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THE LOUISIANA ROAD HOME PROGRAM: A PATH OF UNINTENDED CONSEQUENCES

EVERETT FINERAN, ESQ.

I. INTRODUCTION

The Louisiana Road Home Program (the “Program”)—the largest housing recovery program in U.S. history¹—was potentially the most significant experiment in socialism that the United States government has yet to engage. The experiment has failed. From its inception, the Program has been riddled with problems that could only be solved by allowing the free market to operate without intervention. Instead, the government has put the Program on life support and artificially redeveloped an area that perhaps should not be developed. The negative consequences of this massive government intervention have perhaps just begun, as the Program will be an utterly wasteful experiment if disaster repeats. This article is a call to government planners to recognize that such government intervention is not the solution to disaster recovery; a lasting recovery will only take place when the government assumes a role of referee and allows the free market to create solutions within the framework of fair play.

Section II of this Article offers a detailed explanation of the Program, including eligibility requirements, funding requirements, and award calculations. Section III examines how the Program is managed and discusses the shortcomings that have riddled the Program from its inception. Next, Section IV offers an analysis of the Program from a law and economics perspective. Finally, Section V concludes that the Program will be a failure and should instruct us that capitalism, not massive government intervention, is the best and fastest method of recovering from disaster.

¹ The Road Home About Us, <http://www.road2la.org/about-us/default.htm> (last visited May 7, 2007).

II. THE PROGRAM

The Program was created through a joint effort by Governor Kathleen Blanco, the Louisiana Recovery Authority, and the Office of Community Development.² The stated objective of the Program is to help Louisiana residents affected by Hurricane Katrina “get back into a home or apartment as quickly and fairly as possible.”³ The Program is entirely funded by the U.S. Department of Housing and Urban Development and accordingly implicates federal tax dollars.⁴

A. Eligibility Requirements and Assistance Options

Although the Program is riddled with nuances that even some of its own administrators do not understand, the basic eligibility criteria and assistance options are relatively straightforward. To be eligible to apply for the Program, a homeowner⁵ must have owned and lived in a property in Louisiana prior to

² *See id.*

³ *Id.* Although the Program does have assistance options for both rental property owners and building professionals, this Article focuses on the homeowner assistance component of the Program. This component represents the vast majority of the funding to be allocated under the Program and accordingly will have the greatest impact on the Louisiana housing market. For a more detailed account of the rental assistance component of the Program, see THE ROAD HOME, SMALL RENTAL PROPERTY PROGRAM OVERVIEW (2007), http://www.road2la.org/rental-docs/rental_overview_3_8_07.pdf.

⁴ *See id.* at 4.

⁵ In most circumstances where title does not pass but the occupant is potentially entitled to acquire title at some future point, such as in a bond for deed or lease to own contract, the occupant is not entitled to apply for the Program. Owners of usufructs, however, may be able to apply for the Program. Their eligibility is determined on a case-by-case basis. *See* THE ROAD HOME, THE ROAD HOME HOMEOWNER POLICIES VERSION 4.0 I (2007), http://www.road2la.org/Docs/TRH_Deliverable_00035_Homeowner_Program_Policies_4-15-07.pdf.

either Hurricane Katrina or Rita.⁶ Homeowners of virtually every type of housing, a double-unit structure, a town home, a mobile home, or a condominium, are eligible for a Program so long as the home was registered with FEMA and categorized as having been “destroyed” or having incurred “substantial damage.”⁷ Even homeowners who sold their home after Hurricane Katrina or Rita may apply for the Program under the condition that their applications will be processed after individuals who still own their homes are funded first.⁸

Homeowners eligible for the Program have three assistance options: the homeowner may elect to stay in Louisiana and rebuild, to sell their current home to the State and relocate to another home in Louisiana, or to sell their property to the State and relocate to another state.⁹ In all three situations, the homeowner must sign agreements and covenants restricting how the homeowner may use the funding.¹⁰

If the homeowner elects to rebuild the current home with funding from the Program, he must establish occupancy within three years of the closing on the grant, comply with any applicable Advisory Board Flood Elevation requirements, maintain flood and hazard insurance, and ensure that construction complies with building codes.¹¹ Although the homeowner may sell the property after receiving the grant, the covenants “run with the land” and will apply to the purchaser.¹² The covenants accordingly represent a significant restraint on alienation.

⁶ *Id.* Establishing that the homeowner applied for a homestead exemption is prima facie proof of home ownership. In the absence of proof of such an application, the homeowner can present a utility bill as proof of ownership.

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ *See id.* at 4.

¹⁰ *See id.*

¹¹ *See* Louisiana Road Home Information Page, <http://www.road2la.org/homeowner/eligibility-info.htm> (last visited May 7, 2007). Although all new constructions technically must always comply with building codes, the significance of this covenant is that breach of it may require the homeowner to return all funding received under the Program. *Id.*

¹² Louisiana Road Home About Us Page, *supra*, note 11 at 2.

B. Funding Assistance Options

The Program gives homeowners four funding options. First, the homeowner may elect to receive a general “compensation grant” which may be used for basic rebuilding and renovation of the property.¹³ The homeowner may also receive an “additional compensation” grant, not to exceed \$50,000, for more esoteric repairs.¹⁴ The Program also provides an “elevation allowance,” not to exceed \$30,000.¹⁵ The elevation grant is available to homeowners who are located in areas with Advisory Base Flood Elevation requirements.¹⁶ Finally, homeowners may receive an “additional mitigation grant,” not to exceed \$7,500, for non-elevation mitigation measures such as installing storm shutters.¹⁷

In aggregate, no homeowner may receive more than \$150,000 under these four programs.¹⁸ With 130,328 applications filed so far, the ostensible cap on assistance is accordingly nearly \$20 billion.¹⁹ To put this amount in perspective, the entire 2004 budget for the U.S. Department of Housing and Urban Development, the branch of the federal government that funded the

¹³ See THE ROAD HOME HOMEOWNER POLICIES VERSION 4.0, *supra* note 5, at 8-12.

¹⁴ See *id.* at 14-15.

¹⁵ See *id.*

¹⁶ See *id.* at 13.

¹⁷ See *id.* at 4. There is scant information on what is covered under the “additional mitigation grant” assistance program. In a recent article, however, the Times Picayune suggested that this program will cover things like storm shutters. See *Law Governs Public Adjusters*, TIMES-PICAYUNE (New Orleans), Nov. 19, 2006.

¹⁸ See THE ROAD HOME HOMEOWNER POLICIES VERSION 4.0, *supra* note 5, at 14-15.

¹⁹ This figure represents the cap on spending. Most closings are for less than the maximum a homeowner may receive under the program. In May of 2007, the Program reported that its average closing was for \$75,000. See David Hammer, *Road Home Going Broke, Blanco Says*, TIMES-PICAYUNE (New Orleans), May 2, 2007.

Program, was just over \$31 billion.²⁰ The Program is thus of astounding scope.

C. Calculating Damages

Calculating the appropriate award for a given homeowner is the point at which the Program convolutes. One rule in this context, however, is clear: whatever compensation the homeowner would otherwise be entitled to, he is credited for monies received either from FEMA, the USDA, or private insurance for Katrina-related losses.²¹ However, so as not to reward those who failed to obtain insurance before Hurricane Katrina, the Program imposes a 30% penalty on all applicants who failed to carry hazard insurance or flood insurance where applicable.²² This penalty is imposed on the total compensation grant.

Actually calculating damages is a little more complicated. Under the general compensation grant program, the homeowner who elects to stay in Louisiana receives the *lesser* of either the estimated cost to rebuild the home as is determined by a home evaluator or the uncompensated loss of value.²³ The uncompensated loss of value is determined by subtracting the compensation the homeowner(s) received for structure loss from the home's pre-storm value.²⁴ The estimated pre-storm value of the home is accordingly significant in this calculation, as the higher this figure is estimated the greater the potential reward.

Applicants therefore have an incentive to overestimate the pre-storm value of their home. To combat this potential for mischief, the Program has adopted detailed guidelines as to what

²⁰ See Press Release, Department of Housing and Urban Development, HUD Announces FY 2004 Proposed Budget of \$31.3 Billion to Increase Homeownership, Promote Affordable Housing and Strengthen Communities (Feb. 2, 2003), <http://www.hud.gov/news/release.cfm?content=pr03-014.cfm>. The 2004 budget, of course, did not reflect spending for the Program.

²¹ See *The Road Home Homeowner Policies Version 4.0*, *supra* note 5, at 7.

²² *Id.* at 12.

²³ See *id.*

²⁴ See *id.*

types of appraisals will be accepted and how appraisals are to be performed.²⁵

The cost of repairs is determined according to one of two evaluation “types.” Under an Evaluation Type 1, which is appropriate when the home is more than 50% damaged, the cost of repair is calculated by multiplying the square footage of the living area in the home by \$130.²⁶ The homeowner may also receive a 2% additional allowance to cover builder’s risk insurance. Under an Evaluation Type 2, which is appropriate when the home is less than 51% damaged, the evaluator uses his discretion to identify what work needs to be done and then prepares an estimate.

Given the generosity of the \$130 per square foot allowance in an Evaluation Type 1,²⁷ the homeowner has a significant incentive to have his home deemed more than 50% damaged. The program seeks to avoid the homeowner’s incentive to exaggerate damages by determining the appropriate Evaluation Type with a specific method.²⁸ First, the home evaluator performs both Evaluation Types. The percentage damage is then determined by dividing the Evaluation Type 2 Cost Estimate by the Evaluation Type 1 Cost Estimate and multiplying by 100.²⁹ For example, if an Evaluation Type 1 (\$130 per square foot allowance) would

²⁵ See *id.* at 8.

²⁶ According to the National Association of Home Builders, who compiles extensive annual data on home construction costs, in 2005 the average price per square footage of construction in the south was \$72.03. See NAT’L ASS’N OF HOME BUILDERS, MEDIAN AND AVERAGE PRICE PER SQUARE FOOT OF FLOOR AREA IN NEW ONE-FAMILY HOUSES SOLD BY LOCATION, http://www.nahb.org/fileUpload_details.aspx?contentID=560. Even in the West, where housing construction was the most expensive, the average cost of construction was only \$114.45. *Id.* The \$130 per square foot construction allowance accordingly seems a bit exorbitant. Although Program administrators likely intentionally overestimated the cost of construction to account for increased construction expenses in the area due to a shortage of workers, their \$130 per foot approximation will give homeowners a windfall.

²⁷ See Hammer, *supra* note 19.

²⁸ See The Road Home Homeowner Policies Version 4.0, *supra* note 5, at 1.

²⁹ See *id.* (The percent damage will be calculated by the following the equation: (Evaluation Type 2 Cost Estimate/Evaluation Type 1 Cost Estimate) x 100 = % Damage.

estimate repairs as costing \$100,000 and the Evaluation Type 2 (evaluator discretion) would estimate repairs as costing \$50,000, then the property would be deemed 50% damaged.³⁰

Calculating the damages for homeowners who elect to sell their home and relocate to somewhere in Louisiana is the same with one significant difference. If the homeowner's property was greater than 51% damaged by Hurricane Katrina or Rita, then the homeowner is allowed only the uncompensated loss of value.³¹ Of course, this amount is in addition to the price that the State already paid to purchase the home.

Homeowners who elect to sell their home to the State and move out of Louisiana are penalized under the Program. In this context, a homeowner with less than 51% property damage will receive the lesser of the cost of damage or 60% of their uncompensated loss of value.³² If the homeowner had more than 50% property damage, then he will receive 60% of his uncompensated loss of value.³³ Accordingly, in most instances the Program imposes a 40% penalty for moving out of state—a powerful incentive for homeowners to stay.

III. ADMINISTRATION OF THE PROGRAM

A. The Players

The Louisiana Recovery Authority (LRA) is the governmental body that oversees the administration of the Program. However, although the LRA has over 20 employees—including legal personnel, budget and policy planners, and research and development assistants—it does not actually administer the

³⁰ $(\$50,000/\$100,000) \times 100 = 50\%$ damage.

³¹ See *The Road Home Homeowner Policies Version 4.0*, *supra* note 5, at 12. On the other hand, if the homeowner's property was less than 51% damaged, he or she will receive the lesser of the uncompensated cost of damage or the uncompensated loss of value up to \$150,000, just as would a homeowner who stays in the home.

³² See *id.* at 13.

³³ *Id.*

Program.³⁴ Instead, the LRA opted to outsource the Program in May of June 2006 to ICF International.³⁵ As part of the deal, ICF obtained a contract to handle the administration of the Program for three years. The contract included a budget of over \$756 million.³⁶

B. When Disaster Struck Again: The Road Home Program in Action

Putting aside the issue for a moment of whether society even benefits from a recovery program like the Road Home, there is the more immediate and practical concern of how effectively the Program has been administered. With incessant newspaper titles like “Road Home? Not yet for 90% of Applicants”³⁷ and “Understaffed and Overwhelmed,”³⁸ it is difficult to perceive the program as having been anything other than a fiasco. The company administering the program has stumbled every step of the way—constantly missing deadlines, misapplying the rules, and making an overwhelming amount of simple clerical errors.

1. Mismanagement and Misuse of Resources

From the beginning of its role as administer of the Program, ICF has failed to design even basic systems to handle the job. Hundreds of applicants immediately complained that their applications were ignored or that their calls were returned or that ICF representative were simply too incompetent to answer even

³⁴ Louisiana Recovery Authority Staff Page, <http://www.lra.louisiana.gov/staff.html> (last visited May 7, 2007).

³⁵ Press Release, ICF Int’l, ICF International Awarded Major Contract to Help Rebuild Louisiana Housing Infrastructure (June 30, 2006), <http://www.icfi.com/newsroom/road-home-2006.asp>.

³⁶ Jeffrey Meitrodt, *Understaffed and Overwhelmed*, TIMES-PICAYUNE (New Orleans), Jan. 28, 2007, at A1.

³⁷ Editorial, ‘Road Home’? Not Yet for 90% of Applicants, DAILY TOWN TALK (Alexandria, LA), May 4, 2007, at C5.

³⁸ See *supra* note 36.

basic questions.³⁹ The company could not seem to get anything right:

The record shows ICF making critical misjudgments almost every step of the way, typically by failing to bring sufficient staff resources to bear as applicants move through the process. A shortage of operators at a phone call-in center is addressed, only to be followed by a shortage of interviewers as applicants sign up for face-to-face encounters with ICF advisers.⁴⁰

In response to the immediately-apparent shortcomings of ICF's administration of the Program, Governor Blanco repeatedly issued goals as to how many award letters and closings the company should issue at set intervals.⁴¹ Initially, Governor Blanco set the audacious goal of beginning to make whole-scale disbursements under the Program on August 29, 2006—just one year from Hurricane Katrina.⁴² Although ICF did in fact make *three* disbursements in August of 2006, the trend of success stopped there.⁴³ Even 16 months post-Katrina—four months after Blanco's deadline to begin making full-scale disbursements—ICF had issued grant to fewer than 250 applicants.⁴⁴ At the time, these disbursements represented 0.00025% of total applications.⁴⁵

³⁹ See Meitrodt, *supra* note 36, at 2.

⁴⁰ *Id.* It is not clear exactly what caused the problems ICF faced with administering the program. Although one state official accused the company with under-spending in order to increase its profits, the company correctly pointed out that its \$756 million contract was not a fee but a budget from which the state pays for expenses incurred. *Id.* Accordingly, any funds not spent pursuant to the budget inure to the state and not ICF. *Id.* Some attribute the problems to a company that it not motivated in light of a secure contract with the government. "Either somebody doesn't care or they're incompetent," said state Sen. Ed Murray of ICF. Melinda Deslatte, *Katrina's Aftermath; Louisiana Lawmakers Blast 'Road Home'*, HOUSTON CHRON., Dec. 8, 2006, at A6.

⁴¹ See Meitrodt, *supra* note 36.

⁴² See *id.*

⁴³ See *id.*

⁴⁴ See *id.*

⁴⁵ See *id.*

Another criticism of the Program is that has been “continually evolving.”⁴⁶ The Program has repeatedly changed its application requirements, calculation guidelines, and appraisal techniques. Changing basic criteria midstream like the Program has so often done confuses applicants and makes them uncomfortable with their decision to stay in Louisiana—the opposite effect that the Program was designed to have.

2. The Installment Plan Debacle

Where changes were needed to expedite the process, however, the LRA has been unable to affect them. The LRA originally designed disbursements under the Program to be made in installments.⁴⁷ Accordingly, homeowners would receive periodic funding tied to the completion of renovation projects. This type of plan is consistent with how mortgage lenders typically make construction lenders. Indeed, it was mortgage lenders who had effectively lobbied for an installment plan in order to insure that homeowners actually spend the disbursements on the property in which the lenders have an existing mortgage interest.⁴⁸

In designing this disbursement schedule, however, state planners failed to account for important federal regulations. An installment schedule that required homeowner to prove completion of renovation projects like the one LRA had designed would likely be deemed a “forced rehabilitation program.”⁴⁹ Such a program was necessarily subject to costly environmental and labor reviews.⁵⁰ In early 2007, the Department of Housing and Urban Development (HUD) indeed ruled that the installment plan was a forced rehabilitation program subject to these regulations.

⁴⁶ Brian Friedman, *Changing Rules Make it Hard for Homeowners to Keep Up*, TIMES-PICAYUNE (New Orleans), Mar. 15, 2007.

⁴⁷ David Hammer, *Road Home Faces Detour; Lenders Want to Keep Installment Option*, TIMES-PICAYUNE (New Orleans), Apr. 2, 2007.

⁴⁸ *See id.*

⁴⁹ *Id.*

⁵⁰ *See id.*

Baffled by the decision and unable to reach a compromise with the federal authorities, the LRA ordered the Program to stop sending award letters.⁵¹ State representatives immediately succumbed to the reality that disbursements would have to be made in lump-sum payments in order to avoid complying with the applicable federal regulations. And so the spin began. The LRA characterized the change—which effectively required the entire Program to be shut down for a number of weeks—as being made for the benefit of the public. “The advantage of a direct payment would be that homeowners have immediate access to their entire grant award for repairs, and would be in the driver’s seat in negotiating with their lender regarding the repayment of any arrearages,” or back payments owed on the mortgage,” said the Chairman of LRA.⁵² “We heard the public loud and clear, and this option would give them what they asked for—sole access to their grant award within days of their closing,” Leger said.

Mortgage lenders, however, were not so pleased with the change and voiced several concerns—concerns that the LRA had initially found significant enough to warrant adopting an installment plan. Lenders noted that handing out money as a lump sum payment “will be an open invitation for homeowner to use the money on other things, leading to rampant blight that drives down property value for everyone—including those neighbors who are responsible enough to rebuild.”⁵³ Although a covenant would prevent applicants from spending the money on something other than repairs, the state would have to wait three years to see whether the applicant made a good faith effort to use the funds appropriately and reside in the home, perpetuating the blight in many instances with no recourse when it is needed most.⁵⁴

⁵¹ *Id.*

⁵² David Hammer, *Road Home Poised to Start Lump-Sum Payments*, TIMES-PICAYUNE (New Orleans), Apr. 4, 2007.

⁵³ Hammer, *Road Home Faces Detour*, *supra* note 47. Of course, the mortgage lenders have a significant interest in seeing an appreciation in the overall property value in any area in which the lender has existing mortgage interests.

⁵⁴ *See id.*

In retrospect, the installment plan debacle was but just one of a series of incompetent decisions made by the administrators of the Program. As of May 2007, the Program continued to suffer from the same problems that have plagued it from its inception:

The incompetence known as Louisiana's "Road Home" program continues to hit new lows. Its hallmarks are a painfully slow application and review process, an even slower cutting of checks to the people who need the money and the obvious lack of accountability that stretches from the Governor's Mansion in Baton Rouge to the offices of ICF International in Fairfax, Va. . . . [The Program] highlights everything that is wrong with the state—government mismanagement, bureaucratic inertia, a historic bias against the people of the state and the complete absence of accountability.⁵⁵

The amount of closings the Program has made, the most telling statistic of administrative success, paints a grim picture. As of May 2007, nearly two years after Hurricane Katrina, just 10% of applications had gone to closing.⁵⁶ If the objective of the Program was "to help people get back into a home . . . as quickly as possible," it has miserably failed.⁵⁷

3. The Public Relations Campaign Debacle

Criticism of the Program and the ICF became so harsh that in March of 2007 Program authorities decided to institute a \$1.6 million public relations advertising campaign.⁵⁸ The advertisements featured individuals who had received funding praising the Program for its merit and encouraging those with applications

⁵⁵ *Road Home'? Not Yet for 90% of Applicants*, *supra* note 37.

⁵⁶ *Id.*

⁵⁷ See THE ROAD HOME HOMEOWNER POLICIES VERSION 4.0, *supra* note 5 and accompanying text.

⁵⁸ Posting of Susan Steward-Barre to Think New Orleans, <http://thinknola.com/post/the-road-home-program-goes-to-hollywood/> (Apr. 25, 2007 12:20 EST).

pending to remain patient. In one scene, a group of individuals celebrate in harmony that “The Road Home is A TEAM! The Road Home team tackled my rebuilding problem and made a touchdown for us,” while raising their hands in the air as if a touchdown had been made.⁵⁹ Another scene features a couple saying “The Road Home really is the light at the end of the tunnel. They gave us much more than we ever expected and now we have gone on with our lives.”⁶⁰

Aside from being obnoxiously simplistic and paternalistic, the advertisements demonstrated the type of unfettered waste of resources that has characterized the Program from the beginning. In May of 2007 it became evident that due to a variety of factors—the squander of resources and more applications than expected—the Program would not have enough funding to service all existing applications.⁶¹ In light of this potentially significant shortfall (by some accounts, \$2 billion), the state House Appropriations Committee contemplated a measure that would force the Program to freeze all spending on advertising.⁶² To avoid further embarrassment, officials quietly cancelled the campaign before the measure could be passed.⁶³

C. Why Did the Program Fail?

A number of theories have been offered as to why the Program has failed in so many respects and for so long. Some have attributed the failure to a shortcoming in oversight, others to poor planning by the LRA, and still others to an incompetent implementation of the plan by the ICF. Although the failure of the Program is probably due to a variety of causes, it seems evident that it did not necessarily have to fail so miserably.

⁵⁹ *Road Home? Not Yet for 90% of Applicant*, *supra* note 37.

⁶⁰ *Id.*

⁶¹ See Jan Moller, *Amid bad ratings, TV blitz touting Road Home canceled*, TIMES-PICAYUNE (New Orleans), May 9, 2007, at A1.

⁶² See *id.*

⁶³ See *id.*

Professor John Lovett of the Loyola University College of Law notes that Mississippi's counterpart to the Louisiana Program demonstrates how the Program could have avoided many of the blunders through better planning.⁶⁴ First, the Mississippi plan is much easier to implement because calculating damages is so straightforward. Under that plan, damages are calculated by taking the insured value of an eligible home (an indisputable figure) and multiplying this figure by the percentage of damage the home suffered.⁶⁵ The homeowner then receives a check for this amount, not to exceed \$150,000, less any compensation from private insurance or FEMA.

The plan also has a significantly faster application-to-close processing time because the homeowner is not subjected to any covenants as to how he can use the funding. Once the funds are distributed, the homeowner can use them any way he sees fit and need not actually repair his home. The result of these distinctions is that the Louisiana plan is "considerably more complex and costly to administer than Mississippi's plan."⁶⁶

IV. A LAW AND ECONOMICS CRITIQUE OF THE PROGRAM

Although by most standards the Program has failed, a more important issue is whether any recovery program of this magnitude is an appropriate use of public resources. The Program took billions of national tax dollars and devoted them to revitalizing an area devastated by a natural disaster. Because the United States is likely to see another disaster of this proportion again—perhaps even another disaster of this proportion in Louisiana—it is important to reflect now on whether the significant tax money spent on the area was the best use of our limited national resources.

⁶⁴ John Lovett, *Why Can't Our Road Home be as Simple as Mississippi's?*, TIMES-PICAYUNE (New Orleans), Aug. 17, 2006.

⁶⁵ *See id.*

⁶⁶ *Id.*

A. The Economic Propriety of “Public Insurance”

First, there is the basic issue of whether using public resources to subsidize housing costs on such a widespread basis is even appropriate at all. The obvious alternative would be to leave this task to the private market. The market has indeed developed a powerful vehicle in the form of private insurance with which people can minimize the risk of loss from a disaster like Hurricane Katrina. As a matter of fairness, it seems appropriate to leave recovery funding to the private sector in this respect. No one can claim to be without notice prior to Katrina that New Orleans was subject to flooding.⁶⁷ Accordingly, most of those who chose not to obtain insurance before the storm knowingly bore the risk of loss. These individuals ostensibly valued the amount of the insurance premiums more than they did the potential insurance proceeds subsequent to a disaster.

This analysis, however, may be a bit too simplistic. Some people who did not obtain insurance prior to the storm simply could not afford to do so. Perhaps these individuals bought or inherited inexpensive property in which they could hardly afford a mortgage note and property taxes, much less premiums for hazard and flood insurance. At least as to these individuals, there is nothing more they could have done to protect themselves from disaster.

Nonetheless, transforming the government into a private insurer of these individuals is neither fair to the public who funds this type of “insurance” with tax dollars nor is it in the best long-term interest of society. New Orleans is categorically a risky place to live. In the spirit of freedom, those who want to incur this risk by living here should be allowed to do so. But they should do so at their own risk and not at the risk of society at large. If society bails those out who did not obtain proper insurance,⁶⁸ it is sending a

⁶⁷ See *infra* note 70 and accompanying text.

⁶⁸ Of course, the Road Home Program attempts to alleviate some of this effect by imposing a 30% penalty on those who failed to obtain insurance when it was prudent to do so. See ROAD HOME, *supra* note 22 and accompanying text. This

message to future market participants that they need not heed the risks of where they live; society will reallocate private resources—the resources of many who have already born their own risk of loss from disaster—to rescue those who did not have such foresight.

Aside from these basic issues of risk and resource allocation, this system is dangerous because it has the potential to perpetuate the need for a massive public bailout that we now face. As noted, much of the funding under the Road Home Program will be allocated to aiding those in low-income areas where homeowners could not afford insurance. Left to their own resources these individuals would not be able to repair their housing. They would be left with only one economically-valid option—sell their house to a private market participant who can put the property to better use.⁶⁹ The purchaser, being in a better economic position than the seller, could then purchase private insurance or take other measures to mitigate the risk of loss from disaster.

In contrast, the Program that Louisiana has adopted enables these individuals to fix their housing with public resources and again take up residence there. In most cases in the same or worse economic position than they were before the storm, these individuals will move back into their houses still unable to afford insurance premiums.⁷⁰ The Program attempts to mitigate this effect by requiring those receiving grants to sign covenants agreeing to maintain hazard and flood insurance on the property.⁷¹

penalty, however, is arguably too insignificant to have an impact on future behavior of market participants, particularly those who could not afford insurance anyway.

⁶⁹ Of course, some areas may be too risky to attract any such purchasers. In such a situation, the private market has determined that the risk of loss from disaster in this particular area is not commensurate with the benefits of living there.

⁷⁰ This problem is exacerbated by the fact that the poorest areas in New Orleans—New Orleans East and the Lower Ninth Ward—are by no coincidence the lowest areas in the city. See Leslie Williams, *Study Busts Myth that New Orleans is Sunken City*, TIMES-PICAYUNE (New Orleans), Apr. 20, 2007. Those who move back into areas with the greatest risk of loss from a disaster are thus those who are also least likely to maintain adequate insurance.

⁷¹ See *supra* note 11 and accompanying text.

But given the way the program has been administered thus far, enforcement of these covenants seems comical. Moreover, applicants will have three years to establish residence, in the interim using the grant money at the risk of the public.

Some argue, however, that despite these legitimate concerns bailing out these individuals is necessary as a matter of equity because the government enticed them to move into these areas by building levees. These individuals were given a false sense of security by a flawed levee system, so the argument goes, and thus should be compensated for the losses that they would not have incurred but for having moved into the area under false pretenses.

As a preliminary matter, as to many individuals this argument is entirely invalid because it rests on inaccurate assumptions. Those moving into new housing in New Orleans in the past quarter-century have been repeatedly warned that our levee system could potentially breach or be overtopped in a major hurricane.⁷² Even assuming that the argument is valid as to some individuals who moved into their housing before the discovery of the flaws in the levee system, the argument nonetheless fails.

That the government has presumably made mistakes in the past by building a flawed levee system is no sound justification for continuing to make a similar mistake by enticing people to stay under the reach of a still-flawed system. Implementing a massive government bailout like the Program is just another improper inducement for those to stay who otherwise would (and should) not. And now these individuals will indeed have a legitimate basis for

⁷² The newspaper headlines for the five years before Katrina were eerily ominous in this regard. See Kimm Cobb, *New Orleans gambles on New Pumps, Canals; City's Levees May Hold, but a Big Storm Would Just Wash Over Them*, HOUSTON CHRON., Sep. 16, 2004, at 14; Mark Schleifstein, *The Big One; A major hurricane Could Decimate the Region, but Flooding from Even a Moderate Storm Could Kill Thousands. It's just a Matter of Time*, TIMES-PICAYUNE (New Orleans), June 24, 2002 at 1; Mark Schleifstein, *Corps' Storm Plan Grim; Flooding Could Last 6 months*, TIMES-PICAYUNE (New Orleans), Nov. 16, 2000 at 1.

assuming that the government would bail them out again in the event of another disaster in the future.⁷³

B. A Public Road Home—Is There Even Such a Thing?

Although to some degree the verdict is still out, the Road Home Program so far has been a perfect example of how government subsidies can cause a snowball of unintended consequences. The Program has been so inefficient that, rather than expediting recovery, it has caused a standstill while the public waits for more information before it makes a move. Knowing how large of a grant one will receive under the program—a grant potentially as high as \$150,000—is probably the most significant piece of information most people will have in deciding whether to rebuild or relocate. But two years from Katrina only 10% of people have received funding under the Program, while the other 90% have lost faith in a demonstrably incompetent system.

The delay is significant because it has perpetuated the shortage of housing. A shortage in housing means a shortage in workers, and a shortage in workers means a stay in economic activity. Businesses have thus had the choice to shut down until conditions improve, to temporarily do business somewhere else, or to permanently relocate. The longer the shortage in housing lasts, the more businesses are likely to choose the latter course.

In contrast, in the absence of a Road Home Program homeowners would have had less incentive to postpone their decisions. Inevitably many homeowners would have opted to move in light of the risks inherent in staying. But at least they would have then sold their homes to private investors or intrastate immigrants at a discounted rate, making more housing available and expediting recovery. Moreover, many homeowners would

⁷³ In any case, this argument is really one for tort liability that is best addressed by the courts. The courts rather than the legislature are best suited to determine issues of due care, causation, and damages. In this regard, a case is pending against the Army Corp of Engineers. For more on this class action suit, see <http://www.leveelaw.com>.

have incurred private loans to rebuild, thus immediately injecting money into the local economy.

IV. CONCLUSION

The Louisiana Road Home Program has been a prototypical example of the law of unintended consequences. There were simply too many negative market implications to such a massive program for state planners to effectively mitigate. Moreover, implementing such a massive program without the aid of private market forces directing the activity was bound to spell trouble. The result has been a system that has delayed rather than prevented recovery. Future disaster recovery planners should take heed to the lessons learned through the Road Home experience and adopt a plan that seeks only to facilitate private market forces in the aftermath of a disaster. Anything else will likely only stifle recovery.

