

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID: FEMA–2023–0003]

RIN 1660–AB07

Individual Assistance Program Equity

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is publishing this interim final rule (IFR) amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program.

DATES:

Effective Date: This rule is effective March 22, 2024.

Applicability Date: This rule applies to Emergencies and Major Disasters declared on or after March 22, 2024.

Comment Date: Comments must be received no later than July 22, 2024.

ADDRESSES: You may submit comments, identified by Docket ID: FEMA–2023–0003, via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT:

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Table of Abbreviations

- ADA—Americans with Disabilities Act
- APA—Administrative Procedure Act
- CATEX—Categorical Exclusions
- CDBG—DR—Community Development Block Grant Disaster Recovery Program

- CEQ—Council on Environmental Quality
- CFR—Code of Federal Regulations
- CNA—Critical Needs Assistance
- CPI—U—Consumer Price Index for All Urban Consumers
- CRA—Congressional Review of Agency Rulemaking Act
- CTHA—Continued Temporary Housing Assistance
- DCM—Disaster Case Management
- DHAP—Disaster Housing Assistance Program
- DHS—Department of Homeland Security
- DHS—OIG—Department of Homeland Security’s Office of Inspector General
- DMA2K—Disaster Mitigation Act of 2000
- DRC—Disaster Recovery Center
- DRRA—Disaster Recovery Reform Act of 2018
- EA—Environmental Assessment
- EDW—Enterprise Data Warehouse
- EIS—Environmental Impact Statement
- ESA—Endangered Species Act
- FCO—Federal Coordinating Officer
- FDA—Federal Disaster Assistance Administration
- FEMA—Federal Emergency Management Agency
- FIT—Failed Income Test
- FmHA—Farmers Home Administration
- FMR—Fair Market Rent
- FVL—FEMA Verified Loss
- FY—Fiscal Year
- GAO—Government Accountability Office
- GFIP—Group Flood Insurance Policy
- GSA—U.S. General Services Administration
- HA—Housing Assistance
- HUD—U.S. Department of Housing and Urban Development
- IA—Individual Assistance
- IAPPG—Individual Assistance Program and Policy Guide
- IFG—Individual and Family Grant Program
- IFR—Interim Final Rule
- IHP—Individuals and Households Program
- IRS—Internal Revenue Service
- JFO—Joint Field Office
- LEP—Limited English Proficiency/Limited English Proficient
- LER—Lodging Expense Reimbursement
- LI—Lower Income
- MLR—Multifamily Lease and Repair
- NEMIS—National Emergency Management Information System
- NEPA—National Environmental Policy Act of 1969
- NFIA—National Flood Insurance Act of 1968, as Amended
- NFIP—National Flood Insurance Program
- NHPA—National Historic Preservation Act
- NPRM—Notice of Proposed Rulemaking
- OIG—Office of Inspector General
- OMB—Office of Management and Budget
- ONA—Other Needs Assistance
- PHC—Permanent Housing Construction
- PHP—Permanent Housing Plan
- PIA—Privacy Impact Assessment
- PKEMRA—Post-Katrina Emergency Management Reform Act of 2006
- RA—Regional Administrator
- RA—Rental Assistance
- RFA—Regulatory Flexibility Act of 1980
- RFI—Request for Information
- RIA—Regulatory Impact Analysis
- RPFVL—Real Property FEMA Verified Loss
- SBA—Small Business Administration
- SFHA—Special Flood Hazard Area

SRIA—Sandy Recovery Improvement Act of 2013
 Stafford Act—Robert T. Stafford Disaster Relief and Emergency Assistance Act, as Amended
 STT—State, Tribal, or Territorial Treasury—U.S. Department of Treasury
 TSA—Transitional Sheltering Assistance
 USGCRP—U.S. Global Change Research Program
 Welfare Reform Act—Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996

I. Public Participation

We encourage you to participate in this rulemaking by submitting comments and related materials. We will consider all comments and materials received during the comment period.

If you submit a comment, identify the agency name and the Docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. All submissions will be posted, without change, to the Federal e-Rulemaking Portal at www.regulations.gov and will include any personal information you provide. Therefore, submitting this information makes it public. For more about privacy and the docket, visit <https://www.regulations.gov/document?D=DHS-2018-0029-0001>.

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov>.

II. Executive Summary

The Federal Emergency Management Agency (FEMA) is publishing this interim final rule (IFR) amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a

Small Business Administration (SBA) loan as a condition of eligibility for Other Needs Assistance (ONA); and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

III. Background

A. Individual Assistance

FEMA is responsible for administering and coordinating the Federal Government response to Presidentially declared disasters pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), Public Law 93–288, 42 U.S.C. 5121 *et seq.* When a catastrophe occurs in a State or affects the members of a Tribal community, the State's Governor or Tribal Chief Executive may request a Presidential declaration of a major disaster pursuant to Section 401 of the Stafford Act. 42 U.S.C. 5170(a), (b); 44 CFR 206.36(a). Such a request must be based on a finding that the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the State or Tribal government and the affected local governments and that Federal assistance is necessary. 42 U.S.C. 5170. The President's declaration of a disaster will designate the areas within a State, or for an Indian Tribal government, where Federal assistance may be made available (including local governments such as counties, parishes, or Tribal lands, if appropriate) and identify the types of assistance that are authorized under the declaration, 44 CFR 206.40(a), although other types may be authorized later, 44 CFR 206.40(c). A major disaster declaration may authorize all, or only particular types of, supplemental Federal assistance requested by the Governor or Tribal Chief Executive. 44 CFR 206.40(a).

One of those types is "Federal Assistance to Individuals and Households" governed by section 408 of the Stafford Act, which authorizes FEMA to provide financial assistance and direct services to individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable

to meet such expenses or needs through other means. 42 U.S.C. 5174. FEMA refers to this assistance as the Individuals and Households Program (IHP).

Section 408 categorizes IHP into two provisions of assistance: Housing Assistance (HA) and ONA. Housing Assistance is available for individuals and households who are displaced from their pre-disaster primary residences¹ or whose pre-disaster residences are rendered uninhabitable or, for individuals with disabilities, inaccessible or uninhabitable, as a result of damage caused by a major disaster. 42 U.S.C. 5174(b). FEMA may provide those individuals: (1) temporary housing assistance in the form of financial assistance (funds provided to an individual to reimburse for hotels, motels, or other short-term lodging (referred to as Lodging Expense Reimbursement, or LER) or to rent alternate housing accommodations while the individual is displaced from their primary residence) or direct assistance (FEMA may provide the individual temporary housing units or FEMA may lease and repair multifamily rental properties (referred to as Multifamily Lease and Repair, or MLR) for the purpose of housing individuals); (2) financial assistance to repair owner-occupied private residences, utilities, and residential infrastructure damaged by a major disaster to a safe and sanitary living or functioning condition (referred to as home repair assistance); (3) financial assistance to replace owner-occupied private residences damaged by a major disaster (referred to as home replacement assistance); and (4) in rare circumstances, financial or direct assistance to construct permanent or semi-permanent housing (referred to as Permanent Housing Construction, or PHC). 42 U.S.C. 5174(c).

ONA is financial assistance FEMA makes available to individuals and households adversely affected by a disaster to address their necessary expenses and serious needs.² FEMA

¹ Per 44 CFR 206.111 "primary residence" means the dwelling where the applicant normally lives, during the major portion of the calendar year; or the dwelling that is required because of proximity to employment, including agricultural activities, that provide 50 percent of the household's income. Home Repair Assistance and Home Replacement Assistance are not available for non-traditional forms of housing that do not have structural elements to assess and calculate a repair or replacement award (*e.g.*, tents). By policy, FEMA defines non-traditional housing as a form of dwelling void of structural floor, structural walls, and structural roof. See page 62 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iapppg-1.1.pdf.

² 42 U.S.C. 5174(e).

awards two types of ONA: SBA-dependent, which provides assistance for personal property, transportation, and Group Flood Insurance Policies (GFIPs); and non SBA-dependent ONA, which provides funeral assistance, medical and dental assistance, childcare assistance, moving and storage assistance, critical needs assistance, cleaning and sanitizing assistance as well as assistance for miscellaneous items.³ To obtain SBA-dependent ONA, FEMA currently requires individuals above a certain income level, as identified in SBA-provided income test tables, to apply for a disaster loan from SBA; SBA-dependent ONA includes Personal Property Assistance, Transportation Assistance, and GFIP.⁴ If those individuals were denied for a loan by the SBA or the amount received did not satisfy their total necessary expenses, FEMA could provide them with assistance for SBA-dependent types of ONA. Prior to this rule's revisions, these provisions were located in 44 CFR 206.119(a). FEMA did not require application to the SBA for individuals below the relevant income threshold or for other types of ONA.⁵

As detailed further below, section 1212 of the Disaster Recovery Reform Act of 2018, Public Law 115–254, 132 Stat. 3448 (Oct. 5, 2018) amended Section 408(h) to establish separate caps for each category of assistance. Currently, the maximum amount of IHP HA and ONA financial assistance for any single emergency or major disaster is \$42,500.⁶ These financial caps do not apply to the provision of financial assistance to rent alternate housing accommodations or necessary expenses for individuals with disabilities. 42 U.S.C. 5174(h).⁷ The Federal cost-share under IA is 100 percent for HA and 75

percent for ONA (with the State responsible for the 25 percent non-Federal share). 42 U.S.C. 5174(g).

FEMA may only provide housing assistance for a period not to exceed 18 months from the date of the major disaster declaration, although it may extend this period of assistance if it determines that due to extraordinary circumstances an extension would be in the public interest. 42 U.S.C. 5174(c)(1)(B)(iii); 44 CFR 206.110(e). FEMA is required to ensure it has systems in place to allow it to verify the identity and address of recipients for assistance, minimize the risk of making duplicate or fraudulent payments, collect any duplicate payments, provide instructions to individuals detailing the proper use of assistance, and conduct an expedited and simplified review and appeal process for individuals denied assistance. 42 U.S.C. 5174(i).

FEMA is required to ensure that the disaster assistance it provides is not a duplication of benefits with any other program or from insurance or any other source. 42 U.S.C. 5155(a). FEMA has set forth a regulatory delivery sequence at 44 CFR 206.191(d) which was further clarified in its Individual Assistance Program and Policy Guide (IAPPG)⁸ to establish the order in which disaster relief agencies and organizations provide assistance to disaster survivors and ensure its assistance does not result in a prohibited duplication of benefits. Currently, the delivery sequence is, in order of delivery: (i) Volunteer Agencies and Mass Care; (ii) Insurance; (iii) FEMA Housing Assistance; ⁹ (iv) FEMA/State/Territory/Tribal Government ONA; ¹⁰ (v) SBA Income Evaluation (Repayment Capability) which will either result in an SBA referral or FEMA/State ONA; ¹¹ and (vi) Unmet Needs—Volunteer Agencies.¹²

⁸ See page 10 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappp-1.1.pdf.

⁹ This includes both financial and direct Housing Assistance. For financial, this encompasses Lodging Expense Reimbursement, Rental Assistance, Repair Assistance, and Replacement Assistance, and for direct, this includes Multifamily Lease and Repair, Transportable Temporary Housing Units, Direct Lease, and Permanent Housing Construction.

¹⁰ This includes the following types of non-SBA-dependent ONA: Funeral Assistance, Medical and Dental Assistance, Child Care Assistance, Moving and Storage Assistance, Assistance for Miscellaneous Items, and, under this rule, Critical Needs Assistance and Clean and Sanitize Assistance.

¹¹ SBA-dependent ONA includes Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policy.

¹² See page 10 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappp-1.1.pdf.

B. Impacts of Climate Change on Disaster Assistance

Climate change—changes in the average or variability of weather conditions that persist over long time scales (e.g., multiple decades or longer)¹³—and related global changes can threaten human health; the economy; the built environment; and the natural world, including wildlife, plants, and the ecosystems upon which they rely.¹⁴ Many scientists, governments, and organizations have researched climate change, documented its experienced effects, projected potential effects, and undertaken activities to respond to it.¹⁵ Scientists have demonstrated the effects of climate change are already realized around the world, and they project that climate changes will intensify in future decades.¹⁶

The issue of climate change impacts and implementing solutions is incredibly challenging and complex. Climate change poses a direct threat to the security of our Nation in the form of increasingly severe and unpredictable storms, flooding, and wildfires that disproportionately impact some of

¹³ C.R.S. Rep 46694, Climate Change Adaptation: Department of the Interior, at 1 (2021) available at <https://crsreports.congress.gov/product/pdf/R/R46694>; for example, see definitions of climate and climate change at U.S. Global Change Research Program (USGCRP), “Glossary,” at <https://www.globalchange.gov/climate-change/glossary>, and Intergovernmental Panel on Climate Change, “Definition of Terms Used Within the Data Distribution Centre: Glossary,” at https://www.ipcc-data.org/guidelines/pages/glossary/glossary_c.html. This report does not address the causes of multidecadal climate change. For a discussion of climate change science, see CRS Report R43229, Climate Change Science: Key Points, by Jane A. Leggett. For additional background on climate change, see CRS In Focus IF11446, Weather and Climate Change: What's the Difference? by Jane A. Leggett.

¹⁴ Alexa Jay *et al.*, “Overview,” in Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, vol. II, eds. David Reidmiller *et al.* (Washington, DC: U.S. USGCRP, 2018), pp. 33–71 (hereinafter, assessment cited as Reidmiller *et al.*, Impacts, Risks, and Adaptation).

¹⁵ For example, the USGCRP is a Federal program mandated by Congress through P.L. 101–606 with the stated purpose of developing and coordinating “a comprehensive and integrated United States research program which will assist the Nation and the world to understand, assess, predict, and respond to human-induced and natural processes of global change.” For more information, see USGCRP, “About USGCRP,” at <https://www.globalchange.gov/about>. The IPCC “is the United Nations body for assessing the science related to climate change” (IPCC, “About the IPCC,” at <https://www.ipcc.ch/about/>).

¹⁶ For example, see IPCC, “Synthesis Report of the IPCC Sixth Assessment Report (AR6), Summary for Policymakers” at 4–6, 12–13 (Mar. 20, 2023), <https://www.ipcc.ch/report/sixth-assessment-report-cycle/>; Economic Report of the President at 275, 280, 282–84 (March 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf>.

³ See page 146 of FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide, Version 1.1 (IAPPG 1.1). https://www.fema.gov/sites/default/files/documents/fema_iappp-1.1.pdf.

⁴ Applicants whose pre-disaster home was located in a Special Flood Hazard Area and received assistance for insurable flood damaged real or personal property may be considered for a FEMA-purchased GFIP certificate, which provides 3 years of flood insurance coverage.

⁵ The SBA provides FEMA with the relevant income threshold information on a yearly basis. The income threshold used is determined by the individual's household situation and accounts for where the individual resides and the number of dependents living in the household.

⁶ See 88 FR 72520, Oct. 20, 2023. Section 408 caps the amount of assistance individuals may receive under IA for HA to \$25,000 and for ONA to \$25,000. These caps are adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers (CPI-U) published by the Department of Labor.

⁷ DRRR amended this section to exclude financial housing assistance and necessary expenses for individuals with disabilities from those caps.

America's most vulnerable communities.¹⁷ Climate change disasters, such as heatwaves, can take place over longer time scales or broader geographic areas than other more acute disruptions. Other impacts, such as "nuisance flooding" are less intense but more chronic. This requires us to think differently about emergency response.¹⁸

The Nation is no stranger to historic and costly hurricane seasons. The 2017 Atlantic hurricane season was one of the most active in U.S. history; between April and November, there were 17 named storms, with 10 becoming hurricanes.¹⁹ As of October 9, 2017, FEMA received more applications for the Individuals and Households Program than in hurricanes Katrina, Rita, Wilma and Sandy combined. By November 30, 2017, FEMA registered more than 4.7 million households for the Individuals and Households Program.²⁰ These hurricanes were accompanied by devastating wildfires in California that burned for months. The President's 2023 Economic Report²¹ recounts that Hurricane Ian struck Florida in September 2022, causing a coastal storm surge of up to 18 feet and widespread inland flooding; it will end up being one of the costliest storms on record, with losses to residential and commercial property estimated at between \$36 billion and \$62 billion.²² Climate change has elevated the need for the delivery of efficient disaster services and increased the need for IHP assistance, particularly for socially vulnerable populations, which are disproportionately impacted.²³ In

response and in a step towards equity, the regulatory changes in this rule seek to add efficiency in the delivery of assistance to survivors by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. For example, the changes seek to streamline documentation requirements, thus easing entry into the Individuals and Households Program. Each regulatory change to follow is influenced by the growing emergency needs of citizens across the Nation, which has meant the trend of growing FEMA participation and responsibility for response.

Presently coastal areas globally face land loss, repeat flooding, and storm surges, affecting coastal populations.²⁴ Extreme weather events are increasing in intensity as well as frequency.²⁵ Sustained changes in climate have exacerbated the physical risks and threats coastal communities are exposed to every day.

As climate change threatens to bring more extreme events like increased floods, sea level rise, and intensifying droughts and wildfires, is our responsibility to better prepare and support communities, families, and businesses before, during, and after disasters. Here, in light of the increasing climate-related disasters facing the Nation, FEMA issues amendments to the Individuals and Households Program to ensure that it meets the increasing need for assistance to individuals and families recovering from disasters.

C. Equity in Individual Assistance

1. Income Project

There have been numerous assertions over the years that IHP disproportionately benefits higher income households over lower income households.²⁶ In 2019, FEMA undertook

income, minority, no high school diploma, and 65 or older. See *Id.* at 4, Table ES.1—Socially Vulnerable Groups Analyzed in this Report.

²⁴ Maldonado, J., Wang, I.F.C., Eningowuk, F. *et al.* Addressing the challenges of climate-driven community-led resettlement and site expansion: knowledge sharing, storytelling, healing, and collaborative coalition building. *J Environ Stud Sci* 11, 294–304 (2021), <https://doi.org/10.1007/s13412-021-00695-0>.

²⁵ Maldonado, J., Wang, I.F.C., Eningowuk, F. *et al.* Addressing the challenges of climate-driven community-led resettlement and site expansion: knowledge sharing, storytelling, healing, and collaborative coalition building. *J Environ Stud Sci* 11, 294–304 (2021), <https://doi.org/10.1007/s13412-021-00695-0>.

²⁶ See The Hill, *Disaster Housing Recovery: Time for Congress to Act* (November, 26, 2018) ("FEMA consistently creates barriers that prevent low-income people from receiving assistance . . . FEMA is unwilling and incapable of handling the

an analysis to determine if this was true (Income Project).²⁷ FEMA analyzed 5 years of disaster data (January 1, 2014–December 31, 2018) which comprised 4.8 million registrations.

In July 2019, FEMA completed Phase 1 of the project.²⁸ Phase 1 results showed that of the FEMA registrants during that time period, 62 percent were "lower income," 10 percent were "middle income," and 28 percent were "higher income."²⁹ FEMA concluded generally that lower income households were more likely to receive an award, or, in other words, have a higher award *rate* under the Individuals and Households Program, but that the average award *amount* was lower for those households than for higher income households.

The data proved to be more varied at the assistance type level. FEMA compared the rate of applicants referred to IHP for further consideration,³⁰ award

housing needs of low-income disaster survivors,") <https://thehill.com/opinion/civil-rights/418175-disaster-housing-recovery-time-for-congress-to-act> (last visited Nov. 29, 2021); Texas Housers, *Low-income Households Disproportionately Denied by FEMA is a Sign of a System that is Failing the Most Vulnerable* (November 30, 2018) ("Homeowner households with fewer financial resources were more likely to be denied FEMA assistance after Harvey,") <https://texashousers.org/2018/11/30/low-income-households-disproportionately-denied-by-fema-is-a-sign-of-a-system-that-is-failing-the-most-vulnerable/> (last visited Nov. 29, 2021); NPR, *How Federal Disaster Money Favors the Rich* (March 5, 2019) ("Disasters, and the federal aid that follows, disproportionately benefit wealthier Americans") <https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich> (last visited Nov. 29, 2021).

²⁷ FEMA, *Individuals & Households Program Survivor Income Analysis* (2019) and *Survivor Income Analysis: Phase 2—Drivers of variance in IHP assistance across income groups* (2019). See Supporting & Related Material tab on www.regulations.gov under Docket ID: FEMA–2023–0003.

²⁸ For Phase 1 of the Income Project, the average repair/replacement award size for lower income owners is \$2,165 while the average award size for higher income owners is \$4,139. For Personal Property Assistance, the average award size for lower income owners is \$819, while the average award size for higher income owners is \$2,093. For Personal Property Assistance, the average award size for lower income renters is \$900, while the average award size for higher income renters is \$2,110.

²⁹ FEMA, *Individuals & Households Program Survivor Income Analysis* (2019) and *Survivor Income Analysis: Phase 2—Drivers of variance in IHP assistance across income groups* (2019). See Supporting & Related Material tab on www.regulations.gov under Docket ID: FEMA–2023–0003. FEMA defines Lower income as a combination of low, very low, and extremely low income. As defined by HUD, Extremely Low income means Income at or below the national poverty threshold or 30% of the Area Median Income, whichever is less; Very Low income means Income between >30% and 50% of AMI; and Low Income means Income between >50% and 80% of AMI. (See Page 5 of the Income Analysis).

³⁰ The term "referred to IHP" reflects terminology FEMA uses in the implementation of IHP.

¹⁷ Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States, <https://nca2018.globalchange.gov/#sf-2>.

¹⁸ DHS Strategic Framework for Addressing Climate Change (Oct. 21, 2021), https://www.dhs.gov/sites/default/files/publications/dhs_strategic_framework_10.20.21_final_508.pdf.

¹⁹ 2017 Hurricane Seasons FEMA After-Action Report, at v (July 12, 2018), 2017 Hurricane Season FEMA After-Action Report.

²⁰ 2017 Hurricane Seasons FEMA After-Action Report, at 39 (July 12, 2018), 2017 Hurricane Season FEMA After-Action Report.

²¹ See Economic Report of the President at 282 (March 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf>.

²² CoreLogic, "CoreLogic Analysis Shows Final Estimated Insured and Uninsured Damages for Hurricane Ian to Be Between \$41 Billion and \$70 Billion" (2022), www.corelogic.com/press-releases/corelogic-analysis-shows-final-estimated-insured-and-uninsured-damages-for-hurricane-ian-to-be-between-41-billion-and-70-billion/. Paquette, D., and M. Kornfield, "Ian Is Florida's Deadliest Hurricane Since 1935; Most Victims Drowned" (Oct. 5, 2022), <https://www.washingtonpost.com/nation/2022/10/05/hurricane-ian-florida-victims/>.

²³ See, e.g., EPA, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts*, (September 2021), <https://www.epa.gov/cira/social-vulnerability-report>. The EPA's report analyzed four socially vulnerable groups: low

rates, and award amounts of lower income households to higher income households for home repair/replacement financial assistance, rental housing financial assistance, personal property financial assistance, direct

housing assistance, and transitional shelter assistance.

The data received indicates that lower income households were referred for assistance at a higher *rate* than were higher income households for all types

of assistance except direct housing but were awarded assistance in lower *amounts* for repair and replacement assistance and personal property. Specifically, FEMA found the following:

Table 1— Percentages of Lower Income (LI) as Compared to Higher Income Households for Referral Rates, Award Rates, and Award Amounts

	LI Referral Rate	LI Award Rate	LI Award Amounts
Repair/Replacement	+8%	+49%	(48%)
Rental	+8%	(4%)	+2%
Personal Property	+10x ³¹	(21%)	(62%)
Direct Housing	(45%)	+80%	+3%
Transitional Shelter Assistance	Similar ³²	+84%	+67%

In November 2019, FEMA completed Phase 2 of the project in which it focused on additional analysis of the data to determine the cause of the variance in results between lower and higher income applicants. FEMA found that: (1) higher income households were less likely to receive an award for home repair/replacement assistance because they were more likely to have insurance which covered their losses; (2) lower income households received lower award amounts for home repair/replacement because they had lower Real Property FEMA Verified Loss (RPFVL),³³ smaller homes, and were more likely to live in mobile homes which may be smaller or less expensive than non-mobile homes; (3) lower income households were less likely to receive an award for rental assistance because they were more likely to be found ineligible as a result of their home being habitable than higher income households; (4) lower income households were less likely to be eligible for personal property assistance, but the results were inconclusive and FEMA could not identify the primary driver of the difference; (5) lower income households were likely to have

a lower award amount for personal property assistance but FEMA could not account for the reason why, although home size might be a factor; and (6) using a RPFVL per square foot threshold instead of a flat RPFVL threshold for direct housing would increase the proportion of lower income owners and decrease the proportion of higher income owners who qualified for direct housing.³⁴

2. Equity RFI—IA Program Equity Responses to Comments

On January 20, 2021, President Joseph R. Biden signed Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”³⁵ On January 20, 2021, President Joseph R. Biden signed Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.”³⁷ On January 27, 2021, President Joseph R. Biden signed Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad.”³⁸ And, on February 16, 2023, President Joseph R. Biden signed Executive Order 14091, “Further Advancing Racial Equity and Support

for Underserved Communities Through the Federal Government.”³⁹

Consistent with those Executive Orders and to gain additional information on the issues identified in the 2019 income project, on April 22, 2021, FEMA published a Request for Information (RFI) on FEMA Programs, Regulations, and Policies.⁴⁰ FEMA sought public input on its programs, regulations, collections of information, and policies for the agency to ensure that its programs, regulations, and policies contain necessary, properly tailored, and up-to-date requirements that effectively achieve FEMA’s mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; bolstering resilience from the impacts of climate change, particularly for those disproportionately impacted by climate change; and environmental justice.

FEMA held public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments on FEMA’s programs.⁴¹ All relevant comments received in response to the request for information, including those received during the public

Applicants fill out registrations and their answers will determine some threshold eligibility factors and what types of assistance they may need or what unmet needs they have. At that point, the eligible applications are routed to the FEMA employees who process each type of assistance to make further eligibility determinations.

³¹ This represents “10 times” or “10x more likely” when it comes to personal property referrals for lower income applicants.

³² The original analysis did not include a specific breakdown for Transitional Sheltering Assistance (TSA) referral rates, but FEMA believes the rate to be in line with referral rates for non-lower-income TSA applicants.

³³ RPFVL is the total dollar amount of IHP eligible disaster-caused damage to real property as verified by FEMA.

³⁴ For more information on FEMA’s Direct Housing Assistance see page 93 of IAPPG 1.1.

https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³⁵ Section 2.b. of Executive Order 13985 defines “underserved communities” as populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life, as exemplified by the list in the definition of “equity.” Section 10.a. of Executive Order 14091 defines “equity” to mean the consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to communities that often have been denied such treatment, such as Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; LGBTQI+ persons; persons with disabilities; persons who live in rural areas; persons who live in United States Territories; persons otherwise

adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities.

³⁶ E.O. 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” 86 FR 7009, Jan. 25, 2021.

³⁷ E.O. 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” 86 FR 7037, Jan. 25, 2021.

³⁸ E.O. 14008, “Tackling the Climate Crisis at Home and Abroad,” 86 FR 7619, Feb. 1, 2021.

³⁹ E.O. 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” 88 FR 10825, Feb. 22, 2023.

⁴⁰ 86 FR 21325, Apr. 22, 2021.

⁴¹ See “Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period,” 86 FR 30326, June 7, 2021.

meetings, have been posted to the public rulemaking docket on the Federal eRulemaking portal at <https://www.regulations.gov/document/FEMA-2021-0011-0001/comment>.

Comments on the RFI that are relevant to the IHP issues addressed in this rule are discussed below. Comments regarding other IA programs outside of IHP, such as Disaster Legal Services, other FEMA program areas, such as Public Assistance, or that were otherwise not directly relevant to this rule, are not discussed.

Registration Period

A few commenters raised issues regarding the registration deadline for FEMA programs, arguing that the current deadline posed difficulties for applicants—particularly for applicants from underserved populations—and should be extended.⁴² One commenter stated applicants may have a wide variety of valid reasons for registering late and that requiring documentation to justify the late filing is inappropriate and unnecessary.⁴³ This commenter requested all registrations received during the post-deadline grace period be accepted without additional documentation.⁴⁴ Another commenter recommended removing the registration deadline altogether, saying that it was arbitrary and discouraged disaster survivors from registering.⁴⁵ This commenter also noted that disaster survivors may not realize they need assistance immediately and that even once they do, it may be difficult for them to meet the registration deadlines due to the impacts of a disaster, such as being displaced or losing telephone service. Finally, this commenter argued that FEMA should not impose a registration deadline that ends before the period of assistance for the disaster ends.

We do not agree that a registration deadline discourages disaster survivors from registering. Rather, it provides clear submission timeframes to help disaster applicants.

FEMA's regulations, at 44 CFR 206.112, provide that the standard registration period is 60 days following the date that the President declares an incident a major disaster or an emergency. FEMA may extend the

registration period when the State⁴⁶ requests more time to collect registrations from the affected population. FEMA may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States. After the standard or extended registration period ends, FEMA accepts late registrations for an additional 60 days. FEMA processed late registrations for registrants that provided suitable documentation⁴⁷ to support and justify the reason for the delay in their registration.

FEMA required the applicant to submit a letter, signed by the applicant or person who the applicant authorizes to act on their behalf, explaining the extenuating circumstances that prevented them from applying for assistance in a timely manner. Acceptable documentation included record of hospitalization, illness, or disability of the applicant or an immediate family member; record of death for an immediate family member; or proof of personal or business travel that kept the applicant out of the area for the full registration period.⁴⁸

Based on comments indicating that the level of documentation required to justify a late application is inappropriate and unnecessary, FEMA is removing the requirement to provide documentation. FEMA agrees that the late application process should be simplified to reduce the burden on disaster survivors. Therefore, under this rule, FEMA will only require that registrants explain the reason for the delay. This change is discussed in more detail in the section-by-section analysis, below.

FEMA believes these changes are needed to the current regulations to allow individual applicants to more easily submit a late application, but the regulations are generally sufficient to ensure the majority of disaster survivors have an adequate opportunity to register for assistance during the registration period. FEMA reaches out to survivors and communities after disasters using multiple tools, teams, and tactics to help

applicants register for assistance, to include placing staff who can register applicants in disaster impacted areas and shelters.⁴⁹ Although disaster survivors may face a range of challenges in applying for assistance, the initial 60-day period is generally sufficient for most disasters, and for those specific disasters where there may be additional difficulties with timely filing, FEMA may extend the period. Increasing the default registration period or removing limits on registration altogether could lead to more applicants filing late, slowing the delivery of assistance, and increasing the administrative burden for FEMA in processing those applications.⁵⁰ The flexibility to extend the registration period on a disaster-by-disaster basis as appropriate allows FEMA to avoid unnecessary delays in program administration while still giving applicants additional time when needed, is why the registration period is not arbitrary.

Data shows that over the last 10 years, the registration period was extended past the initial 60 days authorized in 44 CFR 206.112(a) in 42 percent of Individual Assistance (IA) declarations. In 44 CFR 206.112(b), FEMA still retains the ability to extend the registration period on an as-needed basis. FEMA, in coordination with a State, Tribal, or Territorial (STT) government, can extend the registration period when there are wide-spread obstacles that may delay or impede disaster survivors' ability to register, while maintaining the authority to accept late registrations from disaster survivors who may have specific, individual circumstances that impact their opportunity to register.

⁴⁹ For more information see FEMA in the Field: Disaster Survivor Assistance and Disaster Recovery Centers, <https://www.fema.gov/fact-sheet/fema-field-disaster-survivor-assistance-and-disaster-recovery-centers>. FEMA currently provides letters in English and Spanish. FEMA recently updated our English and Spanish letters to include a tagline in six languages informing applicants how to contact the Helpline for translation help. The six languages are: English, Spanish, Russian, Portuguese, Vietnamese, and Korean. FEMA knows which language to provide letters in based on the language that the Disaster Survivor selected on their Disaster Assistance Registration.

⁵⁰ In response to a disaster declaration, FEMA scales up its resources including individuals working the FEMA Helpline, inspectors deploying to the field to conduct damage assessments, and staff deploying to the field to assist the Region and State in disaster recovery. Often, these individuals will staff Disaster Recovery Centers (DRCs), which are locations where individuals may register for assistance, ask questions about their application, provide documentation, etc. to FEMA or other government representatives in person. Removing a registration timeframe or increasing it beyond the current periods established in the regulations would increase the amount of time staff would need to be deployed in these various roles.

⁴² FEMA-2021-0011-0149, FEMA-2021-0011-0236, FEMA-2021-0011-0277, and FEMA-2021-0011-0295.

⁴³ FEMA-2021-0011-0149.

⁴⁴ The commenter referred to a 30-day grace period after the registration period, but as described below, FEMA actually accepts late applications for 60 days following the close of the registration period.

⁴⁵ FEMA-2021-0011-0295.

⁴⁶ To improve readability, the term "State" will be used in this rule to refer to State, Tribal, and Territorial governments, as applicable. Where there are relevant differences in how these governments are treated under the Stafford Act or FEMA's regulations, they will be explained in more detail.

⁴⁷ Page 71 of IAPPG 1.1 discusses late applications and the types of acceptable information FEMA required in order for the late application to be considered. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

⁴⁸ See page 71 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

Accessibility, Language Access, and Effective Communication With People With Disabilities

Numerous commenters provided general statements about improving applicant access to FEMA assistance and the necessity for improving FEMA staff training to assist with language and accessibility needs across programs. Eight of these comments raised concerns about applicant accessibility within FEMA's IHP. Five commenters reasoned that FEMA must improve its communication access for applicants who have a primary language other than English with Limited English Proficiency (LEP),⁵¹ as well as applicants with low-literacy and those with a disability who use another form of communication (e.g., American Sign Language). These commenters stated that FEMA must provide effective translation or local FEMA employees that speak the applicant's language and can effectively explain the IHP process, as well as provide multilingual staff that can answer applicant questions during inspections, throughout registration intake, and in-person at DRCs.

Five commenters questioned FEMA's ability to adequately identify and meet the reasonable accommodation and reasonable modification needs of applicants with disabilities across the IHP service delivery process.⁵² These commenters reasoned that FEMA failed to establish a clear and transparent public process for survivors to request reasonable accommodations and reasonable modifications. One commenter stated that even if a disaster survivor has requested an accommodation or a modification, FEMA has no system to indicate that they are a survivor with a disability or that they need an accommodation or a modification other than another undifferentiated note in their file.⁵³ Commenters explained that, consequently, these requests do not automatically populate across IHP, so FEMA staff are often unaware of an applicant's previously documented accommodation, modification, or access need. They argued that this lack of planning and transparency denies meaningful access to survivors with disabilities and inhibits their ability to access reasonable accommodations and

reasonable modifications within all aspects of IHP.

Two commenters stated that IHP did not provide allowances for the inclusion of accessibility-related items for pre-existing or disaster acquired disabilities. These commenters asserted that disaster survivors with physical disabilities who require accommodations or modifications to access their home in the wake of a disaster should receive timely assistance to repair their homes.⁵⁴ Two commenters further explained that FEMA's habitability standards are inequitable and deny IHP assistance to applicants with disabilities and survivors who have low income, especially for applicants within these underserved groups who also have underlying health conditions. These commenters asserted that a habitability standard which assumes that what is safe to occupy for one person is safe to occupy for another person is wrong. They explained that because IHP policy has not considered the presence of mold a condition that would prevent an applicant from occupying a home safely, applicants with immunocompromised health conditions such as asthma, cancer, or sickle cell disease, for whom it was unsafe to live in a home with mold, were routinely denied assistance.⁵⁵

FEMA acknowledges that voluntary agencies and community organizations are the first and last organizations to provide survivors support services in a community before and after a disaster. Therefore, FEMA's Voluntary Agency Coordination Section provides technical assistance, coordination, and subject matter expertise to partners who are addressing gaps in resources, providing financial support and additional support to survivors after government assistance is exhausted. This assistance is provided via FEMA's Voluntary Agency Liaison (VAL) staff. The function of the VALs is to coordinate voluntary activities between internal FEMA partners, local, State, and Federal Government entities and State and National Voluntary Organizations Active in Disaster; to support and build the capability of disaster recovery for current and future disasters; and to support ongoing community recovery activities even after the period of assistance has ended. VALs work directly with IA staff to ensure that all disaster survivors to include those with LEP are informed of FEMA assistance.

FEMA has many ways to meet survivors' language needs. Many FEMA employees are bilingual or multilingual and can assist LEP survivors with registration in their primary language by phone and in-person at a DRC. All DRCs have a sign posted in a visible location with the phrase "If you do not speak English" in over 40 languages. A DRC staff member will use that sign to determine what language the survivor speaks and call for an interpreter to assist them.

If an in-person interpreter is not present at the DRC, FEMA staff will connect the survivor with the FEMA Helpline or video relay service so the survivor is able to communicate with the FEMA employee accurately. FEMA's Helpline has interpretation services provided by qualified interpreters available in 250 languages to assist LEP disaster survivors.

FEMA recognizes that an applicant's ability to effectively communicate their reasonable accommodation or reasonable modification request is essential. To improve FEMA's ability to assist applicants with disabilities with requesting and receiving reasonable accommodations and reasonable modifications during registration, FEMA recently updated its registration process to better capture accommodations, modifications, and access assistance needs for applicants and their household members. Specifically, FEMA added questions to the Disaster Assistance Registration forms to provide applicants with an opportunity to consider, document and differentiate their household's pre-disaster and disaster-caused accommodation or modification requests and access needs. FEMA uses responses to registration questions to provide reasonable accommodations, reasonable modifications, and assistance to applicants throughout the IHP process. These questions include whether the applicant has a disability or language need that requires an accommodation or modification, or interpretation or translation services to interact with FEMA staff and/or access FEMA programs; if the applicant or anyone in their household has a disability that affects their ability to perform daily living activities or requires an assistive device; and whether they have any disability-related assistive devices or medically required equipment/supplies/support services damaged, destroyed, lost, or disrupted because of the disaster.⁵⁶

⁵¹ FEMA-2021-0011-0149, FEMA-2021-001-0164, FEMA-2021-0011-0261, FEMA-2021-0011-0282, and FEMA-2021-0011-0313.

⁵² FEMA-2021-0011-0152, FEMA-2021-0011-0164, FEMA-2021-0011-0167, FEMA-2021-0011-0205, and FEMA-2021-0011-0313.

⁵³ FEMA-2021-0011-0152.

⁵⁴ FEMA-2021-0011-0164 and FEMA-2021-0011-0261.

⁵⁵ FEMA-2021-0011-0152 and FEMA-2021-0011-0164.

⁵⁶ This rulemaking clarifies that ONA includes medical service costs for the loss or injury of a service animal. See new 44 CFR 206.119(b)(3)(iv).

FEMA recently completed system updates with the new question in 2018 to ensure information provided in response to these questions at registration or provided to staff at other times are captured and easily accessible to all staff in a consistent area in the system. FEMA is also performing additional outreach to applicants with disabilities and language access needs to assist them in understanding any correspondence FEMA provides to them.⁵⁷ Applicants who state they have a disability during the registration process are placed in a prioritization queue and, if later determined ineligible for FEMA assistance, will be contacted via phone to explain their ineligibility. The field will also conduct their own outreach via phone to applicants with access and functional needs. FEMA continues to explore new methods and processes for documenting and populating reasonable accommodation and reasonable modification requests across the IHP. Lastly, in this rule, FEMA is revising the IHP *Application for Continued Temporary Housing Assistance, FEMA Form FF-104-FY-21-115*, to include a question that provides applicants with another opportunity to identify any disability-related household needs that might impact their application or recertification for temporary housing assistance.

As noted in the IAPPG 1.1, FEMA may provide Home Repair Assistance and Personal Property Assistance for disaster-damaged accessibility-related items. Nevertheless, in response to public requests for IHP policy that meets applicants' disaster-caused structural home modification needs, FEMA recently amended its policy to include *Assistance for Disaster-Caused Americans with Disabilities Act (ADA) Real Property Needs*. The September 2, 2021, *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum currently allows FEMA to provide financial assistance to applicants who incur a disaster-caused disability and consequently require the installation or construction of accessibility-related real property components at their damaged dwelling to meet their needs. Home Repair Assistance for specific accessibility-related items is not limited by a financial maximum award. The following accessibility-related items are

currently eligible under Home Repair Assistance when the applicant or a member of the household has a disaster-caused disability:

- Exterior ramp.
- Grab bars.
- Paved path of travel to the primary residential entrance (for accessible ingress or egress from the applicant's vehicle to their dwelling).

In response to public comments, FEMA is also making changes to the regulatory text at 44 CFR 206.117(b)(2) and adding a new 44 CFR 206.113(a)(9) as a part of this rule. The changes allow FEMA flexibility to provide financial assistance to applicants for the installation or construction of real property items that were not present in the home prior to the disaster. Specifically, these changes allow IHP to expand its existing policy, which provides for the installation of ADA related real property to applicants with disaster-caused needs, to include Home Repair Assistance for disaster survivors with pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional when any level of disaster-caused real property damage occurs to the primary residence.

In new 44 CFR 206.113(a)(9), FEMA states that FEMA may provide assistance with respect to home repair for accessibility-related items, if an applicant meets the following conditions: (i) the applicant is either an individual with a disability as defined in 42 U.S.C. 5122 whose disability existed prior to the disaster⁵⁸ and whose primary residence was damaged by the disaster, or an individual with a disability as defined in 42 U.S.C. 5122 whose disability was caused by the disaster and whose primary residence was damaged by the disaster; (ii) the real property component is necessary to meet the accessibility-related need of the household; and (iii) the real property component is not covered by insurance or any other source.

Via information collection at 1660-0002, we are adding a documentation requirement to tie the need for the home repair accessibility-related items (which currently includes only ramp, grab bars, and/or paved pathway) to the pre-existing disability to meet the household's access and functional need. We are requiring that a medical, health care, or rehabilitation professional certify whether or not this is necessary;

as, they have the expertise to make that determination or we will accept prior medical, health care, or rehabilitation professional documentation that supports the need for the accessibility-related items.

FEMA is making the below changes to Home Repair Assistance to respond to four RFI comments,⁵⁹ so that FEMA may make the dwelling safe/sanitary for pre-disaster disabled applicants. For example, this change will allow FEMA to reimburse pre-disaster disabled applicants for installation of accessibility items, such as grab bars and access ramps, if the primary residence sustained disaster damage regardless of whether or not the applicant had grab bars or access ramps pre-disaster.⁶⁰

In 44 CFR 206.117(b)(2)(i), FEMA states that FEMA may provide financial assistance for the repair of an owner-occupied primary residence if: the eligibility criteria in 44 CFR 206.113 are met; FEMA determines the dwelling was damaged by the disaster; and the damage is not covered by insurance. This provision is similar to the current 44 CFR 206.117(b)(2)(i), except FEMA is removing the phrase "real property components in" before "an owner-occupied primary residence;" adding "FEMA determines" after "met;" removing "to the component" after "damage" and replacing "component" with "dwelling," as the Stafford Act does not limit repairs to "components" and replacing "owner's" with "owner-occupied" for consistency as *owner-occupied* is the defined term in 44 CFR 206.111; removing the current 44 CFR 206.117(b)(2)(i)(B) that "the component was functional immediately before the declared event" and removing current 44 CFR 206.117(b)(2)(i)(E) that "the repair of the component is necessary to ensure the safety or health of the occupant or to make the residence functional," and removing the clause "and the damage was caused," since this rule will allow FEMA to pay for pre-existing conditions if the component itself was damaged by the disaster.

In 44 CFR 206.117(b)(2)(ii), FEMA states that FEMA may provide financial assistance for the repair of the disaster damaged dwelling to a safe and sanitary living or functioning condition. This

⁵⁷ FEMA currently provides letters in English and Spanish. FEMA recently updated our English and Spanish letters to include a tagline in six languages informing applicants how to contact the Helpline for translation help. The six languages are: English, Spanish, Russian, Portuguese, Vietnamese, and Korean.

⁵⁸ FEMA generally will accept statements from relevant medical providers, such as physical therapists, occupational therapists, registered nurses, physician assistants, etc.

⁵⁹ FEMA-2021-0011-0152, FEMA-2021-0011-0164, FEMA-2021-0011-0235, and FEMA-2021-0011-0261.

⁶⁰ If the FEMA assistance provided for these items is less than the actual cost to the applicant, the applicant may appeal for additional assistance. FEMA will accept itemized bills, receipts, or estimates to verify that there is a need for additional assistance.

clause is consistent with the current 44 CFR 206.117(b)(2)(ii), except FEMA is adding “the disaster damaged dwelling to a safe and sanitary living or functioning condition including” after “of.” These additions align with the changes that make it clear that only disaster damaged dwellings (regardless of their pre-disaster condition) may receive repair assistance, as FEMA may only pay to restore disaster damage to a safe and sanitary living or functioning condition. If the dwelling was not touched by the disaster, it will not be eligible for repair assistance; therefore, the applicant would not be able to apply for Home Repair Assistance for their pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that would make their home safe and functional.

The September 2, 2021, *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum also amended the Home Repair Assistance section in IAPPG 1.1 to include financial assistance to repair real property components impacted by disaster-caused mold growth.⁶¹ The amendment’s expressed intent was to support low income and other underserved disaster survivors who may not have the means to immediately address disaster damage, particularly when disasters are not declared immediately or inspections are delayed. However, all applicants with disaster-caused mold damage may be eligible for the assistance when they meet all other conditions of eligibility. These additional funds will be provided as part of the Home Repair Assistance award when applicable.

Appeals

Sixteen commenters provided responses about the IHP appeal process. Ten of the commenters expressed concern that the appeal process is burdensome on applicants and must be simpler in order for applicants of varying backgrounds and communities to successfully navigate the process.⁶² According to 3 of these 10 commenters, filing a successful appeal for applicants in traditionally underserved populations often requires hard to find

or costly access to legal services.⁶³ To streamline the appeal process and reduce the burden on disaster survivors, these commenters suggested FEMA expand methods for filing appeals, including by:

- Allowing applicants to file appeals online, by telephone, and in-person.⁶⁴
- Providing a standard appeal form.⁶⁵
- Reaching out directly to applicants by phone to personally assist them with the appeal process when they are denied assistance.⁶⁶
- Providing appeal status updates to applicants through their online applicant portals.⁶⁷

Two additional commenters described the appeal process as overly complicated to navigate because of challenges in other parts of the IHP delivery process. Specifically, these commenters asserted that IHP eligibility notification letters provided unclear explanations of the reason an applicant is determined ineligible for assistance. The commenters explained that when applicants are unable to identify and understand the cause of their denial for assistance, they lack critical information needed to pursue a successful appeal.⁶⁸ Three commenters also discussed obstacles disaster survivors face after the trauma of a major disaster and recommended that FEMA extend the appeal deadline beyond the current 60 days.⁶⁹ Two of these commenters explained that by providing applicants with a grace period for establishing ownership and addressing other issues that take time to obtain documentation, FEMA could improve access to their programs for applicants with low income and applicants of color who are disproportionately affected by heir-ownership (when a person inherited the land or residence but does not hold formal title to it) and other documentation issues.

Three other commenters argued the need for greater transparency in the appeal process.⁷⁰ One of the three recommended that FEMA publish appeal decisions online, while another suggested that if an applicant pursues an appeal and inspection documents exist, FEMA should provide those

documents to the applicant regardless of the applicant’s appeal approval or denial status. Four commenters maintained that the issue went beyond transparency and was instead a matter of fairness. They asserted that the existing appeal process is unfair because FEMA serves as both the *original* decision maker—determining applicant eligibility or award amount, while simultaneously serving as the *final* decision maker—determining if those same applicants have waged a successful appeal to overturn FEMA’s original eligibility and/or award decisions.⁷¹ Three of these commenters went on to reason that a right of legal action in the courts, to include an oral hearing and discovery, should be built into the FEMA appeal process.

FEMA does not have the legal authority to accept the commenters’ suggestions to create a right to challenge FEMA’s eligibility decisions in court as part of the appeal process, so that FEMA is not both the original decision maker and the final decision maker. The United States is immune from suit unless it consents to be sued.⁷² The Stafford Act provides that FEMA shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty. 42 U.S.C. 5148. The appeal process applies to FEMA’s eligibility decisions under IHP. FEMA’s eligibility decisions are discretionary determinations, which means that they are not reviewable by a court.⁷³ However, FEMA has protocols in place that guarantee appeals are not reviewed by the same case worker who made the original eligibility determination.

FEMA similarly does not have the legal authority to extend the 60-day appeal time frame set forth in 42 U.S.C. 5189a(a). Nevertheless, as a part of this rule, FEMA identified an opportunity to

⁶¹ FEMA-2021-0011-0235, FEMA-2021-0011-0275, FEMA-2021-0011-0295, and FEMA-2021-0011-0302.

⁶² See, e.g., *United States v. Mitchell*, 463 U.S. 206, 212 (1983).

⁶³ See *City of San Bruno v. FEMA*, 181 F. Supp. 2d 1010, 1014-5 (N.D. Cal. 2001) (“Distributing limited funds is inherently a discretionary responsibility.”) Please note, while the eligibility decisions underlying appeals are discretionary and therefore immune from suit, the mandatory provisions in 42 U.S.C. 5189a related to appeals are not: FEMA is required to issue rules providing for the fair and impartial consideration of appeals. FEMA has discharged that responsibility by issuing regulations although the content of those regulations are also considered discretionary and immune from suit. (*Barbosa v. United States Dep’t of Homeland Security*, 916 F.3d 1068, 1073 (D.C. Cir. 2019)) (“We have little doubt that the statutory requirement for regulations rely on the discretionary judgment of FEMA; the range of choice that FEMA can employ is quite wide”).

⁶⁴ FEMA-2021-0011-0151, FEMA-2021-0011-0245, and FEMA-2021-0011-0260.

⁶⁵ FEMA-2021-0011-0149, FEMA-2021-0011-0261, and FEMA-2021-0011-0292.

⁶⁶ FEMA-2021-0011-0245.

⁶⁷ FEMA-2021-0011-0261.

⁶⁸ FEMA-2021-0011-0149.

⁶⁹ FEMA-2021-0011-0237 and FEMA-2021-0011-0275.

⁷⁰ FEMA-2021-0011-0149, FEMA-2021-0011-0208, and FEMA-2021-0011-0245.

⁷¹ FEMA-2021-0011-0162, FEMA-2021-0011-0260, and FEMA-2021-0011-0295.

⁶¹ See page 9 of the Amendment to FP 104-009-03, Individual Assistance Program and Policy Guide, Version 1.1 memorandum cites to Chapter 3, Section IV.E. of the IAPPG 1.1, which is on pages 85-88 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

⁶² FEMA-2021-0011-0151, FEMA-2021-0011-0162, FEMA-2021-0011-0209, FEMA-2021-0011-0235, FEMA-2021-0011-0237, FEMA-2021-0011-0245, FEMA-2021-0011-0260, FEMA-2021-0011-0261, FEMA-2021-0011-0273, and FEMA-2021-0011-0292.

codify additional flexibilities for applicants in meeting this 60-day deadline for appeals sent by mail. As is currently done in practice, FEMA will continue to accept and process any appeal postmarked within 60 days of the date on the applicant's IHP decision letter, even if FEMA receives the appeal outside of the 60-day deadline.

FEMA can address comments to simplify the appeal process by removing the requirement to submit an appeal and by creating an optional appeal form. FEMA's existing regulations, 44 CFR 206.115(b), require that appeals must be in writing and explain the reason(s) for the appeal. However, a written explanation may not be necessary to substantiate an appeal claim. Instead, supporting documents, such as receipts, bills, repair estimates, contractor estimates, property titles, or deeds may better demonstrate the reason(s) for the appeal and provide justification for FEMA to reconsider the applicant's original eligibility determination. Nevertheless, to comply with the existing regulations, FEMA does not currently process appeals that do not contain the required written and signed letter of explanation, even if the applicant provides adequate documentation. To alleviate this bureaucratic hurdle, FEMA is removing the requirement that applicants must submit a signed appeal letter explaining the reason(s) for the appeal when they have provided sufficient justification through supporting documents. This change will streamline the appeal process and reduce additional paperwork and correspondence between the applicant and FEMA that may delay the applicant's recovery process.

To further assist applicants with navigating the appeal process, as suggested by a commenter, as part of this rulemaking, FEMA has developed an optional Appeal Request Form which applicants may use to assist them when submitting an appeal.⁷⁴ This form, which FEMA will accept as a written explanation, will be available online at www.DisasterAssistance.gov. These

⁷⁴ FEMA is providing in this rule that appeals must include a written explanation or verifiable documentation for the appeal. This will give disaster survivors the option to complete the Appeal Request Form instead of drafting a written appeal letter, or submit verifiable documentation without the form or a letter. FEMA currently provides letters in English and Spanish. FEMA recently updated our English and Spanish letters to include a tagline in six languages informing applicants how to contact the Helpline for translation help. The six languages are: English, Spanish, Russian, Portuguese, Vietnamese, and Korean. FEMA knows which language to provide letters in based on the language that the Disaster Survivor selected on their Disaster Assistance Registration.

changes are intended to provide a more user-friendly, equitable, and efficient appeal process that better meets the needs of traditionally underserved populations.

With respect to the additional suggestions from commenters, FEMA notes that under the current process, applicants may access key information online, including appeal status, letters, and their personal appeal decision. Applicants with an online account can upload their appeal⁷⁵ or check the status of their appeal, by visiting www.DisasterAssistance.gov and selecting *Check Your Application Status* or by calling FEMA's Helpline at 800-621-3362 (711 or VRS available). Applicants who use a relay service, such as a Videophone, InnoCaption, or CapTel, are asked to provide the specific number assigned to that service. Individual applicants can reference their personal appeal decisions and letters online if they have created an online account and selected electronic correspondence from FEMA. FEMA considered publishing appeals information. Ultimately, FEMA declined to do so, due to a concern that releasing data of only appeal applicants would appear to require greater public exposure for appeal applicants than is required for initial applicants. Publication of appeal records could discourage applicants from appealing, or even appear to be a punitive measure for individuals who appeal.

Our system does not have the capability to display inspection reports nor is it captured in FEMA's National Emergency Management Information System (NEMIS) in a way that would readily be understood by the public. As part of FEMA's development of a new system,⁷⁶ FEMA plans to improve the amount of detail that can be provided to applicants related to their inspection results and eligibility.

In addition, under section 423 of the Stafford Act, 42 U.S.C. 5189a, and existing regulations governing FEMA IHP, 44 CFR 206.115(d)-(f), an applicant may ask for a copy of information in his or her file by writing to FEMA. To promote transparency, FEMA's regulations require the agency to give the applicant a written notice of the disposition of the appeal within 90 days of receiving the appeal. The appeal decision made by FEMA, or the State, Tribal, or Territorial (STT) government

⁷⁵ Applicants that create an online FEMA account or use their login.gov account can upload documents including appeal letters.

⁷⁶ FEMA has been collecting suggestions from various workshops and other feedback efforts to ensure the new system, once built, meets all IHP and applicant needs.

in instances where the STT government has opted to process ONA, is final. FEMA believes its current regulations are sufficient to ensure that disaster survivors can exercise their right to appeal assistance decisions. The existing regulations provide FEMA with the flexibility needed to meet survivor needs, while complying with privacy and paperwork reduction laws, intended to protect applicant information and minimize burdens, and avoiding the unnecessary expenditures and delays that would be a part of implementing the expanded appeal process requested by commenters, which included a litigation component to the IHP appeal process.

Finally, FEMA makes every effort to ensure that its correspondence is written using plain language and that eligibility notification letters provide adequate explanation of the applicant's eligibility determination, award decision, and next steps should the applicant want to appeal the eligibility determination or award amount.⁷⁷ For example, FEMA conducts periodic, comprehensive reviews of our applicant correspondence to make improvements based on disaster survivor feedback. As part of this process, FEMA hosts focus groups with disaster survivors to give them the opportunity to review proposed changes to our letters⁷⁸ and to provide us with feedback about how to make the letters more understandable and helpful. FEMA reviews the feedback received from the focus groups before finalizing changes to the letters. FEMA held focus groups in 2016 and 2022.⁷⁹

Prior to peak hurricane season in 2022, FEMA updated its applicant letters based on focus group feedback, with the intent of simplifying the letters and making the appeal process clearer. As one example of a change made based on focus group input, FEMA further clarified the relationship between SBA and FEMA and how our processes interact, after focus group members

⁷⁷ FEMA currently provides letters in English and Spanish. FEMA recently updated our English and Spanish letters to include a tagline in six languages informing applicants how to contact the Helpline for translation help. The six languages are: English, Spanish, Russian, Portuguese, Vietnamese, and Korean.

⁷⁸ In 2022, the focus groups reviewed the following letters: Cover Letter sent to all applicants; Continued Temporary Housing Assistance Letter; Denial letter; Approval letter; Request For Information letter; and Identity Theft/Bank Routing letter.

⁷⁹ At the 2016 focus group, 196 people agreed to participate but only 76 actually attended the feedback sessions. At the 2022 focus group, 102 people agreed to participate but only 18 actually attended the feedback sessions.

indicated that the SBA section of the letters were confusing.

Applicants who need assistance with understanding their eligibility notification letter or the appeal process can receive assistance by phone by calling the FEMA Helpline at 800-621-3362 (711 or VRS available). When available, applicants may also receive in-person assistance by visiting a local DRC, where FEMA and SBA customer representatives are available. FEMA will continue to explore options for simplifying the process for submitting appeals and strives to continue to identify ways to alleviate any disparate impacts to underserved groups in the IHP process.

Assistance by Default

Two commenters suggested FEMA implement proactive measures to provide a broad delivery of disaster assistance to residents in a declared area in order to equitably deliver assistance without regard to economic ability, housing situation, or specific losses attributed to the disaster.⁸⁰ One of the suggestions specified assistance should be delivered as an opt-out method, with a stronger focus on the housing needs of parolees and unhouseholded individuals.

FEMA has a duty under section 408(i) of the Stafford Act, 42 U.S.C. 5174(i), to verify each applicant is eligible for assistance. Additionally, section 696 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), 6 U.S.C. 795, also requires FEMA to develop and maintain proper internal management controls to prevent and detect fraud, waste, and abuse. Accordingly, without a change to these underlying statutory provisions, FEMA cannot provide assistance without first verifying the applicant's specific housing situation or losses.

While FEMA understands the immediate need for assistance after catastrophic events, FEMA also has to balance its responsibility to ensure assistance is provided only to eligible individuals and for the purpose allowable by statute. Therefore, FEMA must verify disaster-caused loss or expenses. Additional assistance provided for in this rulemaking, such as Serious Needs Assistance and Displacement Assistance,⁸¹ will make more funds immediately available and

their eligibility criteria and uses are less specific than most existing forms of IHP assistance. It should also be noted that there are other State or local agencies, as well as volunteer organizations, that may be able to provide more targeted assistance to populations where needs and challenges extend beyond disaster caused impacts.

FEMA remains committed to ongoing community engagement and communication with our stakeholders to better understand the needs of traditionally underserved communities and to share information regarding disaster preparedness and recovery assistance. We conduct tribal engagement sessions on draft policies; and we have held engagement sessions with the public on letter updates. We also engage with other stakeholders, such as Congressional members and staff, State and local officials, and advocacy organizations to discuss their concerns.

Citizenship

A few commenters raised issues regarding immigration status-based restrictions on FEMA IA, arguing that FEMA should reform the IA Program to ensure that undocumented residents are eligible. Commenters noted that undocumented families are unable to access a range of benefits and therefore are more likely to suffer lasting harm.⁸² One commenter stated that the FEMA registration process asks for information on all members of the household, not just the eligible member(s). Non-eligible parents who have survived disasters, even if they have U.S. citizen children, and other eligible survivors are not applying for help for fear they or others in their household may be turned in to immigration enforcement authorities.⁸³ This commenter also stated that FEMA should repeal its alleged policy of forwarding citizenship status to immigration enforcement authorities or any other Government agencies. Another commenter stated that one of the obstacles for disaster survivors seeking FEMA assistance is that based on the "Welfare Reform Act," an immigrant must have been designated a legal immigrant for 5 years in order to receive any Federal financial assistance.⁸⁴ Another commenter suggested that FEMA should look into creating and promoting programs available for people who are not citizens but pay taxes through work permits or

ITIN⁸⁵ numbers.⁸⁶ Lastly, one commenter stated that immigration and naturalization status is one demographic characteristic that is notably absent in the RFI.⁸⁷

Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, sometimes referred to as the Welfare Reform Act, Pub. L. 104-193, provides that noncitizens who are not "qualified aliens" are not eligible for Federal public benefits, which include assistance provided under Section 408 of the Stafford Act, 42 U.S.C. 5174. FEMA cannot alter this requirement without a statutory change; however, FEMA considers the citizenship status of the entire household where someone is applying for assistance. This means that any adult household member who is a U.S. citizen or qualified alien in the household may apply for assistance, or any undocumented immigrants with children who are U.S. citizens may apply on behalf of their child. Further, regardless of citizenship status, disaster survivors may be eligible for the following FEMA programs that provide services instead of financial assistance to individuals:

- Mass Care/Emergency Assistance (Section 403 of the Stafford Act, 42 U.S.C. 5170b) which addresses sheltering needs immediately following a disaster;
- Crisis Counseling Assistance and Training Program (Section 416 of the Stafford Act, 42 U.S.C. 5183) which is a Federal-funded supplemental program that enables State, local, Territorial, or Tribal government agencies to provide crisis counseling services or contract with local mental health service providers to provide services;
- Disaster Case Management (DCM) (Section 426 of the Stafford Act, 42 U.S.C. 5189d) which is a Federal-funded supplemental program that provides financial assistance to State, local, Territorial, or Tribal government agencies, or qualified private organizations, to enable non-Federal entities to provide DCM services; and
- Disaster Legal Services (Section 415 of the Stafford Act, 42 U.S.C. 5182) which via an agreement with the American Bar Association provides free legal help for survivors.

In 2017, FEMA updated the FEMA registration language by removing

⁸⁰ FEMA-2021-0011-0259 and FEMA-2021-0011-0274.

⁸¹ Applicants experiencing homelessness pre-disaster who can also verify occupancy at an impacted location may also be considered for Initial Rental Assistance only; LER; all types of ONA (this includes Serious Needs Assistance, Displacement Assistance, and Critical Needs Assistance (prior to the IFR).)

⁸² FEMA-2021-0011-0293 and FEMA-2021-0011-0269.

⁸³ FEMA-2021-0011-0245.

⁸⁴ FEMA-2021-0011-0255.

⁸⁵ An ITIN, or Individual Taxpayer Identification Number, is a tax processing number only available for certain nonresident and resident aliens, their spouses, and dependents who cannot get a Social Security Number (SSN). It is a 9-digit number, beginning with the number "9," formatted like an SSN (NNN-NN-NNNN).

⁸⁶ FEMA-2021-0011-0275.

⁸⁷ FEMA-2021-0011-0163.

references to the Bureau of Immigration and Customs Enforcement⁸⁸ and clarifying the reasons FEMA would share information. The current version informs applicants that, consistent with the Privacy Act, 5 U.S.C. 552a, FEMA may share individuals' information with Federal, State, Tribal, and local agencies and voluntary organizations to enable individuals to receive additional disaster assistance or to allow FEMA to administer assistance.⁸⁹

The topic of immigration is notably absent in the RFI because citizenship requirements for Federal assistance are established by statute and cannot be resolved via rulemaking. However, FEMA has no policy of forwarding individuals' information particularly pertaining to their citizenship status to immigration enforcement authorities. Accordingly, FEMA posts the following language via a flyer in all DRC locations. "This location is a protected area designated to provide emergency response and relief. FEMA will not proactively share your information with immigration or law enforcement agencies. U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) will not conduct enforcement operations at or near this location, except in the most extraordinary of circumstances."

Codes and Standards

One comment was received suggesting that FEMA should require IHP applicants to adhere to minimum construction standards for any applicable repair to their disaster-damaged home, regardless of whether the local community has adopted a building code.⁹⁰ While FEMA recognizes the importance of building codes and encourages all communities to adopt and enforce modern building codes,⁹¹ we do not believe it is appropriate to establish a nationwide minimum construction standard for IHP at this time. FEMA provides funds to IHP recipients to address disaster repair needs, which may include costs to meet applicable codes, up to the Housing Assistance maximum award. Recipients should rebuild or repair their damaged homes in compliance with applicable State and local codes, and are subject to State and local enforcement of those

codes. FEMA does not have the capacity to monitor and enforce a nationwide minimum construction standard for IHP. Moreover, FEMA does not have the authority to fund costs of compliance of any such code beyond the maximum award amount, which would leave some recipients in a situation where FEMA would require repair work but would not be able to provide sufficient funding to cover it.

Cost Share

Two commenters raised issues regarding the cost share requirement, arguing that FEMA should reduce or remove the requirement altogether.⁹² The commenters noted that the cost share requirement can preclude many communities from accessing resources because they do not have the ability to meet the cost share, specifically, economically disadvantaged rural communities and Tribal Nations.

Section 408(g) of the Stafford Act, 42 U.S.C. 5174(g), governs the IHP cost share. Specifically, it states that the Federal share of Housing Assistance under the IHP will be 100 percent; whereas, the Federal share for Other Needs Assistance will be 75 percent and the non-Federal share will be paid from funds made available by the relevant STT government.⁹³ The statute at 48 U.S.C. 1469a(d) allows FEMA to waive or adjust the cost share for disaster grants in insular areas such as the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Outside of this one specific flexibility, FEMA does not have the ability to waive or adjust the cost share for IHP assistance through regulatory change, as it would require a legislative change.

Data Sharing/Collection

Two commenters expressed their concerns with how applicant data is shared from FEMA with local partners. One of them commented that the way in which FEMA shares data with local partners seems to be inconsistent from incident to incident.⁹⁴ Additionally, they asked that FEMA utilize Internal Revenue Service (IRS) income data to expedite the verification process.⁹⁵ The other commenter mentioned how FEMA's registration data needs to be accurate and quickly made available to

local partners, and that FEMA should create procedures to safeguard applicants' information.⁹⁶

FEMA recognizes that data sharing might make it easier for survivors to access assistance from other entities, and FEMA is always looking for ways to simplify IHP and speed the delivery of assistance. However, collecting, maintaining, and sharing data on a large scale presents challenges with respect to data security, and updating the rules on data sharing with State and local partners requires carefully balancing those concerns against the benefits of simplifying the program. FEMA continues to work alongside its State, local, Tribal, and Territorial partners to ensure that disaster recovery resources and services are not delayed or hindered by data collection and sharing concerns. Applicants can also access up to date information on their individual applications by setting up a Disaster Assistance Center electronic account with FEMA following a disaster.

Lastly, the IRS has indicated they could not share data with FEMA without statutory authorization.⁹⁷ As most forms of FEMA assistance are not income dependent, however, using IRS income data would not significantly improve how quickly FEMA is able to get initial assistance to applicants. Applicants are asked to self-report their income at Registration Intake to determine if the applicant meets criteria established by the SBA to indicate the capability to repay a loan. Those applicants determined potentially capable of repaying a loan are referred to the SBA and must complete an application with the SBA before being further considered by FEMA for SBA-dependent ONA. Additionally, as part of this rule, FEMA is removing the requirement that applicants must apply and be denied for an SBA disaster loan before being considered for SBA-dependent ONA, further minimizing any potential benefits of information sharing by the IRS.

Demographics

One commentator stated that Federal funds should not be a roadmap but rather a single point of engagement and support, especially to underserved communities or other communities who may fall below the poverty line or

⁸⁸ The Bureau of Immigration and Customs Enforcement is now referred to as the U.S. Immigration & Customs Enforcement.

⁸⁹ See ICR Reference No. 202201-1660-005, FF-104-FY-21-122 (formerly 009-0-1) View Information Collection Request (ICR) Package ([reginfo.gov](https://www.reginfo.gov)).

⁹⁰ FEMA-2021-0011-0307.

⁹¹ https://www.fema.gov/sites/default/files/documents/fema_bcs-brochure_03-01-21_0.pdf.

⁹² FEMA-2021-0011-0265 and FEMA-2021-0011-0289.

⁹³ The Stafford Act definition of State in 42 U.S.C. 5122(4) incorporates the Territories and DC. The "References" provision in 42 U.S.C. 5123 incorporates Tribes into either the definition of State or local government, depending on the role of the Tribe.

⁹⁴ FEMA-2021-0011-0187.

⁹⁵ FEMA-2021-0011-0187.

⁹⁶ FEMA-2021-0011-0277.

⁹⁷ See 26 U.S.C. 6103; IRS, Disclosure Laws (Oct. 5, 2022), <https://www.irs.gov/government-entities/federal-state-local-governments/disclosure-laws>. FEMA had multiple discussions with the IRS on this subject, and representatives from the IRS stated clearly that the agency believed that sharing this type of data with FEMA would require a statutory authorization.

become homeless, and should ensure quality of life before the disaster for these communities.⁹⁸ A few commenters suggested that FEMA should collect demographic data especially of those residing in vulnerable and underserved communities to identify the communities with the most need and enhance equitable recovery.⁹⁹ One of those commenters also suggested that FEMA should reconsider the constraints of the Paperwork Reduction Act on how FEMA collects and shares voluntary demographic data.¹⁰⁰ A few commenters raised the issue of the type of demographic data that FEMA should collect for identifying the communities which benefit most from FEMA resources to include voluntary household data (*i.e.*, gender and race) and how they intersect (*e.g.*, Black woman, Latino man); immigration and nationalization status; ethnicity; race; income; degree of rurality; and data that represents the underserved and others who may fall below the poverty line or become homeless.¹⁰¹

With respect to acting as a single point of engagement for underserved communities' broader quality of life needs, FEMA is committed to providing disaster assistance in a fair and equitable manner. This rule's changes to how FEMA assesses habitability, discussed in more depth below, will put applicants in a better position to recover from disasters while staying within the bounds of FEMA statutory authority under the Stafford Act.

With respect to demographic data, in an effort to further understand the distribution of awarded IHP assistance, FEMA obtained Office of Management and Budget's (OMB) approval to gather demographic information from disaster survivors who choose to provide it.¹⁰²

⁹⁸ FEMA-2021-0011-0159.

⁹⁹ FEMA-2021-0011-0163, FEMA-2021-0011-0224, FEMA-2021-0011-0261, FEMA-2021-0011-0264, FEMA-2021-0011-0275, and FEMA-2021-0011-0277.

¹⁰⁰ FEMA-2021-0011-0163.

¹⁰¹ FEMA-2021-0011-0163, FEMA-2021-0011-0259, FEMA-2021-0011-0261, and FEMA-2021-0011-0275.

¹⁰² Information Collection 1660-0154, Generic Clearance for Civil Rights and Equity. In the IHP, FEMA already collects some demographics for programmatic reasons (date of birth/age, income, and disability via OMB Control Number: 1660-0002, Disaster Assistance Registration). Under 1660-0154, new questions pertaining to race, Tribal enrollment, ethnicity, education, gender, and marital status are intended to be used in order to conduct robust statistical analysis of the outcome of IHP for various vulnerable populations. The data will be used to understand intersectionality of demographics and identify any issues with program implementation that may be affecting a specific group of individuals.

This data will help FEMA assess¹⁰³ whether agency policies and actions create or exacerbate barriers to full and equal participation in our programs and better understand program outcomes for applicants.

Disaster Housing Assistance Program

A few commenters mentioned the expired Disaster Housing Assistance Program (DHAP), which initially was created as a FEMA pilot program administered by the U.S. Department of Housing and Urban Development (HUD) to assist applicants of Hurricanes Katrina and Rita,¹⁰⁴ later for Hurricanes Ike and Gustav, and a small program for Hurricane Sandy. One commenter questioned why the previous administration did not utilize this program for any recent disasters.¹⁰⁵ Two other commenters requested the pilot program be reinstated.¹⁰⁶

Rather than reinstate DHAP,¹⁰⁷ FEMA has instead developed and implemented another form of Direct Temporary Housing Assistance called Direct Lease. Direct Lease provides FEMA with the ability to lease properties not generally available to the public directly from the landlord to provide temporary housing to eligible survivors.¹⁰⁸ Under Direct Lease, eligible survivors pay no cost for rent (not including utilities) for up to 18 months. FEMA matches survivors with available housing that meets their needs and FEMA is able to place applicants into Direct Lease within 4 to 6 weeks following a disaster declaration.¹⁰⁹

Direct Housing

Several commenters mentioned Direct Housing Assistance. Four commenters recommended FEMA should change regulations and policy to allow FEMA to

¹⁰³ The supporting statement associated with FEMA's demographics data collection, 1660-0154, indicates that FEMA will do analysis of the demographic questions to determine if it is necessary to continue to collect the data based on our findings. We plan to complete this analysis after 2 years of data collection, in the fall of 2024, to inform whether all six questions are still needed.

¹⁰⁴ See <https://www.huduser.gov/portal/publications/destech/DHAP.html> for a HUD evaluation of DHAP that served Katrina and Rita.

¹⁰⁵ FEMA-2021-0011-0149.

¹⁰⁶ FEMA-2021-0011-0162 and FEMA-2021-0011-0235.

¹⁰⁷ Building off lessons learned from DHAP, HUD, and FEMA had exploratory conversations regarding development of a new pilot called Disaster Assistance Supportive Housing (DASH). However, DASH is not currently being pursued.

¹⁰⁸ The property must be an existing residential property, not typically available to the general public (*i.e.*, corporate apartments, vacation rentals, and second homes) for use as temporary housing.

¹⁰⁹ In situations where pre-disaster HUD occupants are placed into a FEMA-provided direct housing unit, HUD will engage with the pre-disaster HUD assisted families to assist them in finding permanent housing.

provide permanent housing solutions such as repairing and/or rebuilding the applicant's damaged/destroyed dwelling.¹¹⁰ One commenter desired more housing options outside of Transportable Temporary Housing Units under Direct Housing Assistance,¹¹¹ whereas, another commenter wanted FEMA to provide more help to applicants on their permanent housing plan.¹¹² Lastly, one commenter wanted to remind FEMA to ensure information provided to applicants meet relevant fair housing and civil rights laws and notes that FEMA should enforce those laws with entities with whom FEMA partners.¹¹³

FEMA's existing regulations at 44 CFR 206.117(b) and IAPPG 1.1 currently allow for the following forms of Direct Housing Assistance: Transportable Temporary Housing Units, MLR, Direct Lease, and PHC. Per 42 U.S.C.

5174(c)(4), FEMA may only provide PHC assistance—in the form of direct repairs or new construction—to individuals and households to construct permanent or semi-permanent housing in insular areas outside the continental United States. Per 42 U.S.C.

5174(c)(4)(A)–(B), FEMA may also consider providing such assistance in other locations where no alternative housing resources are available and other types of Temporary Housing Assistance are unavailable, infeasible, or not cost-effective.¹¹⁴ Such circumstances are extremely rare: FEMA has only authorized PHC in the continental United States twice.¹¹⁵

FEMA supports all direct housing occupants—owners and renters—in achieving their Permanent Housing Plans¹¹⁶ through multiple channels, including working with Voluntary Agency Liaisons¹¹⁷ and DCM specialists

¹¹⁰ FEMA 2021-0011-0157, FEMA 2021-0011-0237, FEMA 2021-0011-0269, and FEMA 2021-0011-0224.

¹¹¹ FEMA 2021-0011-0261.

¹¹² FEMA 2021-0011-0146.

¹¹³ FEMA 2021-0011-0235.

¹¹⁴ See 44 CFR 206.117(b)(4)(i)(F).

¹¹⁵ The factors that most commonly result in a need for PHC outside the continental United States are a lack of temporary housing resources and an inability to bring temporary housing into an affected area due to high transportation costs.

¹¹⁶ Currently, permanent housing plan is defined at 44 CFR 206.111 to mean a realistic plan that, within a reasonable timeframe, puts the disaster victim back into permanent housing that is similar to the victim's pre-disaster housing situation. A reasonable timeframe includes sufficient time for securing funds, locating a permanent dwelling, and moving into the dwelling.

¹¹⁷ Voluntary Agency Liaisons establish and maintain relationships among Federal and SLTT governments, as well as voluntary, faith-based and community organizations active in preparedness, response, and recovery; coordinate with Voluntary Organizations Active in Disaster at the national,

to identify and provide additional individualized services and referrals for occupants, coordinating with the respective STT government to jointly develop milestones for timely completion of occupant transitions to permanent housing, and maintaining engagement with the STT government and long-term recovery groups to identify State or local housing programs that can continue to support survivors after FEMA's direct housing mission closes. Furthermore, FEMA complies with and requires all housing entities with whom the Agency contractually partners to comply with Federal housing and civil rights laws. Lastly, it is important to note that FEMA is undertaking an effort to improve and streamline Direct Housing Assistance, which may include further regulatory reforms.¹¹⁸

Group Flood Insurance Policy

One commenter stated that the IA flood insurance requirements, which attaches to property rather than people, can be a burdensome expense for those on limited and fixed incomes.¹¹⁹ The commenter also raised concern about FEMA's policy of determining an applicant ineligible for disaster assistance when they have failed to maintain flood insurance requirements established when the applicant received the initial FEMA financial assistance that triggered the flood insurance requirement. The commenter suggested FEMA consider extending group flood insurance coverage to poor communities beyond 36 months.

FEMA does not have the authority to remove the flood insurance requirement absent a legislative change to the National Flood Insurance Act of 1968 (NFIA). Under the Flood Disaster Protection Act of 1973, FEMA may not approve any financial assistance for acquisition or construction purposes for use in any Special Flood Hazard Area (SFHA) where the sale of flood insurance has been made available under the NFIA, 42 U.S.C. 4001 *et seq.*, unless the building or mobile home and any personal property to which such

State, Territorial, Tribal, and local levels; assist with translating and navigating Federal programs for their stakeholders; provide technical guidance and support with donations, unaffiliated and spontaneous volunteer management; and collaborate with and support non-government organizations that deliver an array of disaster relief services to affected jurisdictions.

¹¹⁸ Direct Housing field operations coordinate with DCM and Voluntary Agency Liaisons by hosting regular roundtable discussions to discuss unmet needs and identify specific solutions for occupants to help them achieve their permanent housing plans.

¹¹⁹ FEMA-2021-0011-0275.

financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost. See 42 U.S.C. 4012a(a). As the commenter notes, this requirement to maintain flood insurance applies to the property, regardless of whether ownership is transferred.

While much of this comment touches on the National Flood Insurance Program (NFIP) and is outside the scope of this IA rulemaking,¹²⁰ FEMA understands that flood insurance policies may be cost prohibitive for some disaster survivors as they are trying to recover from a major disaster. A GFIP is a form of assistance that can help applicants who have trouble affording an initial flood insurance policy. FEMA establishes a GFIP for each disaster declaration that results from flooding and is authorized for IA. FEMA's existing regulations at 44 CFR 206.119(d) provide that individuals identified by FEMA as eligible for ONA as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a SFHA may be included in a GFIP established under the NFIP regulations at 44 CFR 61.17.

Per IAPPG 1.1, FEMA directly purchases GFIP certificates on behalf of

¹²⁰ FEMA is working on many rulemakings to help the public regarding the NFIP. See the following rules on FEMA's Unified Agenda (UA): 1) 1660-AB06, the *National Flood Insurance Program: Standard Flood Insurance Policy (SFIP), Homeowner Flood Form*. This rule would revise the SFIP by adding a new Homeowner Flood Form and five accompanying endorsements. The new Homeowner Flood Form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences. Together, the new Form and endorsements would more closely align with property and casualty homeowners' insurance and provide increased options and coverage in a more user-friendly and comprehensible format. 2) 1660-AB11, *NFIP's Floodplain Management Standards for Land Management & Use, & an Assessment of the Program's Impact on Threatened and Endangered Species & Their Habitats*. FEMA issued a Request for Information to receive the public's input on revisions to the NFIP's floodplain management standards for land management and use regulations. FEMA's authority under the NFIA requires the agency to, from time to time, develop comprehensive criteria designed to encourage the adoption of adequate State and local measures. The agency is reviewing potential actions to better align the NFIP minimum floodplain management standards with our current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding. FEMA is considering revisions to the minimum standards to better protect people and property in a nuanced manner that balances community needs with the national scope of the NFIP while also incorporating opportunities for improving resilience in communities that have been historically underserved. The agency is also reviewing ways to further promote enhanced resilience efforts through the Community Rating System and to strengthen NFIP compliance with Section 7 of the Endangered Species Act.

applicants who are required to purchase and maintain flood insurance but who may not otherwise be able to purchase a policy. This assistance is provided as a part of the effort to reduce future expenses from floods. As required by existing regulations at 44 CFR 206.119(a), applicants must apply for and be denied an SBA loan before receiving a GFIP certificate under ONA. This rule will remove this SBA requirement, which increases the number of applicants in SFHAs that are eligible to receive a 3-year policy from FEMA following a flood disaster.¹²¹

Habitability

A few commenters raised issues regarding the definition of "uninhabitable," recommending that FEMA should revise the definition to ensure it meets the needs of all disaster survivors and underserved communities.¹²² One commenter stated that FEMA defines "uninhabitable" as a dwelling that is not safe, sanitary, or fit to occupy, but that FEMA has no published standard that establishes when a home is "safe, sanitary, and functional." This commenter stated FEMA must clearly define what constitutes a "safe, sanitary, and functional home."¹²³ Another commenter stated that if a residence is deemed "safe to occupy" the applicant will be denied IHP assistance, as it is presumed habitable, and that "One Size Fits All" Habitability Standard is built on the faulty assumption that what is safe to occupy for one is safe to occupy for all.¹²⁴ This commenter also noted that following Hurricane Harvey, FEMA did not consider the presence of mold as a condition which would prevent safe occupation; therefore, many were denied assistance. Another commenter argued that part of the reason for fewer awards to low-income disaster survivors is likely based on the implicit bias and inadequate training of its inspectors but also that part of the reason lies in FEMA's standards for determining when a disaster survivor's home is "safe to occupy."¹²⁵ This commenter also noted that despite applicants living in homes with blue-tarped roofs, buckled floors, nonexistent foundations, destroyed septic systems, and gaping holes, they were denied assistance as their dwelling

¹²¹ An applicant who accepts an SBA loan with a flood insurance requirement will not be considered for a FEMA-purchased GFIP certificate in the same disaster as an applicant cannot hold two flood insurance policies on one property.

¹²² FEMA-2021-0011-0260, FEMA-2021-0011-0152, and FEMA-2021-0011-0286.

¹²³ FEMA-2021-0011-0295.

¹²⁴ FEMA-2021-0011-0152.

¹²⁵ FEMA-2021-0011-0286.

was determined “safe to occupy.” Lastly, another commenter stated that FEMA lacks ascertainable standards for equitable and impartial distribution of Home Repair Assistance, which results in arbitrary, subjective decisions about who gets Home Repair Assistance and how much assistance is provided in each case.¹²⁶

Section 408 of the Stafford Act, 42 U.S.C. 5174, authorizes FEMA to provide Housing Assistance to applicants who, as a direct result of a major disaster, are displaced from their pre-disaster primary residences or are left with pre-disaster primary residences that are “uninhabitable” or, with respect to individuals with disabilities, are “uninhabitable or inaccessible.” FEMA’s regulations at 44 CFR 206.111 defines “uninhabitable” as a dwelling that is not “safe, sanitary or fit to occupy.” FEMA’s regulations at 44 CFR 206.111 further defines “safe” and “sanitary,” but does not define “fit to occupy.” “Safe” means secure from disaster-related hazards or threats to occupants; “sanitary” means free of disaster-related health hazards.

FEMA recognizes that current regulations limit assistance to applicants with residences that incurred disaster-caused damage falling short of immediate safety and sanitation concerns and prevents FEMA from addressing or assessing the general livability issues when determining Housing Assistance eligibility, and is making changes that are expected to address these concerns. FEMA is revising the term “uninhabitable” to mean the dwelling is not safe or sanitary. FEMA is revising the term “safe” to mean secure from hazards or threats to occupants, and FEMA is revising the term “sanitary” to mean free of health hazards. FEMA is also removing the requirement for disaster-damaged real property components to be functional immediately before the disaster in order to provide assistance for pre-existing damage exacerbated by the disaster. This change will remove a discretionary element for inspectors that is not required by the Stafford Act.¹²⁷ As a result, applicants with minimal damage, who may be without the means to pay for minimal repairs, or who are unable to complete the work themselves, will be eligible for Home Repair Assistance.

¹²⁶ FEMA–2021–0011–0310.

¹²⁷ In coordination with the publication of this rule, FEMA will ensure its training and instructional materials are updated to ensure all relevant FEMA staff are apprised of and are able to implement the changes.

Hazard Mitigation Under IHP

Eleven commenters stated that FEMA should allow recovery funds to be used toward making resilient upgrades that offer greater protection against future disasters, with one commenter specifically noting that this would be particularly helpful in flood prone areas.¹²⁸ Another commenter noted the recent changes made to IHP assistance provide funds toward hazard mitigation measures; however, they stated that these funds are specifically for wind and flood events. This commenter believed that these funds should also be extended to wildfire and earthquake events.¹²⁹

FEMA recognizes that helping disaster survivors address hazard mitigation measures while repairing their homes from disaster damage will help make their homes more resilient. Therefore, using our authority under Section 408(c)(2)(A)(ii) of the Stafford Act, 42 U.S.C. 5174(c)(2)(A)(ii), FEMA began including additional assistance for mitigation in Home Repair Assistance awards for disasters declared on or after May 26, 2021.¹³⁰

Prior to this IFR, hazard mitigation under IHP is awarded as part of Home Repair Assistance for specific real property components that existed and were functional prior to the disaster—roof, water heater, furnace, and main electrical panel.¹³¹ Hazard mitigation measures are intended to minimize future damage to owner-occupied residences and are subject to the IHP maximum amount of Home Repair Assistance. FEMA plans to expand hazard mitigation under IHP in the future to include funds for additional mitigation measures, some targeted toward additional disaster causes.

This IFR will allow FEMA to include mitigation for components that were not

¹²⁸ FEMA–2021–0011–0151, Attachment 1; FEMA–2021–0011–0206; FEMA–2021–0011–0209; FEMA–2021–0011–0221; FEMA–2021–0011–0224; FEMA–2021–0011–0237; FEMA–2021–0011–0270; FEMA–2021–0011–0271; FEMA–2021–0011–0278; FEMA–2021–0011–0285; and FEMA–2021–0011–0303.

¹²⁹ FEMA–2021–0011–0261. At the time of this comment, FEMA was only providing hazard mitigation assistance for items in wind and flood events. However, in August of 2022, FEMA added two fire-specific hazard mitigation items, *i.e.*, covering for attic vents, crawlspace vents, and vents in enclosures below decks and non-combustible gutter and leaf guards. FEMA continues to explore hazard mitigation under the IHP to include funds for additional mitigation measures, some targeted toward additional disaster causes.

¹³⁰ See pages 86–88 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappp-1.1.pdf.

¹³¹ Prior to this IFR, in order to receive IHP assistance toward hazard mitigation efforts, the component needs to have been functional prior to the disaster.

functional prior to the disaster when the damage to the component is worsened by the disaster.

Home Repair Assistance

Seven commenters raised concern regarding FEMA’s delivery of Home Repair Assistance,¹³² specifically focusing on how FEMA addresses pre-existing damage.

Per Section 408 of the Stafford Act, 42 U.S.C. 5174, FEMA may provide financial assistance for the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access routes) damaged by a major disaster to a safe and sanitary living or functioning condition; and eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.

As part of this rule, FEMA is removing the requirement for real property components to be functional immediately before the disaster to provide assistance for pre-existing damage that has been further damaged by the disaster. When a component of the home with pre-existing damage is further damaged by the disaster, FEMA may provide assistance to fully repair or replace the item (as appropriate) rather than denying assistance solely because not all damage was caused by the disaster.

One comment suggested FEMA focus its efforts on providing permanent repairs to disaster-damaged homes using a sliding scale benefit.¹³³ FEMA has limited statutory authority to provide direct repairs via PHC—*i.e.*, per Section 408(c)(4) of the Stafford Act, 42 U.S.C. 5174(c)(4), FEMA may only provide financial assistance or direct assistance—in the form of direct repairs or new construction—to individuals and households to construct permanent or semi-permanent housing in insular areas outside the continental United States, or other areas where no alternative housing resources are available and other types of Temporary Housing Assistance are unavailable, infeasible, or not cost-effective. Because FEMA is authorized under statute to provide such assistance only in these limited circumstances, FEMA has only implemented this type of direct assistance twice before in the continental United States.

¹³² FEMA–2021–0011–0033, FEMA–2021–0011–0149, FEMA–2021–0011–0194, FEMA–2021–0011–0199, FEMA–2021–0011–0245, FEMA–2021–0011–0277, and FEMA–2021–0011–0310.

¹³³ FEMA–2021–0011–0269.

Homelessness

Four commenters voiced concern over the lack of FEMA guidance to State, local, and Tribal governments on how to handle people experiencing homelessness during a disaster, the lack of resources available for people experiencing homelessness during or after a disaster, and the need for more programs dedicated to those experiencing homelessness.¹³⁴

Per Section 408(a)(1) of the Stafford Act, 42 U.S.C. 5174(a)(1), FEMA's IHP assistance is intended to assist with disaster-caused losses; therefore, issues related to pre-disaster homelessness are outside the scope of the program. FEMA does not provide Housing Assistance (Rental Assistance, Direct Assistance, Home Repair Assistance, or Home Replacement Assistance) to applicants experiencing pre-disaster homelessness if their need for housing or shelter was not caused by the disaster. However, applicants experiencing pre-disaster homelessness may be eligible for certain types of ONA (Transportation Assistance, Medical and Dental Assistance, Funeral Assistance, and Child Care Assistance). Further, applicants whose pre-disaster residence was a tent or other form of nontraditional housing could be considered for limited housing assistance (2-month initial Rental Assistance and Lodging Expenses Reimbursement) if a public official or homelessness advocate verifies a disaster survivor's occupancy and if that individual meets all other eligibility requirements.

While FEMA may be limited in the types of assistance it can provide to pre-disaster homeless individuals, there are other Federal, State, or local government resources that are more readily available for this population, *e.g.*, HUD's Emergency Solutions Grants Program or HUD's Rapid Unsheltered Survivor Housing Program.

Applicants experiencing homelessness as a result of the disaster—for example, those whose pre-disaster residences were destroyed due to a disaster—may be considered for various types of financial Housing Assistance to include Lodging Expense Reimbursement, Rental Assistance, Home Repair Assistance, and Replacement Assistance, to meet their disaster housing needs. Additionally, if a direct housing mission is approved for the disaster, they could be eligible for a direct housing unit depending on the level of damage incurred to their pre-

disaster residence and on whether they have not been able to use any FEMA-provided Rental Assistance.

IHP File

A few commenters raised issues regarding FEMA's process for applicants to request a copy of their IHP file, stating that it is unnecessarily complex.¹³⁵ One commenter argued that it is excessive and unnecessarily burdensome to require applicants to obtain notary signatures or provide the penalty of perjury statement in order to access their IHP file. This commenter reasoned that IHP file information should be accessible through one online portal.¹³⁶ Another commenter argued that when applicants request a copy of their file, FEMA does not provide access to all specific information used to make FEMA's decision such as pictures, home and property damage descriptions, and eligibility decisions, including include how FEMA calculates the awards and inspection line-item pricing. This commentor also noted that to access this type of information, applicants must file a Freedom of Information Act request.¹³⁷ Lastly, one commenter stated that FEMA should develop a streamlined process including a central point of contact for State-led agencies and other disaster relief organizations to obtain applicant information required to provide further recovery assistance years following the disaster declaration.¹³⁸

There are multiple statutes which govern what information FEMA may collect and how that information may be shared. The Stafford Act allows FEMA to collect personal information to determine eligibility and administer FEMA disaster assistance as a result of an emergency or a Presidentially declared disaster. See 42 U.S.C. 5121–5207.

As outlined on page 67 of IAPPG 1.1, applicants may submit a written, signed request for a copy of FEMA's records related to their registration for IHP assistance.¹³⁹ The request must specifically state what information the applicant would like to receive (*e.g.*, entire file copy, copy of all correspondence from FEMA, etc.)¹⁴⁰

¹³⁵ FEMA–2021–0011–0149 and FEMA–2021–0011–0277.

¹³⁶ FEMA–2021–0011–0149.

¹³⁷ FEMA–2021–0011–0295.

¹³⁸ FEMA–2021–0011–0275.

¹³⁹ Applicants may alternatively choose to complete, sign, and return the Authorization for the Release of Information Under the Privacy Act form (OMB No. 1660–0061) to request a copy of their file and authorize the release of information.

¹⁴⁰ Note that line-item pricing is not part of an applicant's IHP file and therefore is not included in requests for copies of IHP files. While NEMIS can

and who is to receive the requested information (*e.g.*, self, attorney, friend, etc.). For identity verification purposes, the request must include, among other requirements, the applicant's signature with either a notary stamp or seal or the statement: "I hereby declare under penalty of perjury that the foregoing is true and correct." Applicants have the ability to create an online account, via www.DisasterAssistance.gov, where they may access a high-level overview of their application, including eligibility determinations and letters provided by FEMA, upload documentation, and change some information. Current system limitations prevent FEMA from including information such as pictures, home and property damage descriptions, and inspection line-item pricing. However, FEMA is developing a new system with increased capabilities.¹⁴¹ Once such increased capabilities are developed, nothing in this rule will prevent FEMA from implementing them. Information on how FEMA calculates awards and determines eligibility are available to the public via the IAPPG.

FEMA continues to work alongside its State, local, Tribal and Territorial partners to ensure that disaster recovery resources and services are not delayed or hindered by data collection and sharing concerns. Following a disaster, FEMA establishes a Joint Field Office (JFO), which is the appropriate central point to work with the State and disaster-relief organizations for the disaster. Once the JFO closes, those duties would devolve to the FEMA Region, unless a long-term field office is set up to handle disaster-related concerns. FEMA has processes in place to assist States, Tribes, and Territories with information sharing. These entities work with the FEMA staff assigned to coordinate with them for a specific disaster. This is the standard process that FEMA utilizes when responding to disaster-specific requests of all types from States, Tribes, and Territories.

Insurance

One commenter stated that the Stafford Act needed to be amended so that Federal assistance would not be considered a duplication of benefits

provide a summary of the items viewed or noted during inspection, it does not include the line-item pricing.

¹⁴¹ FEMA is in the very early stages of the Systems Engineering Lifecycle and Acquisition process. The Agency is working to complete all requisite documentation needed for gate reviews, and have requested funding via the Program Decision Option process to support completely modernizing the functionality currently provided by the legacy on-premises NEMIS-IA system. This will be a multi-year effort.

¹³⁴ FEMA–2021–0011–0235, FEMA–2021–0011–0277, FEMA–2021–0011–0295, and FEMA–2021–0011–0310.

with received insurance proceeds.¹⁴² Statutory changes are outside the scope of this rulemaking.

Loss Verification

Twenty-three comments were received regarding FEMA's loss verification methods,¹⁴³ referencing FEMA's inspection process and describing it as slow, subject to human error, costly, and disproportionately impacting historically disadvantaged populations. While three commenters stated FEMA should utilize more geospatial technology or develop remote technology capabilities, one commenter¹⁴⁴ noted concern over the remote inspector process established by FEMA during COVID-19, stating that it disadvantaged disaster survivors by creating additional documentation burdens, which particularly impacted those who were least able to access technology or local assistance. Another commenter noted their concern that the loss verification process prioritized property values rather than examining the full impact of the housing loss, thereby adversely impacting whether an applicant would be considered eligible for Direct Housing Assistance. Lastly, one commenter specifically stated that FEMA, during inspection, should count damages to mobile homes as personal property losses.

Once disaster survivors register for assistance, FEMA is required to verify losses to determine their eligibility for IHP assistance. FEMA uses multiple loss verification methods, including onsite and geospatial inspections as well as submitted documentation. FEMA may, at its discretion, determine other methods of verification (*i.e.*, remote inspections) that will be used to help verify loss and deliver assistance.¹⁴⁵ FEMA may also review and verify documentation for disaster-caused

losses that cannot be verified through on-site or geospatial inspections.

FEMA inspectors are trained to identify post-disaster damage and record all appropriate evidence of any disaster damage. Home and/or property values are not considered during damage verification. While there are numerous checks and balances in place to verify consistent and accurate damage assessments, FEMA continues to explore ways to improve its loss verification methods.

Per IAPPG 1.1, FEMA may provide financial assistance to repair an owner-occupied primary residence, utilities, and residential infrastructure, including private access routes damaged as a result of a Presidentially-declared disaster up to the financial Housing Assistance maximum award. Home Repair Assistance is intended to make the damaged home safe, sanitary, or functional. Damage to real property components of the applicant's home is addressed under the IHP's Home Repair Assistance, regardless of the type of home. Mobile homes have unique real property components, and damage to these items are captured during inspection. Personal Property is not dependent on the type of home and is recorded under ONA.

Multifamily Lease and Repair

One commenter stated that FEMA should make more effort to aid residents of multifamily housing units in the wake of disasters.¹⁴⁶

Section 408 of the Stafford Act, 42 U.S.C. 5174, limits IHP assistance to individuals and households;¹⁴⁷ therefore, in situations where multifamily housing units, such as a condominium, are damaged by a disaster, FEMA only provides financial Housing Assistance and ONA to owner-occupants for eligible disaster-caused damages to areas the owner is responsible for within their unit. These types of assistance do not cover repair for disaster-caused damage to multifamily housing units for structural elements (*e.g.*, roof, exterior walls, chimneys, and shared foundation) and common areas shared by all residents such as recreational facilities, outdoor space, parking, landscaping, fences, laundry rooms, and all other jointly-used space, unless these spaces are the individual's responsibility.

FEMA may provide Direct Temporary Housing Assistance to eligible applicants in the form of temporary

rental units made available through repairs or improvements to existing, vacant multifamily housing units (*e.g.*, apartments). Under the Multifamily Lease and Repair program, FEMA may enter into lease agreements with owners of multifamily properties located in a disaster area and make repairs or improvements (including to structural elements and common areas of the multifamily properties) to provide temporary housing to eligible applicants. FEMA may utilize units repaired or improved under Multifamily Lease and Repair as temporary housing for eligible applicants who are unable to use Rental Assistance due to a lack of available resources. This type of Direct Temporary Housing Assistance is intended to repair or improve individual units to re-house existing tenants.¹⁴⁸

Non-Traditional Housing

One commenter stated that FEMA does not recognize applicants who live in non-traditional housing such as "boats, yurts, and travel trailers." The commenter requested that FEMA consider these as viable places of residence and recognize them for compensation.¹⁴⁹

Per Chapter 3: ILB.10. of IAPPG 1.1,¹⁵⁰ eligible applicants who live in travel trailers and boats may be eligible for Home Repair Assistance and Home Replacement Assistance. Applicants residing in yurts and other unique homes may also receive Home Repair Assistance for any damaged structural elements of the home. However, Home Repair Assistance and Home Replacement Assistance is not available for other non-traditional forms of housing if they do not have structural elements to assess and calculate a repair or replacement award (*e.g.*, tents). By policy, FEMA defines non-traditional housing as a form of dwelling void of structural floor, structural walls, and structural roof. Applicants who reside in non-traditional housing who are able to verify occupancy may be eligible for initial Rental Assistance, Lodging Expense Reimbursement, and all types of Other Needs Assistance.

Ownership/Occupancy

All 26 comments received regarding FEMA's verification of applicant ownership and/or occupancy of their

¹⁴⁸ For additional information about Multifamily Lease and Repair, please see pages 107 to 112 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

¹⁴⁹ FEMA-2021-0011-0149.

¹⁵⁰ See page 62 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

¹⁴² FEMA-2021-0011-0153.

¹⁴³ FEMA-2021-0011-0033, FEMA-2021-0011-0147, FEMA-2021-0011-0151, FEMA-2021-0011-0153, FEMA-2021-0011-0159, FEMA-2021-0011-0162, FEMA-2021-0011-0163, FEMA-2021-0011-0169, FEMA-2021-0011-0199, FEMA-2021-0011-0206, FEMA-2021-0011-0208, FEMA-2021-0011-0221, FEMA-2021-0011-0256, FEMA-2021-0011-0261, FEMA-2021-0011-0270, FEMA-2021-0011-0271, FEMA-2021-0011-0275, FEMA-2021-0011-0277, FEMA-2021-0011-0282, FEMA-2021-0011-0285, FEMA-2021-0011-0295, FEMA-2021-0011-0302, and FEMA-2021-0011-0310.

¹⁴⁴ FEMA-2021-0011-0169.

¹⁴⁵ FEMA uses a variety of techniques and technologies when conducting geospatial inspections. This includes using aerial and satellite photography and remote sensing technologies. For remote inspections, FEMA inspectors will contact applicants via phone and complete the standard onsite inspection process remotely based on responses from the applicant.

¹⁴⁶ FEMA-2021-0011-0268.

¹⁴⁷ 44 CFR 206.113(b)(9) further limits assistance by stating that FEMA may not provide IHP assistance for business losses, including farm businesses and self-employment.

disaster-damaged dwelling were consistent with one concern: the applicant's burden of proving ownership and/or occupancy, especially in relation to properties being passed down via heirship.¹⁵¹

Per IAPPG 1.1, FEMA verifies occupancy through an automated public records search or submitted documents. In locations where automated verification of public records is limited, FEMA may partner with applicable authorities from the State, local, Tribal, or Territorial government to verify ownership or occupancy. When FEMA is unable to verify an applicant's occupancy of their disaster-damaged primary residence, the applicant may provide FEMA with documentation for verification. Based on comments submitted via the April 22, 2021 RFI, FEMA updated its automated public records criteria along with its policy to provide more documentation flexibilities for verifying occupancy. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept social service organization documents, local school documents, Federal or State benefit documents, motor vehicle registration, affidavits of residency or court documentation, and mobile home park documents in addition to the documentation options listed in IAPPG 1.1 to verify occupancy. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer or from applicants living in insular areas, islands, and Tribal lands.

Like occupancy, when FEMA is unable to verify an applicant's ownership of their primary residence, the applicant may provide FEMA with documentation to prove ownership. Based on comments submitted via the RFI, FEMA also updated its policy to provide more documentation flexibilities in order to verify ownership. Specifically, as outlined in the *Amendment to FEMA Policy (FP)*

104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1 memorandum, dated September 2, 2021, FEMA will now accept receipts for major repairs or improvements, mobile home park letters, court documents, and a public official's letter in addition to the documentation options listed in IAPPG 1.1 to verify ownership. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer, from applicants living in insular areas, islands, and Tribal lands, and from applicants whose pre-disaster residence was passed down via heirship.¹⁵²

Both occupancy and ownership verification may be completed upon inspection if the applicant is able to show an acceptable document to the inspector. FEMA inspectors, however, will not accept self-declarative statements; this option of last resort must be mailed, uploaded to the applicant's online account, or submitted in person at a DRC.¹⁵³ For those applicants who are still unable to prove occupancy and ownership, FEMA will conduct proactive outreach via casework to ensure all eligible applicants are able to receive assistance.

Period of Assistance

Five commenters requested that the current period of assistance be extended or for there to be options in which it could be extended on an individual disaster basis.¹⁵⁴ One of the commenters stated that some applicants who received FEMA assistance to fix their homes had contractors take money for the repairs but not complete the work, that FEMA should take on the burden of the lost money, or otherwise ensure that the work is properly completed, and that assistance from FEMA should only be complete when the people in a household are fully, safely housed again.¹⁵⁵

Section 408(c)(1)(B)(iii) of the Stafford Act, 42 U.S.C. 5174(c)(1)(B)(iii), limits IHP assistance to 18 months following the date of the disaster declaration. The period of assistance begins at the date of

the Presidential disaster declaration and not the date on which the disaster is designated for IA. FEMA may extend the period of IHP assistance beyond 18 months due to extraordinary circumstances if an extension would be in the public interest, and FEMA has implemented this authority when warranted.¹⁵⁶ As the period of assistance is established in statute, it cannot be addressed in this rulemaking effort.

FEMA assistance is intended for disaster caused losses. Disputes between contractors and individuals are private civil matters, in which FEMA has no authority to intercede. These should be addressed by the applicant through appropriate legal channels.

Rental Assistance

One commenter stated that FEMA must include clear guidance in its policies to ensure that multifamily homes are treated in a fair and equitable manner, including expanding the definition of "household" so that multiple families in one housing unit are counted as separate households for purposes of calculating aid and are eligible for separate rental assistance when needed.¹⁵⁷ This situation is addressed in current FEMA policy.¹⁵⁸ FEMA may provide financial assistance to pre-disaster homeowners or renters to rent alternate housing if they are displaced from their primary residence as a result of a Presidentially-declared disaster. While FEMA typically will award Rental Assistance to the first individual who registers for the household, if a multifamily household is unable to relocate together due to extenuating circumstance, then FEMA may provide additional Rental Assistance to the other members of the household. Additionally, through this rule, FEMA is adding a new type of assistance—Displacement Assistance—that will provide an additional resource to applicants who must temporarily

¹⁵¹ FEMA-2021-0011-0033, FEMA-2021-0011-0149, FEMA-2021-0011-0153, FEMA-2021-0011-0163, FEMA-2021-0011-0194, FEMA-2021-0011-0199, FEMA-2021-0011-0207, FEMA-2021-0011-0235, FEMA-2021-0011-0236, FEMA-2021-0011-0245, FEMA-2021-0011-0255, FEMA-2021-0011-0259, FEMA-2021-0011-0260, FEMA-2021-0011-0261, FEMA-2021-0011-0265, FEMA-2021-0011-0273, FEMA-2021-0011-0275, FEMA-2021-0011-0276, FEMA-2021-0011-0277, FEMA-2021-0011-0282, FEMA-2021-0011-0286, FEMA-2021-0011-0293, FEMA-2021-0011-0302, FEMA-2021-0011-0305, FEMA-2021-0011-0306, and FEMA-2021-0011-0310.

¹⁵² Please see FEMA's Equity web page at [FEMA.gov](https://www.fema.gov) (last visited July 2, 2022.)

¹⁵³ FEMA inspectors do not have the ability to upload documentation into an applicant's file. Applicants may submit a self-declarative statement to FEMA by either mail, uploading the document into their online www.disasterassistance.gov account, or by visiting a DRC, where a FEMA employee may upload the document into their file.

¹⁵⁴ FEMA-2021-0011-0153, FEMA-2021-0011-0163, FEMA-2021-0011-0253, FEMA-2021-0011-0274, and FEMA-2021-0011-0277.

¹⁵⁵ FEMA-2021-0011-0274.

¹⁵⁶ The President has delegated authority to the Administrator of FEMA to determine whether due to extraordinary circumstances an extension of IHP assistance beyond the 18-month limit would be in the public interest. See 42 U.S.C. 5174(c)(1)(B)(iii). Executive Order 12148, Federal Emergency Management, July 20, 1979 and Department of Homeland Security Delegation 9001.1. The FEMA Administrator has delegated authority to the Assistant Administrator for the Recovery Directorate to extend this period if they determine that due to extraordinary circumstances an extension would be in the public interest. See 44 CFR 206.110(e) and section G.4. of the Federal Emergency Management Agency (FEMA) Delegation Number: FDA 112-002a-1 Issue Date: Oct. 30, 2020.

¹⁵⁷ FEMA-2021-0011-0295.

¹⁵⁸ See page 57 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

relocate from their home as the result of damage from a Presidentially-declared disaster. Displacement Assistance will be an award amount based on the daily rate established by the STT government and is intended to provide flexibility for applicants to address their short-term lodging needs via hotels, motels, friends and family, or other available options.

Another commenter stated that it is common in Puerto Rico for multiple homes to be built on a single lot and to have the same address and that this leads to a denial of assistance for the second family to apply due to suspected duplication of benefits.¹⁵⁹ Although FEMA did previously encounter difficulties distinguishing between separate homes on a single lot due to system limitations and lack of available third-party data, we now have a better understanding of these arrangements and have improved our processes¹⁶⁰ to ensure the appropriate assistance is provided to each family when FEMA can determine two separate homes exist and the applicants meet all other eligibility criteria.

Renter Assistance

Ten commenters stated that FEMA assistance is prioritized for homeowners and that programs and services need to be expanded to include renters and/or provide more assistance programs to benefit renters.¹⁶¹ One commenter stated that FEMA should afford minority and poor families the opportunity to move to neighborhoods that are safer, the schools are better, and jobs are more available.¹⁶² This commenter also suggested that the choice of where to live must be built into FEMA housing programs. Another commenter stated that FEMA provides assistance for hotel stays, but there are not many programs that provide rental assistance, security deposits, and application fees for survivors that have

to relocate.¹⁶³ This commenter also stated that providing flexible funding for renters to replace appliances, furniture, clothing, and other necessary goods would be more beneficial. One commenter stated that the application for continuing Rental Assistance is onerous and difficult for survivors to complete. Further, applicants must continue to work toward obtaining permanent housing to remain eligible for continuing rental assistance.¹⁶⁴

A few commenters suggested that FEMA should partner with HUD to design resilient and affordable housing relocation solutions and follow a similar approach to HUD's Community Development Block Grant—Disaster Recovery (CDBG—DR) program for clients who want to remain in their communities while reducing disaster risk.¹⁶⁵ Lastly, two commenters suggested longer-term, safe housing solutions that are affordable to renters, arguing that once the funds are exhausted for renters, FEMA transitional services are not timely or are complex processes causing victims to experience a period of homelessness.¹⁶⁶

Some of these comments misconstrue FEMA policy. Per Section 408 of the Stafford Act, 42 U.S.C. 5174, FEMA may only provide financial assistance to repair an owner-occupied primary residence, utilities, and residential infrastructure, including private access routes damaged as a result of a Presidentially-declared disaster. FEMA does not have the authority to provide repair assistance to renters or landlords not occupying the damaged property as their primary residence.

Section 408 of the Stafford Act, 42 U.S.C. 5174, also states that FEMA may provide financial assistance, *i.e.*, Rental Assistance, to pre-disaster homeowners or renters to rent alternate temporary housing if they are displaced from their primary residence as a result of a Presidentially-declared disaster. FEMA may also provide Continued Temporary Housing Assistance (CTHA) to eligible applicants who exhausted previously awarded Rental Assistance (for its intended use), are unable to return to their pre-disaster residence because it is uninhabitable, inaccessible, or not available due to the disaster, and their post disaster housing costs represent 30 percent or more of their post-disaster household income.¹⁶⁷ This assistance

may be provided for up to 18 months or until the end of the 18-month period of assistance, whichever comes first.¹⁶⁸ FEMA will also award applicants one additional month of rent when utilized for a security deposit. FEMA does not dictate where renters may choose temporary housing; rather, renters may choose where to live. Addressing the suggestion that FEMA partner with HUD to design a CDBG—DR equivalent, FEMA notes that HUD is a separate Federal agency with separate statutory authorities that differ from FEMA's both in terms of the structure of the Agency's programs and the objectives of those programs. Such a change is outside the scope of this rulemaking. However, FEMA is currently working with HUD on several housing issues in an effort to make better use of each agency's authorities in support of disaster survivors.

FEMA agrees that renters should have equitable access to IHP financial assistance. One type of assistance renters may currently qualify for is Personal Property Assistance. Under Section 408(e)(2) of the Stafford Act, 42 U.S.C. 5174(e)(2), FEMA may provide financial assistance under the ONA provision of the IHP to repair or replace personal property damaged or destroyed due to a disaster. FEMA assistance to repair and replace personal property may be provided for: appliances (standard household appliances such as refrigerator, washing machine, etc.); clothing (essential clothing needed due to overall loss, damage, or contamination); room furnishings (standard furnishings found in a bedroom, kitchen, bathroom, and living room); and essential tools (tools and equipment required by an employer for employment and items required for education).

Additionally, FEMA is committed to improving its Renter Assistance program in those areas where equity may be lacking. For example, as part of this rule, FEMA is broadening the IHP to encompass any damage to the applicant's primary residence that causes the home to be unsuitable for occupancy. This change allows more renters with minimal damages to qualify

¹⁶⁸ FEMA may certify pre-disaster renters, up to 18-months or the end of the 18-month period of assistance, whichever comes first, for continued rent assistance when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own. FEMA may certify pre-disaster owners for continued rent assistance, up to 18-months or the end of the 18-month period of assistance, whichever comes first, when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

¹⁵⁹ FEMA—2021—0011—0292.

¹⁶⁰ There are processes available in these types of unique situations where multiple households reside in the same house or there are multiple separate homes on the same property. In the case of multiple separate homes on the same property, applicants must demonstrate that the homes are separate structures, and for multiple households in the same home, they must demonstrate that they have a pre-disaster financial responsibility to the household, such as a formal agreement supported by pre-disaster rent receipts, cancelled checks, or money orders; pre-disaster lease, landlord's written or verbal statement, or rental agreement; or pre-disaster major utility bills.

¹⁶¹ FEMA—2021—0011—0293, FEMA—2021—0011—0271, FEMA—2021—0011—0270, FEMA—2021—0011—0285, FEMA—2021—0011—0206, FEMA—2021—0011—0209, FEMA—2021—0011—0221, FEMA—2021—0011—0262, FEMA—2021—0011—0274, and FEMA—2021—0011—0187.

¹⁶² FEMA—2021—0011—0199.

¹⁶³ FEMA—2021—0011—0275.

¹⁶⁴ FEMA—2021—0011—0295.

¹⁶⁵ FEMA—2021—0011—0231, and 0264.

¹⁶⁶ FEMA—2021—0011—0256, and 0296.

¹⁶⁷ See page 81 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

for Rental Assistance if they must relocate for a short time while repairs are made to their apartment.

As is discussed further below, FEMA is removing the requirement that applicants must apply and be denied for an SBA disaster loan before being considered for SBA-dependent ONA. Applicants may apply for an SBA loan for additional funds if they have an unmet need, but eligibility for Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policies will no longer be contingent on applying for and being denied for an SBA loan making them available to more renters.

Another example of how FEMA is making strides towards equity involves regulatory updates to CTHA. The rule update will add flexibility regarding FEMA's ability to provide some continued assistance without requiring substantial documentation from the applicant. FEMA is also making updates to its CTHA policy and the Application for CTHA forms so that applicants have a better understanding of what documentation is needed at each step of the process. Plus, the applicant having to work toward obtaining permanent housing in order to remain eligible for continued rental assistance increases the likelihood of successful recovery outcomes.

In addition, FEMA is implementing two new types of assistance, Serious Needs Assistance and Displacement Assistance. Serious Needs Assistance will provide funds to address immediate needs related to sheltering, evacuation, or other emergent disaster expenses. Displacement Assistance is intended to assist displaced applicants with the cost of short-term living arrangements immediately following a disaster.

SBA-Dependent ONA

The majority of commenters who commented on this requirement raised the same concern: FEMA should remove the requirement for applicants to apply for and be denied an SBA loan before receiving consideration for IA grants. The commenters stated the process is unclear and places an unnecessary burden on applicants; creates a disproportionate barrier; and may, at best, lead to a delay in the registration process, or, at worst, effectively block access to the grants.¹⁶⁹ Two commenters further expressed that forcing people to apply for an SBA loan after the initial registration is a barrier and deterrent to applying for help, especially in senior

citizen communities as they do not want a loan and most are on a fixed income; for black disaster survivors who face their credit history being scrutinized without receiving tangible assistance; and for renters with low incomes, and for members of underserved communities, including people of color, who, many times, have a greater need than middle-income survivors.¹⁷⁰ Another commenter argued that FEMA should automatically qualify the application and denial steps of the SBA process for individuals who already receive needs-based assistance such as food stamps, Supplemental Security Income, and Social Security Disability Income to allow the most vulnerable to receive assistance more quickly and easily.¹⁷¹ A few commenters offered solutions, such as that FEMA actively coordinate with the SBA to conduct pre-screening using SBA's established credit score and citizenship requirements before referring applicants to the SBA, and that FEMA's staff receive training on SBA-related issues and be able to answer questions about any aspect of the SBA's process.¹⁷² One commenter stated that FEMA underassesses the needs of renters with low-incomes, and for members of underserved communities, including people of color, who seek to recover damaged personal property and vehicles by first requiring an application for an SBA loan, which causes delays in their application process.¹⁷³ Lastly, one commenter remarked that requiring an SBA loan denial as a prerequisite to receiving emergency aid burdens the applicant and paves the way for deeper poverty for survivors of natural disasters. This commentator further explained their perception that the ease to extend debt instruments (*i.e.*, an SBA loan) is in stark contrast to the denial of assistance due to the lack of legal documentation or a means to fight unjust denials.¹⁷⁴

FEMA's current regulations under 44 CFR 206.119(a)(1)–(3) state that FEMA and the State may provide financial assistance to individuals and households who have other disaster-related necessary expenses or serious needs. Prior to this IFR, to qualify for assistance under this section, an applicant must also apply to the SBA Disaster Home Loan Program for all available assistance under that program; and be declined for SBA Disaster Home

Loan Program assistance; or demonstrate that the SBA assistance received does not satisfy their total necessary expenses or serious needs arising out of the major disaster. FEMA's current 44 CFR 206.191(d) provides FEMA's sequence of delivery to ensure uniformity in preventing duplication of benefits. The delivery sequence pertains to that period of time in the recovery phase when most of the traditional disaster assistance programs are available. The delivery sequence includes in relevant part Housing Assistance pursuant to Section 408 of the Stafford Act, 42 U.S.C. 5174; SBA and Farmers Home Administration¹⁷⁵ disaster loans; and then ONA, pursuant to Section 408 of the Stafford Act, 42 U.S.C. 5174.

Prior to this IFR, FEMA's regulations required SBA referrals, but FEMA only required applicants whose self-reported income meets the SBA's minimum income requirements to apply for and be denied an SBA disaster loan before receiving consideration for SBA-dependent ONA, in an effort to minimize the burden on and expedite assistance to applicants whose income did not meet SBA's minimum income requirements. Based on comments submitted via the RFI, the SBA, in coordination with FEMA, raised the minimum income threshold so that more eligible lower income applicants could be assisted by FEMA as opposed to referred to SBA for a loan.

With this rule, FEMA is removing the requirement entirely that applicants must apply and be denied for an SBA disaster loan before being considered for SBA-dependent ONA. Removing this requirement will ensure low income and other vulnerable disaster survivors who may not have the means to obtain or repay a disaster loan due to their financial condition have equitable access to disaster assistance while also leveraging new ways to prevent duplication of benefits.¹⁷⁶

Just because an applicant already receives needs-based assistance such as food stamps, SSI, and SSDI does not mean that they will be eligible for FEMA assistance. The applicant will have to meet the IHP eligibility

¹⁷⁵ The Farmers Home Administration is now administered by the successor agencies of the Farmers Home Administration. The Farmers Home Administration disaster loans are now the Department of Agriculture disaster loans.

¹⁷⁶ FEMA currently shares relevant data with the SBA, and will continue to do so to ensure FEMA and the SBA continue to remain good partners and stewards of taxpayer dollars. FEMA and the SBA will continue to coordinate to ensure that FEMA assistance and SBA disaster loans do not cause a duplication of benefits for the same type of assistance.

¹⁶⁹ FEMA–2021–0011–0245, FEMA–2021–0011–0251, FEMA–2021–0011–0255, FEMA–2021–0011–0275, and FEMA–2021–0011–0277.

¹⁷⁰ FEMA–2021–0011–0245 and FEMA–2021–0011–0277.

¹⁷¹ FEMA–2021–0011–0245.

¹⁷² FEMA–2021–0011–0255 and FEMA–2021–0011–0275.

¹⁷³ FEMA–2021–0011–0277.

¹⁷⁴ FEMA–2021–0011–0306.

requirements which have no link to income for the majority of IHP assistance. Therefore, FEMA cannot automatically qualify applicants for IHP assistance based upon their already receiving food stamps, SSI, and SSDI.

Self-Employed Workers

Two commenters stated that gig workers, artists, and other self-employed individuals do not receive the same assistance as other applicants.¹⁷⁷ One of those commenters detailed that FEMA should correct the inequity by extending eligibility to self-employed individuals for necessary expenses and serious needs for repair or replacement of tools, specialized or protective clothing and equipment required by an employer as a condition of employment. The commenter also stated that FEMA could streamline the process to remove obstacles that delay assistance to self-employed workers by eliminating the FEMA requirement for applicants to first apply for and be denied an SBA disaster loan before self-employed workers are eligible for Personal Property Assistance for necessary expenses and serious needs.¹⁷⁸

Prior to this IFR, per 44 CFR 206.113(b)(9), FEMA may not provide IHP assistance for business losses, including farm businesses and self-employment. Under current policy, self-employed individuals are eligible for FEMA assistance for their personal losses except for necessary expenses and serious needs related to business losses.¹⁷⁹ Business losses include costs for essential tools, such as tool repair or replacement, computing devices, supplies, and uniforms, which may include specialized or protective clothing.

As part of this rule and in response to comments received during the Agency's RFI, FEMA is amending its regulations to allow FEMA to provide self-employed applicants with IHP financial assistance for necessary expenses and serious needs as it relates to self-employed applicants seeking assistance for the replacement of essential tools.¹⁸⁰

¹⁷⁷ FEMA–2021–0011–0187 and FEMA–2021–0011–0200.

¹⁷⁸ FEMA–2021–0011–0200.

¹⁷⁹ See page 168 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iapppg-1.1.pdf.

¹⁸⁰ For self-employed applicants FEMA is requiring a written statement from the applicant, including an itemized list of essential tools, specialized or protective clothing, computing devices, and equipment required for self-employment, and verifying their need for the items. The statement must include "I hereby declare under penalty of perjury that the foregoing is true and correct," and be signed by the applicant. Tax return documentation are required to establish self-

FEMA is also adding a new definition at 44 CFR 206.111 of "essential tools" to mean tools and equipment required for employment and items required for education. The changes will allow FEMA to provide assistance for disaster-damaged tools and equipment, or other items required for a specific trade or profession, for self-employed applicants, in their individual capacity.

In addition, this rule will remove the requirement for applicants to apply for and be denied an SBA loan before receiving ONA. For additional information, refer to the SBA-Dependent ONA discussion in section III.D.2 of this rule.

Single Application for Federal Assistance

Twenty-one commenters recommend merging the information collection authorities that govern over 19 other Federal agencies in order to form a single registration for disaster assistance.¹⁸¹ These commenters point out how each of the separate registration processes of the various agencies places an unnecessary burden on the survivor as they try to recover from a disaster. One commentator also stated that the current documentation requirements and duplicative registration processes prevents them from receiving aid they would otherwise be eligible to receive.¹⁸²

FEMA recognizes the complexities caused by multiple disaster registration processes and that data sharing might make it easier for survivors to access assistance. FEMA has previously examined whether a streamlined, one-stop shop application could be created and has identified statutory and administrative barriers that would prevent a single agency from collecting and sharing as wide a range of information as would be required for a unified application. A recent Government Accountability Office (GAO) report highlighted the potential benefits of a single application, but noted concerns about the feasibility of such an application and about whether it would actually reduce the complexity of Federal disaster recovery

employment (e.g., Form 1040 or 1040–SR, Schedule C, etc.).

¹⁸¹ FEMA–2021–0011–0033; FEMA–2021–0011–0151 Attachment 1; FEMA–2021–0011–0153; FEMA–2021–0011–0157; FEMA–2021–0011–0159; FEMA–2021–0011–0187; FEMA–2021–0011–0204; FEMA–2021–0011–0206; FEMA–2021–0011–0209; FEMA–2021–0011–0221; FEMA–2021–0011–0235; FEMA–2021–0011–0236; FEMA–2021–0011–0237; FEMA–2021–0011–0256; FEMA–2021–0011–0270; FEMA–2021–0011–0271; FEMA–2021–0011–0277; FEMA–2021–0011–0285; FEMA–2021–0011–0293; FEMA–2021–0011–0295; FEMA–2021–0011–0302.

¹⁸² FEMA–2021–0011–0295.

programs.¹⁸³ However, within the spirit of these comments, and aligned with existing authorities, FEMA is streamlining the application process to reduce the burden on applicants, and plans to implement the streamlined process by the end of this year.¹⁸⁴ This effort will also help prepare FEMA's technology platform to integrate with other Federal agency application platforms in the future, but such integration will likely still require multiple years of systems development. Nonetheless, FEMA continually assesses its application process and is open to other changes that would make it simpler or less burdensome for applicants.

Transparency

Eight commenters raised transparency concerns regarding FEMA's IHP policy and guidance. The comments focused mainly on how FEMA should make public the policy and determination process it uses before IA decisions are made.¹⁸⁵ Five commenters stated that FEMA should make FEMA's determination process for IA more transparent and accessible and that FEMA regulations should be easier to find.¹⁸⁶ Two of those commenters also stated that there is a general lack of transparency around FEMA's inspection process.¹⁸⁷ One commenter stated that FEMA denial codes used during Hurricane Harvey offer only vague reasons for a denial of renters and low-income homeowners.¹⁸⁸ This commenter also believes FEMA made processing mistakes during Hurricane Harvey and is refusing to release the data to allow for a proper determination if a significant number of these denials were made incorrectly. One commenter also noted that FEMA's eligibility codes are not publicly accessible, and when found, they do not provide a detailed

¹⁸³ GAO–23–104956, *Disaster Recovery: Actions Needed to Improve the Federal Approach* (November 15, 2022).

¹⁸⁴ Once the streamlined applicant process is implemented, survivors applying for disaster assistance will have the ability to select the type of assistance they require and only have to answer questions directly related to the specific types of assistance they need. This will decrease the number of questions survivors need to answer and reduce the time to complete their disaster application online or at a FEMA Disaster Recovery Center.

¹⁸⁵ FEMA–2021–0011–0206, FEMA–2021–0011–0209, FEMA–2021–0011–0221, FEMA–2021–0011–0237, FEMA–2021–0011–0270, FEMA–2021–0011–0271, FEMA–2021–0011–0286, and FEMA–2021–0011–0295.

¹⁸⁶ FEMA–2021–0011–0033, FEMA–2021–0011–0245, FEMA–2021–0011–0157, FEMA–2021–0011–0285 and FEMA–2021–0011–0277.

¹⁸⁷ FEMA–2021–0011–0277 and FEMA–2021–0011–0285.

¹⁸⁸ FEMA–2021–0011–0277.

explanation of the code.¹⁸⁹ Another commenter stated that FEMA should publicize the RSMeans amounts.¹⁹⁰ Lastly, another commenter suggested that FEMA should release information about the contracting process for IA in a transparent and more equitable way.¹⁹¹

The Stafford Act and FEMA's regulations at 42 U.S.C. 5174 and 44 CFR 206.101–120 govern IHP's eligibility criteria. The Stafford Act and FEMA regulations are publicly available and can be found online by searching on www.fema.gov and www.ecfr.gov.

FEMA embraces the tenets of transparency, participation, and collaboration to support citizens and first responders to increase government accountability, innovation, and effectiveness. To provide greater transparency on the IHP, FEMA released the *Individuals and Households Program Unified Guidance* (IHPUG) on September 30, 2016. The IHPUG compiled FEMA policy for each type of assistance under the IHP into one comprehensive document and was intended to serve as a singular policy resource for State, local, Territorial, and Tribal governments, and other entities who assist disaster survivors with post-disaster recovery. The IHPUG was eventually superseded by the *Individual Assistance Program and Policy Guide*, which was released on January 19, 2019. The IAPPG consolidated policy statements from all IA Programs to include IHP, Mass Care and Emergency Assistance, and the Community Services. On May 26, 2021, FEMA released FP 104–009–03, IAPPG 1.1, which supersedes the IAPPG, Version 1.0. IAPPG 1.1¹⁹² incorporates policy changes to the IHP resulting from Disaster Recovery Reform Act of 2018 (DRRA),¹⁹³ and provides an updated guide to programs and activities available to an affected State, local, Territorial, or Tribal government following a disaster. Chapter 3.III.B. of the IAPPG includes information of how FEMA verifies losses via inspections.

To increase consistency in implementation, collaboration, and knowledge sharing between State, local, Territorial, or Tribal governments, FEMA, and other Federal and non-Federal entities who assist disaster survivors, FEMA conducts a

comprehensive review of IA policies no less than every 3 years. If FEMA determines it necessary to release new or updated policy language before the next scheduled update, FEMA will update the electronic version of the IAPPG, issue a memorandum describing the additions or updates, and post both documents at www.fema.gov.

FEMA continuously seeks to improve public awareness and understanding of FEMA's programs. Some of the comments underestimate the transparency of FEMA policy. Uniform eligibility criteria are currently in place and available to the public. FEMA makes all policies, fact sheets, guidance, news, and multimedia content available online at www.fema.gov. FEMA continually updates and assesses the clarity and effectiveness of its IHP eligibility letters to ensure applicants are properly informed of the reasons for and consequences of FEMA's eligibility determinations, and how the decision may be appealed. Applicants who do not understand FEMA's determination process or have additional questions after receiving an eligibility letter can call FEMA's Helpline to request additional information.

Existing technology for dissemination of disaster data includes OpenFEMA.¹⁹⁴ Building off of the DHS Open Government plan,¹⁹⁵ the OpenFEMA initiative proactively publishes data relevant to its mission and in open formats that are easily accessible to the public. FEMA has a long history of engaging non-profits, local communities and non-governmental organizations (NGOs) and private entities to prepare for, protect from, respond to, recover from and mitigate hazards. This initiative aims to ensure FEMA is providing timely, usable, and accurate data in a raw format to constituents. This enables stakeholders to leverage the data in innovative and value-added ways. The OpenFEMA database is widely used, receiving approximately 8 million requests for data from roughly 64,000 unique visitors each month. Most importantly, by proactively releasing information on an ongoing basis, this initiative makes it easier to operationalize live data during a disaster. FEMA will continue to leverage innovative methods to collect and share data while adhering to all applicable laws and policies.

RSMeans, <http://www.rsmeans.com>, is one of a number of commercial sources that produces industry-accepted guides of construction cost information to support estimating the repair or replacement cost of a building. Under FEMA's contract with RSMeans, the company identifies some of the costs to repair or replace damaged real and personal property based on geographic area. FEMA may not share RSMeans amounts, however, because the contract does not permit us to publicly post the company's proprietary data.

Some of the comments touch on Mass Care and Direct Housing changes, which are outside the scope of this rule. A separate effort is underway to improve Direct Housing and other areas of IA that involve contracting.

Also, in an effort to advance equity and improve program administration, in August of 2022, FEMA began gathering demographic information from disaster survivors that choose to provide it. This data will be used to assess the impact of IA Programs on underserved populations.

Transportation Assistance

One commenter noted that FEMA should provide resources to help displaced households without access to cars obtain funding for increased transportation costs (e.g., the use of Uber or Lyft).¹⁹⁶ Another commenter stated that FEMA should provide transportation assistance to applicants to use public transportation services (i.e., bus, metro).¹⁹⁷

Per Section 408(e)(2) of the Stafford Act, 42 U.S.C. 5174(e)(2), and as outlined on page 170 of the IAPPG 1.1, FEMA may provide financial assistance under the ONA provision of the IHP to individuals and households with disaster-caused vehicle repair or replacement expenses. Unlike most other forms of IHP assistance, an applicant seeking Transportation Assistance does not need to live in the Presidentially-declared area to be considered for assistance.¹⁹⁸ The affected STT government establishes the maximum amount of Transportation Assistance (i.e., Transportation Repair and Transportation Replacement) that may be awarded. The amount of Transportation Repair and Replacement Assistance awarded is based on the degree of damage and the STT government's repair and replacement maximum.

¹⁸⁹ FEMA–2021–0011–0199.

¹⁹⁰ FEMA–2021–0011–0260.

¹⁹¹ FEMA–2021–0011–0275.

¹⁹² See page 7 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

¹⁹³ Disaster Recovery Reform Act of 2018, Public Law 115–254, 132 Stat. 3448 (Oct. 5, 2018), 42 U.S.C. 5174(h).

¹⁹⁴ See OpenFEMA, <https://www.fema.gov/about/reports-and-data/openfema>.

¹⁹⁵ DHS, Open Government Plan 2016–2018 (Oct. 21, 2016), available at https://www.dhs.gov/sites/default/files/publications/2016%20Open%20Government%20Plan_vFinal.pdf.

¹⁹⁶ FEMA–2021–0011–0235.

¹⁹⁷ FEMA–2021–0011–0244.

¹⁹⁸ See page 170 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

Understanding that applicants have serious and immediate needs after a disaster, including for transportation costs, this rule revises FEMA's regulations in order to establish Serious Needs Assistance. Through these changes, FEMA will provide more immediate financial assistance under the ONA provision of the IHP to applicants who have necessary expenses or serious needs as a result of a disaster. Serious needs may include but are not limited to: water, food, first aid, infant formula, diapers, personal hygiene items, and fuel for or the cost of transportation. FEMA's implementation of Serious Needs Assistance will also provide funds to address immediate needs related to sheltering, evacuating, or other emergent disaster expenses. As this assistance is intended to provide applicants the financial means to address immediate serious needs prior to FEMA's evaluation of their eligibility for other disaster assistance programs, FEMA will limit assistance to those applicants who are displaced from their pre-disaster primary residence as a result of the disaster or who are sheltering in their pre-disaster residence and report a need to shelter elsewhere, and who assert they have a serious need at registration and request financial assistance for those needs and expenses.

Utilities

One commenter stated that FEMA needed to provide more assistance to applicants to ensure their utility bills are paid.¹⁹⁹ FEMA may provide assistance toward utility bills in limited circumstances. For example, FEMA may provide financial assistance to pre-disaster homeowners or renters to rent alternate temporary housing if they are displaced from their primary residence as a result of a Presidentially-declared disaster. FEMA awards eligible applicants initial Rental Assistance based on the Fair Market Rent (FMR) established by HUD for the county, parish, Tribal land, municipality, village, or district where the pre-disaster residence is located and the number of bedrooms the household requires. Utility costs are factored into the FMR rate established by HUD. Additionally, should an applicant need continued rental assistance, the cost of utilities is factored into the CTHA award amount provided. Homeowners may also provide their pre-disaster housing costs (to include utilities) in order to show a continued financial need for CTHA. Under section 408 of the Stafford Act, 42 U.S.C. 5174(c)(1)(A), however, FEMA, is not able to provide assistance

for pre-disaster utility bills or for any utility bills from the residence from which the applicant was displaced.

Other Comments on IHP Delivery

One commenter raised the issue that FEMA's assistance is often times proportional to the survivor's pre-disaster financial condition. This commenter, and a few others, expressed that FEMA should prioritize assistance to individuals with fewer resources or capabilities²⁰⁰ including underserved communities and individuals who are near or below the poverty level and cannot afford insurance.²⁰¹ Multiple commenters expressed concern that FEMA's housing programs are overly complex to navigate,²⁰² especially for survivors whose first language is not English.²⁰³

Two of those commenters suggested that FEMA should proactively go into communities disproportionately impacted by emergencies to assist survivors in navigating the process and accessing resources. Specifically, these commenters noted that disaster survivors should be able to access these resources without the need to apply for FEMA assistance.²⁰⁴

One commenter noted that survivors with LEP experience delays in recovery and often times receive denials for disaster assistance caused by miscommunications and misunderstandings of document requirements and lack of services to obtain equitable access to resources and assistance.²⁰⁵ Another commenter expressed that FEMA should provide assistance to local governments so that local officials could work within the community to ensure disaster survivors understand where and how to obtain disaster assistance. Alternatively, another commenter believed that FEMA should provide better outreach to underserved communities in order to inform and help survivors access and apply for FEMA's programs.²⁰⁶

Three commenters suggested that FEMA should develop an internal program and policy evaluation capacity which would reduce the need for external review boards and inspector general audits that are more costly to the U.S. taxpayer and burdensome to FEMA

personnel but results in little to no improvements in program equity.²⁰⁷

Two commenters expressed that FEMA should apply the least restrictive guidance regarding documentation requirements across all jurisdictions to minimize administrative time, confusion, and inconsistencies from disaster to disaster, expressing that one way to start is for FEMA to apply more flexibility in its "use of funds" policy which would allow survivors to repurpose their rental assistance for home repair or vice versa in order to prioritize their own recovery needs.²⁰⁸ Two commenters expressed that FEMA's "use of funds" guidance leads to long wait times for FEMA assistance, communicates distrust between government and residents, and leaves owners and renters of substandard/damaged dwellings waiting for assistance especially for lower-income and underserved groups. A third commenter presented another example indicating that FEMA's strategy to provide limited assistance for temporary home repairs puts vulnerable communities at a greater risk to experience additional disasters due to climate change, and these vulnerable communities would greatly benefit from FEMA's consideration for permanent repairs to include minor cosmetic damage that can lead to further damage if left unrepaired.²⁰⁹ A fourth commenter noted that requiring applicants to have a bank account is an example of how FEMA's regulations and/or policies are complicated and negatively impact accessing assistance for underserved communities.²¹⁰ In addition to the previous four examples, one commenter raised the issue that FEMA's annual adjustments of maximum IHP assistance should consider local rent control and stabilization protection limits.

A commenter stated that FEMA should include subsistence activities under ONA.²¹¹ Furthering that issue, another commenter expressed that climate injustice impacts indigenous people namely harvesters (fisher people), stating FEMA does not recognize them as businesses and denies assistance although they are registered within their Tribes as harvesters. This commenter also highlighted the difficulties experienced by black communities in receiving prompt

²⁰⁰ FEMA-2021-0011-0005, FEMA-2021-0011-0159, and FEMA-2021-0011-0236.

²⁰¹ FEMA-2021-0011-0159.

²⁰² FEMA-2021-0011-0159, FEMA-2021-0011-0265, and FEMA-2021-0011-0276.

²⁰³ FEMA-2021-0011-0276.

²⁰⁴ FEMA-2021-0011-0159, and FEMA-2021-0011-0265.

²⁰⁵ FEMA-2021-0011-0193.

²⁰⁶ FEMA-2021-0011-0287.

²⁰⁷ FEMA-2021-0011-0163, FEMA-2021-0011-0224, and FEMA-2021-0011-0254.

²⁰⁸ FEMA-2021-0011-0235 and FEMA-2021-0011-0281.

²⁰⁹ FEMA-2021-0011-0270, FEMA-2021-0011-0271, and FEMA-2021-0011-0285.

²¹⁰ FEMA-2021-0011-0281.

²¹¹ FEMA-2021-0011-0246.

¹⁹⁹ FEMA-2021-0011-0033.

assistance and communicating with FEMA during Hurricanes Laura and Delta, noting that the New York Times recently cited a study showing that the higher the rate of black households in a ZIP code, the less likely they are to receive an inspection.²¹² This commenter also expressed the need for FEMA to provide housing assistance to unhoused or paroled individuals.²¹³

Another commenter raised the issue that the process between registration and receipt of assistance is too long, confusing, and biased against persons or families in underserved communities, including people of color, and especially for the elderly/disabled individuals who have to wait on insurance adjustments in order to complete and collect documents required for FEMA's eligibility process.²¹⁴ This commenter also suggested that FEMA consider subsidized air filters, cooling, and other assistance for pregnant individuals.²¹⁵

One commenter suggested that FEMA track and analyze who starts but does not finish the registration process to better understand barriers experienced by applicants seeking disaster assistance. This commenter raised the issue that FEMA's registration and the CTHA processes are burdensome, due to the length of the forms and instructions and the lack of a list of required documents, especially for survivors in poverty who may not be residing in traditional housing or not under a traditional written lease. This commenter suggested that FEMA completely remove its documentation requirements as applicants already have to certify the information provided is true and correct.²¹⁶

Similarly, another commenter noted that survivors have difficulty after a disaster with collecting required documentation to complete a disaster registration and/or provide eligibility documentation after they have registered. This commenter also stated that FEMA should change its authorities to allow temporary to permanent housing solutions instead of just temporary housing assistance. Lastly, they remind FEMA that disaster assistance must be fair, equitable, and based upon an objective assessment of need.²¹⁷

²¹² FEMA generally conducts an inspection (onsite and/or geospatial) and considers documentation as methods to verify losses, which is required to determine eligibility for assistance. See IAPPG p. 72.

²¹³ FEMA–2021–0011–0274.

²¹⁴ FEMA–2021–0011–0256.

²¹⁵ FEMA–2021–0011–0258.

²¹⁶ FEMA–2021–0011–0275.

²¹⁷ FEMA–2021–0011–0277.

One commenter raised the suggestion for FEMA to provide two-way travel support to evacuated residents who want to return to their homes and provided examples of the challenges faced in Puerto Rico to include that some travel support was only available for residents who wanted to leave Puerto Rico and had the resources to start anew somewhere else, but others who lacked those resources experienced an insurmountable barrier to returning due to one-way travel restrictions.²¹⁸

One commenter raised the issue that due to the lack of development for post-disaster replacement housing or existing overcrowding in Tribal communities, temporary housing often becomes de facto permanent housing, leaving many families to never recover or regain their housing and become permanently displaced.²¹⁹ This commenter proposes implementing post-disaster temporary-to-permanent housing solutions in communities, with an emphasis on tribal communities. One commenter stated that FEMA mandates applicants leave their residences as a condition of eligibility in order to receive disaster assistance and requested the removal of this requirement.²²⁰ Another commenter expressed that IA should mimic Public Assistance's decision to remove the obtain/maintain flood insurance requirement for applicants who receive less than \$5,000 to repair their damaged structure located in a SFHA.²²¹

FEMA provides IHP assistance without concern to socioeconomic factors or gender, race, or ethnicity. IHP assistance provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs caused by a disaster; it is intended to meet basic needs and supplement disaster recovery efforts. IHP assistance is not a substitute for insurance and cannot compensate for all losses.

As outlined in Section 408(h) of the Stafford Act, 42 U.S.C. 5174(h), the amount of financial assistance an individual or household may receive under IHP is limited. Financial Housing Assistance and ONA have independent and equal financial maximums, and FEMA adjusts these maximum awards each fiscal year based on the CPI–U. Temporary Housing Assistance, including Lodging Expense Reimbursement, Rental Assistance, and CTHA, are not counted toward the

²¹⁸ FEMA–2021–0011–0292.

²¹⁹ FEMA–2021–0011–0293.

²²⁰ FEMA–2021–0011–0295.

²²¹ FEMA–2021–0011–0303.

financial Housing Assistance maximum award.

FEMA understands that an applicant's pre-disaster financial and living situation may impact their post-disaster resources or capabilities, and increasing equity in disaster assistance outcomes is an area of focus for FEMA. As part of this rule, and as discussed above, FEMA is removing the requirement for disaster-damaged real property components to be functional immediately before the disaster to provide assistance for pre-existing damage exacerbated by the disaster. Applicants without the means to pay for minimal damage, or who are unable to complete the work themselves—often low-income or other underserved populations—may be eligible for repair assistance under the changes. The intent is still to limit assistance to disaster damage impacting the home.

One comment mentioned the disproportionate distribution of assistance based on an individual's or household's financial situation prior to the disaster.²²² While the value of an applicant's home prior to the disaster is not a consideration for FEMA assistance, FEMA recognizes that lower income survivors may have smaller homes with fewer rooms leading to smaller average awards than more wealthy applicants with larger homes. The self-reported income at Registration Intake is used to determine whether the applicant meets the SBA disaster loan income requirements to be considered for a disaster loan for SBA-dependent ONA. Based on comments submitted via the RFI, the SBA, in coordination with FEMA, raised their minimum income threshold so that more eligible lower income applicants could be assisted by FEMA as opposed to referred to SBA for a loan. Additionally, as part of this rule, FEMA is removing the requirement that applicants must apply and be denied for an SBA disaster loan before being considered for SBA-dependent ONA. Applicants may apply for an SBA loan for additional funds if they have an unmet need, but eligibility for Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policies will no longer be contingent on applying for and being denied for an SBA loan.

The September 2, 2021, *Amendment to FEMA Policy (FP) 104–009–03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum also amended the Home Repair Assistance section in IAPPG 1.1 to include financial assistance to repair real property components impacted by

²²² FEMA–2021–0011–0005.

disaster-caused mold growth. The amendment's expressed intent was to support low income and other underserved disaster survivors who may not have the means to immediately address disaster damage, particularly when disasters are not declared immediately or inspections are delayed. However, all applicants with disaster-caused mold damage may be eligible for the assistance when they meet all other conditions of eligibility. These additional funds are provided as part of the Home Repair Assistance award when applicable.

Also, as part of this rule, FEMA is making changes to the current regulations, at 44 CFR 206.111, that will broaden its definition of "uninhabitable" as discussed below in section III.D. of this IFR. The changes to 44 CFR 206.117 will remove the requirement for disaster-damaged real property components to be functional immediately before the disaster. These changes will allow IHP to provide assistance for pre-existing damage exacerbated by the disaster, which will create more flexibility within the program to meet disaster survivors' unique recovery needs.

Another example of how FEMA is seeking to improve equity involves the regulatory updates to CTHA. This rule will add flexibility regarding FEMA's ability to provide some continued assistance without requiring substantial documentation from the applicant, while simplifying assistance delivery and reducing processing time. FEMA is making updates to its CTHA policy by adding a new form, the IHP Supplemental Application for CTHA form,²²³ and revising the IHP Application for CTHA form²²⁴ so that applicants have a better understanding of what documentation is needed at each step of the process.

The updates to CTHA policy and the applicable CTHA forms are intended to address to concerns raised by organizations and the public in general about the CTHA process. All changes—working together—are intended to better assist applicants in obtaining a permanent housing solution by the 18-month period of assistance.

With respect to internal program and policy evaluation, FEMA is committed to improving our programs and internal processing capabilities, and previously established the IA Audit Section. This Section evaluates internal controls and makes recommendations for operational improvements within IA disaster assistance activities. The improvement

recommendations are the results of thorough internal audits, studies, and investigations. The Audit Section's focus is to ensure compliance with the Stafford Act and other applicable laws and regulations. FEMA also has a Recovery Reporting and Analytics Division (RAD). This Division serves as the primary resource pool for analytical efforts and is focused on providing analysis and information that is targeted to inform specific operational or strategic decisions. FEMA also has a Continuous Improvement Division that routinely conducts reviews and issues internal after-action reports/recommendations on a variety of issues.²²⁵

FEMA also recently reviewed our policies and processes to improve the application process. Based on comments submitted via the RFI, FEMA updated its policy to provide more documentation flexibilities in order to verify occupancy. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept social service organization documents, local school documents, Federal or State benefit documents, motor vehicle registration, affidavits of residency or court documentation, and mobile home park documents in addition to the documentation options listed in the IAPPG 1.1 to verify occupancy. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer or from applicants living in insular areas, islands, and Tribal lands.

Like occupancy, when FEMA is unable to verify an applicant's ownership of their primary residence, the applicant may provide FEMA with documentation to prove ownership. Based on comments submitted via the RFI, FEMA also updated its policy to provide more documentation flexibilities in order to verify ownership. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance*

²²⁵ Due to the scope and nature of after-action review products, these reports are intended for internal FEMA use and are often not applicable to external audiences. However, to contribute to a larger body of knowledge and foster lessons learned sharing within the emergency management community, after-action review products can be made available to jurisdictions and other Federal agencies that request them or as directed by the Regional Administrators, where appropriate. The general public release of after-action review reports only occurs for reports of national significance as deemed by Agency leadership.

Program and Policy Guide (IAPPG), Version 1.1 memorandum, dated September 2, 2021, FEMA will now accept receipts for major repairs or improvements, mobile home park letters, court documents, and a public official's letter in addition to the documentation options listed in IAPPG 1.1 to verify ownership. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer, from applicants living in insular areas, islands, and Tribal lands, and from applicants whose pre-disaster residence was passed down via heirship.

Both occupancy and ownership verification may be completed upon inspection if the applicant is able to show an acceptable document to the inspector. FEMA inspectors, however, will not be able to accept self-declarative statements as they are an option of last resort.

FEMA recognizes that effective communication access regarding FEMA programs is essential in the recovery process, including during inspection, for all disaster survivors. FEMA has many ways to meet survivors' language needs. Many FEMA employees are bilingual or multilingual and can assist LEP survivors with registration in their primary language by phone and in-person at a DRC. When survivors visit a DRC there is a sign with the phrase "If you do not speak English" in over 40 languages. A DRC staff member will use that sign to determine what language the LEP survivor speaks and call for an interpreter to assist them. Applicants may also request language access by contacting FEMA's Helpline at 800-621-3362 (711 or VRS available). FEMA's Helpline has translation and interpretation services (provided by qualified translators and interpreters) available in 250 languages to assist LEP disaster survivors. FEMA often sends Disaster Assistance Teams into the affected communities to help survivors apply for IHP assistance. Or, FEMA may provide Mobile Registration Intake Centers which ease disaster survivor burden with registration as they provide survivors a way to perform initial registration, some technical assistance on current registrations, and allow them to have documents scanned into their case files. FEMA may also coordinate with the State, local, Tribal, or Territorial government to send staff into emergency shelters to assist survivors. FEMA staff are equipped with computers or similar devices to assist survivors with registering for IHP

²²³ FF-104-FY-21-115.

²²⁴ FF-104-FY-21-115.

assistance or providing them referrals to other resources.

FEMA remains committed to ongoing community engagement and communication with our stakeholders to better understand the needs of traditionally underserved communities and sharing information regarding disaster preparedness and recovery assistance. FEMA has focused on hiring more bilingual employees, including hiring local staff in affected areas with large Spanish-speaking populations.

One commenter appeared to misunderstand FEMA's Section 425, 42 U.S.C. 5189c, Transportation Assistance policy, implying that FEMA only provides assistance for survivors to evacuate their homes and not assistance to return. As outlined in Appendix A of IAPPG 1.1, the Stafford Act authorizes FEMA to provide assistance, when approved, to relocate individuals displaced from their pre-disaster primary residences as a result of a major disaster or emergency or otherwise transported from their pre-disaster residence under Section 403(a)(3) or Section 502 of the Stafford Act, 42 U.S.C. 5170b(a)(3) and 42 U.S.C. 5192, to and from alternative locations for short or long-term accommodation or to return an individual or household to their pre-disaster primary residence or alternative location. Contrary to the comment, per IAPPG 1.1, eligible expenses may include one round trip airfare for all pre-disaster household members and household pets and service animals.

A few other commenters also misconstrued other areas of IHP policy.²²⁶ For instance, applicants do not need to have a bank account in order to receive FEMA assistance. In addition to providing assistance via direct deposit, applicants can opt to receive assistance via check. Additionally, there are only a few types of assistance that are contingent on whether an applicant has relocated from their damaged dwelling (*i.e.*, Lodging Expense Reimbursement, Rental Assistance, and Critical Needs Assistance (CNA)). Regardless of whether an applicant chooses to relocate from their disaster-damaged dwelling, applicants may be eligible to receive Home Repair Assistance or Home Replacement Assistance, along with other types of ONA such as Personal Property Assistance. Lastly, one commenter mentioned FEMA's use of funds policy.²²⁷ Section 314 of the Stafford Act, 42 U.S.C. 5157, governs

FEMA's misuse of funds provision to state that individuals who knowingly misapply the proceeds of assistance provided via the Stafford Act shall be penalized. FEMA has limited discretion in how it implements this statutory provision. Even if the problems identified by the commenter, such as long wait times, are the result of the use of funds policy, FEMA lacks the authority to remove this limitation. Nevertheless, there are still some flexibilities with how an applicant may use their IHP assistance. For example, an applicant who receives Home Repair or Home Replacement Assistance may use the funds to either repair their disaster damaged dwelling or for the purchase of a home in a different location. Similarly, applicants who receive Rental Assistance may choose to use that assistance in any location around the United States.

With respect to the comment that IA should remove the obtain/maintain flood insurance requirement for applicants who receive less than \$5,000 to repair their damaged structure located in a SFHA, FEMA's discretion to waive this requirement is limited by certain statutory provisions. Under the Flood Disaster Protection Act of 1973, FEMA may not approve any financial assistance for acquisition or construction purposes for use in any SFHA where the sale of flood insurance has been made available under the NFIA, 42 U.S.C. 4001 *et seq.*, unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost. See 42 U.S.C. 4012a(a). FEMA understands that flood insurance policies may be cost prohibitive for some disaster survivors as they are trying to recover from a major disaster. A GFIP is a form of assistance that can help applicants who have trouble affording an initial flood insurance policy. FEMA establishes a GFIP for each disaster declaration that results from flooding and is authorized for IA. FEMA's existing regulations at 44 CFR 206.119(d) provide that individuals identified by FEMA as eligible for ONA as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a SFHA may be included in a GFIP established under the NFIP regulations at 44 CFR 61.17. A GFIP has a 3-year policy term and payments to cover the premium amounts for each applicant are necessary expenses eligible under ONA. Covering the first 3 years of applicants' flood insurance policies helps them to

maintain that coverage even when dealing with other disaster-related expenses that might otherwise prevent them from being insured.

D. Changes in Policy Positions To Increase Equity in IHP

As directed by Executive Order 13985 on "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" and Executive Order 14091, "Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," FEMA assessed whether underserved communities and their members face systemic barriers in accessing benefits under IHP and how any such barriers could be reduced. FEMA's assessment was informed by longstanding challenges individuals have reported facing in navigating IHP, the income project,²²⁸ and comments its stakeholders made in response to the equity RFI. FEMA balanced these potential changes with the statutory requirement that financial assistance under the Stafford Act should be a supplemental form of assistance that addresses disaster-related necessary expenses and serious needs and may not duplicate other forms of assistance. As a result of this assessment, FEMA determined it needed to re-visit and change position on certain policy positions that have resulted in inequities in the delivery of IHP.²²⁹ This section identifies prior policy positions FEMA has articulated for specific areas of IHP that have had the unintended consequence of creating inequities in the program and will be remedied with this IFR.

1. Treatment of Insurance Proceeds

FEMA provides IHP financial assistance to applicants for uninsured or underinsured disaster-caused expenses up to the IHP cap for the applicable form of assistance. Pursuant to existing regulations at 44 CFR 206.113(a)(4) and (a)(6), however, insured applicants are only eligible for such assistance if the net insurance settlement amount from insurance is: (1) less than the maximum

²²⁸ FEMA, Individuals & Households Program Survivor Income Analysis (2019) and Survivor Income Analysis: Phase 2—Drivers of variance in IHP assistance across income groups (2019). See Docket ID FEMA-2023-0003 on www.regulations.gov.

²²⁹ FEMA also determined it needed to expand or improve existing forms of assistance under IHP to better address disaster needs and to simplify processes and documentation requirements that serve as barriers to equal opportunity. Those changes are addressed in Section IV's Discussion of the Interim Final Rule but do not require the additional analysis provided here because they are not changes in policy position.

²²⁶ FEMA-2021-0011-0235, FEMA-2021-0011-0281, and FEMA-2021-0011-0295.

²²⁷ FEMA-2021-0011-0235.

amount of assistance FEMA can authorize under IHP; and (2) insufficient to cover the insured applicant's necessary expenses or serious needs. FEMA introduced the current language in 2002 through an NPRM²³⁰ proposing regulations creating the IHP to implement amendments to the Stafford Act from the Disaster Mitigation Act of 2000 (DMA2K).²³¹

DMA2K amended the Stafford Act primarily to authorize a program for predisaster mitigation, but also to streamline the administration of disaster relief and control the Federal costs of disaster assistance.²³² For example, DMA2K enumerated the types of housing assistance available to individuals and set, for the first time via statute, sub-caps for repair and replacement assistance that were relatively low—\$5,000 for repair assistance and \$10,000 for replacement assistance.²³³ FEMA had to determine how to implement DMA2K within this context and within the context of the existing duplication of benefits provision in the Stafford Act which prohibits FEMA from providing assistance to individuals that duplicates assistance that has been provided under any other program or from insurance or any other source.²³⁴

FEMA did not specifically provide a rationale for, or consider any alternatives to, comparing the amount of insurance proceeds to the IHP cap in the preamble to its 2002 regulation; however, by making it a condition of eligibility that the amount of the

insurance proceeds an individual receives must be less than the maximum amount of IHP assistance available, FEMA essentially determined that any insurance payout an applicant receives should be deducted from the amount of the FEMA Verified Loss as if it were automatically duplicative of the assistance FEMA might be authorized to provide. The Stafford Act does not require this result: FEMA is authorized to provide financial assistance, and, if necessary, direct services, to individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs that they are unable to meet through other means.²³⁵

FEMA's 2002 interpretation may have made sense in the context of DMA2K in which Congress expressed intent to control the costs of disaster assistance and established, for the first time via statute, low sub-caps on repair and replacement assistance.²³⁶ However, Congress has since indicated clear intent to increase the amount of assistance FEMA provides to individuals and households. For example, in PKEMRA, Congress removed the \$5,000 and \$10,000 caps on repair and replacement assistance and expanded other forms of assistance under IHP.²³⁷ In DRRRA, Congress more than doubled the amount of assistance available under IHP and removed the caps for accessibility-related real and personal property items for applicants with disabilities.²³⁸ However, despite

this clear Congressional intent to increase the amount of assistance FEMA provides to individuals and households, FEMA never re-visited its prior interpretation that any insurance proceeds should be automatically deducted from the total amount it provides to individuals.

This has resulted in an implementation inequity that penalizes the applicants with the most insurance coverage. Eligible applicants may receive the difference between the net insurance settlement amount and the amount of FEMA verified loss, up to the IHP cap. When an applicant's net insurance settlement amount from insurance is equal to or exceeds the IHP cap, FEMA determines that the applicant's need has been met by insurance and will not provide any additional assistance. In practice, what this means is that even when an applicant's net insurance settlement amount is less than the loss amount verified by FEMA (*i.e.*, the applicant has an unmet need), an applicant is not eligible for IHP assistance if their net insurance settlement exceeds the IHP cap. Conversely, a similarly situated applicant with a net insurance settlement amount less than the IHP cap is eligible to receive IHP assistance to address their remaining unmet need in an amount up to the full IHP cap.

Excluding from IHP financial assistance those insured applicants with a net insurance settlement amount that is equal to or exceeds the IHP cap can pose a significant obstacle to them achieving a permanent housing solution, especially for homeowners. An ineligible insured homeowner whose home is underinsured may be unable to afford the unmet financial need to repair the home. An ineligible renter may also find it difficult to obtain a permanent housing solution when faced with the cost of underinsured losses for personal property. In Table 2 below, which assumes an IHP cap for housing assistance of \$42,500, both Applicants A and B have the same unmet need for home repairs, but only Applicant B is eligible for IHP financial assistance for no other reason than that their net insurance settlement amount is less than the IHP cap.

²³⁰ 67 FR 3412, Jan 23, 2002.

²³¹ Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000).

²³² *Id.*

²³³ *Id.* FEMA noted in the 2002 NPRM that these caps were newly imposed via statute whereas FEMA had previously imposed caps administratively. 67 FR 3412, Jan 23, 2002. FEMA further noted that there appeared to be some “confusion” in the legislative history whether the \$5,000 repair cap was also intended to encompass the costs for hazard mitigation measures and specifically requested comment on whether the cap might “imprudently tie [FEMA’s] hands” in the implementation of the program. FEMA received comments agreeing that the cap was too limiting and stated it would seek legislative modifications. 67 FR 61446, Sept. 30, 2002.

²³⁴ 42 U.S.C. 5155; Section 206 of DMA2K also addressed the duplication of benefits provision specifically as it related to repair assistance noting that FEMA should not require an individual to show that the assistance can be met through other means, “except insurance proceeds.”

²³⁵ 42 U.S.C. 5174(a)(1).

²³⁶ Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000).

²³⁷ Post-Katrina Emergency Management Reform Act of 2006, 109–295, 120 Stat. 1452 (Oct. 4, 2006) at Section 689d expanding IHP to authorize payments for security deposits and utilities; Section 689f authorizing transportation and case management services to individuals and households; and Section 689i authorizing a pilot program to repair multifamily rental housing for the purpose of temporarily housing disaster survivors.

²³⁸ Specifically, DRRRA: (1) removed temporary housing assistance from the calculation of the maximum amount of financial assistance available to applicants; (2) doubled the total amount of assistance available to applicants under the remainder of IHP by separating the maximum amount of financial assistance for HA and ONA from one cap to two equal, independent caps; and (3) removed the financial assistance maximum award limits for accessibility-related real and personal property items for applicants with disabilities. See Disaster Recovery Reform Act of 2018, Public Law 115–254, 132 Stat. 3448 (Oct. 5, 2018), 42 U.S.C. 5174(h).

Table 2—Insurance Proceeds

	Applicant A	Applicant B	Applicant C
FEMA Verified Loss	\$73,500	\$73,500	\$73,500
Settlement Amount	\$44,000	\$32,000	\$0
Deductible Amount	\$1,000	\$1,000	\$0
Net Insurance Settlement	\$43,000	\$31,000	\$0
Unmet Need	\$30,500	\$42,500	\$73,500
IHP Eligibility Amount	\$0	\$42,500	\$42,500

This potential inequity is compounded by the fact that the IHP cap for an eligible insured applicant is not reduced by the amount of their net insurance settlement. The end result is that, while Applicant A is not eligible for any IHP financial assistance (because their net insurance settlement amount exceeds the IHP cap), Applicant B is eligible for IHP assistance up to the full amount of the IHP cap. Furthermore, Applicant B is treated the same as Applicant C, an uninsured applicant; both applicants are eligible for IHP financial assistance to address their unmet need up to the full amount of the IHP cap. This further compounds the inequity for Applicant A, who had the most insurance protection.

FEMA's use of the IHP cap to limit eligibility for insured applicants creates challenges for disaster survivor recovery by limiting the ability of some applicants to achieve a permanent housing solution. Applicants that cannot fund the full repair costs of their homes are, notionally, more likely to remain in temporary housing for extended periods of time. Ultimately, by making these additional funds available to applicants under the IHP cap, the Agency may save funds currently used for financial or direct temporary housing of this population.

To help equitably address the unmet needs of insured applicants, and to more effectively assist them to achieve permanent housing solutions, FEMA considered the following options: (1) remove the IHP cap as a condition of

eligibility for insured applicants; or (2) make the cost of the deductible eligible for insured applicants. Under the first option, FEMA would discontinue its application of the IHP cap against an applicant's net insurance settlement amount for the purpose of determining eligibility for IHP financial assistance. Instead, all insured applicants would be potentially eligible for IHP assistance irrespective of whether their net insurance settlement amount exceeds the IHP cap. The IHP cap would continue to limit the amount of IHP financial assistance that eligible applicants could receive to address their unmet need. During a 5-year period, only 0.4 percent of applicants with real-property insurance settlements were found to be ineligible for IHP assistance due to their net settlement amounts exceeding the IHP cap. Under this option, each of these ineligible applicants would have received approximately \$24,000 in IHP financial assistance. Total costs to FEMA would have been approximately \$398,000 (\$365,000 in financial assistance and \$33,000 for the cost of increased inspections). However, it may be the case that many potential applicants with net settlement insurance amounts greater than the IHP cap simply do not apply for IHP assistance. In that case, the total costs to FEMA could be significantly higher. Regardless, the impact to these applicants will be significant compared to uninsured IHP recipients and those with low levels of damage.

Under the second option, FEMA would authorize eligible applicants to receive IHP financial assistance to address the cost of their deductible, irrespective of their FEMA verified loss. Based on insurance documentation, FEMA could pay applicants for the amount of their deductible. In cases where the insured applicant does not feel they have an unmet need, no FEMA inspection would be required.

Applicants with an unmet need would receive funds to address their unmet need, as determined by their FEMA verified loss, and their deductible. In many cases, FEMA provides a lower amount of IHP funds to repair elements of a home than an insurance company provides. Therefore, addressing applicants' unmet needs and deductibles could help insured applicants recover more quickly post-disaster. It could also incentivize applicants to choose higher dollar deductibles, which does not align with Agency goals to increase insurance coverage in the general population.

This option could be implemented individually or in conjunction with Option 1. While this option is easy to understand, in some cases, it may require FEMA to overpay applicants' unmet needs based on Table 3 below. Applicant D has no unmet need per FEMA's calculations, but will still receive payment for their deductible. Applicant E has an unmet need and receives payment for that need and the amount of their deductible.

Table 3—Insurance Proceeds

Proposal 2 Outcomes	Applicant D	Applicant E
FEMA Verified Loss	\$ 42,500	\$ 47,500
Settlement Amount	\$ 47,500	\$ 47,500
Deductible Amount	\$ 5,000	\$ 5,000
Net Insurance Settlement	\$ 42,500	\$ 42,500
Unmet Need	\$ 0	\$ 5,000
IHP Eligibility Amount	\$ 5,000	\$ 10,000

FEMA ultimately determined that removing the IHP cap as a condition of eligibility for insured applicants would be the most equitable in meeting the recovery needs of all applicants to assist them in recovering from the impacts of disasters by achieving permanent housing solutions more effectively. FEMA's post-DMA2K interpretation that the IHP cap should act as a condition of eligibility may have been reasonable given that the purpose of DMA2K was to control the costs of disaster assistance. However, the continued application of this policy position despite clear Congressional intent to increase assistance to individuals and households, and the inequitable treatment of applicants with varying levels of insurance coverage has led FEMA to reconsider. FEMA did not consider options that would provide less assistance to applicants than we already provide because it would contravene Congressional intent.

In addition to equity, FEMA's intent is to reduce the complexity of our program so that it is more straightforward and user-friendly to navigate for all disaster survivors. As such, it makes sense to remove an arbitrary test that is difficult to explain or defend and instead provide assistance, up to the cap, for the unmet need not covered by insurance. Although the second option might increase the amount of assistance that insured applicants receive, it will not remedy the implementation inequity in which applicants who have more insurance coverage may receive less assistance to address unmet needs. The selected option increases assistance for insured applicants and will not decrease assistance for any other category of applicants; as such, there are no reliance interests FEMA must consider in making the change.

2. SBA Loan Requirement

Through their authorizing statutes, both FEMA²³⁹ and the SBA²⁴⁰ may provide financial assistance to address personal property, transportation, and other necessary expenses resulting from a major disaster. FEMA provides this assistance through the ONA provision of the IHP and refers to these types of ONA collectively as "SBA-dependent ONA." FEMA and the SBA coordinate on the delivery of SBA-dependent ONA to ensure compliance with two of FEMA's regulations: (1) 44 CFR 206.191 which sets forth a sequence of delivery to prevent a duplication of benefits with assistance received from another source;²⁴¹ and (2) 44 CFR 206.119(a)(1) through (3) which sets out the requirement that applicants apply and be declined for an SBA Disaster Home Loan before being considered for FEMA SBA-dependent ONA.²⁴²

When applying for FEMA assistance, applicants who indicate a need for SBA-dependent ONA are asked to provide their approximate annual household income and number of dependents. FEMA's NEMIS performs an automated comparison of the applicant's information to the SBA's minimum income table to determine whether the applicant could potentially qualify for an SBA loan to cover their SBA-dependent ONA need. Applicants whose income and number of dependents do not meet the SBA's minimum threshold are not referred to the SBA and are considered for FEMA SBA-dependent ONA. For internal tracking purposes, FEMA and the SBA categorize these applicants as Failed Income Test (FIT). FEMA does not take additional steps to verify FIT applicants' income or dependent information before awarding funds for verified SBA-

dependent ONA expenses; these expenses may include Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policies.

Applicants whose income and dependent information meet the SBA's minimum income threshold are referred to the SBA to complete the loan application process. The SBA's loan application process consists of multiple steps at which the applicant's income, credit score, and debt-to-earnings ratio are assessed and, in certain cases, verified with the IRS and a private credit reporting agency. If at any point during the process the applicant is declined for a loan, the applicant is referred back to FEMA for consideration for SBA-dependent ONA.

The requirement to apply to the SBA for a loan before an applicant may be eligible for certain types of disaster assistance is a holdover regulatory requirement dating back to the implementation of the Disaster Relief Act of 1974²⁴³ before FEMA existed and when disaster assistance was administered by a component of HUD called the Federal Disaster Assistance Administration (FDAA). The Disaster Relief Act of 1974 authorized disaster assistance to individuals and households through two separate sections—one section addressed temporary housing and the other set up the Individual and Family Grant Program (IFG), which preceded the IHP.²⁴⁴

The IFG was a grant the FDAA could provide to States to administer to individuals and households, subject to national criteria, standards, and procedures established via regulation. The original implementing regulations did not include a requirement to apply to the SBA for a loan as a condition of eligibility before receipt of a grant under the IFG.²⁴⁵ The FDAA first proposed a

²³⁹ Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288 as amended, Section 408(e)(2), 42 U.S.C. 5174(e)(2).

²⁴⁰ Section 9 of the Small Business Act, Public Law 93–24, 87 Stat. 25, (April 20, 1973), as amended, 15 U.S.C. 636 *et seq.*

²⁴¹ Prior to this IFR, 44 CFR 206.191, Duplication of benefits. See paragraph (c)(1) and (d)(2)(iii).

²⁴² Prior to this IFR, 44 CFR 206.119(a)(1)–(3).

²⁴³ Public Law 93–288, 88 Stat. 143 (May 22, 1974).

²⁴⁴ *Id.* at Sections 404 and 408.

²⁴⁵ 39 FR 28212, Aug. 5, 1974; 40 FR 23252, May 28, 1975. The implementing regulations did require that individuals or households applying to the State

loan requirement in 1977, but it was limited to “farmers, ranchers, and persons engaged in aquaculture” who were required to apply to the Farmers Home Administration (FmHA) and provide proof of the denial of such loan assistance before they were considered eligible for assistance under the IFG.²⁴⁶ The FDAA revised the requirement in 1978 to add the SBA to reflect an agreement between FmHA and SBA in which the SBA would make housing or personal property loans in a disaster when farmers had suffered production and farm losses as well as housing and personal property losses.²⁴⁷ The FDAA did not specifically provide a rationale for, or consider any alternatives to, this requirement.

In 1988, the President signed the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988²⁴⁸ into law. FEMA²⁴⁹ issued a rulemaking²⁵⁰ to implement the changes in which it added new parts 206 and 207 to 44 CFR to govern assistance for disasters or emergencies declared on or after November 23, 1988. The section of the regulations governing the IFG was moved to 44 CFR 206.131. FEMA made reference in several parts of the IFG section to processes for applicants who were required to apply to the SBA or the FmHA before being eligible for IFG assistance,²⁵¹ but the regulation no longer identified who was subject to the requirement or maintained the specific identification of the population of applicants who were required to apply for a loan as “farmers, ranchers, and persons who engaged in aquaculture.”²⁵² Instead, FEMA was silent as to applicability. However, one section referred back to the general requirement in 44 CFR 206.131(d)(1)(i)(A) that an individual or

family must apply for all applicable available governmental disaster assistance programs before being eligible for the IFG, beginning the current practice without explicitly determining that a loan from the SBA or FmHA constituted such “applicable available governmental disaster assistance.” At that time, FEMA also added 44 CFR 206.191 governing duplication of benefits and containing the first iteration of the sequence of delivery that is found in FEMA’s current regulations listing disaster loans from the SBA and FmHA as required to be provided before the provision of assistance from the IFG.

In 2000, DMA2K²⁵³ amended section 408 of the Stafford Act to combine the two sections authorizing temporary housing and the IFG into one section setting forth one program for individuals and households. DMA2K acknowledged FEMA’s longstanding position related to SBA loans, specifically prohibiting FEMA from denying assistance to individuals for temporary housing, home replacement, or permanent housing construction solely because of the SBA loan requirement.²⁵⁴ FEMA issued an NPRM²⁵⁵ proposing regulations to establish the IHP to implement these amendments. At that time, FEMA introduced 44 CFR 206.119 which specifically requires that an applicant for IHP apply to the SBA for all available assistance under that program and either: (1) be declined for such assistance; or (2) demonstrate that the SBA assistance the applicant received failed to satisfy their disaster need before they are eligible for ONA.

Neither the FDAA nor FEMA ever provided a specific rationale for, or considered any alternatives to, the determination that applicants must apply to the SBA for loans and be denied or demonstrate the assistance provided fails to meet their needs as a condition of eligibility for ONA. It is clear from the rulemaking documents and the placement of the language related to SBA loans in 44 CFR 206.191 that FEMA views the types of assistance both it and the SBA may provide as potentially duplicative and therefore believes it is necessary to establish procedures to prevent such a duplication. However, there is no specific explanation in the rulemaking documents which sets forth why the FDAA and FEMA decided that loans

from the FmHA or SBA had to precede the delivery of ONA assistance in the sequence of delivery. It may be that FEMA viewed the SBA as required to be first in the sequence of delivery because the Stafford Act requires FEMA to provide assistance to individuals under IHP if the individuals have necessary expenses and serious needs which they are “unable to meet through other means”²⁵⁶ and the availability of an SBA loan could constitute those “other means;” however, that has never been explicitly stated as the rationale for the regulatory requirements.

In practice, the SBA requirement has created such a significant barrier to assistance that it has resulted in millions of potentially eligible applicants walking away from the disaster assistance process and therefore unable to address their necessary disaster expenses or serious needs. Based on data²⁵⁷ from all declared disasters from the last 10 years, 3,887,049 applicants have been referred to the SBA and, of those applicants, 2,140,115 that could have received an SBA loan or been eligible but chose not to take the loan, did not receive SBA-dependent ONA awards (55 percent). During the last 10 years, the remaining 1,746,934 applicants received SBA-dependent ONA awards and, of those, approximately 364,334 were SBA denied, which is about 21 percent.

The GAO completed a review of the IHP in 2020 and described the challenges and barriers associated with the SBA loan requirement as a problem that requires a solution.²⁵⁸ The GAO found that survivors may not complete the SBA loan application because they do not understand it is a requirement that governs eligibility for IHP.²⁵⁹ Multiple officials from SLTTs and NGOs confirmed that survivors did not understand or were confused by the requirement to complete an SBA disaster loan application to qualify for some types of assistance from FEMA’s IHP.²⁶⁰ In addition to officials from SLTTs and NGOs, multiple FEMA staff members reported that survivors had challenges understanding the requirement to apply for an SBA loan and that the requirement has been a long-standing issue with the program.²⁶¹ The GAO states that the process creates an additional burden on disaster

for assistance under the program certify that they had sought assistance for any necessary expense or serious need through other available disaster assistance programs, and either been denied for such assistance or demonstrate it had not satisfied their need, as a condition of eligibility.

²⁴⁶ 42 FR 5094, Jan. 27, 1977; On July 11, 1977, 42 FR 35643, 35644.

²⁴⁷ On May 23, 1978, 43 FR 22029, 22030.

²⁴⁸ Public Law 100–707, 102 Stat. 4689 (Nov. 23, 1988).

²⁴⁹ FEMA was established effective April 1, 1979, and the regulations governing the disaster assistance programs administered by the FDAA were redesignated without change from 24 CFR Chapter XIII to 44 CFR Chapter I (44 FR 56172, Sept. 28, 1979). The language related to the FmHA and SBA loan requirement for “farmers, ranchers, and persons engaged in aquaculture” were moved to 44 CFR 205.48 without change or a rationale for, or consideration of any alternatives to, the loan requirement.

²⁵⁰ 54 FR 11610, March 21, 1989.

²⁵¹ *Id.* at 44 CFR 206.131(d)(1)(iii)(D); 206.131(d)(4); 206.131(j)(1)(ii).

²⁵² *Id.* at 44 CFR 206.131(d)(1)(iii)(D).

²⁵³ Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000).

²⁵⁴ *Id.* at Section 206; *see also* 42 U.S.C. 5174(a)(2).

²⁵⁵ 67 FR 3412, Jan 23, 2002.

²⁵⁶ 42 U.S.C. 5174(a).

²⁵⁷ Data is for all declared disasters from January 1, 2010 through December 31, 2019.

²⁵⁸ GAO–20–503, *Disaster Assistance: Additional Actions Needed to Strengthen FEMA’s Individuals and Households Program* (September 30, 2020).

²⁵⁹ *Id.* at 36.

²⁶⁰ *Id.*

²⁶¹ *Id.*

survivors because survivors who do not have much experience in dealing with the Federal bureaucracy are required to interact with multiple Federal agencies and fill out multiple forms (many of which ask the same questions).²⁶² According to the GAO, the confusion and delays associated with this requirement may have created a barrier that prevented many potentially low-income IHP applicants with FEMA-verified personal property losses from being considered for personal property assistance.²⁶³ The GAO recommended that the FEMA Administrator assess the extent to which its process for determining an applicant's eligibility for SBA-dependent ONA limits or prevents survivors' access to IHP assistance, and work with SBA to identify options to simplify and streamline the disaster assistance application process for survivors.

The GAO report accurately identified the requirement to apply for an SBA loan as a longstanding issue. FEMA was sued in the wake of Hurricane Katrina where plaintiffs alleged, among other claims, that FEMA had violated 42 U.S.C. 5174(a)(2) when it unlawfully denied applicants temporary housing assistance by inaccurately telling them they had to first apply to the SBA for a loan.²⁶⁴ The Court found that while FEMA may not have actually denied disaster applicants for temporary housing as a result of their failure to apply to the SBA for a loan, it failed to properly communicate to individuals that the requirement only applied to the provision of certain types of ONA and that individuals could still receive temporary housing assistance even if they were seeking ONA and had not yet applied to the SBA. Plaintiffs alleged that the requirement, even if not applied to the denial of temporary housing assistance, was onerous and burdensome and caused extensive delays of necessary assistance. The Court found that a press release FEMA had issued to attempt to clear up the confusion only exacerbated it and issued a permanent injunction prohibiting FEMA from requiring applicants to complete an SBA loan application as a prerequisite for receipt of temporary housing assistance and from miscommunicating the nature of Federal assistance under the Stafford Act.

FEMA has attempted to remedy the confusion regarding the SBA requirement by explaining it in

guidance documents, fact sheets, press releases, and videos.²⁶⁵ The message is not simple: FEMA must communicate that some applicants may be referred to the SBA, that those applicants must complete an application for a loan if they are referred, that if the referred applicants do not apply, they may be denied for some assistance, but they only might be denied for ONA and *not* for temporary housing. It is not surprising that the confusion and barrier to assistance has persisted.

FEMA RFI commenters also identified the SBA loan requirement as an inequitable barrier to entry into the program. The commenters stated the process is unclear and places an unnecessary burden on applicants; creates a disproportionate barrier; and may, at best, lead to a delay or, at worst, cause a functional barrier in the registration process.²⁶⁶ Specifically, the commenters stated that: (1) forcing people to apply for an SBA loan after the initial registration is a barrier and deterrent to applying for help, especially for members of senior citizen communities who do not want a loan and may be on a fixed income; for black disaster survivors who face their credit history being scrutinized without receiving tangible assistance; and for renters with low-incomes and for members of underserved communities, including people of color, who many times have a greater need than middle-income survivors;²⁶⁷ (2) FEMA underassesses the needs of renters with low-incomes and members of underserved communities, including people of color, who seek to recover damaged personal property and vehicles by first requiring an application for an

SBA loan, which causes delays in their application process;²⁶⁸ and, (3) the SBA requirement burdens the applicant and paves the way for deeper poverty for survivors of natural disasters and the ease to extend debt solutions (*i.e.*, an SBA loan) to individuals greatly contrasts with the denial of assistance due to the lack of legal documentation or a means to fight unjust appeals.²⁶⁹ A few commenters offered solutions to include that FEMA actively coordinate with the SBA to conduct pre-screening using SBA's established credit score and citizenship requirements before referring applicants to the SBA and that FEMA's staff receive training on SBA-related issues and be able to answer questions about any aspect of the SBA's process.²⁷⁰ Another commenter argued that FEMA should automate the application and denial steps of the SBA process for individuals who already receive needs-based assistance such as food stamps, Supplemental Security Income, and Social Security Disability Income to allow the most vulnerable to receive assistance more quickly and with less complexity.²⁷¹

Contrarily, the Department of Homeland Security's Office of Inspector General (DHS-OIG) criticized FEMA for not instituting enough controls over the SBA loan requirement process and recommended that FEMA collect and verify *more* documentation from disaster survivors, which would add more complexity to the process.²⁷² DHS-OIG asserted that by not taking additional steps to verify a FIT applicant's self-reported income and dependent information, FEMA made improper payments.

FEMA explored multiple options to improve its verification of self-reported income in response to DHS-OIG's concerns. FEMA first considered whether it could require applicants to submit more documentation to verify income. Examples of acceptable documentation would include the previous year's tax returns or pay-related documents from an applicant's employer. Applicants whose documentation indicated that their income and dependent information met the SBA's minimum threshold would be referred to the SBA for loan consideration.²⁷³ However, creating an

²⁶⁵ See pages 7, 45, 141–142, 145–146, 149, 166, 173, IAPPG 1.1. Individual Assistance Program and Policy Guide | *FEMA.gov*; see also, *e.g.*, Fact Sheets | *FEMA.gov* in which search of term “SBA” produces 187 results as of May 4, 2023 covering data dating back to January 20, 2021 with some of the following representative fact sheets describing SBA requirement (Frequently Asked Questions About FEMA Disaster Assistance | *FEMA.gov*; FEMA Assistance Provides for Basic Needs | *FEMA.gov* Renters Can Apply for FEMA Assistance | *FEMA.gov*; Questions and Answers About Individual Assistance | *FEMA.gov*) see also, *e.g.*, representative video FEMA Accessible: Three Ways to Register for FEMA Disaster Assistance—YouTube; see also, *e.g.*, Press Releases | *FEMA.gov* in which search of term “SBA” produces 375 results as of May 4, 2023 covering data dating back to January 20, 2021 with some of the following representative fact sheets describing SBA requirement (SBA Helps Arkansas Businesses Impacted by Severe Storms and Tornadoes | *FEMA.gov*; Oklahoma Survivors in McClain and Pottawatomie Counties Can Apply for Possible FEMA Assistance | *FEMA.gov*).

²⁶⁶ FEMA–2021–0011–0245, FEMA–2021–0011–0251, FEMA–2021–0011–0255, FEMA–2021–0011–0275, and FEMA–2021–0011–0277.

²⁶⁷ FEMA–2021–0011–0277.

²⁶⁸ FEMA–2021–0011–0277.

²⁶⁹ FEMA–2021–0011–0306.

²⁷⁰ FEMA–2021–0011–0255 and FEMA–2021–0011–0275.

²⁷¹ FEMA–2021–0011–0245.

²⁷² DHS–OIG *FEMA Has Paid Billions in Improper Payments in SBA Dependent Other Needs Assistance Since 2003*, OIG–20–60, page 1.

²⁷³ As with each of the options FEMA evaluated, the SBA would need to update their application

²⁶² *Id.* at 40.

²⁶³ *Id.* at 39.

²⁶⁴ *McWaters v. FEMA*, 436 F. Supp. 2d 802 (E.D. La. 2006).

additional administrative hurdle in the immediate aftermath of a disaster would greatly increase the applicant's post-disaster stress and strain FEMA's case-processing resources. FEMA continually attempts to minimize the forms of assistance that require documentation and manual review prior to award. Typically, most SBA-dependent ONA can be auto-processed by NEMIS post-inspection with no required staff interaction. Auto-processed awards can be received by applicants that select an electronic funds transfer within 24 hours of their inspection. Most applicants receive automated payments within 1 to 2 weeks of applying for assistance, while manual payments take a few months to be processed and received by applicants, especially in larger disasters. Increasing the manual workload would further increase the time and/or cost required to make manual payments.

FEMA could take steps to verify income for FIT applicants in coordination with external government partners. This involves certain legal challenges FEMA would have to overcome. The SBA has specific legislative authority, which FEMA does not have, to verify an applicant's income with the IRS as part of its loan application process. The IRS has indicated they could only pursue data sharing if there were specific statutory authority for it.²⁷⁴ If FEMA overcame this legal hurdle, this option would appear to be less burdensome for the applicant, as FEMA would undertake the initial step of verifying the applicant's income and dependent information from the previous tax year; however it would still add some time and additional documentation requirements to the IHP registration process.

FEMA could purchase the services of a privately operated credit reporting company which can verify real-time employment and income data for an individual. This would require FEMA to make system changes to interface with the company's data and add this additional verification against the self-reported income. The service provided

evaluation process to ensure these referred-based-on-verification applicants were not referred back to FEMA based solely on their self-reported income. The SBA also relies on self-reporting during the initial loan application process. The SBA uses this information to calculate an income/number of dependents to debt ratio and compares it to a minimum threshold. The SBA only verifies the income of those applicants that pass this initial threshold, which it accomplishes by coordinating with the IRS and reviewing applicants' credit score.

²⁷⁴ See 26 U.S.C. 6103; IRS, Disclosure Laws (Oct. 5, 2022), <https://www.irs.gov/government-entities/federal-state-local-governments/disclosure-laws>.

by the company may be able to provide an applicant's current income, but it is unclear if that would accurately portray the household's annual income. Variance in household income immediately after a disaster is very common and there are a multitude of reasons why an applicant's reported income immediately after a disaster would not exactly match what is reported by the private sector credit reporting company. This option would not have a significant impact on the timing of the applicant's assistance, unless the private sector credit reporting company returns a higher income than what the applicant self-reported, in which case, the applicant would have to apply to SBA.

FEMA also explored utilizing a credit check to determine which applicants should be referred to the SBA, rather than solely the FIT table. The SBA currently uses a credit check in the later stages of their loan application process and FEMA could mirror the credit score thresholds that the SBA has already developed to determine which applicants should be referred to SBA for further evaluation. FEMA would need to establish a contract with a third-party vendor that provides credit scores. Unlike the SBA, which utilizes detailed information from the credit report on the applicant's debts, FEMA would only need the credit score. As the credit check can be performed electronically and completed in real-time, it should not delay assistance to applicants. However, FEMA would need to inform applicants their credit may be checked when they apply for disaster assistance which could cause hesitation for some applicants to participate in the FEMA disaster assistance process and increase the barrier to assistance.

Ultimately, none of the options FEMA explored to further verify applicant information will eliminate the longstanding inequitable barrier to access to the IHP presented by the SBA loan requirement. The requirement causes delay and confusion. FEMA has attempted to communicate the requirement more clearly; however, the confusion surrounding it has persisted. The historically low percentage of applicants with SBA-dependent needs identified at inspection who choose to apply for and accept an SBA loan for these needs indicates a gap in the correct recovery process which this change would address. Removal of the requirement addresses FEMA's obligation under Executive Order 13985 and Executive Order 14091 to identify and address barriers to opportunities and benefits and aligns with the goal of the 2022–2026 FEMA Strategic Plan to

instill equity as a foundation of emergency management by removing barriers to FEMA programs through a people first approach and achieving equitable outcomes for those we serve.²⁷⁵ Removal of the requirement also aligns with certain of the comments received from the RFI and the conclusions reached by the GAO and will simplify applicant messaging for both FEMA and the SBA. Finally, removal of the requirement will allow applicants to receive the disaster assistance for which they have applied without being re-routed to fill out an SBA loan application first. Applicants will still have the option of applying for an SBA loan if the disaster assistance they receive does not meet their needs; as such, nothing is being taken away from disaster applicants and there are no reliance interests FEMA must consider in making the change.

3. Housing Assistance

Section 408 of the Stafford Act, 42 U.S.C. 5174, authorizes FEMA to provide housing assistance to applicants to respond to the disaster-related housing needs of individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable, or with respect to individuals with disabilities, rendered inaccessible or uninhabitable, as a result of damage caused by a major disaster. A subcategory of housing assistance is home repair assistance which FEMA may provide to repair disaster-damaged owner-occupied primary residences to a safe and sanitary living or functioning condition.

Prior to the changes in this IFR, 44 CFR 206.111 defined "uninhabitable" to mean the dwelling is not safe, sanitary or fit to occupy, but did not directly define "habitable" or "fit to occupy." FEMA defined "safe" as secure from disaster-related hazards or threats to occupants. FEMA defined "sanitary" as free of disaster-related health hazards. FEMA defined "functional" as an item or home capable of being used for its intended purpose. In 44 CFR 206.117(b)(2)(ii), FEMA provided a list of components of the home for which it would provide repair assistance. In 44 CFR 206.117(b)(2)(i), FEMA provided that FEMA will repair each component

²⁷⁵ Strategic Goal 3.1 of the 2018–2022 FEMA Strategic Plan was to reduce the complexity of FEMA and to streamline the disaster survivor and grantee experience, which also would be furthered by these changes. The IFR also aligns with the 2022–2026 FEMA Strategic Plan, Goal 2: Lead whole of community in climate resilience; and Goal 3: Promote and sustain a ready FEMA and prepared Nation.

if it was functional immediately before the disaster, damaged by the disaster, not covered by insurance, and the repair of the component was necessary to ensure the safety or health of the occupant or to make the residence functional. Repairs were limited to restoration of the dwelling to a safe and sanitary living or functioning condition. Repair assistance would only be provided to the extent that the work makes the component functional. 44 CFR 206.117(b)(2)(iii). Components that were functional immediately before the declared event may have been eligible for repair assistance if the damage to the component was caused by the disaster and the component was no longer functional. 44 CFR 206.117(b)(2)(iv).

These regulations reflected FEMA's interpretation that the Stafford Act's requirement that housing assistance be provided for "disaster-related" needs prohibits FEMA from providing home repair assistance for pre-existing damage, which is where applicants have damage to their homes that occurred prior to the disaster and was not a result of the disaster or worsened by the disaster. FEMA has also referred to pre-existing damage as "deferred maintenance."

A version of the current language has been in place since 2002 when FEMA issued an NPRM²⁷⁶ proposing regulations creating the IHP to implement amendments to the Stafford Act from DMA2K.²⁷⁷ However, FEMA's 2002 version of the regulations governing home repair assistance was not explicit regarding FEMA's interpretation that the Stafford Act requires FEMA to identify and exclude pre-existing damage when calculating awards for home repair assistance.²⁷⁸ In 2008, FEMA was sued by disaster survivors from Hurricane Dolly who were denied home repair assistance as a result of FEMA's deferred maintenance determinations.²⁷⁹ The lawsuit alleged that FEMA's "hidden and vague rules" effectively prevented low-income families from accessing home repair assistance" and "institutionalize[d] economic discrimination."²⁸⁰ The Court held that FEMA had violated the APA by failing to publish the deferred maintenance

policy and forbade FEMA to use it to adversely affect Hurricane Dolly disaster applicants.²⁸¹

In 2012, FEMA issued a Notice of Proposed Rulemaking (NPRM)²⁸² to clarify its interpretation of the statutory requirement that housing assistance under the Stafford Act be "disaster-related" by adding more specific limiting language to 44 CFR 206.117(b)(2) and explaining how it applied this interpretation to home repair assistance determinations. According to FEMA, the proposed text did not add new requirements; instead, it clarified the existing requirements.²⁸³ FEMA stated that it historically interpreted the requirement that damage must be "disaster-related" as it applied to components of a home by breaking the evaluation into two parts: (1) the component must have been functional immediately before the event;²⁸⁴ and (2) the component must have been damaged and made not functional by the event.²⁸⁵ FEMA added new language noting that the repair assistance would be provided "only to the extent that it makes the component functional," stating "FEMA does not provide repairs or replacement to further improve a component beyond making it functional."²⁸⁶ FEMA expanded on its general view of IHP by stating "IHP is not a loss indemnification program and does not ensure that applicants are returned to their pre-disaster living conditions."²⁸⁷

These limitations have been a regular source of frustration for survivors and disaster recovery community members,²⁸⁸ highlighting the gap between FEMA's regulations and the expectation of what disaster assistance should, or could, cover.²⁸⁹ The

²⁸¹ *Id.*

²⁸² 77 FR 44562, July 30, 2012. The NPRM was implemented via a Final Rule. See 78 FR 66852, Nov. 7, 2013.

²⁸³ *Id.*

²⁸⁴ FEMA later expanded on this in the proposed rule to state that components did not need to be "fully functional," nor was it "disqualifying if the component posed a risk before the event." In FEMA's view the key was that the component must have had some functionality before the event and incurred a change in functionality (must become unfunctional) as a result of the event.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ See *La Union del Pueblo Entero v. FEMA*, 2009 U.S. Dist. LEXIS 40368 (S.D. Tex., May 13, 2009); *Barbosa v. United States Dep't of Homeland Security*, 916 F.3d 1068, 1073 (D.C. Cir. 2019).

²⁸⁹ FEMA guidance also previously interpreted the requirement that the damage be "caused by the disaster" to exclude assistance for secondary effects of the disaster (e.g., mold, damage to subflooring, removing wet drywall to prevent water wicking further up and causing mold). FEMA's position was that mold is not a direct result of the disaster, rather

limitations associated with pre-existing conditions means repair assistance has been limited to applicants with residences that incurred disaster damage but fall short of immediate safety and sanitation concerns without directly addressing or assessing the general livability issues. For example, certain components such as roofs may have sustained disaster damage but may also still leak from another area with pre-existing damage. Under its prior approach, FEMA would only pay to repair the disaster damage to the roof, not the pre-existing damage, which did not restore the home to a safe, sanitary living or functioning condition.

At the time FEMA made these determinations, it may have made sense to limit assistance under IHP; however, Congress has since indicated clear intent to increase the amount of assistance FEMA provides to individuals and households.²⁹⁰ FEMA considered whether its approach could be altered to better address the needs of disaster survivors and to address livability issues. FEMA considered two options: (1) define "fit to occupy" in guidance ensure consideration of general livability conditions at the time of inspection that, if left unaddressed, could potentially impact the home's habitability later in the disaster or after inspection, and authorize replacement for components that could not be repaired when considering the overall condition of the component; or (2) amend the regulations to remove the requirement for real property components to be functional immediately prior to the disaster so that FEMA could repair a component that sustained disaster damage to a safe, sanitary, and functioning condition without attempting to determine whether the component had pre-existing damage.

a secondary effect caused by not removing, adequately drying out, or cleaning wet materials in the home, and thus not "directly caused by the disaster." As such, FEMA only authorized a limited amount of assistance to remove damaged elements that might cause mold. However, FEMA's position on this was too narrow given that secondary effects would not occur but for the underlying disaster-caused damage. In 2021, FEMA reversed this policy position and authorized assistance to address secondary effects, such as mold. See page 9 of the Amendment to FP 104-009-03, Individual Assistance Program and Policy Guide, Version 1.1 memorandum cites to Chapter 3, Section IV.E. of the IAPPG 1.1, which is on pages 85-88 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

²⁹⁰ See Public Law 106-390, 114 Stat. 1552 (Oct. 30, 2000); Post-Katrina Emergency Management Reform Act of 2006, 109-295, 120 Stat. 1452 (Oct. 4, 2006) Disaster Recovery Reform Act of 2018, Public Law 115-254, 132 Stat. 3448 (Oct. 5, 2018), 42 U.S.C. 5174(h) *supra*, at notes 242-244.

²⁷⁶ 67 FR 3412, Jan 23, 2002. The NPRM was implemented via an IFR. See 67 FR 61446, Sept. 30, 2002.

²⁷⁷ Public Law 106-390, 114 Stat. 1552 (Oct. 30, 2000).

²⁷⁸ 67 FR 3412, Jan 23, 2002 at proposed 44 CFR 206.108(b)(2) and 44 CFR 206.108(c)(1).

²⁷⁹ *La Union del Pueblo Entero (Lupe) v. FEMA*, 2009 U.S. Dist. LEXIS 40368 (S.D. Tex., May 13, 2009).

²⁸⁰ *Id.*

In the first option, FEMA considered putting forth a policy interpretation of what might make a residence “unfit” to occupy.²⁹¹ Unfit is defined in legal terms as “unsuitable; or not adapted or qualified for a particular use or service.”²⁹² In non-legal terms, unfit generally means “not of the necessary quality or standard to meet a particular purpose;” “below the required standard;” “in poor condition;” or “not suitable; inappropriate.”²⁹³ FEMA could have defined “fit to occupy” in guidance to address unsanitary or poor conditions that made a disaster damage home unsuitable for occupancy associated with the disaster-related impacts to the general livability conditions of the home to increase clarity for FEMA housing inspectors and disaster survivors. FEMA also considered whether it could authorize replacement for disaster-damaged components that had pre-existing damage, but could not be partially repaired. However, this approach would not fully remove the subjectivity associated with making habitability and repair decisions and would potentially overcompensate disaster survivors to replace items with pre-existing damage that could be repaired to a safe, sanitary living or functioning condition.

In the second option, FEMA considered amending its regulations to remove the specific requirements related to pre-existing damage so that it could better address livability conditions. This required FEMA to revisit its earlier interpretations of statutory authority. Although the Stafford Act uses the term disaster-related, it is not applied specifically to the subcategory of repair assistance; instead, it applies generally to the initial determination of whether to provide housing assistance at all.²⁹⁴ FEMA may provide housing assistance to respond to the disaster-related needs of individuals who are displaced from their predisaster primary residences or whose predisaster residences are rendered uninhabitable as a result of damage caused by a major disaster. After FEMA determines that an

applicant has cleared this initial hurdle, it determines the appropriate types of housing assistance to be provided to the applicant based on factors such as cost-effectiveness and convenience to the individual.²⁹⁵ As it applies specifically to home repair assistance, the Stafford Act states that FEMA may provide financial assistance for the repair of dwellings that were damaged by a major disaster to a safe and sanitary living or functioning condition.²⁹⁶ This does not require FEMA to discount pre-existing damage; FEMA could read the Act to mean that uninhabitable dwellings which sustained some disaster damage could be repaired “to” a safe and sanitary living condition. Simply, as FEMA has accomplished with this IFR, FEMA may provide assistance to repair a dwelling with a mix of disaster damage and pre-existing damage on a dwelling component to a safe and sanitary living condition. Finally, FEMA previously interpreted functioning to mean “functional” means and applied it in a component-by-component fashion FEMA could instead acknowledge that the Stafford Act uses the term “functioning” as one of the options for the desired end state of the dwelling by authorizing FEMA to provide assistance to repair a disaster-damaged dwelling to a safe and sanitary living “or” functioning condition.

This IFR’s changes to the definitions of “uninhabitable,” “safe,” and “sanitary,” and the eligibility criteria for home repair assistance remove the regulatory limitations associated with pre-existing damage. Addressing this issue via amendment to the regulations more appropriately meets congressional intent that FEMA’s assistance allows applicants to repair homes “to” a safe and sanitary living or functioning condition. Applicants will be in a better position to realistically recover from the disaster by receiving assistance to repair or replace real property components of the home that are not covered by insurance and are necessary to ensure the safety or health of the occupant. As a result, applicants will be less reliant on FEMA’s other forms of housing assistance, such as temporary housing assistance, and will be able to return more quickly to a safe and functioning residence. This will expand assistance and address longstanding complaints that FEMA assistance does not adequately address survivor needs; as such, there are no reliance interests that FEMA considered in making these changes.

4. Serious Needs Assistance and Displacement Assistance

FEMA has the authority under Section 408(e)(2) of the Stafford Act, 42 U.S.C. 5174(e)(2), implemented as ONA at current 44 CFR 206.119(c)(6)(ii), which provides that FEMA in consultation with the State may provide financial assistance for “necessary expenses or serious needs.” FEMA has determined that the most pressing necessary expenses and serious needs generally occur during the immediate aftermath of disasters. Individuals and households displaced from their homes often need immediate assistance to be able to pay for short-term lodging or serious needs. In some instances, the immediate funds would be sufficient to address the short-term needs and the individuals may be able to return to their pre-disaster residences without additional support.

FEMA has established some short-term solutions for housing such as LER and initial rental assistance under its Stafford Act authority to provide temporary housing assistance at Section 408(c)(1)(A)(i), and it has offered expedited assistance for serious needs under its ONA authority at Section 408(e)(2) in the form of debit cards, or CNA. FEMA has, however, attached certain criteria to the eligibility for or expenditure of such assistance that has had the unintended consequence of impacting longer-term needs or resulting in the inequitable distribution of such benefits. FEMA provides LER via reimbursement for hotels, motels, or other short-term lodging while an applicant is displaced from his or her primary residence,²⁹⁷ which requires disaster applicants to have up-front funding for such expenses. FEMA provides initial rental assistance to eligible applicants but will only recertify applicants for continued rent assistance if they can submit rent receipts to show that they have exhausted the FEMA rent funds on rent.²⁹⁸ FEMA’s statutory authority to provide temporary housing assistance requires that the financial assistance be used to rent “alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles or other readily fabricated dwellings;”²⁹⁹ as such, the requirements FEMA has placed upon applicants to prove that such assistance is, in fact, used for rent is a reasonable interpretation of the statute.

²⁹¹ As noted above, in regulation, FEMA defined “uninhabitable” to mean the dwelling is not safe, sanitary or fit to occupy, but did not define “fit to occupy.” FEMA defined “safe” as secure from disaster-related hazards or threats to occupants. FEMA defined “sanitary” as free of disaster-related health hazards.

²⁹² Black’s Law Dictionary (4th pocket ed. 2011); see also Barron’s Legal Guides Law Dictionary (2nd ed. 1984).

²⁹³ Webster’s Collegiate Dictionary (11th ed. 2003); Collins English Dictionary—Complete and Unabridged (12th ed. 2014); and American Heritage Dictionary of the English Language (5th ed. 2016).

²⁹⁴ 42 U.S.C. 5174(b)(1).

²⁹⁵ 42 U.S.C. 5174(b)(2)(A).

²⁹⁶ 42 U.S.C. 5174(c)(2)(A)(i).

²⁹⁷ See page 44 IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

²⁹⁸ 44 CFR 206.114(b)(2).

²⁹⁹ 42 U.S.C. 5174(c)(1)(A)(i).

However, FEMA's previous interpretation has produced inequities in disaster events; FEMA has been sued by disaster applicants alleging that FEMA provided them with initial rental assistance without clearly explaining the purpose of the funds and, when applicants spent the funds on other necessities, FEMA denied them for continued temporary housing assistance because they could not produce receipts verifying the funds were spent on rent.³⁰⁰ While FEMA has continued to communicate the appropriate uses of initial rental assistance, the problem remains that disaster applicants have post-disaster serious needs aside from housing for which they need assistance.

FEMA determined it could improve upon and expand its existing authority by establishing two new types of assistance to address immediate unmet needs under the IHP's ONA provision: Serious Needs Assistance and Displacement Assistance. Serious Needs Assistance and Displacement Assistance would both be subject to the ONA cost share and available for every disaster in which IHP is authorized. Applicants will have to meet all standard IHP eligibility criteria under 44 CFR 206.113. FEMA will not require receipts documenting the use of the funds for either form of assistance. Serious Needs Assistance will take the place of CNA, and, in this improved version, FEMA may provide funds to eligible survivors to assist with the additional costs they incur due to being impacted or displaced by a disaster (including evacuation). Survivors would be able to use the funds for immediate or serious needs such as water, food, first aid, infant formula, diapers, personal hygiene items, or fuel for transportation. These needs will vary according to each applicant and FEMA will not require receipts documenting the use of this assistance. Serious Needs Assistance will be available for every disaster in which IHP is authorized instead of only being available in specific geographic areas upon the request of STT government.³⁰¹ FEMA examined its past

³⁰⁰ *Ridgley v. Fed. Emergency Mgmt. Agency*, 2007 U.S. Dist. LEXIS 43002 (E.D. La., June 13, 2007).

³⁰¹ Prior to this IFR, FEMA only provided CNA for a limited number of disasters and only in specific geographic areas when the STT government submits a written request, with justification, within 14 days from the date of the disaster declaration. See page 164 IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf. The STT government must demonstrate that applicants are displaced due to restrictions placed by STT government officials; shelters in the area do not meet the needs of the displaced population; and community and life-sustaining services within a reasonable distance are limited due to disaster-caused impact. Id.

practice in providing similar payments and considered setting the assistance amount at the current amount provided for CNA (\$500) or increasing it to \$750 or \$1000. At this time, FEMA believes increasing the amount to \$750³⁰² would better cover immediate post-disaster serious needs based upon our prior experience with CNA.

FEMA is establishing Displacement Assistance to provide funds for short-term living arrangements based on a timeframe established by FEMA and a nightly room rate approved in the State Administrative Option as required in § 206.120(b). Displacement Assistance will be available for eligible survivors whose homes are uninhabitable to assist them with securing temporary lodging while they make repairs or pursue temporary housing. Applicants who receive Displacement Assistance can still request and receive Initial Rental Assistance when they are ready to move into temporary housing; however, FEMA created this assistance to fill a gap for disaster survivors who may not need long-term rental assistance.

FEMA considered two options for limiting Serious Needs Assistance and Displacement Assistance. FEMA considered: (1) limiting the population who could receive Serious Needs Assistance to only those applicants who had been displaced by a disaster or who reported a need for shelter as a result of the disaster; or (2) limiting the geographic area that might be eligible for Serious Needs Assistance to only those areas with certain impacts. The first option would not meet the needs of disaster applicants who have immediate, unmet needs that are not caused by displacement. For example, if there are widespread power outages in an area that did not cause an applicant to be displaced, but might have caused refrigerated food or medicine to expire, an applicant might need immediate assistance to replace those necessary items. The second option would potentially delay the disbursement of Serious Needs Assistance beyond the initial disaster period to allow FEMA to gather information about the geographic impacts of the disaster. FEMA often does not have the detailed information necessary about the impacts of a disaster in its immediate aftermath to make such geographic determinations. Such a delay would frustrate the intent to provide immediate assistance and may compound the effects of unmet serious needs.

³⁰² FEMA will adjust the amount of SNA to reflect changes in the CPI for all Urban Consumers that the Department of Labor publishes annually. 44 CFR 206.119(b)(1).

There are multiple benefits to improving FEMA's implementation of these types of immediate needs assistance. Lower-income groups and minorities suffer disproportionately from disaster and recover less quickly than more privileged residents. Natural disasters can compound existing inequities and act as tipping points, consuming savings, and pushing households into financial and economic insecurity. According to the Federal Reserve, 32 percent of Americans could not cover an emergency expense of \$400 with cash or its equivalent, with 11 percent saying they would be unable to pay the expense by any means.³⁰³ FEMA's establishment of Serious Needs Assistance and Displacement Assistance will allow eligible disaster applicants to apply for and quickly receive an initial tranche of each form of assistance to help with the immediate serious needs and necessary expenses after a disaster. Disaster applicants will have more flexibility to choose the form of short-term lodging that best suits their needs, to include staying with friends and family and offsetting their expenses, which should decrease shelter usage. Displacement assistance is a more equitable and efficient way of providing short-term lodging assistance than LER,³⁰⁴ which is an administratively burdensome reimbursement action that benefits those who have the means to pay their hotel bills up front, rather than those applicants who do not have such funds available. FEMA hopes to address the need many disaster survivors have for short-term transitional assistance, when there is no need for longer-term rental assistance. The changes align with the 2022–2026 FEMA Strategic Goal 1 to instill equity as a foundation of emergency management by removing barriers to FEMA programs through a people first approach and achieving equitable outcomes for those we serve.³⁰⁵ The changes also support IA

³⁰³ Federal Reserve Board, Report on the Economic Well-Being of U.S. Households 2021, Figures 19 and 20, <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm> <https://www.federalreserve.gov/publications/2022-economic-well-being-of-us-households-in-2021-dealing-with-unexpected-expenses.htm>

³⁰⁴ FEMA in this IFR states that Displacement Assistance is in lieu of LER and only those displaced applicants who do not receive Displacement Assistance may receive LER.

³⁰⁵ Strategic Goal 3.1 of the 2018–2022 FEMA Strategic Plan, to streamline the disaster survivor and grantee experience, also would be furthered by these changes. The IFR also aligns with the 2022–2026 FEMA Strategic Plan, Goal 2: Lead whole of community in climate resilience; and Goal 3:

Strategic Plan Objective 1.1 to prioritize and evolve service delivery, and IA Strategic Plan Objective 1.3 to enhance program delivery. These changes will expand assistance and address complaints that FEMA assistance does not adequately address immediate, unmet applicant needs; as such, there are no disaster applicant reliance interests that FEMA considered in making these changes. STTs cannot allege a reliance interest associated with future benefits they might request in a discretionary disaster grant program.

IV. Discussion of the Interim Final Rule

A. Section 206.101—Temporary Housing Assistance for Emergencies and Major Disasters Declared on or Before October 14, 2002

On September 30, 2002, FEMA issued regulations on the then-new Individuals and Households Program.³⁰⁶ The rule implemented DMA2K³⁰⁷ and added §§ 206.110–120 to subpart D of part 206 of FEMA's regulations.³⁰⁸ The previous regulations, relating to the superseded Individual and Family Grant Program, were retained in § 206.101, but revised to apply only to disasters declared before October 15, 2002, the applicability date of the new Individuals and Households Program regulations.³⁰⁹ Since these old regulations are now outdated and no longer necessary, FEMA removes and reserves § 206.101. Sections 206.102 through 206.109 are currently reserved, so removing and reserving § 206.101 will extend the existing reservation to §§ 206.101–109.

B. Section 206.110—Federal Assistance to Individuals and Households

In the first sentence of § 206.110(a), FEMA states that this section implements the policy and procedures set forth in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), 42 U.S.C. 5174. This is consistent with the first sentence of current § 206.110(a), except for FEMA removing “section 408 of;” adding “as amended (Stafford Act)” for clarity; and removing “as amended by the Disaster Mitigation Act of 2000” for clarity. FEMA makes these edits for public ease of reference, as a United States Code cite is more accessible to the public and referencing the section of the Stafford Act only

increases the length of the regulation. Plus, there have been many amendments to the Stafford Act since DMA2K. Instead of including all of the amendments to the Stafford Act, FEMA removes the reference to DMA2K and uses “as amended.”

In the first sentence of § 206.110(b), FEMA states that no individual or household will receive financial assistance greater than \$25,000 under subpart D with respect to a single major disaster or emergency for the repair or replacement of their pre-disaster primary residence. This is consistent with the first sentence of current § 206.110(b), except for FEMA adding the phrase “for the repair or replacement of their pre-disaster primary residence” to codify section 1212 of the DRRRA which amended 408(h) of the Stafford Act, 42 U.S.C. 5174, to remove Temporary Housing Assistance from any financial maximum retroactive to disasters declared on or after August 1, 2017. Thereby, financial assistance for temporary housing expenses are no longer limited to a maximum award amount. Financial assistance for home repair and replacement for owner-occupied homes is still limited to a maximum award amount.

FEMA adds a new second sentence to § 206.110(b), FEMA states that no individual or household will receive financial assistance greater than \$25,000 under subpart D with respect to a single major disaster or emergency for Other Needs Assistance. FEMA adds this new language for clarity since section 1212 of the DRRRA amended 408(h) of the Stafford Act, 42 U.S.C. 5174, by separating ONA, so ONA and Home Repair Assistance/Home Replacement Assistance have equal, independent financial maximums retroactive to disasters declared on or after August 1, 2017.

In the third sentence (currently the second sentence) of § 206.110(b), FEMA states that FEMA will adjust the \$25,000 limits annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes. This is consistent with the current second sentence of § 206.110(b), except for FEMA replacing “limit” with “limits” for grammar purposes, since there are multiple \$25,000 limits that FEMA adjusts annually.

FEMA adds a new paragraph (b)(1) to § 206.110 stating that the maximum amount of financial assistance excludes rental assistance under § 206.117(b)(1)(i) and lodging expense reimbursement under § 206.117(b)(1)(i). FEMA adds this new language for clarity; as, Rental

Assistance and Lodging Expense Reimbursement are not counted toward the financial housing assistance maximum award.

FEMA adds a new paragraph (b)(2) to § 206.110 stating that the maximum amount of financial assistance excludes expenses to repair or replace eligible damaged accessibility-related real property improvements and personal property for individuals with disabilities. FEMA adds this new language for clarity since section 1212 of the DRRRA removed financial assistance maximum award limits for accessibility-related real and personal property items for applicants with disabilities. IAPPG 1.1 references specific disaster-damaged accessibility real property items that can be paid in addition to the financial assistance maximum award amount for Housing Assistance (Chapter 3: IV.E. Home Repair Assistance).³¹⁰ Also, IAPPG 1.1 currently references specific disaster-damaged accessibility personal property items that can be paid in addition to the financial assistance maximum award amount for ONA (Chapter 3: VI.A.1. Amount of Assistance.)³¹¹

In the second sentence of § 206.110(c), FEMA states that FEMA will determine the appropriate types of housing assistance to be provided under § 206.110 based on considerations of cost effectiveness, convenience to the individuals and households and the suitability and availability of the types of assistance. This is consistent with the current second sentence of § 206.110(c), except for FEMA revising “shall” to “will” for purposes of plain language.

In the fourth sentence of § 206.110(c), FEMA states that temporary housing and repair assistance must be utilized to the fullest extent practicable before other types of housing assistance. This is consistent with the current fourth sentence of § 206.110(c), except for FEMA revising “shall” to “must” for purposes of plain language.

In § 206.110(d), FEMA states that eligibility for Federal assistance under subpart D is limited to losses or expenses resulting from damage that occurred during the dates of the incident period established in a presidential declaration that a major disaster or emergency exists, except that reasonable lodging expenses that are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under

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³⁰⁶ 67 FR 61446, Sept 30, 2002.

³⁰⁷ Public Law 106–390, 114 Stat. 1552 (Oct. 30, 2000).

³⁰⁸ See 67 FR 61446, 61452.

³⁰⁹ See *Id.* at 61460.

³¹⁰ See page 86 IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³¹¹ See page 146 IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

Chapter I. This is consistent with current § 206.110(d), except for FEMA replacing “will begin on” with “is limited to losses or expenses resulting from damage that occurred during the dates” and replacing “that results” with “period established” for clarity. With these edits FEMA is trying to identify that the damage must have occurred in the incident period, not necessarily all the losses or expenses.

In the second sentence of § 206.110(e), FEMA states that the Assistant Administrator for the Recovery Directorate may extend the period of assistance if he/she determines that due to extraordinary circumstances an extension would be in the public interest. This is consistent with current second sentence § 206.110(e), except for FEMA’s technical edit of replacing “Disaster Assistance” with “Recovery,” as it represents a past FEMA organization change and replacing “this period” with “the period of assistance” to align with the paragraph heading (e), *period of assistance*.

In the first sentence of § 206.110(h), FEMA states that in accordance with the requirements of the Stafford Act, 42 U.S.C. 5155, FEMA will not provide assistance under subpart D when any other source has already provided such assistance or when such assistance is available from any other source. This is consistent with the first sentence of current § 206.110(h), except for FEMA removing “section 312 of” since referencing the section of the Stafford Act just increases the length of the regulation.

FEMA removes current § 206.110(h)(2), which states “applicable benefits are exhausted,” as it is unnecessary, since an applicant does not have to exhaust benefits as a condition for FEMA to provide assistance to insured applicants under subpart D. FEMA’s current regulations assume this is necessary to prevent a duplication of benefits, but FEMA will only be providing assistance for items or repairs that are not covered or adequately addressed by the applicant’s insurance, so it should not be necessary for them to exhaust their insurance benefits before they receive IA.

FEMA is not providing applicants all of the money they need for their recovery. The eligibility factor regulations at § 206.113(a)(5) already ensure that applicants accept all assistance from other sources for which they are eligible and that they accept all assistance from their insurance, if they have any.

Section 206.110(h)(2) is consistent with current § 206.110(h)(3), except for the change to the paragraph structure.

In § 206.110(h)(3), FEMA states that, among other exceptions to the principle that FEMA will not provide assistance when assistance is available from any other source, FEMA may provide assistance to insured applicants when applicants cannot use their insurance because there is no housing on the private market. This is consistent with current § 206.110(h)(4), except FEMA replaced “housing is not available” with “applicants cannot use their insurance because there is no housing” for clarity.

In § 206.110(i)(1), FEMA states that except as provided in § 206.110(i)(2), the Federal share of eligible costs paid under subpart D is 100 percent. This is consistent with current § 206.110(i)(1), except for FEMA replacing “shall be” with “is” for purposes of plain language.

In § 206.110(i)(2) through the first sentence of § 206.110(i)(2)(ii), FEMA states that Federal and State cost shares for “Other Needs” assistance under the Stafford Act, 42 U.S.C. 5174(e) and (f), are as follows: the Federal share is 75 percent; and the non-Federal share is 25 percent and must be paid from funds made available by the State. This is consistent with the current § 206.110(i)(2) through the first sentence of § 206.110(i)(2)(ii), except for FEMA removing “subsections 408 (e) and (f) of” and adding “42 U.S.C. 5174(e) and (f),” for public accessibility; replacing “will be” with “are,” “shall be” with “is,” and “replacing “shall” with “must” for purposes of plain language; and adding “is 25 percent and” after “non-Federal share” for clarity.

In the second sentence of § 206.110(i)(2)(ii), FEMA states that if the State does not provide the non-Federal share to FEMA before FEMA begins to provide assistance to individuals and households under the Stafford Act, 42 U.S.C. 5174(e), FEMA will still process applications. This is consistent with the second sentence in current § 206.110(i)(2)(ii), except for FEMA removing “subsection 408(e) of” and adding “42 U.S.C. 5174(e),” for ease of reference, as a United States Code cite is more accessible to the public and referencing the section of the Stafford Act just increases the length of the regulation.

In the fourth sentence of § 206.110(i)(2)(ii), FEMA states that if the State does not provide such reimbursement on a monthly basis, then FEMA will issue a billing notice to the State on a monthly basis for the duration of the program. This is consistent with the fourth sentence of current § 206.110(i)(2)(ii), except for FEMA replacing “Bill for Collection” with “billing notice” for clarity. The

United States Treasury Department (Treasury) tends to use the term “billing notices” when referring to these documents,³¹² so FEMA is adopting that term here to avoid confusion.

In the fifth sentence of § 206.110(i)(2)(ii), FEMA states that FEMA will charge interest, penalties, and administrative costs on delinquent billing notices in accordance with the Debt Collection Improvement Act. This is consistent with the fifth sentence of current § 206.110(i)(2)(ii), except for FEMA replacing “administrative fees” with “administrative costs” and replacing “Bills for Collection” with “billing notices” for clarity. Treasury uses the terms “costs” and “administrative costs” instead of “fees” and “administrative fees” in the debt collection context,³¹³ so FEMA is adopting that terminology here to avoid confusion.

In the sixth sentence of § 206.110(i)(2)(ii), FEMA states that cost shared funds, interest, penalties and administrative costs owed to FEMA through delinquent billing notices may be offset from other FEMA disaster assistance programs (*i.e.*, Public Assistance) from which the State is receiving assistance, or future grant awards from FEMA or other Federal Agencies. This is consistent with the sixth sentence in current § 206.110(i)(2)(ii), except for FEMA replacing “fees” with “administrative costs,” replacing “Bills for Collections” with “billing notices,” and adding “assistance” after “receiving” for clarity.

In § 206.110(j)(2), FEMA states that under the Stafford Act, 42 U.S.C. 5174(f)(2), FEMA must share applicant information with States in order for the States to make available any additional State and local disaster assistance to individuals and households. This is consistent with current § 206.110(j)(2), except for FEMA removing “section 408(f)(2) of” since referencing the section of the Stafford Act only increases the length of the regulation.

In § 206.110(j)(2)(ii), FEMA states that States receiving such applicant information must not further disclose the information to other entities, and must not use it for purposes other than providing additional State or local disaster assistance to individuals and households. This is consistent with current § 206.110(j)(2)(ii), except for FEMA replacing “must” with “shall” in

³¹² See, *e.g.*, Treasury Dept., Managing Federal Receivables, Chapter 6: Delinquent Debt Transparency, at 6–4 (March 2015), <https://fiscal.treasury.gov/files/dms/chapter6.pdf>.

³¹³ See, *e.g.*, *Id.* at 6–15; 31 U.S.C. 3717(e)(1); and 31 CFR 901.9(c).

two places in the sentence for purposes of plain language.

In the first sentence of § 206.110(k)(2), FEMA states that individuals or households that are located in a special flood hazard area may not receive Federal Assistance for National Flood Insurance Program (NFIP)—insurable real and/or personal property, damaged by a flood, unless the community in which the property is located is participating in the NFIP (See 44 CFR 59.1), or the exception in 42 U.S.C. 4105(d) applies. This is consistent with the first sentence in current § 206.110(k)(2), except for FEMA replacing “(See 44 CFR part 59.1)” with “(See 44 CFR 59.1)” as a technical correction since the cross cite is a section and not a part.

In the first sentence of § 206.110(k)(3)(i), FEMA states that as a condition of the assistance and in order to receive any Federal assistance for future flood damage to any insurable property, individuals and households named by FEMA as eligible recipients under the Stafford Act, 42 U.S.C. 5174, who receive assistance, due to flood damage, for acquisition or construction purposes under subpart D must buy and maintain flood insurance, as required in 42 U.S.C. 4012a, for at least the assistance amount. This is consistent with the current first sentence of § 206.110(k)(3)(i), except for FEMA removing “section 408 of” to decrease the length of the regulations; adding “42 U.S.C. 5174” for accessibility; and revising “damages” to “damage” for grammar purposes.

In the first sentence of § 206.110(k)(3)(i)(A), FEMA states that if the applicant is a homeowner, flood insurance coverage must be maintained at the address of the flood-damaged property for as long as there is a residential building (See 44 CFR 59.1) at the address. This is consistent with the current first sentence of § 206.110(k)(3)(i)(A), except for FEMA adding “there is a residential building (See 44 CFR 59.1) at” before “the address” and removing “exists” for clarity. An address does not “exist.” Rather, the language, for as long as there is a residential building at the address, is more precise.

In § 206.110(m), FEMA states that assistance provided under subpart D generally does not have the potential to affect historic properties and thus FEMA has no further obligations under the National Historic Preservation Act, 54 U.S.C. 306108, with the exception of ground disturbing activities and construction related to §§ 206.117(b)(1)(ii) (direct housing), 206.117(b)(2)(ii)(F) (repair assistance for

privately owned roads and bridges), 206.117(b)(3) (replacement assistance), and 206.117(b)(4) (permanent housing construction.) This is consistent with current § 206.110(m), except for FEMA replacing “is exempted from review in accordance with section 106 of” with “FEMA has no further obligations under” for clarity and since referencing the section of the National Historic Preservation Act only increases the length of the regulation; adding “54 U.S.C. 306108” for ease of reference; replacing “Temporary” with “direct,” adding “206.117(b)(2)(ii)(F) (repair assistance for privately owned roads and bridges),” and replacing “Replacement housing” with “replacement assistance” for clarity; and replacing “Permanent housing construction” with “permanent housing construction” to align with section formatting.

With regard to the changes in § 206.110(m), the National Historic Preservation Act, 54 U.S.C. 306108, states that the head of any Federal agency having direct or indirect jurisdiction over a proposed Federal undertaking or federally assisted undertaking in any State, prior to the approval of the expenditure, shall take into account the effect of the undertaking on any historic property. If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under Section 106 of the National Historic Preservation Act. Based on over 20 years of practice, since § 206.110(m) was published, FEMA has determined that the proposed undertaking, excluding the stated exceptions, does not have the potential to cause effects on historic properties. Therefore, FEMA changes the language in § 206.110(m) to align it with the applicable statutory and regulatory language (*i.e.*, 36 CFR 800.3(a)(1)).

In § 206.110(n), FEMA adds a new paragraph heading of “Severability” for consistency with standards established by the **Federal Register**. FEMA is adding new paragraph § 206.110(n) stating any provision of subpart D held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of subpart D is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of subpart

D and should not affect the remainder thereof.

A severability clause is a standard legal provision. It indicates FEMA’s intent that if a court finds that a specific provision of a rule is unlawful, the court should allow the remainder of the rule to survive. Those provisions that are unaffected by a legal ruling can be implemented by an agency without requiring a new round of rulemaking simply to promulgate provisions that are not subject to a court ruling.

FEMA is publishing this IFR to amend its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

FEMA believes that its authority to implement each of these provisions is well-supported in law and practice and should be upheld in any legal challenge. FEMA also believes that its exercise of its authority reflects sound policy. However, in the event that any portion of the interim final rule is declared invalid, FEMA intends that the various provisions be severable. The provisions are not so interconnected that the rule’s efficacy depends on every one of them remaining in place—implementation of the different provisions is sufficiently distinct that FEMA’s aim of increasing equity and easing entry to the IA Program would still be furthered by

maintaining the other provisions. For example, if a court were to find unlawful the changes to insurance proceeds, the remaining provisions of the interim final rule, such as those on CTHA and security deposit payments, could still function sensibly and FEMA would still intend them to stand.

C. Section 206.111—Definitions

In § 206.111, FEMA adds terms for “Destroyed,” “Essential tools,” “Recertification,” “Repairs,” and “State” and to revise the definitions of “Alternative housing resources,” “Dependent,” “Displaced applicant,” “Eligible hazard mitigation measures,” “Fair market rent,” “Financial ability,” “Functioning,” “Housing costs,” “Manufactured housing sites,” “Owner-occupied,” “Permanent housing plan,” “Reasonable commuting distance,” “Safe,” “Sanitary,” “Serious need,” and “Uninhabitable.”

Alternative housing resources. FEMA revises the term “Alternative housing resources” to mean any housing that is available or can quickly be made available in lieu of permanent housing construction and is cost-effective when compared to permanent construction costs. Some examples are rental resources, manufactured housing units, and travel trailers. This is consistent with the current definition of “Alternative housing resources” except for FEMA replacing “mobile homes” with “manufactured housing units,” after “rental resources.” FEMA makes these changes to align with HUD’s regulations and FEMA has moved away from the term “mobile home” generally, except when referring to a pre-disaster mobile home that an applicant may have occupied and to add an Oxford comma to the list of examples for grammar purposes.

Dependent. FEMA revises the term “Dependent” to mean someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together, where the children live in the affected residence with the parent or guardian who does not claim them on the tax return. This is consistent with the current definition of “Dependent,” except for FEMA removing “actually” before “claim” for clarity.

Destroyed. FEMA defines the term “Destroyed” to mean the primary residence is a total loss or damaged to such an extent that repairs are infeasible. IAPPG 1.1 at Chapter 3: IV.G.1. considers a residence destroyed when: disaster-caused damage necessitates the replacement of the majority of two or more major structural

components (e.g., basement walls/foundation, load-bearing walls, or roof assembly have collapsed); the disaster has completely removed the above-grade structure and only the foundation remains; flood waters have reached the roof, inundating the majority of the structure’s living area; the dwelling is in imminent threat of collapse because of disaster-caused damages; in the case of mobile homes and or travel trailers, when the frame is visibly bent or twisted and releveling is not possible; or repair is not feasible, and replacement is necessary to ensure the safety or health of the occupant or make the residence functional.³¹⁴ FEMA knows that the IAPPG 1.1 definition is too long for a regulatory definition, so FEMA drafted the more succinct definition of “destroyed.”

Displaced applicant. FEMA revises the term “Displaced applicant” to mean one whose disaster-damaged primary residence is uninhabitable, inaccessible, or made unavailable by the landlord. This is consistent with the current definition of the term “Displaced applicant,” except for FEMA adding “disaster damaged” before “primary residence” for clarity as the Stafford Act requires the home to be rendered “uninhabitable” by disaster damage; adding “or” before the clause “made unavailable by the landlord” for clarity; and removing the clauses “(to meet their disaster housing need)” and “or not functional as a direct result of the disaster and has no other housing available in the area, i.e., a secondary home or vacation home.” The removal of the clauses have two different reasons. FEMA’s definition of “Uninhabitable” (not safe, sanitary or fit to occupy) does not mention functioning or functional as a factor for determining whether the home is uninhabitable. The Stafford Act makes “functioning condition” a part of the habitability standard for repair assistance. Specifically, repairs must restore the home to a safe, sanitary or functioning condition. There is no requirement for the home to be not functioning; only that the home be owner-occupied as the primary residence before the disaster and rendered uninhabitable by the disaster damage. Secondly, since the ineligibility factors are included in § 206.113, it seems unnecessary and repetitive to include the additional explanatory information of “i.e., a secondary home or vacation home” in the definition of displaced applicant.

Eligible hazard mitigation measures. FEMA revises the term “Eligible hazard mitigation measures” to mean home improvements that an applicant can accomplish in order to reduce or prevent future disaster damage to the primary residence, utilities, or infrastructure. This is consistent with the current definition of “Eligible hazard mitigation measures,” except for FEMA replacing the phrase “essential components of the home” with “the primary residence, utilities, or infrastructure” for clarity. FEMA does not have a definition for the phrase “essential components of the home,” but § 206.117(b)(2)(ii)(H) currently refers to “eligible hazard mitigation measures” and includes the clarifying words “that reduce the likelihood of future damage to the residence, utilities, or infrastructure.” FEMA is replacing the undefined phrase in § 206.111, with the phrase that FEMA has been using in § 206.117(b)(2)(ii)(H), “the residence, utilities, or infrastructure,” with the small revision of adding “primary” before “residence” as “primary residence” is the defined term in the IHP regulations.

Essential tools. FEMA defines the term “Essential tools” to mean tools and equipment required for employment and items required for education. This definition of “Essential tools” is consistent with the current definition of *Essential tools* in Chapter 3: VI.C.1. of IAPPG 1.1 except that it replaces the phrases “required by an employer as a condition of” and “required as a condition of an applicant’s or household member’s” with “required for” so that it parallels the ONA regulatory text at §§ 206.119(b)(6)(iv) and 206.119(b)(6)(v) for consistency.³¹⁵

Fair market rent. FEMA revises the term “Fair market rent” to mean estimates of rent plus the cost of utilities, except telephone, identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular geographic area. This is consistent with the current definition of *fair market rent*, except for FEMA removing the following part of the current first sentence of the definition: “housing market wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition” for simplicity and removing the following phrase from the beginning of the current second sentence of the definition, “the fair

³¹⁴ See page 91 IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³¹⁵ See page 167 IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

market” for simplicity; adding the phrase “estimates of rent plus the cost of utilities, except telephone” to more closely mirror HUD’s definition of FMR and adding “geographic” before “area” for clarity.

Financial ability. Currently, FEMA’s definition of “Financial ability” only applies to the requirement that applicants whose incomes were impacted by the disaster can afford to pay 30 percent of their income toward housing. Applicants whose income was not impacted are expected to be able to pay the dollar amount they paid pre-disaster. When computing financial ability, extreme or unusual financial circumstances may be considered by the RA. FEMA has been applying the concept that all applicants requesting Continued Temporary Housing Assistance have the financial ability to pay up to 30 percent of their income toward housing to all applicants requesting CTHA since 2002, to treat applicants consistently.

FEMA revises the term “Financial ability” to mean the applicant’s capability to pay 30 percent of gross post-disaster household income for housing. When computing financial ability, extreme or unusual financial circumstances may be considered by FEMA. This is consistent with the current definition of the term “Financial ability,” except for FEMA moving the clause “30 percent of gross post-disaster income for housing” to earlier in the definition, replacing “the Regional Administrator” with “FEMA” to ensure continued consistency in processing across disasters at the national level when computing “Financial ability” in extreme or unusual financial circumstances, and removing the second and third sentences of the current definition.

Functioning. FEMA revises the term from “Functional” to “Functioning” for clarity and FEMA states that the definition remains the same. *Functioning* means an item or home capable of being used for its intended purpose.

Housing costs. FEMA revises the term “Housing costs” to mean rent and mortgage payments, including principal, interest, real estate taxes, real property insurance, homeowners or condominium association fees, and utility costs. This is consistent with the current definition of the term “Housing costs,” except for FEMA adding “homeowners or condominium association fees” to codify the current practice.

Manufactured housing sites. FEMA revises the term “Manufactured housing sites” to mean those sites used for the

placement of travel trailers and other manufactured housing units, including:

(1) *Commercial site*, a site customarily leased for a fee, which is fully equipped to accommodate a housing unit;

(2) *Private site*, a site that the applicant provides or obtains at no cost to the Federal Government, complete with utilities; and

(3) *Group site*, a site provided by the State or local government or FEMA, if determined that such site would be more economical or accessible than one that the State or local government provides, that accommodates two or more units and is complete with utilities.

This is consistent with the current definition of the term “Manufactured housing sites,” except for FEMA removing the phrase “government or privately owned mobile homes” for clarity and deleting the comma after “travel trailers” for grammar purposes. FEMA deletes “government or privately owned” as there is not something other than government or privately owned. FEMA deletes “mobile homes” to align with HUD’s regulations and as FEMA has moved away from the term “mobile home” generally, except when referring to a pre-disaster mobile home that an applicant may have occupied.

Also, the above definition is consistent with the current definition of the subterm “Group site,” except for FEMA adding “or FEMA, if determined that such site would be more economical or accessible than one that the State or local government provides” before “that” for clarity and consistency. Currently, § 206.117(b)(1)(ii)(E)(4) covers a group site provided by FEMA and it includes the language that “such a site would be more economical or accessible than one that the State or local government provides,” so for consistency FEMA adds the limitations of when FEMA will provide a group site to the revisions to the definition.

Owner-occupied. FEMA revises the term “Owner-occupied” to mean that the residence is occupied by:

(1) The legal owner with verifiable documentation; or

(2) A person who does not hold formal title to the residence and pays no rent, but can produce verifiable documentation demonstrative of legal responsibility including tax payment receipts; receipts for major repairs, maintenance, or improvements of the residence; court documents, a letter from a public official, or, for mobile home or travel trailer owners residing in a commercial park, a letter from the mobile home park owner or manager; or

(3) A person who has verifiable documentation of lifetime occupancy rights with formal title vested in another.

This is consistent with the current term “Owner-occupied,” except for FEMA adding “with verifiable documentation; or” after “legal owner” in paragraph (1) for clarity and to avoid being overly limiting; adding “verifiable documentation of” before “lifetime” in paragraph (3) for clarity; and replacing “is responsible for the payment of taxes or maintenance of the residence” with “can produce verifiable documentation demonstrative of legal responsibility including tax payment receipts; receipts for major repairs, maintenance, or improvements of the residence; court documents, a letter from a public official, or, for mobile home or travel trailer owners residing in a commercial park, a letter from the mobile home park owner or manager” in subparagraph (2) for clarity. FEMA has already implemented all of the proposed changes to the definition of the term “Owner-occupied” via the September 2, 2021, *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum; therefore, FEMA is only codifying existing practice in our revisions to this term.

Permanent housing plan. FEMA revises the term “Permanent housing plan” to mean a realistic plan that, within a reasonable timeframe, puts the displaced applicant back into permanent housing that is similar to their pre-disaster housing situation. A reasonable timeframe includes sufficient time within the period of assistance for securing funds and services to repair the home, completing repairs or locating a permanent dwelling, and moving into the dwelling. This is consistent with the current definition of the term “Permanent housing plan,” except for FEMA replacing “disaster victim” with “displaced applicant” and replacing “the victim’s” with “their” for consistency and adding the phrase “within the period of assistance,” the clause “and services to repair the home,” and the clause “completing repairs or” for clarity.

Reasonable commuting distance. FEMA revises the term “Reasonable commuting distance” to mean a distance that does not place undue hardship³¹⁶ on an applicant. It also

³¹⁶ The following are the types of circumstances that FEMA would consider as an “undue hardship.” FEMA takes into consideration the travel time involved due to road conditions and disaster-related impacts to commuting patterns in the area. For example, during the Oso mudslides,

takes into consideration the traveling time involved due to road conditions, e.g., mountainous regions or road closures and the normal commuting patterns of the area. This is consistent with the current definition of “Reasonable commuting distance,” except for FEMA replacing “bridges out” with “road closures” for grammar purposes; as, “bridges out” is not grammatically correct.

Recertification. FEMA defines the term “Recertification” to mean the process that FEMA uses to evaluate an applicant’s eligibility for continued temporary housing assistance under § 206.114. Currently, the recertification process is discussed in various places in the IAPPG.³¹⁷ FEMA describes recertification as when FEMA re-evaluates the occupant’s eligibility on a periodic basis, and the eligibility for the entire period of assistance is subject to the occupant continuing to meet recertification requirements. FEMA defines the term “Recertification” in the IFR for clarity.

Repairs. FEMA defines the term “Repairs” to mean repairs of a quality necessary for a safe and sanitary living or functioning condition. This is a new definition that FEMA aligns with the Stafford Act language at 42 U.S.C. 5174 and is consistent with the edits FEMA made in the below repair section.

Safe. FEMA revises the term “Safe” to mean secure from hazards or threats to occupants. This is consistent with the current definition of the term “safe,” except for FEMA removing “disaster-related” from the definition.

Sanitary. FEMA revises the term “Sanitary” to mean free of health hazards. This is consistent with the current definition of the term “sanitary,” except for FEMA removing “disaster-related” from the definition.

Under FEMA’s current regulations, if an applicant’s primary residence had existing health hazards prior to a disaster, the applicant would not be eligible for assistance to repair those hazards. The changes to the definitions of “safe” and of “sanitary” allow FEMA to provide assistance for repairing those hazards. For example, under the changes, if an applicant’s primary residence had a leaky roof prior to a disaster, that leak will be eligible for

repair as long as the primary residence incurred some disaster damage and repair or replacement of the roof was required to make the home sanitary. This is consistent with 42 U.S.C. 5174 and will help FEMA provide disaster assistance in a more fair and equitable manner.

Serious need. FEMA revises the term “Serious need” to mean the requirement for an item, or service, that is necessary to an applicant’s ability to prevent, mitigate, or overcome a disaster-related hardship, injury or adverse condition. This is consistent with the current definition of the term “Serious need,” except for FEMA replacing “essential” with “necessary” for consistency with the Stafford Act at 42 U.S.C. 5174. The current regulation uses “essential,” which is defined as “absolutely necessary,” so that is something more than necessary. With this change, FEMA is aligning with the statutory language more closely, especially where “necessary” can be interpreted as less of a bar for applicants to reach than “essential.”

State. FEMA defines the term “State” to mean for the purposes of subpart D and where consistent with the requirements of the Stafford Act, any State as defined in § 206.2(a)(22)³¹⁸ or “Indian tribal government” as defined in the Stafford Act (42 U.S.C. 5122(6)). FEMA adds the defined term “State” which includes Tribes for clarity.

Uninhabitable. FEMA revises the term “Uninhabitable” to mean the dwelling is not safe or sanitary. This is consistent with the current definition of “Uninhabitable,” except for FEMA adding “or” before “sanitary” and removing “or fit to occupy,” since the Stafford Act at 42 U.S.C. 5174 does not define uninhabitable but only uses safe and sanitary as a habitability standard.

D. Section 206.112—Registration Period

In the first sentence of § 206.112(b), FEMA states that FEMA may extend the registration period when the State requests more time to collect registrations from the affected population. This is consistent with the first sentence of current § 206.112(b), except for FEMA replacing “the regional administrator or his/her designee” with “FEMA” to ensure continued consistency in processing across disasters at the national level.

In the second sentence of § 206.112(b), FEMA states that FEMA may also extend the standard

registration period when necessary to establish the same registration deadline for contiguous counties or States. This is consistent with the second sentence of current § 206.112(b), except for FEMA replacing “the Regional Administrator or his/her designee” with “FEMA” to ensure continued consistency in processing across disasters at the national level.

In § 206.112(c), FEMA adds a new paragraph heading of “Reopening of the registration period” for consistency with standards established by the **Federal Register**. FEMA adds a new paragraph 206.112(c) which states that after the registration period for the major disaster or emergency has expired, FEMA may reopen the registration period for 60 days only when the President’s declaration is amended to include additional counties and only for the additional counties. The intent is to limit a reopened registration period to 60 days and just for the areas included in the add-on after the registration period already ended.

In the second sentence of § 206.112(d), FEMA states that we will process late registrations for those registrants who explain the reason for the delay in their registration. This is consistent with the second sentence of current § 206.112(c), except for FEMA replacing “provide suitable documentation to support and justify” with “explain” as requiring documentation places a burden on applicants to produce the documents and can slow the provision of assistance to applicants. It is also generally accepted that underserved populations are most likely to struggle with producing suitable documentation.

FEMA’s current policy³¹⁹ states that applicants who apply late must submit a letter that explains the extenuating circumstances that prevented them from applying for assistance in a timely manner and signed by the applicant or person who the applicant authorizes to act on their behalf. The letter should also include documentation justifying the extenuating circumstances. The documentation provided must be dated immediately prior to or within the FEMA registration period. Acceptable documentation may include:

- Record of hospitalization, illness, or disability of the applicant or an immediate family member;
- Record of death for an immediate family member; or

a main thoroughfare was destroyed due to the disaster and the only alternative for residents was to take a mountainous road that increased applicants commute time by 2 hours. Similar situations have also occurred in Hawaii due to lava-flow, where entire roadways were impassible and severely impacted the community.

³¹⁷ See pages 98, 99, and 103 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iapppg-1.1.pdf.

³¹⁸ State: Any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

³¹⁹ Page 71 of the Individual Assistance Program and Policy Guide, version 1.1 (Individual Assistance Program and Policy Guide (IAPPG) ([fema.gov](https://www.fema.gov)) discusses late applications and the types of acceptable information FEMA requires in order for the late application to be considered.

- Proof of personal or business travel that kept the applicant out of the area for the full application period.

Additionally, FEMA received the following comment in response to the RFI:

The barriers for an applicant to access FEMA assistance should be as minimal as possible. To that end, [the commenter] requests that Congress accept any and all applications received during the thirty-day grace period after the deadline has passed. Currently, CFR requirements state that an applicant must provide “suitable documentation” to justify the late application. There are myriads of valid reasons why applicants may be late to apply and forcing them to justify why their particular reason should count is inappropriate and unnecessary.³²⁰

In the past 10 years, FEMA has approved 51 percent of the late applications received. In many disasters, the disaster staff worked closely with survivors who submitted late applications to explain the necessary documentation and help gather it from the applicant. Simplifying the process for applicants will also allow this staff more time to support other elements of disaster recovery and applicants with other ineligibility reasons.

The language surrounding “suitable documentation” has been in FEMA’s regulations since the IHP regulations went into effect in 2002. Generally, requiring documentation has been a means for FEMA to validate that there is a disaster-related need. However, any applicants approved for further consideration based on their late application status still have to meet all the eligibility requirements required of applicants who applied during the application period (*i.e.*, occupancy and ownership, citizenship, and identity verification, assistance eligibility criteria, etc.). Ultimately, survivors who apply during the late application period will only receive funds if they have disaster-caused damages or losses.

This change ultimately benefits applicants and lowers the documentation burden for receiving eligibility consideration for IHP assistance for any disaster survivor who registers during the late application period, while also providing FEMA the ability to ensure there is a disaster-related reason for the late application. There are no expected negative impacts for disaster survivors in making this change.

FEMA has also decided to accept more reasons from applicants for late applications. These include:

- Incarceration;
- Victim of human trafficking;
- On-going domestic situations where persons in the same household posed an immediate threat to other family members, resulting in a separation of the family unit; or
- Major life events that occurred during the initial registration period (*e.g.*, birth or adoption of a child, foster care placement, marriage, gender transition, transition of a family member into or out of a residential or mental health care facility) that led to a late application.

FEMA considered the following policy alternatives: making no change; updating the language to no longer require suitable documentation; or removing the requirement for applicants to justify their late application at all. Making no change maintains a substantial applicant burden that slows the provision of assistance and likely impacts underserved populations disproportionately. While the current documentation requirement impacts a relatively small population’s eligibility, it ultimately denies access to any form of FEMA IHP assistance if the applicant cannot provide documentation justifying the reason for their late application. Removing the requirement for any justification, verbal or otherwise, essentially removes any difference between the standard application period and the late application period which are identified as separate and distinct time periods.

E. Section 206.113—Eligibility Factors

In the first sentence of § 206.113(a), FEMA states that in general, FEMA may provide assistance to individuals and households who qualify for such assistance under the Stafford Act, 42 U.S.C. 5174, and subpart D. This is consistent with the first sentence of current § 206.113(a), except for FEMA removing “section 408 of” and adding “42 U.S.C. 5174” after “the Stafford Act,” for clarity and public ease of reference.

In § 206.113(a)(1), FEMA states that FEMA may only provide assistance when the individual or household has incurred a disaster-related necessary expense and serious need in the State in which the disaster has been declared, without regard to their residency in that State. This is consistent with current § 206.113(a)(1), except for FEMA replacing “or” with “and” before “serious need,” as a codification of a current existing policy and practice since FEMA has always allowed applicants to receive assistance for both a necessary expense and a serious need without regard to their residency in that

State and FEMA capitalizing “State” in § 206.113(a)(1), when used as a noun.

FEMA removes the current sentence at § 206.113(a)(4), which states that an eligibility factor under which FEMA may provide assistance is in a situation where the applicant has insurance, when the insured individual or household’s insurance proceeds are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expenses or serious needs. FEMA removes current § 206.113(a)(4), as an applicant may only receive assistance for real or personal property through the IHP when their insurance proceeds are less than the FEMA Verified Loss (FVL) and the applicable HA or ONA maximum. Per 42 U.S.C. 5174, FEMA can assist underinsured applicants, but the current regulations limit the assistance to applicants who receive less than \$42,500 in real or personal property from their insurance company. FEMA identified the need to update FEMA’s current regulations to allow for more equity in the IHP when FEMA determines the unmet needs of applicants by comparing their net insurance settlements to the FVL. For the reasons described earlier, the IFR limits the requirement to compare insurance proceeds to the financial HA or ONA maximum.

In § 206.113(a)(4), FEMA states that an eligibility factor under which FEMA may provide assistance is in a situation where the applicant has insurance, but the applicant cannot use their insurance because housing is not available on the private market. In § 206.113(a)(4), FEMA is consistent with current § 206.113(a)(5), except for FEMA adding “but the applicant cannot use their insurance” after “insurance,” and replacing “when” with “because” for clarity. FEMA is incorporating this clarifying language to apply to applicants who have insurance but are unable to use their Additional Living Expenses or Loss of Use coverage, as there is no housing available on the private market.

In § 206.113(a)(5), FEMA states that an eligibility factor under which FEMA may provide assistance is in a situation where the applicant has insurance, when the insured individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance, and that assistance and insurance is insufficient to cover the necessary expense and serious need. In § 206.113(a)(5), FEMA is consistent with current § 206.113(a)(6), except for FEMA replacing the phrase “when the insured individual or household’s insurance

³²⁰ FEMA–2021–0011–0149.

proceeds and all other assistance are less than the maximum amount of assistance FEMA can authorize and the proceeds” with the phrase “and that assistance and insurance is” before “insufficient” to allow for more equity and to more fully address the unmet needs of applicants, replacing “or” with “and” before “serious” for clarity, and replacing “needs” with “need” for grammar purposes. We note that the changes from “or” to “and” has no practical effect. Section 408(a)(1) of the Stafford Act, 42 U.S.C. 5174, uses “and” for overarching eligibility criteria, but Section 408(e) of the Stafford Act, 42 U.S.C. 5174 uses “or” to describe eligibility criteria for ONA. FEMA used the word “or” in the current regulations to avoid being overly limiting; however, current § 206.113 defines “necessary expense” to be, essentially, whatever it costs to fix a “serious need.” This means that although the regulations use “or,” FEMA always treated the phrase as an “and.”

Section 206.113(a)(6) is consistent with current § 206.113(a)(7), except for the changes to the paragraph structure. Section 206.113(a)(7) is consistent with current § 206.113(a)(8), except for the changes to the paragraph structure and the removal of “and” at the end of the paragraph. Section 206.113(a)(8) is consistent with current § 206.113(a)(9), except for the changes to the paragraph structure and the addition of “; and” at the end of the paragraph to allow for a new paragraph § 206.113(a)(9).

In new § 206.113(a)(9), FEMA states that FEMA may provide assistance with respect to home repair for accessibility-related items, if an applicant meets the following conditions: (i) the applicant is either an individual with a disability as defined in 42 U.S.C. 5122 whose disability existed prior to the disaster and whose primary residence was damaged by the disaster, or an individual with a disability as defined in 42 U.S.C. 5122 whose disability was caused by the disaster and whose primary residence was damaged by the disaster; (ii) the real property component is necessary to meet the accessibility-related need of the household; and (iii) the real property component is not covered by insurance or any other source.

In response to public comments, FEMA has also changed the regulatory text at § 206.117(b)(2) and a new § 206.113(a)(9) as a part of this IFR. The changes will allow FEMA flexibility to provide financial assistance to applicants for the installation or construction of real property items that were not present in the home prior to the disaster. Specifically, these changes

allow IHP to expand its existing policy,³²¹ which provides for the installation of ADA related real property to applicants with disaster-caused needs, to include Home Repair Assistance for disaster survivors with pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional when any level of disaster-caused real property damage occurs to the primary residence.

Not only does the new regulatory text at § 206.113(a)(9) list the home repair for accessibility-related items eligibility factors, but it also clarifies that FEMA uses the term an “individual with a disability” as defined in section 102(7) of the Stafford Act, 42 U.S.C. 5122. Unfortunately, section 102(7) of the Stafford Act is outdated and states that the term “individual with a disability” means an individual with a disability as defined in Section 3(2) of the Americans with the Disabilities Act of 1990 (42 U.S.C. 12102(2)). The ADA was amended in 2008 and the definition of disability was moved from subparagraph (2) to subparagraph (1). Congress has not amended the Stafford Act to reflect this change; therefore, FEMA is interpreting the language in section 102(7) of the Stafford Act, 42 U.S.C. 5122, to mean that FEMA should use the ADA definition of disability with respect to an individual at 42 U.S.C. 12102(1).

If FEMA did not interpret section 102(7) of the Stafford Act, 42 U.S.C. 5122, to mean that the term “individual with a disability” means an individual with a disability as defined in the ADA at current 42 U.S.C. 12102(1) and instead relied on the ADA cross-reference that is currently listed in the Stafford Act, 42 U.S.C. 12102(2), then FEMA will define “individual with a disability” based on the ADA definition of the term “major life activities” which is illogical. FEMA assumes that Congress will amend the Stafford Act to cross-reference to the correct paragraph of the ADA.

Via information collection 1660-0002, we are adding a documentation requirement to tie the need for the home repair accessibility-related items: ramp, grab bars, and/or paved pathway to the pre-existing disability to meet the household’s access and functional need. We are requiring that a medical, health care, or rehabilitation professional certify whether or not this is necessary;

as, they have the expertise to make that determination or we will accept prior medical, health care, or rehabilitation professional documentation that supports the need for the accessibility-related items.

FEMA is making changes to Home Repair Assistance to adjudicate four RFI comments,³²² so that FEMA may make the dwelling safe/sanitary for pre-disaster disabled applicants. For example, this change will allow FEMA to reimburse pre-disaster disabled applicants for accessibility items, such as grab bars and access ramps, if the primary residence sustained disaster damage regardless of whether or not the applicant had grab bars or access ramps pre-disaster.

In § 206.117(b)(2)(i), FEMA states that FEMA may provide financial assistance for the repair of an owner-occupied primary residence if: the eligibility criteria in § 206.113 are met; FEMA determines the dwelling was damaged by the disaster; and the damage is not covered by insurance. This sentence is consistent with the current § 206.117(b)(2)(i), except for FEMA removing the phrase “real property components in” before “an owner-occupied primary residence;” adding “FEMA determines” after “met;” removing “to the component” after “damage” and replacing “component” with “dwelling,” as the Stafford Act does not limit repairs to “components” and replacing “owner’s” with “owner-occupied” for consistency as *owner-occupied* is the defined term in § 206.111; removing the current § 206.117(b)(2)(i)(B) that “the component was functional immediately before the declared event” and removing current § 206.117(b)(2)(i)(E) that “the repair of the component is necessary to ensure the safety or health of the occupant or to make the residence functional,” and removing the clause “and the damage was caused,” since FEMA is paying for pre-existing conditions if the component itself was damaged by the disaster.

In § 206.117(b)(2)(ii), FEMA states that FEMA may provide financial assistance for the repair of the disaster damaged dwelling to a safe and sanitary living or functioning condition. This clause is consistent with the current § 206.117(b)(2)(ii), except for FEMA adding “the disaster damaged dwelling to a safe and sanitary living or functioning condition including” after “of.” These additions align with the changes that make it clear that only

³²¹ September 2, 2021, Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1 memorandum.

³²² FEMA-2021-0011-0152, FEMA-2021-0011-0164, FEMA-2021-0011-0235, and FEMA-2021-0011-0261.

disaster damaged dwellings (regardless of their pre-disaster condition) may receive repair assistance, as FEMA may only pay to restore disaster damage to a safe and sanitary living or functioning condition. If the dwelling was not touched by the disaster, it will not be eligible for repair assistance; therefore, the applicant will not be able to apply for Home Repair Assistance for their pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional.

In § 206.113(b)(1), FEMA states that FEMA may not provide assistance under subpart D for housing or displacement assistance, to individuals or households who are displaced from other than their pre-disaster primary residence. This is consistent with the current § 206.113(b)(1), except for FEMA adding “or displacement” before “assistance” for clarity, since we added displacement assistance to the ONA regulations in § 206.119(b)(2).

In § 206.113(b)(2), FEMA states that FEMA may not provide assistance under subpart D for temporary housing or displacement assistance, to individuals or households who have adequate rent-free housing accommodations. This is consistent with the current § 206.113(b)(2), except for FEMA adding “temporary” before “housing” and adding “or displacement” before “assistance” for clarity. FEMA may provide assistance to repair an applicant’s home, but FEMA will not provide the applicant with rental assistance or direct housing assistance, while the applicant’s repairs are made because the applicant has somewhere else they can temporarily live.

In § 206.113(b)(3), FEMA states that FEMA may not provide assistance under subpart D for temporary housing or displacement assistance, to individuals or households who own a secondary or vacation residence within reasonable commuting distance to the disaster area, or who own available rental property that meets their temporary housing needs. This is consistent with the current § 206.113(b)(3), except for FEMA adding “temporary” before “housing” and adding “or displacement” before “assistance” for clarity. See the explanation in the above discussion of § 206.113(b)(2).

In § 206.113(b)(4), FEMA states that FEMA may not provide assistance under subpart D for temporary housing or displacement assistance to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and are able to return to and safely occupy the residence

immediately after the incident. This is consistent with the current § 206.113(b)(4), except for FEMA adding “temporary” before “housing” adding “or displacement” before “assistance,” see the explanation in the above discussion of § 206.113(b)(2), removing “who” before “are,” and adding “and safely occupy” before “the residence immediately after the incident” for clarity and equity. This is intended to apply to applicants that did not receive damage that impacted habitability and can safely return and live in their home immediately. However, lodging expense reimbursement is available to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and did not receive temporary housing or displacement assistance. See § 206.110(d).

In § 206.113(b)(5), FEMA states that FEMA may not provide assistance under subpart D for housing assistance, for improvements or additions to the pre-disaster condition of property, except for the following: (i) improvements or additions required to make repairs that comply with local and State ordinances; (ii) eligible hazard mitigation measures; or (iii) accessibility-related items for individuals with disabilities, consistent with § 206.113(a)(9). This is consistent with the current § 206.113(b)(5), except for FEMA adding “for the following;” after “except” and giving the exceptions in a list format across paragraphs (b)(5)(i)–(iii), for clarity; replacing “those” with “improvements or additions” for clarity; adding “hazard” to “Eligible hazard mitigation measures” for clarity since that is the defined term in § 206.111; adding to “make repairs that” before “comply” for clarity; and adding an exception for accessibility-related items for individuals with disabilities, for consistency with the changes to § 206.113(a)(9).

In § 206.113(b)(9), FEMA states that FEMA may not provide assistance under subpart D for business losses, including farm businesses. This is consistent with the current § 206.113(b)(9), except for FEMA removing “and self-employment” in order to allow the self-employed eligibility for essential tools. Currently, the self-employed are ineligible for IHP grants; so, artists and gig workers cannot apply for ONA personal property assistance for their self-employed personal property assistance items damaged in the disaster. Businesses will continue to be ineligible for business losses under 206.113(b)(9). Therefore, FEMA is allowing a self-employed individual to receive assistance under

the ONA portion of the IHP for personal property losses under 206.119(b)(iv) in their individual capacity. For example, under our changes, a gig worker could apply for personal property assistance for disaster damaged essential tools that are required for their livelihood. So, if they are a guitar player, then they could apply for ONA personal property assistance for repairing/replacing the guitar, whichever is needed.

For self-employed individuals, FEMA relies on the individual to self-certify the items required for their job.³²³ Two RFI commenters³²⁴ address challenges faced by self-employed individuals that participate in the “gig economy.” These individuals that have no employees other than themselves are classified by the U.S. Census Bureau as “nonemployer businesses” may face challenges identifying the types of assistance for which they qualify at FEMA and other Federal Agencies.

In Senate Report 115–283, which accompanied the Fiscal Year (FY) 2019 DHS Appropriations Act (Pub. L. 116–6) included the requirement that FEMA review its reimbursement policy, including in relation to Small Business Loans, for expenses incurred as a result of a major disaster or emergency by self-employed or freelance workers for tool repair or replacement, specialized or protective clothing, or other requirement equipment, for fairness in relation to other reimbursement policies. The Senate Report also requested a cost estimate.

FEMA’s Individuals and Households Program Assistance for Occupational Tools FY 2019 Report to Congress (FY 2019 Report) found that FEMA IHP assistance is not a substitute for insurance and cannot compensate for all losses caused by a disaster. The IHP is intended to meet basic needs and supplement disaster recovery efforts. FEMA believed that it was appropriate to continue to direct businesses, including self-employed persons, to SBA so that they can secure low-interest loans for their disaster-related losses. Self-employment business losses are ineligible for FEMA assistance, meaning that FEMA does not record business-

³²³ For self-employed applicants FEMA requires, a written statement from the applicant, including an itemized list of essential tools, specialized or protective clothing, computing devices, and equipment required for self-employment, verifying their need for the items. The statement must include, “I hereby declare under penalty of perjury that the foregoing is true and correct.” and be signed by the applicant. Tax return documentation would be required to establish self-employment (e.g., Form 1040 or 1040–SR, Schedule C, etc.).

³²⁴ FEMA–2021–0011–0187 and FEMA–2021–0011–0200.

related losses including occupational tool loss, from IHP applicants who self-report that their household's primary source of income is self-employment. Because of this ineligibility, FEMA could not provide a cost estimate about self-employment business losses from IHP applicants in the FY 2019 Report.

Currently, self-employed individuals are eligible for all FEMA assistance for their personal losses, except for necessary expenses and serious needs related to business losses. Non-self-employed individuals may receive assistance for disaster related costs for occupational tools, such as tool repair or replacement, essential computer, and uniforms, which may include specialized or protective clothing, but these are currently considered business losses for the self-employed, which makes them ineligible. The IFR changes this by removing "self-employment" from the list of conditions of ineligibility.

This IFR removes the requirement that applicants apply and receive an SBA loan denial before FEMA considers them for personal property assistance. FEMA assists self-employed individuals, solely related to their personal essential tools, without ever requiring them to seek loan assistance from SBA for these losses. In order to implement this change, FEMA is removing "self-employment" as a condition of ineligibility for business losses.

FEMA is making this policy change as there is stakeholder interest in such. Not only did FEMA receive two RFI comments on this matter, but obviously there is Congressional interest, since Senate Report 115-283 asked FEMA to review its policy.

In § 206.113(b)(10), FEMA states that FEMA may not provide assistance under subpart D for any items not otherwise authorized by §§ 206.117 and 206.119. This is consistent with current § 206.113(b)(10), except for FEMA replacing "this section" with "§§ 206.117 and 206.119," for clarity since § 206.113 does not actually authorize any items.

F. Section 206.114—Criteria for Continued or Additional Assistance

FEMA revises § 206.114's heading of "Criteria for continued assistance" to "Criteria for continued or additional assistance" for clarity since it does not only cover "Criteria for continued assistance."

In § 206.114(a), FEMA adds a new paragraph heading of "General" for consistency since the rest of the paragraphs at this level have paragraph headings and to comply with the

Federal Register Document Drafting Handbook.

In the second sentence of § 206.114(a), FEMA states that FEMA may provide initial and continued temporary housing assistance, financial or direct, upon request during the period of assistance, based on need, and generally only when adequate, alternate housing is not available or when the permanent housing plan has not been fulfilled through no fault of the applicant. This sentence is consistent with the current second sentence of § 206.114(a), except for FEMA providing clarifying language by adding "initial and" before "continued" for clarity; adding "temporary" between "continued housing" for consistency throughout the section; adding "financial or direct, upon request" before "during," to clarify that "continued temporary housing assistance" covers both financial or direct assistance and to clarify that applicants must request CTHA; and removing the clause "but not to exceed the maximum amount of assistance for the program." FEMA deletes the clause, as section 1212 of the DRRRA authorized changes to the provision of IHP Assistance by removing the financial assistance maximum award limits for temporary housing assistance. These changes were retroactive to disasters declared on or after August 1, 2017.

"Upon request" refers to the required income and housing costs documentation applicants in need of continued temporary housing assistance will have to complete to request additional assistance. Applicants may complete the IHP Application for Continued Temporary Housing Assistance, FEMA Form FF-104-FY-21-115, and the Supplemental Application for Continued Temporary Housing Assistance, FEMA Form FF-XXXXX, to request additional assistance. FEMA uses the information collected on the Application for Continued Temporary Housing Assistance to verify that an applicant continues to have a disaster-caused need for CTHA and to determine how much rental assistance the applicant may be eligible to receive.

For an applicant that is a homeowner and if the applicant's FEMA verified real property loss exceeds the amount of initial rental assistance awarded, FEMA will automatically mail the Application for Continued Temporary Housing Assistance after the initial rental assistance award. If the recorded FEMA-verified real property loss does not exceed the amount of initial rental assistance awarded, the applicant must call FEMA's Helpline to request an

Application for Continued Temporary Housing Assistance. For an applicant that is a renter, the applicant must call FEMA's helpline to request an Application for Continued Temporary Housing Assistance. In § 206.114(b), FEMA replaces the paragraph heading of "Additional criteria for continued assistance" with "Rental assistance" for clarity.

In § 206.114(b), FEMA adds a new paragraph that states that FEMA may provide initial financial assistance for rent, also known as initial rental assistance, as described in § 206.117(b)(1)(i), to displaced eligible applicants to rent alternate housing accommodations for an initial time period established by FEMA.

FEMA reorganizes our current regulations at § 206.114(b)(1) through (5), as FEMA found that having the eligibility, non-eligibility, and criteria for continued assistance categories separate from the specific types of assistance made for very difficult reading. Therefore, FEMA instead of conflating the regulations into one paragraph, separates them into two paragraphs: "Rental assistance" and "Direct housing assistance." There are no substantive changes in the reorganization, as we simply introduce initial and continued assistance for both rental and direct assistance in a clearer way.

In § 206.114(b)(1), we state that FEMA may periodically recertify all displaced applicants who received initial rental assistance and request continued rental assistance. All displaced applicants requesting continued rental assistance must take the following actions at certain points throughout the recertification process: submit rent receipts to show that they have exhausted or will exhaust previously provided funds; provide documentation demonstrating they lack the financial ability to pay their post-disaster housing costs and have a continued need for rental assistance; establish a realistic permanent housing plan; and provide documentation showing that they are making efforts to obtain permanent housing.

In the first new sentence of § 206.114(b)(1), FEMA clarifies that in order for displaced applicants to receive CTHA they must have been awarded initial rental assistance.

In the second sentence of § 206.114(b)(1), FEMA states that all displaced applicants requesting continued rental assistance must take the following actions at certain points throughout the recertification process. This sentence is not consistent with the current second sentence of

§ 206.114(b)(1) as FEMA currently requires that all applicants must establish a realistic permanent housing plan no later than the first certification for continued assistance. In this IFR, FEMA splits the recertification process into several timeframes and allow applicants to build upon their preliminary documentation as the disaster recovery continues. For example, within the first two payments of CTHA, FEMA will only require applicants to identify a plan for permanent housing. After the second two payments of CTHA, FEMA will

require applicants to present documentation showing progress toward achieving their permanent housing plan and to identify any obstacles impeding the achievement of the plan. FEMA will use these submissions to conduct additional outreach to applicants who are encountering obstacles or to refer such applicants to voluntary organizations to assist them.

In order to help FEMA provide appropriate resources and assistance to applicants throughout their housing recovery process, applicants will select from a list of permanent housing plans

on the Application for Continued Housing Assistance form based on their pre-disaster housing status.

The type of documentation that will be required to establish a permanent housing plan will be variable and flexible depending on an applicant's specific circumstances. For example, the following table provides a non-exhaustive list of the varying types of documentation that might be required based on the applicant's plan to achieve a permanent housing solution and pre-disaster status.

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Table 4—Documentation by Permanent Housing Plan (PHP) Type

Permanent Housing Plan	Pre-Disaster Housing Status	Applicants submit at least one of the following:
Repair/rebuild damaged dwelling	Homeowner	<ul style="list-style-type: none"> • Declarative statement, estimating the timeline for completion with supporting receipts of materials purchased • Contractor estimates, agreements, or other documents identifying timelines for repairs/construction • Permits
Build new home (at damaged dwelling or new site)	Homeowner	<ul style="list-style-type: none"> • Declarative statement, estimating the timeline for completion with supporting receipts of materials purchased • Contractor estimates, agreements, or other documents identifying timelines for repairs/construction • Permits
Purchase home	Homeowner	<ul style="list-style-type: none"> • Information on proof of progress, such as hiring a realtor, homes visited, offers submitted, closing date
Return to pre-disaster rental unit	Renter	<ul style="list-style-type: none"> • Commitment from landlord/property management to repair pre-disaster rental unit • Updates on repair progress from landlord/property management/public housing authority
Move into new rental unit within financial ability	Homeowner or Renter	<ul style="list-style-type: none"> • Proof of affordable rental housing search--rental resources contacted • Verifiable reason(s) unit unacceptable (not within financial ability, not accessible to one or more household members with disabilities, reasonable commuting distance, etc.)
Move in with family/friends	Homeowner or Renter	<ul style="list-style-type: none"> • Statement from family/friend that will be serving as landlord estimating the timeline for the move and agreeing applicant can live at the home

As post-disaster recovery can be a challenge for all applicants, FEMA will

engage more closely to assist applicants in achieving a recovery outcome by the

end of the period of assistance. FEMA will work with applicants through all

recertification phases to review their progress toward their PHP and identify specific resources to assist the applicant in achieving their recovery goals.

Table 5—Continued Temporary Housing Assistance Timeframes³²⁵

Table 5: Continued Temporary Housing Assistance Timeframes	
Timeframe	Requirements and Type of Documentation
Initial Recertification Phase: First two payments of CTHA	<ul style="list-style-type: none"> Applicants identify PHP on CTHA form.
Intermediate Recertification Phase: Second two payments of CTHA	<ul style="list-style-type: none"> Applicants provide full documentation showing progress toward their PHP. Applicants identify any obstacles that may impede their progress due to no fault of their own. <p><i>Note: Based on the information submitted, FEMA will identify applicants who may need additional assistance and refer them to resources such as a Disaster Case Management Program, when authorized and available for the disaster; voluntary organizations, when available for the disaster; and other available resources and programs, as needed. If applicants are not showing progress towards completing their PHP, FEMA may deny further recertification until the applicant show progress. Applicants may appeal FEMA’s decision.</i></p>
Concluding Recertification Phase: Final payments of CTHA and any extension of the period of assistance	<ul style="list-style-type: none"> Applicants provide documentation showing continued progress towards completing their PHP. Applicants identify any obstacles that may impede progress due to no fault of their own. <p><i>Note: FEMA will conduct outreach to applicants still receiving CTHA at this point to ensure the applicant’s PHP is still achievable by the end of the period of assistance and identify any additional assistance applicants may need to achieve their PHP. FEMA will continue to refer applicants to available resources to assist them as needed. Based on the information submitted, FEMA may deny applicants who do not show sufficient progress.</i></p>

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In § 206.114(b)(1)(i), FEMA states that displaced applicants requesting continued rental assistance must submit rent receipts to show exhaustion of previously provided funds. This sentence is generally consistent with the current first sentence of § 206.114(b)(2), except for FEMA adding “displaced”

before “applicants” for consistency; and replacing “they have exhausted the FEMA rent funds and” with less limiting language “that they have exhausted or will exhaust previously provided funds.” While this is less limiting, it is still the Program’s intent that the applicant must exhaust their funds. However, funds may be awarded

prior to exhaustion to prevent a gap in assistance.

In § 206.114(b)(1)(ii), FEMA states that displaced applicants requesting continued rental assistance must provide documentation demonstrating they lack the financial ability to pay their post-disaster housing costs and have a continued need for rental

³²⁵ Depending on the size and scope of the disaster(s), FEMA may adjust the timeframes in the table, as needed. FEMA will continue to engage

applicants throughout the recertification process, especially those who continue to receive assistance toward the end of disaster in order to ensure they

are able to better transition into a non-FEMA provided housing solution.

assistance. The only part of § 206.114(b)(1) that currently exists is the clause to “provide documentation,” in current § 206.114(b)(2). The language, “provide documentation,” refers to the submission of the current recertification form, FEMA Form 104–FY–21–115, IHP Application for Continued Temporary Housing Assistance, as described in Chapter 3: IV.C.2. of IAPPG 1.1.³²⁶ Thereby, the way the displaced applicant provides documentation that they lack the financial ability to pay their post-disaster housing costs and have a continued need for assistance is by completing the CTHA application and providing any additional documentation, as needed.

In § 206.114(b)(1)(iii), FEMA states that displaced applicants requesting continued rental assistance must establish a realistic permanent housing plan, which is consistent with current § 206.114(b)(1) except for the timing of the realistic permanent housing plan. Currently, the realistic permanent housing plan is required no later than the first certification for continued assistance. In this IFR, FEMA no longer requires the realistic housing plan at the first certification for continued assistance.

In § 206.114(b)(1)(iv), FEMA states that displaced applicants requesting continued rental assistance must provide documentation showing that they are making efforts to obtain permanent housing, which is consistent with current § 206.114(b)(1).

In the first sentence of § 206.114(b)(2), FEMA states that FEMA expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. This is consistent with the current first sentence of § 206.114(b)(3), except for FEMA removing “generally” before “expects” for clarity. FEMA does not want to suggest that in some cases applicants should not seek to obtain permanent housing.

In the second sentence of § 206.114(b)(2), we state that FEMA may provide continued rental assistance to pre-disaster renters with a continuing disaster-related housing need. This is consistent with the current second sentence of 206.114(b)(3), except for FEMA replacing “we” with “FEMA” for clarity; replacing “may certify them during the period of assistance, for” with “may provide” before “continued” for clarity; replacing “rent” with “rental” before assistance; and replacing “when adequate, alternate housing is not available, or when they have not realized a permanent housing plan

through no fault of their own” with “to pre-disaster renters with a continuing disaster-related housing need” for clarity. FEMA’s language is closer to the Stafford Act language at 42 U.S.C. 5174 which is our authorizing statute.

Currently, § 206.114 discusses rental assistance and direct housing assistance in the same paragraph. But, in this IFR we separate rental assistance from direct housing assistance. There will be repetitive language in 206.114(b) and (c), in order to clarify to the public what the requirements are for rental assistance and direct housing assistance.

In § 206.114(c), FEMA adds a new paragraph heading “Direct housing assistance,” for consistency since the rest of the paragraphs at this level have paragraph headings and to comply with the *Federal Register Document Drafting Handbook*.

In § 206.114(c), FEMA states that FEMA may provide direct housing assistance as described in § 206.117(b)(1)(ii), to displaced eligible applicants who are unable to make use of financial assistance to rent adequate alternate housing. FEMA may periodically recertify all displaced applicants receiving direct housing assistance for continued direct housing assistance. All displaced applicants who need continued direct housing assistance must take the following actions at certain points throughout the recertification process: (1) establish a realistic permanent housing plan; and (2) provide documentation showing that they are making efforts to obtain permanent housing throughout the recertification process. The clause in § 206.114(c)(1) is generally consistent with the current first sentence of § 206.114(b)(1), except for FEMA removing the phrase “no later than the first certification for continued assistance.” The clause in § 206.114(c)(2) is generally consistent with the current second sentence of § 206.114(b)(1), except for FEMA adding “throughout the recertification process” after “permanent housing.”

In § 206.114(d), FEMA adds a new paragraph heading “Other assistance,” for consistency since the rest of the paragraphs at this level have paragraph headings and to comply with the *Federal Register Document Drafting Handbook*.

In § 206.114(d) through (1), FEMA adds a new paragraph to state that FEMA may provide repairs or housing replacement assistance, as described in § 206.117(b)(2) and § 206.117(b)(3), lodging expense reimbursement, as described in § 206.117(b)(1)(i), or other needs assistance, as described in § 206.119, to eligible applicants. If

FEMA requires more information to process an applicant’s initial request for assistance, it may request additional information. This new language is intentionally broad in case FEMA finds an alternate way to contact applicants to request additional information in the future (e.g., via text) and it codifies Chapter 3: C.2. of IAPPG 1.1, which is a narrower, as it states that an applicant may receive a letter requesting additional information.³²⁷

In § 206.114(d)(2), FEMA states that after the initial award of assistance, applicants requesting additional assistance for repairs, housing replacement, lodging expense reimbursement, personal property, transportation, child care, medical, dental, funeral, moving and storage, or other necessary expenses and serious needs may submit an appeal as outlined in § 206.115 and will be required to submit information and/or verifiable documentation established via guidance identifying the additional need. In § 206.114(d)(2), FEMA combines current § 206.114(b)(5) and § 206.114(b)(6) into one sentence, so as not to have to repeat the following language twice as it is used in both current § 206.114(b)(5) and current § 206.114(b)(6): “individuals or households requesting additional” and “will be required to submit information and/or documentation identifying the continuing need.” Section 206.114(d)(2) is consistent with combining current § 206.114(b)(5) and § 206.114(b)(6), except for FEMA adding “After the initial award of assistance” to the beginning of § 206.114(d)(2) for clarity; replacing “Individual or households” with “Applicants for consistency;” adding “repairs, housing replacement, lodging expense reimbursement” before “personal” for clarity and consistency; adding “child care” before “medical;” adding “may submit an appeal as outlined in § 206.115 and” before “will be” for clarity; adding “verifiable” before “documentation;” adding “established via guidance” before “identifying;” and replacing “continuing” with “additional” at the end of the sentence for clarity purposes. “Continuing need” is not appropriate in the sentence as there is not a “continuing need” for repair assistance, rather an “additional” need of repair assistance is more appropriate. FEMA adds child care; as section 1108 of the Sandy Recovery Improvement Act of

³²⁶ See page 82 of IAPPG 1.1 Individual Assistance Program and Policy Guide | FEMA.gov.

³²⁷ See page 76 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

2013 (SRIA)³²⁸ established child care as an eligible expense under the ONA provision of the IHP.³²⁹ This is a clarifying edit; as, currently FEMA implements child care assistance through Chapter 3: VI.B.3. of IAPPG 1.1.³³⁰ FEMA adds “verifiable” documentation at § 206.114(d)(2), as per

³²⁸ Sandy Recovery Improvement Act of 2013, Pub. L. 113–2, 127 Stat. 47 (Jan. 29, 2013), 42 U.S.C. 5174(e)(1).

³²⁹ Initially, the Recovery Policy, Disaster Assistance for Child Care 9461.1, Jan. 17, 2014 was the controlling policy, https://www.fema.gov/sites/default/files/2020-07/recovery-policy_disaster%20assistance-child-care.pdf.

³³⁰ See pages 155–160 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

PKEMRA FEMA has a responsibility for identifying fraud, waste, and abuse. Therefore, FEMA is making this provision, for clarity and transparency to allow the public to know that the documentation they submit to support their requests for CTHA must be verifiable. FEMA will call service providers as applicable to validate the veracity of the supporting documentation that applicants submit to FEMA.

FEMA adds “may submit an appeal as outlined in § 206.115” for clarity; however, this is the current process so it will not change anything for applicants. Page 66, Chapter 3: II.C. 2. of the IAPPG 1.1 states that applicants

may submit a written appeal if they disagree with any FEMA determination. This is in line with what FEMA states in 206.114(d)(2). Page 68, Chapter 3: II.C.5. of the IAPPG 1.1, states that the appeal letter should be accompanied by documentation to support the appeal request, such as repair estimates, contractor estimates, or other supporting documentation. Table 6 lists supporting documentation that must be submitted to FEMA to demonstrate current housing costs and the use of the previously awarded rental assistance or CTHA funds.

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Table 6—Continued Temporary Housing Assistance Documentation

Type of Documentation	Description of Documentation
Copy of current lease or rental agreement signed by the landlord and tenant	The lease or rental agreement should include location of the unit, amount of rent, duration of lease, and number of occupants.
Proof prior Rental Assistance provided by FEMA has been used for temporary housing	<ul style="list-style-type: none"> • Rent receipts showing date, location of rental unit, and time period for which the payment applies. • If separate from the rent, receipts showing payment of essential utilities. Essential utilities are gas, electric, water, oil, trash, and sewer. • If applicable, receipt showing payment of security deposit for up to one month's rent. • In instances where rent receipts are not available, the lease or rental agreement may serve as proof of use of prior Rental Assistance. • Hotel/motel receipts showing date, address of hotel/motel, and time period for which payment applies. Only the cost of the room and taxes charged by the hotel will be considered toward acceptable exhaustion of Rental Assistance.
Proof of current post-disaster income for all members of the household 18 years and older	<p>Examples include, but are not limited to:</p> <ul style="list-style-type: none"> • Recent pay stubs. • W-2 forms or tax returns from the most recent tax year. • Documentation of self-employment, if applicable. • Documentation of government assistance, including Social Security. • Statement of no income, if applicable.
If still responsible for costs related to pre-disaster home: Proof of current housing costs for the pre-disaster home, if applicable	<ul style="list-style-type: none"> • Mortgage statement or lease/rental agreement for the disaster-damaged primary residence. • Real estate tax statement and homeowners or renters' insurance statement, if paid separately from the mortgage. • Essential utility bill(s) for the disaster-damaged primary residence: gas, electric, oil, trash, water, and sewer.

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Upon subsequent requests for CTHA, applicants will only need to submit supporting documentation for income and housing costs if the household's income or housing costs have changed. See 44 CFR 206.114(b).

G. Section 206.115—Appeals

In the first sentence of § 206.115(a), FEMA states that under the provisions of the Stafford Act, 42 U.S.C. 5189a, applicants for assistance under subpart D may appeal any determination of eligibility for assistance made under subpart D. This sentence is consistent with the current first sentence of § 206.115(a), except for FEMA removing

“section 423 of” and inserting “42 U.S.C. 5189a,” before applicants. FEMA makes these edits for public ease of reference, as a United States Code cite is more accessible to the public and referencing the section of the Stafford Act just increases the length of the regulation.

In the first sentence of § 206.115(b), FEMA states that appeals must include a written explanation or verifiable documentation for the appeal and meet the requirements of § 206.117, as applicable. This sentence is consistent with the current first two words of the first sentence of § 206.115(b). In the first sentence of § 206.115(b), FEMA replaces

the clause “be in writing and explain the reason(s) for the appeal” with “include a written explanation or verifiable documentation for the appeal” to reduce the complexity, to streamline the process, to reduce FEMA processing time, and to decrease the burden on applicants to successfully appeal a determination. This language allows applicants to continue to submit a written letter of explanation to enhance their appeal, if they choose, and establishes the requirement to submit either a written appeal or verifiable documentation—thus reducing the need for additional letters requesting this information from

applicants. Finally, FEMA adds a cross reference for consistency to the end of the first sentence of § 206.115(b) “and meet the requirements of § 206.117, as applicable” since FEMA’s current regulations at §§ 206.117(b)(2)(vii), 206.117(b)(3)(iv), and 206.117(b)(4)(iii) include cross references to the appeals procedures in § 206.115.

In the second sentence of § 206.115(b), FEMA states “See §§ 206.117(b)(2)(vi), 206.117(b)(3)(iv), and 206.117(b)(4)(iii).” FEMA makes this addition to the current regulations for clarity; as, the cross references to the appeals procedures in § 206.115 already exist in FEMA’s current regulations at §§ 206.117(b)(2)(vii), 206.117(b)(3)(iv), and 206.117(b)(4)(iii).

In the third sentence of § 206.115(b), FEMA states that if someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent them. This sentence is consistent with the current third sentence in § 206.115(b), except for FEMA removing “his, her, or” before “them” as “his or her” is redundant.

In the fourth sentence of § 206.115(b), FEMA states that if a written explanation is submitted, it must be signed by the applicant or a person the applicant designates to represent them. This sentence is consistent with the intent of the current second sentence in § 206.115(b). This sentence is trying to ensure that the public understands that if a written explanation is submitted, it has to be signed either by the applicant or the person the applicant chooses to represent them. If the applicant submits verifiable documentation no signature is necessary.

In § 206.115(c), FEMA states that applicants must appeal to FEMA for decisions made under subpart D, unless FEMA has made a grant to the State to provide assistance to individuals and households under § 206.120(a), State administration of other needs assistance; then the applicant must appeal to the State. This is consistent with the current § 206.115(c), except for FEMA replacing “the Regional Administrator or his/her designee” with “FEMA” to ensure continued consistency in processing across disasters at the national level. This change also aligns regulations with current practices that already streamline the appeals process to eliminate delays.

In the second sentence of § 206.115(d), FEMA states that if someone other than the applicant is submitting the request, then the applicant must also submit a signed statement giving that person authority to represent them. This is consistent with

the current second sentence of § 206.115(d), except for FEMA placing “him or her” with “them” for consistency with the edits suggested in the third sentence of § 206.115(b).

FEMA removes current § 206.115(e), which states that the appropriate FEMA or State program official will notify the applicant in writing of the receipt of the appeal. FEMA removes current § 206.115(e), to codify the current practice that the applicant is not notified in writing of receipt of the appeal.

In the first sentence of § 206.115(e), FEMA states that FEMA or the appropriate State official will review the original decision after receiving the appeal. This sentence is consistent with the current first sentence § 206.115(f), except for FEMA replacing “the Regional Administrator or his/her designee” with “FEMA” to ensure continued consistency in processing across disasters at the national level and adding “the” before “appropriate” for grammar purposes.

In the second sentence of § 206.115(e), FEMA states that FEMA or the State, as appropriate, will give the appellant a written notice of the disposition of the appeal and a reason for the determination within 90 days of receiving the appeal. This sentence is consistent with the current second sentence of § 206.115(f), except for FEMA removing “the” before “receiving” for grammar purposes and adding “and a reason for the determination” for clarity and transparency; as, it is currently FEMA’s practice to provide a reason in the written notice of the disposition of the appeal.

In the third sentence of § 206.115(e), FEMA states that the decision of the FEMA or State appellate authority is final. This sentence is consistent with the current third sentence of § 206.115(f), except for FEMA adding a clarifying phrase “FEMA or State” before “appellate.”

H. Section 206.117—Housing Assistance

In § 206.117(a), FEMA removes the definition “Caused by the disaster” since FEMA is paying for pre-existing conditions if the component itself was damaged by the disaster, adding the term “Multifamily Rental Housing,” and revising the definition of “Real Property Component” or “Component,” as follows.

Multifamily Rental Housing. FEMA defines the term “Multifamily Rental Housing” to mean a rental property that contains three or more dwelling units contained within one building, each such unit providing complete and

independent living facilities for one or more persons, including permanent provisions for living, sleeping, cooking, and sanitation. FEMA has used this definition since the January 1, 2019, release of the Individual Assistance Program and Policy Guide at Chapter 3: V.D.1.³³¹ Section 1103 of SRIA³³² established FEMA’s authority to lease and repair rental units located in areas covered by a major disaster declaration for temporary housing of applicants, and section 1213 of DRRRA³³³ reaffirmed this authority. Currently, FEMA has no regulations specific to the selection of properties to be leased and repaired, the types of repairs that may be funded, or the intention that these rental units are to be used as a type of Direct Temporary Housing Assistance. Therefore, this IFR will detail the requirements of implementing Multifamily Lease and Repair as a form of Direct Temporary Housing Assistance including addition of the definition of “Multifamily Rental Housing.”

However, FEMA currently has a definition of “Multifamily Rental Housing” in the IAPPG 1.1 at Chapter 3: V.E.1.³³⁴ that is consistent with the definition of “Multifamily Rental Housing” here except for the clarifying phrase “contained within one building.” This phrase was added to clarify that the definition of multifamily rental housing is limited to rental properties contained within one building, such as apartments, and does not include rental properties composed of multiple separate dwelling units on the same plot of land.

Prior to the definition of “Multifamily Rental Housing” in the 2019 version of the IAPPG, FEMA followed the HUD regulations at 12 CFR 1282.1(b), which states multifamily housing means a residence consisting of more than four dwelling units. However, during DR–4277–LA, the available housing market of multifamily buildings proved insufficient to meet the demand for temporary housing in the affected area. FEMA received hundreds of calls and emails from property owners interested in MLR. Despite a growing need for temporary housing and interest in MLR, many properties were immediately excluded based solely on the fact that the buildings had four or fewer units. Based on this experience, FEMA

³³¹ See page 105 of IAPPG. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³³² 42 U.S.C. 5174(c)(1)(B).

³³³ Disaster Recover Reform Act of 2018, Public Law 115–254, 132 Stat. 3448 (Oct. 5, 2018), 42 U.S.C. 5174(c)(1)(B).

³³⁴ See page 107 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

decided to expand the criteria to include three or more dwelling units because the risk of diminishing returns on the time and labor required to assess and scope potential properties was more than offset by making MLR viable in communities where three- and four-unit buildings were prevalent and larger multifamily properties were scarce.

When provided the authority to repair or make improvements to existing multifamily housing units as a form of direct temporary housing assistance via SRIA, FEMA initially defined “multifamily housing” as “a property that consists of not less than five dwelling units in one site, each such unit providing complete living facilities including provisions for cooking, eating, and sanitation within the unit.”³³⁵

FEMA specifically seeks public comment on whether its definition is appropriate, or should be changed from “three or more dwelling units contained within one building” to “two or more dwelling units contained within one building.”

Real Property Component or Component. FEMA revises the term “Real Property Component” or “Component” to mean each individual part of a dwelling as enumerated in paragraph (b)(2)(ii) of § 206.117. This is consistent with the definition of “Real Property Component” or “Component” in current § 206.117(a) except for FEMA removing the phrase “that makes it habitable,” as whether or not the component makes the dwelling habitable is now immaterial in the definition. The overarching eligibility requirement for housing assistance is whether or not the applicant’s home is uninhabitable. Once an applicant has hit that threshold, FEMA is simplifying the program to pay for all components listed in paragraph (b)(2)(ii) of § 206.117 as long as the component incurred some disaster damage and then repair those components “to” a safe and sanitary living or functioning condition.

FEMA revises subparagraph heading (i) of § 206.117(b)(1) from “Financial” to “Rental” assistance for clarity. In the first sentence of § 206.117(b)(1)(i), FEMA states that eligible displaced applicants may receive rental assistance to rent alternate housing resources. This sentence is consistent with the current first sentence of § 206.117(b)(1)(i), except for FEMA replacing “individuals and households” with “displaced applicants” for clarity; replacing “financial” with “rental” for clarity; and

removing “existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings” for clarity. There is no reason to list the definition of “Alternate housing resources” in the sentence after using the defined term. Finally, in the third sentence of § 206.117(b)(1)(i), FEMA states that this may include lodging expense reimbursement for reasonable short-term lodging expenses for individuals or households who have not received displacement assistance (See § 206.119(b)(2)) in the immediate aftermath of a disaster. This is consistent with the third sentence of current § 206.117(b)(1)(i), except for FEMA replacing “includes” with “may include,” adding “lodging expense” before “reimbursement,” replacing “that” with “for,” and adding “who have not received displacement assistance (See § 206.119(b)(2))” after “households,” and removing “incur” for clarity. FEMA adds the cross-reference to the displacement assistance regulations for ease of review.

In § 206.117(b)(1)(i)(A), FEMA states that FEMA will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless FEMA determines that the size or nature of the household requires that we provide assistance for more than one residence. This sentence is consistent with the current § 206.117(b)(1)(i)(A), except for FEMA replacing “the Regional Administrator or his/her designee” with “FEMA” for consistency.

In the first sentence of § 206.117(b)(1)(i)(B), FEMA states that FEMA will base the amount of assistance on the current fair market rent for existing rental units. This sentence is consistent with the current first sentence of § 206.117(b)(1)(i)(B), except for FEMA replacing “rental” with “amount of” for clarity; removing “Department of Housing and Urban Development’s,” as it is duplicative; and replacing “rates” with “rent” for clarity. FEMA replaces “fair market rates” with “fair market rent” as the defined term at § 206.111 is “fair market rent.” Additionally, the definition of “fair market rent” states that the fair market rental rates applied are those identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular area; since the term provides that the rates are identified by HUD, FEMA does not need to repeat that in the first sentence of § 206.117(b)(1)(i)(B).

In the second sentence of § 206.117(b)(1)(i)(B), FEMA states that

FEMA will further base the applicable rate on the location of the rental unit and the number of bedrooms the household requires, as determined by FEMA. This sentence is consistent with the current second sentence of § 206.117(b)(1)(i)(B), except for FEMA removing the phrase “household’s bedroom requirement and the” from the beginning of the sentence and replacing it with the clarifying phrase “and the number of bedrooms the households requires, as determined by FEMA” to the end of the sentence. This will codify existing policy and practice that FEMA determines the number of bedrooms a household requires, for clarity.³³⁶

In § 206.117(b)(1)(i)(C), FEMA states that rental assistance may include the payment of the cost of utilities, excluding telephone, cable, television, and internet service. This sentence is not consistent with current § 206.117(b)(1)(i)(C), as the current regulations state that all utility costs and utility security deposits are the responsibility of the occupant except where the utility does not meter utility services separately and utility services are part of the rental charge. Section 689d of PKEMRA³³⁷ updated section 408 of the Stafford Act, at 42 U.S.C. 5174(c)(1)(A), to allow for the payment of the cost of utilities, excluding telephone service. This currently is implemented via the IAPPG 1.1 at Chapter 3: IV.B. which further explains this distinction between essential and non-essential utilities and clarifies that cable, TV, and internet service are also excluded.³³⁸ The IFR will codify this provision of the IAPPG 1.1.

In § 206.117(b)(1)(i)(D), FEMA states that rental assistance may include the payment of the cost of security deposits, not to exceed an amount equal to the fair market rent for one month, as determined under paragraph (b)(1)(i)(B) of § 206.117. This sentence is not consistent with the current two sentences of § 206.117(b)(1)(i)(D), as the current regulations state that the occupant is responsible for all housing security deposits and that in extraordinary circumstances, the Regional Administrator or his/her designee may authorize the payment of security deposits; however, the owner or occupant must reimburse the full

³³⁶ See the “fair market rent” box on page 109 of Chapter 3: V.E.2. of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³³⁷ Post-Katrina Emergency Management Reform Act of 2006, 109–295, 120 Stat. 1452 (Oct. 4, 2006), 6 U.S.C. 701 note.

³³⁸ See page 80 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³³⁵ See page 73 of the Individuals and Households Program Unified Guidance, released on September 30, 2016, at FEMA Individuals and Households Program Unified Guidance.

amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance ends. Section 689d of PKEMRA updated the Stafford Act, at 42 U.S.C. 5174(c)(1)(A), to allow for the payment of security deposits. Currently, FEMA implements Section 689d of PKEMRA via the IAPPG 1.1 at Chapter 3: IV.C.2.,³³⁹ and FEMA limits security deposits to the amount equal to one month's rent, if applicable. Therefore, the changes at § 206.117(b)(1)(i)(D) are more limiting than the PKEMRA amendment, but consistent with current practice.

In § 206.117(b)(1)(i)(E), FEMA states that applicants that receive displacement assistance under § 206.119(b)(2) must request rental assistance if their disaster-caused temporary housing needs continue once displacement assistance is exhausted. This new paragraph is for public transparency. With the new displacement assistance, if an applicant wants to receive rental assistance after receiving displacement assistance, they now have to contact FEMA to let FEMA know that they need continued temporary housing assistance in the form of rental assistance. If FEMA did not propose § 206.117(b)(1)(i)(E), the only notification the public would have of this would be from the second sentence of § 206.114(a), which says that FEMA may provide initial and CTHA, financial or direct, upon request during the period assistance.

In § 206.117(b)(1)(ii)(A), FEMA states that FEMA may provide direct assistance in the form of purchased or leased temporary housing units directly to displaced applicants who lack available housing resources and are unable to make use of the assistance provided under paragraph (b)(1)(i) of § 206.117. This sentence is consistent with the current § 206.117(b)(1)(ii)(A), except for FEMA replacing “individuals or households” with “displaced applicants” and replacing “would be” with “are” for clarity.

In § 206.117(b)(1)(ii)(B), FEMA states that FEMA will include all members of a pre-disaster household in a single application and will provide assistance for one temporary housing unit, unless FEMA determines that the size or nature of the household requires that we provide assistance for more than one temporary housing unit. This is consistent with current § 206.117(b)(1)(ii)(B), except for FEMA replacing “residence” with “unit;”

replacing “the Regional Administrator or his/her designee” with “FEMA;” and replacing “residence” with “temporary housing unit,” for clarity and consistency.

In § 206.117(b)(1)(ii)(C), FEMA states that any site upon which a FEMA-provided temporary housing unit is placed must comply with applicable State and local codes and ordinances, as well as 44 CFR part 9, Floodplain Management and Protection of Wetlands, and all other applicable environmental and historic preservation laws, regulations, Executive orders, and agency policy. This is consistent with current § 206.117(b)(1)(ii)(C), except for FEMA adding “temporary” before “housing” for consistency and replacing “Orders” with “orders” for formatting purposes.

In § 206.117(b)(1)(ii)(E), FEMA states that FEMA-provided or funded temporary housing units may be placed in the locations, listed in subparagraphs (1)–(4). This is consistent with current § 206.117(b)(1)(ii)(E), except that for consistency FEMA adding “temporary” before “housing.”

In § 206.117(b)(1)(ii)(E)(1), FEMA states that FEMA-provided or funded temporary housing units may be placed at a commercial site that is complete with utilities, when FEMA determines that the upgrading of commercial sites, or installation of utilities on such sites, will provide more cost-effective, timely and suitable temporary housing than other types of resources. This is consistent with current § 206.117(b)(1)(ii)(E)(1), except for FEMA replacing “the Regional Administrator or his/her designee” with “FEMA” for consistency and removing the superfluous clause “then Federal assistance may be authorized for such actions.”

In § 206.117(b)(1)(ii)(E)(2), FEMA states that FEMA-provided or funded temporary housing units may be placed at a private site that an applicant provides, complete with utilities, when FEMA determines that the cost of installation or repairs of essential utilities on private sites will provide more cost effective, timely, and suitable temporary housing than other types of resources. This is consistent with current § 206.117(b)(1)(ii)(E)(2), except for FEMA replacing “the Regional Administrator or his/her designee” with “FEMA” for consistency and removing the superfluous clause “then Federal assistance may be authorized for such actions.”

In § 206.117(b)(1)(ii)(E)(3), FEMA states that FEMA-provided or funded temporary housing units may be placed at a group site that accommodates two

or more temporary housing units and is complete with utilities, provided by the State or local government, when FEMA determines that the cost of developing a group site provided by the State or local government, to include installation or repairs of essential utilities on the sites, will provide more cost effective, timely, and suitable temporary housing than other types of resources. This is consistent with current § 206.117(b)(1)(ii)(E)(3), except for clarity and consistency FEMA adds “temporary housing” before “units,” replaces “the Regional Administrator or his/her designee” with “FEMA,” removes the superfluous clause “then Federal assistance may be authorized for such actions,” and reorganizes the first portion of subparagraph (3) for clarity and consistency.

In § 206.117(b)(1)(ii)(E)(4), FEMA states that FEMA-provided or funded temporary housing units may be placed at a group site provided by FEMA, if determined that such a site would be more economical or accessible than one that the State or local government provides. This is consistent with current § 206.117(b)(1)(ii)(E)(4), except for FEMA replacing “the Regional Administrator or his/her designee” with “FEMA” for consistency and replacing “determines” with “determined” for grammar purposes.

In § 206.117(b)(1)(ii)(F), FEMA states that if FEMA determines it would be a cost-effective alternative to other temporary housing options, FEMA may enter into lease agreements with owners of multifamily rental housing properties to house displaced applicants eligible for assistance under subpart D.

In § 206.117(b)(1)(ii)(F)(1), FEMA states that FEMA may only enter into lease agreements with owners of multifamily rental housing properties impacted by a major disaster or located in areas covered by a major disaster declaration.

In § 206.117(b)(1)(ii)(F)(2), FEMA states that FEMA may make repairs or improvements to properties under such lease agreements, to the extent necessary to serve as temporary housing, provided, however, that the value of the improvements or repairs must be deducted from the value of the lease agreement.

FEMA is adding these subparagraphs since section 1103 of SRIA³⁴⁰ established FEMA's authority to lease and repair rental units located in areas covered by a major disaster declaration for temporary housing of applicants,

³³⁹ See page 84 of IAPPG 1.1, https://www.fema.gov/sites/default/files/documents/fema_iapppg-1.1.pdf.

³⁴⁰ 42 U.S.C. 5174(c)(1)(B).

and section 1213 of DRRRA³⁴¹ reaffirmed this authority.³⁴² Currently, FEMA has no regulations specific to the selection of properties to be leased and repaired, the types of repairs that may be funded, or the intention that these rental units are to be used as a type of Direct Temporary Housing Assistance. Therefore, this IFR will detail the requirements of implementing Multifamily Lease and Repair as a form of Direct Temporary Housing Assistance.

However, FEMA currently has guidance regarding MLR that is consistent with § 206.117(b)(1)(ii)(F). The IAPPG 1.1 at Chapter 3: V.E.2. added reference to an updated two-tier approval process for determining cost-effectiveness of MLR.³⁴³ Under this process, FEMA determines the cost-effectiveness of a potential MLR property, compared to other forms of Direct Temporary Housing Assistance, by estimating the cost of repairs or improvements to the property, estimating the value of the lease agreement, and calculating the net per-unit cost to FEMA. MLR property repairs may be approved by the RA or the Federal Coordinating Officer, if the RA has delegated the authority to the Federal Coordinating Officer, if the per unit cost does not exceed the average per unit acquisition cost of the smallest mobile housing unit in FEMA's inventory. If the per unit cost of the MLR property repairs does exceed this threshold amount, they must be approved by the IA Division Director and the RA or the Federal Coordinating Officer must provide a justification for why increasing MLR property costs above the per unit cost threshold is a more feasible, cost-effective, and survivor-centric solution.

Additionally, FEMA currently has guidance regarding MLR that is consistent with § 206.117(b)(1)(ii)(F)(1). On page 107 of the IAPPG 1.1 at Chapter 3: V.E.1., FEMA states that properties eligible for MLR must be located in a county/jurisdiction designated for Individual Assistance.³⁴⁴

FEMA also currently has guidance regarding MLR that is consistent with § 206.117(b)(1)(ii)(F)(2). On page 109 of the IAPPG 1.1 at Chapter 3: V.E.2.,

FEMA states that under the terms of any lease agreement for potential MLR property, the value of the improvements or repairs shall be deducted from the value of the lease agreement.³⁴⁵

In the first sentence of § 206.117(b)(1)(ii)(G), FEMA states that after the end of the 18-month period of assistance, FEMA may begin to charge up to the fair market rent for each temporary housing unit provided. This sentence is consistent with the current first sentence of § 206.117(b)(1)(ii)(F), except for FEMA removing "rate" from "fair market rent rate," since the defined term at § 206.111 is "fair market rent" not "fair market rent rate."

The second and third sentences of § 206.117(b)(1)(ii)(G) are consistent with the second and third sentences of current § 206.117(b)(1)(ii)(F), except for the change to the paragraph structure.

Section 206.117(b)(1)(ii)(H) is consistent with current § 206.117(b)(1)(ii)(G), except for the change to the paragraph structure.

Section 206.117(b)(1)(ii)(H)(1) through (3) is consistent with current § 206.117(b)(1)(ii)(G)(1) through (3), except for the changes to the paragraph structure. In § 206.117(b)(1)(ii)(H)(4) through (5), FEMA states that FEMA may terminate direct assistance for reasons that include, but are not limited to the following: the occupant(s) failed to comply with any term of the lease/rental agreement or other rules of the site where the temporary housing unit is located; or the occupant(s) does not provide evidence documenting that they are working towards a permanent housing plan. This is consistent with current § 206.117(b)(1)(ii)(G)(4) through (5), except for FEMA adding "temporary housing" before "unit" for consistency and adding "semicolon or" after "located" as a technical correction.

The first sentence of § 206.117(b)(1)(ii)(I) is consistent with current § 206.117(b)(1)(ii)(H), except for the changes to the paragraph structure.

In the second sentence of § 206.117(b)(1)(ii)(I), FEMA states that this notice will specify the reasons for termination of assistance and occupancy, the date of termination, the procedure for appealing the determination, and the occupant's liability for such additional charges as FEMA deems appropriate after the termination date, including fair market rent for the unit. This sentence is consistent with the current second sentence of § 206.117(b)(1)(ii)(H), except for FEMA replacing "the Regional Administrator or his/her designee" with

"FEMA" to ensure continued consistency in processing across disasters at the national level.

Section 206.117(b)(1)(ii)(f) through (b)(2) is consistent with current § 206.117(b)(1)(ii)(I) through (b)(2), except for the changes to the paragraph structure.

In § 206.117(b)(2)(i), FEMA states that FEMA may provide financial assistance for the repair of an owner-occupied primary residence if: the eligibility criteria in § 206.113 are met; FEMA determines the dwelling was damaged by the disaster; and the damage is not covered by insurance. This sentence is consistent with the current § 206.117(b)(2)(i), except for FEMA removing the phrase "real property components in" before "an owner-occupied primary residence;" adding "FEMA determines" after "met;" removing "to the component" after "damage" and replacing "component" with "dwelling," as the Stafford Act does not limit repairs to "components" and replacing "owner's" with "owner-occupied" for consistency as *owner-occupied* is the defined term in § 206.111; removing the current § 206.117(b)(2)(i)(B) that "the component was functional immediately before the declared event" and removing current § 206.117(b)(2)(i)(E) that the "repair of the component is necessary to ensure the safety or health of the occupant or to make the residence functional," and removing the clause "and the damage was caused," since FEMA is paying for pre-existing conditions if the component itself was damaged by the disaster.

In § 206.117(b)(2)(ii), FEMA states that FEMA may provide financial assistance for the repair of the disaster damaged dwelling to a safe and sanitary living or functioning condition. This clause is consistent with the current § 206.117(b)(2)(ii), except for FEMA adding "the disaster damaged dwelling to a safe and sanitary living or functioning condition including" after "of." These additions align with the changes that make it clear that only disaster damaged dwellings (regardless of their pre-disaster condition) may receive repair assistance, as FEMA may only pay to restore disaster damage to a safe and sanitary living or functioning condition. If the dwelling was not touched by the disaster, it will not be eligible for repair assistance.

In response to public comments, FEMA is also changing the regulatory text at § 206.117(b)(2) and a new § 206.113(a)(9) as a part of this IFR. The changes will allow FEMA flexibility to provide financial assistance to applicants for the installation or

³⁴¹ Disaster Recovery Reform Act of 2018, Pub. L. 115–254, 132 Stat. 3448 (Oct. 5, 2018), 42 U.S.C. 5174 (c)(1)(B).

³⁴² The DRRRA added authorization for FEMA to lease and repair property impacted by a major disaster.

³⁴³ See page 109 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³⁴⁴ Page 107 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³⁴⁵ Page 109 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

construction of real property items that were not present in the home prior to the disaster. Specifically, these changes will allow IHP to expand its existing policy, which provides for the installation of ADA related real property to applicants with disaster-caused needs, to include Home Repair Assistance for disaster survivors with pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional when any level of disaster-caused real property damage occurs to the primary residence.

In new § 206.113(a)(9), FEMA states that FEMA may provide assistance with respect to home repair for accessibility-related items, if an applicant meets the following conditions: (i) the applicant is either an individual with a disability as defined in 42 U.S.C. 5122 whose disability existed prior to the disaster and whose primary residence was damaged by the disaster, or an individual with a disability as defined in 42 U.S.C. 5122 whose disability was caused by the disaster and whose primary residence was damaged by the disaster; (ii) the real property component is necessary to meet the accessibility-related need of the household; and (iii) the real property component is not covered by insurance or any other source.

Via information collection 1660-0002, we are adding a documentation requirement to tie the need for the home repair accessibility-related items: ramp, grab bars, and/or paved pathway to the pre-existing disability to meet the household's access and functional need. We are requiring that a medical, health care, or rehabilitation professional certify whether or not this is necessary; as, they have the expertise to make that determination or, we will accept prior medical, health care, or rehabilitation professional documentation that supports the need for the accessibility-related items. FEMA requests comment on whether this is the appropriate level of documentation needed to confirm the necessity of accessibility-related items or if FEMA should pursue less burdensome documentation requirements.

FEMA makes the below changes to Home Repair Assistance to adjudicate four RFI comments,³⁴⁶ so that FEMA may make the dwelling safe/sanitary for pre-disaster disabled applicants. For example, this change will allow FEMA to reimburse pre-disaster disabled

applicants for accessibility items, such as grab bars and access ramps, if the primary residence sustained disaster damage regardless of whether or not the applicant had grab bars or access ramps pre-disaster. If the dwelling was not touched by the disaster, it will not be eligible for repair assistance; therefore, the applicant will not be able to apply for Home Repair Assistance for their pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional.

In § 206.117(b)(2)(ii)(H), FEMA states that FEMA may provide financial assistance for eligible hazard mitigation measures. This is consistent with current § 206.117(b)(2)(ii)(H), except for FEMA removing the phrase “items or services determined to be” for clarity, as FEMA never defined what “items or services” meant in context of mitigation measures and the removing of the phrase “that reduce the likelihood of future damage to the residence, utilities, or infrastructure” as that is now part of the defined term “Eligible hazard mitigation measures.”

In the first sentence of § 206.117(b)(2)(iii), FEMA states that FEMA financial assistance for the repair of disaster damage will be limited to repairs of quality necessary for a safe and sanitary living or functioning condition. This is not consistent with current § 206.117(b)(2)(iii), as FEMA has changed its position regarding pre-existing conditions. Rather, FEMA now repairs the home to a safe and sanitary living or functioning condition to align with the “functioning condition” provision listed in 42 U.S.C. 5174 (c)(2)(A)(i) of the Stafford Act.

In the second sentence of § 206.117(b)(2)(iii), FEMA states that in some instances, when the extent of the damage is unclear, FEMA may provide assistance for the average cost of a licensed technician's professional assessment. The second sentence of § 206.117(b)(2)(iii) is new regulatory text which indicates that FEMA may pay for the average cost of a licensed technician's professional assessment in some situations when the extent of the damage is unclear. While that situation has typically presented itself when FEMA is considering providing assistance for damages to more complex items that affect the habitability of the home, like furnaces, wells, septic systems, roads, bridges, or retaining walls, there may be other situations in which we will need that kind of assessment. So, FEMA has left § 206.117(b)(2)(iii) general to allow for flexibility.

Currently, under page 86 of the IAPPG 1.1, FEMA lists that for wells, furnaces, and septic systems, FEMA may provide assistance or reimbursement for the cost of a licensed technician's professional assessment associated with the repair or replacement of those components. Additionally, when verifiable receipts or estimates are submitted on appeal, FEMA may pay up to the actual cost of the receipt or estimate for wells, furnaces, and septic systems. Thus, the new regulatory text for the second sentence of § 206.117(b)(2)(iii), will codify FEMA's policy and practice, in place since 2000, of providing assistance for the average cost of a licensed technician's professional assessment.

In the third sentence of § 206.117(b)(2)(iii), FEMA states that FEMA may provide for the replacement of a component if repair is not feasible. This is consistent with the fourth sentence of current § 206.117(b)(2)(iii), except for FEMA adding an “a” after “of” for clarity and replacing “components” with “component” for grammar purposes.

FEMA removes the current § 206.117(b)(2)(iv) that states that components that were functional immediately before the declared event may be eligible for repair assistance if the damage to the component was caused by the disaster and the component is no longer functional. The reason for the removal is FEMA's policy change. In this IFR, FEMA will provide assistance to repair or replace a disaster-damaged component, room, or area as long as the dwelling incurred disaster damage, including damage that was exacerbated by the disaster and requires repair or replacement to make the home habitable. If the dwelling was not touched by the disaster, it will not be eligible for repair assistance.

In § 206.117(b)(2)(iv), FEMA states that eligible individuals or households may receive up to the maximum amount of assistance (See § 206.110(b)) to repair damage to their primary residence irrespective of other financial resources, except insurance proceeds. This sentence is consistent with the current § 206.117(b)(2)(v), except for FEMA removing the italicization of “See” to correct a formatting error, removing “of this part” as to conform with the *Federal Register Document Drafting Handbook* regarding cross-referencing, and revising “damages” to “damage” for clarity.

Section 206.117(b)(2)(v) is consistent with current § 206.117(b)(2)(vi), except for the change to the paragraph structure.

³⁴⁶ FEMA-2021-0011-0152, FEMA-2021-0011-0164, FEMA-2021-0011-0235, and FEMA-2021-0011-0261.

In the first sentence of § 206.117(b)(2)(vi), FEMA states that if the applicant disputes a determination made by FEMA regarding eligibility for repair assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. This is consistent with current

§ 206.117(b)(2)(vii), except for changing the paragraph structure and removing of “of this part.” The removal of “of this part” is to conform with the *Federal Register Document Drafting Handbook* regarding cross-referencing.

In the second sentence of § 206.117(b)(2)(vi), FEMA states that in addition to the requirements in § 206.115, the applicant must provide proof that the component meets the requirements of paragraph (b)(2)(i) of § 206.117. This sentence is consistent with the second sentence of current § 206.117(b)(2)(vii), except for FEMA removing the clause “including that the component was functional before the declared event and proof that the declared event caused the component to stop functioning.” The reason for the clause’s removal is that FEMA is making a policy change that only disaster damaged components (regardless of their pre-disaster condition) may receive repair assistance, as FEMA may only pay to restore disaster damage to a safe and sanitary living or functioning condition.

The third sentence of § 206.117(b)(2)(vi) is consistent with current § 206.117(b)(2)(vii), except for the change to the paragraph structure.

In § 206.117(b)(3)(i), FEMA states that FEMA may provide financial assistance for the replacement of an owner-occupied primary residence if: the eligibility criteria in § 206.113 are met; the residence was destroyed by the disaster; and the damage to the residence is not covered by insurance. This sentence is consistent with current § 206.117(b)(3)(i), except for FEMA replacing “owner’s” with “owner-occupied” before “primary residence;” removing “of this part” from current § 206.117(b)(3)(i)(A) for consistency; removing the current § 206.117(b)(3)(i)(B), which states that the residence was functional immediately before the disaster; removing the following clause from the current § 206.117(b)(3)(i)(C) “and the damage was caused;” removing the current § 206.117(b)(3)(i)(E), which states that repair is not feasible, will not ensure the safety or health of the occupant, or will not make the residence functional; and removing the current § 206.117(b)(3)(i)(F), which states that replacement is necessary to ensure the safety or health of the

occupant. These additions align with the policy changes that the residence does not have to be functional immediately before the disaster and that all of the damage to the residence need not have been caused by the disaster since FEMA is paying for pre-existing damage.

In the first sentence of § 206.117(b)(3)(ii), FEMA replaces the first sentence with the second sentence of current § 206.117(b)(3)(ii), except for FEMA removing the italicization of “See” to correct a formatting error and removing “of this part” for consistency. FEMA is removing the first sentence of current § 206.117(b)(3)(ii), which states that all replacement assistance awards must be approved by the Regional Administrator or his/her designee to ensure continued consistency in processing across disasters at the national level.

In § 206.117(b)(3)(iii), FEMA states that housing replacement assistance will be based on the average replacement cost established by FEMA for the type of residence destroyed, or the statutory maximum (See § 206.110(b)), whichever is less. This sentence is consistent with current § 206.117(b)(3)(iii), except for FEMA replacing “verified disaster related level of damage to the dwelling” with “average replacement cost established by FEMA for the type of residence destroyed” and removing “of this part” for consistency. FEMA’s clarifying revisions are to help the public understand that since FEMA has already said that the residence must be destroyed or cannot be repaired, that FEMA will pay replacement assistance based on the average replacement cost established by FEMA for the type of residence destroyed.

In the first sentence of § 206.117(b)(3)(iv), FEMA states that if the applicant disputes a determination made by FEMA regarding eligibility for replacement assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. This sentence is consistent with the current first sentence of § 206.117(b)(3)(iv), except for FEMA removing “of this part” to conform with the *Federal Register Document Drafting Handbook* regarding cross-referencing.

In the second sentence of § 206.117(b)(3)(iv), FEMA states that in addition to the requirements in § 206.115, the applicant must provide proof that repair is not feasible, or will not ensure the safety or health of the occupant. This sentence is consistent with the current second sentence of § 206.117(b)(3)(iv), except for FEMA removing the clause “or make the residence functional” based on the

policy changes that FEMA has previously discussed in this IFR that the residence no longer has to be functional pre-disaster.

In § 206.117(b)(4)(i)(A), FEMA states that FEMA may provide financial or direct assistance to applicants for the purpose of constructing permanent and semi-permanent housing if the eligibility criteria in § 206.113 are met. This is consistent with current § 206.117(b)(4)(i)(A), except for FEMA removing “of this part” to conform with the *Federal Register Document Drafting Handbook* regarding cross-referencing.

In § 206.117(b)(4)(i)(B), FEMA deletes the current § 206.117(b)(4)(i)(B), which states that the residence was functional immediately before the declared event, based upon the policy changes that the residence no longer has to be functioning immediately before the declared event.

Section 206.117(b)(4)(i)(B) through (D) is consistent with current § 206.117(b)(4)(i)(C) through (E), except for changing the paragraph structure.

In § 206.117(b)(4)(i)(E), FEMA states that FEMA may provide financial or direct assistance to applicants to construct permanent and semi-permanent housing if the residence is in a location where alternate housing resources are not available and the types of financial or direct temporary housing assistance described in paragraph § 206.117(b)(1), (2), and (3) are unavailable, infeasible, or not cost-effective. This is consistent with current § 206.117(b)(4)(i)(F), except for FEMA removing “located” as it is repetitive and replacing the phrase “an insular area outside the continental United States or in another” with “a” before “location” as a simplifying edit for clarity. There is no reason to include the phrase, as the point of the sentence is that the residence is in a location where no alternative housing resources are available.

In the first sentence of § 206.117(b)(4)(iii), FEMA states that if the applicant disputes a determination made by FEMA regarding eligibility for construction assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. This is consistent with the first sentence in current § 206.117(b)(4)(iii), except for FEMA removing “of this part” to conform with the *Federal Register Document Drafting Handbook* regarding cross-referencing.

In the second sentence of § 206.117(b)(4)(iii), FEMA states that in addition to the requirements in § 206.115, the applicant must provide proof that the property is in a location where alternative housing resources are

not available. This is consistent with current § 206.117(b)(4)(iii), except for FEMA removing the phrase “either located in an insular area outside the continental United States or” as a simplifying edit for clarity. There is no reason to include the phrase as the point of the sentence is that the residence is in a location where no alternative housing resources are available.

I. Section 206.118—Disposal of Housing Units

In § 206.118(a) through (1), FEMA states that FEMA may sell temporary housing units purchased under § 206.117(b)(1)(ii), Temporary housing, direct assistance, as follows: sale to an occupant. This is consistent with the current § 206.118(a) through (1), except for FEMA adding “temporary” before “housing units” for clarity and replacing “applicant” with “occupant” for clarity in reference to those who attempt to purchase the temporary housing unit they occupy during their period of FEMA individual assistance.

In § 206.118(a)(1)(i), FEMA states that FEMA may sell a temporary housing unit to the occupant, if they lack permanent housing and have a site that complies with local codes and ordinances and 44 CFR part 9. This is consistent with the current § 206.118(a)(1)(i), except for FEMA replacing “sale” with the clause “FEMA may sell a temporary housing unit;” replacing “individual or household” with “occupant;” removing “occupying the unit;” replacing “the occupant” with “they;” replacing “lacks” with “lack” for grammar purposes; replacing the “comma” after “permanent housing” with “and;” and replacing “has” with “have” for grammar purposes. These changes are for clarity and consistency.

In § 206.118(a)(1)(ii), FEMA removes the paragraph heading “adjustment to the sales price” for consistency and to comply with the *Federal Register Document Drafting Handbook*, as the rest of the paragraphs at that level do not have paragraph headings.

In § 206.118(a)(1)(ii), FEMA states that FEMA may approve adjustments to the sales price when selling a temporary housing unit to the occupant if the occupant is unable to pay the fair market value of the temporary housing unit and when doing so is in the best interest of the occupant and FEMA. This is consistent with current § 206.118(a)(1)(ii), except for FEMA adding “temporary” before “housing unit” for clarity; removing “of a unit;” replacing “purchaser” with “occupant” for consistency and because “occupant” is a defined term in § 206.111; replacing

“home or” with “temporary housing unit;” and replacing “applicant” with “occupant” for consistency.

In § 206.118(a)(1)(iii), FEMA states that FEMA may sell a temporary housing unit to the occupant only on the condition that the purchaser agrees to obtain and maintain hazard insurance, as well as flood insurance on the temporary housing unit if it is or will be in a designated Special Flood Hazard Area. This is consistent with current § 206.118(a)(1)(iii), except for FEMA adding “temporary” before “housing unit” and “temporary housing” before “unit” for consistency.

In § 206.118(a)(2), FEMA replaces a colon with a period for grammar purposes. In the first sentence of § 206.118(a)(2)(i), FEMA states that FEMA may sell, transfer, donate, or otherwise make a temporary housing unit available directly to a State or other governmental entity, or to a voluntary organization, for the sole purpose of providing temporary housing to eligible displaced applicants in major disasters and emergencies. This is consistent with the first sentence of current § 206.118(a)(2)(i), except for FEMA adding “temporary housing” before “unit” for consistency and replacing “disaster victims” with “eligible displaced applicants” for consistency and clarity.

In § 206.118(a)(2)(i)(B), FEMA states that the State, governmental entity, or voluntary organization must agree to obtain and maintain hazard insurance on the temporary housing unit, as well as flood insurance if the housing unit is or will be in a designated Special Flood Hazard Area. This is consistent with current § 206.118(a)(2)(i)(B), except for FEMA adding “temporary housing” before “unit” for consistency.

In § 206.118(a)(2)(ii), FEMA states that FEMA may also sell temporary housing units at a fair market value to any other person. This is consistent with current § 206.118(a)(2)(ii), except for FEMA adding “temporary” before “housing units” for consistency.

In the first sentence of § 206.118(b), FEMA states that a temporary housing unit will be sold “as is, where is,” except for repairs FEMA deems necessary to protect health or safety, which are to be completed before the sale. This is consistent with current § 206.118(b), except for FEMA adding “temporary housing” before “unit” for consistency.

In the third sentence of § 206.118(b), FEMA states that in addition, FEMA will inform the purchaser that they may have to bring the installation of the temporary housing unit up to codes and standards that are applicable at the

proposed site. This is consistent with the third sentence of § 206.118(b), except for FEMA replacing “he/she” with “they” and for adding “temporary housing” before “unit” for consistency. Plus, we are making these changes for clarity; as FEMA has always meant “temporary housing unit” when we used “unit” and FEMA has always meant that the installation of the temporary housing unit has to be up to codes and standards.

J. Section 206.119—Financial Assistance To Address Other Needs

In § 206.119(a), FEMA states that FEMA and the State may provide financial assistance to individuals and households who are adversely affected by a major disaster and have other verifiable, documented disaster-related necessary expenses or serious needs. This is consistent with current § 206.119(a), except for FEMA adding the clause “are adversely affected by a major disaster and” after “households who” for clarity; adding “verifiable, documented” before “disaster-related” for clarification; and removing the current second sentence of § 206.119(a) and removing the current subparagraphs (a)(1) through (3) which state that to qualify for assistance under § 206.119, an applicant must also: apply to the United States Small Business Administration’s (SBA) Disaster Home Loan Program for all available assistance under that program; and be declined for SBA Disaster Home Loan Program assistance; or demonstrate that the SBA assistance received does not satisfy their total necessary expenses or serious needs arising out of the major disaster. FEMA removes the above-mentioned regulatory text, as the removal of the designation of “SBA-dependent ONA” allows FEMA to provide all eligible applicants ONA regardless of loan repayment worthiness.

This aligns with the goal of the 2022–2026 FEMA Strategic Plan to instill equity as a foundation of emergency management by removing barriers to FEMA programs through a people first approach and achieving equitable outcomes for those we serve.³⁴⁷ The historically low percentage of applicants with SBA-dependent needs identified at inspection who choose to apply for and accept an SBA loan for these needs

³⁴⁷ Strategic Goal 3.1 2018–2022 FEMA Strategic Plan was to reduce the complexity of FEMA and to streamline the disaster survivor and grantee experience, which also would be furthered by these changes. The IFR also aligns with the 2022–2026 FEMA Strategic Plan, Goal 2: Lead whole of community in climate resilience; and Goal 3: Promote and sustain a ready FEMA and prepared Nation.

indicates a gap in the correct recovery process which this change would address. This also assists the IA Division in responding to GAO 20–503 on FEMA’s Individuals and Households Program.³⁴⁸ This solution will also simplify applicant messaging for both FEMA and the SBA.

FEMA is removing the SBA requirement in order to streamline the application process and ensure all applicants can access assistance. However, we also recognize that doing so would allow applicants who might otherwise qualify for an SBA loan to instead receive a grant, thus increasing the cost of disaster assistance from the Disaster Relief Fund and reducing the potential for repayment of assistance. FEMA specifically seeks comment on the removal of the requirement to apply to the SBA to qualify for certain categories of assistance under ONA and whether FEMA should seek statutory authority for alternative ways to ensure higher income applicants first pursue SBA loans for this and other categories of assistance. From § 206.119(b) onward, FEMA reorganizes the order of the types of assistance to first cover the two new types of assistance: serious needs and displacement. FEMA states that the new types of assistance should go first as they are first in the delivery sequence and these two types of assistance have specific registration deadlines. FEMA also employees new paragraph headings of “Serious needs” and “Displacement” at § 206.119(b)(1) and § 206.119(b)(2), respectively.

In § 206.119(b)(1), FEMA states that serious needs assistance is the necessary expenses to assist applicants who report they are displaced as a result of the disaster, who report a need for shelter as a result of the disaster, or who have other emergency disaster expenses. These needs will vary according to each applicant and FEMA will not require receipts documenting the use of this assistance. FEMA will adjust the amount of this assistance to reflect changes in the CPI for all Urban Consumers that the Department of Labor publishes.

In § 206.111, FEMA revises the definition of *displaced applicant* to mean one whose disaster-damaged

primary residence is uninhabitable, inaccessible, or made unavailable by the landlord. All that is required by ONA is that the applicant is adversely affected by a disaster. In the ONA revisions at § 206.119(b)(1), an applicant does not have to be displaced to receive the serious needs assistance which is why we did not limit the new serious needs to displaced applicants.

In § 206.119(b)(2), FEMA states that displacement assistance is the necessary expenses to assist displaced applicants with short-term living arrangements immediately following a disaster. Applicants must have registered within the 60-day or extended registration period. The award amount is based on a time period established by FEMA and approved in the State Administrative Option, as required by § 206.120(b). FEMA will not require receipts documenting the use of this assistance.

In § 206.119(b)(2), FEMA states the difference between lodging expense reimbursement and displacement assistance. Section 206.119(b)(2) does not require receipts for the new displacement assistance; while, lodging expense reimbursement does require receipts. Also, the new displacement assistance refers to the revised term *displaced applicant* which means one whose disaster-damaged primary residence is uninhabitable, inaccessible, or made unavailable by the landlord. By contrast, lodging expense reimbursement is for individuals or households who have not received displacement assistance under this section.

In § 206.119(b)(3), FEMA revises the paragraph heading to *Medical and dental*. This paragraph heading is consistent with the current § 206.119(c)(3), paragraph heading except for FEMA removing “expenses” and adding “and dental.” By changing the format of the paragraph headings in this section, FEMA is adding consistency in how each type of assistance is referred to.

Also, in § 206.119(b)(3), when describing eligible medical and dental assistance, FEMA states necessary expenses to assist applicants with medical and dental costs, which may include the following: medical service costs; dental service costs; repair or replacement of medical or dental equipment; loss or injury of a service animal; and costs for prescription medicines related to eligible medical or dental services, or which need to be replaced due to the disaster. This sentence is consistent with current § 206.119(c)(3), except for FEMA replacing “medical” with “necessary” before “expenses” for clarity; adding the

clause “to assist applicants with medical and dental costs which” after “expenses” for clarity; removing “are generally” and “limited to” and adding “may include” for clarity; adding “service” between “medical costs” and “dental costs” for clarity and consistency; adding “or dental” before “equipment;” and adding the following new language “loss or injury of a service animal; and costs for prescription medicines related to eligible medical or dental services, or which need to be replaced due to the disaster” for clarity. FEMA currently covers the loss of prescription drugs in Chapter 3: VI.B.2. of the IAPPG 1.1,³⁴⁹ so it was not essential that we added the regulatory text, but we did so for clarity that these eligible costs may include medical services and prescription drugs. Currently, in Chapter 3: VI.B.2. of IAPPG 1.1³⁵⁰ FEMA interprets current § 206.119(c)(3)(iii) to include service animals. For clarity we are adding “loss or injury of a service animal.”

In § 206.119(b)(4), FEMA adds a paragraph heading of “child care.” This is a new paragraph with a new paragraph heading. Currently, FEMA does not have child care expenses ONA regulations.

In § 206.119(b)(4), FEMA states that child care assistance is for necessary expenses to assist applicants with child care costs, which may include the following: standard child care service fees, including personal assistance services that support activities of daily living for children with disabilities and registration and health inventory fees for applicants who require a new child care provider. FEMA adds child care expenses under ONA; as section 1108 of SRIA³⁵¹ established child care as an eligible expense under the ONA provision of the IHP.³⁵² This is a codification of a current existing policy and practice, as, currently FEMA implements child care assistance through the IAPPG 1.1.³⁵³

Currently, § 206.119(c)(4) paragraph heading is “funeral expenses.” In § 206.119(b)(5), FEMA changes the paragraph heading to “funeral” for

³⁴⁹ See page 153 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³⁵⁰ See page 153 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³⁵¹ 42 U.S.C. 5174(e)(1).

³⁵² Initially, the Recovery Policy, Disaster Assistance for Child Care 9461.1, Jan. 17, 2014, was the controlling policy. https://www.fema.gov/sites/default/files/2020-07/recovery-policy_disaster%20assistance-child-care.pdf.

³⁵³ See pages 155–160, Child Care Assistance, of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

³⁴⁸ GAO 20–503 touched on the confusion created by the current regulatory requirement that applicants apply for an SBA disaster loan prior to being considered for SBA-dependent ONA. The GAO made a formal recommendation that the FEMA Administrator should assess the extent to which its process for determining an applicant’s eligibility for SBA-dependent other needs assistance limits or prevents survivors’ access to IHP assistance, and work with SBA to identify options to simplify and streamline the disaster assistance application process for survivors.

consistency with the other paragraph headings at that paragraph level.

In § 206.119(b)(5), FEMA states that funeral assistance is necessary expenses to assist applicants with funeral costs, which may include the following: funeral services; burial or cremation; and other related funeral expenses. This is consistent with the current § 206.119(c)(4), except for FEMA replacing “funeral” with “necessary” before “expenses” for clarity, adding the clause “to assist applicants with funeral costs which” after “expenses” for clarity, removing “are generally limited to” and adding “may include” for clarity and to parallel the language in § 206.119(b)(3).

In § 206.119(b)(6), when describing eligible personal property assistance, FEMA includes necessary expenses to assist applicants whose primary residences were damaged by the disaster with personal property costs, which may include the following: clothing; household items, furnishings or appliances; computing devices; essential tools, specialized or protective clothing, computing devices, and equipment required for employment; computing devices, uniforms, schoolbooks and supplies required for educational purposes; and cleaning or sanitizing any eligible personal property item.³⁵⁴ This is consistent with the current § 206.119(c)(1), except for FEMA replacing “and serious needs for repair or replacement of” with “to assist applicants whose primary residences were damaged by the disaster with” after “necessary expenses” for clarity, adding “costs” after “personal property” for clarity, replacing “are generally limited to” with “may include” before the “the following” for clarity and to parallel the language in § 206.119(b)(3), adding a new subparagraph (iii) which includes “computing devices” to provide additional assistance under ONA personal property for one household computing device not related to employment or education, adding “Essential” before “tools” as FEMA adds a new definition of “Essential tools” in § 206.111, adding “computing devices” after “protective clothing,” to allow them as eligible costs if the computing devices are for employment, replacing the phrase “by an employer as a condition of” with “for” before

“employment” to reflect FEMA’s policy change regarding self-employed essential tools; and replacing “computers” with “computing devices” in 206.119(b)(6)(iv) for consistency since we are replacing “computers” with “computing devices” in the other subparagraphs in 206.119(b)(6).

While FEMA had previously provided assistance for damaged computers, it was limited to those computers that were required for educational purposes or as a condition of employment. Recognizing that technology continues to have an increasing role in how households communicate, manage finances, and facilitate many other necessary aspects of daily living, FEMA, via IHP, is expanding Personal Property Assistance so that a household may receive financial assistance for a disaster damaged computing device, regardless of its intended use. Applicants may receive financial assistance for additional damaged computing devices that are needed for educational purposes or as a condition of employment, to include self-employed individuals.

In § 206.119(b)(6), FEMA clarifies that the personal property was in a pre-disaster primary residence in a declared disaster area when FEMA adds the clause “to assist applicants whose primary residences were damaged by the disaster.”

The paragraph heading § 206.119(b)(7) is the same as current § 206.119(c)(2), except for the change to the paragraph structure.

In § 206.119(b)(7), when describing eligible transportation assistance, FEMA states that FEMA and the State may provide financial assistance to individuals and households including necessary expenses to assist applicants with transportation costs, which may include the following: repairing or replacing vehicles; public transportation; and other transportation related costs or services. This is consistent with the current § 206.119(c)(2), except for FEMA removing “or serious needs” after “necessary expenses” and removing “for” before “transportation” for clarity; adding the clause “to assist applicants with” before “transportation” and adding “costs” after “transportation” for clarity; removing “are generally limited to” and adding “which may include” before “the following” for clarity and to parallel the language in § 206.119(b)(3); and removing “and” in current § 206.119(c)(2)(i), removing “financial assistance for” before “public,” removing “any;” moving the clause “other transportation related costs or

services” from current § 206.119(c)(2)(ii) to § 206.119(b)(7)(iii).

The heading of § 206.119(b)(8) addresses moving and storage. This is consistent with current § 206.119(c)(5), except the heading does not include “expenses.” In § 206.119(b)(8), when describing eligible moving and storage assistance, FEMA states that FEMA and the State may provide financial assistance to individuals and households including necessary expenses to assist applicants whose primary residences were damaged by the disaster with costs related to moving and storing personal property, which may include the following: moving and storing personal property to avoid additional disaster damage; storage of personal property while disaster-related repairs are being made to the primary residence; and return of the personal property to the individual or household’s primary residence. This is consistent with current § 206.119(c)(5), except for FEMA reorganizing this paragraph to include three subparagraphs so that it follows the format of the other paragraphs in this section. Also, § 206.119(b)(8), removes “and serious needs” after “necessary expenses,” and adds the clause “to assist applicants whose primary residences were damaged by the disaster with costs” before “related to moving and storing personal property” for clarity and replaces “generally” with “may.”

In § 206.119(b)(9), the paragraph heading is Group Flood Insurance purchase, which is consistent with the current paragraph heading at § 206.119(d), except for the paragraph structure. Since Group Flood Insurance is a type of assistance, it should be listed with the other types of assistance listed in § 206.119(b) instead of, as currently stands, its own separate paragraph. In § 206.119(b)(9), FEMA states that individuals identified by FEMA as eligible for assistance for flood insurable damage under the Stafford Act, 42 U.S.C. 5174, as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a special flood hazard area (SFHA) may be included in a Group Flood Insurance Policy (GFIP) established under the National Flood Insurance Program (NFIP) regulations at 44 CFR 61.17. This sentence is consistent with current § 206.119(d), except for FEMA replacing “Other Needs assistance” with “assistance for flood insurable damage” for clarity; removing “section 408 of” and adding “42 U.S.C. 5174” for clarity and public ease of reference.

The first sentence of § 206.119(b)(9)(i) is consistent with the current first

³⁵⁴ When the damages are not captured at inspection, an applicant must provide: an itemized receipt, estimate, or bill for repair or replacement of the disaster-damaged items; a written statement signed by the applicant verifying that the items were disaster-damaged and the written statement includes: “I declare under penalty of perjury that the information I provided is true and correct.”

sentence of § 206.119(d)(1), except for the paragraph structure. Currently, the first sentence of § 206.119(d)(1), states that the premium for the GFIP is a necessary expense within the meaning of § 206.119. In the second sentence of § 206.119(b)(9)(i), FEMA states that FEMA or the State must withhold this portion of the Other Needs award and provide it to the NFIP on behalf of individuals and households who are eligible for coverage. This is consistent with the current second sentence of § 206.119(d)(1), except for FEMA replacing “shall” for “must” for purposes of plain language. In the third sentence of § 206.119(b)(9)(i), FEMA states that the coverage must be equivalent to the maximum assistance amount established under the Stafford Act, 42 U.S.C. 5174. This is consistent with the current third sentence of § 206.119(d)(1), except for FEMA replacing “shall” with “must” for purposes of plain language and removing “section 408 of” and adding “42 U.S.C. 5174” for clarity and public ease of reference.

In the first sentence of § 206.119(b)(9)(ii), FEMA states that FEMA or the State IHP staff must provide the NFIP with records of individuals who received assistance for flood-insurable losses within a SFHA and are to be insured through the GFIP. This is consistent with the current first sentence of § 206.119(d)(2), except for FEMA replacing “shall” with “must” for purposes of plain language and replacing “an “Other Needs” award” with “assistance for flood-insurable losses within a SFHA” for clarity. In the second sentence of § 206.119(b)(9)(ii), FEMA states that records of applicants to be insured must be accompanied by payments to cover the premium amounts for each applicant for the 3-year policy term. This is consistent with the current second sentence of § 206.119(d)(2), except for FEMA removing “Other Needs” for clarity and replacing “shall” with “must” for purposes of plain language. The third and fourth sentences in § 206.119(b)(9)(ii) are consistent with the third and fourth sentences in the current § 206.119(d)(2).

Section 206.119(b)(9)(iii) is consistent with current § 206.119(d)(3), except for the paragraph structure.

In § 206.119(b)(10), when describing eligible miscellaneous assistance, FEMA states that FEMA may provide assistance for other miscellaneous items or services that FEMA, in consultation with the State, determines are necessary expenses and serious needs. Section 206.119(b)(10) is consistent with current § 206.119(c)(6)(ii), except for FEMA

adding a paragraph heading of “Miscellaneous” to § 206.119(b)(10). This last paragraph for section 206.119 serves as a “catch all” for types of assistance under the necessary expenses and serious needs provisions of the Stafford Act.

K. Section 206.131—Individual and Family Grant Program for Major Disasters Declared on or Before October 14, 2002

On September 30, 2002, FEMA issued regulations on the then-new Individuals and Households Program. The rule implemented the DMA2K and added §§ 206.110–120 to subpart D of part 206 of FEMA’s regulations. The previous regulations, relating to the superseded Individual and Family Grant Program, were retained in § 206.131, but revised to apply only to disasters declared before October 15, 2002, the effective date of the new Individuals and Households Program regulations. Since these old regulations are now outdated and no longer necessary, FEMA removes and reserves § 206.131. Sections 206.132 through 206.140 are currently reserved, so removing and reserving § 206.131 extends the existing reservation to §§ 206.131–140.

Since FEMA is removing § 206.131 and reserving § 206.131, FEMA also is revising the Subpart E—heading from “Individual and Family Grant Programs” to “Reserved” for clarity.

L. Section 206.191—Duplication of Benefits

In the first sentence of § 206.191(a), FEMA states that § 206.191 establishes the policies for implementing the Stafford Act, 42 U.S.C. 5155, entitled Duplication of Benefits. This sentence is consistent with current § 206.191(a), except for FEMA removing “section 312 of” and adding “42 U.S.C. 5155” after “the Stafford Act.” FEMA makes these edits for public ease of reference, as a United States Code cite is more accessible to the public and referencing the section of the Stafford Act just increases the length of the regulation.

In the first sentence of § 206.191(b)(1), FEMA states that Federal agencies providing disaster assistance under the Act or under their own authorities triggered by the Act, must cooperate to prevent and rectify duplication of benefits, according to the general policy guidance of the Federal Emergency Management Agency. This sentence is consistent with the first sentence of current § 206.191(b)(1), except for FEMA replacing “shall” with “must” for purposes of plain language.

In the second sentence of § 206.191(b)(1), FEMA states that the

agencies must establish appropriate agency policies and procedures to prevent duplication of benefits. This sentence is consistent with the second sentence of current § 206.191(b)(1), except for FEMA replacing “shall” with “must” for purposes of plain language.

In § 206.191(d)(2), FEMA states that the delivery sequence is, in order of delivery: volunteer agencies’ emergency assistance (except expendable items such as clothes, linens, and basic kitchenware); insurance (including flood insurance); housing assistance pursuant to the Stafford Act, 42 U.S.C. 5174; Other Needs assistance, pursuant to the Stafford Act, 42 U.S.C. 5174; Small Business Administration and Department of Agriculture disaster loans; Volunteer agencies’ “additional assistance” programs; and the “Cora Brown Fund.” This is consistent with current § 206.191(d)(2), except for FEMA removing the Stafford Act section cites and replacing them with United States Code cites, which are more accessible to the public and switching the delivery sequence, so that FEMA disaster survivors do not have to go to SBA before seeking ONA assistance from FEMA. Also, FEMA removes “Farmers Home Administration” and replaces it with “Department of Agriculture” since the Farmers Home Administration is now administered by the successor agencies of the Farmers Home Administration, so the “Farmers Home Administration disaster loans” are now the “Department of Agriculture disaster loans.”

In the first sentence of § 206.191(d)(4), FEMA states that if following the delivery sequence concept would adversely affect the timely receipt of essential assistance by an individual or household, an agency may offer assistance which is the primary responsibility of another agency. This sentence is consistent with current § 206.191(d)(4), except for FEMA replacing “a disaster victim” with “an individual or household” for consistency and clarity.

In the § 206.191(d)(4)(ii), FEMA states that in the case where the individual or household has refused assistance from Agency A, Agency A must notify Agency B that it must recover assistance previously provided. This sentence is consistent with current § 206.191(d)(4)(ii), except for FEMA replacing “disaster victim” with “individual or household” for consistency and adding the clarifying phrase “Agency A must” before “notify Agency B.”

In § 206.191(e)(1)(i), FEMA states that in making an eligibility determination, FEMA, in the case of federally operated

programs, or the State, in the case of State operated programs, must determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way. This sentence is consistent with current § 206.191(e)(1)(i), except for FEMA revising “the FEMA Regional Administrator” to “FEMA” for consistency and revising “shall” with “must” for purposes of plain language.

In § 206.191(e)(2), FEMA states that in making an eligibility determination, FEMA or the State must remind the applicant about his/her responsibility to pursue an adequate settlement. In the second sentence of § 206.191(e)(2)(iii), FEMA states that where flood insurance is involved, FEMA must coordinate with the Federal Insurance Administration. These sentences are consistent with current § 206.191(e)(2) and the second sentence of § 206.191(e)(2)(iii), except for FEMA revising “the FEMA Regional Administrator” to “FEMA,” as the RA is not involved; adding “the” before State for grammar purposes; and revising “shall” to “must” for purposes of plain language.

In the first sentences of § 206.191(e)(3), FEMA states that each disaster assistance agency is responsible for preventing and rectifying duplication of benefits under the general authority of the Stafford Act, 42 U.S.C. 5155. This sentence is consistent with current § 206.191(e)(3), except for FEMA removing the phrase “the coordination of the Federal Coordinating Officer (FCO) and,” as field leadership does not coordinate the rectification of duplication of benefits; and revising “section 312” to “the Stafford Act, 42 U.S.C. 5155” for clarity and public ease of reference.

In the second sentence of § 206.191(e)(3), FEMA states that to determine whether duplication has occurred and established procedures have been followed, FEMA must, within 90 days after the close of the disaster assistance program’s application period, for selected disaster declarations, examine on a random sample basis, FEMA’s and other government and voluntary agencies’ case files and document the findings in writing. This sentence is consistent with the current second sentence of § 206.191(e)(3), except for FEMA replacing “the Regional Administrator” with “FEMA” for consistency, replacing “shall” with “must” for purposes of plain language, and replacing “programs” with “program’s” for grammar purposes.

In § 206.191(e)(4), FEMA states that if duplication is discovered, FEMA must determine whether the duplicating agency followed its own remedial procedures. This is consistent with current § 206.191(e)(4), except for FEMA replacing “the Regional Administrator” with “FEMA” for consistency and replacing “shall” with “must” for purposes of plain language.

In the first sentence of § 206.191(e)(4)(i), FEMA states that if the duplicating agency followed its procedures and was successful in correcting the duplication, FEMA will take no further action. This is consistent with current first sentence of § 206.191(e)(4)(i), except for FEMA replacing “the Regional Administrator” with “FEMA” for consistency.

In the second sentence of § 206.191(e)(4)(i), FEMA states that if the agency was not successful in correcting the duplication, and FEMA is satisfied that the duplicating agency followed its remedial procedures, no further action will be taken. This is consistent with the current second sentence of § 206.191(e)(4)(i), except for FEMA replacing “the Regional Administrator” with “FEMA,” as the RA is not involved.

In the first sentence of § 206.191(e)(4)(ii), FEMA states that if the duplicating agency did not follow its duplication of benefits procedures, or FEMA is not satisfied that the procedures were followed in an acceptable manner, then FEMA must provide an opportunity for the agency to take the required corrective action. This is consistent with the current first sentence of § 206.191(e)(4)(ii), except for FEMA twice replacing “the Regional Administrator” with “FEMA,” as the RA is not involved and replacing “shall” with “must” for purposes of plain language.

In the second sentence of § 206.191(e)(4)(ii), FEMA states that if the agency cannot fulfill its responsibilities for remedial action, FEMA must notify the recipient of the excess assistance, and after examining the debt, then as appropriate, take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at FEMA’s discretion). This is consistent with the current second sentence of § 206.191(e)(4)(ii), except for FEMA replacing “the Regional Administrator” with “FEMA,” as the RA is not involved; replacing “shall” with “must” for purposes of plain language; replacing “if it is determined that the likelihood of collecting the debt and the best interests of the Federal Government justify taking

the necessary recovery actions, then” with “then as appropriate,” and replacing “the Regional Administrator’s” with “FEMA’s,” as the RA’s discretion is not involved.

In the first sentence of § 206.191(e)(5), FEMA states that when the random sample shows evidence that duplication has occurred and corrective action is required, FEMA must urge the duplicating agency to follow its own procedures to take corrective action, and must work with the agency toward that end. This is consistent with the current first sentence of § 206.191(e)(5), except for FEMA replacing “the Regional Administrator and the FCO” with “FEMA,” as the RA and the FCO are not involved and replacing “shall” with “must” for purposes of plain language.

In the second sentence of § 206.191(e)(5), FEMA states that under its authority in the Stafford Act, 42 U.S.C. 5155, FEMA must require the duplicating agency to report to FEMA on the agency’s attempt to correct the duplications identified in the sample. This is consistent with the current second sentence of § 206.191(e)(5), except for FEMA replacing “his/her” with “its;” replacing “section 312” with “the Stafford Act, 42 U.S.C. 5155,” for clarity and public ease of reference; replacing “the Regional Administrator” with “FEMA,” as the RA is not involved in duplication of assistance when assistance under other authorities is involved; replacing “shall” with “must” for purposes of plain language; replacing “him/her” with “FEMA;” and replacing “its” with “the agency’s” for clarity.

In the first sentence of § 206.191(f), FEMA states that funds due to FEMA are recovered in accordance with the Department of Homeland Security’s Debt Collection Regulations (6 CFR part 11—Claims) and the Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (31 CFR chapter IX). This is consistent with the current first sentence of § 206.191(f), except for FEMA adding the follow clause at the end of the sentence “and the Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (31 CFR chapter IX).” FEMA is adding the additional cross reference as much of 44 CFR part 11 uses the joint Department of the Treasury (Treasury)/Department of Justice (DOJ) regulations and there are provisions in the Treasury/DOJ regulations that are not addressed in the DHS regulations.

In the second sentence of § 206.191(f), FEMA states that section 1216 of DRRRA, 42 U.S.C. 5174a, also provides FEMA the authority to waive debts owed by individuals and households who received assistance under subpart D of part 206. FEMA is adding a new second sentence at § 206.191(f) for clarity and transparency, since section 1216 of the DRRRA directs FEMA to (1) waive debt owed by individuals and households who received assistance through the IHP where the assistance was distributed in error by FEMA; and (2) waive debt owed to the United States related to covered assistance that is subject to a claim or legal action, in accordance with section 317 of the Stafford Act, 42 U.S.C. 5160.³⁵⁵ Waiver is not permitted in either instance if the debt involves fraud, the presentation of a false claim, or misrepresentation by the debtor or any party having an interest in the claim.³⁵⁶ Due to passage of section 1216 of DRRRA, FEMA updated its debt collection processes for Individual Assistance recipients.

In § 206.191(g), FEMA adds a new paragraph heading of “Severability” for consistency with standards established by the **Federal Register**. FEMA is adding a new paragraph (g) in § 206.191 stating any provision of § 206.191 held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of § 206.191 is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of § 206.191 and should not affect the remainder thereof.

A severability clause is a standard legal provision. It indicates FEMA’s intent that if a court finds that a specific provision of a rule is unlawful, the court should allow the remainder of the rule to survive. Those provisions that are unaffected by a legal ruling can be implemented by an agency without requiring a new round of rulemaking simply to promulgate provisions that are not subject to a court ruling.

FEMA believes that its authority to implement the provisions of this IFR is well-supported in law and practice and should be upheld in any legal challenge.

³⁵⁵ Disaster Recovery Reform Act of 2018, Public Law 115–254, 132 Stat. 3449 (Oct. 5, 2018), as amended by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117–263, 136 Stat. 3404 (Dec. 23, 2022), 42 U.S.C. 5174.

³⁵⁶ *Id.*

FEMA also believes that its exercise of its authority reflects sound policy. However, in the event that any portion of the IFR is declared invalid, FEMA intends that the various provisions be severable. The provisions are not so interconnected that the rule’s efficacy depends on every one of them remaining in place—implementation of the different provisions is sufficiently distinct that FEMA’s aim of increasing equity and easing entry to the IA Program would still be furthered by maintaining the other provisions. For example, if a court were to find unlawful the change to the sequence of delivery in paragraph (d), the remaining provisions of the IFR, such as those on debt waiver in paragraph (f), could still function sensibly and FEMA would still intend them to stand.

V. Regulatory Analyses

A. Administrative Procedure Act

The Administrative Procedure Act³⁵⁷ (APA) governs the process by which Federal agencies develop and issue regulations. Generally, when an agency promulgates legislative rules, the exercise of that authority is governed by the informal rulemaking procedures outlined in 5 U.S.C. 553, which include publishing notices of proposed rulemaking and providing the opportunity for interested persons to submit comments.³⁵⁸ However, the APA provides an unqualified exemption for all rules relating to “public property, loans, grants, benefits, or contracts” (sometimes also referred to as the “proprietary exemption”) from the procedural rulemaking requirements of Section 553.³⁵⁹ The exemption includes “all federally supported ‘subsidy programs’ and ‘grants-in-aid programs under which the [F]ederal [G]overnment makes payment to [S]tate and local governments’ as well as private individuals and entities.”³⁶⁰ The exemption covers both narrow “managerial” proprietary decisions and broader proprietary “matters of interpretation and policy.”³⁶¹ The case law interpreting the requirement sets forth a relatively brief framework for analysis: namely, that the exempted subject matters are “clearly and

directly” implicated in the rulemaking at issue.³⁶²

As described more fully in the background section, *supra*, this IFR is clearly and directly related to a grant program, the IHP, which authorizes FEMA to provide financial assistance and direct services to individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.³⁶³ As such, this rule is exempt from the APA’s notice and comment requirement.

However, FEMA did not end its analysis here. FEMA’s regulations on rulemaking provide that its general policy is to provide for public participation in rulemaking despite the APA exemption unless it determines that circumstances warrant a departure from that general policy.³⁶⁴ FEMA identified specific circumstances which warrant such a departure, such as for its annual grant programs which are subject to annual appropriations and potential revisions to their requirements, and more general circumstances, such as situations in which it requires flexibility to adapt quickly to legal and policy mandates. FEMA retained its general policy in favor of public participation in rulemaking.

In light of the increasing climate-related disasters facing the Nation, it is vital to implement these program improvements now to ensure IHP meets the increasing need for assistance to individuals and families recovering from disasters. Some impacts of climate change are already being felt as extreme weather events have increased in

³⁶² *Humana of S.C., Inc. v. Califano*, 191 U.S. App. D.C. 368, 590 F.2d 1070, 1082 (1978) (That the governmental function is not strictly “proprietary,” or the regulation’s character is not “mechanical,” does not curtail Section 553(a)(2)’s permissive effect. Public policy may be sorely affected, and the wisdom of public input manifest, but the statutory exemption still prevails when “grants,” “benefits,” or other named subjects are “clearly and directly” implicated.)

³⁶³ 42 U.S.C. 5174.

³⁶⁴ 44 CFR 1.3(a) and (c). Until recently, FEMA waived the exemption afforded to grant programs under the APA and treated its programs as if they were subject to traditional notice and comment requirements. On March 3, 2022, FEMA published a final rule clarifying its position regarding notice and comment rulemaking for its grant programs. See 87 FR 11971, Mar. 3, 2022. FEMA determined that removal of the waiver of the exemption streamlined the regulations and ensured that the agency retained the flexibility to utilize a range of public engagement options in advance of rulemaking where appropriate. FEMA noted that it would retain its general policy in favor of public participation in rulemaking but would retain discretion to depart from this policy as circumstances warrant.

³⁵⁷ 5 U.S.C. 551 *et seq.*

³⁵⁸ See 5 U.S.C. 553(b) and (c).

³⁵⁹ *Id.* Section 553(a)(2).

³⁶⁰ *Sierra Club v. Atlanta Reg’l Comm’n*, 255 F. Supp. 2d 1319 (GA N.D. 2002) (citing *STEIN, MITCHELL & MEZINES, ADMINISTRATIVE LAW* § 1502[4][e] (quoting ATTORNEY GENERAL’S MANUAL ON THE APA 27–28 (1947))).

³⁶¹ *Alphapointe v. Dep’t of Veterans Affairs*, 416 F. Supp. 3d (D.D.C. 2019) (quoting *Nat’l Wildlife Fed’n v. Snow*, 561 F.2d 227, 231–32 (D.C. Cir. 1976)).

intensity as well as frequency,³⁶⁵ and those impacts will worsen as climate change intensifies in the future.³⁶⁶ Such impacts have elevated the need for IHP assistance and will continue to require greater efficiency in the delivery of disaster services, particularly for disadvantaged communities, which are disproportionately impacted.³⁶⁷ This rule increases equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program.

FEMA has balanced the need for flexibility to adapt quickly to legal and policy mandates with its general policy favoring public participation in rulemaking. FEMA sought input on regulatory changes to the IHP through an RFI, published on April 22, 2021, seeking public input on its programs, regulations, collections of information, and policies to ensure they effectively achieve FEMA's mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; bolstering resilience from the impacts of climate change, particularly for those disproportionately impacted by climate change; and environmental justice.³⁶⁸ FEMA held public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments.³⁶⁹ Commenters raised equitable concerns that FEMA

addressed in this IFR, such as removing the requirement to apply for the SBA for a loan fore receipt of ONA, amending FEMA's habitability standards, increasing assistance for essential tools, simplifying its appeal process, and removing documentation requirements for late registrations.

FEMA has determined, in its discretion,³⁷⁰ that these circumstances warrant publishing this as an interim final rule, but FEMA is seeking public comment on this rule and will carefully consider each comment received to determine whether further changes to FEMA's IHP regulations are needed.

B. Executive Order 12866, Regulatory Planning and Review, as Amended by Executive Order 14094, Modernizing Regulatory Review; Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OMB has designated this rule as a "significant regulatory action" as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094 because its annual effects on the economy exceed \$200 million in any year of the analysis. Accordingly, OMB has reviewed it.

This Regulatory Impact Analysis (RIA) provides an assessment of the potential costs, benefits, and transfer payments from this rule under the criteria of Executive Orders 12866 and 13563. This analysis does not attempt to

replicate the regulatory language of the rule or any other supporting documentation. FEMA urges the reader to review the rest of this rule in addition to reviewing this analysis. The complete RIA is available in the Docket. The following analysis is a summary of the information contained in the IA Equity RIA document.

FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority. FEMA is also making several technical changes, codification of existing policy and practice, and non-substantive clarifications to its IA regulations. These changes are addressed in the Marginal Analysis Table that can be found in this document.

³⁶⁵ See Economic Report of the President at 275 (March 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/03/ERP-2023.pdf>.

³⁶⁶ See CRS Rep. 46694, Climate Change Adaptation: Department of the Interior, at 1 (2021), available at <https://crsreports.congress.gov/product/pdf/R/R46694>; Maldonado, J., Wang, I.F.C., Eningowuk, F. et al. Addressing the challenges of climate-driven, community-led resettlement and site expansion: knowledge sharing, storytelling, healing, and collaborative coalition building. *J. Environ. Stud. Sci.* 11, 294–304 (2021). <https://doi.org/10.1007/s13412-021-00695-0>.

³⁶⁷ See, e.g., EPA, Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts (September 2021), <https://www.epa.gov/cira/social-vulnerability-report>.

³⁶⁸ 86 FR 21325, Apr. 22, 2021.

³⁶⁹ See "Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period," 86 FR 30326, June 7, 2021.

³⁷⁰ 42 U.S.C. 5148.

Table 7—Summary of the Impacts of the Changes, No-Action Baseline (2020\$)

Category	Summary
Changes	Revise IHP eligibility determinations based on insurance proceeds to help with unmet needs
	Expand application of “safe, sanitary, and functional” for IHP to include pre-existing damage
	Amend CTHA process and timeline for applicants to provide permanent housing plan documents. Also, codify CTHA income threshold of 30 percent of applicant’s post-disaster income towards their post-disaster housing costs.
	Remove the requirement to apply for an SBA loan prior to receipt of certain types of ONA
	Establish Serious Needs Assistance and Displacement Assistance
	Simplify IHP appeals process
	Codify Multifamily Lease and Repair, Child Care Assistance, Assistance Use Toward Security Deposit, and IHP Max Cap Removal for Temporary Housing Assistance to incorporate changes from PKEMRA ³⁷¹ , SRIA ³⁷² , and DRRRA ³⁷³ .
	Amend IA registration to allow for the reopening of the registration period
	Amend IA late registration to accept verbal explanations for applicant requests
	Expand Home Repair Assistance to include accessibility-related items for applicants who have a disability but had unmet pre-disaster accessibility needs
	Codify Home Repair Assistance for professional assessment when the extent of damage is unclear
	Codify waiver of certain IHP debt
	Expand Personal Property Assistance to provide assistance for disaster-related damages to computing devices for applicants and essential tools used for self-employment
Affected Population	Eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster, FEMA estimates an average of 340,654 IHP recipients per year
Transfers	FEMA estimates an increase in transfer payments from FEMA and States to recipients ³⁷⁴ of \$672 million per year
Costs	FEMA estimates additional costs for States ³⁷⁵ , FEMA, and applicants ³⁷⁶ of \$5.3 million in the first year, \$5.2 million in the second year, and \$0.9 million in subsequent years
Cost Savings	FEMA estimates cost savings of \$8.0 million per year
Net Costs	FEMA estimates net cost savings of \$2.7 million in the first year, \$2.8 million in the second year, and \$7.1 million in subsequent years
Benefits (quantitative)	None
Benefits (qualitative)	Promote more equitable access to disaster assistance by reducing applicant barriers, improving overall timeliness, and lessening administrative burdens
	Improve clarity and align FEMA regulations with statutory changes improving the efficiency and consistency of IHP disaster assistance

1. Need for Regulation

FEMA provides financial assistance under the HA and ONA provisions of

³⁷¹ Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA).

³⁷² Sandy Recovery Improvement Act of 2013 (SRIA).

³⁷³ Disaster Recovery Reform Act of 2018 (DRRA).

³⁷⁴ The term “recipients” used throughout this document refers to individuals and households that apply for IHP assistance and receive assistance from FEMA.

³⁷⁵ FEMA defines the term “State” to mean for the purposes of Subpart D of 44 CFR 206 and where consistent with the requirements of the Stafford Act, any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands or Indian tribal

the IHP to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs. In alignment with Executive Order 13985 on “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” and Executive Order 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” and in response to

government as defined in the Stafford Act (42 U.S.C. 5122(6)).

³⁷⁶ The term “applicants” used throughout this document refers to individuals and households that apply for IHP assistance.

comments received during the Agency’s Request for Information to receive input from the public on FEMA programs, regulations, and collections of information, FEMA is updating its IHP regulations. FEMA makes these changes to simplify the IHP, promote more equitable access to disaster assistance, and to reflect changes made to statutory authority. These changes will remove administrative burdens, improve overall timeliness, and utilize program and policy discretion to reduce barriers.

FEMA makes the following changes to increase equity and ease of entry to IHP:

1. Revise IHP eligibility determinations based on insurance proceeds to help with unmet needs;

2. Expand application of habitability “safe, sanitary, and functioning” for IHP to include pre-existing damage;

3. Amend CTHA process and timeline in which applicants provide permanent housing plan documents. Also, codify CTHA income threshold of 30 percent of applicant’s post-disaster income towards their post-disaster housing costs;

4. Remove the requirement to apply for an SBA loan prior to receipt of certain types of ONA;

5. Establish Serious Needs Assistance ONA;

6. Establish Displacement Assistance ONA;

7. Simplify IA appeals process;

8. Amend IA registration to allow for the reopening of the registration period

9. Amend IA late registration to accept verbal explanations for applicant requests;

10. Expand Personal Property Assistance ONA eligibility for computing devices;

11. Expand Personal Property Assistance ONA eligibility for self-employed essential tools;

12. Expand Home Repair Assistance to include accessibility-related items for applicants who have a disability but had unmet pre-disaster accessibility needs;

13. Codify Home Repair Assistance to include accessibility-related items for survivors with disaster-related disabilities;

14. Codify Home Repair Assistance for professional assessments; and

15. Codify requirements waiver of certain IHP debt.

Additionally, to support eligible applicants’ ability to respond to and recover from major disasters and emergencies, Congress passed PKEMRA, SRIA, and DRRA. This rule will incorporate certain changes identified in those acts into regulation including assistance for Security Deposits and Utilities (PKEMRA), Child Care Assistance (SRIA), Lease and Repair of Multifamily Rental Housing (SRIA), and Maximum Amount of Assistance (DRRA).

2. Affected Population

The IHP provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. From 2010 to 2019, the average number of IHP recipients was 340,654 per year.³⁷⁷

³⁷⁷Data pulled from Enterprise Data Warehouse (EDW) was used to calculate the historical IHP average number of recipients for 2010–2019.

3. Baseline

Following OMB Circular A–4 guidance, FEMA assessed impacts of this rule against a no-action baseline and pre-guidance baseline. The no-action baseline is what the world will look like without this rule. Accordingly, measuring the rule against a no-action baseline shows the effects of the rule as compared to current FEMA practice (*i.e.*, compared to IA Guidance, which reflects FEMA’s current practice). A pre-guidance baseline is what the world will look like without the enabling statute or guidance that FEMA issued to implement it. Accordingly, measuring the rule against a pre-guidance baseline shows the effects of the rule as compared to FEMA practice prior to enactment of the enabling statute or guidance (*i.e.*, as if FEMA had not already implemented the statutory or policy changes through the IAPPG).

FEMA conducted a 10-year retrospective analysis of available IA Program data from 2010–2019, the most recent representative disaster period with complete data at the time of this analysis, to estimate how the rule will impact major disaster declarations costs, benefits, and transfers over a 10-year period.³⁷⁸ FEMA recognizes a future 10-year period could vary from the 2010–2019 period. However, this is the best estimate given the data available and the unpredictability of the number, size, and cost of future IA awards.

4. Transfer Payments

Transfer payments are monetary payments from one group to another that do not affect the total resources available to society. The assistance FEMA provides to recipients through IHP grants are considered transfer payments because these are monetary payments from FEMA and States to individuals and households for their purchase of goods and services. In this analysis, FEMA has analyzed the impact of this rule on these transfer payments.

No-Action Baseline

The rule under a no-action baseline will result in additional transfer payments due to the following changes for: Insurance Proceeds, Habitability, Removing SBA Requirement for ONA, Serious Needs Assistance, Displacement Assistance, Appeals Process, Reopening Registration Period, Personal Property

³⁷⁸FEMA considered 2010–2019 the most representative analysis period when selecting the data and time-period for estimating impacts of this rule into the future. At the time of this analysis, in early 2021, data from 2020 was available but not used for this analysis as Covid data posed more bias and uncertainty risks than value when estimating future impacts.

Assistance (PPA) Computing Devices, PPA Self-Employed, and Home Repair for Accessibility-Related Items for Per-Disaster Unmet Needs. Other changes, such as providing reimbursement for a professional assessment for unclear damage and providing child care assistance, were changed by statute and have been already implemented by FEMA through IA Guidance. Because FEMA has already implemented these policies and codifies them without change, the codification of these policies will not impact transfer payments under the no-action baseline. Additionally, the late registration change of accepting verbal explanations for late registration requests is not expected to impact transfer payments.

Under a no-action baseline, the rule increases assistance provided from FEMA and States to individuals and households by an estimated \$672 million per year. Specifically, FEMA’s transfer payments increase by \$512 million per year and State transfer payments, due to State ONA cost share, increases \$160 million per year. The three largest changes (removing SBA requirement of ONA, Serious Needs Assistance, and Displacement Assistance) account for approximately 87 percent of the increase in transfer payments and detailed summaries of these impact are provided below measured against the no-action baseline.

FEMA’s change removing the SBA loan application requirement prior to receipt of certain types of ONA accounts for more than 20 percent of the transfer payment increase, estimated at \$155,551,150 (FEMA \$116,663,362 + State \$38,887,788) per year. Currently, applicants seeking certain types of IHP ONA must first apply and be denied for an SBA disaster loan. Through this process, applicants who qualify for an SBA loan are ineligible to receive certain types of ONA. Unlike ONA, which is a grant that does not need to be repaid, an SBA loan accrues interest and must be repaid. SBA-dependent ONA includes three types of assistance: Personal Property assistance, Transportation assistance, and GFIP.³⁷⁹ FEMA estimates that, from 2010–2019, approximately 45 percent of SBA-dependent ONA applicants received SBA-dependent ONA; these applicants either did not meet the income threshold to be referred to the SBA to apply for a loan or applied for a loan and were denied. This rule will remove the requirement that applicants apply for an SBA loan before becoming

³⁷⁹See page 150, SBA-dependent ONA, of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

eligible for ONA; however, applicants may still choose to apply for an SBA loan to assist with their recovery.

FEMA used ONA recipient data from EDW for 2010 through 2019 to establish a no-action baseline. From 2010 to 2019, an average of 174,693 recipients received ONA annually and the average award was \$1,455. FEMA awarded \$254,178,315 ($= 174,693 \times \$1,455$) of ONA on average annually. Accordingly, FEMA estimates that under a no-action baseline, 174,693 recipients will receive ONA annually and ONA assistance will total \$254,178,315 per year. FEMA uses these amounts against which to measure the change to remove the SBA requirement for ONA.

FEMA used the three types of SBA-dependent ONA assistance (Personal Property assistance, Transportation assistance, and GFIP) historical ONA data to estimate the impact to households and individuals of the changes to eliminate the requirement to apply for an SBA loan prior to receipt of ONA. From 2010 to 2019, an average of 174,693 recipients received ONA annually. Based on FVL damages collected from ONA applicants 2010 through 2019, FEMA estimates the number applicants previously ineligible for ONA under Personal Property Assistance and Transportation Assistance with disaster damage was 574,899 referred applicants, or 57,490 applicants per year. These applicants previously would have either received an SBA loan or been eligible but chose not to receive a loan. FEMA estimates that, after removing the SBA application requirement, these 57,490 applicants currently ineligible for SBA-dependent ONA will receive the average ONA amount of \$1,455 resulting in additional assistance of \$83,647,950 ($= 57,490 \times \$1,455$) per year. The ONA average award amount of \$1,455 was used for these applicants because Personal Property Assistance and Transportation Assistance are the most frequent types of SBA-ONA assistance and represents the average recipient award amount. Additionally, from 2010 through 2019 there were 422,958 referred ONA ineligible applicants, or 42,296 per year, with flood damage within a flood zone. Applicants located in Special Flood Hazard Areas, who receive disaster assistance after a flooding event, are required to buy and keep flood insurance on their property. As part of ONA, FEMA will provide GFIP for eligible applicants. FEMA estimates that, after removing the SBA application requirement, these 42,296 applicants currently ineligible for SBA-dependent ONA will receive the average GFIP amount of \$1,700 resulting in additional

assistance of \$71,903,200 ($42,296 \times \$1,700$) per year in the future. The \$1,700 specific GFIP average amount was used for these applicants because FEMA was able to identify those in a flood zone and GFIP would be in addition to any other SBA-dependent ONA amounts.

FEMA's primary impact estimate of this change is an additional \$155,551,150 ($= \$83,647,950 + \$71,903,200$) in ONA awards annually. ONA is a cost-shared program between FEMA and the affected State, where the State typically covers 25 percent of ONA award and FEMA covers 75 percent. State's transfer payments for the additional ONA will be \$38,887,788 per year ($= \$155,551,150 \times 25$ percent) and FEMA's transfer payments will be \$116,663,362 per year ($= \$155,551,150 \times 75$ percent).

FEMA will establish Displacement Assistance under ONA that will provide assistance to eligible survivors whose homes are uninhabitable. FEMA expects Displacement Assistance will be a payment per recipient to cover 14 nights of lodging in most cases. Displacement Assistance will become a preceding step before requesting initial Rental Assistance and those receiving Displacement Assistance will be ineligible for LER Assistance.

Currently there are two primary types of assistance for displaced survivors: LER Assistance and initial Rental Assistance. FEMA used LER and initial Rental Assistance data from EDW for 2010 through 2019 to estimate the baseline for this change. FEMA estimates a no-action baseline of 142,273 recipients who receive LER or Rental Assistance ($= 2,367$ LER recipients + 139,906 Initial Rental Assistance recipients) and approved assistance in the amount of \$315,987,647 ($= \$3,017,925 + \$312,969,722$) per year. Displacement Assistance will be a new type of assistance established through this rule; recipients will be ineligible for LER assistance.

To estimate the impact that establishing Displacement Assistance will have on transfer payments, FEMA used the State standard U.S. General Services Administration (GSA) lodging rates in conjunction with initial Rental Assistance data. Initial Rental Assistance data from 2010–2019 provided the recipient count for each State. FEMA assumes that individuals who received Initial Rental Assistance will meet the criteria to receive newly established Displacement Assistance. Additionally, FEMA used IHP data 2010–2019 to estimate that an average of 67,075 individuals per year were

displaced due to housing damage but were unwilling to relocate. These individuals unwilling to relocate were ineligible for Rental Assistance but will be eligible for Displacement Assistance. Because the amount in Displacement Assistance will vary by State according to GSA lodging rates, FEMA needed recipient counts by State in order to estimate the amount in Displacement Assistance that FEMA might provide. FEMA multiplied the number of recipients per State by the GSA lodging rate for each State to calculate a per State total. Next, FEMA summed the State totals to create a national total. Finally, FEMA divided the national total by the total number of Initial Rental Assistance recipients to estimate an average per recipient Displacement Assistance amount of \$1,369 ($= \$283,356,989$ average annual amount + 206,981 (139,906 Rental + 67,075 unwilling to relocate) average number of Initial Rental Assistance recipients and those unwilling to relocate). FEMA used the estimated average Displacement Assistance amount per recipient of \$1,369 multiplied by the average number of recipients for LER and initial Rental Assistance 209,348 ($= 2,367 + 206,981$) per year to estimate the average annual amount of Displacement Assistance at \$286,597,412 ($= \$1,369 \times 209,348$). FEMA anticipates LER for displaced applicants with disaster-damage to their home will fall to near zero based on the sequence of assistance delivery for Displacement Assistance (*i.e.*, it could be paid out quicker), and those receiving Displacement Assistance will be ineligible for LER. FEMA's primary estimate assumes the assistance FEMA currently provides through LER to be zero in the future and initial Rental Assistance will decline by 20 percent from the current 10-year average totaling \$250,375,778 ($\$312,969,722 \times (1-20$ percent)) per year. Accordingly, FEMA estimates the change will cause assistance for Displacement Assistance, LER, and initial Rental Assistance to increase to \$536,973,190 ($= \$286,597,412$ Displacement + \$0 LER + \$250,375,778 Rental) per year.

The estimated annual transfer payments from FEMA and States to recipients (individuals/households) for the new Displacement Assistance ONA increases assistance by \$220,985,543 ($= \$536,973,190 - \$315,987,647$ baseline) per year. ONA is a cost-shared program between FEMA and the affected State, where the State typically covers 25 percent of ONA award and FEMA covers 75 percent. States' transfer payments for Displacement Assistance ONA will be \$55,246,386 ($=$

\$220,985,543 × 25 percent) per year and FEMA's transfer payments will be \$165,739,157 (= \$220,985,543 × 75 percent) per year.

FEMA is also creating Serious Needs Assistance to provide assistance in an amount established by FEMA to eligible survivors to address immediate needs related to sheltering, evacuation, or other emergency disaster expenses. Serious Needs Assistance will be more widely available to survivors than CNA as Serious Needs Assistance will not require an additional State request and FEMA approval, unlike CNA. Serious Needs Assistance will take the place of CNA. FEMA used CNA data from EDW for 2015 through 2019 to estimate the baseline and impact for this change due to more frequent CNA usage during this period. Prior to 2015, CNA was rarely used with most years having zero CNA recipients.³⁸⁰ An average of 185,937 recipients received CNA per year at an average amount of \$528. FEMA estimates a no-action baseline of 185,937 recipients who receive CNA and assistance provided of \$98,174,736 (= 185,937 × \$528) per year.

FEMA used IHP applicant data from EDW for 2015 through 2019 to estimate the impact that replacing CNA with the new, broader, Serious Needs Assistance will have on transfer payments. FEMA's change to Serious Needs Assistance will standardize eligibility within the declaration area based on the applicant's location being out of the pre-disaster home or that they report they have other emergency disaster expenses.³⁸¹ FEMA applied this new

Serious Needs Assistance eligibility to all IHP applicant data from 2015 through 2019 (regardless if CNA was activated by the State or not) to identify applicants that will receive Serious Needs Assistance under the new policy. FEMA estimates 410,807 applicants per year will meet eligibility and receive Serious Needs Assistance. FEMA believes \$750 is the most appropriate amount to cover immediate post-disaster serious needs based on prior experience with CNA. Accordingly, FEMA estimates Serious Needs Assistance will be \$308,105,250 (= 410,807 × \$750) per year.

FEMA estimates that the new Serious Needs Assistance ONA increases annual transfer payments from FEMA and States to recipients (individuals/households) by \$209,930,514, for a total of \$308,105,250 in Serious Needs Assistance per year (from a baseline of \$98,174,736 in CNA per year). ONA is cost-shared between FEMA and the affected State. The State typically covers 25 percent of the ONA award and FEMA covers 75 percent. The States' portion of the additional assistance provided under Serious Needs Assistance ONA will be \$52,482,628 (= \$209,930,514 × 25 percent) per year and FEMA's portion will be \$157,447,886 (= \$209,930,514 × 75 percent) per year.

FEMA will expand Personal Property Assistance so that a household may receive financial assistance for a disaster-damaged computing device, regardless of its intended use. While FEMA had previously provided assistance for damaged computers, it was limited to those computers that were required for educational purposes or as a condition of employment. FEMA recognizes that technology continues to have an increasing role in how households communicate, manage finances, and facilitate many other necessary aspects of daily living. FEMA

used 2010–2019 Personal Property ONA data to estimate the impact of the changes. FEMA estimated the number of additional recipients based on the average number of recipients with Personal Property awards 2010–2019 and the assistance estimated award amount for a computing device of \$900. To estimate the number of additional recipients, FEMA used the average annual number of Personal Property Assistance recipients of 53,131 because recipients of Personal Property Assistance sustained damage to personal property and FEMA assumed all such recipients will be eligible for assistance to replace one computer. FEMA estimates that the annual impact of the change will be an additional \$47,817,900 (= 53,131 × \$900) in assistance. ONA is a cost-shared program between FEMA and the affected State, where the State typically covers 25 percent of ONA award and FEMA covers 75 percent. States' portion of the new Personal Property Assistance ONA will be \$11,954,475 (= \$47,817,900 × 25 percent) and FEMA's portion will be \$35,863,425 (= \$47,817,900 × 75 percent).

In Table 8 below, FEMA presents the total change in transfer payments from the rule as measured against a no-action baseline (*i.e.*, the effects of the rule as compared to current FEMA practice). FEMA estimates that this rule, as measured against a no-action baseline, will result in an additional \$6.72 billion in transfer payments from FEMA and States to individuals and households over 10-years. The total 10-year discounted transfer payments will be \$5.73 billion at a 3 percent discount rate and \$4.72 billion at a 7 percent discount rate; this is \$672 million annualized at a 3 percent and 7 percent discount rate (Table 8).

³⁸⁰ Limited CNA usage prior to 2015 may have been due to the requirements for requesting and justifying CNA and a lack of State familiarization with this assistance.

³⁸¹ Currently CNA must be requested with a justification from the State for each disaster. FEMA has also often waived certain eligibility criteria or only approved assistance in certain counties, parishes, or municipalities.

Table 8— Estimated Transfers, Future 10 Year Period, No-Action Baseline (2020\$)

Year	FEMA Transfer Payments to Recipients	State Transfer Payments to Recipients	Total Transfer Payments	Annual Transfer Payments Discounted at 3%	Annual Transfer Payments Discounted at 7%
1	\$512,116,462	\$159,882,122	\$671,998,584	\$652,425,810	\$628,036,060
2	\$512,116,462	\$159,882,122	\$671,998,584	\$633,423,116	\$586,949,589
3	\$512,116,462	\$159,882,122	\$671,998,584	\$614,973,899	\$548,551,017
4	\$512,116,462	\$159,882,122	\$671,998,584	\$597,062,038	\$512,664,502
5	\$512,116,462	\$159,882,122	\$671,998,584	\$579,671,882	\$479,125,703
6	\$512,116,462	\$159,882,122	\$671,998,584	\$562,788,235	\$447,781,031
7	\$512,116,462	\$159,882,122	\$671,998,584	\$546,396,344	\$418,486,945
8	\$512,116,462	\$159,882,122	\$671,998,584	\$530,481,888	\$391,109,294
9	\$512,116,462	\$159,882,122	\$671,998,584	\$515,030,959	\$365,522,705
10	\$512,116,462	\$159,882,122	\$671,998,584	\$500,030,057	\$341,610,004
Total	\$5,121,164,620	\$1,598,821,220	\$6,719,985,840	\$5,732,284,228	\$4,719,836,850
Annualized				\$671,998,584	\$671,998,584

Pre-Guidance Baseline

The rule under a pre-guidance baseline will result in additional transfer payments due to the following changes (mirroring the no-action baseline changes) that FEMA makes through this rule: Insurance Proceeds, Habitability, Removing SBA Requirement for ONA, Serious Needs Assistance, Displacement Assistance, Appeals Process, Reopening Registration Period, Personal Property Assistance (PPA) Computing Devices, PPA Self-Employed, and Home Repair for Accessibility-Related Items for Per-Disaster Unmet Needs. FEMA also codifies a number of changes that FEMA has previously implemented through guidance. FEMA has measured the impact of these changes on transfer payments against the pre-guidance baseline. These are for changes to: CHTA, Professional Assessment for

Unclear Damage, Debt Waiver, MLR, Assistance for Child Care, Assistance for Security Deposit Payments, Assistance for Utility Payments, Temporary Housing (TH) Maximum Cap Removal, and HA and ONA Maximum Cap Separation.

In Table 9 below, FEMA presents the total change in transfer payments from the rule as measured against a pre-guidance baseline (*i.e.*, the effects of the rule as compared to FEMA practice prior to implementing statutory changes). Under a pre-guidance baseline, the changes that FEMA has already implemented and codifies the new changes FEMA implements through this rule increases assistance provided from FEMA and States to individuals and households estimated at \$711 million per year over the next 10 years. Specifically, FEMA's transfer payments will be \$551 million per year

and State transfer payments due to the State ONA cost share will be \$160 million per year.

Under a pre-guidance baseline, FEMA's three largest changes (removing SBA requirement of ONA, Serious Needs Assistance, and Displacement Assistance) account for approximately more than 80 percent of the increase in transfer payments estimated at \$587 million (FEMA transfer payments \$440 million + State transfer payments \$147 million) per year.

FEMA estimates the 10-year undiscounted transfer payments of the rule measured against a pre-guidance baseline will be \$7.11 billion. The total 10-year discounted transfer payments will be \$6.06 billion at a 3 percent discount rate and \$4.99 billion at a 7 percent discount rate, with annualized transfers of \$711 million at a 3 percent and 7 percent discount rate (Table 9).

Table 9— Estimated Transfers, Future 10 Year Period, Pre-Guidance Baseline (2020\$)

Year	FEMA Transfer Payments to Recipients	State Transfer Payments to Recipients	Total Transfer Payments	Annual Transfer Payments Discounted at 3%	Annual Transfer Payments Discounted at 7%
1	\$551,054,616	\$159,887,957	\$710,942,573	\$690,235,508	\$664,432,311
2	\$551,054,616	\$159,887,957	\$710,942,573	\$670,131,561	\$620,964,777
3	\$551,054,616	\$159,887,957	\$710,942,573	\$650,613,166	\$580,340,913
4	\$551,054,616	\$159,887,957	\$710,942,573	\$631,663,268	\$542,374,685
5	\$551,054,616	\$159,887,957	\$710,942,573	\$613,265,309	\$506,892,229
6	\$551,054,616	\$159,887,957	\$710,942,573	\$595,403,212	\$473,731,055
7	\$551,054,616	\$159,887,957	\$710,942,573	\$578,061,371	\$442,739,304
8	\$551,054,616	\$159,887,957	\$710,942,573	\$561,224,632	\$413,775,050
9	\$551,054,616	\$159,887,957	\$710,942,573	\$544,878,284	\$386,705,654
10	\$551,054,616	\$159,887,957	\$710,942,573	\$529,008,042	\$361,407,154
Total	\$5,510,546,160	\$1,598,879,570	\$7,109,425,730	\$6,064,484,353	\$4,993,363,132
Annualized				\$710,942,573	\$710,942,573

5. Costs

No-Action Baseline

In Table 10 below, FEMA presents the total costs of the rule as measured against a no-action baseline (*i.e.*, the effects of the rule as compared to current FEMA practice) over the next 10 years. The rule, under a no-action baseline, will result in additional costs to States, FEMA, and applicants. States will have additional costs due to familiarization with the rule in the first year only estimated at \$41,816. FEMA expects to incur costs for implementing system updates related to the changes in this rule in the first two years estimated to be \$4.3 million per year. Additionally, FEMA expects to incur costs for reviewing additional documentation submitted by applicants. FEMA anticipates that applicants will

submit additional documents to FEMA as a result of the following changes in this rule: (1) removing the requirement to first apply for a Small Business Administration (SBA) loan before receipt of certain types of ONA (\$578,934), (2) FEMA exercising its option to reopen a registration period (\$991), and (3) expanded assistance for accessibility-related items (\$13,122). FEMA estimates a total of \$593,047 per year in additional documentation review costs to FEMA.

Applicants will have additional costs due to increased burden hours for submitting documentation to FEMA related to these same changes: removal of the SBA application requirement (\$334,300), registration period reopening (\$830), and application for accessibility-related items (\$10,982). FEMA estimates applicants burden hour

costs increases by a total of \$346,112 per year.

FEMA estimates total costs, to FEMA, States, and applicants, at \$5,280,975 (= \$41,816 + \$4,300,000 + \$593,047 + \$346,112) in the first year, \$5,239,159 (= \$4,300,000 + \$593,047 + \$346,112) in the second year, and \$939,159 (= \$593,047 + \$346,112) in subsequent years.

FEMA estimates the 10-year undiscounted costs of the rule will be \$18.0 million over the next 10 years as measured against a no-action baseline. The total 10-year discounted costs will be \$16.3 million at a 3 percent discount rate and \$14.4 million at a 7 percent discount rate, with annualized costs of \$1.9 million at a 3 percent and \$2.1 million at a 7 percent discount rate (Table 10).

Table 10—Estimated Costs, Future 10 Year Period, No-Action Baseline (2020\$)

Year	FEMA Costs	State Costs	Applicant Costs	Total Costs	Annual Costs Discounted at 3%	Annual Costs Discounted at 7%
1	\$4,893,047	\$41,816	\$346,112	\$5,280,975	\$5,127,160	\$4,935,491
2	\$4,893,047	\$0	\$346,112	\$5,239,159	\$4,938,410	\$4,576,084
3	\$593,047	\$0	\$346,112	\$939,159	\$859,464	\$766,633
4	\$593,047	\$0	\$346,112	\$939,159	\$834,431	\$716,480
5	\$593,047	\$0	\$346,112	\$939,159	\$810,127	\$669,607
6	\$593,047	\$0	\$346,112	\$939,159	\$786,531	\$625,801
7	\$593,047	\$0	\$346,112	\$939,159	\$763,622	\$584,861
8	\$593,047	\$0	\$346,112	\$939,159	\$741,381	\$546,599
9	\$593,047	\$0	\$346,112	\$939,159	\$719,787	\$510,840
10	\$593,047	\$0	\$346,112	\$939,159	\$698,822	\$477,421
Total	\$14,530,470	\$41,816	\$3,461,120	\$18,033,406	\$16,279,735	\$14,409,817
Annualized					\$1,908,482	\$2,051,634

Pre-Guidance Baseline

In Table 11 below, FEMA presents the total costs of the rule over the future 10-year period as measured against a pre-guidance baseline (*i.e.*, the effects of the rule as compared to FEMA practice prior to implementing the statutory changes). The rule, under a pre-guidance baseline, will result in additional costs to States, FEMA, and applicants. States will have additional costs due to familiarization with the rule in the first year only estimated at \$41,816. FEMA expects to incur costs for implementing system updates related to the changes in this rule in the first two years estimated to be \$4.3 million per year. The rule also increases costs for FEMA due to (1) reviewing additional applicant submitted

documentation for the SBA requirement removal (\$578,934), (2) debt waiver (\$460), (3) child care (\$708), (4) registration period reopening (\$991), and (5) accessibility-related items (\$13,122), which total an estimated \$594,215 per year measured against a pre-guidance baseline.

Applicants will have additional costs due to increased burden hours for submitting documentation related to the same changes: (1) SBA requirement removal (\$334,300), (2) debt waiver (\$385), (3) child care assistance (\$593), (4) registration period reopening (\$830), and (5) applicants with a disability applying for accessibility-related items (\$10,982). FEMA estimates the total cost to applicants for the new changes in this rule and the changes FEMA has already

implemented and codifies is \$347,090 per year measured against a pre-guidance baseline. FEMA estimates costs, before cost saving, at \$5,283,121 (= \$41,816 + \$4,300,000 + \$594,215 + \$347,090) in the first year, \$5,241,305 (= \$4,300,000 + \$594,215 + \$347,090) in the second year, and \$572,190 (= \$594,215 + \$347,090) in subsequent years.

FEMA estimates the 10-year undiscounted costs of the rule will be \$18.1 million measured against a pre-guidance baseline. The total 10-year discounted costs will be \$16.3 million at a 3 percent discount rate and \$14.4 million at a 7 percent discount rate, with annualized costs of \$1.9 million at a 3 percent and \$2.1 million at a 7 percent discount rate (Table 11).

Table 11—Estimated Costs, Future 10 Year Period, Pre-Guidance Baseline (2020\$)

Year	FEMA Costs	State Costs	Applicant Costs	Total Costs	Annual Costs Discounted at 3%	Annual Costs Discounted at 7%
1	\$4,894,215	\$41,816	\$347,090	\$5,283,121	\$5,129,244	\$4,937,496
2	\$4,894,215	\$0	\$347,090	\$5,241,305	\$4,940,433	\$4,577,959
3	\$594,215	\$0	\$347,090	\$941,305	\$861,427	\$768,385
4	\$594,215	\$0	\$347,090	\$941,305	\$836,337	\$718,117
5	\$594,215	\$0	\$347,090	\$941,305	\$811,978	\$671,137
6	\$594,215	\$0	\$347,090	\$941,305	\$788,328	\$627,231
7	\$594,215	\$0	\$347,090	\$941,305	\$765,367	\$586,197
8	\$594,215	\$0	\$347,090	\$941,305	\$743,075	\$547,848
9	\$594,215	\$0	\$347,090	\$941,305	\$721,432	\$512,008
10	\$594,215	\$0	\$347,090	\$941,305	\$700,419	\$478,512
Total	\$14,542,150	\$41,816	\$3,470,900	\$18,054,866	\$16,298,040	\$14,424,890
Annualized					\$1,910,627	\$2,053,780

6. Cost Savings

The rule, under a no-action and pre-guidance baseline, will also reduce burden costs for applicants by removing the SBA loan application requirement prior to certain FEMA assistance and lowering the expected number of applicants spending time completing loan applications (\$2,029,273), submitting CTHA streamlined incremental documentation (\$870,862), the more flexible appeals process

documentation (\$861,338), and the simplified option for verbal explanations of late registration requests (\$207,727) resulting in cost savings estimated at \$1,939,927 per year. FEMA will also have cost savings related to CTHA documentation review (\$7,220) and late registration review (\$173,928) estimated at \$181,148 per year. Additionally, SBA will have cost savings because fewer loan applications will be submitted and reviewed by SBA staff resulting in savings estimated at

\$3,877,763 per year. The combined Federal Government cost savings are estimated at \$4,058,911 (FEMA \$181,148 + SBA \$3,877,763).

FEMA estimates the 10-year undiscounted cost savings of the will be \$80.3 million. The total 10-year discounted cost savings will be \$68.5 million at a 3 percent discount rate and \$56.4 million at a 7 percent discount rate, with annualized cost savings of \$8.0 million at a 3 percent and 7 percent discount rate (Table 12).

Table 12— Estimated Cost Savings, Future 10 Year Period, No-Action and Pre-Guidance (2020\$)

Year	FEMA Cost Savings	Applicant Cost Savings	Total Cost Savings	Annual Cost Savings Discounted at 3%	Annual Cost Savings Discounted at 7%
1	\$4,058,911	\$3,969,200	\$8,028,111	\$7,794,283	\$7,502,907
2	\$4,058,911	\$3,969,200	\$8,028,111	\$7,567,265	\$7,012,063
3	\$4,058,911	\$3,969,200	\$8,028,111	\$7,346,859	\$6,553,330
4	\$4,058,911	\$3,969,200	\$8,028,111	\$7,132,873	\$6,124,607
5	\$4,058,911	\$3,969,200	\$8,028,111	\$6,925,119	\$5,723,932
6	\$4,058,911	\$3,969,200	\$8,028,111	\$6,723,417	\$5,349,469
7	\$4,058,911	\$3,969,200	\$8,028,111	\$6,527,589	\$4,999,504
8	\$4,058,911	\$3,969,200	\$8,028,111	\$6,337,465	\$4,672,434
9	\$4,058,911	\$3,969,200	\$8,028,111	\$6,152,879	\$4,366,760
10	\$4,058,911	\$3,969,200	\$8,028,111	\$5,973,669	\$4,081,085
Total	\$40,589,110	\$39,692,000	\$80,281,110	\$68,481,418	\$56,386,091
Annualized				\$8,028,111	\$8,028,111

7. Total Net Costs

FEMA estimates net cost savings under a no-action baseline at \$2.7 million (= \$5,280,975 costs – \$8,028,111 cost savings) in the first year, \$2.8 million (= \$5,239,159 costs – \$8,028,111 cost savings) in the second year, and \$7.1 million (= \$980,975 costs – \$8,028,111 cost savings) in subsequent years for this rule.

FEMA estimates net cost savings under a pre-guidance baseline at \$2.7 million (= \$5,283,121 costs – \$8,028,111 cost savings) in the first year, \$2.8 million (= \$5,241,305 costs – \$8,028,111 cost savings) in the second year, and \$7.1 million (= \$941,305 costs – \$8,028,111 cost savings) in subsequent years for this rule.

8. Benefits

FEMA was unable to quantify benefits of this rule because data does not explicitly exist for the types of benefits incurred. All benefits associated with the rule will be qualitative. FEMA anticipates this rule will promote more equitable access to disaster assistance by reducing applicant barriers, improving overall timeliness, and removing administrative burdens for disaster survivors. These benefits are expected to be broad based impacting disaster survivors applying for IHP assistance types covered in this rule. Ultimately, the rule will lead to a larger pool of eligible disaster survivors receiving

disaster assistance funds than had in the past. The rule will also improve clarity and align FEMA regulations with statutory changes improving the efficiency and consistency of IHP assistance. The intent is that these changes will lead to improved recovery outcomes for applicant survivors with an emphasis on vulnerable populations.

No-Action Baseline

The following is an overview of equity (consistent, systematic fair, just, and impartial treatment of all) benefits under a no-action baseline for changes of this rule.

FEMA's change removing the requirement for applicants to apply for SBA loans prior to receipt of ONA will alleviate survivor administrative burden and help streamline recovery. FEMA used EDW applicant data for the FEMA to SBA referral date and SBA to FEMA return date from 2010 through 2019 to estimate the potential change in speed of assistance of this change. FEMA analyzed applicants that FEMA referred to SBA because their income met the referral threshold but who were denied an SBA loan and returned to FEMA for ONA. FEMA estimates that 364,334 (36,433 per year) such applications were referred to SBA and returned to FEMA for ONA. On average, 33.6 days (12,244,620 days ÷ 364,334 applicants) were required for those referred to SBA for loan repayment eligible

consideration, determined ineligible for SBA loans, and returned to FEMA for ONA. Two potential reasons for this time delay estimate could be high volume of SBA referred applicants during the initial days following the disaster and non-responsiveness of applicants. FEMA anticipates that eliminating the need to apply to SBA for a loan before receiving ONA will reduce the time it takes for these 36,433 applicants to receive assistance from FEMA by 33.6 days, thereby streamlining the disaster assistance process for many individuals. Non-repayable assistance grants to survivors also provides greater financial assistance, than repayable SBA loans, allowing disaster survivors and communities to recover more quickly. Additionally, lower income survivors are less likely to apply for an SBA loan, due to uncertain financial and employment conditions following a disaster. Benefits of this change will remove administrative burdens to increase applicant access to assistance.

Benefits from streamlining the appeals process by removing the signed letter requirement are that the appeal requirements will be more equitable and flexible. Applicants could still submit a signed letter explaining the reason(s) for an appeal or applicants could instead choose to provide verifiable documentation of their appeal. To further assist applicants with navigating

is equal to or exceeds the applicable maximum IHP Assistance amount can pose an obstacle to them achieving a permanent housing solution, especially for lower income homeowners, as lower income ineligible underinsured homeowners may be unable to afford the unmet need to repair their home.

Pre-Guidance Baseline

Under a pre-guidance baseline, the benefits above will apply as well as the benefits of the changes FEMA has already implemented and is codifying. The following provides an overview of additional equity (consistent, systematic fair, just, and impartial treatment of all) benefits under a pre-guidance baseline.

Amending the definition of “financial ability” to pay by removing the comparison between pre-disaster and post-disaster income and awarding CTHA recipients 30 percent of their post-disaster housing income streamlines applicant documentation and more accurately measures applicants’ post-disaster financial situation. This change also reduced documentation of the pre-disaster income to lessen applicant burdens.

FEMA’s change for MLR to lease, repair, and improve existing, vacant multifamily units as a type of temporary housing for applicants is cost-effective and more survivor-centric alternative to other temporary housing options. In addition to cost-effectiveness and improvements to properties that benefit affected communities, multifamily lease and repair assistance will provide more capacity for temporary housing. If available properties in the designated area are exhausted, applicants or FEMA will have more flexibility by incorporating this option in the portfolio of housing solutions.

In 2014, FEMA expanded assistance to recognize child care as a disaster-caused financial burden because the applicant’s gross household income has decreased as a direct result of the disaster or because child care expenses have increased as a result of the disaster. By increasing assistance eligibility and reducing disruptions to affordable, local child care services, FEMA enables applicants to financially recuperate sooner and reduces disruptions to families.

FEMA’s change allowing applicants to use security deposit payments for another property when an applicant is unable to return to their disaster-damaged home better assists applicants by allowing the recipient to make timely progress toward finding a long-term housing solution. This change increases assistance flexibility to better help the survivor recover.

FEMA revisions to align with section 698d of the PKEMRA to allow for payments of utilities, excluding telephone service. Providing additional assistance for utility payments increases CTHA flexibility to better help displaced survivors recover by reducing temporary housing burden costs for those with financial needs.

Benefits from removal of Temporary Housing Assistance applied to the Financial Housing Assistance maximum ensures those applicants with the most severe disaster damage may still have funds available to them for temporary housing solutions.

FEMA’s change to have separate and individual maximum caps for HA and ONA ensures those applicants with the most severe disaster damage receive eligible assistance at least equivalent to similarly impacted disaster survivors for HA and ONA. This policy change

removes limiting HA like Home Repair Assistance due to assistance already ready received for ONA.

FEMA change to waive debt for individuals and households who received assistance through the IHP that was distributed in error by FEMA benefitted disaster survivors who accrued this debt through no fault of their own. This change reduced repayment burden for these applicants which could place additional financial hardship on disaster survivors. FEMA made this policy change to align with DRRA.

9. Baseline Time Period

As discussed above, to provide a full understanding of the impacts of the policy changes discussed in this rule, DHS measured their impacts relative to two baselines. The no action baseline represents a state of the world under current FEMA policies; that is, impacts of the rule as compared to IA Guidance. The second baseline considered in the analysis is the pre-guidance baseline, which represents a state of the world before statutory changes and/or FEMA’s implementing guidance. Table 13 provides a summary of the impacts of the rule over a 10-year future period of analysis as measured against a no-action baseline. Table 14 provides a summary of the impacts measured against the pre-guidance baseline for a 21-period of analysis that includes the actual impacts from the changes that FEMA has already implemented and will codify (2010–2019) combined with the future impacts of these changes and the new changes FEMA implements through this rule (2020–2030).

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Table 13—Circular A-4 Accounting Statement, No-Action Baseline (2020\$), 2021-2030

Category	3 Percent Discount Rate	7 Percent Discount Rate	Source Citation
<i>BENEFITS</i>			
Annualized Monetized	N/A	N/A	RIA 9
Annualized quantified, but unmonetized benefits	N/A	N/A	
Qualitative (unquantified) benefits	<ul style="list-style-type: none"> Promote more equitable access to disaster assistance and improve recovery outcomes by reducing applicant barriers, improving overall timeliness, and removing administrative burdens 		
<i>COSTS</i>			
Annualized Monetized	\$1.9 million	\$2.1 million	RIA 8
From/To	Increase in costs for States, FEMA, and applicants		
Annualized quantified, but unmonetized, costs	N/A	N/A	
Qualitative (unquantified) costs	N/A		
<i>COST SAVINGS</i>			
Annualized Monetized	\$8.0 million	\$8.0 million	RIA 8
From/To	Cost savings for applicants and FEMA		
Annualized quantified, but unmonetized, costs	N/A	N/A	
Qualitative (unquantified) costs	N/A		
<i>TRANSFERS</i>			
Annualized Monetized	\$672 million	\$672 million	RIA 7
From/To	Transfer payments from FEMA and States to recipients		
Category	Effects		Source Citation
Effects on State, local, and/or Tribal Governments	Expanding IHP assistance to individuals and households will add familiarization costs for States.		RIA
Effects on small businesses	Expanding Federal assistance for self-employed applicants for replacement of disaster-damaged essential tools.		RIA 6.12
Effects on wages	None		N/A
Effects on growth	None		N/A

Table 14—Circular A-4 Accounting Statement, Pre-Guidance Baseline (2020\$), 2010-2030

Category	3 Percent Discount Rate	7 Percent Discount Rate	Source Citation
BENEFITS			
Annualized Monetized	N/A	N/A	RIA 9
Annualized quantified, but unmonetized benefits	N/A	N/A	
Qualitative (unquantified) benefits	<ul style="list-style-type: none"> Promote more equitable access to disaster assistance and improve recovery outcomes by reducing applicant barriers, improving overall timeliness, and removing administrative burdens Improve clarity and align FEMA regulations with statutory changes improving the efficiency and consistency of IHP assistance 		
COSTS			
Annualized Monetized	\$0.8 million	\$0.7 million	RIA 8
From/To	Increase in costs for States, FEMA, and applicants		
Annualized quantified, but unmonetized, costs	N/A	N/A	
Qualitative (unquantified) costs	N/A		
COST SAVINGS			
Annualized Monetized	\$3.6 million	\$2.8 million	RIA 8
From/To	Cost savings for applicants and FEMA		
Annualized quantified, but unmonetized, costs	N/A	N/A	
Qualitative (unquantified) costs	N/A		
TRANSFERS			
Annualized Monetized	\$336 million	\$336 million	RIA 7
From/To	Transfer payments from FEMA and States to recipients		
Category	Effects		Source Citation
Effects on State, local, and/or Tribal Governments	Expanding IHP assistance to individuals and households will add familiarization costs for States.		RIA
Effects on small businesses	Expanding Federal assistance for self-employed applicants for replacement of disaster-damaged essential tools.		RIA 6.12
Effects on wages	None		N/A
Effects on growth	None		N/A

Table 15—Marginal Analysis

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
Technical Changes						
§ 206.101 Temporary Housing Assistance for Emergencies and Major Disasters Declared on or before October 14, 2002	Removes and reserves § 206.101 because it is outdated and no longer necessary; will extend reservations to §§ 206.101-109	No	D	None.	None.	None.
§ 206.131 Individual and Family Grant Program for major disasters declared on or before October 14, 2002	Removes and reserves § 206.131 outdated and no longer necessary, will extend reservations to §§ 206.131-140 and revises the heading of Subpart E from “Individual and Family Grant Programs” to “Reserved”	No	D	None.	None.	None.
§ 206.110(b)	Replaces “limit” with “limits” grammar	No	D	None.	None.	None.
§ 206.110(a) § 206.110(h) § 206.110(i)(2) § 206.110(i)(2)(ii) § 206.110(j)(2) § 206.110(k)(3)(i) § 206.113(a)	U.S.C. cite instead of Stafford Act (SA) section	No	D	None.	None.	None.

³⁸⁴ Regulatory text cites in 44 CFR, unless otherwise stated.

³⁸⁵ Mandatory actions are marked as “M” and discretionary actions are marked as “D.”

³⁸⁶ Impacts listed under Costs/Cost Savings, Benefits, and Transfer apply under a no-action and pre-guidance baseline, unless otherwise stated.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.115(a) § 206.119(b)(9) § 206.119(b)(9)(i) § 206.191(a) § 206.191(d)(2)(ii) § 206.191(d)(2)(iii) § 206.191(e)(3) § 206.191(e)(5)						
§ 206.110(a)	Adds “, as amended (Stafford Act)”	No	D	None.	None.	None.
§ 206.110(k)(2)	Replaces “(See 44 CFR part 59.1)” with “(See 44 CFR 59.1)”	No	D	None.	None.	None.
§ 206.110(m)	Replaces “section 106 of” with “54 U.S.C. 306108”	No	D	None.	None.	None.
§ 206.110(a)	Removes DMA2K amendment to SA as outdated	No	D	None.	None.	None.
§ 206.110(c) § 206.110(i)(1) § 206.110(i)(2) § 206.110(i)(2)(i) § 206.110(i)(2)(ii) § 206.110(j)(2)(ii)	Plain language revisions	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.113(a)(4) § 206.119(b)(9) § 206.119(b)(9)(i) § 206.119(b)(9)(i) § 206.119(b)(9)(ii) § 206.191(b)(1) § 206.191(e) § 206.191(e)(2) § 206.191(e)(2)(iii) § 206.191(e)(3) § 206.191(e)(4) § 206.191(e)(4)(ii) § 206.191(e)(4)(ii) § 206.191(e)(5) § 206.191(e)(5) § 206.191(e)(5)						
§ 206.110(e)	Replaces “Disaster Assistance” with “Recovery” before “Directorate” as outdated; Replace “this” with “the” and insert “of assistance” after “period” to align with the paragraph heading of (e) <i>period of assistance</i>	No	D	None.	None.	None.
§ 206.113(a)(5)	Replaces “needs” w/ “need” grammar	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.117(b)(1)(ii)(E)(4)	Replaces “determines” w/ “determined” grammar	No	D	None.	None.	None.
§ 206.110(k)(3)(i) § 206.117(b)(2)(iv)	Replaces “damages” w/ “damage” grammar	No	D	None.	None.	None.
§ 206.191(e)(3)	Replaces “programs” w/ “program’s” grammar	No	D	None.	None.	None.
§ 206.117(b)(2)(iv) § 206.117(b)(2)(vi) § 206.117(b)(3)(i)(A) § 206.117(b)(3)(ii) § 206.117(b)(3)(iii) § 206.117(b)(3)(iv) § 206.117(b)(4)(i)(A) § 206.117(b)(4)(iii)	Removes “of this part”	No	D	None.	None.	None.
§ 206.117(b)(1)(ii)(E)(1)-(3)	Remove superfluous phrase “then Federal assistance may be authorized for such actions”	No	D	None.	None.	None.
§ 206.117(b)(1)(ii)(H)(4)	Adding “semicolon or” at the end of the phrase	No	D	None.	None.	None.
§ 206.118(a)(1)(i)	Replacing “comma” after “permanent housing” with “and” and replacing “has” w/ “have for grammar purposes	No	D	None.	None.	None.
§ 206.191(f)	Adding cross-reference to 31 CFR chapter IX joint	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	Department of the Treasury & DOJ regs					
Codification of Existing Policy and Practice						
§ 206.110(b)	Adds clarification that maximum amount of assistance is “for repair or replacement of their pre-disaster primary residence.” Sec. 1212 of DRRA removed Temporary Housing Assistance from any financial maximum and separated ONA so that it has its own maximum.	Yes, implemented 2019 via policy memorandum ³⁸⁷	M	None.	No-action baseline: Improve clarity and align FEMA regulations with statutory changes. Pre-guidance: Ensures applicants with the most severe disaster damage may still have funds available to address needs.	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by \$7,800,713 per year. Cross Reference 206.110(b)(1) below.
§ 206.110(b)(1)	Maximum amount of financial assistance excludes rental assistance & LER sec. 1212 of DRRA.	Yes, implemented 2019 via policy memorandum ³⁸⁸	M	None.	No-action baseline: Improve clarity and align FEMA regulations	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by \$1,230,456 per year.

³⁸⁷ Retroactive to August 1, 2017

³⁸⁸ Retroactive to August 1, 2017

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
					with statutory changes. Pre-guidance baseline: Allows for greater assistance to address applicant temporary housing needs.	
§ 206.110(b)(2)	Maximum amount of financial assistance excludes repair or replacement accessibility-related real property improvements & personal property sec. 1212 of DRRA	Yes, implemented 2019 via policy memorandum ³⁸⁹	M	None.	See above § 206.110(b).	See above § 206.110(b).
§ 206.111	Definitions: “Alternative housing resources;” replacing one example used w/term from “mobile homes” to “manufactured housing units” align w/HUD regs and FEMA use	Yes	D	None.	None.	None.
§ 206.111	“Destroyed;” new definition more succinct; different from IAPPG definition	Yes	D	None.	None.	None.
§ 206.111	“Financial ability;” FEMA removes the comparison between pre-disaster and post-disaster income to determine	Yes – since 2002.	D	None.	None.	None.

³⁸⁹ Retroactive to August 1, 2017

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	financial ability to pay. FEMA codifies its current practice that all applicants requesting Continued Temporary Housing Assistance have the financial ability to pay up to 30 percent of their income toward housing to all applicants requesting CTHA, which FEMA has been applying since 2002 to treat applicants consistently					
§ 206.111	Revise definition of “Housing costs” to add “homeowners or condominium association fees.” Current CTHA lists the current definition of “housing costs.”	Yes	D	None.	None.	None.
§ 206.111	“Owner-occupied” revises definition to describe types of documents that may be used to verify whether applicant’s primary residence is owner-occupied	Yes – implemented 2021 via Memorandum	D	None.	None.	None.
§ 206.111	“State” new term; “State” as defined in § 206.2(a)(22) or Indian Tribal government as defined SA	Yes	D	None.	None.	None.
§ 206.112(b) § 206.115(c) § 206.115(e) § 206.117(b)(1)(i)(A) § 206.117(b)(1)(ii)(B) § 206.117(b)(1)(ii)(E)(I)	Replaces “Regional Administrator or his/her designee” w/ “FEMA” to ensure continued consistency in processing across disasters at the national level	Yes	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.117(b)(1)(ii)(E)(2) § 206.117(b)(1)(ii)(E)(3) § 206.117(b)(1)(ii)(E)(4) § 206.117(b)(1)(ii)(I) § 206.117(b)(3)(ii) § 206.191(e)(1)(i) § 206.191(e)(2) § 206.191(e)(2)(iii) § 206.191(e)(3) § 206.191(e)(4) § 206.191(e)(4)(i) § 206.191(e)(4)(i) § 206.191(e)(4)(ii) § 206.191(e)(4)(ii) § 206.191(e)(4)(ii) § 206.191(e)(4)(ii) § 206.191(e)(5)	Revises “the FEMA Regional Administrator” to “FEMA” Revises “the Regional Administrator” to “FEMA”					
§ 206.191(e)(3) § 206.191(e)(5)	Removes “the coordination of the Federal Coordinating Officer (FCO) and” Replaces “the Regional Administrator and the FCO” w/ “FEMA”	Yes	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
<p>§ 206.191(e)(5)</p> <p>§ 206.191(e)(5)</p> <p>§ 206.191(e)(5)</p>	<p>Replaces “his/her” w/ “its”</p> <p>Replaces “him/her” w/ “FEMA”</p> <p>Replaces “its” w/ “the agency’s”</p>	Yes	D	None.	None.	None.
§ 206.113(a)(1)	Replaces “or” w/ ”and” since FEMA has always allowed applicants to receive assistance for both a necessary expense and a serious need.	Yes	D	None.	None.	None.
§ 206.113(a)(5)	Replaces the “or” in “necessary expenses or serious needs” with “and,” which has no practical effect because a necessary expense is defined as whatever it costs to fix a serious need.	Yes	D	None.	None.	None.
§ 206.114(a)	Removes clause “but not to exceed the maximum amt of assistance for the program” as 1212 of DRRRA removed financial assistance max award limits for CTHA	Yes, implemented 2019 via policy memorandum ³⁹⁰	M	See above § 206.110(b)(1).	See above § 206.110(b)(1).	See above § 206.110(b)(1).
§ 206.114(d)(2)	Adds “child care,” as section 1108 of the SRIA established child care as an eligible expense under the ONA provision of the IHP. Currently, FEMA implements thru IAPPG.	Yes, 2014 implemented via policy	M	<p>No-action baseline: None.</p> <p>Pre-guidance baseline: Increases applicant burden costs by \$593 per year.</p>	<p>No-action baseline: Improve clarity and align FEMA regulations with statutory changes.</p> <p>Pre-guidance baseline: Increases</p>	<p>No-action baseline: None.</p> <p>Pre-guidance baseline: Increases transfers from FEMA to applicants by \$18,278 per year and increases transfers from the State to applicants by \$5,835 per year.</p>

³⁹⁰ Retroactive to August 1, 2017

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
					eligibility for child care reducing care disruptions for families.	
§ 206.119(b)(4)	Adds “child care,” as section 1108 of the SRIA established child care as an eligible expense under the ONA provision of the IHP. Currently, FEMA implements thru IAPPG.	Yes, 2014 implemented via policy	M	See above § 206.114(d)(2).	See above § 206.114(d)(2).	See above § 206.114(d)(2).
§ 206.119(b)(4)(i)-(ii)	Adding child care expenses under ONA; as section 1108 of SRIA established child care as an eligible expense under the ONA provision of the IHP. Currently FEMA implements thru IAPPG.	Yes, 2014 implemented via policy	D	See above § 206.114(d)(2).	See above § 206.114(d)(2).	See above § 206.114(d)(2).
§ 206.117(a)	Adds defined term “Multifamily Rental Housing” section 1103 of SRIA established authority and 1213 of DRRRA reaffirmed authority; defined page 105 of IAPPG, January 1, 2019, except for the clarifying phrase “contained within one building.” See also 206.117(b)(1)(ii)(F).	Yes, 2019 implemented via policy	D	None.	No-action baseline: Improve clarity and align FEMA regulations with statutory changes. Pre-guidance baseline: Increases flexibility and eligible capacity of temporary	No-action baseline: None. Pre-guidance baseline: Reduces transfers from FEMA to applicants by \$1,262,854 per year.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
					housing for applicants.	
§ 206.117(b)(1)(i)(C)	Section 689d PKEMRA allows rental assistance to include payment of the cost of utilities, excluding telephone service. FEMA implemented this change via page 80 of IAPPG which distinguishes between essential & non-essential utilities further excluding cable, TV, and internet service	Yes, 2011	D	None.	No-action baseline: Improve clarity and align FEMA regulations with statutory changes. Pre-guidance baseline: Increases assistance flexibility to better help survivors recover.	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by \$121,220 per year.
§ 206.117(b)(1)(i)(D)	Section 689d PKEMRA allows for the payment of security deposits, currently implemented via page 84 of IAPPG, so FEMA limits security deposits to one month's rent, if applicable	Yes, 2013 via processing guidance memorandum	D	None.	No-action baseline: Improve clarity and align FEMA regulations with statutory changes. Pre-guidance baseline: Increases assistance flexibility to better help	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by \$368,766 per year.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
					survivors recover.	
§ 206.117(b)(1)(ii)(F) § 206.117(b)(1)(ii)(F)(1) § 206.117(b)(1)(ii)(F)(2)	Sec. 1103 of SRIA established FEMA's authority to lease and repair rental units for temporary housing of applicants and sec.1213 of DRRA reaffirmed this authority; Adds new Multifamily Lease and Repair paragraphs to codify IAPPG	Yes, 2019 implemented via policy	D	See above § 206.117(a).	See above § 206.117(a).	See above § 206.117(a).
§206.117(b)(2)(iii)	Adds in some instances, when the extent of the damage is unclear, FEMA may provide assistance for the average cost of a licensed technician's professional assessment	Yes, implemented by policy since 2000	D	None.	No-action baseline: Improve clarity and align FEMA regulations with current practice. Pre-guidance: Increases assistance to ensure complete information of damage and reduce a barrier for lower income applicants.	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by \$2,092,671 per year for professional assessments.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.113(a)(9)(i)	Added w/respect home repair accessibility-related items if applicant an individual w/a disability as defined in 42 U.S.C. 5122 whose disability was caused by disaster as	Yes, implemented by policy 2022	D	None.	No-action baseline: Improve clarity and align FEMA regulations with current practice. Pre-guidance baseline: May increase assistance equity for those disaster survivors with a disability.	No-action baseline: None. Pre-guidance baseline: FEMA was unable to estimate the number of individuals with disaster-caused disabilities that would be eligible for assistance.
§ 206.114(d)(1)	Codifies Chapter 3: C.2. of IAPPG 1.1, which is narrower by stating that an applicant may receive a letter requesting additional information, language says FEMA may request additional information	Yes	D	None.	None.	None.
Current § 206.115(e)	Remove current paragraph (e): The appropriate FEMA or State program official will notify the applicant in writing of the receipt of the appeal within 90 days of receiving the appeal.	Yes	D	None.	None.	None.
§ 206.115(e)	Adds “a reason for the determination” before “within	Yes	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	90 days of receiving the appeal.”					
§ 206.191(d)(2)(iv)	Replace “Farmers Home Administration” w/ “Department of Agriculture” before “disaster loans, as “Farmers Home Administration” no longer exists	Yes	D	None.	None.	None.
§ 206.191(f)	Adds reference to waiver authority from sec. 1216 of DRRRA ³⁹¹ implemented via Instruction 116-1-2: Individuals & Households Program Recoupment Policy	Yes, implemented 2019 via Waiver Information Sheet ³⁹²	D	No-action baseline: None. Pre-guidance baseline: Increases FEMA costs by \$460 per year and increases applicant costs of 385 per year.	No-action baseline: Improve clarity and align FEMA regulations with current practice. Pre-guidance baseline: Reduces repayment burden for applicants with FEMA caused overpayments.	No-action baseline: None. Pre-guidance baseline: Increases FEMA transfers to applicants estimated at \$52,284 per year.
Nonsubstantive Clarifications						

³⁹¹ To implement the Disaster Recovery Reform Act of 2018, Pub. L. 115-254, 132 Stat. 3449 (Oct. 5, 2018), as amended by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263, 136 Stat. 3404 (Dec. 23, 2022), 42 U.S.C. 5174, FEMA will update Instruction 116-1-2: Individuals & Households Program Recoupment Policy. FEMA will now waive debts due solely to FEMA error without any need for applicants to request a waiver. This will simplify FEMA’s current recoupment process. FEMA plans to implement the new process by the end of 2023.

³⁹² Retroactive to October 28, 2012.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.110(d)	Clarifies that the damage must have occurred during the incident period, not necessarily all the losses or expenses	No	D	None.	None.	None.
Current § 206.110(h)(2)	Removes that “applicable benefits are exhausted” as a condition for assistance since an applicant does not have to exhaust benefits	No	D	None.	None.	None.
§ 206.110(h)(3)	Revises “housing is not available” to “applicants cannot use their insurance because there is no housing on the private market” for clarity	No	D	None.	None.	None.
§ 206.110(i)(2)(ii)	Adds “is 25 percent and” and “assistance” for clarity; replaces “Bill for Collection” with “billing notice” and replaces “fees” or “administrative fees” with “administrative costs” for clarity	No	D	None.	None.	None.
§ 206.110(k)(3)(i)(A)	Adds “there is a residential building (See 44 CFR 59.1) at” before “the address” and removing “exists” for clarity	No	D	None.	None.	None.
§ 206.110(m) § 206.115(b)	Updates cross references, replaces “is exempted from review in accordance with section 106 of” with “FEMA has no further obligations under” before “the National Historic Preservation Act,” & adds a cross reference Adds cross reference here since §§ 206.117(b)(2)(vi),	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	206.117(b)(3)(iv), and 206.117(b)(4)(iii) include cross references to § 206.115					
§ 206.111	Definitions: “Dependent:” Removes “actually” from before “claim”	No	D	None.	None.	None.
§ 206.111	Definitions: “ Displaced applicant;” adds “disaster damaged;” removes ineligibility factors listed in 206.113 as unnecessary & repetitive; removes functional as there is no requirement for the home not to be functional; and removes “(to meet their disaster housing need)”	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.111	“Eligible hazard mitigation measures:” replace “essential components of the home” to “the primary residence, utilities, or infrastructure” for clarity & consistency w/ § 206.117(b)(2)(ii)(H)	No	D	None.	None.	None.
§ 206.111	“Fair market rent:” deletes a phrase from each of the two sentences that are part of the definition and adds “geographic” before “area” and adds phrase “estimates of rent plus the cost of utilities, except telephone” to more closely mirror HUD’s definition of FMR	No	D	None.	None.	None.
§ 206.111	“Manufactured housing sites:” Removes the phrase “government or privately owned mobile homes” & adding language to the definition for clarity and consistency w/current HUD regs and § 206.117(b)(1)(ii)(E)(4), which describes when FEMA provides a “group site”	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.111	Permanent Housing Plan revises definition to include displaced applicant and adds “within the period of assistance,” “services to repair the home,” & “completing repairs”	No	D	None.	None.	None.
§ 206.111	“Reasonable commuting distance” revise example from “bridges out” to “road closures” as not grammatically correct	No	D	None.	None.	None.
§ 206.113(b)(2) § 206.113(b)(3) § 206.114(a) § 206.117(b)(1)(ii)(B) § 206.117(b)(1)(ii)(C) § 206.117(b)(1)(ii)(E)	Adds “temporary” before “housing assistance;” Adds “temporary” between “continued housing;” Replaces “residence” with “temporary housing unit” Adds “temporary” Adds “temporary housing”	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.117(b)(1)(ii)(E)(3) § 206.117(b)(1)(ii)(H)(4) § 206.118(a) § 206.118(a)(1)(i) § 206.118(a)(1)(ii) § 206.118(a)(1)(iii) § 206.118(a)(2)(i) § 206.118(a)(2)(i)(B) § 206.118(a)(2)(ii) § 206.118(b) § 206.118(b)	Adds “temporary housing” Adds “temporary” Replaces “sale” with “FEMA may sell a temporary housing unit” Adds “temporary” Replaces “home or” w/ “temporary housing” Adds “temporary” Adds “temporary housing” Adds “temporary housing” Adds “temporary housing” Adds “temporary” Adds “temporary housing” Adds “temporary housing” Revise “he/she” to “they” and add “installation of the” before “temporary housing unit”					
§ 206.113(b)(4)	This is intended to point to applicants that did not receive damage that impacted habitability and can return and live in their home immediately. Removing “who” before “are”	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.113(b)(5)	<i>Conditions of ineligibility.</i> Restructured last part of sentence into subparagraphs (i)-(ii) adds “Improvements or additions” before “required” and adds to “make repairs that” before “comply” to comply w/local & State ordinances. Replaced “eligible mitigation measures” with “eligible hazard mitigation measures” is the defined term ³⁹³	No	D	None.	None.	None.
§ 206.113(b)(10)	FEMA replaces “this section” with “§§ 206.117 and 206.119,” since § 206.113 does not actually authorize any items	No	D	None.	None.	None.
§ 206.114(a)	Adds “initial and,” before “continued” and adds “financial or direct, after “assistance”	No	D	None.	None.	None.
§ 206.114(b)(1)	Clarifies that as a condition of CTHA eligibility displaced applicants awarded initial rental assistance	No	D	None.	None.	None.
§ 206.117(b)(1)(i)	Replaces “Financial” assistance with “Rental” assistance	No	D	None.	None.	None.
§ 206.114(a) § 206.114(b)	Replace “Criteria for continued assistance” w/”Criterial for continued or additional assistance” Replaces “Additional criteria for continued assistance” heading with “Rental assistance”	No	D	None.	None.	None.

³⁹³ Section 206.113(b)(5)(iii) is listed under the Substantive Changes-Home Repair Accessibility-Related Items portion of the Marginal Analysis Table.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.118(a)(1)(ii)	Removes “adjustment to the sales price” heading					
§ 206.119(b)(4)	Adds “Personal property” heading					
§ 206.119(b)(7)	Adds “Transportation” heading					
§ 206.119(b)(10)	Revises “Other” to “Miscellaneous”					
§ 206.119(b)(3)	Replaces “Medical expenses” w/ “Medical and dental” heading					
§ 206.119(b)(4)	Replaces “Funeral expenses” with “Funeral” heading					
§ 206.119(b)(1)	Adds “Serious needs” heading					
§ 206.119(b)(2)	Adds “Displacement” heading					
§ 206.119(b)(5)	Replaces “Moving and storage expenses” w/ “Moving and storage” heading					
§ 206.115(b)	Remove “him, her, or” before “them;”	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.115(d)	Reorder sentence to: if someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent. Replace “him or her” with “them”					
§ 206.114(d)(2)	Replaces “Individual or households” with “Applicants”	No	D	None.	None.	None.
§ 206.117(b)(1)(i) § 206.117(b)(1)(ii)(A) § 206.118(a)(2)(i) § 206.191(d)(4) § 206.191(d)(4)(ii)	Replaces “individuals and households” with “displaced applicants” Replaces “disaster victims” w/ eligible displaced applicants Replaces “a disaster victim” w/ “an individual or household” Replaces “disaster victim” w/ individual or household and adds “Agency A must”	No	D	None.	None.	None.
§ 206.114(d)(2)	Replaces “continuing” with “additional,” as there is not a continuing need for repair assistance, rather an “additional” need of repair assistance. Adds “repair, replacement, lodging expense	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	reimbursement” before “personal”					
§ 206.115(e)	Adds “FEMA or State” appellate authority is final	No	D	None.	None.	None.
§ 206.117(b)(1)(i)	Remove “existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings” after “alternate housing resources” as that is part of the definition of the defined term “alternate housing resources.”	No	D	None.	None.	None.
§ 206.117(b)(1)(i)(B)	Replaces “rental” assistance with “amount of” assistance; removes HUD as HUD is identified in definition of “fair market rate;” replaced “rates” with “rent;” and restatement of FEMA’s current process of determining the number of bedrooms a household requires	No	D	None.	None.	None.
§ 206.117(b)(1)(ii)(G)	Adds “fair market” before rent	No	D	None.	None.	None.
§ 206.117(b)(1)(ii)(E)(3)	Revised word order of the beginning of sentence to “a group site that accommodates two or more temporary housing utilities and is complete with utilities, provided by the State or local government,” before “when.”	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.117(b)(2)(ii)(H)	<p>Removes the clause “items or services determined to be” used to described eligible hazard mitigation measures as FEMA never defined “items or services” related to hazard mitigation measures and removing the term does not change the intention of the sentence;</p> <p>Removes “that reduce the likelihood of future damage to the residence, utilities, or infrastructure” as this is part of the definition of the defined term “Eligible hazard mitigation measures.”</p>	No	D	None.	None.	None.
§ 206.117(b)(4)(i)(E) and § 206.117(b)(4)(iii)	<p>FEMA removing “located” as it is repetitive and removing the phrase an “insular area outside the continental United States” as a simplifying edit for clarity. There is no reason to include the phrase as, the point is that the residence is in a location where no alternative housing resources are available.</p>	No	D	None.	None.	None.
§ 206.118(a)(1) § 206.118(a)(1)(i) § 206.118(a)(1)(i)	<p>Replaces “applicant” w/ “occupant”</p> <p>Replaces “individual or household” w/ “occupant”</p> <p>Replaces “the occupant” w/ “they”</p>	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.118(a)(1)(ii) § 206.118(a)(1)(ii)	Replaces “purchaser” w/ “occupant” Replaces “applicant” w/ “occupant”					
§ 206.119(b)(9) § 206.119(b)(9)(ii) § 206.119(b)(9)(ii)	Replace “Other Needs” w/ “for flood insurable damage” Replace “an Other Needs award” w/ “assistance for flood-insurable losses within a SFHA” Remove “Other Needs”	No	D	None.	None.	None.
Substantive Changes-Habitability						
§ 206.111	“Functioning” replaces current “functional”	No	D	None.	None.	None.
§ 206.111	“Repairs” new term which aligns w/revisions to repair section, § 206.117(b)(2)	No	D	None.	None.	None.
§ 206.111	“Safe” and “Sanitary” revises definitions by removing “disaster-related;” crux of expanding FEMA IHP regulations to be more equitable.	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	Definitions align with revisions discussed in § 206.117(b)(2)					
§ 206.111	“Uninhabitable” revises definition by adding “or” before “sanitary” and removing “fit to occupy” as SA only uses “safe or sanitary”	No	D	None.	None.	None.
§ 206.117(a)	Removes defined term “caused by the disaster” since FEMA is paying for pre-existing conditions if the component itself was damaged by the disaster, Definition aligns with revisions discussed in § 206.117(b)(2)	No	D	None.	None.	None.
§ 206.117(a)	Revises defined term “Real property component” or “Component” by removing “that makes it habitable”	No	D	None.	None.	See § 206.117(b)(2)(ii).
§ 206.117(b)(1)(i)	Revisions to clarify that LER is distinct form of financial assistance from Rental Assistance; LER is only eligible to displaced applicants who have not received displacement assistance.	No	D	None.	None.	None.
§ 206.117(b)(2)(i)-(ii)	<i>Repairs.</i> Whether or not the “component” makes the dwelling habitable would be immaterial. The overarching eligibility requirement for housing assistance would be whether or not the home is uninhabitable. Once an applicant has hit that	No	D	None.	Support low income and other vulnerable disaster survivors who may not have the means to	Increase transfers from FEMA to applicants by \$14,228,959 per year.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	threshold, we are simplifying IHP to pay for all components listed in (b)(2)(ii) with disaster damage and then repair those components “to” a safe, sanitary, & functioning condition.				immediately address disaster damage.	
§ 206.117(b)(2)(i) and (b)(3)(i)	Replacing “owner’s” w/ “owner-occupied” as “owner-occupied” defined term § 206.111	No	D	None.	None.	None.
§ 206.117(b)(2)(iii)	Financial assistance for repairs will be limited to repairs quality necessary to make the home safe and sanitary living or function condition. Would no longer limit to average quality, size, and capacity.	Yes	D	None.	None.	See § 206.117(b)(2)(i)-(ii).
Current § 206.117(b)(2)(iv) and Second sentence of current § 206.117(b)(2)(vii)	Removing current paragraph 206.117(b)(2)(iv) & 2 nd sentence of 206.117(b)(2)(vii) due to FEMA’s policy change to provide assistance to repair or replace a disaster-damaged component, room, or area as long as the real property component incurred disaster damage, including damage that was worsened by the disaster and requires repair or replacement to make the home habitable	No	D	None.	None.	See § 206.117(b)(2)(i)-(ii).
§ 206.117(b)(2)(vi)	Removing from the 2 nd sentence the clause “including that the component was functional before the declared event and proof that the declared event	No	D	None.	None.	See § 206.117(b)(2)(i)-(ii).

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	caused the component to stop functioning”					
§ 206.117(b)(3)(i)	<p><i>Housing replacement.</i></p> <p>Revisions align with the policy changes that the residence does not have to be functional immediately before the disaster and that all of the damage to the residence was caused by the disaster since FEMA is paying for pre-existing damage.</p>	No	D	None.	None.	See § 206.117(b)(2)(i)-(ii).
§ 206.117(b)(3)(iii)	<p>FEMA’s clarifying revisions are to help the public understand that since FEMA has already said that the residence must be destroyed or can’t be repaired, that FEMA will pay average replacement assistance cost established by FEMA for the type of residence destroyed.</p>	No	D	None.	None.	None.
§ 206.117(b)(3)(iv)	<p>FEMA removing the clause “or make the residence functional” based on the policy changes that FEMA has previously discussed in this IFR that the residence no longer has to be functional.</p>	No	D	None.	None.	See § 206.117(b)(2)(i)-(ii).
<p>Current</p> <p>§ 206.117(b)(4)(i)(B)</p>	<p><i>Permanent and semi-permanent housing construction.</i></p> <p>FEMA deleting the clause that states that the residence was functional immediately before the declared event, based upon the policy changes that the</p>	No	D	None.	None.	See § 206.117(b)(2)(i)-(ii).

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	residence no longer has to be functioning immediately before the declared event.					
Substantive Changes-CTHA						
§ 206.111	Housing costs revises definition to add “homeowners or condominium association fees”	Yes	D	None.	Codifying clarification	None.
§ 206.111	“Permanent Housing Plan” revises definition to include displaced applicant and adds “within the period of assistance,” “services to repair the home,” & “completing repairs”	No	D	None.	To better ensure that applicants are prepared for a transition away from FEMA temporary housing assistance and towards a more permanent housing solution.	None.
§ 206.111	“Recertification;” new defined term used in various places in IAPPG. Under the rule, recertification period changing to two CTHA payments after initial assistance compared to currently applicants recertify in 3-month increments after their initial rental assistance award	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.114(a) § 206.117(b)(1)(i)(E)	Adds “upon request” before “during” Adds applicants that receive displacement assistance under § 206.119(b)(2) must request rental assistance if their disaster-caused temporary housing needs continue once displacement assistance is exhausted	No	D	None – Applicants must currently apply for rental assistance.	None.	None.
§ 206.114(b)-(d)	Reorganization of FEMA’s current regs, instead of conflating regs so that eligibility, non-eligibility and criteria for different types of assistance all in one paragraph, separating assistance into paragraphs w/headings of: “Rental assistance,” “Direct housing assistance,” Other assistance”	No	D	None.	None.	None.
§ 206.114(b)(1)(iii) § 206.114(b)(1)(iv)	Replaces current requirement that all applicants must establish PHP no later than 1 st certification of CTHA Applicants must provide documentation showing making efforts to obtain permanent housing	No	D	Reduces applicant costs by \$870,862 per year and reduces FEMA costs by \$7,220 per year.	Lessens administrative burdens on applicants.	None.
§ 206.114(b)(1)(i)	Less limiting in that funds may be awarded prior to exhaustion to prevent a gap in assistance, but still intent that applicant must exhaust their funds	No.	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.114(b)(1)(ii)	Language is to tie it back to the “financial ability” definition of the standard.	Yes. 2002	D	None.	No-action baseline: Clarify and align with current practice. Pre-guidance baseline: More accurately measures eligibility of applicants’ post-disaster financial situation.	No-action baseline: None. Pre-guidance baseline: Increases transfers from FEMA to applicants by \$28,516,620 annually.
§ 206.114(b)(2)	Language is closer to Stafford Act language	No	D	None.	None.	None.
§ 206.114(d)(2)	Adds a cross reference to the 206.115 appeal regs to help applicants that want to apply for continued or additional assistance. Also changes to allow applicants to know that the documentation they submit to support their requests must be verifiable and that the IAPPG lists types of acceptable documentation.	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
Substantive Changes-ONA						
§ 206.111	Revises definition “Serious need” to replace “essential” w/ “necessary” to align SA and lower the bar for applicants	No	D	See below § 206.119(b)(1).	See below § 206.119(b)(1).	See below § 206.119(b)(1).
§ 206.113(b)(1) § 206.113(b)(2) § 206.113(b)(3) § 206.113(b)(4)	Adding “or displacement” before “assistance” to state ineligibility for new displacement assistance. Adding “temporary” before “housing” for clarity and adding “or displacement” before “assistance” to state ineligibility for new displacement assistance. For the same reasons as above, adding “temporary” before “housing” and adding “or displacement” before “assistance” For the same reasons, adding “temporary” before “housing,” “or displacement” before “assistance.” also adding “and safely occupy” before “the residence immediate after the incident” for clarity.	No	D	None.	None.	None.
§ 206.119(a)	Adds clause “Are adversely affected by a major disaster and” after “who” & “verifiable, documented” before “disaster-	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	related necessary expenses or serious needs”					
<p>§ 206.119(b)(3)(i)-(v)</p> <p>§ 206.119(b)(5)</p> <p>§ 206.119(b)(7)</p>	<p><i>Medical and dental.</i></p> <p>FEMA removing “medical and dental” before “expenses;” adding “necessary” before “expense” for clarity; adding the clause “to assist applicants with medical and dental costs which” after “expenses” for clarity; removing “are generally” and “limited to” and adding “may include;” adding “service” between “medical costs” and “dental costs” for clarity and consistency; adding “or dental” before equipment; and adding the following new language “loss or injury of a service animal; and costs for prescription medicines related to eligible medical or dental services, or which need to be replaced due to the disaster” for clarity.</p> <p><i>Funeral.</i></p> <p>Replacing “funeral” with “necessary” before “expenses” for clarity, adding the clause “to assist applicants with funeral costs which” after “expenses” for clarity, removing “are generally limited to” to and adding “may include” for clarity</p>	No	D	None.	None.	None.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.119(b)(8)	<p>and to parallel the language in § 206.119(b)(3).</p> <p><i>Transportation.</i></p> <p>Removing “or serious needs” after “necessary expenses” and removing “for” before “transportation” for clarity; adding the clause “to assist applicants with the” before “transportation” and adding “costs” after “transportation” for clarity; removing “are generally limited to the following” and adding “which may include” before “the following” for clarity and to parallel the language in § 206.119(b)(3); and removing “and” in current § 206.119(b)(7)(i), removing “financial assistance for” before “public,” moving the clause “any other transportation related costs or services” from current § 206.119(b)(7)(ii) to 206.119(b)(7)(iii)</p> <p><i>Moving and storage.</i></p> <p>FEMA reorganized this paragraph to include three subparagraphs so that it follows the format of the other paragraphs in this section. Removing “and serious needs” after “necessary expenses,” and adding the clause “to assist applicants whose primary</p>					

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	residences were damaged by the disaster with costs” before “related to moving and storing personal property” for clarity and replacing “generally” with “may.”					
§ 206.119(b)(1)	New reg text that follows FEMA’s new serious needs assistance that receipts documenting use of this assistance are not required, & future changes to SNA based on the CPI for all Urban Consumers that the Department of Labor publishes.	No	D	None.	Provides more flexibility for eligible expenses to applicants.	Increases transfers from FEMA to applicants by \$157,447,886 per year and increases transfers from States to applicants by \$52,482,628 per year.
§ 206.119(b)(2)	New reg text that follows FEMA’s new displacement assistance, setting forth what the assistance is intended to cover, dates for application, and that receipts documenting use of this assistance are not required.	No	D	None.	Provides more flexibility for eligible expenses to applicants.	Increases transfers from FEMA to applicants by \$165,739,157 per year and increases transfer from States to applicants by \$55,246,386 per year.
§ 206.119(b)(6)(iii)	New subparagraph assistance for personal “computing devices”	No	D	None.	Provides additional assistance for a computing device to help applicants recover more quickly.	Increases transfers from FEMA to applicants by \$35,863,425 per year and increases transfer from States to applicants by \$11,954,475 per year.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.119(b)(6)(iv) & (v)	Replaced “computers” w/”computing devices”	No	D	None.	None.	None.
Substantive Changes-Insurance Proceeds						
§ 206.113(a)(4) current paragraph	Removes current paragraph re: applicants w/insurance, when insurance proceeds are less than max amt IHP & proceeds insufficient to cover necessary expenses or serious needs	No	D	None.	Addresses unmet needs of uninsured and underinsured applicants more equitably.	Increases transfers from FEMA to applicants by \$1,574,683 per year.
§ 206.113(a)(5)	Update to allow for more equity when assessing unmet needs of applicants by comparing net insurance settlement amount to FEMA Verified Loss amount	No	D	None.	See § 206.113(a)(4).	See § 206.113(a)(4).
Substantive Changes-Appeals						
§ 206.115(b)	Replaces “be in writing and explain the reason(s) for the appeal” with “include a written explanation or verifiable documentation for the appeal” to reduce the complexity, streamline the process, reduce FEMA processing time, and decrease the burden on	No	D	Reduces costs to applicants by \$861,338 annually.	Provides a more equitable and efficient appeal process.	Increases transfers from FEMA to applicants by \$10,709,760 annually.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.115(b)	<p>applicants to successfully appeal a determination.</p> <p>If a written explanation is submitted, it must be signed by the applicant or a person the applicant designates to represent them. Clarification that if applicant submits a written explanation it must be signed but verifiable documentation does not have to be signed</p>					
Substantive Changes-SBA						
Current § 206.119(a)(1)-(3)	Removes regulatory text referencing application to the SBA in order to qualify for assistance under this section, as the removal of the designation of “SBA-dependent ONA” allows FEMA to provide all eligible applicants ONA regardless of loan repayment worthiness.	No	D	None.	§ 206.191(d)(2)(iii)-(iv).	See § 206.191(d)(2)(iii)-(iv).

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
§ 206.191(d)(2)(iii)-(iv)	Reorganizes delivery sequence	No	D	<p>Reduces applicant costs (cost savings) by \$2,029,273 per year and reduces SBA costs by \$3,877,763 per year due to fewer loan applications being submitted and processed.</p> <p>Increases the number of applicants eligible for GFIP, resulting in applicant costs of \$334,300 per year and FEMA costs of \$578,934 annually.</p>	Reduce applicant administrative burdens and provides greater access to disaster assistance.	Increases transfers from FEMA to applicants by \$116,663,362 and increases transfers from States to applicants by \$38,887,788 annually.
Substantive Changes- Home Repair Accessibility-Related Items³⁹⁴						

³⁹⁴ For pre-existing disabilities.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
<p>§ 206.113(a)(9)</p> <p>§ 206.113(b)(5)(iii)</p> <p>§ 206.117(b)(2)(ii)</p>	<p>Added w/respect home repair accessibility-related items if applicant individual w/a disability as defined in 42 U.S.C. 5122 whose disability existed prior to disaster & whose primary residence was damaged by the disaster.</p> <p>Via information collection 1660-0002, medical, health care provider, or rehabilitation professional tell us whether or not home repair accessibility-related items are needed to meet the household's access and functional need or we will accept prior medical, health care provider, or rehabilitation professional documentation that supports the need for the accessibility-related items.</p> <p>Added subparagraphs to § 206.113(b)(5) which lists what is excepted from FEMA not providing housing assistance or accessibility-related items for individuals with disabilities, consistent with § 206.113(a)(9).</p> <p>Adding “the disaster damaged dwelling” before “to a safe and sanitary living or functioning condition” in Home Repair Assistance to adjudicate 4 RFI</p>	<p>No</p>	<p>D</p>	<p>Increases applicant burden cost at \$10,982 per year and FEMA cost at \$13,122 per year.</p>	<p>Increases assistance equity for those disaster survivors with a disability by addressing unmet ADA needs.</p>	<p>Increases transfers from FEMA to applicants at \$5,737,814 per year.</p>

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	comments, ³⁹⁵ so that FEMA may make the dwelling safe/sanitary for pre-disaster disabled applicants.					
Substantive Changes-Self-Employed Essential Tools						
§ 206.113(b)(9)	Removes “and self-employment” so gig workers may be eligible for essential tools such as the items required for their job; addresses 2 RFI comments ³⁹⁶	No	D	None.	Provides additional assistance to self-employed disaster survivors improving assistance equity.	Increases transfers from FEMA to applicants by \$3,932,536 per year and additional transfers from States to applicants of \$1,310,845 per year.
§ 206.119(b)(6)(iv)	Adding “computing devices” after “protective clothing” to allow them as eligible costs if the computing devices are for employment, and replacing “by an employer as a condition of” with “for” to reflect FEMA’s policy change regarding self-employed essential tools.	No	D	See § 206.113(b)(9).	See § 206.113(b)(9).	See § 206.113(b)(9).

³⁹⁵ FEMA-2021-0011-0152, FEMA-2021-0011-0164, FEMA-2021-0011-0235, and FEMA-2021-0011-0261.

³⁹⁶ FEMA-2021-0011-0187 and FEMA-2021-0011-0200.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
Substantive Changes-Reopen Registration Period and Late Registrations						
§ 206.112(c)	Adds that when the President’s declaration is amended to include additional counties after the registration period for the major disaster or emergency has expired, FEMA may reopen the registration period for the additional counties for 60 days	Once ³⁹⁷	D	Increases applicant costs by \$830 per year and increases FEMA costs by \$991 per year.	Provides more flexibility to collect disaster assistance registrations .	Increases transfers from FEMA to applicants by \$218,880 annually.
§ 206.112(d)	Revises <i>Late registrations</i> to replace “provide suitable documentation to support and justify” with “explain” the reason for the delay in their registration	No	D	Reduces applicant burden costs by \$207,727 per year and reduces FEMA burden costs by \$173,928 annually.	Provides a lower burden option for late registration eligibility and helps streamline assistance.	None.
Substantive Changes-Severability						
§ 206.110(n) § 206.191(g)	Adds a new <i>Severability</i> paragraph stating any provision held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons	No	D	None.	Provides flexibility for those provisions that are unaffected by a legal ruling can be	None.

³⁹⁷ DR-4473-PR; Rincon.

44 CFR ³⁸⁴	Change	Implemented	Action Type ³⁸⁵	Impact ³⁸⁶ on Costs / Cost Savings	Impact on Benefits	Impact on Transfers
	not similarly situated or to dissimilar circumstances, unless such holding is that the provision is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder and should not affect the remainder thereof ³⁹⁸ .				implemented by an agency without requiring a new round of rulemaking simply to promulgate provisions that are not subject to a court ruling.	

³⁹⁸ Section 206.110(n) references the provision of this subpart. Section 206.191(g) references the provision of this section.

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C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 858–59 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of regulations on small entities. When an agency is required to publish a general NPRM, it must prepare a regulatory flexibility analysis describing the impact of the rule on small entities.³⁹⁹ FEMA is not required, by the Administrative Procedure Act (APA) or any other law, to publish a general NPRM for this rule. Therefore, FEMA is not required to prepare a regulatory flexibility analysis for this rule.

As is discussed above, the APA generally requires agencies to publish an NPRM, but it provides an exception for matters relating to public property, loans, grants, benefits, or contracts.⁴⁰⁰ This rule amends FEMA’s regulations related to grant funding FEMA provides under the IHP. As such, it is exempt from the APA’s notice and comment requirements and therefore from the RFA’s requirements. Until recently, FEMA waived the exemption afforded to grant programs under the APA and treated its programs as if they were subject to traditional notice and comment requirements. On March 3, 2022, FEMA published the “Regulations on Rulemaking Procedures Final Rule” clarifying its position regarding notice and comment rulemaking for its grant programs.⁴⁰¹ FEMA determined that removal of the waiver of the exemption streamlined the regulations and ensured that the agency retained the flexibility to utilize a range of public engagement options in advance of rulemaking where appropriate. FEMA noted that it would retain its general policy in favor of public participation in rulemaking but would retain discretion to depart from this policy as circumstances warrant.

This rulemaking is related to financial assistance and direct services FEMA provides to individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means. 42 U.S.C. 5174. The only part of the rulemaking which might affect small entities are the changes to 44 CFR 206.113(b)(9) where FEMA is

allowing self-employed individuals to receive personal property assistance for essential tools damaged in the disaster. That means this rulemaking will not have a significant impact on small entities as it will only impact those self-employed individuals who choose to apply for personal property assistance, in their individual capacity, not as a self-employed business.⁴⁰² Self-employed individuals who feel that the information collection requirements are too onerous do not have to apply for assistance as this is a voluntary grant program. Based on these circumstances, FEMA is not preparing a regulatory flexibility analysis because this rule is unlikely to have a significant impact on small entities.

D. Unfunded Mandates Reform Act

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that before promulgating any general NPRM that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general NPRM was published, the agency shall prepare a written statement detailing the effect on State, local, and Tribal governments and the private sector. This is a final rule for which a general NPRM was not published, and thus preparation of such a statement is not required.

E. National Environmental Policy Act of 1969 (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires Federal agencies to consider the environmental impacts of any major Federal action they propose that may significantly affect the quality of the human environment, to consider alternatives to that action, and mitigate any potential adverse effects. The Council on Environmental Quality’s (CEQ) regulations for implementing NEPA, 40

CFR parts 1500 through 1508, require each Federal agency to determine whether the proposed activity is a “major Federal action” and the appropriate level of NEPA review, that is, whether the action requires preparation of an environmental assessment (EA) or environmental impact statement (EIS), or if a categorical exclusion applies. 40 CFR 1501.3. Major Federal actions include promulgation of new or revised agency rules. 40 CFR 1508.1(q)(2).

For efficiency, Federal agencies identify in their NEPA implementing procedures categories of actions (categorical exclusions (CATEXs)) that normally do not have a significant effect on the human environment individually or cumulatively. 40 CFR 1501.4. If a CATEX applies then the, preparation of an EA or environmental impact statement EIS is not required. However, the Federal agency must determine if there are extraordinary circumstances which may result in the action having a significant impact. If the agency can lessen the significance of the impact, the agency may still apply the CATEX. However, if there is a significant impact, the CATEX does not apply, and further environmental review is required. 40 CFR 1501.4. If an action does not qualify for a CATEX and has the potential to significantly effect the environment, the agency must prepare an EA to evaluate the environmental impact of the action. The EA will determine whether the agency may issue a finding of no significant impact or must prepare an EIS. A Federal agency is required to prepare an EIS if the proposed action will have significant effects on the quality of the human environment. 40 CFR 1501.3, 1502.3.

DHS has established categorical exclusions for categories of actions that experience has shown do not individually or cumulatively have a significant effect on the human environment. The DHS categorical exclusions are listed in Appendix A of DHS Instruction Manual 023–01–001–01, *Implementing the National Environmental Policy Act* (Instruction Manual). The Instruction Manual and associated DHS Directive 023–01, *Implementing the National Environmental Policy Act*, establish the policies and procedures DHS and its component agencies use to comply with NEPA and CEQ’s NEPA regulations. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece

³⁹⁹ See 5 U.S.C. 603–604.

⁴⁰⁰ 5 U.S.C. 553(a)(2), (b) and (c).

⁴⁰¹ See 87 FR 11971, Mar. 3, 2022.

⁴⁰² Businesses will continue to be ineligible under 44 CFR 206.113(b)(9).

of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.

The majority of the revisions in this rulemaking apply to the regulations for the Individuals and Households Program, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. FEMA publishes this IFR to amend its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority. This action is not a piece of a larger action, but rather amends subpart D, E, and F of 44 CFR part 206⁴⁰³ as a standalone action.

These changes implement existing statutory requirements and amend existing regulations. FEMA is not aware of any significant impact on the environment or any change in environmental effect that will result from these changes. Accordingly, FEMA

finds promulgation of this rule clearly fits within the scope of Categorical Exclusion A(3) in Appendix A of the Instruction Manual, which provides a categorical exclusion for promulgation of certain types of rules, including rules that interpret or amend an existing regulation without changing its environmental effect (Categorical Exclusion A3(d)).

In accordance with DHS NEPA implementing procedures, FEMA finds no extraordinary circumstances associated with this rulemaking that may give rise to significant environmental effects requiring further analysis and documentation. This rule addresses specific amendments to subpart D, E, and F of 44 CFR part 206 and is not part of a larger action by FEMA. This action is therefore categorically excluded, and no further NEPA analysis or documentation is required.

F. Paperwork Reduction Act of 1995

This rule contains information collection revisions necessary to support FEMA's implementation of the Individual Assistance Program Equity Interim Final Rule. The Individual Assistance Registration and Individuals and Households Program collections are assigned OMB Control Numbers 1660-0002 and 1660-0061. The collections are submitted under OMB's emergency clearance procedures to allow implementation as of the effective date of this interim final rule. Additionally, FEMA will seek public comments on both collections through the normal clearance process.

G. Privacy Act/E-Government Act of 2002

Under the Privacy Act, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A "record" is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A "system of records" is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained

in a system of records without written consent from the file subject, or an applicable Privacy Act exception. 5 U.S.C. 552a(b).

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

To meet the requirements of the Privacy Act and E-Government Act of 2002, the agency performed a Privacy Threshold Analysis, which is an initial determination of whether the regulation triggers the requirements of either of those Acts. The system is covered by the existing Privacy Impact Assessments (PIAs): DHS/FEMA/PIA-049 Individual Assistance (IA) Program and DHS/FEMA/PIA-057 Individuals and Households Program Equity Analysis. The system is also covered by an existing System of Records Notice: DHS/FEMA-008 Disaster Recovery Assistance Files.

H. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments," 65 FR 67249, Nov. 9, 2000 applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive order, to the extent practicable and permitted by law, no agency will promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible

⁴⁰³ This IFR revises Subpart D—Federal Assistance to Individuals and Households, removes and reserves Subpart E—Individual and Family Grant Programs, and revises only § 206.191 of Subpart F—Other Individual Assistance.

individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority. Under the IFR, Indian Tribal members would have the same opportunity to participate in the IHP, as other eligible applicants. As a result, FEMA does not expect this IFR to have a substantial direct effect on one or more Indian Tribal Governments or impose direct compliance costs on Indian Tribal Governments. FEMA does not expect the regulations to have substantial direct effects on the relationship between the Federal Government and Indian Tribal Governments or on the distribution of power and responsibilities between the Federal Government and Indian Tribal Governments.

In its request for information,⁴⁰⁴ FEMA received four comments from Indian Tribal Governments or members of Indian Tribal Governments that were relevant to this rule.⁴⁰⁵

⁴⁰⁴ 86 FR 21325, Apr. 22, 2021.

⁴⁰⁵ There were other general Tribal comments received on the request for information, but they are

Subsistence Practices

All four of the comments addressed the same general issue: the eligibility of subsistence cabins and equipment under IHP.⁴⁰⁶ The commenters detailed how the subsistence cabins and fish drying equipment in an Alaska Native community were damaged by flooding, but the Alaska Department of Homeland Security and Emergency Management did not provide assistance for these damages because it determined that Federal regulations limited eligibility for IHP ONA to property in or near a person's home. One commenter stated that the State's ONA State Specific Items list, which they obtained through a public records request, includes certain types of subsistence equipment that are eligible, but only if the items are stored at a person's home at the time of the disaster.⁴⁰⁷ This commenter explained that the subsistence cabins and equipment should be and are eligible for assistance, regardless of location, and stated FEMA must amend its regulations to clarify this eligibility. Another commenter requested FEMA mandate the State of Alaska provide assistance for the repair and replacement of the subsistence cabins and fish drying equipment, even outside the community that they reside.⁴⁰⁸

There are a number of different factors that can impact eligibility under IHP ONA and a close review of the specific circumstances for these subsistence cabins and equipment would be needed to determine whether they are in fact eligible. Even if a given item is eligible, however, the applicable STT government for the declaration must identify all the ONA-eligible personal property and miscellaneous items it wishes to cover, as well as the maximum number of items each individual or household may receive.⁴⁰⁹

Per current regulations, 44 CFR 206.113(b)(9), FEMA may not provide IHP assistance for business losses, including farm businesses and self-employment. Under current policy, self-employed individuals are eligible for FEMA assistance for their personal losses, but not for necessary expenses and serious needs related to business losses.

As part of this IFR and in response to comments received on the agency's RFI,

outside the scope of this rule and are not discussed here.

⁴⁰⁶ FEMA-2021-0011-0176 (pages 19-20, 27-28, representing two separate commenters), FEMA-2021-0011-0246, and FEMA-2021-0011-0283.

⁴⁰⁷ FEMA-2021-0011-0246.

⁴⁰⁸ FEMA-2021-0011-0283.

⁴⁰⁹ See page 149 of IAPPG 1.1. https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

FEMA amends its regulations to allow FEMA to provide self-employed applicants with IHP financial assistance for necessary expenses and serious needs for occupational tools. Assistance would be based on a need to replace certain disaster-damaged items required for self-employment. This would include disaster-damaged tools and equipment, or other items required for a specific trade or profession, not provided or supplied by the employer. Depending on the item requested by the applicant and its purpose, subsistence items may be eligible for assistance under this authority.

I. Executive Order 13132, Federalism

A rule has implications for federalism under Executive Order 13132 "Federalism" (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. FEMA has analyzed this rule under Executive Order 13132 and determined that it does not have implications for federalism.

J. Executive Order 12630, Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights" (53 FR 8859, Mar. 18, 1988).

K. Executive Order 12898, Environmental Justice and Executive Order 14096, Revitalizing Our Nation's Commitment to Environmental Justice for All

Executive Order 12898 "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, Feb. 16, 1994), as amended by Executive Order 12948 (60 FR 6381, Feb. 1, 1995) mandates that Federal agencies identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations. It requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination

because of their race, color, or national origin or income level.

The supplemental definition of “Environmental Justice” in sec. 2.(b)(ii) of Executive Order 14096 “Revitalizing Our Nation’s Commitment to Environmental Justice for All” (88 FR 25251, April 26, 2023) includes the just treatment and meaningful involvement of all people such that they have equitable access to subsistence practices and the Section 1 policy statement says that the Federal Government must recognize, honor and respect the different cultural practices—including subsistence practices, ways of living, Indigenous Knowledge, and traditions—in communities across America.

The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority. There are no adverse effects and no disproportionate effects on minority

populations and low-income populations.

On April 22, 2021, FEMA published an RFI on FEMA Programs, Regulations, and Policies.⁴¹⁰ FEMA sought public input on its programs, regulations, collections of information, and policies for the agency to ensure that its programs, regulations, and policies contain necessary, properly tailored, and up-to-date requirements that effectively achieve FEMA’s mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; bolstering resilience from the impacts of climate change, particularly for those disproportionately impacted by climate change; and environmental justice.

FEMA held public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments on FEMA’s programs.⁴¹¹ All relevant comments received in response to the request for information, including those received during the public meetings, have been posted to the public rulemaking docket on the Federal eRulemaking portal at <https://www.regulations.gov/document/FEMA-2021-0011-0001/comment>.

In response to its RFI, FEMA received five comments on environmental justice related to this rule.⁴¹² One commenter stated that people with disabilities or who live in persistent poverty may often have homes that do not meet FEMA’s “safe and habitable” standard and that FEMA’s limitations on housing recovery efforts beyond a pre-disaster state leaves these people only with housing options that are even more susceptible to negative environmental impact.⁴¹³ Additionally, the commenter stated that because the Individual Assistance program does not cover accessibility-related items for pre-existing or disaster acquired disabilities, many disabled people must choose between accessible housing structures or communities that afford more environmental justice opportunities. The commenter stated that this increases inequity and environmental injustice for disabled persons and that accounting for these environmental needs and covering these

expenses would promote environmental justice.

FEMA recognizes that current regulations limit assistance to applicants with residences that incurred disaster-caused damage; therefore, the regulations, as written, do not allow FEMA to address applicants’ immediate safety and sanitation concerns and prevent FEMA from addressing or assessing the general livability issues with the applicant’s residence when determining Housing Assistance eligibility. As part of this rule, FEMA broadens the definition of uninhabitable to encompass any damage to the applicant’s disaster damaged primary residence that causes the home to be unsuitable for occupancy or any disaster damage, that if left unrepaired, would impact habitability in the future. FEMA redefines “uninhabitable” to mean the dwelling is not safe or sanitary. “Safe” will refer to being secure from hazards or threats to occupants, and “sanitary” will refer to being free of health hazards. FEMA also removes the requirement for disaster-damaged real property components to be functional immediately before the disaster in order to provide assistance for pre-existing damage exacerbated by the disaster. Applicants with minimal damage, including those without the means to pay for minimal damage or who are unable to complete the work themselves, would generally be eligible for Home Repair Assistance under the regulations.

In response to public requests for IHP policy that meets applicants’ disaster-caused structural home modification needs, FEMA recently amended its Home Repair Assistance policy to include *Assistance for Disaster-Caused Americans with Disabilities Act (ADA) Real Property Needs*. The September 2, 2021, *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum currently states that FEMA may provide financial assistance to applicants who incur a disaster-caused disability and consequently require the installation or construction of accessibility-related real property components at their damaged dwelling to meet their needs. Home Repair Assistance for specific accessibility-related items is not limited by a financial maximum award. The following accessibility-related items are eligible under Home Repair Assistance when the applicant or a member of the household has a disaster-caused disability:

- Exterior ramp.
- Grab bars.

⁴¹⁰ 86 FR 21325, Apr. 22, 2021.

⁴¹¹ See “Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period,” 86 FR 30326, June 7, 2021.

⁴¹² There were more comments that raised environmental justice issues generally, but they are outside the scope of this rule and are not discussed here.

⁴¹³ FEMA–2021–0011–0164.

• Paved path of travel to the primary residential entrance (for accessible ingress or egress from the applicant's vehicle to their dwelling).

In response to public comments, FEMA has also changes to the regulatory text at 44 CFR 206.117(b)(2) and a new 44 CFR 206.113(a)(9) as a part of this IFR. The changes will allow FEMA flexibility to provide financial assistance to applicants for the installation or construction of real property items that were not present in the home prior to the disaster. Specifically, these changes would allow IHP to expand its existing policy, which provides for the installation of ADA related real property to applicants with disaster-caused needs, to include Home Repair Assistance for disaster survivors with pre-existing, pre-disaster needs for accessibility-related items, such as an exterior ramp, grab bars, etc., that make their home safe and functional when any level of disaster-caused real property damage occurs to the primary residence.

One commenter recommended programmatic changes they stated would promote environmental justice.⁴¹⁴ First, the commenter suggested FEMA automatically deem applicants eligible for disaster assistance if they are already eligible for or enrolled in other Government aid programs, such as Medicaid, Supplemental Security Income, or Temporary Assistance for Needy Families.

Different Federal aid programs have different statutory requirements for eligibility and an applicant who qualifies for one may not necessarily qualify for another. The eligibility standards for FEMA's IA Program are not the same as those for the other Federal programs the commenter listed, and FEMA is not able to change statutory requirements via regulation.

The commenter further suggested a way to streamline policies to promote environmental justice is to connect agency databases. This way, Federal Government agencies already working with individuals from environmental justice communities, can share information about those in need at the time the individual makes an application for disaster relief.⁴¹⁵ The commenter stated this may shorten application processing times.

FEMA recognizes that data sharing might make it easier to access information about disaster survivors. However, collecting, maintaining, and sharing data on a large scale presents

challenges with respect to data security. The Stafford Act and other authorities allow FEMA to collect personal information to determine eligibility and administer FEMA disaster assistance as a result of an Emergency or a Presidentially-declared disaster. FEMA cannot use other agencies' data for purposes not specifically authorized by statute.

The same commenter stated that to further promote equity, resilience to climate change, and environmental justice, FEMA should reduce its focus and the resources it commits to preventing fraud and duplication of benefits.⁴¹⁶

Section 312(a) of the Stafford Act, 42 U.S.C. 5155(a), requires all Federal agencies to prevent recipients of disaster assistance from receiving such assistance for losses as to which the recipient has received financial assistance under any other program or from insurance or any other source. In short, 42 U.S.C. 5155(a) prohibits the use of Federal disaster assistance to pay a person or entity twice for the same disaster loss. In addition, per Section 408(i) of the Stafford Act, 42 U.S.C. 5174, FEMA must develop a system, including an electronic database, that minimizes the risk of making duplicative payments or payments for fraudulent claims under this section. FEMA must ensure good stewardship of taxpayers' funds and avoid both fraud and duplication of benefits as mandated by law. Section 696 of PKEMRA, 6 U.S.C. 795, also requires FEMA to develop and maintain proper internal management controls to prevent and detect fraud, waste, and abuse.

While FEMA continues to ensure we remain good stewards of taxpayers' funds, based on the comments received via the RFI, FEMA updated its policy to provide more documentation flexibilities in order to verify occupancy. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept social service organization documents, local school documents, Federal or State benefit documents, motor vehicle registration, affidavits of residency or court documentation, and mobile home park documents (*i.e.*, a letter or other written statement from the park owner or manager which states that the applicant or co-applicant occupied the disaster-damaged dwelling at the time of the disaster) in addition to the documentation options listed in

IAPPG 1.1 to verify occupancy. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer or from applicants living in insular areas, islands, and Tribal lands.

Like occupancy, when FEMA is unable to verify an applicant's ownership of their primary residence, the applicant may provide FEMA with documentation to prove ownership. Based on comments submitted via the RFI, FEMA also updated its policy to provide more documentation flexibilities in order to verify ownership. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, date September 2, 2021, FEMA will now accept a mobile home park letter from the park owner or manager which states that the applicant or co-applicant owned the disaster-damaged dwelling at the time of the disaster, court documents, and a public official's letter in addition to the documentation options listed in IAPPG 1.1 to verify ownership. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer, from applicants living in insular areas, islands, and Tribal lands, and from applicants whose pre-disaster residence was passed down via heirship.

The commenter also stated that FEMA's determination letters sent to IA applicants are not effective at achieving the objective of assisting those most at need within environmental justice communities because they fail to provide useful or understandable information about the types of assistance provided or denied and the reasons for denial.⁴¹⁷ The commenter recommended a number of changes to the letters to address these issues, including using plain, simple, natural language and providing more information about why the applicant has been approved or denied and how to address denials.

FEMA continually updates and assesses the clarity and effectiveness of our IHP eligibility letters. FEMA's letters do not rely solely on codes and provide plain language descriptions of reasons for ineligibility and how to appeal. FEMA's regulations, at 44 CFR 206.115(b), require that appeals must be in writing and explain the reason(s) for the appeal. In this rule, FEMA is

⁴¹⁴ FEMA-2021-0011-0245.

⁴¹⁵ FEMA-2021-0011-0245.

⁴¹⁶ FEMA-2021-0011-0245.

⁴¹⁷ FEMA-2021-0011-0245.

removing the requirement that applicants submit a signed appeal letter explaining the reason for the appeal when they have provided sufficient substantiation through other documents. This will streamline the appeal process and reduce the complexity for applicants, which will speed up assistance to applicants and remove bureaucratic hurdles in the applicant's recovery process. To further assist applicants with navigating the appeals process, FEMA has created an optional appeal form that applicants could use when submitting appeals.

The commenter stated that internet access is an environmental justice concern and that members of underserved communities, including people of color, and the elderly tend to lack reliable access to the internet and FEMA's online portal.⁴¹⁸ The commenter further stated that, at least in some cases, requiring disaster survivors submit forms via the internet creates an unnecessary barrier to receiving aid.

While FEMA does encourage applicants to apply online when possible, we appreciate that not all applicants will have reliable internet access, especially right after a disaster. There are other options besides the internet for applying for IHP assistance, and if an applicant prefers not using the internet or does not have reliable access to the internet, they may apply over the telephone or in-person, instead.⁴¹⁹ Applicants may also submit documentation to FEMA through a variety of methods to include postal mail, fax, and by visiting DRCs that may be available in the impacted area following the disaster.

This commenter also stated that immigrant households and those with undocumented individuals face a number of environmental justice issues, that the FEMA application asks for information on all members of a household, not just the eligible members, and that the FEMA application and other forms indicate that information provided regarding an application for assistance may be shared with other DHS components, including U.S. Immigration and Customs Enforcement.⁴²⁰ The commenter recommended FEMA repeal this policy

of forwarding citizenship status to other agencies, and update its forms to reflect such a change, because it has a chilling effect on applications from these households, even when some members of the household are eligible for assistance.

While the Privacy Act requires FEMA to make applicants aware of this information, we have updated this data sharing language in the past several years to remove references to U.S. Immigration and Customs Enforcement and clarify the reasons FEMA would share information. The current version informs applicants that, consistent with the Privacy Act, as amended, 5 U.S.C. 552a, FEMA may share individuals' information with Federal, State, Tribal, and local agencies and voluntary organizations to enable individuals to receive additional disaster assistance or to allow FEMA to administer assistance.⁴²¹

One commenter stated that the focus of many FEMA programs on replacing what was lost in a disaster propagates environmental injustices and inequity for marginalized communities.⁴²² The commenter further stated that numerous studies have shown that some neighborhoods today are still influenced by redlining that occurred decades ago. The commenter recommended FEMA adopt a build-forward approach that leverages the recovery process to implement community-based plans to address inequities.

FEMA may provide financial assistance to repair an owner-occupied primary residence, utilities, and residential infrastructure, including private access routes damaged as a result of a Presidentially-declared disaster. Home Repair Assistance is intended to make the damaged home safe, sanitary, or functional.⁴²³ It is not intended to return the home to its pre-disaster condition. Rather, currently, Home Repair Assistance award amounts are based on repair or replacement of components that are of average quality, size, or capacity and provided to eligible applicants who meet all requirements.

In this rule, FEMA removes the requirement for real property components to be functional immediately before the disaster to provide assistance for pre-existing damage. Under this IFR, when a

component of the home with pre-existing damage is further damaged by the disaster, FEMA will provide assistance to fully repair or replace the item (as appropriate) rather than denying assistance solely because not all damage was caused by the disaster.

One commenter stated FEMA should prioritize comprehensive data collection and analysis to achieve the agency's equity and environmental justice goals, and noted this may require collecting more specific data than FEMA has collected before.⁴²⁴ The commenter said FEMA must conduct rigorous and regular analyses of the distribution of its aid with regards to applicants' race and ethnicity, income level and wealth, educational attainment, gender, disability status, age, and other factors that may help indicate an applicant's relationships to underserved communities.

In August of 2022, FEMA began gathering demographic information from disaster survivors that choose to provide it. This data will be used to assess the impact of IA Programs and policies on underserved populations using FEMA's existing analysis processes. Although some data and information will be provided for background or situational awareness, the objective will be to affect positive changes by conducting analysis of the collected data to better understand program outcomes accordingly based on factors such as race, ethnicity, and income and updating policies and programs within our regulatory and statutory parameters to achieve greater equity.

This commenter also stated that FEMA could extend the process of self-certifying homeownership to members of underserved, historically marginalized, and environmental justice communities nationwide.⁴²⁵ The commenter stated this change could help decrease the barriers for "low-wealth" and "people of color households" to receiving Federal aid and assistance.

Per IAPPG 1.1, FEMA verifies occupancy through an automated public records search or submitted documents. In locations where automated verification of public records is limited, FEMA may partner with applicable authorities from the State, local, Tribal, or Territorial government to verify ownership or occupancy. When FEMA is unable to verify an applicant's occupancy of their disaster-damaged primary residence, the applicant may provide FEMA with documentation for

⁴¹⁸ FEMA-2021-0011-0245.

⁴¹⁹ For more information on ways to apply, see FEMA's IHP web page, <https://www.fema.gov/assistance/individual/program#apply>. Additionally, FEMA does extensive outreach at disaster sites which would include members of underserved communities, including people of color and the elderly. FEMA's robust messaging of how to apply for FEMA assistance includes applying by telephone, using internet access, or by going to a DRC.

⁴²⁰ FEMA-2021-0011-0245.

⁴²¹ See ICR Reference No. 202201-1660-005, FF-104-FY-21-122 (formerly 009-0-1) View Information Collection Request (ICR) Package ([reginfo.gov](https://www.reginfo.gov)).

⁴²² FEMA-2021-0011-0261. See ICR Reference No. 202201-1660-005, FF-104-FY-21-122 (formerly 009-0-1) View Information Collection Request (ICR) Package ([reginfo.gov](https://www.reginfo.gov)).

⁴²³ See 42 U.S.C. 5174(c)(2)(A)(i).

⁴²⁴ FEMA-2021-0011-0265.

⁴²⁵ FEMA-2021-0011-0265.

verification. Based on comments submitted via the RFI, FEMA updated its policy to provide more documentation flexibilities in order to verify occupancy. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept social service organization documents, local school documents, Federal or State benefit documents, motor vehicle registration, affidavits of residency or court documentation, and mobile home park documents (*i.e.*, a letter or other written statement from the park owner or manager which states that the applicant or co-applicant occupied the disaster-damaged dwelling at the time of the disaster) in addition to the documentation options listed in the IAPPG 1.1 to verify occupancy. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer or from applicants living in insular areas, islands, and Tribal lands.

Like occupancy, when FEMA is unable to verify an applicant's ownership of their primary residence, the applicant may provide FEMA with documentation to prove ownership. Based on comments submitted via the RFI, FEMA also updated its policy to provide more documentation flexibilities in order to verify ownership. Specifically, as outlined in the *Amendment to FEMA Policy (FP) 104-009-03, Individual Assistance Program and Policy Guide (IAPPG), Version 1.1* memorandum, dated September 2, 2021, FEMA will now accept receipts for major repairs or improvements, mobile home park letters from the park owner or manager which states that the applicant or co-applicant owned the disaster-damaged dwelling at the time of the disaster, court documents, and a public official's letter in addition to the documentation options listed in IAPPG 1.1 to verify ownership. Furthermore, as an option of last resort, FEMA may accept a written self-declarative statement from applicants whose pre-disaster residence was a mobile home or travel trailer, from applicants living in insular areas, islands, and Tribal lands, and from applicants whose pre-disaster residence was passed down via heirship.

One commenter stated that FEMA's policies forcing disaster survivors to rebuild their homes in hazardous and racially segregated and environmentally blighted areas fails to promote

environmental justice.⁴²⁶ The commenter stated that FEMA fails to affirmatively further fair housing or to make housing options available outside of racially segregated areas to persons receiving IA and that there are many cases in which FEMA has effectively locked people into rebuilding in hazardous areas. The commenter noted that IA funding is specifically tied to rehabilitation of the residence affected by the disaster and argued that instead of spending this funding on repairs to a home in an area that is substandard for safe and sanitary housing, it could be utilized to move the affected household out of the hazardous area.

Per Section 408 of the Stafford Act, 42 U.S.C. 5174, FEMA may provide financial assistance to repair or replace an owner-occupied primary residence damaged as a result of a Presidentially-declared disaster. An applicant who receives Home Repair or Home Replacement Assistance may use the funds to either repair their disaster damaged dwelling or for the purchase of a home in a different location.⁴²⁷ Similarly, applicants who receive Rental Assistance may choose to use that assistance in any location in the United States.⁴²⁸ FEMA may also provide reimbursement of moving and storage expenses to eligible applicants who must relocate from their damaged home.

FEMA recognizes that helping disaster survivors address hazard

⁴²⁶ FEMA—2021-0011-0277.

⁴²⁷ FEMA communicates the options via various means—whether through fact sheets, IAPPG 1.1, in person, or applicant received communication.

⁴²⁸ Since August 2006, FEMA established its Rental Assistance Rate Increase Policy, which outlined the criteria and guidance for increasing the rate of Rental Assistance within a declared State following a presidential emergency or major disaster declaration. This policy is currently included at page 85 of the IAPPG 1.1. FEMA evaluates the need for a Rental Assistance rate increase by comparing U.S. Census Bureau American Community Survey statistics on housing inventory and vacancy rates to the best available data on disaster-caused housing impacts in declared disaster areas. The STT government may request a Rental Assistance rate increase by submitting other reliable sources of these data elements for FEMA to use. The FMR Calculator allows FEMA to rapidly evaluate the need for a Rental Assistance rate increase based on pre-disaster housing stock data, the amount of housing impacted by the disaster, and the post-disaster vacancy rate for each impacted county. FEMA may authorize Rental Assistance rate increases when the FMR Calculator demonstrates available housing for the area is insufficient to meet the disaster-caused housing need, or when elevated housing market rates adversely impact eligible applicants' ability to obtain rental resources. The RA or the FCO, if the RA has delegated authority to the FCO, may approve Rental Assistance rate increases for designated counties (or equivalent) when the FMR Calculator result indicates an increase above 100 percent. The increase may not exceed the amount indicated by the FMR Calculator, or 125 percent of the HUD FMR, whichever is lower.

mitigation measures while repairing their homes from disaster damage will help make their homes more resilient. FEMA began including additional assistance for mitigation in Home Repair Assistance awards for disasters declared on or after May 26, 2021. Section 408(c)(2)(A)(ii) of the Stafford Act, 42 U.S.C. 5174(c)(2)(A)(ii), authorizes FEMA to provide IHP assistance for eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure, under the Home Repair Assistance provision. Hazard mitigation under IHP is awarded as part of Home Repair Assistance for specific real property components that existed and were functional prior to the disaster—roof, water heater, furnace, and main electrical panel. Hazard mitigation measures, such as elevating the water heater and furnace, are intended to minimize future damage to owner-occupied residences and are subject to the IHP maximum amount of Home Repair Assistance. FEMA plans to expand hazard mitigation under IHP in the future to include additional mitigation measures.

The same commenter stated that a number of other issues impact environmental justice. First, the commenter stated FEMA's assistance policy for the homeless population is discriminatory, noting that homeless people living in shelters or unsheltered on the street do not qualify for any housing assistance.⁴²⁹ The commenter recommended FEMA coordinate with local organizations to provide shelter options post-disaster to the homeless population while encouraging permanent housing options.

FEMA's IHP assistance is intended to assist with disaster-caused losses. Therefore, issues related to pre-disaster homelessness are outside the scope of the program. As the commenter noted, applicants who resided in non-traditional housing (including tents) and are able to verify occupancy are eligible for certain types of housing assistance, in addition to ONA.⁴³⁰ However, temporary congregate sheltering options are available to homeless applicants following a disaster regardless of their eligibility for IHP assistance.

Second, the commenter noted that the "Needs Assessment" is the first of many applications for recovery that applicants submit and that it provides crucial information that gives governments a realistic assessment of the amount of

⁴²⁹ FEMA—2021-0011-0277.

⁴³⁰ See page 62 of IAPPG 1.1, https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf.

unmet need, but stated that it may be confusing for applicants that they also need to submit separate applications for FEMA and for HUD assistance.⁴³¹ The commenter recommended the “Needs Assessment” be used as a first point of entrance into the disaster recovery mechanism instead of waiting for applicants to apply for FEMA or CDBG–DR funds. The commenter further recommended that government agencies share this data so that disaster survivors do not get lost in the disaster recovery apparatus.

It is unclear to FEMA whether the “Needs Assessment” referenced by the commenter is a form submitted to a private organization or another Federal agency. If the commenter’s reference is to a form submitted to a Federal agency, different Federal aid programs have different statutory requirements for eligibility and an applicant who qualifies for one may not necessarily qualify for another. The eligibility standards for FEMA’s IA Program are not the same as those for HUD’s CDBG–DR program, and FEMA is not able to change statutory requirements via regulation. If the “Needs Assessment” form is submitted to a private organization, it generally would not be a part of FEMA’s operations.

With respect to data sharing, FEMA recognizes that data sharing might make it easier to access information about disaster survivors. However, collecting, maintaining, and sharing data on a large scale presents challenges with respect to data security. The Stafford Act and other authorities allow FEMA to collect personal information to determine eligibility and administer FEMA disaster assistance as a result of an Emergency or a Presidentially declared disaster. FEMA cannot use other agencies’ data for unintended purposes.

Finally, the commenter noted that some types of disaster assistance are administered by FEMA and others by HUD and that FEMA has an obligation to not duplicate assistance with any other Federal program, but stated that this is an issue of income discrimination for low-income survivors and also a barrier to finding stable housing in a housing market devastated by a disaster.⁴³² The commenter stated that the lack of coordination between the various entities charged with administering recovery funds makes the overall recovery process more complicated, and recommended that FEMA take over temporary housing assistance entirely so disaster survivors may find housing not tied to HUD

assistance while the area is still recovering. The commenter also recommended that FEMA allow its temporary housing funds to be used also as permanent repair dollars in a way that CDBG–DR funding can build on.

The commenter is correct that FEMA must not duplicate assistance provided by other Federal programs. With respect to taking over other assistance programs outside of the Stafford Act, doing so would require a change to the statutory provisions underlying those programs and FEMA cannot change statutory provisions via rulemaking. However, FEMA is committed to ongoing engagement and communication with our Federal partners to better address the needs of traditionally underserved communities and will continue looking for better ways to coordinate our program delivery. Additionally, FEMA already provides permanent repair dollars in addition to temporary housing funds to eligible homeowners.

As part of this IFR and in response to comments received on the agency’s RFI, FEMA amends its regulations to allow FEMA to provide self-employed applicants with IHP financial assistance for necessary expenses and serious needs for occupational tools. Assistance will be based on a need to replace certain disaster-damaged items required for self-employment. This will include disaster-damaged tools and equipment, or other items required for a specific trade or profession, not provided or supplied by the employer. Depending on the item requested by the applicant and its purpose, subsistence items may be eligible for assistance under this authority. (See the *Subsistence Practices* discussion in the Executive Order 13175, Consultation and Coordination With Indian Tribal Governments regulatory statement.)

Other comments received on FEMA’s RFI relating to public access to information, which may overlap with the Environmental Justice effects of this rule, are discussed above in the Equity RFI—IA Program Equity Responses to Comments section.

L. Executive Order 12988, Civil Justice Reform

This rule meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

M. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not create environmental health risks or safety

risks for children under Executive Order 13045, “Protection of Children From Environmental Health Risks and Safety Risks” (62 FR 19885, Apr. 23, 1997).

N. Executive Order 11988, Floodplain Management

Pursuant to Executive Order 11988, each Federal agency is required to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of the Executive order, to the extent permitted by law.

Before promulgating any regulation, an agency must determine whether the regulation will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). Where possible, an agency shall use natural systems, ecosystem processes, and nature-based approaches when developing alternatives for consideration. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency’s floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is located in the floodplain.

The requirements of Executive Order 11988 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities. However, this rule will not have an effect on floodplains. The purpose of the rule is to update FEMA’s

⁴³¹ FEMA–2021–0011–0277.

⁴³² FEMA–2021–0011–0277.

IHP regulations to reflect statutory changes that have already been implemented. The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

O. Executive Order 11990, Protection of Wetlands

Pursuant to Executive Order 11990, each Federal agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to

water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in the Executive order, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are: public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

The requirements of Executive Order 11990 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities. However, this rule will not have an effect on land use or wetlands. The purpose of the rule is to update FEMA's IHP regulations to reflect statutory changes that have already been implemented. The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-

opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

P. National Historic Preservation Act

The National Historic Preservation Act (NHPA) (54 U.S.C. 300101, formerly 16 U.S.C. 470) was enacted in 1966, with various amendments throughout the years. Section 106 of the NHPA (54 U.S.C. 306108) requires Federal agencies to take into account the effect of a proposed Federal or Federally assisted undertaking on any historic property. Among other requirements, where there is the potential for the undertaking (or project) to affect historic properties, the NHPA mandates a consultation process in the early stages of project planning which must be completed prior to the approval of expenditure of the Federal funds. Subpart B of 36 CFR part 800 lays out a four-step Section 106 process to fulfill this obligation: (1) Initiate the process (800.3); (2) identify historic properties (800.4); (3) assess adverse effects (800.5); (4) resolve adverse effects (800.6). If, however, the agency determines that the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency has no further obligations under the NHPA. 36 CFR 800.3(a)(1). Based on over 20 years of practice, since section 206.110(m) was published, FEMA has determined that the proposed undertaking, excluding the stated exceptions, does not have the potential to cause effects on historic properties. Therefore, FEMA changes the language in section 206.110(m) to align it with the applicable statutory and regulatory language (*i.e.*, 36 CFR 800.3(a)(1)).

The purpose of the rule is to amend its IA regulations to increase equity and ease of entry to the IA Program and to update FEMA's IHP regulations to reflect statutory changes that have already been implemented. The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially-declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

Pursuant to Section 106 of the NHPA and its implementing regulations at 36 CFR part 800, FEMA has determined that this rule does not have the potential to cause effects to historic properties and in accordance with 36 CFR 800.3(a)(1), FEMA has no further obligations under Section 106.

Q. Endangered Species Act

The Endangered Species Act (ESA) mandates that Federal agencies determine whether their proposed actions may affect listed species and/or their designated critical habitat (critical

habitat has been designated for some, but not all listed species). Without authorization or exemption from Federal resource agencies, it is unlawful for any person, whether government employee or private citizen, to take listed species.

To comply with Section 7(a)(2) of the ESA, 16 U.S.C. 1536, for every action that FEMA proposes to carry out, fund, or authorize, FEMA must first determine if listed species and habitat are present in the action area. If species are present in the action area, then FEMA must make one of the following determinations with respect to the effect of the proposed action on listed species and critical habitat: (1) No Effect (NE); (2) may affect, but is not likely to adversely affect (NLAA); or (3) may affect and is likely to adversely affect (LAA).

The purpose of the rule is to update FEMA's IHP regulations to reflect statutory changes that have already been implemented. The majority of the revisions in this rulemaking apply to the regulations for the IHP, which is a voluntary grant program that provides financial assistance and direct services to eligible individuals and households who have uninsured or underinsured necessary expenses and serious needs as a result of a Presidentially declared disaster. FEMA publishes this IFR amending its regulations governing the Individual Assistance program to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR increases eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allows for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplifies the documentation requirements for continued temporary housing assistance; simplifies the appeals process; simplifies the process to request approval for a late registration; removes the requirement to apply for a Small Business Administration loan as a condition of eligibility for ONA; and establishes additional eligible assistance under ONA for serious needs, displacement, disaster-damaged computing devices and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to

include provisions for utility and security deposit payments, lease and repair of multifamily rental housing, child care assistance, maximum assistance limits, and waiver authority.

This rule has been evaluated by FEMA and due to the administrative nature, FEMA has determined the rule does not have the potential to affect Federally listed species or designated critical habitat. As such, a "No Effect" determination has been made for these activities. Per the ESA regulations, notification to, and consultation with, the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service are not required for activities with a "No Effect" determination.

R. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the GAO a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency's actions under the RFA and the Unfunded Mandates Reform Act; and any other information or statements required by relevant Executive orders.

FEMA has submitted this interim final rule to the Congress and to GAO pursuant to the CRA. OMB has determined that this rule is a "major rule" within the meaning of the CRA.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

- 1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

Subpart D—Federal Assistance to Individuals and Households

§ 206.101 [Removed and Reserved]

- 2. Remove and reserve § 206.101.
- 3. Amend § 206.110 by:
 - a. Revising the first sentence of paragraph (a), paragraphs (b), (c), (d), and (e);
 - b. Revising paragraph (h) introductory text;
 - c. Removing paragraph (h)(2), redesignating paragraphs (h)(3) and (4) as (h)(2) and (3), and revising newly redesignated paragraph (h)(3);
 - d. Revising paragraphs (i), (j)(2) introductory text, and (j)(2)(ii);
 - e. Revising the first sentence of paragraph (k)(2), the first sentence of paragraph (k)(3)(i) introductory text, and the first sentence of paragraph (k)(3)(i)(A);
 - f. Revising paragraph (m); and
 - g. Adding paragraph (n).

The additions and revisions read as follows:

§ 206.110 Federal assistance to individuals and households.

(a) *Purpose.* This section implements the policy and procedures set forth in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), 42 U.S.C. 5174. * * *

(b) *Maximum amount of assistance.* No individual or household will receive financial assistance greater than \$25,000 under this subpart with respect to a single major disaster or emergency for the repair or replacement of their pre-disaster primary residence. No individual or household will receive financial assistance greater than \$25,000 under this subpart with respect to a single major disaster or emergency for Other Needs Assistance. FEMA will adjust the \$25,000 limits annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes.

(1) The maximum amount of financial assistance excludes rental assistance under § 206.117(b)(1)(i) and lodging expense reimbursement under § 206.117(b)(1)(i).

(2) The maximum amount of financial assistance excludes expenses to repair or replace eligible damaged accessibility-related real property improvements and personal property for individuals with disabilities.

(c) *Multiple types of assistance.* One or more types of housing assistance may be made available under this section to meet the needs of individuals and households in the particular disaster situation. FEMA will determine the appropriate types of housing assistance

to be provided under this section based on considerations of cost effectiveness, convenience to the individuals and households and the suitability and availability of the types of assistance. An applicant is expected to accept the first offer of housing assistance; unwarranted refusal of assistance may result in the forfeiture of future housing assistance. Temporary housing and repair assistance must be utilized to the fullest extent practicable before other types of housing assistance.

(d) *Date of eligibility.* Eligibility for Federal assistance under this subpart is limited to losses or expenses resulting from damage that occurred during the dates of the incident period established in a presidential declaration that a major disaster or emergency exists, except that reasonable lodging expenses that are incurred in anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

(e) *Period of assistance.* FEMA may provide assistance under this subpart for a period not to exceed 18 months from the date of declaration. The Assistant Administrator for the Recovery Directorate may extend the period of assistance if he/she determines that due to extraordinary circumstances an extension would be in the public interest. * * *

(h) *Duplication of benefits.* In accordance with the requirements of the Stafford Act, 42 U.S.C. 5155, FEMA will not provide assistance under this subpart when any other source has already provided such assistance or when such assistance is available from any other source. In the instance of insured applicants, we will provide assistance under this subpart only when: * * *

(3) Applicants cannot use their insurance because there is no housing on the private market.

(i) *Cost sharing.* (1) Except as provided in paragraph (i)(2) of this section, the Federal share of eligible costs paid under this subpart is 100 percent.

(2) Federal and State cost shares for “Other Needs” assistance under the Stafford Act, 42 U.S.C. 5174(e) and (f), are as follows:

(i) The Federal share is 75 percent; and

(ii) The non-Federal share is 25 percent and must be paid from funds made available by the State. If the State does not provide the non-Federal share to FEMA before FEMA begins to provide assistance to individuals and

households under the Stafford Act, 42 U.S.C. 5174(e), FEMA will still process applications. The State will then be obliged to reimburse FEMA for the non-Federal cost share of such assistance on a monthly basis. If the State does not provide such reimbursement on a monthly basis, then FEMA will issue a billing notice to the State on a monthly basis for the duration of the program. FEMA will charge interest, penalties, and administrative costs on delinquent billing notices in accordance with the Debt Collection Improvement Act. Cost shared funds, interest, penalties and administrative costs owed to FEMA through delinquent billing notices may be offset from other FEMA disaster assistance programs (*i.e.*, Public Assistance) from which the State is receiving assistance, or future grant awards from FEMA or other Federal Agencies. Debt Collection procedures will be followed as outlined in 44 CFR part 11.

(j) * * *

(2) Under the Stafford Act, 42 U.S.C. 5174(f)(2), FEMA must share applicant information with States in order for the States to make available any additional State and local disaster assistance to individuals and households. * * *

(ii) States receiving such applicant information must not further disclose the information to other entities, and must not use it for purposes other than providing additional State or local disaster assistance to individuals and households.

(k) * * *

(2) Individuals or households that are located in a special flood hazard area may not receive Federal Assistance for National Flood Insurance Program (NFIP)—insurable real and/or personal property, damaged by a flood, unless the community in which the property is located is participating in the NFIP (See 44 CFR 59.1), or the exception in 42 U.S.C. 4105(d) applies. * * *

(3) *Flood insurance purchase requirement:* (i) As a condition of the assistance and in order to receive any Federal assistance for future flood damage to any insurable property, individuals and households named by FEMA as eligible recipients under the Stafford Act, 42 U.S.C. 5174, who receive assistance, due to flood damage, for acquisition or construction purposes under this subpart must buy and maintain flood insurance, as required in 42 U.S.C. 4012a, for at least the assistance amount. * * *

(A) If the applicant is a homeowner, flood insurance coverage must be maintained at the address of the flood-

damaged property for as long as there is a residential building (See 44 CFR 59.1) at the address. * * *

(m) *Historic preservation.* Assistance provided under this subpart generally does not have the potential to affect historic properties and thus FEMA has no further obligations under the National Historic Preservation Act, 54 U.S.C. 306108, with the exception of ground disturbing activities and construction related to §§ 206.117(b)(1)(ii) (direct housing), 206.117(b)(2)(ii)(F) (repair assistance for privately owned roads and bridges), 206.117(b)(3) (replacement assistance), and 206.117(b)(4) (permanent housing construction).

(n) *Severability.* Any provision of this subpart held to be invalid or unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this subpart is invalid and unenforceable in all circumstances, in which event the provision should be severable from the remainder of this subpart and should not affect the remainder thereof.

- 4. Amend § 206.111 by:
- a. Revising the definitions of “Alternative housing resources” and “Dependent”;
- b. Adding the definition of “Destroyed”;
- c. Revising the definitions of “Displaced applicant” and “Eligible hazard mitigation measures”;
- d. Adding the definition of “Essential tools”;
- e. Revising the definitions of “Fair market rent” and “Financial ability”;
- f. Removing the definition of “Functional”;
- g. Adding the definition of “Functioning”;
- h. Revising the definition of “Housing costs”;
- i. In the definition of “Manufactured housing sites,” revise the introductory text and paragraph (3);
- j. Revising the definitions of “Owner-occupied”, “Permanent housing plan” and “Reasonable commuting distance”;
- k. Adding the definitions of “Recertification” and “Repairs”;
- l. Revising the definitions of “Safe”, “Sanitary”, and “Serious need”;
- m. Adding the definition of “State”; and
- n. Revising the definition of “Uninhabitable”.

The additions and revisions to read as follows:

§ 206.111 Definitions.

* * * * *

Alternative housing resources means any housing that is available or can quickly be made available in lieu of permanent housing construction and is cost-effective when compared to permanent construction costs. Some examples are rental resources, manufactured housing units, and travel trailers.

* * * * *

Dependent means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together, where the children live in the affected residence with the parent or guardian who does not claim them on the tax return.

Destroyed means the primary residence is a total loss or damaged to such an extent that repairs are infeasible.

Displaced applicant means one whose disaster-damaged primary residence is uninhabitable, inaccessible, or made unavailable by the landlord.

* * * * *

Eligible hazard mitigation measures are home improvements that an applicant can accomplish in order to reduce or prevent future disaster damage to the primary residence, utilities, or infrastructure.

Essential tools means tools and equipment required for employment and items required for education.

Fair market rent means estimates of rent plus the cost of utilities, except telephone, identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular geographic area.

Financial ability means the applicant’s capability to pay 30 percent of gross post-disaster household income for housing. When computing financial ability, extreme or unusual financial circumstances may be considered by FEMA.

* * * * *

Functioning means an item or home capable of being used for its intended purpose.

* * * * *

Housing costs means rent and mortgage payments, including principal, interest, real estate taxes, real property insurance, homeowners or condominium association fees, and utility costs.

* * * * *

Manufactured housing sites means those sites used for the placement of

travel trailers and other manufactured housing units, including:

* * * * *

(3) *Group site*, a site provided by the State or local government or FEMA, if determined that such site would be more economical or accessible than one that the State or local government provides, that accommodates two or more units and is complete with utilities.

* * * * *

Owner-occupied means that the residence is occupied by:

(1) The legal owner with verifiable documentation; or

(2) A person who does not hold formal title to the residence and pays no rent, but can produce verifiable documentation demonstrative of legal responsibility including tax payment receipts; receipts for major repairs, maintenance, or improvements of the residence; court documents, a letter from a public official, or, for mobile home or travel trailer owners residing in a commercial park, a letter from the mobile home park owner or manager; or

(3) A person who has verifiable documentation of lifetime occupancy rights with formal title vested in another.

Permanent housing plan means a realistic plan that, within a reasonable timeframe, puts the displaced applicant back into permanent housing that is similar to their pre-disaster housing situation. A reasonable timeframe includes sufficient time within the period of assistance for securing funds and services to repair the home, completing repairs or locating a permanent dwelling, and moving into the dwelling.

* * * * *

Reasonable commuting distance means a distance that does not place undue hardship on an applicant. It also takes into consideration the traveling time involved due to road conditions, e.g., mountainous regions or road closures and the normal commuting patterns of the area.

Recertification means the process that FEMA uses to evaluate an applicant’s eligibility for continued temporary housing assistance under § 206.114.

Repairs means repairs of a quality necessary for a safe and sanitary living or functioning condition.

Safe means secure from hazards or threats to occupants.

Sanitary means free of health hazards.

Serious need means the requirement for an item, or service, that is necessary to an applicant’s ability to prevent,

mitigate, or overcome a disaster-related hardship, injury or adverse condition.

* * * * *

State means, for the purposes of this subpart and where consistent with the requirements of the Stafford Act, any State as defined in § 206.2(a)(22) or Indian tribal government as defined in the Stafford Act (42 U.S.C. 5122(6)).

Uninhabitable means the dwelling is not safe or sanitary.

* * * * *

- 5. Amend § 206.112 by:
 - a. Revising paragraph (b);
 - b. Redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c); and
 - c. Revising the second sentence of newly redesignated paragraph (d).

The additions and revisions read as follows:

§ 206.112 Registration period.

* * * * *

(b) *Extension of the registration period.* FEMA may extend the registration period when the State requests more time to collect registrations from the affected population. FEMA may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States.

(c) *Reopening of the registration period.* After the registration period for the major disaster or emergency has expired, FEMA may reopen the registration period for 60 days only when the President's declaration is amended to include additional counties and only for the additional counties.

(d) *Late registrations.* * * * We will process late registrations for those registrants who explain the reason for the delay in their registration.

- 6. Amend § 206.113 by:
 - a. Revising paragraphs (a) introductory text and (a)(1);
 - b. Removing paragraph (a)(4) and redesignating paragraphs (a)(5) through (a)(9) as paragraphs (a)(4) through (a)(8), respectively;
 - c. Revising newly redesignated paragraphs (a)(4), (5), (7), and (8) and adding paragraph (9);
 - d. Revising paragraphs (b)(1) through (5), (9) and (10).

The addition and revisions read as follows:

§ 206.113 Eligibility factors.

(a) *Conditions of eligibility.* In general, FEMA may provide assistance to individuals and households who qualify for such assistance under the Stafford Act, 42 U.S.C. 5174, and this subpart. FEMA may only provide assistance:

(1) When the individual or household has incurred a disaster-related necessary expense and serious need in the State in which the disaster has been declared, without regard to their residency in that State;

* * * * *

(4) In a situation where the applicant has insurance, but the applicant cannot use their insurance because housing is not available on the private market;

(5) In a situation where the applicant has insurance, when the insured individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance, and that assistance and insurance is insufficient to cover the necessary expense and serious need;

* * * * *

(7) With respect to housing assistance, if the primary residence has been destroyed, is uninhabitable, or is inaccessible;

(8) With respect to housing assistance, if a renter's primary residence is no longer available as a result of the disaster; and

(9) With respect to home repair for accessibility-related items, if an applicant meets the following conditions:

(i) The applicant is either an individual with a disability as defined in 42 U.S.C. 5122 whose disability existed prior to the disaster and whose primary residence was damaged by the disaster, or an individual with a disability as defined in 42 U.S.C. 5122 whose disability was caused by the disaster and whose primary residence was damaged by the disaster;

(ii) The real property component is necessary to meet the accessibility-related need of the household; and

(iii) The real property component is not covered by insurance or any other source.

(b) * * *

(1) For housing or displacement assistance, to individuals or households who are displaced from other than their pre-disaster primary residence;

(2) For temporary housing or displacement assistance, to individuals or households who have adequate rent-free housing accommodations;

(3) For temporary housing or displacement assistance, to individuals or households who own a secondary or vacation residence within reasonable commuting distance to the disaster area, or who own available rental property that meets their temporary housing needs;

(4) For temporary housing or displacement assistance to individuals or households who evacuated the

residence in response to official warnings solely as a precautionary measure and are able to return to and safely occupy the residence immediately after the incident;

(5) For housing assistance, for improvements or additions to the pre-disaster condition of property, except for the following:

(i) Improvements or additions required to make repairs that comply with local and State ordinances;

(ii) Eligible hazard mitigation measures; or

(iii) Accessibility-related items for individuals with disabilities, consistent with paragraph (a)(9) of this section;

* * * * *

(9) For business losses, including farm businesses; or

(10) For any items not otherwise authorized by §§ 206.117 and 206.119.

- 7. Revise § 206.114 to read as follows:

§ 206.114 Criteria for continued or additional assistance.

(a) *General.* FEMA expects all recipients of assistance under this subpart to obtain and occupy permanent housing at the earliest possible time. FEMA may provide initial and continued temporary housing assistance, financial or direct, upon request during the period of assistance, based on need, and generally only when adequate, alternate housing is not available or when the permanent housing plan has not been fulfilled through no fault of the applicant.

(b) *Rental assistance.* FEMA may provide initial financial assistance for rent, also known as initial rental assistance, as described in § 206.117(b)(1)(i), to displaced eligible applicants to rent alternate housing accommodations for an initial time period established by FEMA.

(1) FEMA may periodically recertify all displaced applicants who received initial rental assistance and request continued rental assistance. All displaced applicants requesting continued rental assistance must take the following actions at certain points throughout the recertification process:

(i) Submit rent receipts to show that they have exhausted or will exhaust previously provided funds;

(ii) Provide documentation demonstrating they lack the financial ability to pay their post-disaster housing costs and have a continued need for rental assistance;

(iii) Establish a realistic permanent housing plan; and

(iv) Provide documentation showing that they are making efforts to obtain permanent housing.

(2) FEMA expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. However, FEMA may provide continued rental assistance to pre-disaster renters with a continuing disaster-related housing need.

(c) *Direct housing assistance.* FEMA may provide direct housing assistance as described in § 206.117(b)(1)(ii), to displaced eligible applicants who are unable to make use of financial assistance to rent adequate alternate housing. FEMA may periodically recertify all displaced applicants receiving direct housing assistance for continued direct housing assistance. All displaced applicants who need continued direct housing assistance must take the following actions at certain points throughout the recertification process:

(1) Establish a realistic permanent housing plan; and

(2) Provide documentation showing that they are making efforts to obtain permanent housing throughout the recertification process.

(d) *Other assistance.* FEMA may provide repairs or housing replacement assistance, as described in § 206.117(b)(2) and § 206.117(b)(3), lodging expense reimbursement, as described in § 206.117(b)(1)(i), or other needs assistance, as described in § 206.119, to eligible applicants.

(1) If FEMA requires more information to process an applicant's initial request for assistance, it may request additional information.

(2) After the initial award of assistance, applicants requesting additional assistance for repairs, housing replacement, lodging expense reimbursement, personal property, transportation, child care, medical, dental, funeral, moving and storage, or other necessary expenses and serious needs may submit an appeal as outlined in § 206.115 and will be required to submit information and/or verifiable documentation established via guidance identifying the additional need.

■ 8. Amend § 206.115 by:

- a. Revising the first sentence of paragraph (a) introductory text;
- b. Revising paragraphs (b) and (c) and the second sentence of paragraph (d);
- c. Removing paragraph (e); and
- f. Redesignating paragraph (f) as paragraph (e) and revising newly redesignated paragraph (e).

The revisions read as follows:

§ 206.115 Appeals.

(a) Under the provisions of the Stafford Act, 42 U.S.C. 5189a, applicants for assistance under this subpart may appeal any determination

of eligibility for assistance made under this subpart. * * *

* * * * *

(b) Appeals must include a written explanation or verifiable documentation for the appeal and meet the requirements of § 206.117, as applicable. See §§ 206.117(b)(2)(vi), 206.117(b)(3)(iv), and 206.117(b)(4)(iii). If someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent them. If a written explanation is submitted, it must be signed by the applicant or a person the applicant designates to represent them.

(c) Applicants must appeal to FEMA for decisions made under this subpart, unless FEMA has made a grant to the State to provide assistance to individuals and households under § 206.120(a), State administration of other needs assistance; then the applicant must appeal to the State.

(d) * * * If someone other than the applicant is submitting the request, then the applicant must also submit a signed statement giving that person authority to represent them.

(e) FEMA or the appropriate State official will review the original decision after receiving the appeal. FEMA or the State, as appropriate, will give the appellant a written notice of the disposition of the appeal and a reason for the determination within 90 days of receiving the appeal. The decision of the FEMA or State appellate authority is final.

■ 9. Amend § 206.117 by:

- a. In paragraph (a):
- i. Removing the definition of “Caused by the disaster”;
- ii. Adding the definition of “Multifamily Rental Housing”; and
- iii. Revising the definition of “Real Property Component” or “Component”;
- b. Revising paragraphs (b)(1)(i), (b)(1)(ii)(A) through (C) and (E);
- c. Redesignating paragraphs (b)(1)(ii)(F) through (I) as paragraphs (b)(1)(ii)(G) through (J), respectively, and adding a new paragraph (F);
- d. Revising the first sentence of newly redesignated paragraph (b)(1)(ii)(G), paragraph (b)(1)(ii)(H)(4), and the second sentence of newly redesignated paragraph (b)(1)(ii)(I);
- e. Revising paragraphs (b)(2)(i), (b)(2)(ii) introductory text, (b)(2)(ii)(H), and (b)(2)(iii);
- f. Removing paragraph (b)(2)(iv) and redesignating paragraphs (b)(2)(v) through (vii) as paragraphs (b)(2)(iv) through (vi);
- g. Revising newly redesignated paragraphs (b)(2)(iv) and (b)(2)(vi);

■ h. Revising paragraphs (b)(3) and (b)(4)(i)(A);

■ i. Removing paragraph (b)(4)(i)(B) and redesignating paragraphs (C) through (F) as paragraphs (B) through (E); and

■ j. Revising newly redesignated paragraph (b)(4)(i)(E) and the first two sentences of (b)(4)(iii).

The additions and revisions read as follows:

§ 206.117 Housing assistance.

(a) * * *

“*Multifamily Rental Housing*” means a rental property that contains three or more dwelling units contained within one building, each such unit providing complete and independent living facilities for one or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

“*Real Property Component*” or “*Component*” means each individual part of a dwelling as enumerated in paragraph (b)(2)(ii) of this section.

* * * * *

(b) *Types of housing assistance*—(1) *Temporary housing assistance*—(i) *Rental assistance.* Eligible displaced applicants may receive rental assistance to rent alternate housing resources. FEMA may also provide assistance for the reasonable cost of any transportation, utility hookups, or installation of a manufactured housing unit or recreational vehicle to be used for housing. This may include lodging expense reimbursement for reasonable short-term lodging expenses for individuals or households who have not received displacement assistance (See § 206.119(b)(2)) in the immediate aftermath of a disaster.

(A) FEMA will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless FEMA determines that the size or nature of the household requires that we provide assistance for more than one residence.

(B) FEMA will base the amount of assistance on the current fair market rent for existing rental units. FEMA will further base the applicable rate on the location of the rental unit and the number of bedrooms the household requires, as determined by FEMA.

(C) Rental assistance may include the payment of the cost of utilities, excluding telephone, cable, television, and internet service.

(D) Rental assistance may include the payment of the cost of security deposits, not to exceed an amount equal to the fair market rent for one month, as determined under paragraph (b)(1)(i)(B) of this section.

(E) Applicants that receive displacement assistance under § 206.119(b)(2) must request rental assistance if their disaster-caused temporary housing needs continue once displacement assistance is exhausted.

(ii) *Direct assistance.* (A) FEMA may provide direct assistance in the form of purchased or leased temporary housing units directly to displaced applicants who lack available housing resources and are unable to make use of the assistance provided under paragraph (b)(1)(i) of this section.

(B) FEMA will include all members of a pre-disaster household in a single application and will provide assistance for one temporary housing unit, unless FEMA determines that the size or nature of the household requires that we provide assistance for more than one temporary housing unit.

(C) Any site upon which a FEMA-provided temporary housing unit is placed must comply with applicable State and local codes and ordinances, as well as 44 CFR part 9, Floodplain Management and Protection of Wetlands, and all other applicable environmental and historic preservation laws, regulations, Executive orders, and agency policy.

* * * * *

(E) FEMA-provided or funded temporary housing units may be placed in the following locations:

(1) A commercial site that is complete with utilities, when FEMA determines that the upgrading of commercial sites, or installation of utilities on such sites, will provide more cost-effective, timely and suitable temporary housing than other types of resources.

(2) A private site that an applicant provides, complete with utilities, when FEMA determines that the cost of installation or repairs of essential utilities on private sites will provide more cost effective, timely, and suitable temporary housing than other types of resources.

(3) A group site that accommodates two or more temporary housing units and is complete with utilities, provided by the State or local government, when FEMA determines that the cost of developing a group site provided by the State or local government, to include installation or repairs of essential utilities on the sites, will provide more cost effective, timely, and suitable temporary housing than other types of resources.

(4) A group site provided by FEMA, if determined that such a site would be more economical or accessible than one that the State or local government provides.

(F) If FEMA determines it would be a cost-effective alternative to other temporary housing options, FEMA may enter into lease agreements with owners of multifamily rental housing properties to house displaced applicants eligible for assistance under this subpart.

(1) FEMA may only enter into lease agreements with owners of multifamily rental housing properties impacted by a major disaster or located in areas covered by a major disaster declaration.

(2) FEMA may make repairs or improvements to properties under such lease agreements, to the extent necessary to serve as temporary housing, provided, however, that the value of the improvements or repairs must be deducted from the value of the lease agreement.

(G) After the end of the 18-month period of assistance, FEMA may begin to charge up to the fair market rent for each temporary housing unit provided.

* * *

(H) * * *
(4) The occupant(s) failed to comply with any term of the lease/rental agreement or other rules of the site where the temporary housing unit is located; or

* * * * *

(I) * * * This notice will specify the reasons for termination of assistance and occupancy, the date of termination, the procedure for appealing the determination, and the occupant's liability for such additional charges as FEMA deems appropriate after the termination date, including fair market rent for the unit.

* * * * *

(2) *Repairs.* (i) FEMA may provide financial assistance for the repair of an owner-occupied primary residence if:
(A) The eligibility criteria in § 206.113 are met;

(B) FEMA determines the dwelling was damaged by the disaster; and,

(C) The damage is not covered by insurance.

(ii) FEMA may provide financial assistance for the repair of the disaster damaged dwelling to a safe and sanitary living or functioning condition including:

* * * * *

(H) Eligible hazard mitigation measures.

(iii) FEMA financial assistance for the repair of disaster damage will be limited to repairs of a quality necessary for a safe and sanitary living or functioning condition. In some instances, when the extent of the damage is unclear, FEMA may provide assistance for the average cost of a licensed technician's professional assessment. FEMA may

provide for the replacement of a component if repair is not feasible.

(iv) Eligible individuals or households may receive up to the maximum amount of assistance (See § 206.110(b)) to repair damage to their primary residence irrespective of other financial resources, except insurance proceeds.

* * * * *

(vi) If the applicant disputes a determination made by FEMA regarding eligibility for repair assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. In addition to the requirements in § 206.115, the applicant must provide proof that the component meets the requirements of paragraph (b)(2)(i) of this section. If the applicant disputes the amount of repair assistance awarded, the applicant must also provide justification for the amount sought.

(3) *Housing replacement.* (i) FEMA may provide financial assistance for the replacement of an owner-occupied primary residence if:

(A) The eligibility criteria in § 206.113 are met;

(B) The residence was destroyed by the disaster; and

(C) The damage to the residence is not covered by insurance.

(ii) If replacement assistance is granted, the applicant may either use the maximum amount of assistance (See § 206.110(b)) to replace the dwelling in its entirety, or may use the assistance toward the cost of acquiring a new permanent residence.

(iii) Housing replacement assistance will be based on the average replacement cost established by FEMA for the type of residence destroyed, or the statutory maximum (See § 206.110(b)), whichever is less.

(iv) If the applicant disputes a determination made by FEMA regarding eligibility for replacement assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. In addition to the requirements in § 206.115, the applicant must provide proof that repair is not feasible, or will not ensure the safety or health of the occupant. If the applicant disputes the amount of replacement assistance awarded, the applicant must also provide justification for the amount sought.

(4) * * *

(i) * * *

(A) The eligibility criteria in § 206.113 are met;

* * * * *

(E) The residence is in a location where alternative housing resources are not available and the types of financial

or direct temporary housing assistance described in paragraphs (b)(1), (2), and (3) of this section are unavailable, infeasible, or not cost-effective.

* * * * *

(iii) If the applicant disputes a determination made by FEMA regarding eligibility for construction assistance, the applicant may appeal that determination pursuant to the procedures in § 206.115. In addition to the requirements in § 206.115, the applicant must provide proof that the property is in a location where alternative housing resources are not available. * * *

■ 10. Revise § 206.118 to read as follows:

§ 206.118 Disposal of housing units.

(a) FEMA may sell temporary housing units purchased under § 206.117(b)(1)(ii), Temporary housing, direct assistance, as follows:

(1) *Sale to an occupant.* (i) FEMA may sell a temporary housing unit to the occupant, if they lack permanent housing and have a site that complies with local codes and ordinances and part 9 of this Title.

(ii) FEMA may approve adjustments to the sales price when selling a temporary housing unit to the occupant if the occupant is unable to pay the fair market value of the temporary housing unit and when doing so is in the best interest of the occupant and FEMA.

(iii) FEMA may sell a temporary housing unit to the occupant only on the condition that the purchaser agrees to obtain and maintain hazard insurance, as well as flood insurance on the temporary housing unit if it is or will be in a designated Special Flood Hazard Area.

(2) *Other methods of disposal.* (i) FEMA may sell, transfer, donate, or otherwise make a temporary housing unit available directly to a State or other governmental entity, or to a voluntary organization, for the sole purpose of providing temporary housing to eligible displaced applicants in major disasters and emergencies. As a condition of the sale, transfer, or donation, or other method of provision, the State, governmental entity, or voluntary organization must agree to:

(A) Comply with the nondiscrimination provisions of the Stafford Act, 42 U.S.C. 5151; and

(B) Obtain and maintain hazard insurance on the temporary housing unit, as well as flood insurance if the housing unit is or will be in a designated Special Flood Hazard Area.

(ii) FEMA may also sell temporary housing units at a fair market value to any other person.

(b) A temporary housing unit will be sold “as is, where is”, except for repairs FEMA deems necessary to protect health or safety, which are to be completed before the sale. There will be no implied warranties. In addition, FEMA will inform the purchaser that they may have to bring the installation of the temporary housing unit up to codes and standards that are applicable at the proposed site.

■ 11. Revise § 206.119 to read as follows:

§ 206.119 Financial assistance to address other needs.

(a) *Purpose.* FEMA and the State may provide financial assistance to individuals and households who are adversely affected by a major disaster and have other verifiable, documented disaster-related necessary expenses or serious needs.

(b) *Types of assistance.* (1) *Serious needs.* Necessary expenses to assist applicants who report they are displaced as a result of the disaster, who report a need for shelter as a result of the disaster, or who have other emergency disaster expenses. These needs will vary according to each applicant and FEMA will not require receipts documenting the use of this assistance. FEMA will adjust the amount of this assistance to reflect changes in the CPI for all Urban Consumers that the Department of Labor publishes.

(2) *Displacement.* Necessary expenses to assist displaced applicants with short-term living arrangements immediately following a disaster. Applicants must have registered within the 60-day or extended registration period. The award amount is based on a time period established by FEMA and approved in the State Administrative Option, as required by § 206.120(b). FEMA will not require receipts documenting the use of this assistance.

(3) *Medical and dental.* Necessary expenses to assist applicants with medical and dental costs, which may include the following:

- (i) Medical service costs;
- (ii) Dental service costs;
- (iii) Repair or replacement of medical or dental equipment;
- (iv) Loss or injury of a service animal; and

(v) Costs for prescription medicines related to eligible medical or dental services, or which need to be replaced due to the disaster.

(4) *Child care.* Necessary expenses to assist applicants with child care costs, which may include the following:

- (i) Standard child care service fees, including personal assistance services

that support activities of daily living for children with disabilities; and

(ii) Registration and health inventory fees for applicants who require a new child care provider.

(5) *Funeral.* Necessary expenses to assist applicants with funeral costs, which may include the following:

- (i) Funeral services;
- (ii) Burial or cremation; and
- (iii) Other related funeral expenses.

(6) *Personal property.* Necessary expenses to assist applicants whose primary residences were damaged by the disaster with personal property costs, which may include the following:

- (i) Clothing;
- (ii) Household items, furnishings or appliances;
- (iii) Computing devices;
- (iv) Essential tools, specialized or protective clothing, computing devices, and equipment required for employment;
- (v) Computing devices, uniforms, schoolbooks and supplies required for educational purposes; and
- (vi) Cleaning or sanitizing any eligible personal property item.

(7) *Transportation.* Necessary expenses to assist applicants with transportation costs, which may include the following:

- (i) Repairing or replacing vehicles;
- (ii) Public transportation; and
- (iii) Other transportation related costs or services.

(8) *Moving and storage.* Necessary expenses to assist applicants whose primary residences were damaged by the disaster with costs related to moving and storing personal property, which may include the following:

- (i) Moving and storing personal property to avoid additional disaster damage;
- (ii) Storage of personal property while disaster-related repairs are being made to the primary residence; and
- (iii) Return of the personal property to the individual or household’s primary residence.

(9) *Group Flood Insurance purchase.* Individuals identified by FEMA as eligible for assistance for flood insurable damage under the Stafford Act, 42 U.S.C. 5174, as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a special flood hazard area (SFHA) may be included in a Group Flood Insurance Policy (GFIP) established under the National Flood Insurance Program (NFIP) regulations at 44 CFR 61.17.

(i) The premium for the GFIP is a necessary expense within the meaning of this section. FEMA or the State must withhold this portion of the Other Needs award and provide it to the NFIP

on behalf of individuals and households who are eligible for coverage. The coverage must be equivalent to the maximum assistance amount established under the Stafford Act, 42 U.S.C. 5174.

(ii) FEMA or the State IHP staff must provide the NFIP with records of individuals who received assistance for flood-insurable losses within a SFHA and are to be insured through the GFIP. Records of applicants to be insured must be accompanied by payments to cover the premium amounts for each applicant for the 3-year policy term. The NFIP will then issue a Certificate of Flood Insurance to each applicant. Flood insurance coverage becomes effective on the 30th day following the receipt of records of GFIP insureds and their premium payments from the State or FEMA, and such coverage terminates 36 months from the inception date of the GFIP, which is 60 days from the date of the disaster declaration.

(iii) Insured applicants would not be covered if they are determined to be ineligible for coverage based on a number of exclusions established by the NFIP. Therefore, once applicants/policyholders receive the Certificate of Flood Insurance that contains a list of the policy exclusions, they should review that list to see if they are ineligible for coverage. Those applicants who fail to do this may find that their property is, in fact, not covered by the insurance policy when the next flooding incident occurs and they file for losses. Once the applicants find that their damaged buildings, contents, or both, are ineligible for coverage, they should notify the NFIP in writing in order to have their names removed from the GFIP, and to have the flood insurance maintenance requirement expunged from the data-tracking system.

(10) *Miscellaneous.* Other miscellaneous items or services that FEMA, in consultation with the State, determines are necessary expenses and serious needs.

Subpart E—[Removed and Reserved]

■ 12. Remove and reserve Subpart E, consisting of §§ 206.131 through 206.140.

Subpart F—Other Individual Assistance

- 13. Amend § 206.191 by:
 - a. Revising paragraphs (a), (b)(1), (d)(2)(ii) through (iv);
 - b. Revising the first sentence of paragraph (d)(4) introductory text and paragraph (d)(4)(ii);
 - c. Revising paragraph (e)(1)(i), (e)(2) introductory text, the second sentence

of (e)(2)(iii), (e)(3) through (5) and paragraph (f); and

■ e. Adding paragraph (g).

The addition and revisions read as follows.

§ 206.191 Duplication of benefits.

(a) *Purpose.* This section establishes the policies for implementing the Stafford Act, 42 U.S.C. 5155, entitled Duplication of Benefits. This section relates to assistance for individuals and families.

(b) * * *

(1) Federal agencies providing disaster assistance under the Act or under their own authorities triggered by the Act, must cooperate to prevent and rectify duplication of benefits, according to the general policy guidance of the Federal Emergency Management Agency. The agencies must establish appropriate agency policies and procedures to prevent duplication of benefits.

* * * * *

(d) * * *

(2) * * *

(ii) Housing assistance pursuant to the Stafford Act, 42 U.S.C. 5174;

(iii) Other Needs assistance, pursuant to the Stafford Act, 42 U.S.C. 5174;

(iv) Small Business Administration and Department of Agriculture disaster loans;

* * * * *

(4) If following the delivery sequence concept would adversely affect the timely receipt of essential assistance by an individual or household, an agency may offer assistance which is the primary responsibility of another agency. * * *

* * * * *

(ii) In the case where the individual or household has refused assistance from Agency A, Agency A must notify Agency B that it must recover assistance previously provided.

(e) * * *

(1) * * *

(i) In making an eligibility determination, FEMA, in the case of federally operated programs, or the State, in the case of State operated programs, must determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way.

* * * * *

(2) *Programs under the Act vs. insurance.* In making an eligibility determination, FEMA or the State must:

* * * * *

(iii) * * * Where flood insurance is involved, FEMA must coordinate with

the Federal Insurance Administration. * * *

(3) *Random sample.* Each disaster assistance agency is responsible for preventing and rectifying duplication of benefits under the general authority of the Stafford Act, 42 U.S.C. 5155. To determine whether duplication has occurred and established procedures have been followed, FEMA must, within 90 days after the close of the disaster assistance program's application period, for selected disaster declarations, examine on a random sample basis, FEMA's and other government and voluntary agencies' case files and document the findings in writing.

(4) *Duplication when assistance under the Act is involved.* If duplication is discovered, FEMA must determine whether the duplicating agency followed its own remedial procedures.

(i) If the duplicating agency followed its procedures and was successful in correcting the duplication, FEMA will take no further action. If the agency was not successful in correcting the duplication, and FEMA is satisfied that the duplicating agency followed its remedial procedures, no further action will be taken.

(ii) If the duplicating agency did not follow its duplication of benefits procedures, or FEMA is not satisfied that the procedures were followed in an acceptable manner, then FEMA must provide an opportunity for the agency to take the required corrective action. If the agency cannot fulfill its responsibilities for remedial action, FEMA must notify the recipient of the excess assistance, and after examining the debt, then as appropriate, take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at FEMA's discretion).

(5) *Duplication when assistance under other authorities is involved.* When the random sample shows evidence that duplication has occurred and corrective action is required, FEMA must urge the duplicating agency to follow its own procedures to take corrective action, and must work with the agency toward that end. Under its authority in the Stafford Act, 42 U.S.C. 5155, FEMA must require the duplicating agency to report to FEMA on the agency's attempt to correct the duplications identified in the sample.

(f) *Recovering FEMA funds: debt collection.* Funds due to FEMA are recovered in accordance with the Department of Homeland Security's Debt Collection Regulations (6 CFR part 11—Claims) and the Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (31

CFR chapter IX). Section 1216 of the Disaster Recovery Reform Act of 2018, 42 U.S.C. 5174a, also provides FEMA the authority to waive debts owed by individuals and households who received assistance under subpart D of this part.

(g) *Severability*. Any provision of this section held to be invalid or

unenforceable as applied to any person or circumstance should be construed so as to continue to give the maximum effect to the provision permitted by law, including as applied to persons not similarly situated or to dissimilar circumstances, unless such holding is that the provision of this section is invalid and unenforceable in all

circumstances, in which event the provision should be severable from the remainder of this section and should not affect the remainder thereof.

Deanne Criswell,
*Administrator, Federal Emergency
Management Agency.*

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