

June 22, 2018

The Honorable Ron Johnson  
Committee on Homeland Security and  
Governmental Affairs  
U.S. Senate  
Washington, DC 20510

The Honorable Bill Shuster  
Committee on Transportation and  
Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Claire McCaskill  
Committee on Homeland Security and  
Governmental Affairs  
U.S. Senate  
Washington, DC 20510

The Honorable Peter DeFazio  
Committee on Transportation and  
Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

To Chairman Johnson, Ranking Member McCaskill, Chairman Shuster, and Ranking Member DeFazio:

On behalf of the Disaster Housing Recovery Coalition, I write to express strong opposition to H.R. 4 (Section 610) and S. 3041 (Section 11) – the Disaster Recovery Reform Act of 2018 – which would authorize states to administer disaster housing assistance programs, without providing oversight and safeguards to ensure that the housing needs of disaster survivors are met. Since its creation in the aftermath of Hurricanes Katrina and Rita, the U.S. Department of Housing and Urban Development’s (HUD) [Disaster Housing Assistance Program \(DHAP\)](#) has been used successfully after Hurricanes Gustav and Ike and Superstorm Sandy to meet the longer term housing needs of disaster survivors, including those with the lowest incomes who face the greatest barriers to recovery. After the 2017 disasters, however, the Federal Emergency Management Agency (FEMA) refused to activate DHAP and instead experimented with state-administered programs. Ten months later, it is clear that FEMA’s experiment failed. Thousands of families are still living in cramped FEMA hotels and thousands more – including low income seniors, people with disabilities, families with children, and other individuals – still do not have access to the stable, affordable homes they need to get back on their feet. As a result, too many families have had no choice but to move into uninhabitable or overcrowded homes, to sleep at shelters, or to pay far too much of their limited incomes on rent, making it harder to meet their other basic needs. These precarious housing situations put the lowest income families at increased risk of evictions and, in worst cases, homelessness. For these reasons, we urge you to omit Section 610 of H.R. 4 and Section 11 of S. 3041 from any final legislation. Instead, we urge you to add legislative language directing FEMA to activate DHAP immediately.

The Disaster Housing Recovery Coalition is led by the National Low Income Housing Coalition and includes more than 700 national, state, and local organizations, including many organizations working directly with disaster-impacted communities and with first-hand experience recovering after disasters. We work to ensure that federal disaster housing recovery efforts reach all impacted households, including those with the lowest incomes, who are often hardest hit by disasters and have the fewest resources to recover.

One of the top priorities after a disaster is making sure that all displaced families have a safe, accessible, and affordable place to live while they recover. FEMA’s experiment with the 2017 disaster recovery demonstrates, however, that state-administered programs are ill equipped to meet the needs of low income disaster survivors.

State-administered disaster programs used after the 2017 disasters have been plagued by significant delays and gaps in services. The General Land Office in Texas, for example, has struggled to design, implement, and stand up housing assistance programs after Hurricane Harvey, leaving [too many households](#) without the help they need to get back on their feet. The state had no prior experience in operating similar programs and did not have existing relationships with housing providers. The GLO also struggled to increase staffing necessary to deploy programs and to contract with local governments to carry out the programs. As a result, Texas has been unable to reach those households most in need of assistance. FEMA reports that only a few hundred families are anywhere in the pipeline to be served through Texas' state-administered disaster rental assistance programs.

State-administered programs have also failed to address the housing needs of displaced survivors. After Hurricane Maria, for example, survivors were displaced to nearly 40 states across the nation. While DHAP should have been activated to provide housing assistance across state boundaries through HUD's 3,800 local public housing agencies, state-administered programs in Puerto Rico have been unable to serve these households. According to FEMA, the government of Puerto Rico would have had to negotiate separate agreements with each host state to provide disaster housing assistance to displaced survivors – a far more time-consuming and bureaucratic process than simply activating DHAP. As a result, far too many Puerto Rican families displaced to other states are now living in precarious housing situations, and some states have already reported an increase in homelessness.

We are deeply concerned that the Disaster Recovery Reform Act fails to address these pressing concerns, ensuring that the failures of the 2017 disaster recovery efforts will likely be repeated. As outlined below, significant changes to Section 11 and Section 610 are needed to provide oversight and safeguards to ensure that the housing needs of low income survivors are met. For these reasons, we urge you to omit Section 610 of H.R. 4 and Section 11 of S. 3041 from any final legislation.

If you have any questions, please feel free to contact Sarah Mickelson, NLIHC's Senior Policy Director, at [smickelson@nlihc.org](mailto:smickelson@nlihc.org) or 202-507-7447.

Sincerely,



Diane Yentel  
President and CEO  
National Low Income Housing Coalition

## ***Concerns with Section 610 and Section 11 of the Disaster Recovery Reform Act***

Disaster housing programs play a critical role in addressing the needs of low and moderate income disaster survivors and their communities. However, the Disaster Housing Recovery Coalition (DHRC) is deeply concerned that without safeguards and protections, these scarce resources may not reach the people and communities that face the greatest needs. This could put vulnerable populations – including low income seniors, people with disabilities, families with children, veterans, and others – at risk of evictions, and in worst cases, homelessness.

### **Applications to Administer Disaster Housing Programs**

#### **Housing Strategy**

While the DHRC appreciates that the Senate bill requires states to submit to the President for approval a “housing strategy outlining the approach of the state...to meet the disaster-related sheltering and housing needs,” changes must be made to provide basic protections to ensure that this strategy meets the housing needs of all disaster survivors, including those with the lowest incomes. As written, there are no standards that state housing strategies must meet, and no standards for approval or disapproval.

For this reason, legislation allowing states to administer disaster housing programs should set minimum requirements for what must be included in state housing strategies, including, but not limited to: detailed information on the specific programs the state will implement, eligibility for each program, how the programs will be administered, and how the use of such funds will address the housing needs of the most impacted individuals and distressed areas.

The bill also provides no standards for when a president must disapprove a housing strategy. Any bill should direct the president to disapprove a housing strategy or substantial amendment to if the strategy does not:

- Outline a credible case for why the state the capacity to implement these programs.
- Include meaningful opportunities for public input, including a 30-day comment period;
- Provide for an equitable allocation of resources between homeowners, renters, and people experiencing homelessness, based on FEMA data assessments and other available data;
- Include a credible plan to ensure compliance with federal and state fair housing and civil rights laws;
- Include an appeals process that ensures due process for survivors that includes ultimate access to a court of record;
- Provide for robust data transparency of all data on state-administered programs and how resources are spent in a manner allowing for meaningful analysis, while protecting privacy interests, and ensuring that the needs of protected classes are met.
- Provide for comprehensive and publicly accessible websites of that make available information regarding all disaster housing program activities assisted with federal and state funds, which information shall include full and unredacted copies of documents.

This section does not limit states to activities outlined in its housing strategy.

This section also does not indicate what happens if and when state's housing strategy does not meet basic standards.

### Data Transparency

It is critical that any legislation authorizing states to administer disaster housing programs requires states to be publicly transparent. All data on state-administered programs and how resources are spent must be made publicly available in a manner allowing for meaningful analysis while protecting privacy interests and ensuring that the needs of protected classes are met.

States should be required to share all data collected or analyzed with the public – including data on program outcomes and how resources are spent. This would have several benefits: Access to the full scope of data collected and analyzed on program outcomes and data on how resources are spent are necessary to ensure that the use of public funds is equitably balanced among homeowners, renters, and people experiencing homelessness and to make sure that state-administered housing programs are targeted to the most affected areas and the lowest-income households. Making data public can help identify gaps in services, as well as reforms needed for future disaster recoveries. It would also decrease the number of Freedom of Information Act (FOIA) requests that state agencies are asked to comply with, which have overwhelmed staff.

To allow meaningful analysis by the public and protect the privacy concerns of individuals, this data must be provided on a (1) block group or (2) census tract level. Currently, federal disaster recovery data is provided to the public on a zip code level, which is not granular enough to allow meaningful analysis.

Moreover, states should collect and make public data disaggregated by race, geography, and all protected classes of individuals under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Americans with Disabilities Act of 1990, the Fair Housing Act, the Civil Rights Act of 1964, and other civil rights and nondiscrimination protections.

These standards must also be required of all subgrantees of state-administered funds.

### Comprehensive and Publicly Accessible Websites

Legislation should require state housing strategies to include an adequate procedure to ensure the state maintains comprehensive and publicly accessible websites that make available information regarding all disaster housing program activities assisted with federal and state funds, which information shall include full and unredacted copies of all requests for qualification for assistance or for procurement with such funds, however styled; all responses to such requests; the identity of any individual or entity that reviews, evaluates, scores, or otherwise influences or determines the disposition of such requests; all reports, however styled, containing the reviewing individual or entity's scores, findings; and conclusions regarding such requests; and any resulting contract, agreement, or other disposition of such requests.

### **Ability to Manage**

The bill does not provide any standards of how the president should determine whether the state has a "demonstrated ability" to manage the program.

At a minimum, the statute should include as evidence of a state's demonstrated ability: (1) state housing programs currently in operation that are effectively similar to those proposed under its application; (2) state practices of collecting and making public data on state housing programs currently in operation and how resources are spent in a manner allowing for meaningful analysis while protecting privacy interests; (3) the state's history of compliance with federal and state fair housing and civil rights laws; (4) the state's practices of maintaining comprehensive and publicly accessible websites that make data available regarding state housing programs currently in operation; (5) appeals processes currently in operation that ensure due process.

The statute should also direct the president to disapprove an application if the state does not have the "demonstrated ability" to manage the programs.

### **Plan In Effect**

It is unclear how the "plan" referenced in Subsection (3)(B)(iii) is different than the housing strategy that states must submit to the president for approval. More specificity is needed to explain what this section means and to ensure that housing plans meet the housing needs of all disaster survivors, including those with the lowest incomes.

For this reason, legislation allowing states to administer disaster housing programs should set minimum requirements for what must be included in housing plans, including, but not limited to the same criteria listed above under "Housing Strategy."

### **State Disaster Housing Task Force**

While DHRC supports the establishment of a State Disaster Housing Task Force, this task force should be activated and its formal recommendations should be issued, made publicly available, and incorporated into the state housing strategy before the state receives an approval to administer disaster housing programs. As it is currently written, the expertise of the State Disaster Housing Task Force will have no bearing on the state housing strategy.

Moreover, the statute should specify the particular areas of expertise that members of the State Disaster Housing Task Force must have, including expertise in fair housing and civil rights laws, housing and homelessness, and housing for people with the lowest incomes or for people with special needs, including, but not limited to people with disabilities.

### **Quality Assurance**

In addition to policies, procedures, and internal controls to prevent and detect waste, fraud, abuse, and program mismanagement, the bill should expressly direct the President to institute policies, procedures, and internal controls to ensure that programs fulfill their purposes and eligible families and individuals receive the full amount of assistance for which they were eligible.

While the bill provides the president with the authority to withdraw approval of a state that is not administering the program in a "manner satisfactory to the president," it does not provide any requirements of when the president must withdraw approval.

At a minimum, bill language should state that the president must withdraw approval under the following circumstances:

- If programs are designed, implemented or administered in a discriminatory way;
- If there are significant gaps in services, where state-administered programs are not meeting the full needs of all survivors.

The bill provides no course of action for when a president withdraws approval. There must be a procedure to ensure that the needs of survivors are met.

## **Audits**

As currently written, the bill provides no guidance to the Office of Inspector General (OIG) about the scope of its audits and oversight. It is critically important for any legislation to specify that in conducting audits, reviews, oversight, evaluation, and investigations, in addition to activities designed to prevent and detect waste, fraud, and abuse, the Inspector General should review state disaster housing programs to ensure such programs fulfill their purposes, eligible families and individuals receive the full amount of assistance for which they were eligible, and states have the capacity to administer these programs.

Moreover, legislation should direct FEMA to oversee and collect data on state-administered programs disaggregated by race and geography and report to Congress on its findings. Data should include all protected classes covered by the *Stafford Act*, the *Americans with Disabilities Act*, *Fair Housing Act*, *Title VI*, and other civil rights protections. This data should also be made available to the public.

## **Report on Effectiveness**

Subsection G directs the OIG to report on the effectiveness of state-administered programs, including the speed of recovery and whether the state had the capacity to administer this section, and to make recommendations to Congress.

This section should be expanded to include an assessment of whether the state-administered programs fulfilled its purpose and that all eligible families and individuals received the full amount of assistance for which they were eligible.

## **Report on Incentives**

We are deeply concerned that Subsection H does not provide enough guidance on the incentive structures should be designed. At a minimum, the statute should require the FEMA administrator to ensure that any proposed incentives would not result in the loss of services or benefits to disaster survivors and that under such incentives all eligible families and individuals receive the full amount of assistance for which they were eligible.

## **Waiver of Notice and Comment Rulemaking**

Subsection J allows the FEMA administrator to waive notice and rulemaking, despite the fact that this legislation would fundamentally change how the federal government responds to disasters. Given the significant nature of these changes, and the possible risks to disaster survivors – including evictions and, in worst cases, homelessness – the bill should require FEMA to undergo notice and comment rulemaking to gather vital public input.