Testimony of
David F. Wilson

On Behalf Of the
National Association of Home Builders

Before the
United States House Committee on Financial Services, Subcommittee on Housing and Community Opportunity

"Emergency Housing Needs in the Aftermath of Hurricane Katrina"

September 15, 2005

Introduction

The 220,000 members of the National Association of Home Builders (NAHB) appreciate the opportunity to share our views on how to respond to the tragedy of Hurricane Katrina and address the emergency housing needs in its aftermath. Our heartfelt sympathies go out to the victims of the hurricane, we commend the heroic acts performed by thousands of rescue workers and pledge our support for what promises to be an unprecedented rebuilding effort along the Gulf Coast.

Members of the home building community, like so many around the country, feel the impacts of Katrina on a very personal level. By our estimate, more than 9,000 NAHB builder members have been displaced, lost their homes or businesses or have otherwise been affected by this tragedy. NAHB and its state and local associations are working as quickly as possible to get builders in the affected areas back on their feet so they can begin rebuilding in their communities.

The task of recovery and rebuilding is unprecedented with 1 million people homeless or displaced, 275,000 homes destroyed across the gulf coast and countless others severely damaged and widespread environmental damage, especially in New Orleans. Further, the impacts of the hurricane are being felt not only in the Louisiana, Mississippi and Alabama but also in the surrounding states that have taken in thousands of evacuees and must provide for their shelter and other needs.

This testimony focuses on three areas: the builder response to the crisis; discussion of the impacts of hurricane Katrina on home building and construction costs in the affected areas and recommendations for a federal response.

Builder Response

The building community has responded in several ways to the hurricane disaster. In an effort to reach out to our builders on the gulf coast, NAHB is placing radio, TV and print public service announcements (PSAs) in Texas, Louisiana and Mississippi asking for builders who have been economically disadvantaged or displaced to call a designated number so that NAHB's local affiliates can provide them with assistance to help get them back on their feet so they can begin rebuilding in their communities. In addition, NAHB is also placing consumer oriented PSAs warning about fly-by-night contractors who prey on disasters and what consumers need to know when choosing a builder.

State and local builder associations in the region are also helping to organize building material donations to be used in the rebuilding effort. Further, Low Income Housing Tax Credit (LIHTC) builder members in Texas organized a web site to connect available LIHTC units with hurricane evacuees in Houston. This effort resulted in more than 1,000 individuals and families securing affordable housing within the first two weeks after the Katrina disaster.

NAHB applauds those steps already taken by the Congress and the Administration to meet the housing needs of those affected by Katrina. Along these lines, we would respectfully ask the

Congress to make NAHB a partner in the government's "Housing Area Command" established for the gulf coast region. Ultimately, it is important that competitive, quality housing is rebuilt and that community character is restored to affected neighborhoods. Local builders have long been a part of their local community and it is essential that they be part of the rebuilding effort.

Impacts of Katrina on Construction Costs and Labor

I. Building Materials

The price and availability of materials was problematic even before the hurricane. Over the past two years, despite low overall rates of inflation, the cost of construction materials has increased sharply. The BLS Producer Price Index for materials used in residential construction, weighted by the quantities used in home building, increased by 15.8 percent from August 2003 to August 2005. Also, shortages of materials such as concrete products, roofing, and brick have delayed many construction projects and contributed to increases in other costs.

The largest component of the cost of materials in home building consists of framing lumber and wood panels (plywood and OSB). During the clean-up and repair phase of the recovery effort, the need for wood panels will be particularly great. As the recovery process moves from repair to rebuilding, the demand for framing lumber will grow.

Over the past several weeks, far more dramatic increases in materials costs have been reported. The national average wholesale price of wood panels has increased 37 percent since the end of August (with Southern pine plywood up by 50 percent), and national average framing lumber prices increased 14 percent. In the hurricane areas, the increases were much larger and shortages were widespread. Some of those increases may be partially reversed as production is restored at the facilities that were idled by the storm, and as panic buying dissipates, but the elevated need for materials will continue for several years.

Due to inadequate supplies of timber and inadequate production capacity in industries such as cement, the U.S. has had to rely on imports, especially for wood products and cement, in order to meet the demand for new housing. About one-fourth of our cement supply, 39 percent of our framing lumber, and 30 percent of wood panels are imported. However, exorbitant duties imposed on Canadian lumber and Mexican cement, as well as new duties on Brazilian plywood, have increased the cost of housing and led to shortages.

Demands from China and elsewhere for cement, and for the ships to transport cement, have contributed to widespread shortages. A report from the Portland Cement Association on June identified 23 states where shortages were reported, and the list has grown since then. Imports have come from countries such as Korea, Thailand, Greece, and Turkey. Shipping cement from there takes one to two months and involves high transportation costs. There is additional cement supply available from Mexico, only about 4 days away, but imports from Mexico are limited because of high duties.

While timber harvests from private forests are already at or beyond maximum sustainable yields, sales of timber from public lands were reduced by 87 percent from 1990 to 2004. Not only has this raised housing costs and increased our reliance on imports, but it has increased the risk of catastrophic forest fires.

II. Labor

While skilled construction labor will continue to be needed throughout the reconstruction process, qualified labor will be especially critical during the repair phase, since repair work is relatively more labor-intensive than new construction. Even before the hurricane, builders were reporting labor shortages. An NAHB survey in July found more than 20 percent of builders in the South reporting a "serious" shortage of carpenters, and another third reporting "some" shortage. Regarding roofers, 15 percent of builders in the region reported a serious shortage and 35 percent reported some shortage.

Recommendations for Federal Response

I. Building Materials

To help alleviate shortages and price pressures in building materials, the following steps should be taken:

- Remove the Countervailing Duty (CVD) and Anti-Dumping (AD) tariffs on Canadian lumber. The duties on lumber from Canada have already been found inconsistent with U.S. law by unanimous bi-national NAFTA panels. NAHB is very concerned that the Administration has not implemented these rulings and is further concerned that a portion of the U.S. timber industry has filed a constitutional challenge to the very provisions of NAFTA that have paved the way for the duties to be removed. Eliminating these tariffs will help address the building material needs in the gulf coast region.

- Eliminate the duties on Brazilian plywood. As of July 1, plywood from Brazil was declared ineligible for Generalized System of Preferences (GSP) tariff-free treatment. Brazil is the largest foreign supplier of plywood to the U.S.

- Remove the AD tariffs on cement from Mexico. The duties have contributed to the widespread shortages disrupting public and private construction in many areas. Earlier this year, the governors of Florida, Texas, New Mexico, Idaho, Nevada, Utah, and South Dakota, as well as other public officials all wrote to the Commerce Department describing the cement supply problems and the adverse impact of these duties. NAHB supports eliminating these duties to address gulf coast redevelopment needs.

- Increase timber sales from Federal lands. Nearly half of all standing softwood saw timber in the U.S. (excluding timber in protected parks and wilderness areas) is on U.S. Forest Service and BLM land. Overly-complex regulations, inadequate authority from Congress, and changes in Federal forest policies have produced the near-elimination of Federal timber sales and harvests.

II. Government Housing Programs

The need to address the unprecedented damage left by Hurricane Katrina will require the federal government's attention for several years to come. While billions of dollars have already been appropriated to the Federal Emergency Management Agency (FEMA) to address the immediate needs for temporary shelter, food, clothing, medical care and initial debris removal and environmental clean-up, billions more will be required to repair, rehabilitate and construct infrastructure, housing and businesses. NAHB strongly urges Congress to ensure that the affected communities receive adequate funding for the following housing programs over the next several years to tackle the extremely difficult task of rebuilding for their futures.

US Department of Housing and Urban Development

Section 8 Housing Choice Voucher and Section 8 Project-based Programs

The Section 8 Housing Choice Voucher program provides tenant-based rental assistance to extremely low- and low-income households throughout the country, many of whom reside in the areas affected by Hurricane Katrina. The Section 8 program is the most important resource available immediately to ensure that displaced voucher holders, as well as others displaced by the hurricane, obtain housing quickly. The Section 8 project-based properties are important sources of affordable housing, which have millions of dollars of subsidies tied to them. This resource should not be lost. The following program requirements should be suspended or modified immediately:

- Preserve Section 8 project-based Housing Assistance Contracts (HAPs). A sizable number of privately owned properties with Section 8 project-based assistance, as well as public housing units, were destroyed or rendered uninhabitable by Hurricane Katrina. The funding for the housing subsidies has already been appropriated. Congress should ensure that Section 8 project-based HAP contracts on affected properties are frozen or suspended to prevent them from expiring while the properties are being rebuilt or rehabilitated and, if necessary, facilitate the transfer of such HAP contracts to other properties.

- Issue tenant-based vouchers to residents who lived in project-based projects that were destroyed or rendered uninhabitable. Residents who lived in affected properties with project-based assistance should be able to "convert" their rental assistance to vouchers.

- Prepare a special lease addendum to the Section 8 model lease for project-based Section 8. The need to waive the income, employment, etc., requirements will necessitate a special lease addendum to protect owners and HUD from fraudulent or ineligible applicants discovered subsequent to lease-up.

- Streamline portability of existing tenant-based vouchers. Recipients of Section 8 tenant-based vouchers who were displaced because of the hurricane should be able to quickly port those vouchers to other jurisdictions without the normal administrative procedures. Sufficient funding for housing agencies that accept the ported vouchers should be provided.

- Income/employment verification. HUD and public housing authorities (PHAs) can easily verify the status of current subsidy recipients through their PIC or TRACs system. This will assist owners who are trying to determine the status of displaced persons seeking units in their properties, and it will also help relieve the displaced persons from having to find and provide documentation on their status as a voucher holder.

- Waive tenant rent contributions (including the minimum rent contribution). Due to the large scale of destruction of businesses, many families will not be receiving any income for some time. Congress should waive the tenant rent contribution for three months or until the families or elderly receive their social security or unemployment checks or find new employment.

- Allow disaster victims to move to the top of waiting lists. Any victims in federally declared disaster areas or in areas that are receiving a significant influx of victims should be placed at the head of public housing authority (PHA) waiting lists without violating any rules.

- Increase voucher payment standard ceiling. PHAs should have the ability to raise their payment standards to up to 140 percent of Fair Market Rents (FMRs) for victims of Hurricane Katrina without prior HUD permission.

- Delay initial unit inspection. Allow PHAs or HUD to inspect the units after move-in. Currently, units must be inspected prior to move-ins, and it often takes 30 days or longer to schedule an inspection. Delaying unit inspections will enable disaster victims to obtain their housing much more quickly.

- Suspend one-year lease requirements. Owners should be able to lease units on a month-by-month basis to enable residents to return to their original homes when possible or move to other permanent housing.

- Suspend translation (Limited English Proficiency/LEP) requirements. Suspend any requirements to translate leases and other documents to avoid delays. Providers can work with volunteers to ensure that verbal translation occurs where necessary.

- FMRs in the areas damaged by Hurricane Katrina, as well as in the areas receiving displaced residents, should not be allowed to decline in FY 2006. In both types of areas, rental markets will be impacted severely. In areas where the damage occurred, many rental units will need to be replaced by new construction. Current FMRs, which are based on existing units and explicitly exclude rents on units less than two years old, will typically be lower than the rents for these newer units. In areas receiving displaced residents, the increase in demand will clearly place strong upward pressure on rents.

  The FMRs proposed for FY 2006 by HUD show declines for many areas for a variety of reasons. These include the adoption of a new system for classifying metropolitan areas and defining their boundaries, results from random digit dialing surveys, and the decision to reduce FMRs from the 50th to the 40th percentile in some areas based on criteria published in an interim rule in 2000. These proposed FMRs were published before Hurricane Katrina struck and are based on data that was collected well before the Hurricane. As a result, they do not reflect the impacts of the damage and dislocation in the impacted areas. Therefore, at the very least, FMRs should not be allowed to decline in FY 2006, irrespective of how they were previously calculated on the proposed list, in Alabama, Louisiana, Mississippi, Texas, or any other state that has accepted or agreed to accept a substantial number of displaced residents.

The HOME Program

The HOME program has become critical to the financial feasibility of thousands of affordable housing developments, particularly for those projects with Low Income Housing Tax Credits (LIHTCs). The following recommendations will help ensure that the victims of Hurricane Katrina are not inadvertently prohibited from residing in affordable housing developments that contain multiple sources of financing from various government programs because of different requirements. In addition, these recommendations will help speed the development of new affordable housing when such activities can get underway. These recommendations should apply to all federally declared disaster areas related to Hurricane Katrina, as well as to the geographic areas that receive a significant influx of victims.

- <u>In LIHTC projects that also have HOME funds, apply the same relief as contained in IRS Notice 2005-69 which temporarily suspends income limits for displaced disaster victims</u>. The IRS Notice indicates that state housing finance agencies shall determine the appropriate period of temporary housing for each project, not to go beyond September 30, 2006.

- <u>Suspend HOME program income limits for the remainder of FY 2005, as well as for FYs 2006 and 2007 for all program activities</u>. This action would help affected communities address both immediate and longer-term housing needs, especially since it may take many months before permanent housing construction can begin. HOME funds will be needed to help finance the new construction and rehabilitation that will be necessary to rebuild the affected communities.

- <u>Suspend, on a temporary basis, the statutory requirement that owners of HOME-assisted rental projects must adopt written tenant selection criteria</u>. Without this waiver authority, HUD must continue to require owners to revise their written tenant selection criteria and review and approve the revised criteria before owners can admit any hurricane victims on a priority basis. Owners could be required to submit their revised criteria within 30 or 60 days after accepting their first victims to ensure that victims are not turned away due to administrative rules.

- <u>Eliminate the matching funds requirement for the HOME program for FYs 2006 and 2007.</u> HUD has the authority to waive the statutory matching funds requirement and should do so without waiting for the affected areas to request such a waiver.

- <u>Expedite all waiver requests from affected communities.</u> HUD should be as flexible as possible in granting waiver requests and should grant such waivers as quickly as possible.

- Enforce all Fair Housing and nondiscrimination requirements. In addition, as provided in IRS Notice 2005-69 for LIHTC projects, existing tenants in occupied HUD-assisted units must not be evicted or have their tenancy terminated as a result of efforts to provide temporary housing for displaced individuals.

The Community Development Block Grant (CDBG) Program

In using CDBG funds, entitlement communities must ensure that the expenditure of funds meets one of three national objectives: (1) benefit low- and moderate-income households; (2) prevent or eliminate slums or blight; or (3) meet other urgent community development needs. To ensure that CDBG funds can be used effectively and quickly to address the needs resulting from Hurricane Katrina, NAHB recommends the following:

- Provide that CDBG funds used in affected areas related to Hurricane Katrina for any purposes, including housing construction and rehabilitation, meet the national objective of "meeting other urgent community development needs." This simple step would help eliminate the red tape involved in approving waiver requests, providing the entitlement communities the flexibility to use CDBG funding to address the wide range of needs associated with disaster relief and rebuilding.

- Automatically allow new construction of housing as an eligible use of CDBG funds without waiting for the affected entitlement community or state to request such a waiver. Current law prohibits the use of CDBG for new housing construction unless it is being developed and built by certain community development housing corporations. This waiver will speed new construction activities by the private sector, as well as by other non-profits who are not certified housing community development corporations.

- Suspend CDBG program income limits for the remainder of FY 2005, as well as for FYs 2006 and 2007 in the affected areas. This action would help affected communities address both immediate and longer-term needs.

- Expedite all CDBG waiver requests from affected communities. HUD should be as flexible as possible in granting waiver requests and should grant such waivers as quickly as possible. As stated above, HUD should continue to enforce all Fair Housing and nondiscrimination requirements.

The Section 108 Loan Guarantee Program

The Section 108 Loan Guarantee program has been an effective community development tool for many years. CDBG entitlement communities may provide loan guarantees to private entities for up to five times their CDBG allocation on an annual basis. The loan guarantees may be used to finance acquisition of real property, including related public improvements, clearance and relocation; housing rehabilitation, public facilities and economic development. The loan guarantees must be used in accordance with all of the requirements that apply to the CDBG program. Currently, HUD does not have the authority to waive statutory requirements for the Section 108 Loan Guarantee program.

- Waive the same statutory and regulatory provisions allowed for the CDBG program for the Section 108 Loan Guarantee program. Such authority would greatly facilitate the use of the Section 108 Loan Guarantee program in the affected communities. Without the same waivers, the financing of redevelopment activities will be needlessly impeded.

FHA Multifamily Mortgage Insurance Programs

The FHA multifamily mortgage insurance programs have been critical sources of financing for affordable rental housing, especially in recent years which saw all records broken for the volume of loans approved. The Section 221(d) (4) program, which provides mortgage insurance on loans to private developers and builders, has been especially successful since Congress authorized several important improvements to the program. NAHB recommends that Congress consider the following recommendations, which would help facilitate the development of new multifamily rental housing in the affected communities.

- Increase the statutory mortgage loan limits in affected areas by up to 140 percent without prior HUD approval. Currently, the HUD Secretary must approve, on a project-by-project basis, an increase of the mortgage loan limits up to that level.

- Increase the commitment authority for the General Insurance/Special Risk Insurance (GI/SRI) Fund if so warranted as a result of increased demand for FHA multifamily mortgage insurance in the affected areas. The Administration has requested a commitment level of $35 billion for FY 2006, which is probably sufficient, although an increase may be needed for FY 2007.

FHA Single Family Mortgage Insurance Programs

Since its creation in 1934, the Federal Housing Administration (FHA), which operates as part of the U.S. Department of Housing and Urban Development (HUD), has been an innovator in insuring mortgage loan products that serve families that are either not served or underserved by the private market.

- Enact the Zero Downpayment legislation currently before Congress. A bipartisan bill, the "Zero Downpayment Act of 2005" (H.R. 3043), was introduced in the House of Representatives earlier this year and a hearing for this bill was held on June 30. This bill would authorize the HUD Secretary insure zero downpayment mortgage loans for one-to-three unit residences provided that the borrower occupies one of the units. Currently, FHA requires most buyers to make a 3 percent minimum cash contribution to the downpayment and closing costs under its 203(b) program. H.R. 3043 would eliminate this requirement on a pilot basis, up to 50,000 loans. Homebuyer counseling would be required for all borrowers in the program, which NAHB believes is important. Loans in this program would be insured through HUD's Mutual Mortgage Insurance (MMI) Fund. To assist in mitigating risk to FHA, the program would carry higher upfront and annual mortgage insurance premiums (MIPs) than HUD's other FHA single family mortgage insurance programs. Because the upfront MIP is normally included in the amount borrowed, the higher upfront and annual MIP would be reflected in slightly higher monthly payments.

- Temporarily increase FHA single family loan limits in affected areas. The current structure for establishing limits for FHA insurance of single family mortgage loans is based on 95 percent of the median home price for the area where a home is located. In no case is the FHA loan limit less than 48 percent of the Fannie Mae / Freddie Mac conforming loan limit or greater than 87 percent of the conforming loan limit. Adjustments to the FHA loan limit lag the market, since these changes are based on the prices for homes for which sales have been closed. NAHB believes that the prices of new homes that will be built to replace those destroyed by Hurricane Katrina will be significantly higher due to higher labor and materials costs and the fact that the new homes will replace older homes that were built to less stringent codes. NAHB urges Congress to allow FHA flexibility in establishing higher local area loan limits in the affected areas.

- Extend the maximum amortization to 40 years for FHA-insured loans. Section 203(b) (3) of the National Housing Act currently limits the maximum term for FHA-insured single family mortgage loans to 35 years (30 years if the mortgage is not approved prior to the start of construction). A 40-year maximum amortization term would decrease the monthly payment burden for FHA borrowers. For a $100,000 loan at a 5.5 percent rate, a 40-year term would save a homeowner approximately $624.00 each year over a 30-year loan. Currently, mortgage loans with terms of up to 40 years are offered in the conventional loans market; however, many FHA borrowers do not have sufficiently strong credit or the cash available to qualify for these loans.

- Allow loans to purchase individual condominium units to be insured under Section 203(b) of the National Housing Act. Condominiums are often the most affordable homes in a given area. HUD's project approval requirements cause delays, which result in either units not being available for purchase using FHA-insured mortgage loans or increased carrying costs that are passed along to the purchaser. Currently, condominium loans are insured under Section 234(c), which is considered a multifamily loan program with single unit ownership. Because of the connection to the multifamily requirements, such as environmental and historical property reviews, condominium projects must be pre-approved by FHA in order for the mortgage loans to purchase individual units to be eligible for FHA insurance. While these reviews may be relevant to the condominium construction loans that are insured under Section 234(d), these reviews should not be required before the individual units become eligible for purchase using FHA-insured loans. NAHB believes that FHA-insured mortgage loans for individual condominiums should be included as eligible properties under section 203(b), which includes the requirements for mortgage insurance on loans for other single family homes.

- Permit investor participation in the FHA 203(k) rehabilitation loan program. The FHA 203(k) program insures mortgage loans in those situations where a home in need of rehabilitation or repair is being purchased. These loans, which require a cash contribution by the home buyer, cover the most of the purchase price of a home as well as the cost of repairs and could prove to be a very useful financing tool to help in the rebuilding of homes in the areas affected by Hurricane Katrina. Since 1996, HUD has not allowed investors, including individuals who build or renovate homes as a profession, to purchase and renovate homes for resale under this program. This prohibition was a result of unsuccessful use of the 203(k) program by nonprofit organizations and investors who generally lacked the expertise or capacity to complete the needed repairs to the acquired homes. NAHB urges Congress to encourage HUD to reauthorize the use of the 203(k) mortgage insurance program when the borrower has relevant expertise in home construction or renovation.

- Grant FHA clear authority to insure single-family construction loans. FHA presently has a construction-to-permanent (C-P) insurance program, but does not insure the construction segment of the loan under this program. NAHB has requested FHA to insure the construction portion of C-P loans, as well as to develop an insurance program for single family construction loans. HUD has denied these requests on the grounds that HUD does not believe it has clear statutory authority to develop such programs. NAHB provided HUD with a legal opinion outlining relevant authorizing language in the National Housing Act that would support FHA's insurance of the construction portion of a construction-to-permanent loan. We agree that new statutory authority is needed for a stand-alone construction loan insurance program. Furthermore, there is precedent for an FHA-insured single family construction loan program as FHA does insure construction loans as part of its Section 221(d) (4) multifamily mortgage insurance program. Providing clear statutory authority to HUD for an FHA-insured single family construction loan program would support FHA's mission to contribute to the building of neighborhoods and communities, not only now in the wake of Katrina's wrath, but for the future.

Acquisition, Development and Construction (AD&C) loans

AD&C loans are used to purchase land, develop lots and build homes. These loans are made in two basic forms – short-term (6-to-18 month) loans to builder/developers and combination construction/permanent mortgage loans to home buyers. AD&C loans are made almost exclusively by commercial banks and thrifts, which hold the loans for their entire term in their portfolios and the lack of competition in the AD&C market makes loan costs very high relative to credit risk.

Builder/developer loans are used to purchase land; develop lots; build a project's infrastructure such as streets, curbs, sidewalks, lighting, and sewer and utility connections; and construct homes. Loans extended to builder/developers are short-term obligations lent as progress payments, i.e., portions of the loan commitment are advanced as stages of the construction project are completed. The advances, or draws, are generally made over a 6-to-18 month period. The principal and interest on the loans is repaid to the lender when the home is sold.

Loans made to home owners are made to improve their land and construct their own homes. The loan initially is taken out as a short term construction loan and payments are made to the homeowner as stages in the construction are completed. When the home is completed the obligation is converted to a permanent mortgage without a second closing.

In addition to the reductions in financing costs and home prices, a residential AD&C secondary market would improve the availability of housing production funds in economically distressed areas. Loopholes in the current Community Reinvestment Act (CRA) regulations allow commercial banks and thrifts to determine their service areas in ways that frequently exclude rural, distressed urban and other underserved areas. A secondary market would diminish such imbalances in the cost and availability of housing production credit as greater lender competition and investor interest focus attention on market needs and opportunities.

- Create a secondary market for residential land acquisition, development and construction (AD&C) loans. This would reduce the cost of a $200,000 home by $3,000, or 1.5 percent. The reduction would make a home of that value affordable for more than 750,000 additional households.

US Department of Agriculture Rural Housing Service (RHS) Programs

The RHS Section 515 multifamily rental housing portfolio is a critical source of affordable housing in rural areas. Many of these projects have been financed with LIHTCs, as well as HOME and/or the Federal Home Loan Bank Affordable Housing Program (AHP). NAHB appreciates that the RHS has already determined that displaced residents who were receiving rental assistance may port the assistance to other Section 515 properties. RHS is also allowing these residents priority for vacant Section 515 units. However, the RHS has not suspended the income limit requirements for victims who must find alternative housing. NAHB recommends the following:

- Apply the IRS guidance in Notice 2005-69 (discussed previously) to Section 515 properties with LIHTCs. Specifically, suspend income limit requirements in the projects that are receiving victims of the hurricane. This will ensure that victims are not turned away from these properties because of conflicting program waivers.

III. Other Government Programs

NAHB appreciates action by the Treasury Department to funnel New Markets Tax Credits (NMTCs) into the Gulf Coast states hit by Hurricane Katrina. NAHB supports extending the deadline for organizations that commit to target their investment activities to counties impacted by the hurricane and giving additional consideration to applicants that target disaster areas.

IV. State Housing Finance Agency (HFA) Programs

The HFAs have responsibility over several major housing programs, including the LIHTC program, HOME and CDBG for non-entitlement communities, and the mortgage revenue bond and private activity (tax-exempt) bond programs. NAHB applauds the steps already by the IRS to temporarily suspend income limits on LIHTC properties for displaced disaster victims. NAHB has the following additional recommendations for the LIHTC and private activity (tax-exempt) bond programs:

Low Income Housing Tax Credit (LIHTC) Program

- Consider a special allocation of LIHTCs for the affected states to facilitate rebuilding for the next two to three years.

- Consider designating LIHTC projects in the federally-declared disaster areas of Louisiana, Mississippi and Alabama eligible for the 30 percent basis boost also for the next two to three years to provide additional critical resources to finance rebuilding.

  Currently, the Secretary of HUD regularly designates Qualified Census Tracts (QCTs) and Difficult to Development Areas (DDAs). QCTs are areas of high poverty relative to the overall population and DDAs are areas with high land, construction and utility costs relative to Area Median Income (AMI). To encourage affordable housing development in these areas, Section 42 makes housing credit projects in these areas eligible for up to a 30 percent increase in eligible basis used to calculate the amount of credit the project can receive.

  Given the great need for affordable housing in these disaster areas, and the immense difficulty of developing in these areas, this designation would help bring additional critical resources to facilitate rebuilding.

Mortgage Revenue Bond Program

State Housing Finance Agencies (HFAs) play a vital role in funding purchases for first-time homebuyers. A significant portion of the programs offered by state HFAs is funded through the sale of Mortgage Revenue Bonds (MRBs), tax-exempt bonds that state and local governments generally issue through HFAs. The proceeds from the bonds are used to fund below-market interest rate mortgages for certain first-time homebuyers meeting income and purchase price restrictions. Unfortunately, current program requirements restrict the use of HFA programs to provide assistance for recovery from Hurricane Katrina. NAHB recommends the following modifications to the MRB programs in order to facilitate the use of MRBs and HFA programs in the recovery effort.

- Consider raising the private activity (tax-exempt) bond cap for the affected states, to facilitate rebuilding for the next two to three years.

- Relax Restrictions on Mortgage Revenue Bond Programs in Disaster Areas. NAHB supports suggestions by some Senators to provide greater access to mortgage revenue bond proceeds by lifting the first-time homeowner requirement and relaxing the purchase price and income limitations for homes in the area damaged by Katrina. This is consistent with Section 143(k)(11) of the Internal Revenue Code, which includes special rules that broaden the eligibility requirements for the use of MRBs in Presidentially-declared disaster areas. This provision allows disaster areas to be treated as "targeted" or chronically economically depressed areas, which means that loans to purchase homes with higher purchase prices and borrowers with higher incomes would be eligible to benefit from the lower interest rates typically found for loans financed through the sale of MRBs. This provision also lifts the first-time buyer restriction.

- Reauthorize the use of MRB in Presidentially-declared disaster areas and expand the time during which these provisions may be used to five years from the existing two-year limit. Unfortunately, the portion of the law that lifts the first-time buyer restriction and allows for higher purchase price and income restrictions in targeted areas expired on December 31, 1998. In addition, the current law limits to two years the time during which presidentially-declared disaster areas can be considered as targeted areas.

- Repeal the Ten-Year Rule. Currently, the Ten-Year Rule forces states and local issuers to use mortgage payments received after the original MRB has been outstanding for ten years to retire the bond rather than to make new loans to home buyers. This requirement severely constrains HFAs' abilities to meet their states' homeownership needs. In this time of recovery, these funds are needed more than ever before. NAHB urges Congress to immediately and permanently repeal the Ten-Year Rule.

- Index the Home Improvement Loan Ceiling to 50 percent of the MRB safe harbor purchase price limit for the area where the home is located. The current limit for home improvement loans that can be funded through MRB proceeds is $15,000 and has not been increased since it was established by Congress in 1980. Purchase price limits for homes purchased using MRBs are set at 90 percent of the area average home price. The IRS publishes safe harbor area purchase price limits that are indexed to limits on FHA-insured single family loans which are adjusted annually to reflect increases in area home prices. By indexing the limit for home improvement loans to 50 percent of the MRB safe harbor limit, Congress would significantly improve the availability of funding for loans which low- and moderate-income home owners could use to repair their homes damaged by Hurricane Katrina.

Homeownership Tax Credit

Modeled on the highly successful Low-Income Housing Tax Credit, the Homeownership Tax Credit (HOTC) encourages new construction and substantial rehabilitation of homes by making the tax credit available to developers who construct or rehabilitate owner occupied homes in census tracts with the greater of 80 percent of area or state/national median income, designated rural areas, Indian reservations, or areas of chronic economic distress. While many of the areas damaged by Hurricane Katrina fall within the HOTC’s targeted areas, the definition could be expanded to include areas that are declared federal disaster areas.

Under the HOTC, states allocate credits to developers through a competitive allocation process administered by state agencies. A developer can obtain a credit for up to 50 percent of the development cost of each home. Developers can sell the credits to investors who provide financing for construction or rehabilitation costs. The tax credit is claimed over five years and is not subject to recapture by the developer or investors or any other obligation after the home is sold to an eligible buyer. Generally, an eligible buyer is a family with an income that is 80 percent or less than area median gross income (or national median gross income, as contained in Senate legislation). Early sale by the buyer may result in recapture if there is a gain on the sale.

Nationwide, the HOTC is expected to produce 50,000 new and rehabilitated homes annually, $2 billion of private equity investment, $6 billion in total investment generated, 122,400 jobs, $4 billion in wages, and $2 billion in taxes and fees. More than half of the jobs (66,150) would be in industries other than construction. The construction industry would realize 56, 250 new jobs. The non-construction industry jobs would be 29,850 manufacturing jobs, 33,750 jobs in trade, transportation and services, and 2,550 in mining and other industries.

The Bush Administration proposed the *Renewing the Dream Homeownership Tax Credit* for the fifth time in the FY 2006 Budget Proposal. Two bills reflecting the administration's proposal have been introduced in the 109th Congress. Representatives Tom Reynolds (R-NY) and Ben Cardin (D-MD) have introduced H.R. 1549, the *Renewing the Dream Tax Credit Act*. S. 859, the *Community Development Homeownership Tax Credit Act*, was introduced in the Senate by Senators Santorum (R-PA), John Kerry (D-MA), Gordon Smith (R-OR) and Debbie Stabenow (D-MI).

- In order to aid the massive rebuilding of single-family homes in the effected areas, NAHB proposes the creation of a *Homeownership Tax Credit* (HOTC).

V. Financial Institutions Requirements and Regulations

Loans to One Borrower Requirements

National banks and federal savings associations are subject to statutory limitations on the loans they are permitted to make to one borrower (LTOB). This limit is 15 percent of a bank's or savings association's unimpaired capital (capital) and unimpaired surplus (surplus). There are several exceptions to this general lending limit however. Most notably, the Home Owners Loan Act permits a savings association (but not a national bank) to make loans to one borrower to develop residential single-family housing units, not to exceed $30 million or 30 percent of the savings association's capital and surplus, so long as the purchase price of each unit does not exceed $500,000.

- Temporarily extend LTOB exception to multifamily properties. NAHB believes the statutory exception to LTOB limits will be critical in providing sufficient levels of financing for rebuilding storm-ravaged areas. However, the eye of Hurricane Katrina's wrath did not focus exclusively on single family residential dwellings. Therefore, NAHB requests that the statutory LTOB limits be revised temporarily to permit a savings association to make loans to one borrower to develop domestic residential housing units, not to exceed $30 million or 30 percent of the savings association's capital and surplus, so long as the purchase price of each single-family unit does not exceed $500,000 and each multi-family unit satisfies the qualifying criteria of the Community Reinvestment Act.

- Congress should also establish temporary parity between federal savings associations and national banks by revising the LTOB limits in the National Bank Act to include the exception currently accorded savings associations.

VI. Appraisals

The process of appraising property for sale in the post-Katrina environment will be extremely difficult. In the affected areas, there will be few sale comparables. More broadly, shortages in labor and construction materials will impact construction costs throughout the nation. It is inevitable that the high level of residential and commercial building and repair activity, accentuated by the relocation of workers out of the affected area and the loss of production facilities, will precipitate shortfalls in the availability of skilled labor and inventories of building materials. These shortages will likely lead to increased prices which, in turn, will drive up the cost of building and repairing homes in the affected areas and elsewhere. These shortfalls are likely to be more widespread and of longer duration than previously experienced.

- <u>Increased replacement cost of a home should be factored into an appraisal.</u> NAHB encourages the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA), U.S. Department of Agriculture Rural Development, Fannie Mae, and Freddie Mac to provide direction to the appraisal community to recognize the way in which home values are impacted by higher, volatile construction costs. There is precedent for these organizations to issue this type of direction to appraisers. In the early 1990s, a sharp spike in the price of framing lumber led to significantly increased home building costs. At that time, these increased costs prompted the agencies to encourage appraisers to consider market forces, particularly increases in the cost of construction, when making adjustments to the values of comparable homes. In view of the market conditions that are expected to evolve, NAHB urges these organizations to once again provide clear guidance for appraisers.

- <u>Provide assurances to appraisers that appraisals using "reasonable" approaches to determining property values will not be criticized.</u> The task of producing an appraisal is an art. Appraisers should be assured that their work will not be subject to criticism or sanction as long as the appraiser's approach to value is clearly explained.

- <u>Relax real estate loan-to-value ratios.</u> Given the difficulty there will be in deriving appropriate property values, Congress should urge financial institutions regulators to relax loan-to-value requirements for real estate loans in the affected areas, as well as those regions that absorbed a substantial number of evacuees.

VII. Federal Home Loan Bank System

<u>Affordable Housing Program</u>

The Federal Home Loan Banks (FHLBanks) play a vital role in providing liquidity to community-based institutions for housing finance, a factor that is sure to be important in the effort to make communities in disaster-stricken areas inhabitable once again. In addition, the home building industry, which is made up largely of smaller companies that do not have direct access to the capital markets through stock or bond issues, relies heavily on the member institutions of FHLBanks for financing to produce homes.

Much of the devastation wrought by Hurricane Katrina was inflicted upon lower income groups and other underserved socioeconomic areas. NAHB believes the FHLBank System's Affordable Housing Program (AHP) can be used as a resource for financing to replenish the much-needed affordable housing supply so individuals and families in these groups will once again have a place to call home.

NAHB requests that Congress and the Federal Housing Finance Board look for ways to modify the AHP statute and implementing regulations in this time of crisis in order to expedite more funds to the relief effort. In particular, we request the following modifications:

- <u>Eliminate the statutory preference for non-profit sponsors of AHP-qualified projects.</u> This has inhibited participation by for-profit builders even though for-profit builders have demonstrated the ability to produce housing of higher quality and lower cost than that produced by non-profits. The exclusion of for-profit sponsors needlessly works against the AHP's goal of providing housing most efficiently in markets where the need is greatest.

- <u>In disaster-stricken areas and other areas in which displaced individuals and families have sought refuge, raise or eliminate the income limits for renting vacant units in AHP-assisted rental projects.</u>

- <u>Permit the first-time homebuyer set-aside fund to be used for any qualified home purchase in disaster-stricken areas and other areas in which displaced individuals and families have sought refuge.</u>

VIII. Environmental Policy

From an environmental perspective, one of the key concerns confronting the redevelopment process is the risk of wide spread soil and sediment contamination from pollutants in the flood waters. A recent EPA analysis found that the flood waters in New Orleans contained over one hundred priority pollutants including lead, petroleum products, PCBs, and dozens of chemicals used in pesticides and herbicides. NAHB is concerned that the risks poised by environmental contamination threatens to limit rebuilding in some areas.

Although Congress passed the Brownfields Revitalization and Environmental Restoration Act of 2001 (PL 107-118), which establishes a process developers and landowners can follow in order to receive limited federal liability protections, three years after its passage significant elements of the law remain unimplemented. Under this law, in order for a developer (or any other landowner) to receive the liability protections afforded under that statute, landowners must first demonstrate that they conducted "all appropriate inquiry" into potential environmental contamination. Although Congress directed EPA to establish minimum criteria within two years as to what an "all appropriate inquiry" entails, the EPA has yet to finalize the All Appropriate Inquiry rule.

NAHB is also concerned that gaps in the liability protections under the federal Brownfields law will hinder redevelopment efforts. Specifically, the federal brownfields law excludes properties that are contaminated with pollutants such as petroleum, lead-based paint, PCBs, or asbestos, all of which the EPA has publicly stated are in the flood waters of New Orleans. Although state voluntary clean-up programs (VCP) in Alabama, Mississippi, and Louisiana allow properties contaminated with these pollutants to participate in their programs, without the same liability protections at the federal level as what is currently offered by the states, NAHB is concerned developers may be reluctant to redevelop these areas.

Finally, under the federal brownfields law, states are responsible for determining clean-up standards and assessing completion of clean-up plans for each site enrolled in their state programs. Given the expected amount of newly contaminated land, NAHB members have serious concerns as to whether existing state programs can handle the expected massive increase in oversight responsibility.

To address the above concerns and facilitate long-term building efforts, NAHB urges Congress to do the following:

- Extend the same federal liability protections for petroleum contaminated sites currently available under existing state VCP programs (including Alabama, Louisiana, and Mississippi) by amending the federal definition of “Brownfield Site” found under 42 USC §39(B) and removing the current exclusion of petroleum contaminated sites.

- Increase federal technical assistance funding to state Voluntary Cleanup Programs in Alabama, Louisiana, and Mississippi to help increase the capacity of these existing state programs.

IX. Insurance

Congress should not let liability insurance and homeowners insurance become inadvertent victims of Hurricane Katrina. The construction business, like most businesses, is fraught with risk. One of the ways builders attempt to avoid risk is by purchasing general liability insurance. Liability insurance is the single most important component of a builder’s insurance program. It provides coverage for the insured builder for damages resulting from certain claims asserted by third parties. This coverage includes claims for bodily injury, property damage, advertising injury and personal injury, all as defined by the policy.

The general liability policy is intended to cover a wide range of third party claims involving both “premises-operations” exposures (e.g., a slip and fall at the builder’s offices or model home; a job site injury to a worker), as well as “products-completed operations” exposures (construction defect claims are a notable example).

Today, builders are confronting a liability insurance crisis. Due to adverse insurance market conditions, liability coverage for builders is less available, more expensive and more restrictive in terms of the coverage afforded. Depriving builders of such valuable insurance protection would disrupt an industry that is a vital part of a healthy economy.

The ability to operate efficiently in the home building industry and to price a home competitively depends on the degree to which the builder’s overall costs are certain and predictable. The inability to obtain liability insurance would expose home builders to the uncertainty of additional costs and litigation expenses. This increased exposure by builders would lead to an increase in the cost of building homes. Builders would have to increase the price of their homes to cover these costs. Increased prices would adversely affect the housing industry, with ripple effects on construction-related industries and the economy in general, since housing is a critical component of local economic development -- creating jobs and demand for goods and services, generating revenues, and providing affordable housing.

Additionally, Congress should ensure that buyers have access to reasonably priced, comprehensive homeowners insurance, because without such insurance homeowners will not able to obtain the funding necessary to buy homes.

Conclusion

NAHB appreciates the opportunity to share our views on responding to the housing crisis in the aftermath of hurricane Katrina. The impacts of this tragedy will be felt by the region and the nation for years to come and it will take a cooperative effort of federal, state and local governments and the private sector to respond. The nation's home builders stand ready to take on this challenge.