

# FEMA IA Legislative Reforms

Recommendations from NLIHC's Disaster Housing Recovery Coalition (DHRC)

## 1. Simplify Application and Appeals Processes

**Require FEMA to work with SBA, HUD, and other federal agencies to create a universal application**, with the explicit goal of making the process easier and less burdensome on survivors. Congress should require FEMA to report on their progress and require FEMA to make publicly available the universal application and supporting materials.

**Direct FEMA to use Broad Based Categorical Eligibility during the IA application process.** To help address the high barriers to receiving assistance, Congress should direct FEMA to 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. Congress should require FEMA to report on their progress in implementing BBCE periodically and ensure that such reports are made accessible to the public.

**Require FEMA to accept a broad range of documentation, including self-declaration forms, to prove ownership and residency, as included in the Housing Survivors of Major Disasters Act.** This is critical to addressing the unique needs of owners of manufactured houses and residents as well as precariously housed individuals with informal, heirship, and other legal title traditions. FEMA must be directed to create an official declarative statement that survivors can use to prove residency and ownership, and FEMA must be directed to make this available publicly. The declaration form must be applicable to insular and non-insular areas. Congress should require FEMA to report on their progress. *[NOTE: This is addressed via the [Housing Survivors of Major Disasters Act](#) Sponsored by Representative Espaillat (D-NJ), Congresswoman Gonzalez-Colon (PR), and Senator Warren (D-MA)]*

**Create due process standards for survivors appealing FEMA's determination of their application.** Congress should require that FEMA provide to each applicant, in a timely manner, a complete copy of the applicant's file when requested, including all documents created or supplied by FEMA, the applicant or any 3rd party. Congress should enact legislation creating a private right of action for wrongful denial of assistance, establish the right to appeal adverse actions and inactions, including when repayment is at issue, allow comprehensive discovery, and giving survivors recourse to a court of competent jurisdiction. Congress should direct FEMA to make publicly available documents used to inform applicants of their rights regarding the IA/IHP programs and information on the internal processes for determining program eligibility, including training manuals and factors used to determine eligibility. Congress should also direct FEMA to extend the current 60-day deadline for the filing of FEMA appeals. The current deadline creates substantial time constraints on legal advocates assisting denied applicants and often precludes collaborative work between the applicant, their advocates, local EM staff, and case managers.

**Require FEMA to report publicly on applications and denials.** Congress should direct FEMA to collect and report publicly in an electronically searchable form on a monthly/quarterly basis on application completion rates and the length and success rates of FEMA IA eligibility appeals. The report should contain the status of the tracking application numbers for all applications. The agency should not be permitted to delete any applications or tracking numbers for any reason – including for denial or withdrawal – and must include well defined categories for case status. This data must be disaggregated by race, disability, income, housing type and status, and be made publicly available. Such data with corresponding personally identifiable information should be made available for research purposes. In addition, FEMA should release the block and census tract of residences or other structures for which assistance is being sought.

**Require FEMA to make application and appeals information, as well as information on programs, accessible to survivors.** Congress should direct FEMA to ensure materials are accessible to all survivors, including people with disabilities and people with limited English proficiency, and be written at a 4<sup>th</sup>-6<sup>th</sup> grade level. Congress should direct FEMA to make publicly available such materials in other languages. Congress should require FEMA to create and implement a comprehensive, accurate outreach and education effort to inform survivors about their due process rights.

**Require FEMA to automatically set aside direct funding for legal services/aid organizations** to help survivors apply for FEMA assistance. Direct FEMA to enter into contracts with legal aid organizations to provide trainings to FEMA-credentialed first responders, emergency and relief workers, and others on the ground in the weeks directly following a disaster.

## 2. Ensure Oversight and Data Transparency

**Direct FEMA to collect and make publicly available on OpenFEMA 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, while protecting personally identifiable information. In addition, all information that FEMA releases in the monthly/quarterly IA application reports must appear on OpenFEMA in an electronically searchable format.

**Direct FEMA to 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.

**Direct FEMA to prioritize providing IA data to state and local governments for the purposes of creating CDBG – Disaster Recovery (CDBG-DR) and CDBG – Mitigation (CDBG-MIT) Action Plans.** State, local, territorial, and tribal governments

utilize FEMA information as part of CDBG-DR and CDBG-MIT spending plans required to be submitted and approved by HUD. Often, failures by FEMA to quickly provide comprehensive data on IA applications and approvals further slow the creation of these plans – further lengthening the amount of time it takes these important long-term recovery funds to reach disaster survivors.

**Redefine FEMA’s working definition of “waste, fraud, and abuse”** to ensure that the agency’s commitment does not prevent disaster survivors from receiving assistance.

**Create an independent advisory committee** comprised of experts in affordable housing, homelessness, legal services, disability, fair housing and civil rights, and low-income survivors. This committee should periodically report its activities and recommendations and all steps or actions taken or not taken in response to Congress – which shall make such reports public within a specified time.

### 3. Ensure Equity and Access

**Clarify FEMA’s non-discrimination language in the Stafford Act.** FEMA currently interprets its non-discrimination clause to prevent the agency from addressing the unique needs of certain subgroups of disaster survivors, including individuals who were homeless prior to a specific disaster, individuals with low incomes, those with Low English Proficiency, and others. This interpretation should comply with those utilized by other agencies and comply with standing precedent within civil rights law. Congress should require FEMA to report on their progress.

**Direct FEMA to ensure Disaster Recovery Centers are accessible** by requiring their location in impacted areas, in areas accessible by public transportation, where applicable, and in buildings accessible to individuals with disabilities in line with federal law.

**Require FEMA to make access to translators 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.**

**Direct FEMA to educate and inform immigrant communities and disaster survivors in their primary language** that there is no information exchanged between the agency and ICE and that individuals who may be undocumented can safely visit DRCs and speak with the agency without risk of deportation.

### 4. Ensure Access to Safe, Decent Homes

**Automatically activate the Disaster Housing Assistance Program (DHAP)** upon a major disaster declaration to provide the lowest-income and most marginalized survivors with direct, longer-term rental assistance and case management services.

**Direct FEMA to remove or ameliorate barriers** to that prevent low-income survivors from accessing FEMA’s Transitional Sheltering Assistance (TSA) hotel program. Congress should direct FEMA to bar hotel providers from requiring survivors to have a credit card or a security deposit to access the program. Congress should establish statutory requirements that must be met for when the TSA program ends based on the

amount of temporary housing available, the overall housing stock of the area, the state of the current local economy, and other measures. Congress should bar hotel providers from charging a survivor additional fees beyond the amount FEMA is providing them. Congress should require FEMA to make publicly available, on a monthly basis, 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 – either because they have moved to permanent housing, or because they violated terms of the program. Congress should also direct FEMA to authorize TSA for longer increments than the current 14-day policy.

**Establish in statute that people experiencing homelessness prior to the disaster are eligible for the same emergency shelter and housing recovery resources available to impacted renters.** The provision of assistance must not be based on whether the individual resided in a tent or temporary structure prior to the disaster.

**Direct FEMA to include in its standard recovery assistance plan** an on-site assessment of homeless encampments and shelters identified by each community's leaders, communities of individuals with Low English Proficiency, centers for independent living, and congregate care facilities.

## 5. Fair Housing and Civil Rights Compliance

**Direct FEMA to enforce federal fair housing laws on FEMA's Housing Portal** or any other website or resource to which FEMA may refer people seeking housing. Congress should bar landlords from publishing discriminatory advertisements for rental properties. After past disasters, FEMA's Housing Portal and other websites to which FEMA's website linked included explicitly discriminatory advertisements that violated federal and state fair housing laws.

**Direct FEMA to provide guidance and ensure compliance with non-discrimination laws**, including the Stafford Act, the Americans with Disabilities Act, Fair Housing Act, Title VI, and other civil rights laws, for all entities administering or receiving housing resources in order to ensure fairness and avoid delays due to enforcement actions.

**Direct FEMA to work with HUD to provide timely, actionable fair housing guidance and training** to FEMA staff or contractors who handle housing-related inquiries from the public.

**Direct FEMA to enter into 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.

**Direct FEMA to ensure that any information provided directly or indirectly by FEMA about housing resources for people displaced by a disaster complies with fair housing requirements.**

## 6. Improving Assistance Programs

### Temporary Housing Assistance

- Begin the 18-month time limit for direct temporary housing assistance when a disaster survivor moves into a MHU, instead of the date of the disaster declaration.
- Mandate that FEMA disclose its decision-making process for extending the 18-month deadline for temporary direct housing assistance.
- Statutorily require FEMA to make publicly available a target number of temporary housing units it plans to build and how it came to that number. Congress should require FEMA to build a certain number of temporary housing units within a certain time frame, and to report to Congress regarding the current state of completed and planned temporary housing. Congress should ensure that the number of MHU's constructed is based on the number of post-disaster affordable housing units available in a disaster-stricken community, post-disaster employment rates, and similar measurements.

### **Disaster Case Management (DCM)**

- FEMA should make clear that services conducted under the agency's DCM program must be performed by state, tribal, or territorial agencies or non-profits alone. Additionally, a preference should be created for the use of existing Continuums of Care (CoC) or Community-based organizations for DCM programs if applicable.
- FEMA should institute a requirement that DCM award applications or pre-disaster DCM plans be available for comment and review by the public. This requirement should be instituted even if it necessitates an extension of the 90-day post-disaster declaration deadline for DCM program application submittal. Alternatively, FEMA should create a system allowing the receipt of community input on state, tribal, or territories DCM program award applications and independently consider such input when evaluating or requesting amendments to DCM program award applications.

### **STEP**

- Direct FEMA to provide immediate, emergency rehabilitation to properties where tenants are at high health and safety risks and to determine proper cost-sharing with the property owner afterwards.
- Direct FEMA to report to Congress on why the STEP program was not implemented during the past several major disasters and make publicly available all documents pertaining to the administration of the program.
- Mandate that the STEP program be re-implemented.
- Expand the STEP program to include multi-family and rental properties.

### **Transportation Assistance**

- Provide resources to help displaced households without access to cars afford their increased transportation costs. FEMA should help cover the costs of Uber/Lyft, connector buses, and public transportation.
- 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.
- 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.
- Ensure that individuals with disabilities can fully access supportive programs necessary to continue living independently – these include personal assistance services and related strategies.

**Home Repair**

- Ensure that assistance provided for home repairs is based on a survivor's real need by basing grant amounts on the cost to replace or repair damaged property rather than property values to help close financing gaps and to protect households that live in neighborhoods where property values are less than the cost of repairs and replacement.
- Provide survivors with the flexibility to use temporary rental assistance for home repairs if initial repair assistance is not sufficient.
- Set standards to ensure damage inspectors contracted by FEMA are qualified to inspect the housing types present in a disaster area – including manufactured homes, multifamily properties, single family homes, ADU's, and others.