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and Community Opportunity
and the Committee on Homeland Security Subcommittee on Emergency
Communications, Preparedness, and Response

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“Examining the Roles and Responsibilities of HUD and FEMA in
Responding to the Affordable Housing Needs of Gulf Coast States
following Emergencies and Natural Disasters”

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Chairwoman Waters and Chairman Cuellar, I would like to thank you for the opportunity to testify on behalf of the National Association of Housing and Redevelopment Officials (NAHRO) during today's important joint hearing on the roles and responsibilities of HUD and FEMA relative to affordable housing needs following emergencies and natural disasters. Thank you also to Chairman Frank and Chairman Thompson of the full committees for your leadership on these issues. My name is Saul Ramirez, and I am the Executive Director of NAHRO.

A 501(c)(3) membership association, NAHRO represents over 3,200 housing authorities, community development departments, and redevelopment agencies, as well as over 19,000 individual associates working in the housing and community development industry. NAHRO's members administer HUD programs such as Public Housing, Section 8, CDBG, and the HOME Program. For nearly 75 years, our extensive and diverse membership has allowed us to serve as the leading housing and community development advocate for the provision of adequate and affordable housing and strong, viable communities for all Americans - particularly those with low- and moderate-incomes.

Our statement will draw upon the experiences of some of our member public housing agencies (PHAs) to make a larger point about the need to reform the relationship between HUD and FEMA as it pertains to repairing and rebuilding public housing following disasters. By way of example and review, HUD approved \$100 million in Community Development Block Grant (CDBG) funding on August 31, 2006 to address lingering affordable housing needs in Mississippi resulting from the 2005 hurricane season. When HUD announced approval of the state's partial Action Plan, then-Secretary Alphonso Jackson called the funding "a direct investment in the homes of low- and very low-income families who once called these public housing developments home." The Secretary stated that HUD intended for the dollars to be used to "restore these public housing units on at least a one-to-one basis." This goal, along with so much of the Gulf Coast's recovery, was not realized in a timely fashion.

When NAHRO members traveled to Mississippi in February 2007 to help rebuild damaged public housing units, our Mississippi member agencies along the Gulf Coast had not yet received any of the \$100 million in emergency CDBG funding approved in August 2006. As the Subcommittee on Housing and Community Opportunity heard during its May 8 hearing, grant funds for the impacted Mississippi agencies are still “pending final application and completion of environmental assessments.” Delays of this nature have clearly slowed the restoration of affordable housing opportunities in the region. However, the reality is that even if the funding approved by HUD in August 2006 had flowed instantly to Mississippi PHAs, over one year would have passed between Hurricane Katrina’s landfall and the receipt at the local agency level of federal aid for restoring damaged and destroyed public housing units.

NAHRO was vocal in its support for emergency CDBG funding to address Gulf Coast recovery needs, but it is our belief that public housing developments should not have had to wait so long to access federal funding, nor should public housing residents have had to wait so long to return home. We have always believed there was an easier way, but the relevant decision-makers have yet to seize the opportunity.

Recall that President Bush signed \$10 billion in Stafford Act funding into law on September 1, 2005. As I explain below, while all other forms of publicly-assisted housing are eligible to be repaired and rebuilt using these dollars, an obscure and outdated agreement between HUD and FEMA has prevented PHAs from accessing Stafford Act funding for the permanent repair and reconstruction of public housing units.

An Outdated Memorandum of Understanding Contributed to Delays in Bringing Gulf Coast Public Housing Units Back Online

For nearly three years, NAHRO has worked to bring attention to a specific policy that we believe has impeded the repair and reconstruction of the region’s public housing inventory. In the months following the 2005 hurricane season, many of our member agencies operating along the Gulf Coast were frustrated by the resistance they encountered as they investigated the availability of FEMA funds for the repair and/or

replacement of damaged public housing units. NAHRO has consistently argued that many of these difficulties can be traced directly to a Memorandum of Understanding (MOU) entered into by HUD and FEMA in 2001.

This MOU has led FEMA and HUD to conclude that FEMA assistance, authorized under Section 406 of the Stafford Act, for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster is not an option for projects that are eligible for HUD disaster assistance under section 9(k) of the U.S. Housing Act of 1937, as amended. Although the MOU was most likely well-intentioned in that it sought to prevent duplication of resources, it has nonetheless put public housing developments in the unenviable position of being unable to access existing FEMA funds by virtue of being eligible for HUD funding that has proven insufficient, as I will explain.

NAHRO believes that the authors of the MOU should have known the process it outlined would prove to be unworkable. Beginning with the Fiscal Year (FY) 2000 VA/HUD Appropriations Act, Congress has consistently prohibited HUD from moving appropriated funds into the 9(k) emergency reserve. In order to provide an alternative to the 9(k) reserve, Congress has since FY 2000 provided line-item funding for grants to PHAs for emergency capital needs resulting from emergencies and natural disasters. This emergency capital needs set-aside was funded at \$75 million for FY 2000.

The MOU between HUD and FEMA concerning coordination of disaster assistance to PHAs was entered into on January 8, 2001 and issued on March 19, 2001. For PHAs' disaster recovery costs not covered by insurance and essential assistance from FEMA, the MOU identifies the source of funding as "the capital public housing reserve authorized by section 9(k) of the United States Housing Act of 1937, authority, as amended (42 U.S.C. 1437g(k)), or similar statutory authority, subject to the availability of appropriations. The MOU, therefore, referred directly to a nonexistent source of funding (the 9(k) reserve) while failing to make a direct reference to the emergency capital needs set-aside. The MOU also failed to describe what recourse, if any, is

available to PHAs if funds available through the 9(k) reserve “or similar statutory authority” have been exhausted or are insufficient.

The prohibition against using appropriated funds for the purposes specified in 9(k) has been a feature of every HUD appropriations measure since FY 2000, including FY 2005 during which Katrina and Rita made landfall. Congress has continued to separately appropriate funds for the emergency capital needs set-aside, but this funding is distinct from the 9(k) emergency reserve and in some years will likely be insufficient to address the extensive costs associated with repairing or rebuilding public housing units in the aftermath of a major disaster, as was the case in 2005. Note also that emergency capital needs funding cannot carry forward and may only be used to address disasters that occur in the fiscal year for which the dollars are appropriated. Looking forward, Congress appropriated just \$18.5 million for the emergency capital needs set-aside for FY 2008, or just 25 percent of the original FY 2000 appropriation of \$75 million.

In addition to being outdated from the outset, the MOU seems to discriminate against public housing units. In a memorandum dated April 14, 2003, FEMA assigned a policy number (9523.7) to the March 2001 MOU. The memorandum provided additional clarification on the disaster assistance available to various types of publicly-assisted housing facilities. Specifically, the memorandum makes clear that while public housing units developed or modernized under section 9(k) are eligible for HUD disaster assistance, “publicly-subsidized housing facilities that were developed and financed from other sources, such as other HUD programs (e.g., Section 8, FHA Mortgage Insurance, etc.)...do not qualify for HUD disaster assistance” and “may apply directly to FEMA for public assistance grants under any category of work, including Section 406 permanent repairs.” Because the MOU seems to have cut off public housing developments from Section 406 assistance, this type of housing has been placed at a distinct disadvantage compared to all other forms of publicly-assisted housing.

HUD and FEMA Need to Clarify the Eligibility of Public Housing Units

NAHRO contends that the MOU leaves important questions unanswered. Even though public housing units are eligible for HUD disaster assistance, are they *unequivocally barred by statute* from receiving FEMA public assistance funding to support repair and reconstruction work, including permanent repairs classified under Section 406? And if not, why isn't this eligibility reflected in the MOU? NAHRO believes public housing units are indeed eligible for Section 406 assistance. In our opinion, the MOU should be revised to make this eligibility explicit.

In a letter to NAHRO dated October 31, 2005, HUD Assistant Secretary for Congressional and Intergovernmental Relations Steven B. Nesmith wrote:

“The MOU directs PHAs to look to the Capital Fund set-aside for emergencies and natural disasters for reconstruction funding. ***The MOU does not specifically rule out seeking FEMA assistance under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act***, as amended (Section 406). Historically, FEMA has not funded public housing reconstructions under Section 406 because of the availability of substantial funding under the Capital Fund set-aside for emergencies and natural disasters.” (emphasis added)

This suggests that HUD perceives no legal barrier preventing PHAs from accessing FEMA assistance for reconstruction. Furthermore, FEMA's April 2003 memorandum states:

“Although HUD has specific authority under Section 9(k) of the U.S. Housing Act of 1937, as amended, to provide funds for the repair of disaster damaged PHA facilities, ***FEMA has generally funded these costs in the past.***” (emphasis added)

This raises the question of how frequently FEMA funded costs associated with repairing and rebuilding public housing units prior to entering into the MOU. In a November 21, 2007 letter to House Financial Services Chairman Barney Frank, FEMA Disaster Assistance Directorate Assistant Administrator Carlos J. Castillo wrote the following in

response to the Chairman's request that FEMA work with HUD to revise the MOU to clarify that public housing developments are eligible to receive Section 406 assistance if HUD funds are unavailable:

"While your request poses a number of challenges, FEMA has committed to and communicated to HUD that ***we will study the feasibility of this issue, for the purpose of authoritatively determining whether such a change is both appropriate and legal.*** That study is actively underway." (emphasis added)

If FEMA has previously funded the permanent repair and reconstruction of public housing units, then it would seem that the question of whether "such a change is...legal" has already been answered. If FEMA has never funded the repair or reconstruction of this particular type of publicly-assisted unit, then we remain puzzled as to why the 2001 MOU and the 2003 memorandum did not explicitly state that such units are ineligible for Section 406 assistance. We hope this hearing will provide an opportunity for FEMA to set the record straight on this issue.

Not Enough Dollars Are Available, and Too Much Time Has Passed

As I mentioned earlier, while the Congress continues to provide funding for the emergency capital needs set-aside, these funds have proven to be insufficient during fiscal years in which major disasters occur. Such was the case following the 2005 hurricane season. Mr. Nesmith's October 2005 letter to NAHRO communicated HUD's recognition that "the needs for public housing reconstruction funding will exceed the funding currently appropriated." The letter also stated that HUD was "coordinating its efforts with those of FEMA to address the wide spectrum of needs not only for public housing reconstruction, but for other community needs as well." Clearly HUD knew its own resources were insufficient to meet the needs for public housing reconstruction and had ample opportunity to communicate this information to FEMA.

Approximately \$29 million was available under the emergency capital needs set-aside for FY 2005, the fiscal year during which Katrina and Rita made landfall. Only two agencies were successful in securing funding through that program for costs associated

with the 2005 hurricane season. Those agencies were the HUD-led Housing Authority of New Orleans, which received \$21.8 million, and the Biloxi Housing Authority, which received \$7 million. As I mentioned earlier, Congress appropriated just \$18.5 million for the set-aside for FY 2008.

As an aside, although HUD realized it did not have enough resources to fund all incoming applications from PHAs, it is our opinion that the Department did not do enough in the aftermath of the 2005 hurricane season to ascertain quickly and accurately the true nature of the repair and reconstruction needs of Gulf Coast PHAs. NAHRO attempted to be helpful in this regard. I sent multiple letters to then-Secretary Jackson and others at HUD sharing our thoughts on how the Department could move quickly to generate the detailed cost data necessary to undertake the restoration of damaged public housing units. The first of these letters, delivered on September 9, 2005, also suggested that the Department employ an “inspection process for assuring that alternative housing provided for relocated victims of Katrina is suitable,” and that this process be conducted in a way that would “generate information needed by the Department for assessing the damage to other HUD-assisted housing.” We never received a response to our suggestions.

Moving forward, as evidence of the urgent need to revise the MOU, it must be noted that HUD has not even requested funding for emergency capital needs for FY 2009. Under the heading for the Public Housing Capital Fund, the FY 2009 HUD budget appendix states,

“Funds for disaster relief are not requested. FEMA disaster assistance is available **for any needs** that are not covered by the required property insurance.” (emphasis added)

This was the second HUD budget in a row to request no funding for disaster assistance. Clearly HUD is aware that, in the case of public housing developments, FEMA disaster assistance has *not* been available “for any needs that are not covered by the required property insurance.”

With HUD no longer requesting disaster funding, it is worth noting that FEMA built an automatic review date into its 2003 memorandum updating the MOU. As I mentioned above, the memorandum numbering the MOU and providing additional clarification was published on April 14, 2003. That memorandum specified a review date “three years from date of publication.” Although it is reasonable to conclude that the events of the 2005 hurricane season were themselves sufficient to inspire a review of the MOU, it appears that FEMA and HUD were supposed to revisit the policy on April 14, 2006 regardless of recent or current events.

Absent an automatic review, other parties have urged HUD and FEMA to revise the MOU. In a June 12, 2007 letter addressed to FEMA Administrator Paulison and copied to then-HUD Secretary Jackson, Chairman Frank called on FEMA to “work with HUD in resolving this matter quickly and in a manner that clearly specifies an appropriate, accessible, and readily available funding source for the repair, restoration, and replacement of public housing units following major disasters.” We very much appreciate Chairman Frank’s efforts. We note also that his letter was not the first attempt by an interested party to resolve the confusion that has arisen from the MOU. On October 5, 2005, I transmitted a letter to then-HUD Secretary Jackson stating the following:

“We believe that the clear intent of the MOU is to make available the federal resources necessary to repair and restore publicly-subsidized facilities, such as public housing, provided that recipients do not receive redundant funding.

“NAHRO suggests that, inasmuch as no resources are available under section 9(k), the Department immediately seek FEMA funding for the repair, restoration and replacement of damaged or destroyed public housing in hurricane-impacted areas. To the extent any language contained in the MOU is deemed to present an impediment to the availability of FEMA assistance it should be renegotiated to allow the use of FEMA assistance in an instance in which HUD has not supplied full funding for the repair, restoration or replacement of damaged public housing under section 9(k).”

After Mr. Nesmith provided a response from HUD in the form of his October 31, 2005 letter, I wrote to Deputy Secretary Roy Bernardi restating NAHRO's belief that, "if resources are available at FEMA for the repair and reconstruction of public housing, all necessary steps should be taken immediately by the Department to allow and facilitate PHAs' access to that funding."

Although the MOU has still not been revised, it is our understanding that HUD and FEMA have engaged in negotiations and a draft version of a new MOU is under consideration. We have now entered our third new post-Katrina hurricane season, and this issue remains unresolved. NAHRO hopes you will urge HUD and FEMA to move quickly to enter into a revised agreement outlining a process through which PHAs can apply for FEMA assistance under Section 406 to repair or rebuild public housing units if adequate funding is not available through the 9(k) reserve or the emergency capital needs set-aside for the applicable fiscal year. Any revised agreement should make it clear that Section 406 assistance may be used to cover the costs of repairing or replacing public housing units that are not otherwise funded by HUD or insurance proceeds. It is our hope that this revised policy would be made retroactive to 2005 in order to provide any impacted Gulf Coast agencies experiencing funding shortfalls with the chance to finally access needed resources.

We also believe a revised MOU along the lines we have described is appropriate regardless of future Congressional actions relative to the 9(k) reserve and the emergency capital needs set-aside. Even if HUD is eventually permitted to move appropriated dollars into the 9(k) reserve, it is entirely possible that we will experience future disasters that result in public housing repair and reconstruction needs that outstrip available HUD resources.

Mississippi Housing Agencies Denied Promised Reimbursement

I also wanted to use this written statement to relate an unfortunate episode that was, in NAHRO's opinion, both a byproduct of the outdated MOU and further evidence of the

need for better coordination between HUD and FEMA and a fundamental rethinking of FEMA's housing-related responsibilities following disasters.

In late 2005 five Mississippi PHAs informed NAHRO of two separate but related challenges as they sought reimbursement under FEMA's Public Assistance (PA) program for demolition and debris removal activities (including mold abatement) undertaken as a result of Hurricane Katrina. The first challenge stemmed from what appeared to be a decision made by FEMA that made it practically impossible for PHAs to secure previously promised reimbursement, while the second challenge was related to FEMA's bureaucratic structure.

These PHAs described to NAHRO staff in detail an October 5, 2005 meeting in Jackson, Mississippi, during which officials representing FEMA and the Mississippi Emergency Management Agency (MEMA) informed PHAs that demolition and debris removal activities related to Hurricane Katrina would be classified as Category B (emergency protective measures) under the PA program and would therefore be eligible for 100 percent reimbursement from FEMA. During this meeting, FEMA and MEMA officials encouraged PHAs to fill out project worksheets and work toward the completion of demolition and debris removal by the deadline for PA funding, which at that point in time was October 27, 2005. PHAs' representatives left that meeting with the distinct impression that they had to act quickly or forever lose the opportunity to seek and receive full reimbursement from FEMA.

NAHRO staff received multiple reports asserting that FEMA officials signed off on and began to process PHAs' project worksheets under either Category A (debris removal) or Category B, only to later reclassify the activities involved as Category E (permanent reconstruction expenses related to buildings and facilities) activities, thus making the activities ineligible for reimbursement. In many of these instances, FEMA reclassified time-sensitive mold abatement activities under Category E, thus tacitly invoking the terms of the MOU. Because Category E activities involve permanent reconstruction

expenses, FEMA argued that HUD bore the responsibility for “provid[ing] funding to repair disaster damages” for the public housing units in question.

Email communications between FEMA and Mississippi PHAs indicated that FEMA had adopted a new mold remediation policy for Mississippi on December 16, 2005. This policy was again revised on January 6, 2006. In a January 7, 2006 email sent by one FEMA official to another FEMA official on this topic, the first official wrote, “It’s not likely that any of the mold growth along the coast was addressed soon enough after Katrina hit to qualify it as Category B.” In the same e-mail message, the official also wrote, “Essentially, there are times when the activity the Housing Authority performed would be Category B work, and other times when those same activities would be Category E work.”

In a separate e-mail addressed to a PHA and dated January 7, 2006, another FEMA official wrote, “In short, regarding mold treatment, FEMA has decided that the line has to be drawn somewhere between calling such work an emergency response (Category B) and part of a permanent repair (Category E)...Currently, the line is drawn after several hours, as opposed to days, following the storm.” In another email, this FEMA official wrote he had recently learned that “other PWs (project worksheets) have been revisited by Jackson in a like manner,” meaning that FEMA-Jackson had apparently adopted a policy of reclassifying project worksheets seeking reimbursement under Categories A and B as Category E.

Other activities undertaken by PHAs that would reasonably qualify as either Category A or B were also reclassified as Category E by FEMA, thus resulting in decisions to deny reimbursement. In some cases these decisions were made based on FEMA’s characterization of the work performed. In other cases it appears that the nature of the work was immaterial and the main concern was when the work was actually completed. As an example, one PHA told NAHRO that FEMA provided assurances that sheetrock removal would be reimbursed. This PHA completed a project worksheet and submitted for reimbursement under Category B. FEMA later reclassified the project worksheet

under Category E, arguing that the work had not been performed in the hours immediately following the storm. In another case, covering holes in a roof with salvaged sheetrock and decking in order to put up a tarp -- clearly a temporary action taken to prevent further water damage -- was reclassified by FEMA as a permanent repair.

FEMA's decision to reclassify mold abatement work and other emergency repair activities as Category E was unfair for a number of reasons. First, FEMA punished PHAs for not adhering to a mold remediation policy that did not yet exist at the time of the October 5, 2005 meeting in Jackson and was later revised again. Second, if it was always FEMA's intent to deny reimbursement for activities that did not occur within the first few hours after Hurricane Katrina struck, FEMA could have made that clear during the October 5, 2005 meeting, since over a month had passed since the federal disaster declaration. FEMA should not have changed the rules after making promises that were relied upon in good faith by the PHAs.

Finally, even through the use of emergency procurement procedures, it would have been impossible for PHAs to address storm damage in the first few hours following the storm. PHAs were without electricity or telephone service, gasoline was scarce, and the buildings from which they would normally conduct business had in many cases sustained major damage. It defies logic to expect PHAs facing these conditions to procure contractors and complete repairs "after several hours." The suggestion that Katrina-related remediation should have proceeded apace just hours after a disaster of this magnitude is frankly risible.

Consider that FEMA's own Frequently Asked Questions resource, available online at <http://www.fema.gov/government/grant/pa/faq.shtm>, states that both debris removal and emergency protective measures may be reimbursed if the work is performed within six months:

“Project Funding

Does the time period in which work is performed affect the reimbursement of that work?

The initial deadlines are established according to the type of work performed.

Debris removal - 6 months

Emergency protective measures - 6 months

Permanent repair work - 18 months

Time extensions may be granted for extenuating circumstances.”

If the devastating effects of Katrina did not qualify as “extenuating circumstances,” we are hard pressed to imagine what would. In any case, the PHAs seeking the promised reimbursement completed debris removal activities and emergency protective measures well within the six month timeframe.

In many cases, the PHAs that contacted us found themselves navigating a maze of bureaucracy in their attempts to secure the appropriate level of reimbursement. For example, two PHAs that contacted us had been represented by an individual who was assured by FEMA in October 2005 that reimbursement would arrive no later than three weeks after emergency repair work was completed. Eight months after the disaster, these PHAs continued to encounter resistance from FEMA officials as they attempted to convince the agency to revisit work orders and adjust the level of approved reimbursement to reflect updated insurance settlement information. Instead of meeting with the representative of the PHAs to resolve the issue of the work order, FEMA required PHAs to revisit and document their procurement processes, despite the fact that the PHAs had been encouraged to employ emergency procurement.

On April 25, 2006, I transmitted a letter to then-acting FEMA Director David Paulison communicating NAHRO’s concern over what appeared to be an effort on the part of FEMA to withhold reimbursement for previously-authorized work plans. FEMA took over six months to respond. In a letter dated November 9, 2006, James A. Walke, Public Assistance Branch Chief for FEMA’s Recovery Division, essentially dismissed

NAHRO's concerns, writing that "the amount of interior demolition (i.e., removal of sheetrock) that is considered emergency protective measures is best made onsite."

Furthermore, instead of acknowledging that FEMA staff did anything improper, Walke's letter implicitly invokes the MOU by stating that "HUD provides funding to repair disaster damages to facilities authorized by Section 9(k) of the US Housing Act of 1937." Walke closed the letter by writing that FEMA was "pleased to have assisted many PHAs in recovering from the devastating effects of Hurricane Katrina." Surely such a sentiment is little more than cold comfort to those agencies that were struggling to rebuild.

Conclusion

In our opinion, there is a connection between the problematic and ambiguous MOU and the difficulties faced by our members in Mississippi. As I have discussed, the MOU allows FEMA to claim it provides essential assistance to PHAs but is unable to fund the permanent repair and reconstruction of public housing units, including in those years in which HUD funding is clearly insufficient. However, when PHAs seek essential assistance from FEMA, funding for which PHAs' eligibility is not in dispute, FEMA has managed to avoid paying for emergency protective measures by simply reclassifying projects as permanent repair or reconstruction, thus shifting responsibility to HUD. This vicious circle ultimately places rebuilding efforts in limbo and leaves public housing residents wondering whether they will ever have the option to return home. While we can only speak to the cases brought to our attention by our members, we do feel that this episode clearly demonstrates that revisiting the MOU should be part of any strategy intended to both address lingering affordable housing needs in the Gulf Coast and ensure that future federal disaster responses do not needlessly impede local efforts to bring public housing units back online in a timely fashion.

As we enter the 2008 hurricane season, both the woefully outdated MOU and the experiences of the Mississippi PHAs demonstrate the urgent need for HUD and FEMA to reassess their roles and responsibilities regarding the provision of assistance to PHAs following emergencies and natural disasters. It is NAHRO's hope that today's

hearing will spur HUD and FEMA to return to the negotiating table to review and revise the MOU in a way that makes funding accessible and, of equal importance, holds these federal agencies accountable for the various commitments they make to PHAs. We hope HUD and FEMA will take it upon themselves to make the needed changes. However, should it be necessary, Congress should encourage HUD and FEMA in the strongest terms to produce a transparent and unambiguous roadmap for PHAs to follow as these local agencies seek the resources needed to preserve and protect the federal government's long-term investment in our nation's public housing inventory, an inventory that represents a \$100 billion public asset.

Thank you for your consideration. NAHRO commends your leadership as it relates to housing and community development policy as well as your ongoing commitment to meeting the needs of those impacted by the 2005 hurricane season.