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RE: Request for Information on FEMA Programs, Regulations, and Policies, Docket ID: FEMA–2021–0011

I. Introduction

The National Low Income Housing Coalition (NLIHC) is dedicated solely to achieving socially just public policy that ensures people with the lowest incomes in the United States have affordable and decent homes. Our members include state and local housing coalitions, residents of public and assisted housing, nonprofit housing providers, homeless service providers, fair housing organizations, researchers, public housing agencies, private developers and property owners, local and state government agencies, faith-based organizations, and concerned citizens. While our members include the spectrum of housing interests, we do not represent any segment of the housing industry. Rather, we focus on housing policy and funding improvements for extremely low-income people who receive and those who need assistance.

NLIHC leads the Disaster Housing Recovery Coalition (DHRC) of more than 850 national, state, and local organizations, including many working directly with disaster-impacted communities and with first-hand experience recovering after disasters. The DHRC works to ensure that federal disaster recovery efforts reach all the lowest-income and most marginalized survivors.

America’s disaster housing recovery framework is broken and in need of major reform. When disasters strike, the lowest-income survivors – including people of color, seniors, people with disabilities, people experiencing homelessness, people with limited English proficiency, and other individuals – are often hardest hit and face the longest, steepest path to recovery.¹ Despite the clear need, federal efforts frequently leave these survivors without the assistance needed to fully recover and their communities less resilient to future disasters. As a result, federally led emergency response and recovery programs exacerbate and reinforce racial, income, and accessibility inequities at each stage of response and recovery.

The Federal Emergency Management Agency (FEMA) has [requested information](#) on the extent to which agency programs, regulations, and policies 1) perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups; 2) bolster resilience to the impacts of climate change; and 3) address the disproportionately high and adverse climate-related impacts on disadvantaged communities. FEMA has also requested information about unnecessary or unjustified administrative burdens that may create the systemic barriers.

¹ Ratcliffe, C., Congdon, W. J., et. al., (2019). *Insult to Injury*. Urban Institute.

This comment letter will address the negative impacts that FEMA programs, regulations, and policies have for the lowest-income and most marginalized survivors and how those failures reinforce vulnerabilities to climate change, housing insecurity, and racial segregation.

II. People of color and other underserved groups are disproportionately impacted by low incomes, housing cost-burdens, and homelessness, which magnify the adverse climate impact on disadvantaged communities.

Data collected by the U.S. Census Bureau and [analyzed annually](#) by NLIHC show that there are 10.8 million renter households with extremely low incomes – accounting for 25% of all renter households.² People of color are much more likely than white people to have extremely low incomes; 20% of black households, 18% of American Indian or Alaska Native households, 14% of Latino households, and 10% of Asian American and Pacific Islander households have extremely low incomes. Only 6% of white non-Latino households in the U.S. are extremely low-income renters.³

When looking at households who are housing cost-burdened – defined as households that spend more than 30% of their incomes on rent and utilities – racial disparities persist. While 42% of white households are cost-burdened, 52% of Latino renters, and 54% of Black renters are cost burdened – with over 30% of all Black renters spending more than half of their income on housing.⁴ Nearly half (48%) of extremely low-income renters have a disability or are seniors.⁵

These racial disparities are also reflected in data on homelessness. According to the National Alliance to End Homelessness, in 2020, Native American and Black Americans had the highest rate of homelessness among the nation’s racial and ethnic groups. Latinos have the second highest homeless rate – still almost double the homelessness rate of white people.⁶

Racial disparities in housing directly relate to the disproportionately high and adverse climate-related impacts on disadvantaged communities. A community with significant populations of cost-burdened households is a community that is vulnerable to the future effects of climate change.⁷ By bolstering support for these communities, FEMA can ensure their full recovery while simultaneously bolstering their ability to withstand future climate change impacts. A recently released report from NLIHC, “[Taking Stock: Natural Hazards and Federally Assisted Housing](#)” found that one-third of federally assisted housing stock is in areas with very high or relatively high risk of negative impact from natural hazards, and people of color disproportionately make up the population living in these units.⁸ As a result, housing will play a large role in ensuring that low-income households and their communities can weather the climate change impacts of the coming years.

² National Low Income Housing Coalition, The GAP Report, 2021, Available at: https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf

³ Id.

⁴ Id.

⁵ Id.

⁶ National Alliance to End Homelessness, Racial Inequalities in Homelessness, by the Numbers, June 2020, Available at: <https://endhomelessness.org/resource/racial-inequalities-homelessness-numbers/>

⁷ Andreanecia Morris & Lucas Diaz (2019), Reimagining Housing: Affordability Crisis and Its Role in Disaster Resilience and Recovery. in S. Laska (ed.). *Louisiana’s Response to Extreme Weather* (pp. 241-259), Springer.

⁸ National Low Income Housing Coalition and the Public and Affordable Housing Research Corporation, Taking Stock: Natural Hazards and Federally Assisted Housing, June 2021, Available at: <https://preservationdatabase.org/wp-content/uploads/2021/06/Taking-Stock.pdf>

III. Lack of FEMA leadership, guidance, and technical assistance prevents people of color and other underserved groups from accessing assistance during a disaster.

Emergency planning and disaster response efforts have largely failed to fully recognize and incorporate the needs of the lowest-income and most marginalized survivors, including people of color, seniors, people with disabilities, people experiencing homelessness, people with limited English proficiency, immigrants, and others, resulting in devastating impacts on disaster survivors.⁹ These challenges date back to beyond the disastrous efforts to evacuate New Orleans in 2005 to the recent stranding of Puerto Ricans without food, water, or shelter after Hurricane Maria in 2017, and the failed evacuation of Paradise, CA during the Camp Fire of 2018.

Without strong oversight by FEMA, local and state emergency managers regularly fail to ensure that people of color and other underserved groups are safe during disasters. As a result, the human toll of a disaster and a community's vulnerability to future climate change impacts is increased. While some jurisdictions have drafted substantially improved accessible emergency plans, others have continued to ignore the problem.¹⁰ Without federal standards, emergency disaster response will continue to vary by jurisdiction, leading to increased danger for vulnerable survivors from climate change impacts and communities less able to withstand even greater impacts in the future.

Barriers to Emergency Management Resources

Disaster survivors with low incomes commonly lack access to emergency management resources at the local level.

Localities frequently expect residents to have the resources to acquire food, water, and other necessities to shelter in place for the duration of the storm and emergency response period. Residents are expected to obtain the necessary plywood and nails and have the tools needed to prepare their homes for potential damage. During an evacuation, planners often presume residents have cars or bus fare, the city or region has enough buses, that evacuation staging points are effectively and universally communicated, that state-run information sources are trusted, and that residents will be able to return when they can safely do so. Local governments may assume private companies and businesses will officially close during storms, while many service industry businesses that employ low-income individuals stay open, forcing residents to stay in harm's way despite calls for evacuation. Experience has shown that many of the above expectations are simply not true for many of the lowest-income households who live in under-resourced communities, have a disability or limited English proficiency, or lack access to public information sources.

A recent example of these failures can be found at the federally assisted Sandpiper Cove property in Galveston, TX. In August of 2020, the approaching Hurricane Laura prompted city officials to issue a mandatory evacuation order. Residents of [Sandpiper Cove](#), located in a majority non-white census tract where 58% of individuals fell below the poverty line, were not notified by property management nor city authorities of any official plan for evacuation. Contacted by phone, city emergency management staff only provided vague information about a mass transit evacuation staging location half a mile from the property when directly requested by housing advocates working in the community. Residents were unaware of what personal property to bring with them during evacuation, were unable to walk to the

⁹ See Ratcliffe, C., Congdon, W. J., et. al., (2019). *Insult to Injury*. Urban Institute; Guillermo, O., Schultheis, H., et. al., (2019), *A Perfect Storm*, Center for American Progress; Kathleen Tierney, *Disasters: A Sociological Approach*, Polity Press, 2019

¹⁰ Liu, Amy, et al., editors. *Resilience and Opportunity: Lessons from the U.S. Gulf Coast after Katrina and Rita*. Brookings Institution Press, 2011. JSTOR, www.jstor.org/stable/10.7864/jctt127x5f.

evacuation site, and calls to the local emergency management hotline went unanswered or faced long wait times. Information at the evacuation site was only provided in English and emergency management staff could not confirm the destination of buses being used for evacuation. In line for buses, seniors and children were forced to spend five or six hours outside of a locked air-conditioned community center in 90-degree heat as they waited. Multiple individuals with disabilities were forced to remain behind due to this mismanaged evacuation. While Hurricane Laura subsequently changed paths, returning residents were greeted with notices that they would be removed from their apartments for a renovation project. Neither state or local officials have conducted a debrief or assessment of the evacuation or have reached out to advocates or organizers at the building.¹¹

A substantially similar failure occurred at a care facility where Hurricane Laura struck in Lake Charles, LA. Nearly 80 residents of the majority-black [Golden Arms Apartments](#) were forced to wait for assistance for three days after the storm. Residents called authorities 80 different times over the course of the ordeal but received no assistance until passing recovery volunteers were flagged down by residents. Multiple government organizations active in the response to Hurricane Laura refused to accept responsibility for the situation in the aftermath. When asked for comment a FEMA spokesperson said that FEMA does not have a role in investigating the subject.¹²

Policy Solution

FEMA must use its technical assistance and grant programs to ensure local emergency response resources are accessible to disaster survivors with low incomes.

Although FEMA's role during the initial disaster response is to financially support state and local governments, the agency has an obligation to provide technical assistance to create effective disaster assistance plans and to support training and education programs for comprehensive emergency management.¹³ FEMA's National Preparedness Directorate and Grant Programs Directorate's Technical Assistance (TA) program currently provides support to states, tribes, territories, and local governments (STTLs) in support of homeland security mission areas – including response.¹⁴ FEMA must develop TA expertise in preventing or perpetuating systemic barriers to assistance during emergency response and, using the strongest language available, request or require that STTLs utilize this TA to ensure that instances like those described above do not reoccur.

In addition, FEMA creates the National Response Plan (NRP) and National Disaster Recovery Framework (NDRF), and facilitates the Emergency Management Performance Grant (EMPG), providing funds to assist STTLs in implementing National Preparedness Goals (NPG).¹⁵ As a requirement for the continuing receipt of EMPG funds, FEMA must require a review of all relevant emergency response plans to ensure that STTL emergency managers are adequately anticipating the specific needs of low-income households, individuals and families experiencing homelessness, individuals living with disabilities, individuals with Low English Proficiency, and other underserved groups. STTL plans that do

¹¹ See Texas Housers, *Close Call With Disaster: Lessons from the Hurricane Laura Evacuation of a HUD Subsidized Apartment in Galveston* (2021), Available at: <https://texashousers.org/wp-content/uploads/2021/03/Close-Call-With-Disaster-Sandpiper-Cove-v.1.1.pdf>

¹² See Sacks, Brianna, "These Seniors Were Left Behind When Hurricane Laura Hit. No One Claimed Responsibility", *Buzzfeed News*, September 25, 2020, Available at: <https://www.buzzfeednews.com/article/briannasacks/seniors-left-behind-hurricane-laura-lake-charles>

¹³ 44 CFR §360.1 et seq.

¹⁴ FEMA, *NPD TA Factsheet* (2011), Available at: https://www.fema.gov/pdf/media/factsheets/2011/npd_ta_factsheet.pdf

¹⁵ FEAM, *2021 Preparedness Grants Manual* (2019), Available at: https://www.fema.gov/sites/default/files/documents/FEMA_2021-Preparedness-Grants-Manual_02-19-2021.pdf

not meet the standards developed by the agency should be required to utilize FEMA TA to rectify the shortcomings as a prerequisite for receiving future EMPG funds.

One of the best ways to ensure that the needs of communities of color and other underserved communities are addressed is to offer them a leading role in developing emergency planning and response plans. This ensures that plans have been created with the cultural competence and knowledge needed to serve all survivors regardless of income, ability, language, or education levels; address communication gaps; and ensure that inadequate information or rumors do not exacerbate the situation. To the greatest extent possible, FEMA must encourage or require STTL officials to engage members of these communities and their networks of trusted relationships to plan for future emergencies and update plans that fail to protect all survivors. Doing so not only serves the purpose of education and information, but also builds trust in communities that have historically been overlooked or mistreated by authorities.

Barriers For People Experiencing Homelessness

Emergency response operations regularly discriminate against individuals and families experiencing homelessness.

Individuals and families experiencing homelessness are among the most vulnerable individuals during a disaster, often relying on nonprofit or informal organizations as a means of accessing information, shelter, food, and water.¹⁶ When homeless services or shelter systems are disrupted by a disaster, many individuals and families experiencing homelessness lose ways to access information about emergency assistance or evacuations, and means to access food, water, or shelter. Many may lack telecommunication devices that can receive emergency alerts from government authorities that contain critical information about evacuation staging areas or the location of emergency shelter.

In many areas that have sought to criminalize or otherwise harass individuals and families experiencing homelessness, there may be an adversarial relationship between individuals living in encampments or on the street and local government or police that prevent them from trusting offers of assistance.

Compounding this issue, pre-disaster homeless populations are often excluded from, or face additional barriers to, accessing emergency shelters. During Hurricane Michael, individuals and families experiencing homelessness were not taken to general shelters but were placed in specific shelters that were separate from the general evacuation shelters.¹⁷ Following Hurricane Irma, advocates reported that people experiencing homelessness prior to the disaster were forced to wear armbands and were kept separated from other disaster survivors. These actions further stigmatize people experiencing homelessness and often bar them from the resources they need to stay safe during a disaster.

Policy Solution

FEMA should create and enforce national standards and technical assistance materials to ensure equal access to emergency response resources for individuals experiencing pre-disaster homelessness.

¹⁶ June Gin, “Preparing the Whole Community: Including Individuals Experiencing Homelessness in Disaster Planning”, October 2020, UC Boulder Natural Hazards Center, Available at: <https://hazards.colorado.edu/news/research-counts/preparing-the-whole-community-including-individuals-experiencing-homelessness-in-disaster-planning>.

¹⁷ US Department of Housing and Urban Development, “Send Red, Not Blue: The Homeless Resident”, 2014, Available at: <https://files.hudexchange.info/resources/documents/Send-Red-Not-Blue.pdf>

FEMA should update the NRP, NDRF, Federal Emergency Support Functions and Federal Interagency Operations plans (FIOPs), and all other applicable federal directives to directly address responsibility for meeting the equal access and needs of individuals and families experiencing homelessness prior to a disaster. In partnership with HUD and the US Interagency Council on Homelessness (USICH), FEMA should create new federal standards and enforce existing standards for interacting with and assisting individuals and families experiencing homelessness during a disaster. These standards must be implemented so that individuals and families experiencing homelessness are able to access shelters and are not isolated in dedicated mass or non-congregate sheltering as has been seen during past disasters. These standards should reflect the civil rights obligations under federal law that must be followed to ensure that a survivor's rights are not being infringed based upon their status as unhoused.

As discussed above, while FEMA does not directly oversee emergency sheltering or evacuations at the local levels, it does have a responsibility to provide appropriate TA to STTLs and otherwise assist the creation of emergency response plans through grant programs such as the EMPG. FEMA must require that STTL emergency response plans include sections dedicated to the evacuation and emergency sheltering of individuals and families experiencing homelessness. This type of TA can be utilized when FEMA identifies an emergency response plan that fails to adequately address the needs of individuals and families experiencing homelessness during emergency response.

FEMA should also encourage emergency managers and emergency shelter partners such as the American Red Cross to work with existing providers of shelter and services to individuals and families experiencing homelessness in their area to ensure that these plans are being developed with and shared both among the homeless assistance sector and the individuals and families experiencing homelessness themselves.

Barriers for Individuals with Disabilities

Emergency response operations often lack access or accommodations for individuals with disabilities.

People with disabilities are twice to four times more likely to die or sustain a critical injury during a disaster than people without disabilities.¹⁸ Yet many emergency plans do not sufficiently address how to reach those with disabilities during times of disaster. Instead, many local authorities rely on a neighbors-helping-neighbors approach that is not workable in many areas of the country.

FEMA itself has been slow to roll out training products and other materials to assist local officials in taking care of the needs of individuals with disabilities during disaster emergency response. This lack of response at the federal level can result in local officials making the care of individuals with disabilities during disasters even less of a priority.

While federal law, including the Americans with Disabilities Act and the Rehabilitation Act, prohibits discrimination against individuals with disabilities under any federal program - including those for disaster preparation and response - practice has lagged.¹⁹ The Department of Homeland Security (DHS) has published accessibility and inclusion guidelines for state and local disaster planners, but these best practices are often overlooked, ignored or rejected.²⁰ Advocates from impacted areas frequently report

¹⁸ Paul Timmons, "Disaster Preparedness and Response: The Special Needs of Older Americans," Statement for the Record, Special Committee on Aging, U.S. Senate, September 20, 2017, available at https://www.aging.senate.gov/imo/media/doc/SCA_Timmons_09_20_17.pdf.

¹⁹ 29 U.S.C. § 794 et seq.

²⁰ Department of Homeland Security, Recommendations for Emergency Managers for Improving the Delivery of Disaster Assistance to Disaster Survivors with Disabilities, March 2019, https://www.dhs.gov/sites/default/files/publications/adg-listening-sessions-recommendations_english_0.pdf.

that shelters and outreach and application centers are not accessible, available physical and mental health assistance is inadequate, and sign interpreters and other accommodations are not provided. People with disabilities whose only needs are the ability to get into a shelter and use its restrooms are often diverted to “special needs” or “medical shelters,” even if they do not require the level of care provided there.

The Department of Health and Human Services consistently issues waivers allowing states to direct people with disabilities to nursing homes, which are not always the safest places of refuge in emergencies, often leading to involuntary institutionalization.²¹ During Hurricane Harvey, elderly residents in a Galveston, Texas nursing home were photographed with flood waters up to their waists²² and 14 nursing home residents in the largely unregulated nursing home industry died in 2017 from heat exhaustion when their facility lost power in Hurricane Irma.²³

In some areas regularly impacted by disasters, authorities have provided for the pre-registration of persons of limited mobility so they can be evacuated if necessary, and the officials have directed persons with disabilities to specific shelters, separate from general population shelters and away from their families and loved ones. At other times, people with disabilities may be directed away from shelters to hotels or other facilities. In prior iterations of this non-congregate sheltering, residents assigned to hotels may have to buy and prepare their own food, which would otherwise be provided without charge at a large shelter. In addition to the financial challenges this presents, survivors with disabilities may not be physically or otherwise able to access grocery stores, or the markets that once existed may not be available after a disaster.²⁴

Communication of emergencies to the deaf and blind communities is often erratic despite requirements of the law. Emergency broadcasts in some states and localities feature no sign language interpreters or partially obscured interpretation that makes it difficult for a viewer to fully understand what information is being conveyed. In the 2019 storm season, the National Weather Service and National Oceanographic and Atmospheric Administration provided depictions of Hurricane Dorian’s projected path in a visual format only, making it impossible for those with vision impairments to understand where the storm was headed.²⁵

Policy Solution

FEMA should create and enforce national standards and technical assistance materials to ensure equal access to emergency response resources for individuals with disabilities.

Due to the failure of STTLs to ensure equal access to emergency response resources for individuals with disabilities, FEMA should update the NRP, NDRF, Federal Emergency Support Functions and FIOPs; and all other applicable federal directives to specifically address the responsibility for meeting the equal access, health maintenance, safety, and independence needs of children and adults with disabilities to prevent institutionalization. The federal standards in these documents should be strictly enforced, requiring communications, shelters, and evacuation strategies that can reach people with disabilities

²¹ National Council on Disability, “Preserving Our Freedom, Ending Institutionalization of People with Disabilities During and After Disasters”, May 2019, https://ncd.gov/sites/default/files/NCD_Preserving_Our_Freedom_508.pdf

²² Galveston Daily News, “Eighteen People Rescued from Flooded Assisted Living Facility”, August 27, 2017.

²³ CNN, “Husband and Wife Among 14 Dead After Florida Nursing Home Lost A/C”, October 9, 2017.

²⁴ See National Council on Disability, “The Impact of Hurricanes Katrina and Rita on People with Disabilities: A Look Back and Remaining Challenges” (2006), Available at: <https://ncd.gov/publications/2006/aug072006>

²⁵ Shelley Tremain, “Dorian, Disaster Relief, and Disabled People” (2019), Biopolitical Philosophy, Blog, Available at: <https://biopoliticalphilosophy.com/2019/09/03/dorian-disaster-relief-and-disabled-people/>

without requiring institutionalization. These standards should include requirements that emergency communication be fully accessible to those within the deaf and blind communities without exception.

Federal funds – such as FEMA EMPG - are required to be spent in compliance with the equal access requirements of the Rehabilitation Act of 1973 and the Americans With Disabilities Act of 1990.²⁶ However, many recipients are, at best, unaware of how to comply with these requirements nor how to interact with people with disabilities without adhering to a medical-model bias that leans towards institutional placement. FEMA must ensure that grantees receiving funding from FEMA are fully aware of their responsibilities when it comes to these and other applicable laws dealing with individuals with disabilities and develop TA and training materials to ensure compliance.

Simultaneously, FEMA must redouble its efforts to work with the disability justice community to ensure that individuals with disabilities are being represented fully on applicable policy making and advisory bodies, that plans and initiatives around disability are met with approval by disaster justice advocates, and that their concerns and recommendations are being fully considered and followed. FEMA should also continue to push STTLs to work with disability justice advocates in their own areas to ensure that such work is occurring at all levels of emergency response. This means meeting directly with disability justice advocates when requested.

Barriers for Immigrant Populations

Emergency response operations often lack access or accommodations for immigrant populations.

Many immigrant communities have a distrust of police and other local authorities due to targeting by immigration authorities both locally and by the DHS. Often, this distrust results in community members only calling for help or assistance as a last resort. This distrust has been further enhanced by the actions of the most recent administration – which moved to dramatically modify the “public charge” rule that would prevent individuals from gaining U.S. citizenship because they received a certain amount of assistance from the federal government. Although disaster and emergency response assistance are not directly impacted, many recent immigrants may become less likely to seek out and utilize emergency disaster response services.²⁷

In addition to this inherent distrust, emergency alerts and instructions are often presented only in English – meaning that immigrant populations and others with Low English Proficiency are unable to clearly understand what they must do during a disaster. There is no requirement that emergency announcements appear in languages other than English.²⁸ However, such access is required for federal- or state-funded programs.²⁹ Translated documents can at times be available but often not in the needed amount.

²⁶ FEMA, “Preparedness Grants Manual”, page 43, February 2021, Available at:

https://www.fema.gov/sites/default/files/documents/FEMA_2021-Preparedness-Grants-Manual_02-19-2021.pdf

²⁷Bernstein, H., McTarnaghan, S., Gonzalez, D., “Safety Net Access in the Context of the Public Charge Rule”, Urban Institute (August 2019), Available at:

https://www.urban.org/sites/default/files/publication/100754/safety_net_access_in_the_context_of_the_public_charge_rule_1.pdf

²⁸ Martín, C. (2019). Understanding US Housing Data in Relation to the 2017 Disasters. *Natural Hazards Review*, 20(3), 04019007.

²⁹ 42 U.S.C. §2000d and 24 C.F.R. §1.4

Policy Solution

FEMA should create technical assistance materials and enforce national standards to ensure equal access to resources for immigrant populations.

FEMA should update the NRP, NDRF, Federal Emergency Support Functions and FIOPs and all other applicable federal directives to specifically address responsibility for meeting the equal access, health maintenance, safety, and other needs of immigrant populations. These national standards should also include ensuring that emergency communications are issued in languages other than English.

To improve access to critical information among immigrant populations, FEMA must encourage emergency planners to seek out ways to decentralize emergency communications and build formal relationships with networks of community-based organizations within those populations to increase reach and credibility. These communications must be accessible to people with Low English Proficiency. This will allow communities of recent immigrants to see and respond to emergency notices and encourage their greater involvement in the emergency planning process.

FEMA must educate and inform immigrant communities and disasters survivors that there is no information exchanged between the agency and U.S. Immigration and Customs Enforcement (ICE) and that individuals who may be undocumented can safely visit DRCs and speak with the agency without risk of deportation. If FEMA does share any such information with ICE, it must immediately cease doing so.

IV. FEMA’s agency-wide disaster recovery strategies perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups during the disaster recovery process.

After sheltering and evacuation plans are executed, disaster recovery begins. Without the affordable and accessible homes low-income survivors need, many have no choice but to return to uninhabitable homes, sleep in cars or tents, stay at shelters, double- or triple-up with other low-income families, or pay more than half of their limited incomes on rent, putting them at increased risk of eviction and homelessness. Despite the clear need, FEMA programs often leave many of the lowest-income survivors – who are disproportionately people of color or other underserved populations - without the affordable and accessible homes required to recover. As a result of this neglect, impacted communities become additionally vulnerable to future impacts of climate change as community members are unable to seek resilient shelter during future disasters, community resources must be used for their care and assistance, and kinship networks and other informal connections break down as community bonds are severed.

Flawed Interpretation of Non-Discrimination Protections

FEMA’s interpretation of the Stafford Act’s non-discrimination statute prevents the agency from fully addressing the barriers to opportunities and benefits for people of color and other underserved groups.

The Stafford Act and related regulations prohibit discrimination on the basis of color, race, nationality (including limited English Proficiency), sex, religion, age, disability, or economic status when carrying out federal assistance functions at the site of a major disaster.³⁰ Specifically, Section 308(a) of the Stafford Act directs that regulations be issued to ensure that “the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.” Based on previous discussions with FEMA staff, the

³⁰ 42 U.S.C. 5151; *See also* 44 CFR § 206.11; 44 CFR § 7.5

agency-wide interpretation of this statute prevents special consideration from being provided to individuals that would allow additional services or assistance to be provided based the factors listed above. This incredibly strict interpretation is unique among agencies that offer assistance programs.

Policy Solution

FEMA must change its interpretation of the Stafford Act’s non-discrimination statute to meet the unique needs of people of color and other underserved groups.

Instead of using the non-discrimination language of the Stafford Act to justify its lack of action regarding the severe and unique needs of people of color and other underserved groups – including individuals and families experiencing homelessness, households with low incomes, individuals with disabilities, and individuals with Low English Proficiency – the agency should adopt an interpretation that allows all individuals to access the assistance they need to recover. Many other federal agencies have interpreted their respective non-discrimination statutes as to allow individuals with unique needs to receive specialized treatment, and FEMA should follow suit.

Failure to Access the Unique Needs of People Experiencing Homelessness

The lack of specialized programs for individuals and families experiencing homelessness during disaster recovery perpetuates barriers to opportunity and benefits for people of color and other underserved groups.

Individuals and families experiencing homelessness prior to a disaster are often marginalized or treated differently than housed disaster survivors.³¹ Just as emergency planning must treat pre-disaster homeless populations equally, homeless individuals should also receive the same recovery assistance as other survivors. Pre-disaster homeless populations are often denied access to the vast majority of FEMA assistance.³² FEMA often denies any meaningful assistance to individuals who were experiencing homelessness before a disaster strikes, even if all their belongings were destroyed in the disaster.

After a disaster, existing resources for individuals and families experiencing homelessness are stretched extremely thin to accommodate those who became housing insecure during the disaster. Due to the influx of new households in need, communities are often unable to return to the level of care provided to people experiencing homelessness before the disaster. As a result, communities are forced to spend higher amounts of funding to assist homeless populations, and individuals and families experiencing homelessness themselves find themselves trapped in homelessness for longer.

Policy Solution

FEMA must directly ensure that individuals and families experiencing homelessness access the assistance they need to recover.

FEMA must directly establish that people experiencing homelessness prior to the disaster are eligible for the same emergency shelter and housing recovery resources available to impacted renters. Unlike any other program or agency dealing with individuals and families experiencing homelessness, FEMA IA

³¹ HUD, The Consequences of Disaster for Homeless and Other Vulnerable People, Toolkit, Available at: <https://www.hudexchange.info/homelessness-assistance/disaster-recovery-homelessness-toolkit/response-guide/>

³² FEMA, Individual Assistance Program and Policy Guide (2021), pg. 61, Available at: https://www.fema.gov/sites/default/files/documents/fema_individual-assistance-program_policy-guide_05-26-2021.pdf

programs make a distinction between individuals that were “homeless” and those living in “non-traditional housing” – with those in the latter category eligible for initial rental assistance and some other needs assistance.³³ For example, FEMA considers an individual residing in a tent or shack as being “housed,” despite their homelessness. The provision of assistance must not be arbitrarily based on whether the individual resided in a tent or temporary structure prior to the disaster.

In addition, to help the agency assess the unique needs of the pre-disaster population of individuals and families experiencing homelessness in a certain area, FEMA must include in its standard recovery assistance plan and preliminary damage assessments an on-site assessment of homeless encampments and shelters. This will provide the agency with an idea as to the pre-existing support structure for individuals and families experiencing homelessness, as well as the ongoing need for outreach and assistance to ensure these individuals are able to apply and receive the assistance that they need to recover.

Failure to Activate the Disaster Housing Assistance Program (DHAP)

FEMA’s failure to activate the Disaster Housing Assistance Program (DHAP) directly perpetuates barriers to opportunity and benefits for people of color and other underserved groups.

Developed from the hard-won lessons of Hurricane Katrina, [DHAP](#) has been used to great effect by both Democratic and Republican administrations, providing longer-term housing assistance and wrap-around services to low-income survivors immediately after a disaster. Program services are provided by local housing professionals with extensive knowledge of the local housing market. This assistance helps families find permanent housing solutions, secure employment, and connect to public benefits.

Under the most recent administration however, FEMA has refused to activate the program, instead relying on its Transitional Shelter Assistance (TSA) motel-stay program and other FEMA and state administered disaster housing programs inaccessible to many low-income disaster survivors.³⁴ Although FEMA has [claimed](#) that these programs are more efficient and cost-effective than DHAP, there is no evidence to support such a position. In fact, a [report](#) from the Government Accountability Office (GAO) explicitly stated that it was impossible to assess this claim because the information needed to compare DHAP’s effectiveness with other FEMA programs was not collected by the agency. However, that same report found that DHAP provided disaster survivors with as much as 17% more assistance than other FEMA programs.³⁵

After refusing to activate DHAP, FEMA has instead relied on the TSA motel stay program and similar programs that are inaccessible to many low-income survivors. Low-income families are often unable to access TSA motels due to financial and other barriers, including the practice of motels charging daily “resort” fees and requiring security deposits or credit cards.³⁶ Because TSA must be renewed every 14 days, those survivors who can access the program face arbitrary deadlines that cause them to scramble to submit required paperwork or leave the motel before finding a permanent housing solution.

While FEMA is authorized to provide TSA for at least 18 months, the Trump administration abruptly terminated the program for dozens of Puerto Rican families displaced to the mainland after Hurricane

³³ Id. at 62.

³⁴ Elizabeth Webster, “Disaster Housing Assistance: Homeland Security Issues in the 116th Congress”, Congressional Research Service, 2019, Available at: <https://fas.org/sgp/crs/homesec/IN11054.pdf>

³⁵ Government Accountability Office, “Disaster Housing: Improved Cost Data and Guidance Would Aid FEMA Activation Decision” (2020), Available at: <https://www.gao.gov/assets/720/711255.pdf>

³⁶ FEMA, Fact Sheet: Transitional Sheltering Assistance (TSA), 2018, Available at: <https://www.fema.gov/press-release/20210318/fact-sheet-transitional-sheltering-assistance-tsa>

Maria, forcing them to find alternative housing or to return to their uninhabitable homes on the island with just a few hours' notice.³⁷ States that received large numbers of displaced Puerto Rican survivors – including Massachusetts and Connecticut – saw increased homelessness as a result.

In the chaos after a disaster, survivors often find the constant reapplication requirements to be further traumatizing and many leave TSA without a permanent housing plan.³⁸ Without the affordable and accessible homes survivors need, many have had no choice but to return to uninhabitable homes, sleep in cars or tents, stay at shelters, double- or triple-up with other low-income families, or pay more than half of their limited incomes on rent, putting them at increased risk of eviction and homelessness. In some cases, failure to access the TSA program can lead to even worse outcomes; there are numerous accounts from many recent disasters where individuals unable to access FEMA's TSA program returned to sleep in mold-infest homes and requiring emergency hospital care as a result.

Policy Solution

FEMA should immediately enter into an interagency agreement with HUD to implement DHAP after future major disaster.

DHAP must be provided to the lowest-income survivors until long-term housing recovery is complete, including reconstruction of the affordable rental housing stock. DHAP requires an interagency agreement between FEMA and HUD to implement as it utilizes the expertise of local housing professionals and the pre-existing housing voucher system. FEMA must quickly enter into an agreement with HUD to ensure that DHAP stands ready to be implemented after every major disaster.

In addition, FEMA must bar hotels from requiring survivors to have a credit card or a security deposit, or to pay any additional fees beyond the amount covered by FEMA to access the program. FEMA must make publicly available monthly information on the number of households in TSA hotels, when funding for those rooms will expire, and how many individuals have moved out of TSA-funded rooms – including whether they have moved to permanent housing or violated terms of the program. FEMA must also authorize TSA in increments longer than the current 14-day policy.

Barriers to FEMA's Individual Assistance (IA) and Individual and Households Program (IHP)

FEMA's Individual Assistance and Individual and Households Program perpetuate barriers to opportunity and benefits for people of color and other underserved groups.

FEMA programs provide a critical lifeline to help survivors recover from a disaster by providing temporary shelter and financial assistance and making basic structural repairs to homes. For many survivors, the most critical programs are FEMA's Individual Assistance (IA), Individuals and Households Program (IHP), and companion programs, which are intended to provide rapid relief to meet immediate

³⁷ See Connecticut, https://www.buzzfeed.com/briannasacks/fema-abruptly-cuts-housing-funds-for-dozens-of-puerto-rican?utm_term=.cbeGk92boD#.htP3MLRP29; Pennsylvania, <https://www.pri.org/stories/2018-02-13/puerto-ricans-who-evacuated-philadelphia-worry-help-will-soon-run-out>; Massachusetts, http://www.masslive.com/politics/index.ssf/2018/02/sens_elizabeth_warren_ed_marke_9.html; New York, <https://www.nytimes.com/2018/02/12/nyregion/puerto-rican-hotels-fema-hurricane-maria.html>; Florida, <http://www.orlandosentinel.com/news/puerto-rico-hurricane-recovery/os-fema-housing-direct-lease-evacuees-puerto-rico-20180213-story.html>

³⁸ U.S. Senator Kamala D. Harris, Letter to FEMA Administrator Peter Gaynor, May 22, 2019. Available at: <https://www.harris.senate.gov/imo/media/doc/052219%20Camp%20Fire%20Housing.pdf>

housing needs in the first few months after a disaster. Low-income survivors, however, face enormous barriers in accessing these programs.³⁹

This challenge is made more difficult by America's affordable housing crisis. [According to the National Low Income Housing Coalition](#), the U.S. has a shortage of 7 million affordable and available rental homes for households with the lowest incomes.⁴⁰ In certain metropolitan areas, the supply of affordable, available rental housing can be as low as one home for every 10 extremely low-income renter households. The loss of rental housing stock due to a disaster creates extreme housing scarcity that can lead to skyrocketing rents, displacement, and homelessness. For instance, without adequate housing assistance, homelessness increased by over 16% in Northern California's Butte County after the 2017 Camp Fire.⁴¹

The levels of homelessness, housing cost-burdens, and distress that occurs due to these failures have long-term effects. An area with large numbers of community members sleeping exposed on the street, or in partially repaired homes is less able to adequately respond and adapt to increasing climate change effects. The recent flooding in Southwest Louisiana is an example of this effect. Due to a slow and largely non-existent recovery from Hurricane Laura and Hurricane Delta, recent flooding, the southern deep freeze, and other disasters have compounded, with each resulting in more and more damage. At the same time, FEMA continues to deny many survivors the appropriate levels of assistance. The agency closed their local Disaster Recovery Center in February.⁴²

Lack of Fair Housing Protections

FEMA IA and IHP programs lack of fair housing protections perpetuate barriers to opportunity and benefit for people of color and other underserved groups.

People of color and other underserved groups often experience housing discrimination after a disaster, reducing their options for places to live, concentrating them into substandard housing, and removing them from social and community networks whose support is needed to fully recover.⁴³ Low-income people, people of color, people with disabilities, and immigrants also face increased disaster-caused displacement from the dual threats of disinvestment and speculation, which further exacerbate the disparities created by segregation and inequality by making it even more difficult to find alternative housing in the area where they lived prior to a disaster.⁴⁴

The housing recovery needs of individuals with disabilities or older Americans are commonly ignored or overlooked. This often means that homes are built or repaired without ensuring that the homes are

³⁹ "It's not a safety net. The system is really designed for the middle class. It's not designed to take care of pre-existing conditions." Craig Fugate, former administrator of FEMA, quoted in, Danny Vinik, 'People Just Give Up': Low-Income Hurricane Victims Slam Federal Relief Programs, Politico (May 29, 2018), <https://www.politico.com/story/2018/05/29/houston-hurricaneharvey-fema-597912>

⁴⁰ National Low Income Housing Coalition, The GAP Report, 2020, Available at: <https://nlihc.org/gap>.

⁴¹ Camille Von Kaenel, "Butte County Snapshot of Homelessness Shows Increase from Camp Fire", Chicoer, June 18, 2019. Available at: <https://bit.ly/2BVRGxZ>

⁴² FEMA, Lake Charles Disaster Recovery Center Closing, Press Release (2021), Available at: <https://www.fema.gov/press-release/20210212/lake-charles-disaster-recovery-center-closing>

⁴³ National Fair Housing Alliance, "No Home for the Holidays: Report on Housing Discrimination Against Hurricane Katrina Survivors" December 2005. Available at: <https://nationalfairhousing.org/wp-content/uploads/2017/04/No-Home-for-the-Holidays-NFHA-Katrina-Discrimination-Report-12-20-05-3.pdf>

⁴⁴ Gretchen Frazee, "How Natural Disasters Can Increase Inequality," PBS, April 2019. Available at: <https://to.pbs.org/3fwnisu>

accessible.⁴⁵ If a community has no accessible housing, people with disabilities must remain in shelters until accessible housing is available. Parents of children with disabilities who are unable to return to a school with disability resources are forced to care for their children instead of working.

FEMA's housing services, whether administered directly through the agency or a subgrantee, have often failed to properly ensure compliance with existing fair housing and civil rights law. For instance, after past disasters, FEMA's Housing Portal and other websites to which FEMA's website directed disaster survivors included explicitly discriminatory advertisements that violated fair housing laws.

Policy Solution

FEMA must ensure that all housing related information provided to disaster survivors meet the requirements of fair housing and civil rights law.

Discrimination is not only a moral and legal wrong, but it can also drive post-disaster displacement. Any effort to restore housing stock must be accompanied by tenant protections and greater enforcement of fair housing and civil rights. It is critical for disaster recovery planning to go hand in hand with fair housing compliance so that recovery efforts explicitly acknowledge and address the impact of racism, segregation, and inequality.

FEMA should enforce federal fair housing laws on its Housing Portal or any other website, resource, or information, which FEMA may refer people seeking housing. FEMA should bar landlords seeking to partner with FEMA from publishing discriminatory advertisements for rental properties. Any entity administering or receiving housing resources must be provided guidance and be required to comply with the non-discrimination provisions of the Stafford Act, the Americans with Disabilities Act, the Fair Housing Act, Title VI, and other civil rights law.

FEMA must work with HUD and other agencies with fair housing compliance and enforcement experience to ensure that all guidance and training to FEMA staff or contractors who handle housing-related inquiries meet the requirements of federal fair housing and civil rights law. This work should also include the creation of a Memorandum of Understanding (MOU) with HUD outlining a process to refer, investigate, and resolve discrimination complaints that arise from property owners or residents receiving housing assistance. This will allow case management services and housing counselors involved in recovery efforts to support displaced households that wish to relocate into neighborhoods of their choice, including neighborhoods with access to good performing schools, jobs, transit and healthcare.

FEMA must also work to ensure that its programs fit civil rights and fair housing requirements through an ongoing dialogue with practitioners in the field. The creation of an independent advisory committee of experts in affordable housing, homelessness, legal services, disability, fair housing, civil rights, and low-income survivors would allow FEMA to anticipate and tailor program guidelines and planning documents to match the needs of people of color and other underserved communities before they are published.

Complicated Applications and Appeals Processes

The complexity of the IA and IHP application and appeals process perpetuate barriers to opportunity and benefits for people of color and other underserved groups.

⁴⁵ GAO, "FEMA Action Needed to Better Support Individuals Who Are Older or Have Disabilities," May 2019. Available at: <https://www.gao.gov/assets/700/699539.pdf>

As many disaster survivors and advocates have discovered, applicants eligible for disaster assistance are often deemed ineligible because of inflexible and arbitrary requirements and confusing bureaucratic processes, despite an applicant's clear need for disaster assistance.⁴⁶ Disaster survivors are required to submit several applications to federal agencies such as the SBA, along with multiple layers of personal identification, proof of ownership and residency, citizenship, insurance reporting, and more. Many of these same requirements will need to be repeated later in the disaster recovery process when HUD funds become available. FEMA's application process is confusing, lengthy, and burdensome. As a result, FEMA denial rates have reached extremely high levels in recent disasters, raising questions about why so many are being turned away.⁴⁷

Many disaster survivors receive assistance with their applications in person at FEMA Disaster Recovery Centers (DRCs). The DRC model allows survivors to access assistance applying for help from a wide variety of federal agencies and private organizations. However, during past disasters, DRCs have been placed in areas with limited accessibility to transit, in buildings that are not accessible to individuals with disabilities, or in areas far from where the lowest-income disaster survivors are located. This makes it even more difficult for survivors to have recovery questions answered and receive assistance with their application. In addition, while DRCs are required to offer translation services and translated copies of FEMA documents, workforce and logistics issues often mean that translators are not present or are exceptionally busy, and that there may not be enough translated documents printed to match the area's population of individuals with Low English Proficiency.

The application process for FEMA assistance requires that a certified inspector visit and document damaged or destroyed properties. The inspection process is slow, relying on the survivor to schedule, direct, and accompany the inspector on their visit. Many low-income survivors, however, are displaced to areas far from their pre-disaster home, making it impossible to meet these requirements. In addition, inspectors rely on phone calls and email, which low-income survivors are less likely to have access to in the weeks directly after a disaster. Data collected after Hurricane Harvey show that inspection contact failures disproportionately affected lower-income applicants for FEMA aid.⁴⁸

Inspectors commonly have little knowledge or experience with the type of housing they are tasked with inspecting, and they are inconsistently trained and monitored for quality assurance. In Puerto Rico, advocates report that some contractors were paid based on how many homes they could inspect in a day, some did not even enter the homes, and others spoke no Spanish. Neighbors with nearly identical circumstances ended up with vastly different results. Inspectors often devalue low-income homes or misattribute damage to sources other than the disaster. A review of Individual Assistance applications in the aftermath of Hurricane Delta found that majority-African American zipcodes were denied assistance at a rate more than double those of majority-white zipcodes.⁴⁹

While FEMA has been barred from using unpublished "deferred maintenance" criteria to deny assistance, it is still training inspectors to use these criteria.⁵⁰ As a result, inspectors have less success in evaluating

⁴⁶ Danny Vinik, "'People Just Give Up': Low Income Hurricane Victims Slam Federal Relief Programs," Politico, May, 29, 2018. Available at: <https://www.politico.com/story/2018/05/29/houston-hurricane-harvey-fema-597912>

⁴⁷ Hannah Drier, "Assistance Not Approved", Washington Post (April 2021), Available at: <https://www.washingtonpost.com/nation/2021/04/25/fema-disaster-assistance-denied/>

⁴⁸ <https://texashousers.net/2018/11/30/low-income-households-disproportionately-denied-by-fema-is-a-sign-of-a-system-that-is-failing-the-most-vulnerable/>

⁴⁹ Christopher Flavell, "Why Does Disaster Aid Often Favor White People", New York Times (June 2021), Available at: <https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html>.

⁵⁰ LUPE, et al. v. FEMA, B:08-cv-487 [2008]

homes of low-income survivors, raising assistance denial rates among poorer households.⁵¹ The shift towards virtual damage assessments during the past year have further complicated efforts, with disaster survivors required to catalogue their damage, or otherwise work with inspectors virtually to show disaster damage at their home.

As has been seen during numerous disaster recovery efforts in the past several years, applicants denied assistance are often unaware of why their applications were denied or how to correct any perceived errors. FEMA has consistently refused to provide applicants with reasons for the denial of disaster assistance. Instead of receiving guidelines or clarification, survivors and advocates are forced to work through a lengthy administrative process to get a reason for their denial.⁵² The lack of clarity makes it more difficult for organizations attempting to inform and assist low-income survivors after a disaster and means that appeals take longer and are more costly. Low-income survivors and survivors of color are more likely to be denied when applying for aid.⁵³ As a result, those who have the greatest need for disaster recovery assistance are required to overcome more hurdles and wait longer for aid.

The IA and IHP appeals process is particularly confusing and difficult. The initial step in the process is for the denied applicant to submit a form explaining the dispute and providing supporting documentation. FEMA denial letters, however, are overly vague as to the reason for the initial denial of assistance. Survivors are asked to identify issues with their applications via code numbers, many of which appear similar or duplicative to individuals not familiar with the FEMA internal application review process.⁵⁴ The denied applicant must refute all possible interpretations of the reason, or they will lose their appeal. There is little to no advice provided on what arguments can be made, or what a successful appeal looks like, and often only a partial number of denial reasons are provided via FEMA's determination letter.

For individuals able to access free legal services or otherwise afford an attorney, these problems can be resolved via a lengthy process, but for those survivors without access to legal representation or the money necessary for a protracted legal fight, the repeated denials of appeals not only create an insurmountable barrier but can retraumatize them as they work to navigate the process. As a result, low-income survivors, who often have little access to legal representation or the money for a protracted legal fight, simply do not appeal at all. FEMA's decision to quickly forward recoupment claims to the Treasury Department after an initial agency finding that assistance was provided in error – as has been currently occurring to survivors of the 2020 Puerto Rico earthquakes.

Policy Solution

FEMA must streamline the IA and IHP application process and ensure that applicants are afforded due process.

Instead of creating and implementing numerous categories of ineligibility, disaster assistance programs should employ broad-based categories for eligibility, with the aim that every disaster survivor receives the assistance to which they are entitled. By redefining FEMA's working definition of "waste, fraud, and abuse," and utilizing damage assessments, geographic information, and other data, a reformed federal disaster housing recovery framework can provide categorical eligibility to survivors. Applying the least

⁵¹ See Flavelle, NY Times; Texas Housers, "Low Income Households Disproportionately Denied By FEMA is a Sign of a System that is Failing the Most Vulnerable", 2018, Available at: <https://texashousers.net/2018/11/30/low-income-households-disproportionately-denied-by-fema-is-a-sign-of-a-system-that-is-failing-the-most-vulnerable/>

⁵² Vinick, Politico

⁵³ Id.

⁵⁴ FEMA, Help After Disasters, Available at: https://www.fema.gov/pdf/about/process/help_after_disaster_english.pdf

restrictive guidance regarding alternative documentation, and doing so consistently across all jurisdictions, would also cut down on administrative time and confusion. FEMA can and should use damage assessments, geographic information, and other data such as enrollment in pre-existing assistance programs to provide Broad Based Categorical Eligibility (BBCE) for survivors in impacted areas. BBCE has been notably implemented in programs such as USDA's SNAP program, which automatically finds households eligible for assistance if they qualify for a non-cash Temporary Assistance for Needy Families (TANF) or state maintenance of effort (MOE) funded benefit.⁵⁵ FEMA should report on their progress in implementing BBCE periodically and ensure that such reports are made accessible to the public.

FEMA, SBA, HUD, and other federal agencies involved in disaster recovery efforts should work to create a single, universal application for aid with the explicit goal of making the process easier and less burdensome on survivors. This simple step would save countless hours spent by survivors applying for assistance.

FEMA also must ensure its DRCs are accessible by requiring their location in areas near to public transportation, where applicable, and in buildings accessible to individuals with disabilities in line with federal law. Further, FEMA must ensure that translators are readily accessible, and that all documents distributed within DRC's or through recovery-related websites include translations for individuals with disabilities or Low English Proficiency pursuant to federal law.

FEMA should also ensure that survivors have clearly defined rights of appeal and legal action. The appeals process should be as least burdensome as possible, allowing applicants to receive benefits quickly without lengthy legal proceedings and substantial court and attorney fees. By simplifying the application process, more eligible individuals will receive assistance and fewer will need to appeal improper findings. Less administrative time will be spent on unnecessary administrative proceedings. In addition to a right of appeal, a right of action must be provided to disaster survivors who are denied or deemed ineligible, allowing them access to the civil court system. This right of action for the denial or misappropriation of benefits should be clearly identified and integrated with the administrative appeals process.

Due process, including the right to appeal adverse actions and inactions, including when repayment is at issue, allow comprehensive discovery, and recourse to a court of competent jurisdiction, must be instituted. Upholding these constitutional and legal rights will ensure that survivors can access benefits and not be required to work through a difficult appeals process. Allowing disaster survivors to access the court system when fighting for benefits means that legal assistance organizations must have the capacity to assist low-income individuals in court. Direct and robust operational funding should be available to support legal aid organizations that serve survivors. These organizations can also be contracted to provide training to first responders, emergency and relief workers, and other individuals on the ground to ensure that legal issues are spotted in advance of the application process. By ensuring that disaster recovery applicants understand their rights, have access to legal representation, and have clearly listed appellate processes, the number of eligible individuals left without assistance after a disaster can be dramatically reduced.

Community outreach and education should inform survivors of their due process rights. This education must be comprehensive, accurate, and accessible to all survivors, including people with disabilities and limited English proficiency and be written at a 4th-6th grade level.

⁵⁵ Dottie Rosenbaum, "SNAP's 'Broad-Based Categorical Eligibility' Supports Working Families and Those Saving for the Future", Center on Budget and Policy Priorities (2019), Available at: <https://www.cbpp.org/research/food-assistance/snaps-broad-based-categorical-eligibility-supports-working-families-and>

Onerous Title and Lease Documentation Requirements

Title and lease documentation requirements for FEMA IHP perpetuates barriers to opportunity and benefits for people of color and other underserved groups.

Title documentation requirements have barred countless low-income disaster survivors, largely Black, Indigenous, and Latino disaster survivors, from FEMA assistance. FEMA consistently requires disaster survivors to provide title and similar documentation to prove eligibility for the agency's IHP programs and other recovery aid, despite the fact that its guidance on individual and household assistance specifically allows alternative documentation of ownership.⁵⁶ Low-income homeowners, residents of manufactured housing, renters without written leases, and other individuals frequently lack such documentation or the ability to quickly procure proper documents. This is an issue that has impacted low-income disaster survivors since at least 1995 according to FEMA officials, but the agency has done little to resolve this issue.

Following Hurricane Maria, FEMA denied assistance to at least 77,000 survivors due to title documentation issues.⁵⁷ These same issues occurred in North Carolina after Hurricane Florence. In the American South, rural, historically African American communities often do not use title systems, implementing a system like the one used in Puerto Rico.

In Puerto Rico, FEMA's Office of Chief Counsel worked closely with DHRC members Ayuda Legal Huracan Maria, Fundación Fondo de Acceso a la Justicia, and Servicios Legales de Puerto Rico to prepare a "sworn statement" that would allow Puerto Rican homeowners without title documents to prove ownership of their homes so that they can receive the assistance to which they are entitled.⁵⁸ A similar type of form was utilized in the response to Hurricane Harvey and the 2017-2018 wildfire season, however many survivors were unaware that such an opportunity existed.

Since that time, however, FEMA has refused to provide the sworn statement to survivors or even to make it available on FEMA's website, social media, or at Disaster Recovery Centers, greatly limiting the ability of survivors to make use of this new resource. FEMA has stated to congressional offices that it is not allowed to share such documents, unless they have been approved by the Office of Management and Budget, but FEMA has not taken sufficient steps to get the appropriate approval. In 2019, FEMA changed policy to only allow declaration forms in insular areas, tribal lands, and territories – not in states – a move that only worsens the problem.

In California, title issues largely impacted applications for aid by mobile-home-park residents. A large percentage of mobile-home owners, often farm workers or other low-income workers, do not have title to their homes.⁵⁹ During the most recent wildfire season, FEMA refused to modify its programs to accommodate the situation, denying eligible applicants instead.

⁵⁶ FEMA, Individuals and Households Program Unified Guidance (IHPUG), FP-104-009-3/, September 30, 2016.

⁵⁷ Ivis Garcia, The Lack of Proof of Ownership in Puerto Rico is Crippling Repairs in the Aftermath of Hurricane Maria, American Bar Association Human Rights Magazine, May 2021, Available at: https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/vol--44--no-2--housing/the-lack-of-proof-of-ownership-in-puerto-rico-is-crippling-repai/

⁵⁸ Disaster Legal Aid, Sworn Statement for Ownership Puerto Rico Press Release, 2018, Available at: https://www.disasterlegalaid.org/library/item.685183-Sworn_Statement_for_Ownership_Verification_Puerto_Rico_Press_Release

⁵⁹ Craig Shultz, "Why your California mobile home may not be properly registered – and how to fix the program", Press-Enterprise, July 17, 2018, Available at: <https://www.pe.com/2018/07/17/why-your-california-mobile-home-may-not-be-properly-registered-and-how-to-fix-the-problem/>.

Residents of manufactured housing – which in certain areas are predominantly people of color – frequently do not have access to proper or updated title documentation for their homes: tracking former owners can be challenging; manufacturers often fail to provide title when the home is delivered; mobile-home parks that control title documents frequently fail to keep records updated; and residents often are victims of fraud and rent-to-own schemes related to title and registration and do not have proper documentation. These issues are prevalent in rural areas, where manufactured housing is a common source of affordable housing. As stated above, while FEMA has worked to create “sworn statements” for homeowners, the agency has not created similar forms for residents of manufactured housing.

Policy Solution

FEMA must allow nationwide use of sworn statement forms and broaden the list of documentation acceptable to prove occupancy.

FEMA must standardize and authorize a sworn statement form for use when an applicant for assistance does not have the formal documents available. The form should be standardized across FEMA’s regions and translated into all required languages and made available on the FEMA website and in disaster recovery centers on an ongoing basis. The declaration form must be applicable to insular and non-insular areas. In addition, FEMA must broaden its list of documents that are eligible to show residency or occupancy in a disaster damaged property. This change is critical to addressing the unique needs of owners of manufactured houses and residents with informal, heirship, and other title issues.

Ineffective Temporary Housing Programs

FEMA temporary housing program requirements and narrow benefits perpetuate barriers to opportunity for people of color and other underserved groups.

If a person of color or other underserved group can successfully complete an IA application and are enrolled in FEMA’s housing programs, they still face a program rife with problematic requirements. Rental assistance is based on the county or territory fair market rent and may be inadequate to meet post-disaster rental rates; families receiving FEMA rental assistance are frequently victims of housing discrimination; landlords may be unwilling to enter into short leases; and often, vacant rental housing may simply not be available in the wake of a disaster. In addition, FEMA assistance expiration dates often do not line up with additional recovery programs, such as HUD’s Community Development Block Grant – Disaster Recovery program. This creates a gap in recovery support that can result in people of color and other underserved groups being forced to live on the street, cars, or their damaged or destroyed homes. Disaster survivors are susceptible to trauma, and a lapse of program assistance, even if just for a few days, can cause significant mental harm to households that have already been displaced by a disaster.⁶⁰ A year after Hurricane Harvey, nearly 20% of individuals experiencing homelessness in the city of Houston reported that they became homeless due to the disaster.⁶¹

FEMA’s reliance on outdated and inflexible housing program protocol have also harmed private efforts by people of color to rebuild their own homes. Grant amounts for repair and replacement of homes are based on property values of homes as opposed to realistic repair costs. People of color and other underserved groups often suffer from the legacy of racist redlining and Jim Crow-era policies that systematically lowered the property values of their communities. This trend is currently being amplified

⁶⁰ Susanne Babbel, “The Trauma That Arises from Natural Disasters,” *Psychology Today*, April 2010. Available at: <https://bit.ly/3hyUd1o>

⁶¹ Eva Vigh, “Hurricane Harvey Caused Homelessness Lingers in Harris County 2 Years Later,” *Community Impact*, August 20, 2019. Available at: <https://bit.ly/3hEvKHW>

by rising inequality.⁶² In the ongoing recovery efforts in Southwest Louisiana, there have also been reports that repair assistance provided to households that own disaster-impacted homes have not been sufficient to cover the actual cost of rebuilding. These families have retained their rental assistance benefits in an amount that could cover the remaining repair costs but are unable to utilize them due to FEMA policy. Repair assistance has also been found to be inadequate in other disasters, such as the 2019 Arkansas River floods.⁶³

Direct housing assistance provided by FEMA can be slow to implement and hard to navigate. According to FEMA, only a few hundred families were served under state-administered housing programs following Hurricanes Harvey and Irma, while state-administered programs like Multifamily Lease and Repair were wholly unsuccessful because property owners declined to participate.⁶⁴ At the same time, FEMA has not embraced new, cost-effective approaches to providing affordable and accessible homes shortly after a disaster. Instead, FEMA continues to rely on traditional mobile homes, which are expensive and time-consuming to make available and often fail to accommodate people with disabilities. Before a trailer or mobile home can be used, contractors must level the site and establish electricity and water hookups.

Following Hurricane Harvey, FEMA piloted state implementation of temporary housing programs. State-run disaster housing programs faced significant delays and have been unable to address the full scale of the housing needs in large part because FEMA continued to retain control over eligibility and the program-assignment process.⁶⁵ After 18 months from the date of the presidential disaster declaration, households utilizing FEMA direct temporary housing are required to leave. Survivors are required to demonstrate continuing need for program enrollment and work toward a permanent housing plan. Extensions are commonly granted but the process for requesting for such extensions are often unknown. Often, families in need of housing after the passage of the 18-month deadline are expected to start paying often unaffordable rents on their trailers.

Finally, FEMA's additional programs such as Other Needs Assistance (ONA), often provide too small a benefit to ensure that households can regain employment or access community services, lessening the chance that a permanent housing plan will be successful. FEMA does not help with mass transit costs, repair or replacement vehicle expenses max out at \$5,000 and are only available for one vehicle. In addition, individuals with disabilities that can live independently through a relationship with an independent living center, often have trouble ensuring that the services they need to survive are covered through FEMA. If an individual with a disability is unable to procure necessary services, they often face institutionalization.⁶⁶

Policy Solution

FEMA must adopt a more flexible approach to housing programs that allow people of color and other marginalized groups the ability to fully recover.

⁶² Junia Howell, Elizabeth Korver-Glenn, Race Determines Home Values More Today than it did in 1980, Rice Kinder Institute for Urban Research, 2020, Available at: <https://kinder.rice.edu/urbanedge/2020/09/24/housing-racial-disparities-race-still-determines-home-values-America>

⁶³ Emily Walkenhorst, "Money a Big Barrier in Arkansas Flood Recovery, Northwest Arkansas Democrat Gazette, July 5 2020, Available at: <https://www.nwaonline.com/news/2020/jul/05/money-a-big-barrier-in-recovery/>

⁶⁴ Jasper Scherer and Mike Morris, "Three Years After Harvey, Recovery Programs Continue To Lag, Who is to blame?", Houston Chronicle, August 29 2020, Available at: <https://www.houstonchronicle.com/news/houston-texas/houston/article/Three-years-after-Harvey-Houston-s-home-repair-15523516.php>

⁶⁵ Id.

⁶⁶ National Council on Disability, "Preserving Our Freedom, Ending Institutionalization of People with Disabilities During and After Disasters", May 2019, https://ncd.gov/sites/default/files/NCD_Preserving_Our_Freedom_508.pdf

FEMA must ensure that societal inequities do not result in assistance awards that are too small to address the repair and alternative housing needs of low income households and can safely connect with long-term recovery programs later in the recovery process, ensuring that people of color and other marginalized groups are able to fully recover through FEMA programs. Basing housing award grant amounts on the cost to replace or repair damaged property rather than property values can help close financing gaps and protect households that live in neighborhoods where property values are less than the cost of repairs and replacement. Starting the 18-month time limit for temporary housing assistance when temporary housing is deployed as opposed to when a disaster declaration is made would also help ensure that disaster survivors remain housed for longer after a disaster and are able to fully connect with long-term recovery resources offered by HUD.

FEMA must adopt more flexibility in its programs. Allowing rental assistance to be repurposed as repair assistance, or vice versa, would allow survivors themselves to ensure they have what they need to fully recover from a disaster. The implementation of greater flexibility not only will ensure that survivors that wish to utilize repair funds over rental assistance can move into their homes more quickly, but it also saves FEMA the time and effort required to provide someone with assistance they do not desire.

To ensure the public and advocates are aware of near-term temporary housing plans, FEMA should make publicly available a target number of temporary housing units it plans to build and how it came to that number. FEMA should also develop and release a framework to determine how many temporary housing units it should provide based on the number of post-disaster affordable housing units available in a disaster-stricken community, post-disaster employment rates, and similar measurements.

FEMA should also move to implement common sense housing solutions – like the RAPIDO program developed in Texas. Under RAPIDO, an initial structure that can be rapidly constructed is placed on site, providing a space for families to live while they complete repairs.⁶⁷ If a home is a total loss, the temporary RAPIDO shelter can form the core of a new home, allowing the household to build a new home around it. This model should be expanded, as it is more cost effective and better for families to live in the same place for both short- and long-term recovery.

To assist with additional costs of recovery, FEMA should provide resources to help displaced households without access to cars afford their increased transportation costs. These costs should include Uber/Lyft, connector buses, and public transportation. For survivors with damaged or destroyed vehicles, FEMA should increase the maximum funds available to repair or replace a single parcel vehicle from \$5000 to \$10,000. Alternatively, FEMA should permit disaster survivors to enter into reimbursable short-term auto leases. The agency should also increase the maximum level of personal transportation assistance in cases where the surviving household can demonstrate the need for two personal vehicles to accommodate transportation to and from places of employment.

FEMA must work with the disability justice community to ensure that individuals with disabilities are able to fully access supportive programs necessary to continue living independently – including personal assistance services and related strategies. When awards are made for repair work, such awards must take into account the need for housing to be accessible to individuals with disabilities. Doing so will prevent disaster survivors with disabilities from being forced into institutional settings.

⁶⁷ RAPIDO Recovery, website, Available at: <http://rapidorecovery.org/>

V. FEMA’s failure to collect and share data prevents further analysis on how FEMA programs perpetuate barriers to opportunity and benefits for people of color and other underserved groups.

Although reliance on data collection and analysis is pivotal to the oversight and improvement of disaster recovery programs, it is by no means the single measure of how well a program is functioning. Anecdotal information – individual experiences with programs – must also be honored and valued. Today’s disaster recovery planners, advocates, and policymakers often downplay or neglect the use of anecdotal information when focusing on program improvements. Any focus on data collection and analysis must respect and uplift the anecdotal experiences of low-income disaster survivors themselves as representative of how well a program is functioning.

Outside of anecdotal information, FEMA’s lack of outcome tracking has been cited as a major obstacle to ensuring equity in its programs.⁶⁸ The agency has been known to pull pertinent information off of its website, allow previously established transparency initiatives languish, and allow long wait times for Freedom of Information Act (FOIA) requests.⁶⁹ Information on how FEMA programs affect the lives of disaster survivors and allowing that information to be accessible to the broader academic and advocacy field will only strengthen FEMA’s ability to ensure its programs are not perpetuating barriers to opportunity and benefits for people of color and other underserved groups.

Lack of Outcome Tracking

The lack of outcome tracking at FEMA prevents analysis of how the agency may be perpetuating barriers to opportunity and benefits for people of color and other underserved groups.

Useful outcome data (i.e., information on how well a recovery program is working) is often not made publicly available for many FEMA programs. Although FEMA does report out regular on the amount of applications approved and the amount of funding dispersed, FEMA often does not collect or make public information on how program participants fare after leaving the program or later on in the disaster recovery process. The information that is released is often not provided at a small enough geographic level to be useful for many academic or public policy researchers. In addition, FEMA often does not compile or release information on race, disability, or other subpopulations regarding its programs. A recent National Advisory Council (NAC) report released last year stated that the while FEMA maintains some publicly available databases, they were “limited in scope and are more output than outcome focused.”⁷⁰

FEMA has historically not even collected enough information on outcomes of its programs that it precludes comparisons of one program to the other. This was the case for FEMA’s claims that its post-disaster TSA program outperformed other housing programs such as DHAP.⁷¹ This claim was publicly

⁶⁸ Alessandra Jerolleman, Building Resilience in Rural America, Eos, February 2021, Available at: <https://eos.org/opinions/building-resilience-in-rural-america>

⁶⁹ Jeff Stein, “Trumps Administration Deleted Data on Puerto Rico’s Crisis from FEMA’s Website”, VOX, October 2017, Available at: <https://www.vox.com/policy-and-politics/2017/10/6/16435596/trump-puerto-rico-water>; See also, Justin Elliott, Trying (and failing) to get records from the ‘most transparent administration’”, Pacific Standard, June 2017, Available at: <https://psmag.com/news/trying-and-failing-to-get-records-from-the-most-transparent-administration>

⁷⁰ FEMA, National Advisory Council 2020 Report, Available at: https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf

⁷¹ FEMA, Fact Sheet: Myths vs. Facts – FEMA’s Transitional Sheltering Assistance Program, Available at: <https://www.fema.gov/press-release/20210318/fact-sheet-myths-vs-facts-femas-transitional-sheltering-assistance-program>

refuted by the GAO, which released a report stating that such comparisons could not be made given that adequate outcome tracking was not performed on either program.⁷²

This issue has importance extends beyond FEMA. Data from FEMA’s IA program are frequently used to shape long-term rebuilding efforts. As discussed above, low-income survivors struggle to access FEMA programs, and as a result, the agency provides far fewer benefits to renters than to homeowners. By using these data to make recovery decisions, planners overlook renters who were found by FEMA to be ineligible for aid, but who remain in desperate need of recovery funds. After Superstorm Sandy, for example, New Jersey created a housing-recovery program that assumed that only 22% of the housing damage from the storm occurred in rental units. An analysis by advocates showed, however, that the state had undercounted the needs of renters by half. Because nearly half of renters impacted by Hurricane Sandy in New Jersey were African Americans and Latinx compared to only 16% of impacted homeowners, the recovery housing program was found to be discriminating by race and ethnicity by under-allocating resources to renters. This program was later subject to the largest settlement in the history of fair housing litigation due in part to its reliance on FEMA data.⁷³

Policy Solution

FEMA must track outcomes of program participants to ensure that its programs are not perpetuating barriers to opportunity and benefits for people of color and other underserved groups.

Application and assistance outcomes should be tracked over the long-term to enhance data collection and analysis capabilities for disaster researchers and policymakers. Program enrollment data, de-enrollment data, and other metrics showing the successes and failures of a disaster recovery program should also be collected and made publicly available. This enhanced data can be used to create best practices to be incorporated into future disaster planning and response efforts.

Specifically, FEMA must collect and make publicly available comprehensive demographic data on the impact of the disaster and federal recovery efforts. Data should be collected on all protected classes covered by the Stafford Act, the Americans with Disabilities Act, Fair Housing Act, Title VI, and other civil rights protections, including, but not limited to race/ethnicity, income and economic status, age, disability, and gender, and the housing tenure of the individual and location by census block group to enable meaningful analysis.

The NAC report mentioned in the preceding section called upon the agency to invest in an agency-wide data management system to track and monitor outcomes across the entire disaster lifecycle.⁷⁴ This type of infrastructure is heavily needed to ensure that FEMA is actively responding to issues that disproportionately impact low-income households, people of color, and other underserved groups.

Lack of Data Transparency

The lack of data transparency at FEMA prevents analysis of how the agency may be perpetuating barriers to opportunity and benefits for people of color and other underserved groups.

⁷² Government Accountability Office, “Disaster Housing: Improved Cost Data and Guidance Would Aid FEMA Activation Decision” (2020), Available at: <https://www.gao.gov/assets/720/711255.pdf>

⁷³ HUD, HUD and New Jersey Announce Agreement to Expand Hurricane Sandy Recovery Programs, HUD No. 14-062, May 2014, Available at: <https://archives.hud.gov/news/2014/pr14-062.cfm>

⁷⁴ Id.

What data that FEMA does collect on its programs are often difficult to access. Ill-defined terms like “unmet need” and unclear methodology means that the data that are accessible are often misleading or not useful. Currently, organizations seeking information from FEMA are forced to utilize the Freedom of Information Act (FOIA) process. Freedom of Information Act (FOIA) requests to FEMA often go months or years without being answered. In other cases, FEMA refuses to provide basic information, claiming grounds of privilege. In recent years, some progress has been made with the release of data after major disasters through FEMA’s OpenFEMA portal. The changes at OpenFEMA, while a welcome development, are not guaranteed to continue.

This anti-transparency stance of the agency has been bolstered by past incidents that demonstrated the agency’s issue with releasing accurate evaluations of its programs. In 2019, the Department of Homeland Security Office of the Inspector General was found to have commonly redacted reviews that were critical of FEMA’s performance.⁷⁵ Although the head of that office resigned after the changes were made public, it underscores the need for researchers and the general public to have access to reliable data to ensure that recovery plans are followed, and programs are fully administered. The lack of data transparency prevents meaningful input and accountability from external stakeholders that could analyze the accessed data for gaps in FEMA’s disaster response framework and drive the creation and dissemination of best practices throughout the agency and the emergency management field writ large.

Policy Solution

FEMA must make data collected by the agency is accessible to STTLs, researchers, and advocates to ensure that its programs do not perpetuate barriers to opportunity and benefit for people of color and other underserved groups.

To ensure that these best practices and outcomes have the greatest reach, data collected by the government must be open and accessible, while protecting personally identifiable information. Prioritizing data transparency allows policymakers and advocates to be informed about program results and areas for improvements. Data transparency efforts should ensure that private and personally identifiable information is not made accessible, outside of research purposes.

Immigration status or other information commonly used to persecute marginalized populations should not be made available to organizations that would use it to remove individuals from non-disaster related assistance programs, or as a pretext to deportation or detainment. Doing so will ensure that eligible individuals will apply for these programs and participate in the conversations and collaboration between communities and disaster planners.

FEMA must create an open process for research, academic, and other organizations to use IA and other disaster response and recovery data possessed by FEMA for the purpose of conducting research. FEMA should allow these institutions to access personally identifiable information if important policy-relevant research questions can only be answered by using this data and if the receiving organization can offer adequate measures for the confidentiality of the data, as required by other federal agencies. FEMA should provide to the public, researchers, and academic institutions data collected by its programs for analysis to the greatest extent possible under federal privacy laws.

FEMA must also collect and report publicly on a monthly/quarterly basis on application completion rates and the length and success rates of FEMA IA eligibility appeals. This data must be disaggregated by race,

⁷⁵ Jory Heckman, “DHS Acting Inspector General Resigns Earlier than Expected After Office Pulled ‘Feel Good’ Reports,” Federal News Network, June 2019. Available at: <https://federalnewsnetwork.com/people/2019/06/dhs-acting-inspector-general-resigns-earlier-than-expected-after-oig-pulled-13-feel-good-reports/>

disability, income, housing type and status, and be made publicly available, and personally identifiable information should be made available for research purposes.

VI. Conclusion

FEMA has a moral, ethical, and legal obligation to ensure that the lowest-income and most marginalized survivors – who are disproportionately people of color and other underserved groups – are not prevented from accessing the assistance they need to recover after disasters. While the recent history of the agency is rife with examples of how such principles were ignored, we are hopeful that the agency can move beyond these failures and ensure that all disaster survivors are able to fully recover.

Our nation needs a new vision for disaster housing recovery that centers around those with the greatest needs. To undo the racial, income, and accessibility inequities embedded in our current disaster housing recovery framework and to ensure a complete and equitable housing recovery for all survivors, our nation must prioritize robust resident engagement, transparency, full accountability and due process, robust equity and civil rights enforcement, and increased local capacity and benefits. By establishing an anti-racist and equitable disaster response, FEMA can exemplify this new vision and create communities that are not only economically and socially vibrant, but ones with the resources needed to increase their resilience and face the brunt of climate-change driven disasters in the coming years.

Sincerely,

A handwritten signature in cursive script that reads "Diane Yentel".

Diane Yentel
President and CEO
National Low Income Housing Coalition