Disaster Housing Programs

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FEMA leads the federal government's efforts to prepare for potential disasters and to manage the federal response and recovery efforts following any disaster that overwhelms local and state authorities. FEMA provides immediate, direct financial and physical assistance to those affected by disasters and is responsible for coordinating government-wide relief efforts.

HISTORY

Until the 1930s, *ad hoc* legislation was passed in response to hurricanes, earthquakes, floods, and other natural disasters. When the federal approach to disaster-related events became popular, the Reconstruction Finance Corporation was given authority to make disaster loans for repair and reconstruction of certain public facilities following an earthquake, and later, other types of disasters. However, a piecemeal approach to disaster assistance continued. The "Disaster Relief Act of 1974" firmly established the process of presidential disaster declarations. Finally, on April 1, 1979, President Jimmy Carter signed Executive Order 12127, merging many of the separate federal disaster-related responsibilities into the newly created FEMA. In 2003, FEMA became part of the new Department of Homeland Security (DHS). Long-term recovery funding is also managed by HUD, which administers several programs focused on housing and economic recovery in areas struck by disasters.

The "Robert T. Stafford Disaster Relief and Emergency Assistance Act" (Public Law 100-707), amending the "Disaster Relief Act of 1974," became law on November 23, 1988. It created the system still in place today through which presidential disaster declaration of an emergency triggers financial and physical assistance through FEMA. The act gives FEMA responsibility for coordinating government-wide relief efforts and provides orderly and systemic federal natural disaster assistance for state and local governments. Congress' intention was to encourage states and localities to develop comprehensive disaster preparedness plans, prepare for better intergovernmental coordination in the face of a disaster, encourage the use of insurance coverage, and provide federal assistance for disaster-related losses.

President George W. Bush signed the "Post-Katrina Emergency Reform Act" on October 4, 2006. The act significantly reorganized FEMA and provided substantial new authority to remedy gaps that became apparent in the response to Hurricane Katrina in August 2005, including a more robust preparedness mission for FEMA. President Barack Obama signed the "Sandy Recovery Improvement Act (SRIA) of 2013" on January 29, 2013. SRIA authorized several significant changes to the way FEMA delivered federal disaster assistance.

The "Disaster Recovery Reform Act," (Public Law 115-254), amending the "Robert T. Stafford Disaster Relief and Emergency Assistance Act," was signed into law on October 5, 2018. The act further reforms FEMA, increasing the agency's pre-disaster planning process and its overall efficiency after the destructive 2017 hurricane and wildfire seasons. Notably, the act changes the factors FEMA considers when advising a president to issue a federal disaster declaration. The agency will now consider a disaster-stricken state's ability to pay for its own recovery along with damage reports and assessments.

During the COVID-19 pandemic, FEMA was not initially called upon to coordinate the response. Instead, the Center for Disease Control (CDC) and the Department of Health and Human Services (DHHS) were placed in charge of the response. This was done in accordance with pandemic-related policies established in the past decade. As the scope of the pandemic became clear and CDC and DHHS capabilities began to be overwhelmed, FEMA was tasked with coordinating the federal response. You can find out more about FEMA's actions in the "Role of FEMA in COVID-19 Response" section of this guide.

FEDERAL PROGRAMS

FEMA

Along with other government agencies, FEMA may provide disaster victims with low-interest loans, veterans' benefits, tax refunds, excise tax relief, unemployment benefits, crisis counseling, and free legal assistance. These resources are available once the president grants a governor's request for Individual Assistance (IA) programs as part of a major disaster declaration. Disaster housing and community development programs unique to FEMA include:

The Individuals and Households Program (IHP). The Housing Assistance provision of the IHP provides financial and direct assistance for disaster-caused housing needs not covered by insurance or provided by any other source. IHP Assistance lasts for 18 months, although the impacted state may request an extension that must be approved by the president. It is important to note that individuals who were experiencing homelessness before a disaster are not eligible for the majority of IHP programs. Four types of housing assistance are available under IHP:

1. Temporary housing assistance, which includes:
   - Transitional Shelter Assistance (TSA). In recent large-scale disasters, FEMA has provided TSA to cover the cost of staying in an approved hotel or motel for an initial period of up to 14 days (which may be extended in 14-day intervals for up to six months). TSA does not cover additional fees, such as resort fees, that hotels may include in the cost of a room. Some participants in the program have been required to present credit cards before being provided access to rooms in accordance with an individual hotel's policy on incidentals. These costs and requirements constitute major barriers to accessing temporary housing under this program. Participation in TSA does not count against a household's maximum amount of assistance available under IHP.
   - Rental Assistance. FEMA may provide financial assistance to rent temporary housing. The amount is based on the impacted area's Fair Market Rent (FMR) and covers rent plus utilities typically for two months, although it may also be used as a security deposit equal to one month of FMR. Households may seek Continued Rental Assistance when alternate housing is not available.
   - Direct Temporary Housing Assistance. FEMA may provide direct housing assistance when disaster survivors are unable to use Rental Assistance due to a lack of available housing resources. Direct Temporary Housing Assistance is not counted toward the IHP maximum award amount and must be specifically requested by the impacted government. Direct Temporary Housing Assistance may include:
     - Manufactured Housing Units provided by FEMA and made available to use as temporary housing.
     - Multi-Family Lease and Repair, which allows FEMA to enter into lease agreements with owners of multi-family rental properties and make repairs to provide temporary housing.
     - Permanent or Semi-Permanent Housing Construction, which allows home repair and/or construction services to be provided in insular areas outside the continental U.S. and other locations where no alternative housing resources are available, and where other types of FEMA Housing Assistance are unavailable, infeasible, or not cost effective.
2. Home repair cash grants, available to homeowners for damage not covered by

insurance. These grants are intended to repair homes to safe, sanitary, or functional conditions but are not intended to return the home to its pre-disaster condition.

3. Home replacement cash grants, available to homeowners to help replace a destroyed home that is not covered by insurance.

Other Needs Assistance (ONA): In addition to housing assistance, the IHP includes ONA, which provides financial assistance for disaster-related necessary expenses. There are two categories of ONA: those that do not require a household to have been denied a Small Business Administration (SBA) loan, and those that do require such a denial. "Non-SBA dependent" types of ONA that may be awarded regardless of a household's SBA status include covering medical, dental, childcare, and funeral expenses. Also included in this category is Critical Needs Assistance, which provides up to $500 to meet lifesaving or life-sustaining needs such as water, food, first aid, prescriptions, infant formula, diapers, consumable medical supplies and durable medical equipment, and fuel for transportation. Assistance that depends on a household being denied an SBA loan or receiving a partial SBA loan that is not adequate to meet needs include funds to repair or replace damaged personal property, repair or replace vehicles, and cover moving and storage costs.

Public Assistance (PA): FEMA provides disaster assistance to state, territorial, tribal, and local governments as well as certain private nonprofits through the PA program. Under the Permanent Work component of Public Assistance, FEMA provides grants to state and local governments to repair roads, bridges, water control facilities, public utilities, public buildings, and parks and recreational facilities (Categories C through G). In addition, PA can be provided to nonprofits to restore damaged facilities, which could include repair funds for public housing agencies. The Emergency Work component of PA aids in the removal of debris and carries out emergency protective measures – which can include emergency mass sheltering (Categories A and B). FEMA generally provides 75% of the cost of PA, requiring the state and subgrantees (for example, counties) to provide the remaining 25%. FEMA has the authority to temporarily modify this cost share ratio under certain circumstances.

Hazard Mitigation Grant Program (HMGP): To reduce the risk of damage and reliance on federal recovery funds in future disasters, FEMA administers the HMGP. HMGP provides state and local governments funds for long-term mitigation following a federally declared disaster. Nonprofits, individuals, and businesses may apply through their local government. Uses of HMGP include acquiring an individual property in a flood-prone zone and permanently removing the property, raising a home so that flood water flows underneath, erecting barriers to prevent flood water from entering a home, flood diversion and storage, and aquifer storage and recovery. FEMA provides up to 75% of the funds for mitigation projects.

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created in 1968 to make flood insurance available to homeowners for the first time. The "Flood Disaster Protection Act of 1973" made the purchase of flood insurance mandatory for properties in Special Flood Hazard Areas (SFHAs) if the property had a mortgage from a federally regulated or insured lender. To participate in NFIP, a community must adopt and enforce floodplain management ordinances. The NFIP has an arrangement with private insurance firms to sell and service flood insurance.

HUD

Community Development Block Grant Disaster Recovery (CDBG-DR): CDBG-DR funding is provided for presidentially declared major disasters by appropriations acts and is generally tailored to specific disasters. To determine how much a state or local government receives, HUD uses a formula that considers damage estimates and disaster recovery needs unmet by other federal disaster assistance programs such as FEMA and SBA. In addition to any requirements cited in the specific appropriation act, the regular CDBG regulations at 24 CFR 570 apply to CDBG-

DR funds. However, CDBG-DR appropriations generally grant HUD broad authority to issue waivers and alternative requirements identified in a *Federal Register* notice issued by HUD following the announcement of the appropriation.

CDBG-DR grantees, usually states, must prepare an Action Plan to assess housing, infrastructure, and economic revitalization needs and then identify activities to address unmet needs. Public participation in devising the Action Plan is required. In the regular CDBG program, a minimum 30-day public review and comment period is required. However, in recent CDBG-DR *Federal Register* notices, HUD has reduced the public participation period to a mere 14 days. Advocates stress that more time for public engagement is necessary, especially since the consequences of the final plan will have long-term impacts on low-income households.

The regular CDBG program requires that at least 70% of the funds be used for activities that benefit low- and moderate-income households or those with income at or less than 80% of the area median income. The CDBG-DR *Federal Register* notices regarding funds for the 2017 disasters maintained the 70% low/mod-income benefit requirement; however, most of the major notices between Hurricane Katrina in 2005 and 2016 allowed waivers so that only 50% of the CDBG-DR had to meet the low/mod benefit test. In 2020 FEMA and HUD signed a Memorandum of Understanding that streamlined the use of CDBG-DR funds to pay for portions of FEMA PA projects. Under this new streamlining agreement, only the portion of the project funded directly by HUD CDBG-DR is required to meet CDBG requirements, such as targeting low income households. Previously, the use of CDBG-DR funding on FEMA PA projects would extend such requirements to the entire project.

Recent *Federal Register* notices have required that at least 80% of the total funds provided to a state address unmet needs within an area designated by HUD as being the most impacted and distressed. They have also required the Action Plan to propose allocating CDBG-DR to primarily address unmet housing needs and describe how the grantee's program will promote housing for vulnerable populations, including a description of activities to address the housing needs of homeless people and to prevent extremely low-income households from becoming homeless.

Grantees must submit Quarterly Performance Reports (QPRs) using HUD's electronic Disaster Recovery Grant Reporting System showing each activity's progress, expenditures, accomplishments, and beneficiary characteristics such as race, ethnicity, and gender.

CDBG Mitigation (CDBG-MIT): As part of a new focus on pre-disaster mitigation and preparedness after the destructive 2017 and 2018 hurricane seasons, Congress has begun to appropriate funds under a HUD CDBG-MIT program. Like CDBG-DR, CDBG-MIT funding is provided for areas that suffered from a presidentially declared disaster and is distributed similarly to CDBG-DR. Program funding is available for mitigation and resiliency projects, defined as activities that reduce the risk to life and property by lessening the impact of a future disaster. These projects are not required to address an existing disaster impact, but rather, areas that are likely to be impacted in the future. Like the CDBG-DR program, the regular CDBG regulations at 24 CFR 70 apply to CDBG-MIT funding subject to waivers and alternative requirements released by HUD in the program's enacting *Federal Register Notice*.

The process for CDBG-MIT grantees is also essentially the same as the CDBG-DR program, with the grantee developing an action plan that outlines the planned use of the funds. The plans are subject to public comment and HUD approval. The program requires a 30-day public participation window and specifies a minimum number of public meetings to be held that correspond to the amount of funding allocated to that state. As this program is relatively new, program guidelines and policies can be expected to change as the program develops.

Disaster Housing Assistance Program (DHAP): The aftermath of Hurricane Katrina in 2005 demonstrated that HUD, not FEMA, was best suited to oversee and administer federal disaster housing assistance to the lowest-income people. Congress amended the "Stafford Act" to require the federal government to create a disaster housing plan. In 2009, that plan made it clear that HUD should play a key role in creating and operating disaster housing assistance programs and recommended that Congress make the DHAP permanent. The 2011 National Disaster Recovery Framework also recommended that HUD, not FEMA, serve as the coordinating agency for delivering housing assistance. However, before HUD can put a DHAP program in place, FEMA must enter an interagency agreement with HUD. In the wake of recent major disasters, FEMA has resisted working with HUD to stand up DHAP programs.

DHAP has been used after past disasters, including Hurricanes Katrina, Rita, Gustav, Ike, and Sandy, to provide low-income, displaced families with safe, decent, and affordable rental homes while they rebuild their lives and get back on their feet. DHAP is administered through HUD's existing network of local public housing agencies, which have significant local market knowledge and experience administering HUD's Housing Choice Voucher program.

DHAP provides displaced households with temporary rental assistance, covering the cost difference between what a family can afford to pay and their rent, capped at a reasonable amount. Over the course of several months, families are required to pay a greater share of their rent to encourage and help them assume full responsibility for housing costs at the end of the program. All families receiving DHAP rental assistance are provided wrap-around case management services to help them find permanent housing, secure employment, and connect with public benefits.

DHAP helps fill the gaps that low-income households experience with FEMA's Transitional Shelter Assistance (TSA) and Rental Assistance programs. Many hotels do not participate in TSA, and those that do often charge daily resort fees, ask for security deposits, and require that displaced households have credit cards, all of which are barriers for low-income households. Because disasters generally reduce the amount of available housing stock, low-income renters are often unable to use FEMA Rental Assistance in their communities. If a displaced household relocates, the Rental Assistance amount, which is based on the Fair Market Rent (FMR) of the impacted area, may not be enough to cover the cost of an apartment in a different community.

Federal Housing Administration (FHA): The FHA grants a 90-day moratorium on foreclosures and forbearance on foreclosures of FHA-insured home mortgages. HUD's Section 203(h) program provides FHA insurance to disaster victims who have lost their homes and need to rebuild or buy another home. Borrowers from participating FHA-approved lenders may be eligible for 100% financing. HUD's Section 203(k) loan program enables those who have lost their homes to finance the purchase of or refinance a house along with repairs through a single mortgage. It also allows homeowners who have damaged houses to finance the rehabilitation of their existing single-family home.

U.S. Small Business Administration

After households apply to FEMA, they might be contacted by SBA to apply for a low-interest loan. If eligible, the household does not have to accept the loan. If a household is not eligible for an SBA loan, they will be referred to FEMA to be considered for a FEMA ONA grant. To be considered for an ONA grant, a household must have submitted an SBA loan application.

SBA can provide physical disaster loans to cover uninsured or uncompensated losses of a home or personal property. A homeowner can apply for a loan to repair or rebuild a primary residence to its pre-disaster condition based on the verified losses and homeowners may apply for up to $200,000 to repair or replace their home to its pre-disaster condition. The loan amount can increase by as much as 20% to help homeowners rebuild in a manner that protects against damage from future disasters of the same kind, up to the $200,000 maximum. Both homeowners and renters may apply for loans—up to $40,000—to replace personal property (anything not considered real estate or part of the structure of the home) lost in a disaster. The interest rate on SBA physical disaster loans depends on the applicant's ability to secure credit from another source. In 2017, applicants unable to obtain credit elsewhere were charged 1.75% interest; for those who could obtain credit elsewhere, the interest rate was 3.5%. The term of loans is often 30 years.

Businesses, including rental property owners and nonprofit organizations, can apply for loans for real estate and personal property loss up to a maximum of $2 million. In addition, businesses and nonprofits can apply for economic injury loans of up to $2 million to cover working capital to meet their ordinary financial obligations.

U.S. Department of Agriculture

The U.S. Department of Agriculture (USDA) provides loans, grants, and loan servicing options to its loan borrowers and their tenants or grant recipients. It also will adjust Supplemental Nutrition Assistance Program (SNAP) limits to provide greater access to food in disaster-effected areas.

U.S. Department of the Treasury

Congress authorized the Department of the Treasury to provide special Low-Income Housing Tax Credits (LIHTCs) and other tax incentives after recent major disasters without a permanent disaster recovery program in place. In the case of hurricanes Katrina and Rita, the Treasury established Gulf Opportunity (GO) Zone tax credits, GO Zone tax-exempt bonds, and additional New Markets Tax Credits to help rebuild housing. After Superstorm Sandy in 2011, Congress also authorized additional LIHTCs, private activity bonds, and New Markets Tax Credits. The same occurred after the 2018 California wildfire season, with Congress approving additional LIHTC funding to replaced destroyed housing stock.

Revenue Procedure 2014-49 (Rev. Proc. 2014-49) from 2014 provides guidance to owners and state housing finance agencies (HFAs) regarding temporary relief from certain requirements that apply to the LIHTC program. A key provision allows an owner to provide up to twelve months of emergency housing to households that have been displaced by a presidentially declared major disaster. Households are eligible for emergency housing in an LIHTC unit if their home is in an area eligible for FEMA individual assistance.

Unless a property's written policies and procedures provide a preference for households displaced by a presidentially declared disaster, an owner may not skip over households on a waiting list to provide emergency housing. Existing households cannot be displaced in order to provide emergency housing.

Rev. Proc. 2014-49 relieves an owner and household of providing evidence of income eligibility. All other LIHTC rules apply, however, including LIHTC rent limits. The emergency relief period ends one year after the date the disaster was declared. After that date, displaced households that are not income-eligible under the LIHTC program cannot occupy a unit assisted under the LIHTC program. To provide emergency housing, an owner must request written approval from the HFA.

Additional issues can arise when LIHTC units are damaged by disasters. Owners of LIHTC units knocked out of service by a presidentially declared disaster have a "reasonable period" (defined as 25 months by the IRS) to finish rebuilding in order to retain their tax-credit status and avoid IRS tax credit recapture. Depending on the level of devastation caused by the disaster, some owners struggle to meet this deadline. Housing providers are able to petition the IRS for an extension to the 25-month deadline if needed although such extensions are considered rare. This issue was notably seen in California after the 2018 wildfire season and in the aftermath of Hurricane Harvey in Houston. Advocates and housing providers should remain aware of this deadline and work proactively to avoid a lapse in tax-credit status and possible recapture.

FORECAST FOR 2021

The ongoing recovery from 2017 and 2018 disasters, as well as the record-breaking 2020 Atlantic Hurricane Season and West Coast Wildfire season pushed Congress to introduce several bills that encourage quick and equitable recovery. In 2019, Representatives Ann Wagner (R-MO) and Al Green (D-TX) introduced the "Reforming Disaster Recovery Act," which permanently authorizes the CDBG-DR program. The bill also creates important safeguards and tools to ensure that federal disaster recovery and rebuilding efforts reach all impacted households, including those with the lowest incomes that are often hardest hit by disasters but have the fewest resources. NLIHC strongly supports this bill. The bill passed out of the House Financial Services Committee by unanimous vote and was later passed by a bipartisan vote of the House of Representatives. Companion legislation in the Senate was introduced by Senators Brian Schatz (D-HI) and Todd Young (R-IN).

In addition, the "Housing Survivors of Major Disasters Act" introduced in 2019 by Congressman Adriano Espaillat (D-NJ) and Senator Elizabeth Warren (D-MA) passed unanimously out of the House Transportation and Infrastructure Committee and then the entire House of Representatives in 2020. The bill addresses the requirement that applicants for FEMA disaster assistance provide title documentation to show ownership over disaster damaged property. This requirement constitutes a major barrier to aid for low income households. People living in manufactured housing such as mobile homes and people with "heirs property" ownership over their home often lack access to clear title. These households are forced into lengthy and expensive legal title clearing procedures before they can be found eligible for FEMA assistance. The bill would require FEMA to expand the list of documents eligible to prove ownership for the purposes of receiving recovery assistance and also require the agency to develop a "declarative form" allowing owners who are unable to procure ownership documents to attest to ownership of their home under penalty of perjury.

Several other Members of Congress introduced bills directing FEMA to standardize damage assessments, streamline emergency notification services, and boost pre-disaster planning efforts. Congress will work in the coming year to enact bills to assist those struck by disasters in 2020, including Hurricane Laura, Sally, Delta, Zeta, the West Coast Wildfires, the Iowa Derecho, and additional disasters as they occur. Any disaster relief bill should include resources to ensure that all survivors, including people with the lowest incomes, are served.

In addition to potential legislative changes, advocates should remain aware of administrative and programmatic releases from federal agencies surrounding disaster recovery. One change announced by FEMA in late 2020 would modify the formula used by FEMA to decide if major disaster declarations are warranted. Under the new proposed rule, FEMA will add greater weight to the ability of states to respond to disasters themselves, making it less likely that rural areas of relatively prosperous states such as Northern California and the Rio Grande Valley of Texas would receive the entire range of federal assistance they need in order to recover after a disaster. Advocates should monitor FEMA and other federal agency releases on this and additional disaster recovery topics.

HUD has released guidance and allocations for almost all 2017, 2018, and 2019 CDBG-DR grantees in the *Federal* Register. Funds are currently being spent at different rates across 2017-2019 disaster regions with states pursuing the completion of their state CDBG-DR/CDBG-MIT action plans. The reasons for the slow disbursement range from issues with community input for the program, high administrative burdens and the COVID-19 pandemic. As the process continues, advocates should be prepared to ensure that all guidelines and policies, including federal civil rights law, are being followed as long-term recovery dollars begin to reach disaster areas.

2020 disasters have not received an allocation of CDBG-DR as of this writing. Advocates should continue to push for CDBG-DR allocations to these areas especially as FEMA programs assisting in short-term disaster recovery begin to expire.

FOR MORE INFORMATION

National Low-Income Housing Coalition, 202-662-1530, www.nlihc.org.

The Disaster Housing Recovery Coalition's webpage, http://nlihc.org/issues/disaster, including its recommendations:

- To Congress
- To HUD
- To FEMA

NLIHC's Report, "Reforming America's Broken Disaster Housing Recovery System, Part One: Barriers to a Complete and Equitable Recovery", https://bit.ly/2RZHmuK & "Part Two: Policy Framework Reform Recommendations", https://bit.ly/3n5lnzq.

NLIHC's Top Priorities for Any Disaster Recovery Package, https://bit.ly/2K8Mp6b.

NLIHC's Disaster Recovery Resources webpage: https://nlihc.org/issues/disaster/resources.

NLIHC's Disaster Housing Assistance Program fact sheet: https://bit.ly/2QZ2WvP.

NLIHC's Disaster Housing Recovery Coalition's Administrative Transition Recommendations, https://bit.ly/3gD7GFf.