive transition services were provided to every Gulf Coast Recovery Office staff member to ensure they had every opportunity to seek and find meaningful employment.

Even though these initiatives have all led to significant Gulf Coast recovery progress much work still remains to be done. With the continued help of our federal, state and local partners, the Gulf Coast recovery will continue to move forward collaboratively and successfully.

- 7) **Page 5 of Garratt’s written testimony refers to 32 previously stalled projects that were successfully resolved by the Joint Expediting Team. Chairwoman Norton wants the names of each project and how the eligibility issues were resolved.**

See attached

GET BACKS

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Get backs:

1) Chairwoman Norton - FEMA to provide its interpretation on whether or not the arbitration panel can make decisions on policy matters.

- The arbitration panels provide an independent third party assessment. The arbitration panels assigned have complete authority to interpret all applicable laws, regulations and policies they believe necessary to arrive at a decision.
- At its request, the CBCA was provided a copy of the Stafford Act, regulations, the PA Guide and Digest for each of its judges, they also have access to all current PA policies, which are published online to make these determinations.
- Additionally, each arbitration panel will consider all relevant written statements and supporting documentation from the applicant, the State, and the FEMA Regional Administrator. Each panel will also provide all parties the opportunity to make an oral presentation (telephonically or in-person). Finally, each arbitration panel may seek the advice or expertise of independent scientific or technical subject matter experts, such as engineers and architects in making their decision.

2) Chairwoman Norton – FEMA to provide an interpretation of its authority to conduct arbitration outside of the ARRA legislation pursuant to 5 U.S.C. 572.

FEMA will consider whether to adopt in the future an arbitration process pursuant to 5 USC 572 that is in addition to the appeals process required by the Stafford Act. In doing so FEMA will of course consider the current arbitration process and the lessons learned from that process against the factors specified in 5 USC 572.

3) Chairwoman Norton – FEMA to provide its interpretation of the arbitration provision in the American Recovery and Reinvestment Act (PL 111-5) in terms of whether or not it disallowed applicants who qualified for arbitration from electing to utilize the FEMA appeals process instead.

FEMA believes a plain language reading of PL 111-5 requires FEMA only to make arbitration available but it does not require FEMA to take away the public assistance appeals process or to require applicants abandon the appeals process if an appeal is what they would like to pursue.

**Louisiana Transitional Recovery Office
Staffing**

| Office | CORE | PET/TFT | DAE | FEMA Total | Contractor Total |
|---------------------------|------------|----------|-----------|------------|------------------|
| Acquisitions | 12 | 0 | 0 | 12 | 0 |
| Administrative Services | 10 | 0 | 5 | 15 | 0 |
| ADR | 1 | 0 | 1 | 2 | 0 |
| Command Staff | 3 | 3 | 2 | 8 | 0 |
| Employee Relations | 0 | 0 | 0 | 0 | 0 |
| Environmental | 18 | 1 | 1 | 20 | 23 |
| ERO (HQ) | 5 | 0 | 0 | 5 | 0 |
| External Affairs | 19 | 0 | 3 | 22 | 0 |
| Finance | 16 | 0 | 0 | 16 | 1 |
| Hazard Mitigation | 59 | 0 | 0 | 59 | 7 |
| Individual Assistance | 114 | 0 | 17 | 131 | 0 |
| Logistics | 118 | 0 | 1 | 119 | 0 |
| Office of Chief Counsel | 7 | 0 | 0 | 7 | 0 |
| Operations | 2 | 0 | 0 | 2 | 0 |
| Planning | 0 | 0 | 7 | 7 | 0 |
| Program Management Office | 5 | 0 | 0 | 5 | 0 |
| Public Assistance | 114 | 1 | 50 | 165 | 290 |
| Records Management/FOIA | 3 | 0 | 0 | 3 | 0 |
| Safety | 5 | 0 | 0 | 5 | 0 |
| Security | 10 | 0 | 0 | 10 | 0 |
| Training | 5 | 0 | 0 | 5 | 0 |
| TOTAL | 527 | 7 | 90 | 618 | 326 |

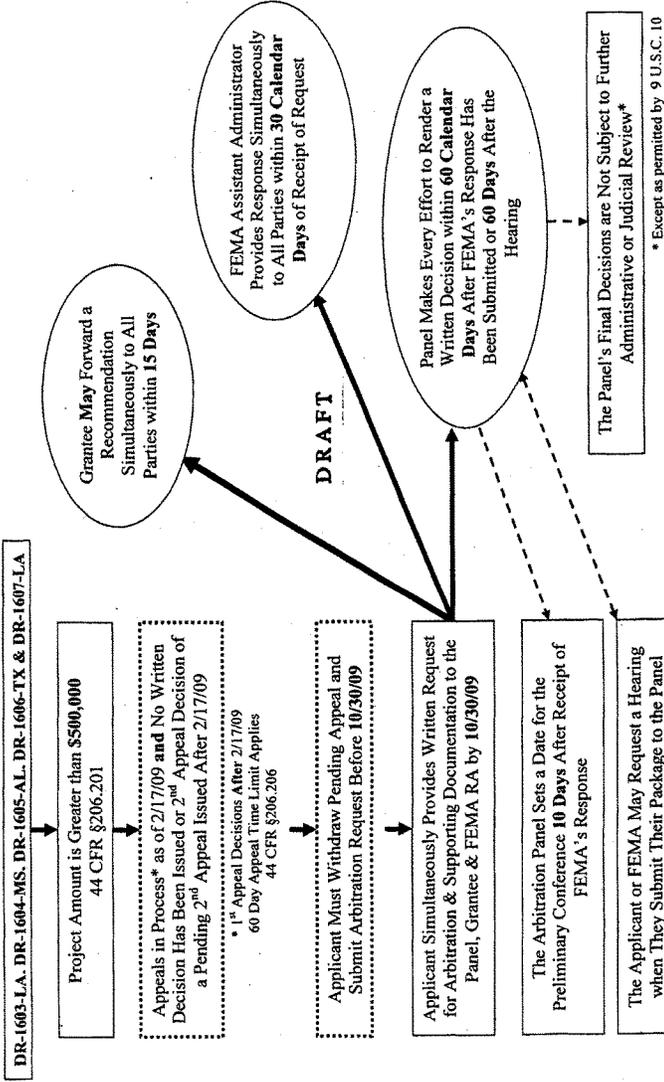
| Project | Status | Additional Funding Disbursed | Additional Funding Pending Obligations | Total Obligated (1P-4)P | Reason for Dispute | How Dispute was Resolved |
|--|----------------------------|------------------------------|--|-------------------------|--|---|
| Mandeville Deleaga Clinic | Replacement | \$ 1,450,825 | | \$ 1,511,089 | City sought replacement. | A joint evaluation was conducted with the Applicant, State, and FEMA and no eligible damages were discovered. As a result, the facility has been determined to be eligible for replacement. |
| Rosa Keller Library | Replacement | \$ 1,979,936 | | \$ 2,430,085 | City sought replacement. | A joint evaluation was conducted with the Applicant, State, and FEMA and additional eligible damages were discovered. As a result, the facility has been determined to be eligible for replacement. |
| Templeman I & II | Replacement | \$ 23,576,552 | | \$ 27,500,977 | City sought replacement. | Based upon a series of joint evaluations and meetings with the State and the city's architects and project managers, additional eligible damages were discovered. As a result, the facility qualified for replacement. |
| Robert E. Smith Library | Replacement | \$ 1,647,346 | | \$ 1,910,178 | City sought replacement. | A joint evaluation was conducted with the Applicant, State, and FEMA and additional eligible damages were discovered. As a result, the facility has been determined to be eligible for replacement. |
| Joseph Bluth/Rosenow City Courthouse Maintenance Bldg. & Golf Cart Storage | Repair | | \$ 2,030,264 | \$ 1,987,650 | City seeking improvements and replacement of certain facilities. | The facility was evaluated, additional eligible damages were discovered. As a result, the facility qualified for replacement. Scope alignment ongoing and in progress. |
| NOFD Engine #3 | Replacement | \$ 472,302 | | \$ 670,717 | City sought replacement. | The facility was determined to be eligible for replacement. Significant flood damage by the city's fire department. Significant repair work had begun, the FEMA team conducted a 50% repair vs. replacement analysis. The facility was determined to be eligible for replacement. |
| NOFD Engine #6 | Repair | \$ 159,493 | | \$ 238,216 | City seeking replacement. | Facility eligible for repair and floodproofing. Additional funding obligated to Applicant. |
| NOFD Engine #21 | Repair | \$ 348,625 | | \$ 515,639 | City seeking replacement. | Facility eligible for repair and floodproofing. Additional funding obligated to Applicant. |
| NOFD Police Stables & K9 Unit | Partial Repair/Replacement | | \$ 8,772 | \$ 409,105 | City seeking replacement of Main Stable Building. | Evaluation of the facilities were completed. The Main Stable Building is eligible for replacement. Main stable eligible for repair. Scope alignment in progress. |

| Project | State | Additional Funding (obligated) | Additional Funding (pending obligation) | Total Obligated (100-99) | Reason for Dispute | How Dispute was Resolved |
|-------------------------------------|-------------|--------------------------------|---|--------------------------|--|--|
| SUNO Brown Hall (Old Science) Bldg. | Replacement | \$ 10,079,448 | | \$ 12,143,347 | State sought replacement | Based upon a series of joint evaluations and meetings with the applicant, a consensus was reached between all parties that the facility is eligible for replacement. |
| SUNO New Science Bldg. | Replacement | \$ 6,079,813 | \$ 4,732,168 | \$ 7,541,989 | State sought replacement | Based upon a series of joint evaluations and meetings with the applicant, a consensus was reached between all parties that the facility is eligible for replacement. |
| SUNO Clark Hall- Education Bldg. | Replacement | \$ 6,431,219 | \$ 7,521,987 | \$ 8,468,352 | State sought replacement | Based upon a series of joint evaluations and meetings with the applicant, a consensus was reached between all parties that the facility is eligible for replacement. |
| SUNO Multi-Purpose Classroom Bldg. | Replacement | \$ 11,359,342 | \$ 2,090,921 | \$ 17,268,182 | State sought replacement | Based upon a series of joint evaluations and meetings with the applicant, a consensus was reached between all parties that the facility is eligible for replacement. |
| SUNO Admin Building | Repair | | \$ (65,150) | \$ 1,391,189 | State originally sought replacement and requested re-evaluation. | Evaluation completed and facility remains eligible for repair. State is in agreement with these findings. Mitigation plans in progress for the facility. |
| SUNO University Center Bldg | Repair | | | \$ 317,813 | State originally sought replacement and requested re-evaluation. | Evaluation completed and facility remains eligible for repair. State is in agreement with these findings. Mitigation plans in progress for the facility. |
| SUNO Library | Repair | | \$ 1,098,102 | \$ 1,455,112 | State originally sought replacement and requested re-evaluation. | Evaluation completed and facility remains eligible for repair. State is in agreement with these findings. Mitigation plans in progress for the facility. |
| RTA Plaza Building | Repair | \$ 497,659 | | \$ 2,095,615 | Applicant sought replacement | Requested the facility and captured all damages captured. Applicant remains eligible for repair. Additional funding obligated to Applicant. |
| Crocker ES | Replacement | \$ 20,041,796 | | \$ 22,372,372 | Applicant sought replacement | Evaluation completed and additional eligible damages captured. As a result, the building now qualifies for replacement. |
| Our Lady of Lourdes Cafeteria | Replacement | | \$ 2,344,208 | \$ - | Applicant sought replacement | Evaluation completed and additional eligible damages captured. As a result, the building now qualifies for replacement. |
| St. David Commodity Bldg | Replacement | | \$ 112,719 | \$ - | Applicant sought replacement | Evaluation completed and additional eligible damages captured. As a result, the building now qualifies for replacement. |
| St. David Kindergarten | Replacement | \$ 68,978 | | \$ 69,670 | Applicant sought replacement | Evaluation completed and additional eligible damages captured. As a result, the building now qualifies for replacement. |

| Project | Status | Additional Funding Available | Estimated Project Cost | Estimated Replacement Cost | Reason for Dispute | City/State/Other Agency | Notes |
|---|--|------------------------------|------------------------|---|--------------------|-------------------------|---|
| City of New Orleans Camellion Holiday Home Center | Replacement | \$ 1,369,264 | \$ 1,432,786 | City sought replacement. | | | A joint evaluation was conducted with the Applicant, State, and FEMA and additional eligible damages were discovered. As a result, the facility has been determined to be eligible for replacement. |
| Katherno Benson Clinic | Replacement | \$ 655,331 | \$ 774,145 | City sought replacement. | | | A joint evaluation was conducted with the Applicant, State, and FEMA and additional eligible damages were discovered. As a result, the facility has been determined to be eligible for replacement. |
| NOPD #5 | Replacement | \$ 2,857,560 | \$ 3,367,871 | City sought replacement. | | | A joint evaluation was conducted with the Applicant, State, and FEMA and additional eligible damages were discovered. As a result, the facility has been determined to be eligible for replacement. |
| NOPD #7 | Replacement | \$ 2,227,587 | \$ 3,003,678 | City sought replacement. | | | A joint evaluation was conducted with the Applicant, State, and FEMA and additional eligible damages were discovered. As a result, the facility has been determined to be eligible for replacement. |
| New Orleans Fire Station #36 | Replacement | \$ 2,054,353 | \$ 2,169,507 | Facility was originally found to be a repair. FEMA performed a reassessment and found it to be a replacement. | | | FEMA located adjacent to NOPD #7 (replacement) found eligible for replacement. Additional funding obligated to Applicant. |
| St. Louis de Marillac School Bldg | Repair (Alternate Project) | | \$ 572,506 | Alternate Project requested, however, the Applicant faced public opposition over proposed location change. | | | The applicant has elected not to pursue the alternate project at the proposed site. Plans are in progress towards future projects. Applicant will notify FEMA once plans are finalized. |
| Wentwood Playground Concession Bldg | Replacement (Improved Project Approval in process) | | \$ 607,306 | Applicant sought replacement | | | Initial estimate was found to be undervalued. FEMA revised estimate. Facility now eligible for replacement. |
| Timber Admin Bldg 1* | Repair | | \$ - | Applicant sought replacement | | | FEMA performed an evaluation of the facility; facility remains a repair. |
| Timber Admin Bldg 1* | Repair | | \$ - | Applicant sought replacement | | | FEMA performed an evaluation of the facility; facility remains a repair. |

| Project | Status | Additional Funding Considered | Maximum Available for Meeting Obligations | From Other Sources (FIS Loan) | Request for Offer/Alternate Project received | Other Available Funds |
|--|------------------------------------|-------------------------------|---|-------------------------------|--|--|
| St. Mary of Angels School | Repair | \$ 262,227 | | \$ 3,195,619 | However, the Applicant faced opposition over proposed location change | The applicant has secured US purchase the alternate project at the proposed site. Plans are in development to utilize eligible funds for future projects. Applicant will notify FEMA once plans are finalized. |
| St. Bernard Port, Harbor, and Terminal District Bldg 170 | Repair (improved Project approved) | | | \$ 1,211,761 | Applicant believed that the scope and its associated cost was not complete and accurate. | A version has been written to capture all eligible scope of work and all costs have been updated to reflect current pricing. |
| TOTALS | | \$ 262,227 | | \$ 4,407,380 | | \$ 127,213,602 |

After 2/17/09 – Pending Appeal or Final Determination Issued
DRAFT Arbitration Process for FEMA Gulf Coast Disasters DRAFT

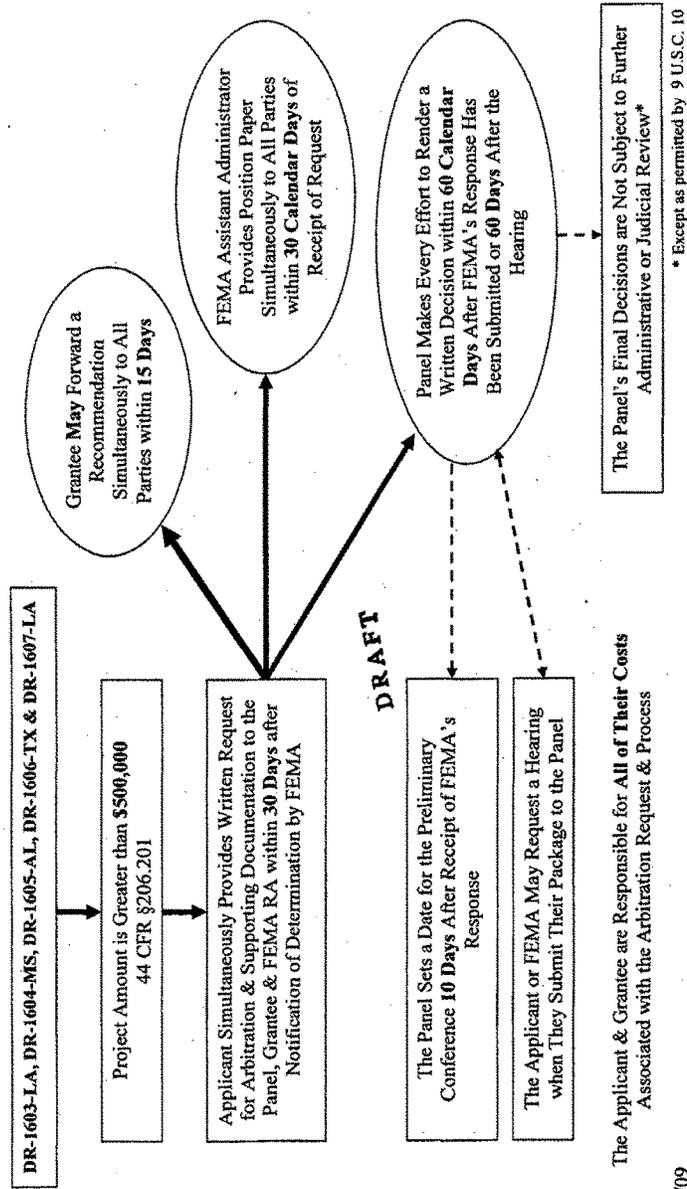


The Applicant & Grantee are Responsible for All of Their Costs Associated with the Arbitration Request & Process

8/22/09

* Except as permitted by 9 U.S.C. 10

After 8/31/09 - Arbitration in Lieu of Appeal
D R A F T A r b i t r a t i o n P r o c e s s f o r F E M A G u l f C o a s t D i s a s t e r s D R A F T



| | |
|------------|--|
| Question#: | 1 |
| Topic: | ground |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

Submitted by FEMA – Department of Homeland Security

Question: How many people does FEMA have on the ground in Louisiana dedicated to the recovery effort?

Response:

| Office | CORE | PFT/TFT | DAE | FEMA Total | Contractor Total |
|---------------------------|------------|----------|-----------|------------|------------------|
| Acquisitions | 12 | 0 | 0 | 12 | 0 |
| Administrative Services | 10 | 0 | 5 | 15 | 0 |
| ADR | 1 | 0 | 1 | 2 | 0 |
| Command Staff | 3 | 3 | 2 | 8 | 0 |
| Employee Relations | 0 | 0 | 0 | 0 | 0 |
| Environmental | 18 | 1 | 1 | 20 | 23 |
| ERO (HQ) | 5 | 0 | 0 | 5 | 0 |
| External Affairs | 19 | 0 | 3 | 22 | 0 |
| Finance | 16 | 0 | 0 | 16 | 1 |
| Hazard Mitigation | 59 | 0 | 0 | 59 | 7 |
| Individual Assistance | 114 | 0 | 17 | 131 | 0 |
| Logistics | 118 | 0 | 1 | 119 | 0 |
| Office of Chief Counsel | 7 | 0 | 0 | 7 | 0 |
| Operations | 2 | 0 | 0 | 2 | 0 |
| Planning | 0 | 0 | 7 | 7 | 0 |
| Program Management Office | 5 | 0 | 0 | 5 | 0 |
| Public Assistance | 114 | 1 | 50 | 165 | 290 |
| Records Management/FOIA | 3 | 0 | 0 | 3 | 0 |
| Safety | 5 | 0 | 0 | 5 | 0 |
| Security | 10 | 0 | 0 | 10 | 0 |
| Training | 5 | 0 | 0 | 5 | 0 |
| TOTAL | 526 | 5 | 87 | 618 | 321 |

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|-------------------|--|
| Question#: | 2 |
| Topic: | impediments |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

Question: At the bottom on page three of your testimony you mention that FEMA has eliminated a number of bureaucratic impediments.

What were these impediments?

Did the IG or any oversight body concur with the elimination?

Which offices were consolidated? Where any employees effected?

Response:

Soon after assuming office, both Secretary Napolitano and Administrator Fugate demonstrated their commitment to Gulf Coast recovery by visiting New Orleans to hear first-hand the concerns of State and local officials. FEMA has reduced or eliminated a number of bureaucratic impediments that were obstructing progress, put new leadership in place, consolidated our offices to increase efficiency, and streamlined decision-making.

FEMA has undertaken a number of actions to speed the resolution of disputes and the pace of federal funding to Gulf Coast communities. FEMA has provided briefings and updates to committee staff to apprise them of our efforts and ensure their awareness of our activities. All of these efforts that have been effective in expediting the Public Assistance (PA) funding process have been associated with building a stronger partnership with the State and applicants and organizing necessary reviews and discussions so that they occur concurrently rather than in a linear fashion.

When there are questions regarding the formulation and content of a PA project, the State and FEMA jointly address the issue through the Joint Expediting Team (JET). The JET was established, consisting of technical and policy experts from FEMA and GOHSEP, to increase efficiency. Rather than conduct separate reviews of version requests for existing obligated Project Worksheets, FEMA and the State of Louisiana's Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) agreed to set up a joint team to work through version request packages received from PA applicants as well as any other significant project related issues. The team's purpose is to review requests, quickly obtain any necessary documentation, conduct joint assessments of projects and collaboratively work to expedite eligibility determinations. Previously, there had been two separate review processes with GOHSEP and FEMA which extended the timeline for project funding and many projects that had resulted in disagreements between FEMA, the State, and applicants had been stalled as all parties were not able to come to resolution.

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| Question#: | 2 |
| Topic: | impediments |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

If resolution of project issues cannot be reached by the JET, they can then be referred to the Unified Public Assistance Project Decision Team (Decision Team). The Decision Team is comprised of senior level GOHSEP and FEMA representatives and was created as a higher level review team to review stalled projects, work through the issues that relate to these projects (documentation, eligibility, etc.), and make final determinations to move the project forward. If the determination of the team is not in favor of the applicant's request, the applicant still has the option to appeal the decision through the formal appeals process or arbitration.

Given the size of the event, this creative approach has been successful in streamlining the process for resolving and/or making final eligibility determinations. In the past, project funding may have been delayed due to disagreements by various parties over scope of work or cost. This often resulted in stalled projects. This new process has facilitated faster resolution as all parties are now coming together and collaborating on bringing issues to resolution. The streamlining of the PA process has led to an additional \$1.4 billion in Public Assistance funding being obligated since January 2009.

There were two major organizational changes implemented to further streamline the Gulf Coast recovery processes:

1. On March 23, 2009, U.S. Department of Homeland Security (DHS) Secretary Janet Napolitano transitioned management oversight of the Mississippi Transitional Recovery Office from Biloxi, Mississippi, to FEMA's regional office in Atlanta, Georgia.

This office consolidation led to faster decision-making and smoother and more efficient operations. It was an important step to finish the rebuilding effort and assist residents with getting back on their feet quicker. While day-to-day operations are still being performed locally, the regional office team is best positioned to guide the process of securing permanent housing for affected families, and recovering their communities.

2. On April 9, 2009, the U.S. Department of Homeland Security announced a further realignment of offices in the Gulf Coast. The Gulf Coast Recovery Office, a provisional operation created after Hurricanes Katrina and Rita to oversee the multi-state FEMA operations of the Alabama, Mississippi, Louisiana, and Texas Transition Recovery Offices (TRO), was dissolved. The Louisiana Transitional Recovery Office assumed operations of the Gulf Coast Recovery Office. New leadership was also appointed to serve in the

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| Question#: | 2 |
| Topic: | impediments |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

Louisiana Transitional Recovery Office in order to build a more collaborative and productive federal-State partnership.

These decisions represented the commitment to ensure that FEMA has the best operational structure to support the most effective recovery process for the Gulf Coast. There were no delays or disruption of work as a result of this transition. Supportive transition services were provided to every Gulf Coast Recovery Office staff member to ensure they had every opportunity to seek and find meaningful employment.

Even though these initiatives have all led to significant Gulf Coast recovery progress much work still remains to be done. With the continued help of our federal, State, and local partners, the Gulf Coast recovery will continue to move forward collaboratively and successfully.

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| Question#: | 3 |
| Topic: | arbitration |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

Question: What do you think needs to be the focus to make the arbitration process successful?

If applicants ask for an arbitration hearing in their home state, will FEMA agree?

Response:

The new arbitration system will further the Hurricane Katrina/Rita recovery efforts by providing final adjudication of disputes arising from Public Assistance projects by an independent, neutral panel of arbitrators. The arbitrators are judges serving on the Civilian Board of Contract Appeals.

In most cases, the arbitrators will use written statements provided by the applicants to render a final decision. If any of the parties involved requests an oral hearing, the hearings can take place telephonically, via video conferencing, or in-person. The Civilian Board of Contract Appeals has the authority to decide on the location of in-person oral hearings. Based on scheduling needs and the time necessary for a panel to travel, we anticipate most oral hearings will be held in Washington, DC. However, State or local government officials are not required to travel to Washington, DC for an oral hearing.

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| Question#: | 4 |
| Topic: | threshold |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

Question: Is FEMA considering using other existing authority to provide arbitration for projects below the \$500,000 threshold. Does FEMA believe arbitration below the \$500,000 threshold would be constructive in expediting public assistance in the Gulf Coast. If so why, if so why not?

Will the standard FEMA appeals process also be available to applicants?

Response:

No, FEMA is not considering using other existing authorities to provide arbitration for projects below the \$500,000 threshold. FEMA will evaluate the arbitration process in the fourth quarter of FY 2010 to determine if it accelerates applicants' recovery and is appropriate to implement in other disasters.

In order to expedite all projects, FEMA has implemented initiatives to streamline the Gulf Coast recovery processes, such as, the Joint Expediting Team and the Unified Public Assistance Project Decision Team.

To expedite decisions on pending Public Assistance projects, the State of Louisiana and FEMA's Louisiana Transitional Recovery Office established a Joint Expediting Team, which is composed of technical and policy experts focused on providing applicants quick and fair resolutions. The team's purpose is to review requests, quickly obtain necessary documentation, conduct joint assessments of projects, and collaboratively work to expedite eligibility determinations. This team has successfully resolved 32 previously stalled projects.

On March 11, 2009, Secretary Napolitano also created a Unified Public Assistance Project Decision Team to make final eligibility decisions for disputed projects. This effort has ensured close coordination between FEMA and the State to identify disputes, and has further improved the decision making process as well as helped speed the recovery. Members of the team review stalled projects, evaluate areas or issues of disagreement related to these projects, and make final determinations that allow these stalled projects to once again move forward. To date, this team has resolved 44 previously disputed cases. In addition, this team set a series of precedents that have empowered field personnel to resolve numerous additional projects involving similar issues before they became disputes.

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| Question#: | 4 |
| Topic: | threshold |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

FEMA and the State continue to work together in a coordinated effort to resolve new disputes as quickly as they are identified. In addition, these teams have worked to collaboratively address unresolved issues before they become formal disputes. These have all led to significant Gulf Coast recovery progress and represent the commitment to ensure that FEMA has the best operational structure to support the most effective recovery process for the Gulf Coast.

FEMA's experience is that these measures, along with the statutory appeals process available under our authorities have worked successfully in many cases to resolve projects that fall below that threshold.

Will the standard FEMA appeals process also be available to applicants?

The standard appeals process required by the Stafford Act and 44 CFR 206.206 remains available. Applicants may elect to pursue this appeals process or the new arbitration process.

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| Question#: | 5 |
| Topic: | HR 3247 |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

Question: Do you think any provisions of HR 3247 from the 110th Congress would still be useful in expediting the recovery from Hurricanes Katrina and Rita? If so which ones and how?

Response:

We will continue to work with Congress to help FEMA improve and clarify our authorities that we might be able to swiftly and decisively serve the American people in times of disaster, but no further legislation is needed at this time.

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| Question#: | 6 |
| Topic: | background |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

Question: Since you did not provide a written statement, can you describe your background for the record?

Response:

Charlie Axton entered the emergency management field in January of 1997 following the severe storms and flooding that impacted the states of Oregon, Idaho, and Washington. Initially, he was responsible for managing the Public Assistance program in the State of Idaho as the State Public Assistance Officer. He later moved to FEMA Region X and has worked for 11 years in the regional office as a PA Program Specialist, Emergency Analyst, and Disaster Assistance Division Director.

He has served in numerous capacities in field operations throughout Region X, Utah, South Carolina, Alabama, and Louisiana.

He has also previously been detailed to FEMA HQ to work in the Disaster Operations Directorate, Disaster Assistance Directorate, and with the National Disaster Housing Task Force.

Currently, Charlie is the Director of the Disaster Assistance Division for FEMA Region X, in which he has been responsible for the delivery and implementation of the disaster assistance programs and functions, which includes the oversight of all Public Assistance grants and Individual Assistance programs.

He was detailed to HQ in August 2009 to serve as the Acting Deputy Assistant Administrator for the Disaster Assistance Directorate.

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| Question#: | 7 |
| Topic: | difference |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

Question: What is the difference between the Joint Expediting Team and the Unified Public Assistance Project Decision Team?

Response:

FEMA introduced a number of actions to speed the resolution of disputes and the pace of federal funding to Gulf Coast communities. All of the efforts that have been effective in expediting the Public Assistance (PA) funding process have been associated with building a stronger partnership with the State and applicants and organizing necessary reviews and discussions so that they occur concurrently rather than in a linear fashion. When there are questions regarding the formulation and content of a PA project, the State and FEMA jointly address the issue. Previously, there had been two separate review processes with the State of Louisiana's Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP) and FEMA, which extended the timeline for project funding.

FEMA and GOHSEP established the Joint Expediting Team (JET), consisting of technical and policy experts, to establish a joint review process. Rather than conduct separate reviews of version requests for existing obligated Project Worksheets, FEMA and GOHSEP agreed to set up a joint team to work through version request packages received from PA applicants as well as any other significant project related issues. The team's purpose is to review requests, quickly obtain any necessary documentation, conduct joint assessments of projects, and collaboratively work to expedite eligibility determinations. As a result, FEMA, GOHSEP, and the applicants have been able to resolve issues on numerous projects that had stalled due to disagreements between FEMA, the State, and applicants.

If the JET cannot reach resolution on project issues, it can refer matters to the Unified Public Assistance Project Decision Team (Decision Team). The Decision Team is comprised of senior level GOHSEP and FEMA representatives and was created as a higher level review team to review stalled projects, work through the issues that relate to these projects (documentation, eligibility, etc.), and make final determinations to move the projects forward. If the determination of the Decision Team is not in favor of the applicant's request, the applicant still has the option to appeal the decision through the formal appeals process or arbitration.

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| Question#: | 7 |
| Topic: | difference |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

Given the size of the event, this creative approach has been successful in streamlining the process for resolving and/or making final eligibility determinations. In the past, various parties may have delayed project funding due to disagreements over scope of work or cost. This often resulted in stalled projects. This new process has facilitated faster resolution as all parties are now coming together and collaborating on bringing issues to resolution. The streamlining of the PA process has led to an additional \$1.4 billion for 2,165 projects in Public Assistance funding obligations since January 2009.

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| Question#: | 8 |
| Topic: | manpower |
| Hearing: | Arbitration cases being handled in the wake of Hurricane Katrina |
| Primary: | The Honorable Eleanor Holmes Norton |
| Committee: | TRANSPORTATION (HOUSE) |

Question: Do you think you have sufficient manpower to move forward? Mr. Taffaro in his testimony describes manpower is a major shortcoming. Mr. Taffaro says FEMA has engaged in "right sizing". What is that?

Response:

Yes. On April 9, 2009, the U.S. Department of Homeland Security announced a further realignment of offices in the Gulf Coast. The Gulf Coast Recovery Office, a provisional operation created after Hurricanes Katrina and Rita to oversee the multi-state FEMA operations of the Alabama, Mississippi, Louisiana, and Texas Transition Recovery Offices (TRO), was dissolved. New leadership was appointed to serve in the Louisiana TRO in order to build a more collaborative and productive federal-State partnership.

These decisions represented FEMA's commitment to ensure the best operational structure is in place to support the most effective recovery process for the Gulf Coast. There were no delays or disruption of work as a result of this transition. Supportive transition services were provided to every Gulf Coast Recovery Office staff member to ensure they had every opportunity to seek and find meaningful employment.

As in all disaster recovery operations, as the need for FEMA resources is met in a disaster area, the need for the supporting staff is diminished. FEMA refers to the process of adjusting staff numbers to correspond with need as "right-sizing". Staffing at the Louisiana TRO is being adjusted in direct relation to workload and program requirements. However, the Public Assistance staff numbers at the TRO have increased over the past few months to remain consistent with program requirements and workload analysis.

Testimony of Paul Rainwater

Executive Director of the Louisiana Recovery Authority

**Before the U.S. House of Representatives Committee on Transportation
and Infrastructure**

**Subcommittee on Economic Development, Public Buildings
and Emergency Management**

September 29, 2009

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Rainwater / page 1

Thank you for allowing me to testify today about Louisiana's recovery from hurricanes Katrina and Rita. I am Paul Rainwater, the executive director of the Louisiana Recovery Authority and Governor Bobby Jindal's Authorized Representative to the Federal Emergency Management Agency for recovery from hurricanes Katrina, Rita, Gustav and Ike. In these roles, I serve as the governor's chief hurricane recovery advisor, and I have broad oversight for more than \$20 billion worth of federal recovery funds, including the more than \$8.5 billion in FEMA Public Assistance funding obligated to the state of Louisiana for those four disasters.

I work in conjunction with the staff of the Governor's Office of Homeland Security and Emergency Preparedness, which manages the day-to-day functions of the PA program in Louisiana. Together, these two agencies, on behalf of the State of Louisiana, take very seriously the responsibilities of managing the Public Assistance funds obligated for these disasters. As bureaucratic as the federal regulatory requirements are, we are proud to have reimbursed more than \$5 billion to recovering communities. Currently, it takes our staff less than 10 days to process and pay request for reimbursements to applicants.

Though the subject of this hearing is recovery from hurricanes Katrina and Rita, it is relevant to remember that Louisiana also is recovering from two hurricanes from 2008, Gustav and Ike, which have greatly compounded our Katrina and Rita recovery efforts. So far, we have more than \$615 million in PA funds obligated for the 2008 storms, and we have reimbursed PA applicants more than \$396 million. I feel that I can confidently state that right now, the state of Louisiana has the dubious honor of being FEMA's largest customer, and could stay this way for quite some time.

Since I testified before this Subcommittee about the status of the FEMA Public Assistance program in February of this year, we have seen an increase in the amount of funds obligated for projects, including several high-profile projects that often were used to exemplify disagreements between the state of Louisiana and FEMA. I believe in giving credit where credit is due, and since President Obama took office, FEMA has obligated more than \$1 billion in additional funding to Louisiana projects. I believe in large part this is due to the new FEMA leadership in Louisiana and their willingness to take a stronger partnership approach to the recovery efforts.

Rainwater / page 2

Several large projects come to mind, including \$16 million recently obligated to Tulane University to mitigate the Howard Tilton Memorial Library against future storm damages. This library is a federal documents repository and the project had been stalled for years, with the documents stored in trailers with temporary HVAC systems. This was in addition to \$32.9 million obligated just weeks before to reconcile costs for Katrina-related repair work across the campus at Tulane.

FEMA also provided an additional \$19.4 million to reimburse Dillard University in New Orleans for emergency protective measures taken after Hurricane Katrina, including security, debris and mud removal and stabilizing buildings and removing their contents. And in August, Secretary Napolitano and FEMA Administrator Fugate visited the campus of Southern University at New Orleans to announce an additional \$32 million for the campus, which was devastated by Katrina. College officials had spent years going back and forth with FEMA about getting necessary funding to rebuild, and four years after the disaster they now have the \$92 million necessary to plan their recovery.

A few other notable examples include:

- The obligation of an additional \$21.7 million for New Orleans schools, including \$18.7 million to the Orleans Parish School Board for extra costs to replace three buildings at Edward Hynes Elementary and another \$3 million for the Holy Cross School. In addition, FEMA has obligated \$8.4 million more to pay for lost contents in Orleans Parish School Board facilities;
- Consolidated funding of \$13.5 million to allow Plaquemines Parish to combine two damaged clinics into one state-of-the-art health facility for the parish;
- More than \$3 million to replace the administration building at Nunez Community College in St. Bernard Parish;
- An additional \$23.3 million obligated to the city of New Orleans to fund the extra costs necessary to replacement of Templeman Prisons I and II because the facilities were deemed more than 50 percent damaged.

This is not to say every problem is solved. We have much work left to be done, as a recent survey by the Governor's Office of Homeland Security and Emergency Preparedness identified

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4,238 project worksheets that still need to be "versioned." These projects essentially remain in some level of dispute over what the final amount of the project worksheet could be. Our PA applicants have valued the unrecognized damage at more than \$5.8 billion. It is our estimate that the total value of eligible public assistance funding for Katrina/Rita could exceed \$12 billion.

If this number sounds large, I would remind you that when I came into my role as the Governor's Authorized Representative to FEMA in January of 2008, FEMA employees told the state of Louisiana that we would never exceed \$5 billion in total PA obligations. Today, we have more than \$8 billion in PA funding obligated. That is more than \$3 billion worth of funding for which many people fought very hard. And that represents thousands of projects that were stalled and could not move forward. By our current estimates we still have a considerable amount of work to be done to fully recognize all eligible damages related to these two disasters.

We do feel that we have a better partner in FEMA than we did this time last year. But, to be clear, the longer it takes for those last billions to be freed up for the applicants, the longer our recovery labors on, as many projects simply cannot move forward without the applicant knowing a final answer on its level of funding. This simply is the reality we face each day in Louisiana. FEMA's process for identifying eligible funding through the versioning process is cumbersome and inefficient and causes serious delay in an applicant's ability to proceed with its recovery efforts.

Some of these disputes can be solved without ever having to go into the appeals process, with FEMA, state and local staff sitting down together to crunch numbers, as we do many times on a daily basis. Others must be decided by the traditional FEMA appeals process and still others will go before the newly created arbitration panel.

We were pleased that the Department of Homeland Security has implemented rules for the arbitration of disputes between Public Assistance applicants and FEMA. The state has long advocated for this kind of independent review, and we are hopeful that it will result in a fair process for both the federal government and our state and local PA applicants.

Currently the state has 30 projects that could qualify for the arbitration panel, but as I testified earlier, we have thousands of projects that are still being discussed and, based on past

Rainwater / page 4

experience, we see the potential to bring additional disputes to the arbitration panel in the future. We do not intend to use the arbitration panel to settle every case and will choose our particular projects thoughtfully.

A discussion of the arbitration panel would not be complete without mentioning the state's largest project worksheet, for the replacement of the Medical Center of Louisiana at New Orleans, commonly referred to as "the Charity Hospital". The state and FEMA have been in dispute for years over this facility. Based on three separate studies, the state has argued that the facility is more than 50 percent damaged, meaning FEMA should obligate the full replacement cost for the hospital, which amounts to \$492 million. FEMA already has denied the state's first appeal on this project worksheet.

In August, the state submitted its documentation for a second appeal to FEMA, but asked the agency to hold off on processing this appeal until such time as we could review the arbitration regulations and make an informed decision about our path forward. FEMA assured us that it would not be issuing any second appeal denials before October 30, which is our deadline to submit documentation on currently eligible arbitration panel projects. Right now, the state is preparing its documentation to submit the Charity Hospital project worksheet to the independent arbitration panel for a decision. We do believe that this arbitration panel could be the quickest way for the state to get the full replacement costs for the facility.

In addition to this movement for fair funding from FEMA, several weeks ago Louisiana State University and Tulane University signed a historic agreement about the governance of the hospital. Momentum is building behind the new teaching hospital that would offer world-class medical care to the region, create jobs and train the next generation of medical professionals. A final, fair decision on the amount of funding the state will get from FEMA will put us one step closer to realizing the state's vision for the construction of a new medical center and a new purpose for the historic Charity Hospital building in downtown New Orleans.

Remaining Challenges

My only complaint about Tony Russell is that there is only one of him. Because of years of lingering disagreements between the state and FEMA, the pipeline is full of problems for him to fix and disputes for him to mitigate. Mr. Russell has been an asset to the state and to FEMA, a

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champion for local applicants and an honest partner. But we keep Mr. Russell busy. In many cases his intervention is necessary to ensure that lower level FEMA employees resolve problems with applicants.

One case in point is the lump sum agreement with the Recovery School District. This is a huge victory for the state, for FEMA and for the Recovery School District in New Orleans. FEMA had direction from Congress and the ability to affect this change for months and months, yet it took Tony Russell's intervention before the agency's staff would move forward to implement the policy.

This should not be necessary. But if it is, our state would benefit if we had three times the decision-making capacity we have now, otherwise it is possible that this time next year, we still will have billions of dollars in dispute. There are two important things the state of Louisiana needs from FEMA to speed its recovery:

- a cadre of qualified professionals that have the experience necessary to quickly identify and value eligible damage;
- a streamlining of the versioning process so that we can quickly version the almost 5,000 projects that are currently undervalued.

We have seen progress through the decision teams sent to the Gulf Coast to focus on solving problems and would encourage the addition of staff and the creation of more decision teams to focus on specific sectors in the recovery. For example, FEMA could create a team focused only on higher education projects, one dedicated to public safety issues and another devoted to primary and secondary school facilities. This would allow staff members to specialize in their areas of expertise and address issues across multiple applicants if necessary.

So while we have seen vast improvement thanks to the efforts of Mr. Russell, Administrator Fugate and Secretary Napolitano, the long-term challenge for FEMA is to ensure that positive changes to assist state and local applicants are engrained in the rank-and-file FEMA employees and to ensure that Louisiana has significant levels of support to work through a large number of project worksheets for several years to come.

**Paul Rainwater
Executive Director
Louisiana Recovery Authority**

• What are the most significant changes you have seen in the public assistance process since you testified before us last February?

The biggest change we have seen is a willingness by FEMA staff to work with state and local applicants. The change in attitude has been amazing and refreshing. We have had a number of large Project Worksheets written, including work at Southern University of New Orleans and Tulane University because local and state applicants and FEMA finally were able to agree on a common scope and level of damage. We would attribute this to new leadership setting a new tone within FEMA and the Transitional Recovery Office.

• Do you think any provisions of HR 3247 from the 110th Congress would still be useful in expediting the recovery from Hurricanes Katrina and Rita? If so which ones and how?

While several of the actions proposed by the legislation have been addressed by other vehicles (including the ARRA), three issues that HR 3247 would address still remain problems today, including that:

- The Stafford Act does not cover costs associated with re-interring remains at a private or nonprofit cemetery;
- Temporary housing cannot be used to house volunteers;
- Public facilities damaged by the hurricanes that lost business because of their damages cannot be reimbursed for this loss.

Further, the state of Louisiana would support an effort to codify into law some of the significant changes to the Stafford Act that we have succeeded in putting into place for post-Katrina and Rita recovery. For example, we believe the Stafford Act should always allow a Public Assistance applicant to treat a series of related buildings as a "system" for the purposes of penalties assessed for not having proper flood insurance. This allows PA applicants to take one deduction for a system of related buildings, instead of taking one deduction on each building. We have had some success with having this enacted for school systems, but could benefit from having it put into law. In addition, we would support language that would allow PA applicants to do a lump sum "settlement" with FEMA for their PA losses, much as one would do with a private insurer.

In addition, we have long advocated for the addition of a "catastrophic" annex of the Stafford Act that would be triggered by catastrophic events on the scale of Hurricane Katrina. This would include a set of rarely used policies that would be beneficial to governments that were

completely devastated by the storms, including automatic forgiveness of Community Disaster Loans, the waiver of any state or local matching costs for FEMA programs, the long-term extension of temporary disaster housing assistance and the creation of a streamlined process for handling Public Assistance disputes with FEMA, to name a few examples.

- **It has been the view of this Subcommittee that FEMA has sufficient authority to expand the arbitration program to projects under \$500,000. Do you think it would be constructive for FEMA to expand the arbitration program to projects below \$500,000?**

If there were sufficient resources available at the Arbitration Panel to deal with an increased numbers of cases, the state would support getting rid of the \$500,000 requirement. For applicants dealing with major storm related damage, amounts of several thousand dollars are sufficient to keep their project from moving forward. In addition, removing the cap could prevent those writing the project worksheets from aiming to keep projects out of arbitration by lowballing damage estimates.

That said, we would be worried about the level of attention cases would receive and the speed with which we would have decisions, should more cases to go to the Panel would slow the process down, we would hesitate to recommend this change. We have committed at the state of Louisiana to be selective with the projects we submit to the Panel, lest it be overwhelmed.

- **In your opinion, what is the single area of most disputes between FEMA and applicants? Under the normal FEMA appeals process how would these disputes get resolved?**

One common stumbling block is that applicants often feel that their full level of damage is not being taken into account by FEMA in a project worksheet. This is a key dispute because facilities that are more than 50 percent damaged receive the full replacement value of the building, whereas buildings with less than 50 percent damage only have their repair costs covered. In some situations, this can be a question of millions of dollars, and the more time applicants spend arguing with FEMA, the longer it takes them to rebuild.

Typically the applicant would ask that FEMA write a new version of their project worksheet to change the scope of the project and file a formal appeal for more funds. Oftentimes FEMA and the applicants will visit the site together to assess the level of damages.

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUB-COMMITTEE ON ECONOMIC DEVELOPMENT, PUBLIC BUILDINGS AND EMERGENCY
MANAGEMENT

Final Breakthrough on the Billion Dollar Katrina Infrastructure Logjam: How is it working?

Testimony of St. Bernard Parish, LA

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September 29, 2009

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Madam Chair, members of the sub-committee, members of Congress, FEMA, and other interested citizens- First and foremost I would like to thank you for the invitation to present to you a few brief but important aspects of the Hurricane Katrina/Rita recovery. Your invitation does more than just allow St. Bernard Parish to weigh in, it underscores your commitment to a continued effort to complete the mission of recovery of a community.

THE BACKGROUND OF RECOVERY

As you are aware, St. Bernard parish was ground zero for the Hurricane Katrina event of August 29, 2005. Of our 26,000 households, only a single digit number were spared significant damage or destruction. To date, over 8,000 of those pre-Katrina households have been demolished. In rough numbers, an additional 14,500 have been repaired with the remaining several thousand resting in conditions ranging from demolition ready to clean and secured, but not habitable. Our business community was also devastated with only one small business of over a thousand not forced to close its doors at least temporarily. A figure that helps put this event into small town America perspective is the estimate that in our pre-Katrina community of 26,000 households and 68,000 people it is estimated that there was a financial loss of property and personal belongings of over 3 billion dollars, using conservative figures. This figure does not begin to contemplate additional losses suffered from lost wages, lost relationships, or a loss of the rich cultural history of our parish, nor does it account for the irreparable loss of 163 of our St. Bernard family members. Business losses in structural damage, lost revenues, and the support of the ad valorem tax base is estimated to have been nearly another 500 million dollars.

However, this testimony is not about the devastation of Hurricanes Katrina and Rita. That information is well documented. This testimony is rather a report of the resolve of a community committed to seizing our opportunity to return the community of St. Bernard Parish to its rightful place as an integral part of the fabric of the Gulf Coast region. Our natural resources of wildlife and fisheries support a commercial fishing industry that has continued to produce part of the largest share of shrimp, oysters, and fisheries commodities in the nation and promote some of the

world's greatest recreational fishing. Our parish is home to two oil refineries and a natural gas plant, together producing nearly a third of the south's and east coast's fueling needs. We are also home to the Domino Sugar Refinery, world's largest sugar cane production refinery in the world. Located in the Mississippi River, St. Bernard Parish shares in the competitive port industry coordinating much of its cargo activity with the port of New Orleans.

This testimony is intended to be a hopeful reminder that our recovery is far from over and that the model that St. Bernard Parish has set in place is destined to be successful for not to be is not an option.

THE APPROACH TO RECOVERY

Since January 2008, St. Bernard Parish has sought to lead the Gulf Coast region in its recovery efforts. I dare say that we have established ourselves as a significant member of the recovery activity as we remain as the first or second most prolific community in the Gulf Coast region in all areas of recovery since January 2008. This is reported not only as testimony of the unique achievements of St. Bernard Parish, but also as a statement that our model has validity and its components and team members share in developing a system that has worked and can work even better.

With the celebration of new projects starting and others being completed almost on a weekly basis, St. Bernard Parish has put over 250 recovery related projects into action over the last 20 months and is set to meet its goal to have the remaining two dozen projects in motion by the end of 2009. With repeated reports and projections taking our recovery out to the ten year mark, St. Bernard Parish has embarked on a mission to complete all recovery related construction projects by the end of 2011, bettering the ten year projection by three to four years. Again, this ambition is not presented as simple rhetoric but lays the groundwork for vital and ongoing evaluation and adaptation to an ever changing recovery environment.

Recently completed street repairs of over five miles, rebuilt gyms and fields and new recreational facilities, new school buildings with state of the art accommodations, seven fire stations in construction to compliment three already repaired stations, a new Council On Aging center for

our senior citizens, the repair of 92 lift stations, and the start of several drainage projects, a new government complex building, a new 911 communications center, the historic St. Bernard Parish Courthouse, the St. Bernard Parish Sheriff's Office Annex, and several new construction projects underway for animal control, a water plant, and a consolidated wastewater treatment system, there is much to take notice of in St. Bernard Parish.

The current pace of St. Bernard Parishes Recovery however doesn't just happen. No one tosses a recovery manual and review of the Stafford Act on the table and projects simply evolve- quite the contrary. There is a formula that was adopted in St. Bernard Parish beginning in January 2008 that has largely resulted in the experiences of the past 20 months. The formula is rather simple in its mission- form as many partnerships with as many local, state, and federal team members as possible and remain in constant communication with them using the Stafford Act as a reason to do something rather than do nothing.

We, at the local level, must always be mindful that the recovery is our recovery and that while our partnerships are critical, it is our lead that will be followed. It is certainly obvious that for the first nearly two and a half years of our recovery, we did not lead. We certainly were not led nor were we rescued from our own, self-imposed chaos, thus the slow outcome was a shared failure by every level. Inherent in this formula is the position of St. Bernard Parish that no other agency will have the capacity to care as deeply and know as intimately the true value of the partnerships we sought. Frustrations and complications were to meet with solutions and movement, rather than the same paralysis of blame and complaining. Reviews and discussions were to prompt action and movement. Achievements and celebrations were to include the team from every level of contributors. Let's face it- Recovery is about people. People both on the one end of the spectrum who seek the assistance that eases the over 3 billion dollars of individual losses, and people who seek the funding of projects necessary to rebuild a community, and people who just try to navigate through the hundreds of requests made to them. When people connect, share a common vision, and commit to success, great recovery experiences happen.

THE PROCESS OF RECOVERY

The level of damage in St. Bernard Parish easily qualifies us as a major disaster alone. And while our approach over the last 20 months has resulted in a significant level of improvement, it has also revealed glaring needs for continued success in the recovery formula that we have established. A common factor that continues to impact the everyday process of recovery is the initial valuation of projects and the eligibility determinations of those projects. This challenge is twofold: First the initial determination of eligibility immediately impacts the pace of recovery by the requirement of simply coming to agreement that an element of recovery is disaster related. In the Hurricane Katrina/Rita disasters, this determination could have and should have saved thousands of man hours and millions of dollars in personnel costs alone. For a community, that at its lowest level of damage had three feet of water mixed with one foot of sludge to the more common experience of 15 to 20 feet of water mixed with three feet of sludge, to still, after four years, be justifying storm related damage slows a process of a community that does not have the luxury to wait it out, costs more to the FEMA organization and the federal government, costs more to the state's Governor's Office of Homeland Security and Emergency Preparedness (GOHSEP), and certainly costs the local government valuable resources. Secondly, the under valuation of projects at the initial stages of recovery sets in motion the need to revisit a given project multiple times to create an adjustment of the actual and more appropriate funding obligations to move a project through the various federal and state level review ques. Again, this process, commonly known as versioning of a project worksheet, significantly slows the pace of recovery of a given community, costs more at all levels, and erodes the level of confidence shared by individuals at all levels of the needed partnerships.

An additional demand of this versioning process is manpower. As FEMA initiated its "right sizing" initiatives several months ago, concerns were expressed that such activity would be inconsistent with the needs of the pace of St. Bernard's recovery. This concern was realized and despite the best efforts of those team members on the ground, significant delay activity was experienced. This perspective is best illustrated in looking at some basic trends experienced in the St. Bernard Parish recovery. As a sub-applicant, St. Bernard Parish has initiated 457 project worksheets. The pattern exhibited within the process was that over 90% of initial project

worksheets were undervalued, creating the challenge as identified above. In addition to this statistic, such under valuation has created a need to initiate over 1,000 version requests over the last 20 months, if accounted in a conservative manner, and many of these related to the same project. As suggested previously, this creates a time-consuming, costly process which leaves many projects unfunded at the time the project is ready for or under construction. The practical result of this process is an ambitious recovery pace that requires St. Bernard Parish to fund its own recovery or follow a slow, unproductive paced that in essence stifles, if not kills a recovering community.

The additional burden on local government during such a process is costly and heightens the need for additional recovery staff, project management support, and accounting reviews to justify the additionally required services. This circular recovery activity does not promote a pace sufficient to allow adequate recovery nor is it consistent with the stated mission and commitment of the FEMA team. The simple fact is that the pace of the St. Bernard Parish Recovery has not been met with adequate staffing or workforce capacity to keep up with the needs of local government.

From a financial standpoint, the 13 Public Assistance applicants in our parish have more than \$1.3 billion in funds obligated collectively, with only nearly \$833 million of that paid. Our parish government has 446 separate projects, for a total of \$809 million in obligations (LAPA). We've been paid 68 percent of these funds or around \$543 million, much of which falls into non-permanent funded activity such as demolition and debris costs. This number also does not include \$400 million worth of school projects or \$75 million worth of public safety projects.

To clarify the magnitude of this challenge as an ongoing issue, St. Bernard Parish is currently awaiting an additional 29 project worksheets totaling an additional 108 million dollars of recovery project funding. Complicating this cash flow problem is the fact St. Bernard Parish also has an additional 166 version requests into GOHSEP totaling 114 million dollars.

We are an example of a parish that is focused on recovery and one that has pushed forward through obstacles to recover. We often sit in the shadow of our neighbors in Orleans parish, but we've reached many milestones quicker than almost anyone else – including rebuilding a new

public school and opening several newly rebuilt fire stations. We are poised to accomplish so much more, but we are still hamstrung by lingering disputes, undervalued project worksheets, and the versioning process.

THE RECOVERY SOLUTIONS

With all the challenges, obstacles, and difficulties surrounding the recovery of St. Bernard Parish, there is little doubt that progress has been made over the last 20 months. The pace of projects, the review of version requests, and the increased level of communication have all been part of the focused effort to make the appropriate adjustments to a struggling process. It has been the opinion of many at the local level of recovery that much of what is right in the FEMA system is targeted for smaller, shorter duration disaster events and the application of a system to an extended disaster involving the magnitude of the destruction caused Hurricanes Katrina and Rita is just not feasible.

In addressing this challenge, it has been the experience at the St. Bernard Parish level that a rotation of personnel, often at critical junctures in decision making, coupled with a rather lengthy learning curve for incoming personnel has only intensified the vulnerability of an inapplicable system.

It is also believed that effecting change to a system as large as the FEMA system is a daunting task from a local government level and even more of a challenge trying to do so in the midst of a disaster response and recovery. In applying the previously stated formula from the local end of the recovery spectrum, a concerted effort was made to establish a mutual respect between and among the members of the local, state, and FEMA team members. As part of an increased communication, at the very least, an awareness of the true needs of St. Bernard Parish's recovery could be conveyed. Unfortunately, the reality of sound and open dialogue could not and has not resulted in a capacity beyond what the hard working individuals on the ground could give.

When effort is not the question, we have sought to understand how the interventions that are necessary can be implemented. To this end, ongoing discussions have been achieved on a regular basis over the last 20 months and longer. The primary resolution has been to address the

process on two fronts: expedite the process of version obligation and increase the number of personnel assigned to write the hundreds of versions already in the system and those to be placed into the system in the near term. At the current pace and manpower, to write the number of versions necessary to keep pace with St. Bernard Parish, it will likely take over three years just to address the current versions.

At the time of this testimony, FEMA has agreed to begin to embed dedicated staff to St. Bernard Parish in order to address the versions that need to be written. Additionally, the lead recovery representative will also be embedded in St. Bernard Parish. While this is a refreshing acknowledgement of a most important need, it will continue to be short of the necessary manpower needed for the completion of the mission. The scope of St. Bernard's recovery alone is bigger than most major disaster declarations, and in the context of Katrina, Rita, Gustav and Ike, it is easy for individual projects to be stuck simply because there is not enough capacity to handle the number of projects.

Credit for the progress that has been realized over the last year and in particular in the last few months must in no short order be attributed to the presence of Mr. Tony Russell and the full confidence that he has been granted from FEMA- Washington, D.C. Mr. Russell has presented himself as embracing an approach that is more consistent with utilizing the Stafford Act to accomplish the task of supporting the recovery of St. Bernard Parish within the limits of the law. Additionally, Mr. Russell has committed to and has engaged in a dialogue that results in answering questions that need resolution and discontinued a pattern of projects hanging in limbo for months on end only to issue ambiguous direction that leaves an applicant incapable of appealing or proceeding.

The issue remains however that capacity of those who are present cannot fulfill the capacity of those who are not. The sheer volume of the workload to complete and obligate project worksheets and versions is greater than the personnel afforded to St. Bernard Parish.

A simple recommendation would be that FEMA triple its capacity for handling Public Assistance needs for St. Bernard Parish Government for a period of six months with trained personnel and embed them in the Recovery Office of St. Bernard Parish. Concurrently, we have sought and

will continue to seek increased personnel at the state level to avoid an imbalance of pace between the state and the federal level.

We do enjoy a strong working relationship with our state partners as well, and for the first time in many years there is a united spirit between levels of government and agencies to get the job done. I am confident that a full and speedy recovery is in our grasp if we increase our capacity.

However, without a larger team working to move the hundreds of millions of dollars worth of projects forward, we will be struggling to recover from these storms for many years to come and stand at the edge of operational bankruptcy.

In terms of using the newly developed Arbitration Panel, St. Bernard has not saw fit nor has encountered a current need to pursue this as an option. While we reserve some concerns about a blind panel having total summary judgment authority, the shortened time frame is certainly of some relief. Having not accessed the arbitration process, there is no direct testimony offered relative to this process.

Again, it is appreciated that St. Bernard Parish has been granted the opportunity to address the committee on such an important recovery topic. Together, I believe that the federal, state, and local partnership will achieve the desired outcome to completely recover St. Bernard Parish and the entire Gulf Coast region.

Respectfully submitted,

Craig P. Taffaro, Jr.