



*BRIEFING PAPER ON FEMA'S DISASTER HOUSING POLICY*

**MORE THAN FIVE YEARS AFTER KATRINA, FEMA IS  
NOT PREPARED TO MEET THE TEMPORARY HOUSING NEEDS OF  
PEOPLE WITH DISABILITIES AND OTHERS AFTER A DISASTER**

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The National Center for Law and Economic Justice (NCLEJ) is a national organization that uses litigation, and policy advocacy to advance the cause of economic justice in the United States. One focus of NCLEJ's work is ensuring that government programs serving low-income individuals provide meaningful access to people with disabilities.

## Introduction

After Hurricanes Katrina and Rita in 2005, thousands of displaced persons with disabilities were left stranded in shelters, forced into institutions, and given trailers without ramps, with inaccessible bathrooms, inadequate room to maneuver wheelchairs, and other accessibility barriers. Although FEMA estimated that one-quarter of the people displaced by Katrina had disabilities, and one-third of those individuals needed accessible trailers, FEMA had no process in place to determine whether displaced persons had disabilities and needed accessible trailers, and no system to meet their needs. Many people with disabilities were given inaccessible trailers, others were given trailers that FEMA claimed were “handicapped friendly” that had a few accessibility features but were not fully accessible.

Given the magnitude of the problem and a clear legal mandate for FEMA to operate housing programs that are accessible to and usable by people with disabilities, the National Center for Law and Economic Justice (NCLEJ) and Advocacy Center in Louisiana filed a lawsuit against FEMA on behalf of displaced people with disabilities asserting that FEMA’s failure to provide people with disabilities with accessible trailers violated federal civil rights laws and the Stafford Act. The lawsuit settled. As part of the settlement, FEMA sent notices informing those who applied for FEMA housing informing about the right to accessible trailers, created a hotline for people with disabilities to make their need for accessible housing known to FEMA, created screening questions to determine what accessibility features people needed, and provided accessible trailers to those who needed them. The settlement also required FEMA to put a minimum number of accessible trailers on group trailer sites and make common areas of those sites accessible.<sup>1</sup> These steps, however, applied only to the class of displaced persons in the lawsuit.

In March 2009, NCLEJ asked FEMA for copies of the agency’s current policies for providing accessible temporary housing to people with disabilities after a disaster, so we could determine whether FEMA is better prepared now than it was in 2005. Months passed, but FEMA did not respond to our document request. NCLEJ filed another lawsuit against FEMA to obtain copies of its post-Katrina temporary housing policies. This lawsuit settled as well, and in March 2010, FEMA provided us with the requested documents. Unfortunately, the documents were extremely troubling and raised further questions. We have tried to get answers to these questions, but FEMA has failed to provide answers. In July 2010, we submitted another request to FEMA for temporary housing policies. To date, we have received no response.

Although the current administration has professed its commitment to government transparency, it has been difficult to get basic information from FEMA about its current temporary housing policies. We will continue to seek answers to these questions, and urge others to do so as well.

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<sup>1</sup> *Brou v. FEMA*. No. 06-0838 (E.D. La., settlement agreement entered Sept. 26, 2006).

As discussed in detail below, FEMA has evidently not learned from its past mistakes, and does not appear to have adequate policies in place for meeting the temporary housing needs of *anyone* – either people with disabilities or others – in future disasters. We hope that others will recognize the alarming nature of this situation, and join with us to press FEMA to develop the policies needed to meet the temporary housing needs of everyone in future disasters.

## **FEMA’s Temporary Housing Policies**

### **1. FEMA has not disclosed how many temporary housing units, and how many accessible units, it currently has on hand for future disasters.**

In response to our 2009 document request, FEMA provided us with two “Interim Policies,” dated 2006 and 2007, on providing temporary housing to individuals with disabilities and others after a disaster.<sup>2</sup> To our knowledge, FEMA has never said how many trailers or other housing units, or how many accessible trailers or other housing units, it currently has on hand. On June 15, 2010, FEMA testified before the House Committee on Homeland Security about FEMA trailers, but did not say how many housing units, or accessible units, FEMA currently has in its inventory. We have asked for these figures in our most recent document request, but FEMA has not responded. We believe the public is entitled to this information, and we call upon FEMA to release it.

### **2. It isn’t clear whether FEMA current has a policy for providing temporary housing after a disaster.**

FEMA’s 2006 and 2007 Interim Policies on post-disaster temporary housing are inconsistent and inadequate. As both as designated “interim” policies, it is unclear whether either, both, or neither, are FEMA’s current post-disaster temporary housing policy. When we asked FEMA officials about this in May 2010, they attempted to distance themselves from the Interim Policies but did not identify other documents that are their current policies. FEMA has not responded to our most recent formal document request. ***Thus, it is unclear whether FEMA currently has a temporary housing policy that it would look to in the event of a disaster next week, next month, or next year.***

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<sup>2</sup> *FEMA Interim Recovery Policy 9452.1 (Interim): Temporary Housing Units for Eligible Disaster Victims with a Disability* (October 13, 2006) (hereinafter “2006 Interim Policy”); *FEMA Recovery Policy 1003: Temporary Housing Inventory Requirements* (February 27, 2007) (hereinafter “2007 Interim Policy”).

**3. FEMA's 2006 and 2007 Interim Policies will not provide sufficient temporary housing to people likely to need it after a major disaster.**

**A. FEMA's 2006 and 2007 Interim Policies will not provide sufficient temporary housing for everyone.**

If FEMA's 2006 and 2007 Interim Policies are the agency's current policies on post-disaster temporary housing, this is bad news for everyone.

FEMA's 2007 Interim Policy states that FEMA "will maintain a sufficient inventory of fully mission capable (i.e., ready for occupancy) temporary housing units (mobile homes, park models, and travel trailers) to meet an immediate demand for authorized temporary housing following any presidentially-declared major disaster or emergency." The policy goes on to say that the baseline inventory level will be sufficient for a catastrophic "Katrina-level event." Yet the policy states that for calendar year 2007, the baseline inventory was only 13,500 housing units. After Katrina and Rita, FEMA purchased over 145,000 trailers and housed over 120,000 families in those units.<sup>3</sup> Thus, *the most recent temporary housing policy released by FEMA indicates that FEMA's on-hand inventory would meet less than 10% of temporary housing needs in a Katrina-sized disaster.*

In addition, FEMA has failed to comply with the policy. The 2007 Interim Policy states that FEMA will issue a revised trailer inventory number annually. As of March 2010, FEMA had not updated the numbers since the 2007 Interim Policy was issued.

In June of this year, FEMA indicated that it *had* updated the baseline inventory numbers, but the numbers had shrunk significantly. In June 2010, a FEMA official told Congress that the current "target baseline temporary housing inventory" is 4,000 housing units, less than one-third of the 2007 number. FEMA offered no explanation of how the new number was arrived at or why it is so much smaller.

**B. FEMA's 2006 and 2007 Interim Policies will not provide sufficient temporary housing for people with disabilities.**

FEMA's 2006 Interim Policy states that individuals with qualified disabilities eligible for temporary housing assistance will be provided accessible housing units or a standard units with

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<sup>3</sup> U.S. Senate, Ad Hoc Committee on Disaster Recovery, Committee on Homeland Security and Governmental Affairs, *Far From Home: Deficiencies in Federal Disaster Housing Assistance After Hurricanes Katrina and Rita and Recommendations for Improvement* (February 2009), at 106.

modifications,<sup>4</sup> but this language is not included in the 2007 policy. In other words, ***the most recent FEMA temporary housing policy provided to us contains no general commitment by FEMA to provide accessible temporary housing to individuals with disabilities who need it after a disaster.***

Further, the Interim Policies do not ensure that there will be enough accessible temporary housing for people with disabilities. After Katrina, FEMA estimated that 25 percent of displaced persons had disabilities and that one-third of those with disabilities (8 percent) needed accessible trailers.<sup>5</sup> Using these estimates, 11,600 accessible temporary housing units would be needed after a Katrina-sized disaster. Yet the 2007 Interim Policy requires only 2,500 housing units in the inventory to be accessible. This would serve *only 2 percent* of the number of persons after a Katrina-sized disaster.

Even more troubling, when FEMA testified before Congress in June 2010, an agency official said that *only 400 housing units* in the “target baseline inventory” would be accessible to people with disabilities. FEMA did not explain why the number of accessible units FEMA intends to have on hand has shrunk from 2,500 to 400. At one point FEMA was considering requiring at least *50 percent* of the housing units in FEMA’s inventory to be accessible to people with disabilities. ***In short, the number of accessible housing units FEMA intends to have on hand would meet the needs of only a fraction of people with disabilities likely to need it.***

In fact, neither of FEMA’s Interim Policies actually requires FEMA to have 2,500 accessible trailers on hand. The 2007 Interim Policy states that 2,500 units is “a long term inventory objective.” Both policies say that the 2,500 figure is “subject to disaster draw-downs.” In other words, once FEMA begins to distribute accessible housing units, neither policy requires FEMA to purchase additional accessible units to maintain 2,500 accessible units on hand. Further, although FEMA has said that its contracts with temporary housing manufacturers require manufacturers to comply with technical accessibility standards when FEMA specifies “accessible units” in its order, ***neither Interim Policy requires FEMA to purchase any additional accessible housing units once it begins to drawn down its inventory, and neither requires a minimum number or percentage of the additional units it orders to be accessible.***

#### **4. FEMA lacks plans for delivering temporary housing to people who need it within a reasonable time frame.**

We recognize that it is not practical or cost-effective for FEMA to purchase all of the housing units that may be needed after a major disaster in advance and pay for storage and upkeep of those units. Thus, we are not opposed to the general approach reflected in FEMA’s

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<sup>4</sup> 2006 Interim Policy.

<sup>5</sup> Letter from Pauline Campbell, Director, Office for Civil Rights, FEMA, to Lawrence Roffee, Executive Director, Access Board (December 29, 2005).

Interim Policies, which is to have some housing units “on hand” that are ready for deployment, and to order additional units as needed. Given this approach, however, FEMA must determine *how many* housing units it should have on hand ready for deployment. If FEMA chooses to have a relatively small number of units on hand, it should have a reasonable basis for assuming that in the event of a major disaster, the additional units that may be needed could be manufactured and deployed within a reasonable time frame.

Unfortunately, there is no indication in FEMA’s Interim Policies that FEMA could justify its decision regarding the number of units to have on hand. FEMA’s 2007 Interim Policy states that FEMA can deploy 150 trailers a day during the first 90 days after a disaster. It does not say what the pace of deployment could be after 90 days. The 2006 Interim Policy is completely silent on this issue. Using the only information FEMA has provided on the pace of delivery, at a pace of 150 trailers a day, it would take FEMA *more than two years* to deploy the 120,000 trailers FEMA distributed after Katrina. In June 2010, a FEMA official told Congress that it has contracts with five housing manufacturers that could each produce 150 housing units per week within three weeks of a request from FEMA. At that rate, it would take FEMA *over three years* to order and obtain all of the housing units deployed after Katrina. If FEMA has only 4,000 units on hand, this would shorten the total time by less than two months. These timetables are clearly not workable.

**5. FEMA lacks plans for ensuring that group housing sites have accessible housing units.**

Many people displaced by Katrina and Rita did not own property on which to place a trailer, and their only option was to live in group trailer sites. After Katrina and Rita, more than 20,000 households lived in trailers at more than 500 group sites.<sup>6</sup> Given the continued shortage of affordable low-income housing in the U.S., it is likely that in the event of a future disaster, a significant number of displaced persons would need to live at group sites again. And, given the extremely limited availability of affordable low-income housing that is accessible to people with disabilities, it is likely that many of those individuals will have disabilities.

Some of the group trailer sites that opened after Katrina and Rita did not have trailers that were accessible to people with disabilities, and, in many, common areas and services (e.g., garbage bins, mail boxes, and laundry rooms) were not accessible. As part of the settlement in *Brou v. FEMA*, NCLEJ’s accessible trailer lawsuit, FEMA agreed to ensure that, with the exception of one site, at least 5 percent of the trailers at all group sites in Louisiana and Mississippi with 20 or more trailers were accessible, and agreed to make common areas and routes at group sites accessible.

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<sup>6</sup> U.S. Government Accountability Office, *Disaster Assistance: Federal Efforts to Assist group Site Residents with Employment, Services for Families with Children, and Transportation*, GAO-09-81 (December 2008), at 3, 13.

Yet, on this issue as well, FEMA does not appear to have learned from its past mistakes. FEMA's 2006 Interim Policy requires group trailer sites built by or on behalf of FEMA to have accessible routes and accessible common areas, and requires at least 15 percent of the *lots* in each site to be able to accommodate an accessible housing unit. But the policy doesn't require a minimum number or percentage – or indeed, any – of the *housing units* at group sites to be accessible.<sup>7</sup> Even worse, the 2007 Interim Policy is completely silent on the question of whether group sites must be accessible to people with disabilities, and if so, how many or what percentage of housing units, must be accessible. ***Thus, neither interim policy requires group sites to have any housing units that are accessible to people with disabilities.***

**6. FEMA needs an adequate temporary housing policy now, even if the agency's goal is to move away from the use of trailers.**

FEMA is making efforts to develop alternative to trailers to meet post-disaster temporary housing needs.<sup>8</sup> While we are pleased to hear about these efforts, we do not believe they obviate the need for FEMA to have an adequate, workable plan for meeting temporary post-disaster housing needs *now*. A disaster could occur before the pilot projects are completed and before FEMA is ready to select an alternative to trailers. FEMA's final report on its Alternative Housing Pilot Program, which has funded several projects to explore better alternatives for post-disaster housing, is not due until December 2011.<sup>9</sup> Moreover, whatever type of housing FEMA intends to use now or in the future, the agency needs a policy detailing how it will meet temporary housing needs of people with disabilities and others in the event of a disaster.

**7. FEMA is currently violating federal law.**

In 2007, Congress took steps to prevent FEMA from overlooking the post-disaster housing needs of people with disabilities again. It amended the Stafford Act to require FEMA's National Disaster Housing Strategy (NDHS) to “ensure that a sufficient number of housing units are provided for individuals with disabilities.”<sup>10</sup>

FEMA has not complied with this mandate. FEMA has drafted a NDHS, but the NDHS

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<sup>7</sup> The U.S. Access Board's Emergency Transportable Federal Housing Federal Advisory Committee has recommended that the Access Board require 10 percent of the trailers at group sites be fully accessible. U.S. Access Board, Emergency Transportable Federal Housing Federal Advisory Committee, *Recommendations for Emergency Transportable Housing* (Oct. 2008), available at [www.access-board.gov/eth/report/hm#charter](http://www.access-board.gov/eth/report/hm#charter).

<sup>8</sup> Testimony of Richard L. Skinner, Inspector General, Federal Emergency Management Agency, before House Committee on Homeland Security (June 15, 2010), pp. 6-8.

<sup>9</sup> *Id.*

<sup>10</sup> 6 U.S.C. § 772(d)(5) (October 4, 2006).



says nothing whatsoever about how FEMA will ensure that there are a sufficient number of accessible units are provided to people with disabilities. It is completely silent on the issue.<sup>11</sup> An “Annex” to the NDHS summarizes federal disability laws and housing programs, but it does not discuss providing accessible trailers to individuals with disabilities after a disaster or contain or discuss specific policies or procedures.<sup>12</sup> Thus, FEMA is flouting a Congressional mandate intended to prevent the agency from neglecting people with disabilities and repeating its past mistakes.

## Conclusion

When it comes to providing temporary housing to individuals after a disaster, FEMA is poised to repeat its past mistakes. FEMA needs, but does not have, a comprehensive written policy detailing what it intends to do to meet the temporary housing needs of people with disabilities and others after a disaster. The policy should be adequate and defensible, and should specify:

- that FEMA will meet provide accessible temporary housing to those who need it after a disaster;
- the number of temporary housing units, and the number of percentage of accessible temporary housing units, that may be needed overall in the event of a Katrina-sized disaster;
- the number of temporary housing units, and the number of percentage of accessible housing units, FEMA must have in its on-hand inventory to meet the needs of individuals with disabilities and others after a Katrina-sized disaster;
- what FEMA must to obtain additional units and accessible units, and the timetable within it must do it, to acquire the number of units needed to meet the inventory numbers specified in the policy;
- how quickly the housing units in FEMA’s existing inventory can be deployed, and how quickly additional housing units that FEMA will may need can be manufactured and deployed;

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<sup>11</sup> Federal Emergency Management Agency, *National Disaster Housing Strategy* (January 16, 2009), pp.59-60.

<sup>12</sup> Federal Emergency Management Agency, *National Disaster Housing Strategy: Annex 3: Summary of Programs for Special Needs and Low Income Populations, Including Provision of Housing Units for People with Disabilities* (January 16, 2009).

- the number or percentage of housing units that FEMA may need to order on an as-needed basis that must be accessible to people with disabilities;
- what “accessibility” means under the policy;
- that group temporary housing sites must have accessible common areas and paths of travel; and
- that group temporary housing sites must have a minimum number or percentage of accessible housing units at each site.

Failure to develop a policy will inevitably cause needless suffering. If FEMA will not develop a policy on its own, Congress and others must act.