

Additional Testimony from the National Low Income Housing Coalition
RE: May 12 Hearing *Stafford Act Reform: Sharper Tools for a Smarter Recovery*
Presented to the
Ad Hoc Subcommittee on Disaster Recovery of the
Committee on Homeland Security and Government Affairs
United States Senate
May 27, 2010

The federal government has the primary duty and responsibility to provide protection and humanitarian assistance for those displaced during catastrophic disaster, as well as to lead long-term disaster recovery in a way that meets the needs of all displaced persons, with special attention to vulnerable populations, until conditions associated with displacement end. The response to hurricanes Katrina, Rita, Ike, Gustav and Dolly demonstrated that the need for a plan to address initial disaster response and long-term disaster recovery is a matter of national security and importance. State authorities, localities and municipalities are simply ill-equipped to prepare for and to cope with disaster recovery on a catastrophic scale.

It is imperative that future federal disaster recovery better address the housing needs for people with the lowest incomes and vulnerable populations such as people of color, the elderly and persons with disabilities.

The hurricanes of 2005 and 2008 exacerbated an already existing lack of rental housing that is affordable for households with extremely low incomes on the Gulf Coast. Stafford Act reform must ensure a strong commitment of federal support absolutely necessary to ensure access to safe, affordable housing and adequate recovery for all residents after future disasters.

General Housing Issues

Shared Household Eligibility

People who shared a household before a disaster are often forced to seek separate housing after. Under FEMA's so-called "shared households" rules, which limit assistance to one person from each pre-disaster household, members of separated households are often unfairly denied the assistance for which they are otherwise eligible. The Stafford Act should require FEMA to provide assistance to members of separated households with good cause for the separation, including for reasons of divorce, re-employment, evacuation to separate geographic locations, a lack of housing appropriate for the original household size, domestic violence or any other reason for household separation of the pre-disaster household.

Eligibility of People Experiencing Homelessness Prior to a Disaster

People experiencing homelessness prior to a disaster, who are evacuated or displaced, should be explicitly eligible for individual and household assistance under the Stafford

Act, including assistance with housing and, where applicable, medical, dental and funeral expense; transportation expense and reimbursement; and loss of personal property. Simply achieving the goal of returning someone to their pre-disaster status is not acceptable in the case of someone experiencing homelessness.

Recertification

Temporary Housing Assistance should be provided on a continuous basis, without gaps in assistance, to all applicants who demonstrate continued financial need. Continued need should be established when the applicant's post-disaster housing expenses exceed 30% of the applicant family's post-disaster income. Post-disaster housing expenses should include post-disaster rent and utilities, as well as any pre-disaster housing expenses such as mortgage payments, utilities, taxes and homeowner's and flood insurance payments.

Recertification should occur based on the applicant's need without gaps in assistance and without onerous recertification requirements. Any requirements for recertification should be published on the FEMA website and mailed to the applicant more than 30 days prior to the deadline for recertification.

Temporary housing assistance should not be discontinued to an applicant with demonstrated financial need and should continue as long as adequate housing remains unavailable or unaffordable in the displaced household's pre-disaster community or as long as the pre-disaster community lacks adequate infrastructure including utility and telephone service, schools, emergency services including police and fire, medical care including ambulance service, etc.

Housing Assistance with Appeal Pending

FEMA must continue to provide temporary housing assistance to a household pending an appeal of denial of temporary housing assistance. These funds would be subject to recoupment if the household is found through the appeal to be ineligible for the assistance.

Guidance on Housing Assistance

FEMA must be required to issue public guidance in simple terms explaining: all types of housing assistance available under the Stafford Act to households affected by a major disaster; the specific requirements that households must meet to be eligible for the different types of housing assistance, including requirements for continuation of housing assistance provided; and procedures for applying for such assistance. Said guidance should be posted on FEMA's website and provided in accessible format to any household requesting housing assistance.

The guidance must be issued in alternate formats that may be understood by individuals with limited English proficiency, vision or hearing impairments, including through video

relay and TTY system answered by live operators. The information must be available no later than 5 days after the declaration of a major disaster.

HUD must articulate clear responsibilities for state and local public housing agencies and must increase their resources for responding to critical housing needs created by future disasters.

Hardship Waivers for Collection of Rental Charges for Direct Assistance

FEMA should provide hardship waivers for recipients of direct assistance after the initial 18-month period of assistance. All persons continuing to receive direct assistance at least 30-days prior to the end of the 18-month period must be notified of the possibility of a waiver for hardship, which should explicitly describe the process for obtaining such a waiver and for appeal of denial by FEMA. Direct assistance recipients applying for a waiver for hardship or appealing a subsequent denial by FEMA should not be charged rent while their application/appeal is under review.

Hardship Waivers and Appeals for Recoupment

FEMA should provide hardship waivers for recipients subject to recoupment and recipients must be notified of the availability of such a waiver. All persons who receive a recoupment letter must be notified of the possible availability of a waiver for hardship. This notice must also explicitly describe the process for obtaining a hardship waiver. FEMA's regulations and practice is that it will, in its discretion, provide for a repayment plan, but there is no requirement that those who are truly low-income will not be subject to recoupment. Fraud cases would be exempt from this provision.

All temporary housing assistance shall continue pending the appeal of any recoupment or request for hardship waiver. Recoupment payments should not be due and interest and penalties should not begin to run until the appeal is decided.

Public Guidance on Housing Assistance

FEMA should be required to provide public guidance in simple terms explaining all types of housing assistance available to households affected by a major disaster; the specific requirements that households must meet to be eligible for the different types of housing assistance, including requirements for continuation of housing assistance provided; and procedures for applying for such assistance.

Provision of Rental Assistance Dollars

When an applicant is found eligible for temporary housing benefits, the benefit should be provided as of the date the applicant incurred expenses for temporary housing.

Sale of Temporary Housing Units

FEMA should be required not to sell to the public temporary housing units determined to be unsafe for habitation.

National Housing Stock Plan

HUD must develop a National Housing Stock Plan which will identify available housing for rent with disaster housing assistance.

Public Housing One-for-One Replacement Plan

HUD should articulate a plan and identify resources to provide one-for-one replacement of all pre-storm federally assisted homes that serve people below 50% AMI. The plan must include a process for creating high quality, mixed-income developments, located on former public housing sites, which does not decrease the stock of deeply affordable homes.

Financial Assistance for Housing

Adjustment to Rental Assistance Amount

There should be a requirement that the amount of rental assistance given to displaced households be no less than HUD's fair market rent (FMR). Household assistance will set at 120% of local FMR if the President determines that the disaster has resulted in rental market changes such that the FMR does not accurately reflect the cost of renting an apartment. "Extraordinary circumstances," including when accommodating the housing needs of a person with disabilities, would allow for households to receive above 120% FMR. Any adjustment to the amount of assistance must be publicly announced.

Eligible Expenses Under Rental Assistance

Rental assistance provided under the Stafford Act should include advance rental payments when required by the landlord, utility deposits, and security deposits required by the landlord.

Temporary Mortgage and Rental Payments for Households Facing Financial Hardship

FEMA should be able to provide temporary assistance in the form of mortgage or rental payments for individuals or families who, as a result of financial hardship caused by a declared disaster, are at imminent risk of dispossession or eviction from a residence due to foreclosure, cancellation of contract for sale, or termination of any lease, entered into prior to the disaster.

Direct Housing Assistance

Accessible Direct Housing Assistance

Not less than 15% of direct housing assistance units should be made accessible for persons with mobility impairments. Not less than an additional 2% of such units should be accessible for persons with hearing or vision impairments and not less than 1% of these units should be accessible for persons with mobility and vision or hearing impairments.

Unit Standards

All direct housing assistance should be habitable, meaning that the unit is safe, sanitary, and secure. Safe is defined as 1) the exterior is structurally sound, to include windows, doors, and roof; 2) components for electricity, gas, heat, plumbing, etc. are properly functioning, and 3) the interior is structurally sound, to include floors, walls, and ceiling. Sanitary is defined as free of detectable health hazards. Secure is defined as having functional locking mechanisms on exterior doors and windows.

Other Assistance

Other Needs Assistance Related to Temporary Housing

Other Needs Assistance should include any moving and storage expenses necessary to obtain and move into temporary housing and to preserve and transport salvageable personal property and basic household necessities. Temporary housing assistance shall also include moving expenses necessary for the household to obtain affordable housing and moving expenses related to re-patriation.

Assistance should also be available to individuals or families with low incomes in order to obtain clear title for property to which they can demonstrate equitable ownership.

Fair Housing

Compliance

Distribution of FEMA funds must comply with the Civil Rights Act, the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

Oversight of State/Local Distribution of Funds

The Federal government has primary duty to protect those displaced during a disaster especially those most vulnerable. Thus, federal oversight must ensure that state and local governments are not distributing federal funds in violation of the Civil Rights Act, the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Sub-grantees of FEMA assistance should be subject to the same requirements.

Eliminating Bias in the Design of Recovery Programs

After Hurricanes Katrina, Rita and Wilma, the states in the Gulf allocated substantial portions of their (CDBG) disaster recovery funds to help homeowners repair or rebuild storm-damaged homes. In several instances, guidelines or standards built into the design of the state-run programs had the impact of limiting assistance to people of color and lower-income homeowners. This occurred despite the fact that Congress made specific note in the appropriations bills that the grantees were required to comply with fair housing and civil rights standards, and the fact that (CDBG) funds are specifically intended to benefit low and moderate income people.

Disaster recovery funding grantees must be prohibited from using any discriminatory factors as a basis for determining the amount of rebuilding assistance for which property owners are eligible. HUD should be required to review state-run proposed program guidelines, make a determination that they do not violate the Fair Housing Act, and publish its findings for public review and comment.

Coordination

Coordination with Local Food Banks

FEMA should be required to coordinate with local food banks to ensure access to food for persons in FEMA provided housing. FEMA also should coordinate to ensure that eligible residents of FEMA trailers or other temporary housing programs get connected with all public benefits for which they may be eligible, including food stamps.

Equitable Provision of Social Services Regardless of Classification of Emergency Shelter

Functional needs shelters and general population shelters are the two general categories of shelters after disasters. Often, different resources are available to populations of different shelters. Access to social services and information about housing opportunities should be provided in an equitable manner to all persons, without regard to the category of emergency shelter and the agencies responsible for administering the emergency shelter.

Other

Transparency

A statute should require FEMA to publish all standards that it uses to decide applications for individual assistance, and to make the facts *and* standards that FEMA uses to decide each application available to disaster survivors according to a simple procedure (i.e. a password-protected web site). FEMA's legitimate need for flexibility in varying disasters cannot justify secret or arbitrary decision making. A statute need only provide that (a) whenever FEMA gives policy direction to those who decide applications for disaster assistance, FEMA must simultaneously publish all such policies; and (b)

FEMA must publish a simple process that enables disaster survivors, or their designated advocates, to see all information in their case files. The Subcommittee witnesses--- including DHS's own inspector general---unanimously identified case management as a persistent shortcoming, particularly due to its dispersion among FEMA employees and contractors. Case management cannot begin to be improved until the basic, ordinary work of publishing standards has been done. Make no mistake, FEMA does not yet publish the standards and facts that it relies upon to decide applications for disaster assistance.

FEMA Policy Decisions

FEMA claims the need for broad disaster-by-disaster flexibility in choosing individual assistance policies. Without debating the genuineness of this need, the public deserves appropriate input into FEMA's policy choices regardless of whether those choices are made on an emergent or non-emergent basis. In many instances, Congress has established specialized notice and comment procedures when the standard procedures of the Administrative Procedure Act have proved inadequate. At bottom, if FEMA is to have the unusual and enormous power to alter its individual assistance policies at will, then Congress must decide what public input is appropriate, if any, before or after FEMA does so. This matter of what public input into FEMA policy choices is available requires statutory attention. Regardless of what choice Congress makes, the choice must be in a statute or it will be ignored in disasters. Only outside the context of an individual disaster can rational consideration be given to the proper scope of public input as FEMA alters its standard individual assistance policies. An example of the need for public input on FEMA individual assistance policies is FEMA's "deferred maintenance" rule, which is not publicly available, and which FEMA apparently uses mainly in disasters that affect low-income communities. Under this rule, FEMA denies repair assistance under 42 U.S.C. § 5174(c)(2)(A) if FEMA somehow determines that the condition of a house *prior* to a disaster was a contributing cause of the damages caused by the disaster. Of course low-income families are the primary, if only, ones who are hurt by this rule. They seek--indeed they need--a fair opportunity to discuss with FEMA the origin, objective, and operation of rules such as this before, or at least during, their deployment.

Mitigation Funds

FEMA should be required to further target its current and future pre-disaster mitigation programs to better incentivize pre-disaster mitigation efforts for people with the lowest incomes to prevent destruction and damage from future storms for the most vulnerable populations.

Monetary Cap

The provision of temporary housing assistance to disaster victims is often inequitable. Those households that receive rental assistance have the amount of such assistance deducted from the monetary cap on assistance, while those households that receive

direct housing assistance, in the form of a mobile home or travel trailer, do not have the worth of their housing assistance deducted from the cap.

To correct this imbalance, the monetary value of all forms of temporary housing assistance should be exempt from monetary cap on assistance.

Incorporation of UN Guiding Principles

Stafford Act reform should incorporate the guidelines set out by the United Nations Guiding Principles on Internal Displacement, including the declaration that displaced person should have the right to housing that requires the government to provide temporary housing for the duration of the displacement and support for the rebuilding of permanent homes.

Shelter Reimbursement to Non-Profits

Private non-profits shall be reimbursed for the provision of emergency shelter to households waiting for individual and household assistance under the Stafford Act.

Federal Recovery Funds

The Stafford Act must also be amended to include a mandate that federal agencies administering disaster recovery funding issues clearer regulations for sub-grantees which guarantee access to disaster recovery assistance to persons with low incomes and protected classes under the Stafford Act.

The following recommendations emphasize our understanding of the overwhelming disparities that the poor and Stafford Act protected classes have experienced during disaster recovery efforts which have been implemented by states and localities (as sub-grantees) administering federal disaster housing dollars. Therefore, leading disaster recovery agencies including HUD and FEMA must be required to issue clear standards which govern sub-grantees in their administration of all federal disaster money.

All Rules Apply to Grantees and Subgrantees

When a state defers decisions regarding how disaster recovery funds are to be used to regional or local governmental bodies, HUD has in the past allowed states to file a "shell" disaster recovery plan that does not set forth the detailed uses of the funds or the beneficiaries. This renders the citizen participation process and HUD review of the state disaster recovery plan meaningless. Recently, HUD has taken a stance against shell disaster recovery plans, as evidenced in the Texas CDBG rejection and the recent settlement between Texas advocates and the state of Texas. However, the future of disaster recovery must ensure adequate and just housing recovery by requiring HUD to issue standards that ensure that when states transfer authority to make funding decisions and program design to regional or local units of government, HUD shall require from these sub-granted government entities compliance with all applicable

CDBG requirements imposed upon the states, including plan submission and HUD review and approval of funding allocations and program guidelines.

Income Targeting

The Stafford Act should be amended to require that housing recovery dollars be expended with equitable income targeting for households with the lowest incomes. It is the federal government's primary responsibility to ensure equitable access to recovery, especially when states and localities have demonstrated in past disaster recovery efforts an inability to adequately address the needs of the very poor or protected classes. The flexibility of the CDBG program has allowed localities and states administering *housing* recovery dollars to be administered in ways which disparately impact households with low incomes and protected classes.

Future disaster recovery efforts should include targeted assistance to be awarded through HUD's HOME program to ensure that housing recovery dollars are expended on actual housing needs and that state and local sub-grantees are not allowed to use the flexibility of the CDBG program to effectively prevent people with low incomes, minorities, the elderly or the disabled from having access to affordable housing. Further, we recommend that HUD be required to issue regulations which strengthen its CDBG program and the original income targeting requirements which are often unnecessarily waived during disasters.

Waivers of Income Targeting

Congress has long recognized the need to provide state and local governments with standards for assistance based on beneficiary incomes through the CDBG program. In the regular CDBG program, state and local recipients of CDBG are required to demonstrate that 70 percent of the funds principally benefit individuals with incomes below eighty percent of the median. This standard was preemptively waived to 50 percent for disaster recovery funds appropriated for Hurricanes Katrina, Rita, Gustav, Dolly and Ike, and Congress further offered states the option to seek a waiver further reducing the 50 percent low and moderate income benefit standard.

Congress must apply existing priorities for the use of federal CDBG disaster recovery funds to ensure that the most vulnerable populations are equitably benefited, especially when insufficient funds are appropriated to assist all persons in need. Federal disaster recovery funds must therefore be awarded with the same income targeting requirements as the regular CDBG program, i.e. at least seventy percent of the funds principally benefit low and moderate income persons, and that any waiver of that requirement be based on a showing of "compelling need."

Congress should set more specific standards as to how a recipient must benefit LMI households or require HUD to publish guidance or regulations as to this issue; and if waivers to the LMI requirement are to be permitted to provide the needed flexibility in times of a disaster, there should be similar standards set for judging how a recipient

must demonstrate the “compelling need” requirement for a waiver.

Further, using the income and household needs data available through applications for FEMA housing assistance, states and localities should be required to provide proportional assistance to very low income families with incomes below fifty percent of the median income. These very low income families most often lack insurance and other resources to recover without public assistance, and their unmet needs present a substantial barrier to broader community recovery.

Ratio of Funding for Owner & Rental Rebuilding

Congress recognized the importance of equitably providing for the housing needs of renters in disaster recovery by requiring states to expend at least 10 percent of available CDBG disaster recovery funds for the restoration of rental housing. In disaster recovery processes, localities often are quite vocal about their goals to use federal disaster recovery funds to reduce the number of rental housing units within their jurisdictions and to target funding toward increasing the proportion of middle income homeowners as a strategy to reduce the local proportions of lower income renters. The effect of such policies not only disproportionately denies housing rebuilding assistance to lower income households who are the intended beneficiaries of disaster assistance, in many jurisdictions affected by the recent hurricanes it also has the effect of reducing benefits to persons of color.

Applications for FEMA assistance should be complete enough to allow states undertaking disaster recovery to accurately assess the needs for owner occupied and renter occupied housing. Congress should require that state disaster recovery plans provide housing benefits to owner and renter occupied housing proportional to the need revealed by these objective needs assessments, and should instruct HUD to refrain from preemptively waiving program requirements related to affordable and subsidized housing.