

# FEMA & Other Disaster Benefits

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# Intro

- This resource is a general outline only, intended to help lawyers, advocates and survivors navigate the systems/structures in place following a federally declared disaster.
- When necessary, seek help from a lawyer who can assist you in handling claims and many of the issues you will encounter in your recovery.

# What triggers FEMA Assistance?

- Presidential declaration of “major disaster”
  - La. Severe Storm & Flood Disaster Declaration: **8/16/2016**
  - Disaster #: **DR-4277**
- Federal assistance supplements resources of state and local governments and voluntary relief organizations.
- Applicable Law: **Stafford Act**, as amended **42 U.S.C. §5121 et. seq.**

[www.fema.gov/pdf/about/stafford\\_act.pdf](http://www.fema.gov/pdf/about/stafford_act.pdf)

# Who's eligible?

- To provide financial assistance and direct assistance,
- to **ELIGIBLE** individuals and households
- who as a **direct result** of a major disaster or emergency,
- have **UNINSURED or UNDERINSURED**, necessary expenses and serious needs and
- have no other means to meet those needs.

# Registration Deadline – 206.112

- **60 days** but can be extended
  - Deadline to apply: **October 13, 2016**
  - by regional director or his designee
- **Late registrations accepted**
  - 60 days after standard or extended period
  - Good cause shown
  - Suitable documentation and justification for delay in registration

# Documents and Items You Need To Apply

- Social Security number
- Current and pre-disaster address
- A telephone number where you can be contacted
- Insurance information
- Total household annual income
- Bank routing and account number (only necessary if you want to have disaster assistance funds transferred directly into your bank account).
- A description of your losses that were caused by the disaster. (Pictures if available.)

# Hierarchy for Relief & Recovery

1. Red Cross
  2. Other voluntary relief efforts
  3. Insurance proceeds
  4. Small Business Administration (SBA) loans for personal and business use
  5. FEMA benefits
  6. Can also get welfare, unemployment, food stamp, Medicaid, other benefits
- \* See Handout: Sources of Financial Help After a Disaster

# FEMA Assistance

## Individuals and Households Program (IHP) 44 CFR 206.101-120

- Direct financial assistance.
- Housing assistance. (206.117)
- Other needs assistance (“ONA”). (206.119)



# Limits of IHP

- **\$34,900** monetary limit
  - Includes: all direct financial assistance and rental assistance paid to landlord.
  - Changes Total monetary limit **per household** changes yearly (annual CPI adjustment).
- Unpaid FEMA debts (*i.e. old FEMA claims*) should not be offset against amounts to which an applicant is entitled.
- FEMA considers applicant's financial situation except with rental assistance requests by homeowners.

# Limits of IHP

- IHP is NOT designed to make people whole after a disaster.
- NOT designed to replace a home or even cover all disaster-related expenses.
- Inadequate Insurance not supplemented by FEMA. Applicant only eligible for FEMA assistance if insurance does not cover a category that FEMA does (e.g., no contents insurance – may be eligible for FEMA ‘personal property’ assistance).

# Housing Assistance

## Basic requirement:

- Renters and homeowners.
- Primary residence.
- destroyed, inaccessible, or uninhabitable.

**NOTE:** This means that those homeless at the time of the disaster are ineligible.

# Housing Assistance

Assistance may include:

- **Rental Assistance** :

- Financial: Money for rent, transportation, & utility hookups
  - ~~Will not pay for rental security deposit~~
  - ~~Will not pay utilities that are not part of rent~~
- for both displaced homeowners and former renters who cannot find affordable rentals
- Continued Assistance Requests: renewable for up to 18 months; FEMA much stricter on renewal applications of former renters;
  - Renewal applicants must have receipts to show use of prior aid.
  - Housing plan shows moving toward affordable permanent housing

- **Temporary shelter** in hotels, mobile homes (trailers), boats, or housing on military bases.

- ~~Doesn't count against total aid cap. b/c not direct payment to applicant.~~

- **Home Repair Funds** – damaged homes

- **Home Replacement Funds** - housing destroyed, but subject to the cap on assistance.

# Tip: Housing Plans

- FEMA wants to know the applicant's plan to get affordable permanent housing. Examples:
  - if homeowner, plan might be making repairs or
  - returning to prior housing
  - plan to return to prior home when utilities restored or landlord makes repairs
  - plan to buy new home
  - plan to relocate to different area without FEMA rental help

# Ineligible persons

- Non –disaster related displacement
- Non-primary residence displacement
- Persons with adequate rent-free housing alternatives
- Persons with secondary or vacation home within ***reasonable commuting distance*** to disaster area
- Persons who own rental property that meets their temporary housing needs
- Persons in shared household situation and pre-disaster roommates

# Termination of Housing Assistance

- Have received for **18 months** (unless extended by FEMA)
- Maxed out aid cap (\$33,000)
- Adequate alternate housing is available
- Got into it through misrepresentation/fraud
- ***Fail to comply with lease/rental agreement (applicant breaks lease)***
- ***Do not provide evidence that you are working towards a permanent housing plan (if no good cause)***
- Notice and Right to Appeal:
  - 15 day notice to terminate for unit—tenants have appeal rights; consider action in state court to challenge

# Other Needs Assistance (ONA)

206.119



# Other Needs Assistance (ONA)

FEMA may cover **disaster-related**:

- Personal Property loss: Clothing, furnishings, appliances, tools for jobs, educational materials
- Medical and dental costs
- Replacement or repair of necessary medical items
- Disaster-related funeral and burial costs
- Cleaning and sanitization of property
- Vehicles damaged by the disaster
- Moving and storage costs

# Tip for Advocates

- Some amounts may be set by FEMA. Check website for press releases on policy guidance.
- Other amounts are determined based on a ***pattern*** you will be able to identify as you work with clients.
- Expect disparities in amounts and types of assistance provided.
- Be willing to advocate based on the regulations.

# Appeals

42 U.S.C. §5189a (Sec. 423 of the Stafford Act)

44 C.F.R. §206.115 (Appeals)

# Can Appeal Any Eligibility-Related Decision

- Eligibility for assistance, including recoupment;
- **Amount** or type of assistance;
- **Cancellation** of an application;
- **Rejection** of a late application;
- **Denial of continued assistance** under 206.114
- FEMA's intent to collect rent on housing provided by FEMA;
- **Termination of direct housing assistance**;
- Denial of request to purchase FEMA-provided housing unit;
- Sales price of such housing unit;
- "Any other eligibility-related decision."

44 C.F.R. §206.115 (a)

# Appeal Requirements

## REQUIREMENTS

- In writing - 44 C.F.R. §206.115(b);
- Explain reason(s) for the appeal - 44 C.F.R. §206.115(b);
- Must be **signed by the applicant or authorized representative** (who must also include a form meeting FEMA requirements, signed by applicant) - 44 C.F.R. §206.115(b);
  - FEMA form 009-0-3
- Postmark or fax within 60 days of FEMA's decision - 44 C.F.R. 206.115 (a). FEMA mailing address & fax number on the decision.

## CHALLENGES

- Paper Only
- Hearsay & other deficient evidence unchallenged.
- FEMA decision maker invisible.
- Inability to challenge ex parte contacts by FEMA.
- Inability to present live testimony.
- Inability to cross-examine adverse witnesses.

# Recommended Inclusions

- Any due process or other legal objections.
- **All** evidence you want considered with the appeal, in whatever form available and relevant to the claim (e.g., affidavits, declarations or other statements, receipts, any type of documentation).
- Don't assume appeal adjudicators will review FEMA file; include copy of full file or selected portions if sufficient; if you seek judicial review have in your appeal everything you want a court to see.
- Any need for accommodation, or argument of illegal discrimination, should be thoroughly documented.

# FLOOD INSURANCE

# Flood Bar Issue

- Flood zone recipients of FEMA aid are required to purchase and maintain flood insurance “for at least the assistance amount” on the flood-damaged property. 44 C.F.R. §206.110(k)(3).
- **Homeowners** must maintain flood insurance for as long as the address exists, and the flood insurance requirement “is reassigned to any subsequent owner.” 44 C.F.R. §206.110(k)(3)(1)(A).
- **Renters** must keep flood insurance “on the contents” for as long as they reside at the flood-damaged unit. 44 C.F.R. §206.110(k)(3)(1)(B).
- Those who do not comply are not eligible for future FEMA assistance on the same flood-damaged property. §206.110(k)(3); §206.113(b)(8).



# What you should know...

- FEMA may not have the facts right.
- FEMA should prove the prior assistance amount and that the recipient was informed of the future obligation.
- If a prior owner was the recipient, argue that FEMA should prove that your client received notice. But if you can prove the opposite, document this in your appeal.
- FEMA may have sent notice of the obligation to a wrong address.
- Document thoroughly.

# SBA Loans

SBA Disaster Loans 15 U.S.C. § 636 (b), (c)

Regulations 13 C.F.R. § 123 et seq.

Agency website [www.sba.gov](http://www.sba.gov)

# SBA Loans

- Completed SBA **loan application** may be required by FEMA for ONA
- **not for housing programs assistance**
- **Eligibility:** 1) credit history, 2) ability to repay and 3) collateral for losses about \$25,000 for some loans, but not all.
- **Summary denials** (e.g., very low income/resources) may be done by FEMA and SBA
  - You will need to push FEMA and SBA on this
- SBA loan **decisions can be appealed**

# SBA Loan Types

- Personal/Real Property Replacement
  - Homeowners and renters
  - Repair or replace disaster damages to primary residence (up to \$200,000) or personal property (up to \$40,000)
  - May be secured or unsecured
- Physical Disaster Business Loans
- Economic Injury Disaster Loans

See handout.

# Lessons learned...

- Loans are very attractive (esp. to low-income folks)
  - Low interest rate (0% - 5%)
  - Small payments
  - Short term
- Defaulted borrowers who ignore these face tough collections, including wage garnishments and foreclosure.
- Frequently causes trouble for homeowners seeking loan modifications, DILs, Short Sales on primary loans.
- Dischargeability in bankruptcy?

# Other Disaster Assistance

# Disaster Unemployment Assistance ("DUA")

- Application **Deadlines: September 15, 2016**
  - See [www.laworks.net](http://www.laworks.net) for any changes
  - Info needed: SSN, check stub/proof of self-employment
- Up to \$247/week
- Up to 26 weeks if unemployment continues because of disaster

# DUA - Eligibility

- Unemployed workers/ self-employed who:
  - Became unemployed as a direct result of the disaster
  - Are not eligible to receive regular unemployment insurance
- Or those who:
  - Become breadwinner after head of HH dies in disaster
  - Become unemployed due to disaster-sustained injury
  - Can't reach their job due to disaster
  - Were scheduled to start a job but can't due to disaster



# DUA decisions

- Decisions arrive by mail generally (check your state).
- Keep address current and monitor mail.
- **Denials can be appealed but act quickly**; usually there's a short appeal period (check your state law)
- **DUA overpayments are not waivable** as a matter of federal law; check your state law for collection relief rights on regular UI overpayments.

# Disaster Food Stamps (“D-SNAP”)

- SNAP (Supplemental Nutrition Assistance Program) = formerly Food Stamps.
- D-SNAP = Cash assistance for ***new and ongoing FS recipients***
- Usual SNAP financial eligibility rules relaxed.
- D-SNAP resources: [www.fns.usda.gov/disaster/disaster-assistance](http://www.fns.usda.gov/disaster/disaster-assistance)

# D-SNAP/SNAP– Applying

- Check with the agency that administers the food stamp (SNAP) program in your state.
- Many eligible for regular SNAP benefits have never applied; advise of possible dual eligibility.
- Assistance denials can be appealed.

# FEMA Recoupment

6 CFR Part 11 (Dept. of Homeland Security)

31 CFR Parts 900-904 (Dept. of Treasury)

44 CFR Part 206 (Federal Disaster Assistance)

See also “FEMA Debt Resolution Process: In Summary” at [www.regulations.gov](http://www.regulations.gov)  
under Docket ID FEMA-2009-0003.

**NOTE:** Past uncollected debt should  
not preclude receipt of new disaster  
assistance.

# FEMA's Authority To Recover Overpaid Assistance.

## 44 C.F.R. §206.116 Recovery of Funds

(a) The ***applicant must agree to repay to FEMA*** (when funds are provided by FEMA) and/or the State (when funds are provided by the State) from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA and/or the State exceed the amount that the applicant recovers from insurance or any other sources.

(b) An ***applicant must return funds*** to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

# FEMA Recoupment

## WHAT

- Expedited Assistance
- Personal Property Assistance
- Transitional Housing Assistance
- Rental Assistance
- Transportation Assistance
- Any other kind of assistance

## WHY

- Duplication of benefits - single household
- Duplication of benefits – insurance
- Damaged dwelling not primary residence
- Failure to maintain flood insurance
- Overpayment of assistance (e.g. Personal Property)

# Collection Process Step by Step

## Step 1: Notice of Debt (Written demand for payment)

6 C.F.R. §11.3; 33 C.F.R. §901.2

- Resolution Options:
  - Pay in full
  - Ask for repayment plan
  - Ask for compromise of debt
  - Appeal
  - Ignore it (not the best idea)
  
- Timeline:
  - **30 days**: **pay in full** or FEMA starts to charge interest
  - **60 days**: deadline to **appeal**
  - **90 days**: deadline to **set up repayment plan** to avoid financial penalties (6% per year)
  - **120 days**: no appeal or appeal denied, FEMA turns case over to Treasury Department for collection

# If FEMA Proceeds with Collection

- **Step 2** is a Letter of Intent from the FEMA Finance Center letter = “last chance to pay or resolve debt” notice.
- **Step 3** - Debt will be referred to U.S. Department of the Treasury, which will send a notice explaining its multiple means of collection including:
  - A. Offset of other federal payments, such as Social Security benefits or IRS tax refunds.
  - B. Referral to private collection agency.
  - C. Administrative wage garnishment of federal employees.

Additional fees will be added to the debt once it is final.



# If FEMA Proceeds with Collection

- Certain amounts are protected from recovery, including:
  - A. Debtor's first \$750 a month in Social Security income is exempt.
  - B. Collection in general is limited to 15% of income.

31 CFR § 285.4(e)(1).
- In court actions, exemptions are available that would be available in bankruptcy. 28 U.S.C. § 3014.

# Final Thoughts and Tips

# Resources

- ABA Standing Committee on Disaster Response and Preparedness
- [www.disasterlegalaid.org](http://www.disasterlegalaid.org)
- FEMA's Help after a Disaster  
[www.fema.gov/pdf/assistance/process/help\\_after\\_disaster\\_english.pdf](http://www.fema.gov/pdf/assistance/process/help_after_disaster_english.pdf)