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Reference: Comments on the FEMA Programmatic Environmental Assessment for HMGP Program Exception for the State of Louisiana and Mississippi

To Whom It May Concern:

Thank you for publishing a conceptual framework for making changes to the Hazard Mitigation Grant Program. This change is very important to the homeowners of Louisiana and Mississippi who have been seeking assistance to mitigate their homes in order to prevent future damages, but who have been stalled for far too long in their process of rebuilding. FEMA has stepped up to introduce flexibility to a federal program at a critical moment, and the agency should be applauded for their efforts.

It is the position of this office that we are in agreement with the necessity for FEMA to create this Programmatic Environmental Assessment which will allow mitigation activities initiated prior to FEMA's approval of HMGP funding to be excluded from environmental review and be eligible for reimbursement. It is anticipated that up to 55,000 homeowners who are eligible for the State of Louisiana's Road Home program may select to elevate their homes and construct individual mitigation measures under a HMGP program administered by the Disaster Recovery Unit. Over 80,000 homeowners who received damage from the storms and reside in the 100 year flood plain have already been submitted to FEMA for initial review and will receive a Voluntary Participation Agreement and survey to determine if they choose to elevate or provide individual mitigation measures to their home. The State completed a preliminary survey and results show that of the initial homeowners who received funding from the Road Home Program, approximately 33% have already started or completed construction of their storm damaged homes. Without such an exemption, nearly 19,000 homeowners would not be eligible for reimbursement. It is only logical and necessary to allow homeowners who had the initiative to begin to rebuild their lives not be penalized for their efforts.

The Road Home Homeowner Assistance Program is now expected to serve as many as 160,000 families. This program was initially funded with \$7.5 billion of funds, of which almost \$1.2 billion was always intended to come from the HMGP program. These dollars were always intended to be used in the Road Home program for eligible HMGP activities, such as elevations, acquisitions to green space, and other smaller mitigation measures.

However, the regulations of HMGP have been found to conflict with the Road Home program. This has been most visibly problematic for families who may have already started work, or may be starting work in the future. For the purposes of this public

comment, the public interest related to the recovery should be to enable homeowners to access funds to elevate and otherwise build back safer on the timeline that best suits their needs. If they receive their Road Home Assistance (as CDBG compensation awards) and are prepared to begin rebuilding with those funds immediately, it shouldn't jeopardize their ability to apply for HMGP funds if they are determined otherwise to be eligible. That's why this change is critical.

As much as possible, the HMGP program should also be changed to increase the pace of the program's assistance getting into the hands of homeowners.

The need for this PEA arises because of these factors, as well as the immense and unique scope of Hurricanes Katrina and Rita, the time that has elapsed since those events and the importance of mitigation activities during recovery to ensure that we rebuild safely.

While we are thankful for the goals that FEMA has sought to create this flexibility, we do have concerns about how the proposed alternatives enable the above goals to be achieved. In short, as crafted, the new guidelines could continue to restrict many families who are doing the right thing from being eligible for funding.

Our concerns are detailed below in a bulleted list. There are three overarching concerns.

First, the proposal suggests that homeowners who have already started work would only have 60 days after the announcement of this provision to enter the program. This provision would clearly leave many families without funding to mitigate, just as the current rules would. This proposed timeline should simply be removed. If a home is mitigated and the responsible agencies are able to determine retroactively that that mitigation does not violate any of the rules otherwise that FEMA has or has proposed for HMGP, there should not be a timeline whatsoever that should prevent a homeowner who has already started work from being eligible.

This proposed 60 day timeline is also inconsistent with the nature of the Road Home program's timeline for assisting families. Families are still moving through the Road Home program, getting offer letters, returning those letters to accept their awards, and going to their closings. Assuming that additional funds will fill a current funding shortfall facing the program, depending on what happens in the program, this process may continue for as long as twelve months or more. If a family has not yet gotten a benefit selection form (containing their grant offer, including their eligibility for mitigation assistance), or has not returned that letter, then they cannot apply for HMGP. However, many of those homeowners will have gotten insurance and/or Road Home money, may have already started their work. If elevation is to occur, it must be the first part of the construction activity and after two years since the storms, many families have started to rebuild their homes and lives. If there is a reason to change the program now for those who have already started or have completed their mitigation work, and it is legal, this flexibility should be offered to all of those families who are mitigating, and on whatever timeframe makes sense for the family's recovery (which will typically happen faster than any federal approval). If this provision cannot be removed, we recommend

that it should be set at two years rather than 60 days to allow sufficient time for families to receive their award notifications from the Road Home and not be inhibited by a limited timeline from HMGP guidelines.

Secondly, the proposed language seeks to limit this exception to hurricane damaged structures. While the Road Home Program targets only hurricane damaged owner occupants, these guidelines are not in the traditional HMGP programs in Louisiana and Mississippi. As you know, HMGP has never been linked to disaster response program; it is a program to mitigate future damages. Yet here is a programmatic change that accepts that it is important to link an exception to recovery from these events, and which we strongly feel is justified. If the agency can legally, reasonably, and justifiably tie HMGP to the recovery from Hurricanes Katrina and Rita, and given that HMGP has never been tied to disaster damages, there is no legal or justifiable reason to limit this guideline to hurricane damaged structures. Moreover, we believe it does not serve the public purposes of the Hazard Mitigation Grant Program to limit assistance to hurricane damaged structures, if there are others that could pose a future risk of damage and would otherwise be eligible for HMGP. This PEA is not a Road Home only change; it is a change for Mississippi and Louisiana's mitigation as a result of the enormity and uniqueness of those events, the time period that has elapsed since those events prior to mitigation being approved and engaged, and significant nature of the response.

Third, there are a variety of different items in the PEA that have to meet certain tests, where assistance and eligibility is linked to producing "necessary documentation." However, that term is not defined in relation to what documentation these homeowners who are covered by the exception must present. If the documentation requirements become too extreme, it is going to create a slowdown for serving the families. The definition of "necessary documentation" needs to be defined, and it needs to be defined with flexibility. If not, this language could truly still prohibit access to many families who have already started work and are worthy of assistance for their mitigation efforts. To possibly reject families because of unnecessary red tape and paperwork is potentially just as harmful as not having allowed this class of applicants to be served them in the first place.

These comments and others are contained in greater detail in the bulleted list below. Thank you for your commitment to helping Louisiana rebuild safer, stronger, and smarter than before.

Sincerely,

Adam Knapp
Deputy Director
Louisiana Recovery Authority

Comments on Draft Programmatic Assessment of Hazard Mitigation Grant Program Exception for States of Louisiana & Mississippi

- Page 3: This language needs to include “Mitigation Pilot Reconstruction,” as this term appears elsewhere in document and addresses a specific action approved for the Katrina and Rita disaster declarations. Additionally, there needs to be an inclusion of undamaged structures in this PEA alternative, which is consistent with the intention of the HMGP (the point of the program is to reduce risk, and is not related to whether a facility is damaged or not).
- Page 3: The PEA states that “The States would ensure that all appropriate documentation for each project is included with the project.” What level and type of documentation, permits, inspections, licenses, etc. will be deemed acceptable when dealing with “Work in Progress or already completed” projects? What would be the minimum requirement for documentation for “Duplication of Benefits? The answers to these questions could either create a manageable and efficient program, or could result in months or years of delay in implementing what is proposed as part of the PEA.
- Page 3: The PEA states that “Projects must obtain and comply with all applicable permits (e.g. National Pollution Discharge Elimination System [NPDES] permits, CWA Section 404 General or Individual Permits, Storm water Pollution Prevention Plans [SWPPP], Incidental Take permits [ESA Section 10(a)(1)(b)], building permits for construction in the floodplain, coastal use permits, etc.). Projects that did not obtain applicable permits and properly implement permit conditions would not be eligible for HMGP funding.” FEMA needs to make sure this requirement is provided with sufficient guidance regarding what is and is not considered acceptable.
- Page 3: Alternative B-1: Exception for hazard mitigation measures to residential and commercial structures would make the exception available for hazard mitigation measures to residential and commercial structures that were damaged by Hurricanes Katrina or Rita. These hazard mitigation measures are limited to:
 - Retrofitting residential and commercial structures for hazard protection
 - Elevation of residential and commercial structures
 - Mitigation Reconstruction of residential and commercial structures
 - Demolition of existing residential and commercial structures where a prospective acquisition or mitigation reconstruction is proposed

Under this alternative FEMA would limit the applicability of the exception to actions initiated without FEMA approval at the date of announcement of the decision to implement the program exception.

There are a variety of questions related to this provision, specifically the following: (1) Would it matter what the funding source was used to perform project activity I.E. Demolition and it's affect on eligibility? (Say insurance money was used vs. a demolition performed by FEMA and US ACE?); and (2) Why does the PEA exclude non-damaged

structures, which are equally eligible under the HMGP and whose risk is equally as important to mitigate?

- Page 3: The PEA states that “Alternative B-2: Exception for hazard mitigation measures to residential and commercial structures with extension period. This alternative addresses the same range of activities as Alternative B-1 but would extend the applicability of the exception for 60 days after the announcement is made.” This sunset period would affect applicants that become part of the program after this 60 day period that have not yet started work; people who already contracted for services with a contractor prior to or shortly after the 60-day window is established, but whose work was not initiated until after the 60-day window closes; as well as homeowners who have initiated work already and register for the program after the 60-day window. In all of these cases, we believe that the timeline for the sunset period should be removed. If it is not removed, it should be extended to two years. The reasons are as follows:
 - o The alternatives being considered by FEMA are complex, and it will take time to explain to the public what they mean and how associated requirements can be met. That is simply not possible within a 60-day window, which will result in significant numbers of people being denied funding for which they should be eligible.
 - o The enforcement of this provision on people who already have signed contracts with contractors will likely result in penalties and significant delays (if they delay the initiation of work until all “normal” HMGP processes are complete), or ineligibility if the contractor executes the contract as signed.
 - o The Road Home is still gearing up to fund a possible 60-80,000 homeowners many who will not even be able to hear about this period until after the time clock has already started.
 - o If families need this assistance, this provision will cause families who are on a timeline to begin rebuilding to HALT their rebuilding because of a FEMA restriction.
 - o Restrictions such as these types of timelines that require notification are more likely to adversely affect low income families who are harder to reach with information about what they must do to be eligible. Many lower income families are in a racial or ethnic minority.
 - o The deadline contradicts the intent of relief through exemption, by first acknowledging the limitations of parishes and applicants and scope of the disaster, then puts a short cap on response for eligibility, while parishes and homeowners are still struggling.

- Page 5: The PEA states in Section III. C. Alternatives Considered But Dismissed, that “Hazard Mitigation Activities Not Associated with the Repair or Restoration of Damaged Structures - This alternative would have allowed the exception for initiated or completed hazard mitigation actions that did not relate to the repair or restoration of damaged structures. This alternative was dismissed because it does not meet the purpose and need.” Under the State of Louisiana’s State Hazard Mitigation Plan (approved by FEMA), as well as eligibility criteria for DR-1697 Hurricane Rita, a non-damaged homeowner could mitigate their home with FEMA HMGP funds. Since the purpose of the HMGP is to address risk irregardless of damages, and the fact that we are more than two years after the declared event has already been determined a justifiable reason to provide program exemptions (since it is not reasonable to expect people or sub-grantees

to delay addressing their risk for such an extended period), why are non-damaged homes and structures not addressed within this PEA? This is inconsistent with the HMGP program's intent, as well as the State's plans and priorities for mitigation funding.

- Page 13: The PEA states in Section V. B. 1. Water Resources. Louisiana 1. Current Conditions, that “The LDEQ manages certification under CWA Section 401 to ensure compliance with State water quality standards. Water quality certification is obtained from the LDEQ prior to project approval.” We do not believe that securing a water quality certification for each individual project from LA DEQ Water Quality to be a reasonable request.
- Page 13: The PEA states in Section V. B. 1 “In addition, LDEQ administers the stormwater pollution prevention permitting and monitoring program (SWPPP), which requires a SWPPP for any construction activity that would affect more than one acre of land. GOHSEP believes that this requirement applies only to each individual project location, and not cumulative acreage of multiple homes submitted by parishes or OCD as part of a single application. We also recommend that as LA DEQ evaluates project activities, relative to construction activities and environmental considerations, programmatic exemptions be submitted by LA DEQ for those actions posing negligible effects.
- Page 19: The PEA states in Section C. 2. Floodplains; Environmental Impacts that “Through its EHP review process, FEMA would have evaluated each HMGP project application for compliance with 44 CFR Part 9 – Floodplain Management and Wetland Protection, before the initiation of each project. FEMA’s procedures for compliance with E.O. 11988 and E.O. 11990 comprise Part 9. It establishes an eight-step decision making process for ensuring wise use of Federal funds...” FEMA has already provided a Programmatic 8–step process that applies to all storm-impacted parishes, so we believe that same process should be utilized here.
- Page 33: The PEA states in Section F. Historic Properties; Alternative B-2, Exception for Hazard Mitigation Measures for Residential and Commercial Structures with Extension Period that “The 60-day extension period for the applicability of the exception may result in a higher number of projects subject to the exception and an increased number of potential effects to historic properties than Alternative B-1. Thus, this alternative may result in more projects with adverse effects to historic properties than Alternative B-1. (Pg. 34) The intent of the 60-day extension period is to provide property owners with sufficient notice of the HMGP requirements and to allow sufficient time to finish any administrative and planning work (e.g., receipt of permits, execution of contracts, etc.) that was ongoing at the time of announcement.” “For this reason, FEMA believes that this alternative would be subject to the same Section 110(k) applicability finding as Alternative B-1. FEMA will undertake the consultation process described under Alternative B-1.” As stated previously, the State believes that the 60-day period is unnecessary and unreasonable. It should be removed. If not removed, it should be extended to two years (24 months) after the release of these program exemptions.