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**UNITED STATES HOUSE OF REPRESENTATIVES
HEARING OF COMMITTEE ON HOMELAND SECURITY
“FEMA HOUSING: AN EXAMINATION OF CURRENT PROBLEMS AND
INNOVATIVE SOLUTIONS”**

July 8, 2009

INTRODUCTION¹

Good morning. I am Reilly Morse, a senior attorney in the Katrina Recovery Office of the Mississippi Center for Justice in Biloxi, Mississippi. I thank Chairman Thompson, Ranking Member King, and the members of the committee for holding this hearing to examine current problems and solutions on FEMA disaster housing. I also thank the U. S. Department of Housing and Urban Development (HUD) and the Federal Emergency Management Agency (FEMA) for their efforts to house Gulf Coast residents following emergencies and natural disasters.

The Mississippi Center for Justice (“MCJ”) is a nonpartisan, nonprofit, civil rights legal organization that was founded in 2003. It was formed to provide a home-grown means to advance racial and economic justice in Mississippi. In 2005, MCJ became the Deep South affiliate of the Lawyers’ Committee for Civil Rights Under Law (“Lawyer’s Committee”), a national civil rights legal organization formed in 1963 to remedy racial discrimination. Shortly after Hurricane Katrina, MCJ opened a Katrina Recovery office in Biloxi, where we joined forces with the Lawyers’ Committee and attorneys and law students from across the nation to provide free legal representation, impact litigation, and policy advocacy for storm victims, particularly low income and minority populations.²

I am a third-generation Gulfport, Mississippi lawyer. After Katrina destroyed my office, and displaced innumerable relatives and friends, I joined MCJ to provide legal assistance for others to move towards recovery. My family and our home survived Katrina, but the clients I represent here today were not so fortunate. On behalf of those clients, I urge you to do the following:

¹ I express appreciation for contributions to this testimony from the National Low Income Housing Coalition, the National Fair Housing Center, PolicyLink, Texas Appleseed, my colleagues at Mississippi Center for Justice and the Lawyers’ Committee for Civil Rights Under Law, and the 2009 University of Maryland Law School Summer interns.

² MCJ’s early experience in partnership with the Lawyers’ Committee for Civil Rights Under Law, is described in Jonathan P. Hooks, Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 California Western Law Review 21 (Fall 2006).

1. Ensure that post-disaster housing and the necessary public assistance to local governments that supports housing recovery remain FEMA top priorities.
2. Require FEMA to maximize the repair and rehabilitation of existing housing resources, prioritize modular housing over travel trailers, and accelerate and increase aid to special needs and lower-income populations.
3. Require FEMA to provide unified, comprehensive, and intensive case management, especially for vulnerable populations, to reform eligibility and duplication of benefits rules, and to strengthen fair housing training and enforcement for its staff and contractors.

I. POST DISASTER HOUSING IS TOP PRIORITY FOR RECOVERY PROCESS

Housing is central to disaster recovery, to state the obvious. “Housing is the connector to how we live our lives and interact with the social networks within our communities,” notes FEMA’s 2009 National Disaster Housing Strategy.³ All stages, from shelter to interim to permanent housing, determine the pace of recovery. As pointed out by the Director of Governor Barbour’s Office of Recovery and Renewal, “[t]he repair and reconstruction of housing is the foundation of individual, community, and overall economic recovery. ... Without the rapid provision of temporary and permanent housing solutions, recovery will be slowed or fail to occur in a manner that meets the needs of disaster victims, the recovery objectives of local leaders, or the intent of the Governor, which is to achieve a coastal “renaissance.”⁴

Affordable housing is a prerequisite to the recovery of the job market. This is as true years later as it is in the immediate aftermath. “Housing is our biggest priority. Our community cannot survive without housing. The jobs will come and have come back but people must have a place to live,” testified a local minister in January, 2006.⁵ In 2007, Mississippi proposed to solve the hiring problem of many of its major employers through a long term workforce housing program. As of May, 2009, both the population and the civilian labor force in the Mississippi

³ FEMA National Disaster Housing Strategy, January 16, 2009, p. 52 (hereafter “the Strategy.”) <http://www.fema.gov/news/newsrelease.fema?id=47305>.

⁴ Testimony of Gavin Smith, January 14, 2006 Field Hearing of House Financial Services Subcommittee on Housing and Community Opportunity, “Housing Options in the Aftermath of Hurricanes Katrina and Rita,” (hereafter January, 2006 Housing Options Hearing), pp. 2-3. <http://www.house.gov/financialservices/media/pdf/011406gs.pdf>

⁵ Testimony of Rosemary Williams, Mount Zion United Methodist Church, January, 2006 Housing Options Hearing, transcript, p. 48.

coastal region were seven percent or more below pre-Katrina levels.⁶ Housing stock, excluding temporary housing, likewise stands at roughly seven percent of pre-Katrina levels, according to recent estimates by Mississippi officials. Until more housing becomes available, the affected region's civilian labor force cannot return.

II. FEMA'S INTERIM HOUSING STRATEGY SHOULD MAXIMIZE AVAILABLE HOUSING RESOURCES

Interim housing, according to FEMA, "covers the gap between sheltering and the return of disaster victims to permanent homes."⁷ Providing interim housing is more difficult when the disaster also damages the public and commercial infrastructure of the community. As households transition from shelter to interim housing, the recovery of their neighborhood will determine their access to food, health services, work, and school.

FEMA's public assistance programs are critical to achieving the recovery of essential public services and infrastructure on which the housing and commercial recovery depends.⁸ For this reason, MCJ urges FEMA to streamline the public assistance approval process and to closely coordinate it with FEMA's interim housing activities in the same community. In cases of catastrophic loss, we urge FEMA to eliminate cost shares and reimbursement-based assistance to local governments. Just as people and families need enhanced financial assistance to restore their stability, local and county governments need federal public assistance without having to shoulder additional cost shares in the wake of a catastrophic loss.

People tend to recover sooner from disasters the closer they are to home, and so MCJ endorses FEMA's plans for immediate repair assistance to rental properties to enable as many tenants as possible to return to their pre-disaster locations.⁹ Congress should amend the Stafford Act to permanently enable FEMA to use public funds for repairs of private, for-profit rental property following a federally declared disaster.¹⁰ In Mississippi, 30,017 out of 42,187 single family rentals had minor damage (below \$5,200).¹¹ The per-unit cost of restoring a lightly-damaged single family rental to permanent habitability is one-sixth of the cost of a FEMA trailer

⁶ See Census Report and Labor Market data attached as Exhibit "A".

⁷ The Strategy, p. 50.

⁸ The Strategy, Annex 2, pp. 54-57.

⁹ The Strategy, pp. 57-58.

¹⁰ We support in concept FEMA's Rental Repair Pilot Program; however, we cannot comment on the details because we have not yet seen the report that was to have been filed on March 30, 2009.

¹¹ Housing Unit Damage Report, February 12, 2006, FEMA ("FEMA February 2006 Report"). http://gnocdc.s3.amazonaws.com/reports/Katrina_Rita_Wilma_Damage_2_12_06_revised.pdf

on a private site, and one-thirteenth of the cost of a FEMA trailer at a group site.¹² Rental repair is quicker, it stimulates the local economy, it reduces neighborhood blight and depopulation, does not incur expenses for mobilization/demobilization, and it avoids zoning barriers that may block conversion of other housing alternatives from temporary to permanent use. In the case of a major disaster or catastrophe, we also encourage consideration of the use of rental repair sweep teams using a civilian-led combination of civilian/military personnel to make habitability repairs within 90 days of a natural disaster.¹³

III. FEMA'S INTERIM HOUSING STRATEGY SHOULD PRIORITIZE MODULAR HOUSING OVER TRAVEL TRAILERS

FEMA should look to other options instead of travel trailers when a disaster destroys much of the available rental housing and requires longer stays in interim housing. FEMA's \$400 million Alternative Housing Pilot Program sought to develop alternatives to travel trailers in situations where a disaster has left a significant shortage of available rental housing. In Mississippi, nearly 2,800 cottages were constructed and deployed under this pilot program funded by FEMA and administered by the Mississippi Emergency Management Agency ("MEMA"). The cottages were larger, stronger, and more livable than the FEMA trailers they replaced. While a few hundred cottages in extremely low-lying flood zones were surge-damaged by Hurricane Gustav, the majority of cottages weathered the winds well. Also, the cottages were designed to be converted to permanent use. MCJ endorses the Mississippi cottage as an important interim housing option. MCJ opposes use of travel trailers as FEMA's default option.

Despite their superior modular construction, vernacular architecture, and higher quality, some communities have banned or severely restricted the permanent placement of the MEMA cottage because they were towed in on axles.¹⁴ MCJ has pursued advocacy and litigation against local municipalities to ensure that the MEMA cottages are treated the same as any other modular unit, and to remove other restrictions such as pre-storm ownership.¹⁵ The axle fixation demonstrates how local perceptions on relatively small details can alter the fate of a proposed housing solution. It also demonstrates the importance of clear legal and engineering

¹² General Accounting Office, "Hurricane Katrina-Ineffective Oversight of Housing Maintenance Contracts in Mississippi Resulted in Millions of Dollars in Waste and Potential Fraud," GAO 08-106, Figure 3, p. 24 (\$30,000 per trailer on private site) Table 4, p. 25. (\$69,000 to \$229,000 per unit at group sites). <http://www.gao.gov/new.items/d08106.pdf>

¹³ See Southeast Louisiana Catastrophic Hurricane Plan, prepared by IEM, Inc, for FEMA and state agencies, January 5, 2005, pp. 88-90, 92, 97, Appendices pp. 68-70.

¹⁴ Examples of excessive restrictions include veto authority to any resident within 160 feet of a proposed cottage site and requirements of pre-Katrina title and homestead exemption.

¹⁵ *Gambrell et al v. City of Waveland* 2301-09-0045(1) (Hancock County Chancery Court) http://mscenterforjustice.org/press-article.php?article_id=107

classifications to overcome objections to the conversion to permanent use of any FEMA interim housing program.

"Interim housing" is a FEMA construct which can obscure the core mission of housing: to keep occupants safe and healthy. All housing, whether classified by FEMA or other government entities as "temporary," "disaster" or otherwise should at a minimum meet the requirements as set forth in the ICC's International Residential Code without restriction. These requirements are the standards by which a building official would inspect a structure to deem it safe and healthy and thus secure the basic human right of people in FEMA's care. In cases of catastrophic loss, durability is especially important because the residents will likely stay longer in interim housing and face successive exposures to disaster. All modular housing, like the Mississippi Cottages, meet these codes.

IV. FEMA'S INTERIM HOUSING STRATEGY SHOULD PRIORITIZE AID TO LOWER-INCOME AND SPECIAL NEEDS POPULATIONS

Disasters like Hurricane Katrina reduce significantly the affordable rental stock in the affected region and reduce the permanent housing options for low-income renters. In coastal Mississippi, thousands of units of public housing and subsidized private rental housing were destroyed or rendered uninhabitable. Rental rates rose on average between 30-40 percent, and in some evictions handled by MCJ, they doubled within months of the disaster. Restoring the public and subsidized rental housing market after a catastrophic disaster can take years and call for greater flexibility on financial caps than exists in current law. As FEMA notes, "[c]urrent legislation imposes financial restrictions on Federal programs; *therefore, populations with additional needs and/or low income receive the same amount of financial assistance as the general population, even though their needs may exceed the limits of the program.*"¹⁶ (emphasis added). In catastrophic losses, FEMA should eliminate the financial cap for very low income households or implement a sliding scale cap that recognizes that lower-income disaster victims need greater financial assistance over time than those with greater personal resources, such as higher income, credit, and insurance.

This shortage stems from a persistent trend to under-fund federal housing programs. FEMA's 2009 Strategy catalogues various housing programs for special needs and low-income populations, including those with disabilities, as well as those for the general population¹⁷ but gloomily notes that "many if not most ... have extensive waiting lists (frequently in excess of one year) and thus have few vacancies, so all alternatives for housing will need to be

¹⁶ The Strategy, Annex 3, p. 77.

¹⁷ *Id.* p. 80-89 (special needs, low income) pp. 90-98 (general population).

considered.”¹⁸ Our Nation faces a vast structural shortage of affordable housing that requires a fundamental shift in federal housing policy. As noted by the National Low Income Housing Coalition, there is an acute shortage of rental homes for the lowest income people in the United States -- 9 million extremely low income renter households (earning 30% of area median income or less) but only 6.2 million homes that rent at prices they can afford. For Mississippi there are 55 homes for every 100 such households.¹⁹ Given these troubling truths, MCJ questions the capability of current housing voucher programs to adequately meet the interim housing needs of our most vulnerable populations following a disaster.

It therefore was surprising to learn in May, 2009, that FEMA’s Rental Resource Division informed Mississippi Governor Barbour that there are over 3,000 rental vacancies on the Mississippi Gulf Coast, nearly 2,000 of which will accept a Section 8 voucher.²⁰ To test this assertion, the Mississippi Center for Justice and Lawyers’ Committee contacted all landlords accepting Section 8 vouchers on current lists from the area’s two largest public housing authorities. The provisional results showed a maximum possible 773 vacancies, over sixty percent less than FEMA claimed, out of 2631 units.²¹ The provisional results overstate the actual vacancy rate, since the survey counted all units as Section 8 eligible for several large property managers who were unable to separate Section 8 from other units. MCJ will provide final supplemental data following the hearing. In addition MCJ verified through public records requests that there remain thousands of persons currently on PHA Section 8 waiting lists. This field research mirrors the shortfalls, backlogs, and inability to serve clients in HUD’s public and assisted housing programs described in the Special Report of the Senate Homeland Security Ad Hoc Subcommittee on Disaster Recovery.²²

While broader use of HUD programs is a sound step, it will not be enough to create a permanent DHAP-like stream of vouchers to address interim housing needs. Any such program must include steps to provide an adequate supply of housing, a national inventory of available housing, an effective case-management regime, and a funding stream to finance the cost of providing these capacities.²³ As FEMA’s David Garratt acknowledged, “[H]anding someone a

¹⁸ *Id.*, p. 80.

¹⁹ Testimony of Sheila Crowley, “A New Way Home: Findings from the Disaster Recovery Subcommittee Special Report and Working with the New Administration on a Way Forward,” Senate Homeland Security Ad Hoc Subcommittee on Disaster Recovery, March 18, 2009, p. 3.

²⁰ Governor Haley Barbour, “The Role of the Community Development Block Grant Program in Disaster Recovery,” Senate Homeland Security Ad Hoc Subcommittee on Disaster Recovery, May 20, 2009, p. 6.

²¹ Summary of Results of Coastal Mississippi Section 8 Vacancy Rate Survey, Exhibit “B”.

²² “Far From Home: Deficiencies in Federal Disaster Assistance After Hurricanes Katrina and Rita and Recommendations for Improvement,” Special Report of Ad Hoc Subcommittee on Disaster Recovery of Committee on Homeland Security, February 2009, pp. 173-181.

²³ *Id.*, at 183-84.

voucher ... if there are no other forms of housing available at or near the fair market rent ... is not worth a lot.”²⁴

Disability access in interim housing is both practically necessary and required by federal laws. Over one third of households in the Mississippi Cottage Program have a person with disabilities, according to a recent survey.²⁵ Yet only one quarter of Mississippi cottages were ADA compliant, according to MEMA.²⁶ The problem was substantially worse for those in FEMA trailers, only a miniscule percentage of which complied with the Uniform Federal Accessibility Standards. FEMA’s non-compliance with federal accessibility laws prompted a class action on behalf of persons with disabilities and a settlement.²⁷ To better meet the needs of the class FEMA agreed to order 10 percent of temporary housing units that complied with the UFAS, to modify common areas to render them accessible to persons with disabilities, and to notification and reporting requirements for persons with disabilities who seek disability-accessible interim housing.²⁸

Today, FEMA has the opportunity to do better. In October, 2008, the U. S. Access Board Federal Advisory Committee released a report with detailed recommendations that should be reviewed and incorporated into emergency and interim housing solutions for persons with disabilities by architects, engineers, manufacturers and contractors. These recommendations deal with the vital nuts and bolts of accessibility, deserve careful scrutiny, but require more space than permitted by this Committee to adequately discuss.²⁹ Accordingly, MCJ recommends that the Committee ensure that these requirements are factored into its future plans and that FEMA make contact with disability advocates with recent disaster housing experience to ensure that its future response is an improvement over Hurricanes Katrina and Rita.

V. BETTER CASE MANAGEMENT OF INTERIM HOUSING IS REQUIRED, ESPECIALLY FOR VULNERABLE POPULATIONS.

MCJ agrees with FEMA’s 2009 Strategy that case management is important to successfully place and transition special needs and low income populations into and out of

²⁴ Testimony of David Garratt, Senate “Beyond Trailers” Hearing, April 24, 2007, p. 17.

²⁵ ABT Associates, Mississippi Alternative Housing Pilot Program, Quality of Life Evaluation, April 15, 2009. Slide 4.

²⁶ Table of ADA units provided by MEMA to Mississippi Center for Justice, Exhibit “C”.

²⁷ *Brou v. FEMA*, (No. 06-0838) (E. D. La. 2006) (Duval, J.).

²⁸ Settlement Agreement on file with MCJ Biloxi office (available on request), pp. 7-15.

²⁹ “Recommendations for Accessible Emergency Transportable Housing,” U. S. Access Board Federal Advisory Committee, October, 2008, <http://www.access-board.gov/eth/report.htm>

interim housing.³⁰ Several advocacy organizations have submitted a set of recommendations to the Office of Management and Budget on case management. The letter urges the adoption of a comprehensive and client centered service delivery system that transcends program barriers and agency turf. The letter recommends unified and intensive case management coupled with un-siloed and accessible resources, and provides additional detail and guidance on both elements.³¹

FEMA's track record since Hurricane Katrina indicates there remains major areas for improvement. Following Hurricane Dolly in July 2008, half of all applications for housing assistance were denied. In May 2009, a federal judge in Brownsville, Texas issued a preliminary injunction finding that FEMA's failure to publish clear and ascertainable standards, criteria, and procedures for determining eligibility for home repair housing assistance violated the Stafford Act and ordered the agency to rewrite its rules.³² According to Texas Appleseed, FEMA denied 85% of applications for housing assistance following Hurricane Ike. The most common reason for denial was "insufficient damage," but applicants were denied for reasons as minor as an omitted middle initial.

VI. REFORM OF FEMA'S ELIGIBILITY AND DUPLICATION OF BENEFITS RULES IS REQUIRED FOR INTERIM HOUSING TO FUNCTION AS INTENDED.

Closely related to case management is reforms to the overall administration of FEMA's temporary housing programs. Annex 7 of FEMA's 2009 Strategy correctly emphasizes that **"differences in interpretation of programs under the Stafford Act have led to inconsistencies in assistance provided."**³³ (emphasis in original) However, FEMA must take additional steps to clarify its eligibility and appeal requirements to ensure success of any FEMA interim housing effort. In testimony before the Senate Ad Hoc Subcommittee on Disaster Recovery, MCJ and the Lawyers' Committee provided a detailed critique, recommendations, and endorsement of solutions proposed in the Senate "Far From Home" report. Please incorporate this discussion and these recommendations into your overall strategy.³⁴

FEMA's ability to transition residents from interim to permanent housing will require re-examination of federal duplication of benefits rules, especially in the setting of catastrophic disasters. MCJ urges FEMA to use a more nuanced approach in determining whether an

³⁰ The Strategy, p. 5; Annexes, pp. 58, 80.

³¹ Letter to Xavier Briggs from National Low Income Housing Coalition, PolicyLink and MCJ, July 6, 2009, Exhibit "D".

³² *Lupe v. FEMA*, Civil Action No. B-08-487, S.D. Texas, May 13, 2009.

³³ The Strategy, Annex 7, p. 126.

³⁴ Testimony of Reilly Morse, "A New Way Home: Findings from the Disaster Subcommittee Special Report and Working with the New Administration on a Way Forward," March 18, 2009, pp. 4-5.

individual FEMA benefit actually “duplicates” another federal benefit. As FEMA’s Strategy notes, the different housing programs, shelter, interim, and permanent housing serve fundamentally different purposes.³⁵ Likewise, other benefits funded via federal disaster community development block programs can frequently serve different purposes than an individual FEMA payment under review.³⁶ FEMA, working with HUD, should put away broad brush approaches to duplication of benefits, and instead precisely classify its assistance to enable true matching of duplicate benefits without eliminating the full spectrum of assistance available and necessary for disaster victims to return to permanent housing. As previously noted, this is especially important for lower-income renter populations who will need greater than normal housing assistance. If necessary, FEMA and HUD should jointly seek revisions to the applicable laws to achieve this goal.

VII. FEMA MUST BETTER INTEGRATE FAIR HOUSING TRAINING AND ENFORCEMENT INTO ITS MISSION

The Stafford Act requires FEMA to promulgate regulations to insure that all of its functions are carried out in a manner that does not discriminate on the basis of race, color, religion, nationality, sex, age, disability, English proficiency or economic status. (42 USC 5151, Sec. 308 (a)). FEMA regulations provide that no one involved in carrying out FEMA functions (either FEMA employees or contractors) can discriminate on any of those bases. (44 CFR 206.11, citing to 44 CFR part 7, Nondiscrimination in Federally Assisted Programs). FEMA needs to increase its efforts to train staff and contractors on non-discrimination and place on its website the regulations, policies, procedures and manuals that actually spell out the steps that FEMA employees or contractors should take to be in compliance.

After a disaster, FEMA itself needs to provide information to individuals about fair housing rights, how to recognize discrimination, or what to do if they encountered it. Following Hurricane Katrina, FEMA failed to take this very basic step and so it fell to local fair housing organizations to do so. The information should be provided in English and appropriate alternate languages.

FEMA’s use of resource networks should carry with it a responsibility to police and enforce non-discrimination by users. In the immediate aftermath of Katrina, a FEMA-endorsed website, Dhronline.com, intended as a resource to help evacuees find housing, posted

³⁵ The Strategy, Annex 7, pp. 131-141.

³⁶ For example, a landlord who accepts a tenant’s DHAP voucher, and who receives a forgivable loan under a state’s CDBG-funded small rental assistance program is not receiving a duplication of benefits because the two payments provide different, necessary layers of rental housing subsidy, with different eligibility criteria, and different rent-restriction obligations.

advertisements for housing vacancies by third parties that were blatantly racially discriminatory.³⁷

FEMA's delegation of interim housing to contractors carries the risk of discriminatory treatment of displaced storm victims. It is essential that FEMA provide the initial investigation and training to weed out contractors with histories of discrimination. FEMA and HUD also should develop a joint operating agreement to more expeditiously address housing discrimination complaints in FEMA interim housing. This is necessary to prevent incidents such as the one detailed in a recently-filed HUD complaint on a 3-year-old allegation of racial discrimination against African American persons against owners of a FEMA trailer park in Mississippi.³⁸ It simply is unacceptable that FEMA and HUD had no capacity to take address and more quickly resolve complaints of racial discrimination in FEMA disaster housing programs. If FEMA does not want to develop the staff and expertise in-house, it could contract with private fair housing groups to investigate complaints, or it could negotiate an agreement with HUD to investigate complaints on an expedited basis. In any event, a more accelerated solution for solving this sort of problem for disaster victims is required.

It is not clear whether FEMA's 2009 Strategy mentions or acknowledges the Fair Housing issues associated with interim housing. The result is that people who have been displaced by storms like Katrina, or other disasters, may find themselves barred from desperately needed housing because of their race, color, religion, national origin, familial status, disability, etc. FEMA, working with HUD, and private fair housing groups, clearly can improve this aspect of its operations.

Thank you for the opportunity to testify.

Respectfully Yours,



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³⁷ Testimony of James Perry, Greater New Orleans Fair Housing Action Center, House Financial Services Subcommittee, February 28, 2006, <http://financialservices.house.gov/media/pdf/022806jp.pdf>

³⁸ HUD v. Hebert, et al, FHEO 04-06-0723-8, April 30, 2009, http://www.hud.gov/offices/fheo/enforcement/09_HUD_v_Christopher_S_Hebert_etc.pdf

