



**TESTIMONY OF DAVID F. TIPSON
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**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON HOMELAND SECURITY
“ENSURING SAFE AND EFFECTIVE HOUSING PROGRAMS
IN THE WAKE OF DISASTERS”**

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I. Introduction

Good afternoon. I am David Tipson, a community-development attorney with the Lawyers' Committee for Civil Rights Under Law (“Lawyers' Committee”). I would first like to thank Chairman Thompson, Ranking Member King, and the members of the Committee for holding this important hearing on post-disaster housing programs and, in particular, for providing the Lawyers' Committee with the opportunity to participate.

The Lawyers' Committee is a nonpartisan, nonprofit civil rights legal organization that has been in existence for over 40 years. It was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under the law. For 45 years, the Lawyers' Committee has advanced racial and gender equality through a highly effective and comprehensive program involving educational opportunities, fair employment and business opportunities, community development, fair housing, environmental justice, and meaningful participation in the electoral process.

The ongoing humanitarian crisis on the Gulf Coast we call Hurricane Katrina is well into its third year. Since the day the storm made landfall, the Lawyers' Committee and its local affiliate, the Mississippi Center for Justice, have organized volunteer attorneys from around the country and held over 30 free legal clinics to provide assistance to thousands of individuals unable to access the FEMA housing benefits to which they are entitled. Over the last two and a half years, we have observed firsthand the struggles – and the suffering – of thousands on the Gulf Coast. I am honored to provide this testimony in behalf of my fellow citizens on the Mississippi Gulf Coast

whose needs for adequate housing assistance remain unmet. In fact, it is our belief that the situation for low income residents of Mississippi is only getting more desperate and frightening. Although my remarks concern the situation in Mississippi, the problems I will describe are shared across the region affected by Hurricanes Katrina and Rita. By sharing the experiences of Mississippi residents with you, I hope to encourage a renewed commitment to the improvement of FEMA programs not only for the Gulf Coast, but for victims of future disasters as well.

The Committee is already familiar with many of the problems in FEMA's administration of emergency housing programs on the Gulf Coast. (Indeed, Chairman Thompson has introduced a bill to require emergency housing provided by FEMA to meet the health standards and formaldehyde-emission levels set by the Department of Housing and Urban Development [HUD] for permanent, manufactured housing). This testimony will focus, therefore, on two recently observed issues: the failure of coordination with local governments and the rocky transition to the Disaster Housing Assistance Program administered by HUD. Before I begin a discussion of these issues, however, I want to review the devastating impact of Hurricane Katrina in Mississippi on low-income families.

II. The Impact of Katrina

Most Americans have emblazoned in their memory an image of a category five hurricane roaring across the Gulf Coast of Louisiana, Mississippi and Alabama, hurling casinos in the air, crumbling century-old buildings, and devastating thousands of homes – and even more lives – under a massive tidal surge. When Katrina made landfall, it instantly became the worst natural disaster in over 200 years.

Katrina drove a massive wall of water over barrier islands and into the Mississippi Gulf Coast. With heights approaching 28 feet in some places, this storm surge, along with catastrophic winds, damaged or destroyed over 85,000 housing units.¹ Homes owned by families of low- and moderate-income suffered a significant and disproportionate share of the devastation. Sixty-five percent of the housing units damaged by the storm surge in Harrison, Hancock, and Jackson Counties were occupied by households earning less than the U.S. median income level.² In East Biloxi, about 95 percent of households earned below federal median income before Katrina, and 87 percent of these households suffered extensive or catastrophic damage.³ Over 40 percent of the households in water-front census blocks in Gulfport and Biloxi had incomes below 80 percent of the area median income.⁴

¹ Reilly Morse, "Environmental Justice Through the Eye of Katrina," citing Richard D. Knabb, Jamie R. Rhome, and Daniel P. Brown, "Tropical Cyclone Report: Hurricane Katrina" (December 20, 2005), 8-9, http://www.nhc.noaa.gov/pdf/TCR-AL122005_Katrina.pdf.

² Governor's Commission Report on Recovery, Rebuilding and Renewal (December 31, 2005), 54.

³ Governor's Commission Report, 54.

⁴ Morse, 29.

Low-income renters were hit especially hard. According to a July, 2006 HUD/FEMA damage report, 52 percent of rental housing stock (37,105 out of 71,616) damaged by the hurricane was rented to persons of very low income (less than 50 percent of area median income).⁵ Within this segment, about one third of the units (11,914 out of 37,105) were severely damaged or destroyed. The Mississippi Regional Housing Authority for Region VIII reported that 80 percent of subsidized housing in coastal Mississippi was damaged or completely destroyed.⁶

Today many of these low-income families remain in FEMA trailers or other emergency shelter with nowhere to go.⁷ The State of Mississippi also has 13,022 households currently in FEMA temporary housing programs, of which 11,641 (or 89 percent) are still occupying travel trailers. These figures cumulatively represent approximately 35,159 displaced individuals as of January 16, 2008.⁸ Of those receiving Direct Housing Assistance (i.e., trailers), 81 percent of households report low to moderate incomes (80 percent below the Area Median Income), yet only 1.3 percent of those who still remain in trailers ever received federal housing assistance prior to Katrina.⁹ Nearly half (47 percent) of this population were renters prior to the storm and 36 percent of these residents are over the age of 60 and/or have a disability.¹⁰

Ninety-three percent of the 1,381 households receiving rental subsidy assistance report low to moderate incomes. FEMA also reports that 88 percent currently receiving subsidies were renters prior to Katrina. That stated, only seven percent received any federal housing assistance prior to the 2005 disaster. Eleven percent of these households include elderly and/or persons with disabilities.¹¹

The sheer loss of affordable housing caused by Hurricane Katrina threatens to create an entire new homeless population in Mississippi, one of the poorest states in the nation. In addition to causing emotional and physical devastation, the storm left behind myriad legal hurdles for Katrina survivors. Over the last two and a half years, the Lawyers' Committee has organized dozens of legal assistance workshops for the seemingly endless needs of individuals who did not receive the FEMA assistance to which they were entitled. Again and again we saw examples where FEMA 1) undercompensated storm victims and then threatened them to return the little they received, 2) misapplied its own rules and sought recoupment from individuals for its errors, 3) wrote checks from the wrong account, and 4) failed to inform recipients of

⁵ FEMA Housing Unit Damage Estimates, July 12, 2007, p. 6.

⁶ Michael Kunzelman, "Unhabitable Habitats: Tenants Living in Squalor," *SunHerald* (Biloxi), April 16, 2006, A19.

⁷ For a first hand look at the housing crisis through the eyes of FEMA trailer residents, please view a short documentary prepared by the Lawyers' Committee at <http://www.lawyerscommittee.org/2005website/home/katrina3.mp4>.

⁸ FEMA, Mississippi 1604, GCRO, IA Global Report No. 23.0, Report Date: 01/16/08: http://www.fema.gov/pdf/hazard/hurricane/2005katrina/ms_iag.pdf: Note: The aggregate number reported uses FEMA's standardized formula of : [# of households x 2.7 (average MS household size) = total aggregate population] .

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

substantive restrictions on the use of the funds. All of these mistakes resulted in devastating recoupment actions against terrified individuals whose only mistake was to rely on the competency of FEMA. These residents were punished for FEMA's failures to apply and communicate its own rules.

The inability to communicate rules and policies clearly, poor management of information, bureaucratic rigidity, passivity to local conditions, and assistance programs poorly tailored to the needs of disaster victims are themes we have observed repeatedly in FEMA's post-Katrina response. Attorneys at the Lawyers' Committee discussed these issues in an article entitled "The Continuing Storm: How Disaster Recovery Excludes Those Most in Need," which is attached to this testimony.¹² In order to help decipher many of the confusing and conflicting messages from FEMA, the Lawyers' Committee produced "Your Risks, Your Rights," a document that has been distributed to hundreds of residents. In the process of preparing this document, we discovered for ourselves the complete absence of clarity surrounding basic questions about FEMA's programs and policies. These themes have also surfaced in the rocky and, for many residents, traumatic, transition from FEMA assistance to the Disaster Housing Assistance Program administered by HUD.

III. Transition to DHAP

This fall, FEMA began transferring responsibility for rental assistance for Katrina victims to HUD under the Disaster Housing Assistance Program or DHAP. Under the program, local public housing authorities are supposed to provide rental subsidies to the landlords of eligible households. The program was also scheduled to begin assisting FEMA trailer residents this month.¹³

From the beginning, the transition from FEMA rental assistance to DHAP has been troubled. In a shocking number of cases, HUD officials discovered that FEMA's data on eligible households was outdated, incomplete, inaccurate, or just missing altogether. We have heard accounts of landlords receiving DHAP subsidy checks for tenants who have moved. Many landlords who were willing to accept checks from FEMA are not willing to participate in DHAP. Many families who were receiving FEMA rental assistance find that their current apartment will not pass DHAP's inspection requirement. At the same time, landlords who initially agreed to participate in the program are becoming frustrated with late rent checks and other bureaucratic hassles. Tragically, many families who successfully entered the DHAP program, found an acceptable apartment, and convinced a landlord to participate are now receiving notices to vacate because the local housing authority was late with January rent. A photocopy of one such notice is attached to this testimony.

¹² Miller, Trisha B., and Jonathan P. Hooks. *The Continuing Storm, How Disaster Recovery Excludes Those Most in Need*. California Western Law Review. Vol 43. 2006.

¹³ Department of Housing and Urban Development. "Disaster Housing Assistance Program (DHAP): Fact Sheet: HUD to administer Continued Rental Housing Assistance For Residents Affected by Gulf Coast Hurricanes." October 24, 2007. <http://www.hud.gov/news/dhap.cfm>

As a result, an increasing number of households who have been recipients of FEMA rental assistance are facing 30-day notices to vacate their apartments unless they are able to pay the entire (above) market-rate rent for the same apartment in the same complex. These families are now on the brink of homelessness, with no other affordable housing alternatives.

I would like to offer the true story of a person I will call Helen to illustrate the harrowing ordeals that have accompanied the transition to DHAP for many storm survivors. Helen's landlord alerted her to his decision not to participate in DHAP on November 8 and told her that, after November 14, she would be responsible for paying her rent. Helen's lease expires in April, and she cannot afford to pay rent without the assistance. Recently, Helen received a letter from HUD saying that her landlord had elected not to participate in DHAP and that, if she wished to participate, she must get out of her current lease and relocate to a unit with a participating landlord. It also stated that DHAP could not void a binding lease, and, if she had entered into a binding lease, she would be ineligible for assistance." This is precisely Helen's situation; her landlord refuses to release her from the lease, which has onerous early termination penalties. As a result, she cannot move to a different rental property. Helen is now at risk of losing her assistance, her only means of paying for housing, because of an uncooperative landlord and a rigid and opaque DHAP policy.

One of the reasons landlords are wary of participating in DHAP is inherent in the structure of DHAP itself. Beginning one month from now, rental assistance provided by DHAP will be reduced by \$50 each month until it is eliminated altogether.¹⁴ This reduction schedule treats rental assistance as a form of dependence from which recipients need to be gradually weaned and bears no relation to the financial realities of Katrina survivors living in disaster areas. Given the extreme difficulty of finding apartments – let alone inspection-ready apartments with cooperative landlords – we are concerned that many families experienced financial setbacks in having to relocate to new areas far from employment opportunities. Landlords are understandably skeptical that many families will not be able to keep up with the subsidy reductions. Since DHAP is undergoing continual modification to accommodate the realities of federal administration, we recommend other adjustments to accommodate families whose financial situations do not correspond to DHAP's linear reduction program.

In future disasters, it is critical that HUD is engaged immediately to assist in providing long-term housing assistance for survivors – preferably through its existing housing voucher programs. As we have seen, a federal disaster management agency is ill equipped for the challenges of providing housing assistance on an extended basis. Moreover, for disaster survivors with nerves already worn thin, the difficulties of a mid-crisis transition between federal assistance programs are manifest.

It remains unclear how DHAP will affect those living in FEMA trailers, since there is a significant gap between the need for affordable housing and availability of housing. Many housing advocates still do not understand how trailer residents should

¹⁴ Ibid.

begin the transition to DHAP. This question has particular urgency for FEMA trailer residents living in cities that have acted to prohibit FEMA trailers within their jurisdictions.

IV. FEMA and Local Government

As described above, the problem of finding alternate, affordable housing is particularly severe for low-income households currently surviving with FEMA assistance. In the last nine months, however, FEMA's ability to provide direct housing assistance to Hurricane survivors has been compromised by the actions of local jurisdictions along the Mississippi Gulf Coast. Affordable rental housing is largely unavailable on today's Gulf Coast. When faced with the choice of homelessness or living in toxic trailers, trailer residents have no choice but to provide some form of shelter for themselves and their families.

Beginning in May of 2007, however, the Cities of Pascagoula, Gulfport, Ocean Springs, and Bay St. Louis have taken local action to eliminate FEMA trailer parks and even single FEMA trailers on private property. Even though FEMA has committed to providing direct housing assistance through its trailers and mobile units through March of 2009, these local governments have refused to extend local permits accordingly. Moreover, these local governments continue to receive financial assistance from FEMA through its Public Assistance Program. The Lawyers' Committee represents residents of three trailer parks in Pascagoula in an appeal of that city's decision.¹⁵

When pushing to expel FEMA trailers from their jurisdictions, these local governments often cite a need for trailer residents to become self sufficient without any explanation of how they can achieve this goal. The reality is that most residents could have no greater incentive to move than the FEMA trailer itself. Cramped, uncomfortable, toxic with formaldehyde, and utterly vulnerable to the next hurricane, FEMA trailers are places that people live only when they have *no where else to go*.

I want to share the story of a man named Harold to illustrate the effects of such local government actions on people. Harold is an African-American man of 57 years, who is hearing impaired. Back Bay Mission, one of the Lawyers' Committee's local partners, has been assisting Harold for several years. He has been on a fixed income from SSI for over ten years and he lost his rental home and all of his possessions in the storm. After being temporarily homeless for a few months, Harold received a FEMA trailer located on a commercial site in Biloxi, MS.

In December, 2007 Back Bay Mission was contacted by FEMA and was told that Harold needed to be informed that he would no longer be able to reside in his trailer in Biloxi as the site was scheduled for closure in mid-January. On December 28, 2007 FEMA informed Back Bay Mission caseworkers that they would be moving Harold's

¹⁵ *Mitchell, et al v. City of Pascagoula*, No. 2007-00125 filed in the Circuit Court of Jackson County.

trailer within five to seven days (if not sooner) from the East Biloxi site to another site in Gulfport.

Without notice of a specific date or time, Harold's trailer was moved a week later to the Gulfport site. Almost immediately, Back Bay Mission was further informed to instruct Harold that he was to place all utilities (electricity and water) for the trailer at its new location in his name, and further, that he must do so within one week or face removal of his trailer.

In order for Harold to place the utilities in his name, he must pay deposits for those connections: \$150.00 for electricity and \$90.00 for water. When questioned by caseworkers as to why FEMA was discontinuing utility assistance, the FEMA worker replied that as trailer parks get shut down and clients move to either another trailer or a rental paid for by FEMA, clients must pay for deposits and any other expenses associated with the transition.

Harold is presently not able to meet these demands on his own. Due to the temporary loss of SSI payments, he lacks resources for even basic necessities of life. He has been displaced yet again by the move from his informal support network in East Biloxi (his home) to Gulfport and lacks a car or funds for public transportation. In order to stay on top of his situation, Harold visits Back Bay Mission at least two to three times a week, walking to East Biloxi from Gulfport, leaving his house at 6am to get to Back Bay Mission by 9am.

Harold's story is one of thousands. The testimony of other trailer residents can be viewed on the Lawyers' Committee's website:
<<http://www.lawyerscommittee.org/2005website/home/katrina3.mp4>>.

Local government closures of FEMA trailer parks have thwarted FEMA's ability to guide a strategic and comprehensive recovery program along the Mississippi Gulf Coast. Rather than provide the coordinated leadership we expect from a Federal agency, FEMA has scrambled to adapt its programs to the dictates of municipalities. See, for example, an October 2007 news release entitled, "FEMA Temporary Housing Sites Closing; Meeting Local Deadlines," in which FEMA lists cooperation with local governments as a top priority and in which the role of the federal disaster agency appears to be reduced to accommodating local officials.¹⁶ "We want to help [local governments] accomplish what they feel is best for their residents," the release states.¹⁷

Attached to this testimony is a notice from FEMA announcing that three more trailer parks will close by March 31.¹⁸ The only guidance for trailer residents in this notice is a promise of assistance with finding rental resources and a reference to the relocation assistance program scheduled to end in exactly one month. With each locally driven trailer-park closure, FEMA has had to expend its limited resources to relocate

¹⁶ <http://www.fema.gov/news/newsrelease.fema?id=41376>.

¹⁷ Ibid.

¹⁸ <http://www.fema.gov/news/newsrelease.fema?published=1&id=42363>

families and even trailers from one place to another. In some cases, families who continue to remain eligible for FEMA assistance fall out of the system altogether during these transitions. FEMA was not prepared for this foreseeable set of circumstances and has failed to take proactive steps to address this growing problem.

At the same time, local governments have not welcomed alternative housing solutions to FEMA trailers even as they prohibit these trailers within their jurisdictions. Instead, we have seen local governments place hurdles – and sometimes barriers – to housing solutions that would provide an alternative to FEMA trailers. For example, 2,777 Mississippi Alternative Housing Program (MAHP) units, a.k.a. Katrina or Mississippi Cottages, sit in pastures throughout South Mississippi unable to be placed in service or in any manner become occupied by those who require more permanent, safe and healthy homes. A major reason for this situation is that local governments have often resisted the placement of these cottages.¹⁹ Local government reception of affordable housing has been similarly cold.

On the Gulf Coast, FEMA needs to demonstrate leadership by proposing forward-thinking strategies for providing direct housing assistance to all those who require it through March of 2009. FEMA representatives need to work closely and proactively with local officials to alleviate many of the concerns that lead to trailer prohibitions before these decisions are made. When local governments cannot be persuaded, FEMA must identify alternative sites in commercial trailer parks or nearby jurisdictions so that trailer residents can continue to live near existing jobs and social networks. Such continuity represents the only possible avenue to the self-sufficiency that we all want to see for trailer residents.

In future disasters, local governments that benefit from participation in FEMA's National Flood Insurance Program and receive funds through FEMA's Public Assistance Program must be held accountable for their part in facilitating emergency housing for disaster victims. We encourage FEMA to work with local governments on emergency-housing contingency plans before disasters occur. These plans could be adopted in conjunction with local floodplain management standards required by the National Flood Insurance Program. In any case, FEMA must avoid locating emergency housing pursuant to local temporary use permits entirely subject to local discretion. Such permits must have reasonable renewal provisions correlated to the magnitude of the disaster and the pace of recovery.

Local cooperation in emergency housing programs must be tied to the receipt of funds through FEMA's Public Assistance Program. Local governments that wish to prohibit FEMA trailers and trailer parks within their jurisdiction must take proactive steps to facilitate alternative housing opportunities. Many of the towns that accept FEMA Public Assistance are not embracing the construction of affordable housing and the permanent placement of Mississippi Cottages under the Mississippi Alternative Housing Program.

¹⁹ J.R. Welsh, "Council Fights Katrina Cottages," *SunHerald*, Oct. 27, 2007.

V. Relocation Assistance

Another problem is that FEMA's Relocation Assistance Program will end shortly despite the magnitude of the Katrina disaster or the unavailability of housing on the Gulf Coast. Currently, FEMA provides up to \$4000 of actual costs for eligible displaced people moving back to the Gulf Coast. This allows families to afford reasonable travel and moving expenses, often a significant barrier to returning home. However, the new relocation assistance policy was announced only last fall and is slated to end one month from today. FEMA's Disaster Assistance Directorates on relocation assistance have stated that the deadline may be extended "when it is determined that doing so would be in the public interest."²⁰

Currently thousands of former Gulf Coast residents are unable to return home even though they would like to. A major barrier for these families is the lack of affordable housing. Many working poor, elderly, disabled, and middle-class families trying to return to the Gulf Coast will not be able to return without relocation assistance. We urge FEMA to extend the availability of such assistance past February 29, 2008. Any extension should be open ended, dependant upon the availability of housing, and widely publicized.

VI. Conclusion

We urge FEMA and Congress to explore ways to address the shortcomings identified in this testimony, because the problems and missteps of our post-Katrina housing-assistance programs have real consequences. By way of conclusion, I would like to share some statistics from Back Bay Mission. In 2007, Back Bay Mission's Emergency Assistance Program recorded 2,488 visits from members of households located in the lower three counties of MS. Through this program, a total of 5,235 residents were served through assistance in paying rent/mortgage payments, utilities, prescription medications, transportation, and incidentals. *Back Bay Mission has witnessed a 58 percent increase from 2006 in the number of individuals served through this program.* The average median income of households served in 2007 was \$338.00/month, with over 30 percent of those reporting fixed-incomes, *almost half of whom had never sought assistance from BBM prior to 2007.* Similarly Back Bay Mission's Home at Last Program reported no vacancies in apartments and lengthy waiting lists for 2007. In addition, the year-end report revealed a 35 percent increase in the number of homeless persons served through outreach (by providing tents, sleeping bags, bus passes, clothes, shoes, and hygiene items) from 2006 to 2007.²¹ For these newly impoverished and homeless individuals, the worst of Hurricane Katrina has yet to come.

²⁰ FEMA Disaster Assistance Directorate, Issued July 21, 2008.

²¹ These statistics are kept by Back Bay Mission, Biloxi, Mississippi.

Mr. Chairman and members of the Committee, thank you again for the opportunity to testify on this important subject. I look forward to answering any questions from the Committee.