

VII

LEGAL REPRESENTATION IN DISASTER ASSISTANCE CASES

Revised May 2007

The following materials provide an overview of disaster assistance under the Stafford Disaster Relief and Emergency Assistance Act (Stafford Act),^{1/} the steps that a legal assistance program should take to help ensure that this assistance reaches low-income disaster victims, and practice pointers to guide the advocate in representing clients.

I. INITIAL ADVOCACY

Low income people are usually the individuals most severely affected by disasters. FEMA is prohibited by federal law from discriminating based on race, ethnicity and income in administering the Stafford Act.^{2/} However, FEMA is not always sensitive to the realities of the living situations and the needs of low-income people, or to those of racial and language minorities. Much of the responsibility for ensuring that disaster benefits are made equally available to low-income people and people of racial or language minorities will therefore fall on legal assistance programs.

^{1/} 42 U.S.C. §§5121, *et seq.*

^{2/} 42 U.S.C. §5151; 44 C.F.R. §206.11.

Following a disaster, the legal aid advocate can safeguard the rights of low-income people by (1) getting to know the officials and other players involved in providing disaster assistance, (2) advocating quickly for emergency and other programs needed by low-income disaster victims, (3) ensuring that helpful information and services are reaching low-income disaster victims, (4) advocating for needed extensions of application deadlines, and (5) providing legal representation to enforce the rights of low-income disaster victims to disaster assistance.

A. Contacting Officials and Other Players

Immediately after the Declaration of Disaster, Florida Legal Services (FLS) will contact the FEMA Regional Office to determine the name(s) and telephone numbers(s) of the Federal Coordinating Officer (FCO) and the Disaster Recovery Manager (DRM). FLS will obtain the name(s) and telephone number(s) of the State Coordinating Officer (SCO) and the Governor's Authorized Representative (GAR) from the Governor's office.

Finally, FLS will secure the name and telephone number of the attorney from the Young Lawyer's Division (YLD) of the American Bar Association (ABA) who is responsible for coordinating volunteer lawyers from either the local YLD or YLD headquarters in Virginia. FLS will transmit all of this information to the director of each impacted legal aid program and to the program's identified disaster point persons.

1. Obtaining Background Information

FLS will also obtain and transmit to local programs a copy of the Declaration of Disaster, and any amendments, along with a copy of the FEMA-State

Agreement which is required to be published in the Federal Register.^{3/} From these documents, local legal aid programs can obtain: The date of the Declaration, the incident period (losses must be sustained during this period of time in order to be compensable under disaster relief programs), the geographical area of the disaster, and the types of disaster assistance authorized. If the Declaration states that Financial Assistance to Address Other Needs will be available, FLS will also determine whether FEMA or the state will be administering this program.^{4/} If the state will be administering this program, FLS will obtain and provide to you a copy of the State Administration Plan (SAP), and the name and telephone number of the official who will be responsible for its overall administration.

2. Additional Necessary Contacts

FLS will also obtain the name and telephone number of the state official(s) responsible for setting up the Disaster Food Stamp program, the Disaster Unemployment Assistance program, and the Crisis Counseling program. Since there is considerable latitude in setting up these programs, either FLS will or local legal aid programs should contact the identified state officials as quickly as possible in order to determine the manner in which they intend to implement the programs in the disaster

^{3/} Additional likely sources are the FEMA Regional Office, the FEMA website, www.fema.gov, the Governor's office, and the website of the Florida Division of Emergency Management, www.floridadisaster.org.

^{4/} As of the 2004 hurricane season, FEMA is administering the Financial Assistance to Meet Other Needs program.

area(s). The most important data to obtain are (1) the eligibility criteria, (2) any deadlines for applying, (3) the way in which the benefits will be publicized, (4) where people can apply, and (5) how the benefits will be distributed. The local legal aid program will obtain the name and telephone number of the local official(s) responsible for setting up and/or administering the Disaster Food Stamp program, the Disaster Unemployment Assistance program, and the Crisis Counseling program in their localities. Since there is considerable latitude in setting up these programs, the local program should contact the identified local officials as quickly as possible in order to determine the manner in which they intend to implement the programs in their areas.

In addition, the local legal aid program should contact the local Public Housing Authority and HUD to find out what types of disaster housing programs, such as Section 8 Disaster Vouchers, will be authorized for residents of public housing and for other disaster victims. If public housing has been destroyed or damaged, the legal aid program should also find out from the appropriate public housing authority what arrangements will be made for providing emergency shelter to these residents.

B. Advocating for Emergency and Other Disaster Programs

1. Assessing Your Community's Needs

Legal aid programs will need to begin surveying the community as soon as possible to assess the community's needs for the various types of disaster assistance available under the Stafford Act. For instance, as staff travels around the disaster area, they should begin noting the condition of low-income and public housing, with the goal of compiling a list of destroyed or uninhabitable units, as well as remaining

habitable units.^{5/} While driving, staff should also note whether grocery stores and convenience stores within the disaster area are open, and determine whether any large employers are closed due to disaster caused destruction. Also, when interviewing clients, legal aid staff should ask them about the condition of the housing in which they live and of the housing around them, as well as whether they are in need of food, and whether they have lost a job as a result of the disaster.

With respect to establishing the need for disaster Food Stamps, legal aid staff should find out how long electricity has been interrupted and in what geographic area(s) (to determine the need for Replacement Food Stamps by documenting spoilage of food due to loss of refrigeration). Staff should also ascertain the extent of interruption in the usual means and corridors of transportation, e.g., road passability, bus service, destruction of automobiles, operation of vehicle repair shops as well as the extent of interruption in basic communication channels such as newspaper delivery and radio and television broadcasts (to document the need for Disaster Food Stamps, the need for DCF to advertise the program, and the need to extend the Disaster Food Stamp program).

^{5/} See section IV.A. for suggestions and resources in conducting a census of affordable housing.

Also, when interviewing clients, legal aid staff should ask them about the condition of the housing in which they live and of the housing around them, as well as whether they are in need of food, and whether they have lost a job as a result of the disaster.

Immediately after obtaining the most basic information, local programs should begin to work with FLS to advocate on behalf of low-income disaster victims to obtain appropriate emergency assistance. In particular, legal aid programs should address any issues arising under Disaster Food Stamps immediately, since these benefits are generally awarded within the first few days after the disaster.^{6/}

a. Advocacy for Additional Programs

^{6/} See section III.A.4. re: advocating for Disaster Food Stamps.

As soon as the local program has information regarding the unmet needs of low-income disaster victims, staff should work in conjunction with FLS to advocate for the implementation of any program that will meet these needs but has not yet been authorized by FEMA or some other agency. Low-income housing in particular is likely to have suffered extensive damage. Local programs should therefore immediately begin documenting (1) the extent to which low-income housing has been destroyed or rendered uninhabitable, and (2) whether there is sufficient habitable affordable housing within reasonable commuting distance to meet the needs of dislocated low-income families. If the answer to (2) is no, legal aid staff should begin advocating as soon as possible for mobile homes to provide temporary housing for low-income disaster victims.^{7/} If sufficient housing is available nearby, but it is not affordable, legal aid staff should advocate for Section 8 Disaster Vouchers to be made available to low-income disaster victims.

Requests for additional types of assistance must be addressed to the Governor's Authorized Representative(GAR), since such assistance must be requested from FEMA by the Governor or the GAR.^{8/} The request must be justified by verified assessments by state and local governments as to the need for the assistance and the inability of state and local government to meet the need.^{9/} Because of its knowledge of the low-income community, the legal aid program may be able to provide valuable information

^{7/} See section III.D.4.a, *infra* re: the criteria used by FEMA to determine the necessity for mobile homes and travel trailers.

^{8/} 44 C.F.R. §206.40(c)

^{9/} *Id.*

to assist the state in requesting additional assistance. Intervention by federal legislators may also be helpful.

b. Advocacy Regarding the DRCs

Legal aid programs should visit the Disaster Recovery Centers (DRCs) as soon as possible after they begin to open, and make contact with the FEMA DRC Coordinator. Issues of immediate concern are the locations of the DRCs (FEMA may tend to locate the DRCs outside of low-income communities), publicity regarding the location of the DRCs (FEMA may not provide publicity in a form or in locations accessible to low-income people), and, if there are a significant number of language minorities, the number and training of bilingual staff or translators provided at the DRCs (even if staff fluent in a minority language is hired, such staff may not be adequately trained either with respect to their responsibilities as translators, with respect to disaster benefits, and/or regarding FEMA's administrative process).

C. Ensuring that Low-Income People Receive Information

1. Advocacy Regarding Publicity

Ordinary means of communication are often severely disrupted by a disaster. Since low-income people are likely to be especially badly affected by this, legal aid programs should carefully examine the manner in which FEMA publicizes disaster benefits. Depending on how each type of medium has been affected by the disaster, legal aid staff may need to watch for newspaper, television and radio announcements concerning disaster assistance to make sure that FEMA's public information campaign addresses the needs of the community's low-income people. For

example, if a large portion of the low-income community speaks another language besides English, FEMA should make announcements in their language and use radio and television stations listened to or viewed by them. Also, if the housing of many low-income people has been destroyed, they will have little ability to access information through mass media. In this case, FEMA should distribute flyers at mass feeding sites, tent cities or other sites at which displaced low-income residents gather.

Legal aid programs may also want to make their own public service announcements on radio or television, and to develop and disseminate their own informational flyers. In affected rural areas, it may be necessary to distribute flyers in several languages on a door-to-door basis, something that FEMA is unlikely to do. Since FEMA typically does not widely publicize information regarding application deadlines or the types of disaster assistance that are available, legal aid program flyers that include such information can be very useful to the low-income community.

2. Notice Regarding Disaster Housing Assistance

It is particularly crucial that low-income disaster victims are aware of the types of housing assistance that are available. FEMA can provide either cash rental assistance or mobile homes if both types of housing assistance are allowed under the Declaration of Disaster. But FEMA issues mobile homes only if the disaster victim would be unable to make use of rental assistance.^{10/} If much of the affordable housing stock within the community has been rendered uninhabitable, it is crucial that low-income disaster victims be told of the mobile home option and the need to show that

^{10/} 44 C.F.R. §206.117(1)(ii).

they would be unable to use cash rental assistance because of the lack of available housing.

3. Development of Written Informational Material

Information regarding the range of disaster benefits is one of the most important services a legal assistance office can provide to its client population immediately after a catastrophic disaster. As soon as legal aid staff have gathered some of the most necessary information, they should begin preparing disaster flyers outlining the availability of benefits, and pamphlets regarding legal rights. Included in this manual are model flyers.

4. Dissemination of Materials

Legal aid programs should distribute the flyers and pamphlets they develop as soon as possible at shelters, mass feeding sites, DRCs, and through community and volunteer agencies and churches. In largely destroyed areas, it may require a great deal of effort just to locate these sites. People in rural areas may be particularly isolated and in need of information.

Legal aid programs should also rely on local media such as radio, newspapers and television stations, especially ethnic radio and television stations and ethnic community newspapers in order to better reach more insular communities such as immigrants.

Local programs may also want to use the large number of people who often volunteer to assist after a disaster. These volunteers can (1) go out into the low-income communities to locate mass distribution sites as well as isolated communities, and (2)

physically deliver the flyers and pamphlets to these sites.

II. APPLICATION FOR DISASTER ASSISTANCE

To apply for disaster assistance, people must either go to a FEMA Disaster Recovery Center (DRCS) or apply by telephone. In either case, a FEMA interviewer takes information from the disaster victim, and fills out a one-page application which the applicant is required to sign. The applicant is then given a copy of the application for his/her records. If the application is taken by telephone, a copy is mailed to the applicant. The FEMA application is the basis for determinations of eligibility for the Individual and Household Assistance program. Applicants are referred to other agencies located at the DRC as determined appropriate by the FEMA interviewer.

A. Application Deadlines

A disaster victim must usually “register” for Individual and Household Assistance within 60 days after the Declaration of Disaster; however, FEMA accepts late registrations for an additional 60 days beyond the deadline, if the registrant produces documentation to justify the delay.^{11/} The application deadlines for other programs may be shorter. The application deadline and other standards of eligibility for Disaster Food Stamps are established by the Secretary of Agriculture soon after the disaster.^{12/} Disaster Unemployment Assistance must be applied for within 30 days of the Declaration, but can be applied for later if the applicant shows good cause for late

^{11/} 44 C.F.R. §206.112.

^{12/} 7 C.F.R. §280.1.

filing.^{13/} The application deadline for the Disaster Loan program administered by the SBA is published in the Federal Register following the disaster. The SBA will accept applications beyond the deadline based on a finding of substantial causes beyond the control of the applicant.^{14/}

^{13/} 20 C.F.R. §625.8(a).

^{14/} 13 C.F.R. §123.3(b).

All application deadlines may be extended, unless this would result in an extension of the application deadline beyond the benefit period. The Regional Director or Disaster Recovery Manager (DRM) may extend the registration deadline for Individual and Household Assistance when the state requests more time, or to establish the same deadline for contiguous counties or states.^{15/} Generally, the Governor's Authorized Representative (GAR) must request a modification of the FEMA-State Agreement in order to extend filing deadlines. Modifications must be approved by the FEMA Regional Director, or the Disaster Recovery Manager (DRM).

B. Inspection of the Disaster Dwelling

The homes of all disaster victims who apply for Individual and Household Assistance must be inspected by FEMA-hired inspectors to determine if they can be lived in, and the extent of any damage to the dwelling and/or personal property. In addition to determining the condition of the dwelling and its contents, the inspector also makes a determination as to whether the applicant is an owner or a renter, and whether the applicant is the "head of household." The registration and the inspection report are the sole documents used to make initial determinations of eligibility and the type and amount of assistance for Individual and Household Assistance.

C. Eligibility of Immigrants

^{15/} 44 C.F.R. §206.112(b).

Written FEMA policy requires that applicants for disaster food stamps, disaster unemployment benefits, disaster housing assistance and assistance to meet other needs must be either U.S. citizens or “qualified aliens” as defined under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).^{16/} A copy of FEMA’s policy is attached as Appendix A.

As anyone who has dealt with the “qualified alien” definition in the welfare context will acknowledge, making a determination that someone meets the definition of “qualified alien” is an extremely complex and often time consuming process. It is particularly ill-suited to the type of quick ad-hoc decision making required in a disaster setting. FEMA, which directly administers the disaster housing assistance and usually the assistance to meet other needs as well, is organized to get help to those in need and is antagonistic to rules that hinder that service. As a result, the workers on the ground often used various generalized interpretations of the rule to provide assistance. For example, it was generally accepted by many FEMA workers that a social security card was proof of “qualified alien status” while absence of a social security card/number demonstrated failure to achieve the status. Similarly FEMA instructed workers that they could help an entire family (at least with in-kind assistance) if any member of the family, including a child was eligible. Certainly these were all well intentioned efforts to help families in desperate need. Whether FEMA will make any attempt to recoup the benefits provided in these situations remains to be seen.^{17/}

^{16/} Codified at 42 U.S.C. §§601, *et seq.*

^{17/} Please see Section III.D.4.d. below for a discussion of FEMA’s recoupment process.

III. TYPES OF DISASTER ASSISTANCE AND SPECIFIC LEGAL ISSUES

A. FOOD STAMPS

Food stamps are available in three different situations following a disaster. First, people who are destitute or whose housing expenses are greater than their gross income are entitled to **expedited food stamps**.^{18/} Second, households are entitled to **replacement food stamps** if they were participating in the Food Stamp Program at the time of the disaster and their food was destroyed as a result of the disaster.^{19/} And, third, disaster victims may be eligible for **disaster food stamps** following a disaster, under criteria developed for that particular disaster.^{20/} All three types of food stamps are provided through the state welfare agency.

The availability of **replacement food stamps** and **disaster food stamps** is governed by decisions made by the Food and Nutrition Service of the U.S. Department of Agriculture in conjunction with the state welfare agency following each disaster. In order for Department of Agriculture to authorize issuance of replacement and disaster food stamps, it must find that: (1) the disaster has disrupted commercial channels of food distribution, (2) disaster victims are in need of temporary food assistance, and (3)

^{18/} 7 U.S.C. §2020(e)(9); 7 C.F.R. §273.2(i).

^{19/} 7 U.S.C. §2014(h)(3)(A); 7 C.F.R. §280.1.

commercial channels of food distribution have again become available.^{21/}

Administrative decisions regarding whether to make **replacement food stamps** and **disaster food stamps** available are made within the first few days after the disaster. Because the time frame is so short, FLS will take the lead role in working with state and federal agencies to advocate for this type of assistance. However, local legal aid offices will need to provide FLS with as much background information regarding local conditions as necessary to support FLS advocacy efforts. In addition, because many decisions on implementing the **replacement** and **disaster food stamp** programs are left to local agency discretion, local legal aid programs will need to take the lead role in advocating with local agencies for replacement and disaster stamps in their area(s), for effective notice to potentially eligible households, and for adequate time frames for disaster victims to respond and obtain the food stamps.

1. Expedited Food Stamps

^{20/} 7 U.S.C. §2014(h)(1); 7 C.F.R. §280.1.

^{21/} *Id.*

Expedited food stamps are available to needy people, whether or not a disaster has occurred. An eligible applicant must receive food stamps within seven calendar days of application.^{22/} To be eligible, a person must either have less than \$150 in gross monthly income and \$100 or less in liquid resources, have a combined gross household income that is less than the household's housing expenses, or be a destitute migrant or seasonal worker.^{23/}

2. Replacement Food Stamps

^{22/} 7 C.F.R. §273.2(i)(3)(i).

^{23/} 7 C.F.R. §273.2(i)(1); *see also* 7 C.F.R. §273.10(e)(3)(describing destitute migrant or seasonal farm worker households).

Following a declaration of disaster, the Secretary of Agriculture must provide for issuance of replacement food stamps to households receiving food stamps at the time of the disaster to replace food destroyed during the disaster.^{24/} Replacement food stamps should be at least equal to the amount of food lost but may not be greater than the applicable maximum monthly allotment for the household's size.^{25/}

3. Disaster Food Stamps

After consultation with the Federal Coordinating Officer (FCO), the Secretary may also authorize issuance of food stamps to all disaster victims in households found to be in need of temporary food assistance.^{26/} The eligibility criteria for this type of food stamps are determined by the Secretary after the disaster and may be very broad, so that persons who would not ordinarily be eligible for food stamps are rendered eligible for disaster food stamps.^{27/} The Secretary typically dispenses with normal income and resource criteria and authorizes the maximum food stamp allotment to each disaster-affected household based on its size. The Secretary is also required to

^{24/} 7 U.S.C. §2014(h)(3); 7 C.F.R. §280.1.

^{25/} *Id.*

^{26/} 7 U.S.C. §2014(h)(1); 7 C.F.R. §280.1.

^{27/} *Id.* During a Disaster Food Stamp program, DCF often suspends strict verification requirements because identity papers, including immigration documents, are unavailable after a disaster.

establish a Food Stamp Disaster Task Force to assist states in implementing and operating the disaster food stamp program, and may send members of the Task Force to the disaster area.^{28/}

4. Advocacy Issues

Since the Department of Agriculture has broad authority to establish standards of eligibility for disaster food stamps for each disaster, it is important to have input into decision-making process as early as possible. The local legal aid program should immediately assess the need for them, collaborate with local officials and agencies to advocate for Disaster Food Stamps, and collaborate with FLS to contact the U.S. Department of Agriculture and the Federal Coordinating Officer as soon as possible to assure that the needs of low-income disaster victims are considered in whether and how to make these benefits available.

^{28/} 7 U.S.C. §2014(h)(2).

Once these benefits are authorized, legal aid staff should work closely with local officials and agencies and with the USDA's Food and Nutrition Service to ensure that the Disaster Food Stamp program is adequately advertised, available for a meaningful time, and administered in a manner that low-income people learn about and receive the food stamps for which they are eligible. Federal law requires the Secretary to adjust issuance methods and other application requirements in accordance with conditions in the disaster area.^{29/} In particular, the Secretary must consider conditions that make reliance on electronic benefit transfers impracticable, and any disruption in transportation and communications.³⁰ Since flyers in the appropriate language may be the only effective means of getting information out to low-income people after a catastrophic disaster, legal aid staff may want to advocate for their dissemination, and/or attempt to disseminate them themselves.

Finally, local legal aid programs should work collaboratively with FLS as needed to press the state coordinating officer to request an extension of the Disaster Food Stamp program because of difficulties in disseminating and receiving information, transportation problems, and the need for disaster victims to take care of more immediate needs, such as shelter.

B. DISASTER UNEMPLOYMENT ASSISTANCE

^{29/} 7 U.S.C. §2014(h)(3)(B).

^{30/} *Id.*

Disaster Unemployment Assistance (DUA) may be made available following a major disaster to anyone who has become unemployed as a result of the disaster but who is not eligible for ordinary unemployment compensation benefits (UCB).^{31/} Legal aid advocates should check the Declaration of Disaster to determine if DUA was designated as a disaster benefit. If it was not, staff should begin gathering information to establish the need for these benefits, and work through FLS to urge the governor to request that this assistance be authorized.

In Florida, at the current time, DUA is administered by the state employment security office the Agency for Workforce Innovation (AWI). It is available for the length of time prescribed in the Declaration of Disaster, but for a period no longer than 26 weeks following the declaration, as long as the applicant's disaster-caused unemployment continues.^{32/} A disaster victim must apply to the state employment security office for DUA within 30 days of the declaration of disaster, but can apply beyond the deadline if s/he shows good cause for late filing.^{33/} However, the victim cannot apply after the expiration of the DUA benefit period.

1. Eligibility

^{31/} 42 U.S.C. §5177(a).

^{32/} 42 U.S.C. §5177(a).

^{33/} 20 C.F.R. §625.8(a).

Applicants for DUA must show that their unemployment is a direct result of the disaster.^{34/} As with ordinary UC, applicants must generally be able and available to work.^{35/} However, both individuals who are unable to work because of an injury caused by the disaster and self-employed individuals performing activities for the purpose of enabling them to resume self-employment are deemed to meet this requirement.^{36/} In addition, an applicant is considered unemployed for purposes of DUA if any of the following occur: (a) the applicant lost a job as a result of the disaster (whether the job had already begun or did not commence as a result of the disaster); (b) the applicant is unable to reach the place of employment because of the disaster; or (c) the applicant has become the family breadwinner as a result of the disaster-caused death of the head of the household.^{37/}

2. Re-employment Assistance

Federal law also requires a State to provide re-employment assistance

^{34/} 20 C.F.R. §625.4(d); 20 C.F.R. §625.5(c).

^{35/} 20 C.F.R. §625.4(g).

^{36/} 20 C.F.R. §625.4(g); 20 C.F.R. §625.5(a)(5).

^{37/} 20 C.F.R. §625.5(a)(2)-(4).

services to people rendered unemployed by a major disaster,^{38/} whether or not they apply for DUA.^{39/}

3. Advocacy Issues

There are three areas of systemic advocacy that require attention: publicity regarding DUA and re-employment assistance, and extensions of the application deadline. First, because DUA eligibility criteria are much broader than for ordinary UC, legal aid clients must be notified that they may be eligible for these benefits. Legal aid programs may wish to distribute flyers widely and to urge the state unemployment compensation office that administers the benefits to publicize them on available local media.

Second, the 30-day deadline for applications is extremely short, especially if a catastrophic disaster has occurred. Local legal aid programs should work collaboratively with FLS to press the state coordinating officer to request an extension of this deadline because of difficulties in disseminating and receiving information, transportation problems, and the need for disaster victims to take care of more immediate needs, such as food and shelter.

^{38/} 42 U.S.C. §5177(b).

^{39/} 20 C.F.R. §625.3.

Third, even disaster victims who do not qualify for DUA are eligible for re-employment services if they have become unemployed because of the disaster.^{40/} Services that must be provided include counseling, job referrals, and training to assist unemployed disaster victims to obtain re-employment as soon as possible.^{41/} It is therefore important to widely disseminate information on the availability of these services to low-income disaster victims.

C. ASSISTANCE TO LOW-INCOME MIGRANT/SEASONAL FARM WORKERS

^{40/} 42 U.S.C. §5177(b); 20 C.F.R. §625.3(a).

^{41/} 20 C.F.R. §625.3(a).

Following a federal state or local emergency or disaster, the Secretary of Agriculture may make grants to provide emergency services to low-income migrant and seasonal farm workers.^{42/} The grants must be awarded to public agencies or private nonprofit organizations that have experience in providing emergency services to low-income migrant and seasonal farm workers.^{43/} Before awarding grants, the Agriculture Department must first determine that an emergency or disaster has caused low-income migrant or seasonal farm workers either (1) to lose income, (2) to be unable to work, or (3) to stay home or return home in anticipation of work shortages.^{44/} “Low-income migrant or seasonal farm workers” are people who (1) performed farm work for wages 12 consecutive months during the past 2 years, (2) had an annual family income during those 12 consecutive months less than the poverty level or 70 percent of the lower living standard income level, whichever is higher; and (3) received at least half of their income or worked at least half-time in farm work.^{45/}

The authority to make grants, administer the grant program and determine the types of assistance to be provided to aid low-income migrant and seasonal farm workers

^{42/} 42 U.S.C. 5177a(a).

^{43/} *Id.*

^{44/} *Id.*

^{45/} 42 U.S.C. §5177a(b).

impacted by an emergency or disaster has been delegated to the Administrator, Rural Housing Service.^{46/}

^{46/} 7 C.F.R. §2.49(a)(3).

D. SECTION 403 SHORT-TERM LODGING PROGRAM

Because of the huge number of people displaced following Hurricane Katrina on August 29, 2005, FEMA initiated an emergency housing assistance program under Section 403 of the Stafford Act, 42 U.S.C. §5170b(a)(3)(B), also known as the Stafford Act's "public assistance" provision. This section of the law allows FEMA to perform "work or services essential to saving lives and protecting and preserving property or public health and safety, *including ... emergency shelter...*"^{47/} Immediately after Hurricane Katrina, FEMA authorized the Red Cross to house displaced disaster victims in hotels and motels through the "Direct Payment Hotel/Motel Program" until they were able to find more permanent housing. However, since many of the communities to which the disaster victims had been relocated were overwhelmed by the influx of new residents, many were unable to find more permanent lodging.

On October 24, 2005, FEMA took over the Red Cross administered hotel and motel program, which became known as the "Short-Term Lodging Program." It is believed that this is the first time that FEMA has directly administered a hotel and motel housing program. Unlike FEMA's Temporary Housing Assistance program (THA - see *below*), there are no federal regulations and there were no written rules at the time the Short-Term Lodging Program was initiated.

^{47/} 42 U.S.C. §5170b(a)(3)(B).

On November 15, 2005, FEMA abruptly announced that it would cease funding its Section 403 Short-Term Lodging Program on November 30, 2005. A class action suit was filed to enjoin this immediate termination and seeking other relief. *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, Nov. 10, 2005). On plaintiffs' motion for preliminary relief, the federal district court found that the disaster victims remaining in the Short-Term Lodging Program were the most economically disadvantaged of the disaster victims and that by arbitrarily terminating this assistance, FEMA was discriminating against victims on the grounds of economic status in violation of the Stafford Act, 42 U.S.C. §5151.^{48/} The court therefore ordered that FEMA continue assistance under the Short-Term Lodging Program at least until January 7, 2006, and also ordered that every disaster victim be given at least 2 weeks notice before termination of this assistance.

On June 16, 2006, the court entered an order permanently enjoining FEMA from terminating Section 403 assistance until at least 2 weeks following notice to disaster victims of their denial or eligibility for Section 408 Temporary Housing Assistance.^{49/}

E. INDIVIDUAL AND HOUSEHOLD PROGRAM (IHP)

The Individual and Household Program (IHP) contains two parts: Temporary Housing Assistance (THA),^{50/} and Financial Assistance to Address Other

^{48/} *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, Dec. 12, 2005).

^{49/} *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, June 16, 2006).

^{50/} 44 C.F.R. §206.117. This program was formerly known as the Temporary Housing Assistance (THA) Program.

Needs (ONA).^{51/} The maximum amount of assistance that an individual or household may receive under both programs is \$25,000, adjusted yearly for inflation.^{52/}

^{51/} 44 C.F.R. §206.119. This program was formerly known as the Individual and Family Grant (IFG) Program.

^{52/} 44 C.F.R. §206.110(b).

To be eligible for IHP, a disaster victim must “register” either by calling the FEMA tele-registration number or applying in person at a disaster recovery center (DRC) within the registration period. The initial registration period is usually 60 days from the date of the disaster, but this period can be extended by FEMA.^{53/} Although IHP assistance is a need-based benefit, there are no income or resource eligibility guidelines. In order to be eligible, applicants must establish that they have incurred a disaster-related serious need in the state in which the disaster has been declared.^{54/} Residency in the state is not required,^{55/} but in order to qualify for housing assistance, the applicant must show that the disaster-related damage is to the applicant’s primary residence.^{56/}

^{53/} 44 C.F.R. §206.112.

^{54/} 44 C.F.R. §206.113(a).

^{55/} 44 C.F.R. §206.113(a)(1).

^{56/} 44 C.F.R. §206.113(a)(8),(9).

Applicants who live in a special flood hazard area may not receive FEMA assistance for construction or repair of real property or to purchase insurable contents, unless the local community participates in the National Flood Insurance Program (NFIP).^{57/} Applicants in a special flood hazard area who receive assistance due to flood damage must maintain flood insurance on the property at least in the amount of the disaster assistance.^{58/} When assistance is received to repair or construct a home, the flood insurance requirement is transferred to any subsequent owner.^{59/}

IHP assistance may not be counted as income or resources for purposes of determining eligibility for or the amount of benefits under federally-funded income assistance or resource-tested benefit programs.^{60/} IHP assistance is exempt from garnishment, levy, seizure, encumbrance, execution, pledge, attachment, release, and waiver.^{61/}

^{57/} 44 C.F.R. §206.110(k)(1), (2). If the community is not participating at the time of the disaster, but enters the NFIP during the six months following the declaration, FEMA may process assistance applications if the GAR requests a time extension.

^{58/} 44 C.F.R. §206.110(k)(3).

^{59/} 44 C.F.R. §206.110(k)(3)(i)(A).

^{60/} 42 U.S.C. §5155(d); 44 C.F.R. §206.110(f).

^{61/} 44 C.F.R. §206.110(g).

1. TEMPORARY HOUSING ASSISTANCE (THA)

The housing assistance portion (THA) of the Individual and Household Program is administered directly by FEMA. The program provides financial assistance or actual housing to victims whose primary residences were destroyed, made uninhabitable or inaccessible as a result of the disaster.^{62/} There are four forms of THA: (1) money for renting alternate housing, (2) rent-free occupancy in federally provided temporary housing, (3) money for repair of owner-occupied housing, and (4) money for replacement of owner-occupied housing.^{63/} FEMA determines the appropriate type of housing assistance based on cost effectiveness, convenience to the disaster victims, and the suitability and availability of assistance.^{64/} Disaster victims are expected to accept the first offer of housing assistance, and unwarranted refusal can result in forfeiture of housing assistance.^{65/}

a. Eligibility

To obtain THA, applicants must show that (1) as a direct result of a major disaster or emergency, (2) their home was destroyed, made uninhabitable, or made inaccessible or unavailable, and (3) that the housing assistance needed (i.e., temporary rental assistance, mobile home, repair of the home, or its replacement) is

^{62/} 44 C.F.R. §206.113(a)(8),(9).

^{63/} 42 U.S.C. §5174(c); 44 C.F.R. §206.117(b). Previously, FEMA administered a program of rental and mortgage assistance for individuals and households who remained in their pre-disaster housing but were unable to pay the rent or mortgage as a result of the disaster. That program no longer exists, and the mere inability to pay the mortgage or rent no longer qualifies a household for assistance. However, if the lack of money is due to loss of employment, they may qualify for disaster unemployment assistance (DUA).

^{64/} 42 U.S.C. §5174(b)(2)(A); 44 C.F.R. §206.110(c).

^{65/} *Id.*

either not covered by the applicant's insurance policy, or that the amount of insurance is insufficient to cover the damage.^{66/}

Two federal district courts have held that disaster victims have a property interest in THA protected by the due process clause of the 5th amendment once FEMA has made the finding that they satisfy the above eligibility criteria.⁶⁷

^{66/} 44 C.F.R. §206.113(a).

^{67/} *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, June 16, 2006); *ACORN v. FEMA*, 463 F.Supp.2d 26 (D.D.C. 2006), *appeal filed* (D.C.Cir., Dec. 5, 2006).

Federal specifically provides that it is **not** necessary for a disaster victim to apply for an SBA disaster loan in order to be eligible for THA.^{68/} Despite this specific prohibition, following Hurricane Katrina, FEMA required many applicants to apply for an SBA loan, with the result that their THA assistance was either greatly delayed or denied. The federal district court in *McWaters v. FEMA*^{69/} permanently enjoined FEMA from requiring disaster victims to apply for an SBA loan prior to receiving THA and ordered FEMA to notify disaster victims that this is not a requirement.

During the initial interview, the FEMA representative makes an initial determination of whether the applicant has insurance coverage and marks the application form accordingly. Applicants with insurance coverage must establish either that (1) the proceeds of the insurance policy are less than the amount of their disaster-related damages and also less than the maximum amount that FEMA can authorize, or (2) that they have been unable to obtain payment from their insurance company (denial of claim or significant delay in receiving proceeds).^{70/} Applicants with adequate insurance

⁶⁸ 42 U.S.C. §5174(a)(2).

^{69/} Civ. No. 05-5488 (E.D. LA, June 16, 2006).

^{70/} 44 C.F.R. §206.113(a)(2),(3),(4). Even fully insured disaster victims are eligible for IHP temporary housing assistance benefits if they have made reasonable efforts to secure payment from their insurance company but have been unable to do so, and they have agreed to repay FEMA from any insurance proceeds they later receive. 44 C.F.R. §206.113(a)(3).

coverage who refuse insurance proceeds are ineligible.^{71/}

^{71/} 44 C.F.R. §206.113(b)(6).

During the initial interview, the FEMA representative also makes a determination of who is in the household. A “household” consists of all the people “who lived in the pre-disaster residence who request assistance,” as well as people “expected to return during the assistance period.”^{72/} FEMA provides assistance for one temporary housing residence for each household unless they find that the size or the nature of the household requires more than one residence.^{73/}

b. Types of Assistance

^{72/} 44 C.F.R. §206.111.

^{73/} 44 C.F.R. §§206.117(b)(1)(i)(A); 206.117(b)(ii)(B).

(i) *Financial Assistance.* The primary type of housing assistance provided by FEMA following a disaster is money to rent alternate housing.^{74/} FEMA typically provides eligible applicants with a check to cover rental housing for one to three months. The monthly amount of the THA rental benefit is required to be at least the amount of HUD's fair market rental value for the area of the applicant's residence.^{75/} FEMA regulations provide that THA rental assistance may not be used to pay security deposits.^{76/} Although FEMA regulations also state that THA may be used to pay utility costs only if the costs are part of the rental charge,^{77/} the federal district court in *Watson v. FEMA*,^{78/} found that by using the term "fair market rent" in the Stafford Act, Congress' intent was to require FEMA to apply this HUD concept, which includes utility costs as part of the rental amount, to disaster rental assistance. The court therefore entered a mandatory injunction requiring FEMA to reimburse THA recipients the full amount of HUD's fair market for their area of residence, and to allow recipients to use any THA benefits in excess of their rent to help pay the cost of utilities.^{79/} The *Watson* court also required FEMA to notify THA rental assistance recipients that they could use the difference between HUD's fair market rent and their monthly rent to help pay for

^{74/} 44 C.F.R. §206.117(b)(1)(i). FEMA may also provide cash assistance to pay for transportation, utility hookups, or installation of manufactured housing units to be used for housing. *Id.*

^{75/} 42 U.S.C. §5174(c)(1)(A)(ii); 44 C.F.R. §206.177(b)(1)(i)(B); *Watson v. FEMA*, Civ. No. H-06-1709, (S.D. TX, July 13, 2006).

^{76/} 44 C.F.R. §206.117(b)(1)(i)(C).

^{77/} *Id.*

^{78/} Civ. No. H-06-1709 (S.D. TX, July 13, 2006).

^{79/} *Watson v. FEMA*, Civ. No. H-06-1709 (S.D. TX, July 13, 2006).

utilities.^{80/}

(ii) *Direct Assistance.* FEMA may provide temporary housing units, usually in the form of mobile homes, to disaster victims whose homes are destroyed or rendered uninhabitable and who would be unable to make use of cash rental assistance.^{81/} In the past, FEMA has failed to provide handicapped accessible mobile homes equipped with wheelchair ramps, grab bars in bathrooms and wheelchair maneuvering room. This practice was challenged in *Brou v. FEMA*,^{82/} by advocates of disabled Hurricane Katrina victims as violating Section 504 of the Rehabilitation Act, and the Fair Housing Act. Under the resulting court-approved settlement, FEMA agreed to ensure that 5 percent of FEMA trailers at group sites would meet Uniform Federal Accessibility Standards, and to provide various procedural safeguards to disabled disaster victims.^{83/}

^{80/} *Id.*

^{81/} 42 U.S.C. §5174(c); 44 C.F.R. §206.117(b)(1)(ii).

^{82/} Civ. No. 06-0838 (E.D.LA, *filed* Feb. 16, 2006).

^{83/} *Brou v. FEMA*, Civ. No. 06-0838 (E.D.LA, Sep. 26, 2006).

Mobile homes must be placed on FEMA approved sites.^{84/} FEMA does not pay utility costs unless utility services are part of the site rental.^{85/} This type of assistance is generally available only for a maximum of 18 months, but this period may be extended under extraordinary circumstances if an extension would be in the public interest.^{86/} FEMA may charge fair market rent to people remaining in units after 18 months.^{87/}

FEMA regulations provide that they may terminate the provision of actual housing if: (1) the 18 month period of assistance has expired and not been extended; (2) Adequate alternative housing has become available; (3) The occupant obtained the housing assistance through fraud or misrepresentation; (4) The occupant fails to comply with the lease or other site rules; or (5) The occupant fails to provide evidence showing that they are working toward a permanent housing plan.^{88/} The regulations also state that FEMA will provide 15 days notice of the termination, and

^{84/} 44 C.F.R. §206.117(b)(1)(ii)(C), (E).

^{85/} 44 C.F.R. §206.117(b)(1)(ii)(D).

^{86/} 42 U.S.C. §5174(c)(1)(B)(ii); 44 C.F.R. §206.110(e).

^{87/} 42 U.S.C. §5174(c)(B)(iii); 44 C.F.R. §206.117(b)(F).

^{88/} 44 C.F.R. §206.117(b)(1)(ii)(G).

specify the reason for the termination and the process to be followed on appeal.^{89/} If a client is being dispossessed in this manner, advocates should consider initiating an action in a court of competent jurisdiction for violation of state landlord/tenant law.

^{89/} 44 C.F.R. §206.117(b)(1)(ii)(H).

(iii) *Grants for Home Repairs and Hazard Mitigation.* If the Disaster Declaration provides for it, FEMA may make available a limited amount of money for repairs to uninsured disaster-related damages to an owner's primary residence, utilities, and residential infrastructures such as private access routes, as well as assistance for hazard mitigation measures that reduce the likelihood of future damage to damaged residences, utilities or infrastructure.^{90/} This assistance is available only if (1) the damage to the home is disaster related; (2) the home is owner occupied; (3) the damage is not covered by insurance; and (4) the cost of repairs does not exceed \$5,000 adjusted annually for inflation.^{91/} Repairs must conform to local and state building codes.^{92/} Money for repairs may not be used for improvements or additions to the pre-disaster condition of the property unless these are required to comply with local and state ordinances or eligible mitigation measures.^{93/}

^{90/} 42 U.S.C. §5174(c)(2)(A); 44 C.F.R. §206.117(b)(2)(i),(iii).

^{91/} 42 U.S.C. §206.5174(c)(2); 44 C.F.R. §206.117(b)(2).

^{92/} 44 C.F.R. §206.117(b)(2)(v).

^{93/} 44 C.F.R. §206.113(b)(5).

Although recipients of home-repair or hazard-mitigation grant under the IHP housing assistance program must show that the damage for which they seek assistance is not covered by insurance, they cannot be required to show that they are unable to obtain assistance from any other means.^{94/} In particular, and in contrast to Financial Assistance to Address Other Needs,^{95/} an uninsured homeowner cannot be required to show that s/he is ineligible for an SBA disaster loan in order to qualify for home-repair or hazard-mitigation assistance.^{96/} In fact, a homeowner may be eligible for IHP housing assistance to cover emergency repairs, and may also qualify for an SBA loan for more extensive repairs. However, the owner is required to use the proceeds of the SBA loan to repay the IHP grant if it was used for repairs or measures also eligible for an SBA loan.^{97/}

(iv) Replacement of Primary Residence. If the disaster declaration so provides, FEMA may award up to \$10,000 (adjusted annually for inflation) for replacement of a primary residence that incurred more than \$10,000 (adjusted annually for inflation) in disaster-related damage.^{98/} This type of assistance must be individually approved by the Associate Director of FEMA. The applicant may either purchase a

^{94/} 42 U.S.C. §5174(c)(2)(B); 44 C.F.R. §206.117(2)(iv).

^{95/} See Part , below.

^{96/} 42 U.S.C. §5174(a)(2), (c)(2)(B); 44 C.F.R. §206.117(b)(2)(iv); see also, *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, June 16, 2006), in which the federal district court permanently enjoined FEMA from requiring applicants for THA to complete an SBA loan application as a prerequisite to receiving THA.

^{97/} 13 C.F.R. §123.101(c); see also, 42 U.S.C. §5155(a),(b); .

^{98/} 44 C.F.R. §206.117(b)(3). Replacement assistance may be provided to applicants with damages less than \$10,000 in extraordinary circumstances, based on a finding that replacement assistance is more appropriate than other forms of housing assistance. *Id.*

replacement residence for \$10,000, or apply the grant toward the purchase of a more costly home.^{99/}

2. FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS

^{99/} *Id.*

The Financial Assistance to Address Other Needs (ONA) part of the IHP program must be requested by the Governor, and listed as a designated type of assistance in the Declaration of Disaster.^{100/} The purpose of ONA is to assist disaster victims in replacing personal property and paying for transportation, disaster-related medical, dental, funeral and other necessary expenses and serious needs.^{101/} The amount of assistance cannot exceed \$25,000 (adjusted annually for inflation) less the amount of any THA received.^{102/}

Depending on the arrangement chosen by the state, the ONA program may be administered by the state or by FEMA.^{103/} If the state chooses to administer the program, it must have in place an approved State Administrative Plan (SAP).^{104/} If the state will be administering the ONA program, legal aid advocates should

^{100/} 42 U.S.C. §5174(f); 44 C.F.R. §206.40(a).

^{101/} 42 U.S.C. §5174(e); 44 C.F.R. §206.119(a),(b).

^{102/} 42 U.S.C. §5174(h); 44 C.F.R. §206.110(b).

^{103/} 44 C.F.R. §206.120(a),(b). As of the 2004 hurricane season, Florida has chosen to allow FEMA to administer the "Other Needs" program.

^{104/} 44 C.F.R. §206.120(c). The State Administrative Plan (SAP) should be in place before the disaster. By November 30 of each year, the state is required to submit to FEMA the SAP, an annual update, or a letter

obtain a copy of the State Administrative Plan from FLS or the State Coordinating Officer (SCO) as soon as possible.^{105/}

stating that the SAP is still current, for FEMA's review and approval by December 31. *Id.*

^{105/} Other likely sources of the SAP are the Governor's office, the office of the Governor's Authorized Representative (GAR), the FEMA Regional Office, and/or the Disaster Field Office (DFO).

The State Administrative Plan must include procedures for (1) notifying potential applicants of the availability of the program (including application deadlines, program descriptions and eligibility guidelines), (2) registration and acceptance of applications and late applications, (3) damage inspections,(4) eligibility determinations, (5) notification of eligibility, (6) payment of grants, (7) appeal processing, and (8) protection of applicant privacy.^{106/}

a. Eligibility Requirements

Like THA, ONA is need based, but not means or resource tested. To be eligible, applicants must show that they incurred necessary expenses or have serious needs as a result of the disaster for which they cannot obtain relief through other means, including a Disaster Loan from the SBA.^{107/} An applicant must exhaust all other sources of potential assistance by applying for insurance reimbursement and/or for assistance from the SBA Disaster Loan Program.^{108/} With respect to insurance, if the disaster-related expense is covered by an insurance policy, the applicant must demonstrate either that the proceeds will be insufficient to cover the necessary expense or serious need and are less than the maximum amount of assistance available through FEMA,^{109/} or that the insurance payment has been unduly delayed and the applicant has agreed to repay FEMA from insurance proceeds.^{110/} With respect to an SBA Disaster

^{106/} 44 C.F.R. §206.120(d)(3).

^{107/} 44 C.F.R. §§206.110(a); 206.119(a)(1),(2),(3).

^{108/} *Id.*

^{109/} 44 C.F.R. §206.113(a)(4).

^{110/} 44 C.F.R. §206.113(a)(3).

Loan, the applicant must show that s/he has applied and either been denied, or that the loan will be insufficient to cover the necessary expenses or serious needs.^{111/}

b. Application Process

^{111/} 44 C.F.R. §206.119(a).

At the time of the initial interview, the FEMA representative determines whether the applicant, based on the applicant's income, is potentially eligible for an SBA loan.^{112/} If the applicant is found ineligible for an SBA loan at the time of the initial interview, the application form is so marked, and the applicant is referred to the ONA program.

The extent of an applicant's real and personal property losses are determined by a FEMA inspector during an on-site visit. The ONA program bases its findings of eligibility and the amount of the grant on the FEMA inspector's report. ONA grants may be used only to repair or replace the damaged or destroyed items listed in the award letter.

The conditions engendered by a disaster, particularly a catastrophic disaster, result in many errors in FEMA inspection reports. Therefore, whenever possible, advocates should advise disaster victims to take photographs of the damage to their homes or personal property. In cases of disagreement with the inspection report, the applicant should support an appeal with photographs as well as sworn statements from landlords, neighbors, or friends regarding the extent of the damage.

c. Types of Assistance.

^{112/} See 44 C.F.R. §206.119(a).

ONA grants are available in any amount for which the applicant qualifies, so long as the \$25,000 maximum (adjusted for inflation) for all types of IHP assistance to an individual or household is not exceeded.^{113/} Covered items include medical, dental and funeral expenses for disaster related injury or death, disaster related damage or destruction of personal property (including automobiles), and money for transportation and specific other expenses.^{114/}

(i) Medical and Dental Expenses. Medical expenses are generally limited to medical costs, dental costs and repair or replacement of medical equipment.^{115/}

(ii) Funeral Expenses. This coverage is generally limited to the cost of funeral services, burial or cremation and other related funeral expenses.^{116/}

(iii) Repair or Replacement of Personal Property. This assistance is generally limited to coverage of (1) clothing, (2) household items, furnishings and appliances, (3) tools, specialized or protective clothing, and equipment required by an employer as a condition of employment,^{117/} (4) computers, uniforms, school books and supplies required for educational purposes, and (5) cleaning or

^{113/} 42 U.S.C. §5174(h); 44 C.F.R. §206.110(b).

^{114/} 44 C.F.R. §206.119(b)(1), (2).

^{115/} 44 C.F.R. §206.119(c)(3).

^{116/} 44 C.F.R. §206.119(c)(4).

^{117/} This assistance is not available to a self-employed applicant, 44 C.F.R. §206.113(b)(9), who will need to rely instead on an SBA disaster loan.

sanitizing eligible personal property items.^{118/}

(iv) *Transportation*. This coverage is generally limited to repairing or replacing vehicles and financial assistance for public transportation and any other transportation related costs or services.^{119/}

^{118/} 44 C.F.R. §206.119(c)(1).

^{119/} 44 C.F.R. §206.119(c)(2).

(v) *Other Expenses*. This category includes (1) moving and storage expenses to avoid additional disaster damage, (2) purchase of a Group Flood Insurance Policy, and (3) other miscellaneous items or services determined to be necessary expenses and serious needs.^{120/}

3. IHP APPEALS

Any decision regarding eligibility for assistance or its amount may be appealed within 60 days after the applicant receives notice of the decision.^{121/} In addition to denials and insufficient awards, appealable decisions include recoupment of assistance, denial of continued housing assistance, termination of direct housing assistance, denial of a request to purchase a FEMA housing unit, and the sale price of a FEMA housing unit.^{122/} The appeal must be in writing and signed by the appellant or his/her representative.^{123/} Applicants or their representatives may request copies of their

^{120/} 44 C.F.R. §206.119(c)(5), (6).

^{121/} 42 U.S.C. §5189a; 44 C.F.R. §206.115(a).

^{122/} 44 C.F.R. §206.115(a)(1)-(9).

^{123/} 44 C.F.R. §206.115(b). If the appeal is filed by a representative, the applicant must submit a signed statement authorizing the representation. *Id.*

files.^{124/} FEMA must issue a decision within 90 days of receipt of the notice of appeal.^{125/}

FEMA's decision is final.^{126/}

^{124/} 44 C.F.R. §206.115(d). If the request is filed by a representative, the applicant must submit a signed statement authorizing the representation. *Id.*

^{125/} 42 U.S.C. §5189a(b); 44 C.F.R. §206.115(f).

^{126/} 44 C.F.R. §206.115(f).

If the State administers the “Other Needs” portion of the IHP program, the State Administrative Plan (SAP) is required to set forth the state’s procedures for interacting with applicants, including procedures for appeals by applicants.¹²⁷ At a minimum, the state must consider appeals on all issues which FEMA is required to consider.^{128/}

^{127/} 44 C.F.R. §206.115(d)(3)(viii).

^{128/} *Id.*

4. ADVOCACY ISSUES

a. *FEMA Denial Notices: Due Process Rights*

FEMA notices and procedures regarding denial and termination of assistance have been challenged in recent cases brought on behalf of victims of Hurricane Katrina.^{129/} In *ACORN v. FEMA*,^{130/} the court held that FEMA notices violated due process because they did not adequately communicate the basis for denying benefits. More recently, plaintiffs in *Ridgely v. FEMA*^{131/} are urging the federal court to enjoin FEMA's procedures for termination of benefits and recovery of overpayments because FEMA fails to provide adequate written notice regarding intent to terminate benefits or recover alleged overpayments, clear written statements of the reasons for their action, and a hearing prior to termination or recovery.

Since the *ACORN* case has been appealed, and the *Ridgely* case was filed only recently, the advocate should carefully research the latest federal court decisions and seek to enforce applicable case law that is favorable to low-income clients whenever possible. A good resource is Clearinghouse's FEMA Answers

^{129/} *ACORN v. FEMA*, 463 F.Supp.2d 26 (D.D.C., 2006); *Ridgely v. FEMA*, Civ. No. 07-2146 (E.D.LA, filed April 19, 2007).

^{130/} 463 F.Supp.2d 26 (D.D.C., 2006).

^{131/} Civ. No. 07-2146 (E.D.LA, filed April 19, 2007).

website.^{132/}

^{132/} <http://femaanswers.org>.

b. Availability of Rental Housing: The Need for Trailers.

When massive destruction creates a situation in which there is no housing available to rent, rental assistance is not a useful form of assistance. In this situation, FEMA is authorized to provide mobile homes, travel trailers or other manufactured housing units to people who “lack available housing resources”^{133/} and would be “unable to make use of” rental assistance.^{134/} Therefore, after a catastrophic disaster, advocates should begin assessing the availability of intact rental units right away, and begin to urge that mobile homes be provided as soon as it is apparent that rental property is not available. Time is particularly of the essence because FEMA may deny mobile homes to applicants who have previously received rental assistance, but if

^{133/} “Alternate housing resources” is defined as “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, mobile homes and travel trailers.” 44 C.F.R. §206.111.

“Adequate, alternate housing” is defined as “housing that accommodates the needs of the occupants; is within the normal commuting patterns of the area or is within reasonable commuting distance of work, school, or agricultural activities that provide over 50 percent of the household income; and is within the financial ability of the occupant.” 44 C.F.R. §206.111.

“Reasonable commuting distance” is defined as “a distance that does not place undue hardship on an applicant.” 44 C.F.R. §206.111.

^{134/} 44 C.F.R. §206.117(b)(1)(ii).

an applicant refuses rental assistance, s/he may be denied all housing assistance.^{135/}

FEMA may also fail to provide or adequately disseminate information on the availability of mobile homes and how to obtain them, especially among the low-income community. This may be information that mobile homes are available or information on the criteria being used to determine eligibility for them. Advocates should urge FEMA to provide adequate information to disaster-affected populations as to the availability of mobile homes and the eligibility criteria for obtaining them. Legal aid programs may also want to disseminate this information themselves through flyers or public service announcements.

c. Accessibility of Trailers to People with Disabilities

^{135/} 44 C.F.R. §206.110(c). In order to deny all housing assistance because of a refusal of the first offer, FEMA must also find that the refusal was unwarranted. *Id.*

In the past, FEMA has failed to make available mobile homes that accommodate the needs of people with disabilities, e.g., trailers with ramps to enter and exit, roll-in showers, toilets with grab bars, rooms with wide doorways and sufficient space to maneuver a wheelchair, and other accessible design features. This has prevented people with disabilities from receiving this form of assistance. After Hurricane Katrina, advocates for the disabled brought suit in *Brou v. FEMA*,^{136/} challenging this practice as violating Section 504 of the Rehabilitation Act^{137/} and the Fair Housing Act.^{138/} The *Brou* case was settled under terms favorable to the plaintiffs: FEMA agreed to ensure that 5 percent of trailers at group sites would meet Uniform Federal Accessibility Standards and to provide various procedural safeguards to disabled disaster victims. Advocates of future disaster victims should be aware of this litigation issue and ensure that FEMA follows federal accessibility requirements.

d. The “Shared Household” Issue.

^{136/} *Brou v. FEMA*, (E.D. LA, filed Feb. 16, 2006).

^{137/} 29 U.S.C. §794(a).

^{138/} 42 U.S.C. §3604.

FEMA provides assistance to “households,” which consists of all the people “who lived in the pre-disaster residence who request assistance,” as well as people “expected to return during the assistance period.”^{139/} FEMA typically issues one check in the name of the “head of household” and/or one mobile home per pre-disaster household.^{140/} If the person whom FEMA has determined to be the “head of household” fails to share the assistance, other household members are effectively denied all IHP assistance.^{141/} Since many very low-income people share housing in order to be able to afford it, this can result in some disaster victims receiving no assistance. For instance, if two families are sharing a two-bedroom pre-disaster dwelling, one family may apply for disaster benefits and be granted housing assistance for a two bedroom apartment in the form of a check for several months rent. When the second family applies, they will ordinarily be denied because assistance has already been provided to the first family.^{142/}

^{139/} 44 C.F.R. §206.111.

^{140/} 44 C.F.R. §206.117(b)(1)(i)(A).

^{141/} The initial determination of who is the “head of household” of a particular dwelling unit is made by the FEMA inspector who visits the applicant’s pre-disaster dwelling to assess the extent of damage; it is generally based on who has the legal obligation to pay the rent or mortgage for the dwelling.

^{142/} A similar situation can occur if several unrelated individuals are sharing a small rental unit, and FEMA issues a check to one of them. Another situation in which one disaster victim may be denied assistance while

another gets more than s/he is entitled to involves a couple that splits up after the disaster.

However, FEMA regulations also allow the Regional Director to determine that “the size or nature of the household requires” that FEMA provide assistance for more than one residence.^{143/} Legal aid advocates can therefore serve an important function by alerting FEMA during the early stages of disaster recovery to the prevalence of shared housing situations among members of the low-income community. If FEMA is aware of these shared housing situations at the time it determines the type and amount of assistance, it may either issue a check in the names of all adults in the household, separate checks for each family or individual, or mobile homes to each, depending on the size or nature of the household.

If FEMA denies assistance to an individual or household in a shared housing situation, legal representatives can nevertheless advocate for their coverage, by showing that their clients did not receive the assistance provided to the “head of the household” through no fault of their own. After Hurricane Andrew in 1992 and the institution of the *Locket v. FEMA* litigation,^{144/} FEMA gave disaster housing assistance to applicants who were previously denied if they could show either that: (1) the head of household used the assistance to obtain housing that was too small to accommodate the applicant or too far from the applicant’s work or school or (2) the head of household’s whereabouts were not known to the applicant. Also, following Hurricane Katrina in 2005, the federal district court in *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, June 16, 2006), noted that FEMA modified its “Shared Household” policy and provided separate

^{143/} 44 C.F.R. §206.117(b)(1)(i)(A).

^{144/} 836 F.Supp. 847 (S.D. Fla. 1993).

assistance to different members of a single pre-disaster household who were scattered after the storm.

e. Requirements for Continued THA

FEMA often fails to communicate to disaster victims who are granted temporary housing assistance what will be required of them in order to show that they continue to be eligible once the initial grant expires. For instance, FEMA usually fails to notify disaster victims in correspondence accompanying or following their initial rental assistance check that in order to receive continued assistance, they will need to provide receipts to establish that they spent the money on rent.

The federal district court in *McWaters v. FEMA*^{145/} and *ACORN v. FEMA*^{146/} both held that disaster victims have a property interest in temporary housing assistance (THA) protected by the Fifth Amendment to the United States constitution. The courts based these holdings on evidence that established that all persons meeting FEMA's eligibility criteria are provided with assistance, thereby creating a reasonable expectation of this benefit. The *McWaters* court found that since recipients of THA "have protected due process interests in *continuing receipt* of said assistance,"^{147/} FEMA is required to "clearly delineate to recipients the necessary standards and

^{145/} Civ. Action 05-5488 (E.D. LA, June 16, 2006).

^{146/} 463 F.Supp.2d 26 (D.D.C., 2006)

^{147/} *Id.*, p. 40 (*emphasis added*).

requirements to continue receiving such rental assistance.”^{148/}

^{148/} *Id.*

Advocates should examine the award letters sent to clients as soon as possible to ensure that they contain an explanation of how to use the funds and how to obtain additional benefits. FEMA officials should be reminded of their obligation to include such required notices in their correspondence with disaster victims. If FEMA fails to notify recipients at the time they receive THA of how they are required to expend the funds, advocates should urge that FEMA issue a directive suspending the rent receipt documentation requirement for continued assistance, as FEMA did following Hurricane Katrina.^{149/}

f. Termination of Mobile Home Assistance

If FEMA determines that a disaster victim is ineligible for a mobile home after the victim has already been placed in the mobile home, the victim is entitled to the substantive and procedural protections outlined under federal regulations.^{150/} The tenant must be given 15 days' notice of the termination of the lease agreement^{151/} and has a right to appeal the decision within 60 days of such notice.^{152/}

^{149/} See Attachment

^{150/} 44 C.F.R. §§206.117(b)(1)(ii)(G),(H); 206.115(a)(7).

^{151/} 44 C.F.R. §206.117(b)(1)(ii)(H).

^{152/} 44 C.F.R. §206.115(a)(7).

The eviction notice must specify the reasons for termination, the date of termination, the procedure for appealing, and the occupant's liability for additional charges after the termination date.^{153/} The occupant may ask for a copy of the information in his or her file.^{154/}

^{153/} 44 C.F.R. §206.117(b)(1)(ii)(H).

^{154/} 44 C.F.R. §206.115(d).

FEMA can terminate leases or other direct mobile home assistance for reasons that include, but are not limited to (1) The 18 month period of assistance has expired and not been extended; (2) Adequate alternative housing has become available;^{155/} (3) The occupant obtained the housing assistance through fraud or misrepresentation; (4) The occupant failed to comply with the lease or other site rules; (5) The occupant failed to provide evidence showing that s/he is working toward a permanent housing plan.^{156/}

In addition to requiring FEMA to abide by its own procedural and substantive rules regarding eviction, the advocate should also insist that FEMA must also follow applicable state law and obtain an order from a court of competent jurisdiction in order to legally evict a tenant from a mobile home.

g. Recoupment Issues

After an initial phase of awarding benefits, FEMA begins an extensive process of review of the grants it has awarded in order to determine if recipients were eligible. FEMA's reexamination of eligibility for grants may go on for several years. Major reasons for recoupment affecting low-income clients include:

FEMA "Shared Household" rule - 44 C.F.R.

^{155/} "Adequate alternate housing" is defined as "housing that accommodates the needs of the occupants; is within the normal commuting patterns of the area or is within reasonable commuting distance of work, school, or agricultural activities that provide over 50 percent of the household income; and is within the financial ability of the occupant." 44 C.F.R., §206.111.

^{156/} 44 C.F.R. §206.117(b)(1)(ii)(G).

§206.117(b)(1)(i)(A). As discussed above, this regulation provides 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 the Regional Director or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.” This rule disproportionately affects low-income disaster victims, because so many low-income people “double-up” to save money on housing prior to a disaster. After a disaster, they may either (a) be unable to relocate together, (b) the person who is given the disaster assistance may not share it, or (c) the disaster crisis may cause the two households to be unable to continue to live together due to tension, threats or violence between them.

FEMA Duplication of Benefits Rule - 42 U.S.C. §5155; 44

C.F.R. §206.110(h). Although limited by its terms to duplication of assistance from other programs or from insurance, these statutory and regulatory provisions have been interpreted by FEMA in the past to prohibit FEMA from providing more than one form of disaster housing assistance to households. For example, FEMA has in the past attempted to recoup benefits from disaster victims if they were awarded both cash rental assistance and a mobile home.

FEMA’s Recoupment Process - FEMA’s recoupment process significantly disadvantages low-income disaster victims. It is essentially a “pay now” and “appeal later” process. Regardless of whether a disaster victim appeals, if (s)he fails to pay the alleged debt or enter into a repayment agreement within 30 days of FEMA’s notice, the victim is charged interest and penalties. FEMA’s failure to provide a hearing prior to initiating recoupment procedures is being challenged in the recently filed case of

Ridgely v. FEMA.^{157/} The advocate should review the progress of this case for applicable case law. Clearinghouse's FEMA Answers website is a good resource.^{158/}

^{157/} Civ. No. 07-2146 (E.D.LA., *filed* April 19, 2007).

^{158/} <http://femaanswers.org>.

If FEMA determines that an applicant was ineligible, it initiates recoupment procedures by sending a notice to the recipient. This notice usually provides little information regarding the basis for the determination that an overpayment has occurred, a practice that is being challenged by plaintiffs in *Ridgely v. FEMA*.¹⁵⁹ FEMA's regulations require the recipient to repay the entire amount or enter into a repayment agreement within 30 days. If the recipient does not do so, (s)he is charged interest (presently 2%).¹⁶⁰ The recipient may appeal in writing within 60 days, but this does not toll the repayment obligation.¹⁶¹ The recipient may obtain a copy of his/her file, but this does not toll the time within which to appeal.¹⁶² If the recipient has not paid or entered into a repayment agreement within 90 days, (s)he is charged an additional penalty of 6% per year on the unpaid principal and interest.¹⁶³ If the recipient has not paid or entered into a repayment agreement within 120 days, and FEMA's review indicates that a debt is due, FEMA uses administrative offset to collect principal, interest and penalty.¹⁶⁴ Administrative offset allows recoupment via: (a) income tax refunds (including any Earned Income Tax Credit);¹⁶⁵ (b) Social Security benefits and other

¹⁵⁹/ Civ. No. 07-2146 (E.D.LA, *filed* April 19, 2007).

¹⁶⁰/ 44 C.F.R. §11.42(a).

¹⁶¹/ 44 C.F.R. §11.43(c); 44 C.F.R. §206.115(b).

¹⁶²/ 44 C.F.R. §206.115(d).

¹⁶³/ 44 C.F.R. §11.42(a).

¹⁶⁴/ 44 C.F.R. §11.43(d).

¹⁶⁵/ 44 C.F.R. §11.61.

federal benefits of more than \$9,000 per year.^{166/} FEMA may also offset a debt from wages,^{167/} and may sell or assign the debt to a credit collection agency.

Under these procedures, FEMA staff make ample use of letters and telephone calls to pressure recipients to enter into repayment agreements.^{168/}

This can be very intimidating to low-income people, especially among the elderly and newly arrived immigrants. Such people may enter into repayment agreements despite valid defenses or the availability of debt forgiveness. Advocates should warn disaster-assistance recipients not to enter into repayment agreements without consulting an attorney. It may also be necessary for advocates to advise FEMA staff not to initiate contact with represented recipients.

Further, unlike middle-income disaster victims, most low-income people do not have the resources to repay the alleged debt via a credit card and then resolve the issue with FEMA. The other option of entering into a repayment agreement creates survival issues for very low-income disaster victims - they will often have to choose between eating, keeping a roof over their heads, obtaining necessary medical care or medicines, and repaying FEMA. Advocates may want to address this issue with FEMA, federal legislators or federal courts, based on the recoupment process'

^{166/} 31 U.S.C. §3716(c)(3)(A)(ii).

^{167/} 5 U.S.C. §5514.

^{168/} 44 C.F.R. §11.42.

discriminatory impact on low-income disaster victims.^{169/}

Substantive Defenses - If recoupment is based on the “shared household” rule, the advocate should show that the household split up after the disaster and that the amount provided to the other individual was not available to the client, because the other individual relocated to another area, or the client was unable to locate the other individual, or another reason existed which made sharing the money or mobile home impossible (for instance a domestic violence situation).

If recoupment is based on the client receiving a rental assistance check initially and later receiving a mobile home, the advocate may be able to argue that disaster victims should not be penalized for having been erroneously given a rental check when no rental housing was actually available, that the client used the money for necessities, and that the client did not receive notice that the money could only be used for rent. If recoupment is based on FEMA erroneously providing two rental-assistance checks, the advocate may be able to establish that the recipient used all of the money for rent and required continued assistance beyond the initial eligibility period.

^{169/} See 42 U.S.C. §5151(a); 44 C.F.R. §206.11(b).

FEMA regulations also allow for the termination of collection actions if no substantial recovery is possible, the debtor cannot be located, the cost of collection will exceed the recovery, the claim is legally without merit, or the claim cannot be substantiated by evidence.^{170/}

F. SBA DISASTER LOANS

^{170/} 44 C.F.R. §11.51(b).

The Disaster Loan Program is administered by the Small Business Administration (SBA), in coordination with FEMA.^{171/} Three types of SBA loans may be made available following a declaration of disaster: disaster home loans, business disaster loans, and economic injury disaster loans.^{172/} Disaster home loans are available to individuals, whereas business disaster loans and economic injury loans are provided to businesses. This article addresses disaster home loans only. SBA disaster home loans are available to disaster victims whenever the disaster declaration authorizes IHP Assistance.^{173/} Such loans can be used to repair or replace uninsured or under-insured privately owned real or personal property damaged or destroyed as a result of the disaster.^{174/}

1. Application Process

When someone applies for disaster benefits, FEMA makes an initial “desk determination” of the applicant’s eligibility for an SBA loan based on income and family size. Applicants who are “desk denied” (their FEMA application states that an SBA application has been refused) are automatically referred for a grant from the

^{171/} 15 U.S.C. §636(b); 13 C.F.R. Part 123.

^{172/} 13 C.F.R. §123.5.

^{173/} 13 C.F.R. §123.3(1)

^{174/} 15 U.S.C. §636(b)(1); 13 C.F.R. §123.2.

“Other Needs” portion of the IHP program. Although applicants who are desk denied may nevertheless submit applications for SBA loans, doing so will delay their consideration for IHP “Other Needs” assistance.^{175/}

^{175/} 44 C.F.R. §206.119(a).

Applicants who are not summarily determined ineligible for an SBA loan are given an SBA loan application packet that must be completed and returned to SBA before the published deadline. SBA applications submitted after the deadline will be accepted only if SBA determines that the late filing is due to “substantial causes” beyond the applicant’s control.^{176/}

Applicants who relocate after a disaster are responsible for insuring that SBA is informed of their current address and telephone number. Applicants should file promptly with SBA because SBA will not verify the loss until after the application is received, and delays may make verification of loss difficult. If SBA is unable to conduct a verification or cannot reach an applicant, the application will be denied, no benefits will be disbursed, and the applicant’s case will not be referred to the “Other Needs” portion of the IHP program for consideration of a grant. This situation can be corrected by requesting a reconsideration in writing.^{177/}

2. Eligibility

^{176/} 13 C.F.R. §123.3(b). SBA publishes a notice of the disaster declaration, including the kinds of assistance available, the date of the disaster, and the deadline and location for filing loan applications in the Federal Register. *Id.*

^{177/} 13 C.F.R. §123.13. A request for reconsideration must be received by the SBA office that declined the original application within six months of the date of the declined notice. *Id.*

Loans are available to repair or replace primary residences or personal property.^{178/} An applicant must establish (1) a verifiable disaster-related physical loss to personal or real property owned by the applicant, (2) that is not covered by insurance, and (3) the ability to repay a loan.^{179/} A completed application received by SBA is reviewed by a loan officer to determine if the individual is able to repay a loan and, if so, the amount of the loan and the terms that should be offered. Age is not a factor in determining eligibility for an SBA loan, but the applicant must be an adult.^{180/}

Loans for the repair or replacement of real property may be made only to homeowners, and beneficial owners.^{181/} Home disaster loans may not be used to repair or replace a secondary home.^{182/} Individuals living in a disaster-damaged dwelling who are not dependents of the owner-occupant may qualify for personal property loans.^{183/} Such loans may not be used to repair or replace a vehicle of a type normally used for recreational purposes.^{184/}

3. Other Requirements

Flood insurance is required for all loans made for the repair or

^{178/} 13 C.F.R. §123.7.

^{179/} 13 C.F.R. §§123.6, 123.100.

^{180/} 15 U.S.C. §636c.

^{181/} 13 C.F.R. §123.100(b).

^{182/} 13 C.F.R. §123.101.

^{183/} 13 C.F.R. §123.100(a)(2).

^{184/} 13 C.F.R. §123.101(f).

replacement of property located in a flood zone.^{185/} In addition, the SBA loan authorization generally requires applicants for home-repair loans to carry homeowner's insurance as a condition of receipt. However, both of these requirements can be relaxed by SBA in accordance with the applicant's circumstances and the conditions following the disaster.

^{185/} 13 C.F.R. §123.17.

4. Amount of Loans

A loan for repair or replacement of household or personal effects may not exceed \$40,000.^{186/} A loan for repair or replacement of a primary residence may not exceed \$200,000.^{187/} SBA does not require collateral for home loans of \$10,000 or less. For loans larger than this amount, the applicant must provide a lien on the damaged or replacement property and/or a security interest in personal property.^{188/}

5. Terms of Loans

^{186/} 13 C.F.R. §123.105(a)(1).

^{187/} 13 C.F.R. §123.105(a)(2).

^{188/} 13 C.F.R. §123.11.

Home disaster loans may be granted for up to 30 years and may cover 100 percent of the verified loss, subject to the applicable limit of \$200,000.^{189/} Loan interest rates are established by regulation, and are lower for applicants who cannot obtain credit elsewhere.^{190/} SBA determines each applicant's loan maturity and installment terms based on the borrower's needs and ability to pay.^{191/} Monthly installment payments beginning five months after the signing of the note are usual, but variations in these terms may be arranged.^{192/} Payment amounts may be modified if the economic conditions of the borrower change. There is no penalty for prepayment of a loan.^{193/}

6. Misapplication of Funds

In order to verify that loan proceeds are used in accordance with their stated purpose, SBA requires borrowers to save receipts for a period of three years from the date of last disbursement.^{194/} Willful use, without SBA approval, of any part of an SBA loan in a manner contrary to the loan authorization and agreement subjects the borrower to a fine in the amount of one and one-half times the original principal amount.^{195/}

^{189/} 13 C.F.R. §123.105(a),(c).

^{190/} 13 C.F.R. §123.104.

^{191/} 13 C.F.R. §123.105(c).

^{192/} *Id.*

^{193/} 13 C.F.R. §123.105(c).

^{194/} 13 C.F.R. §123.12.

^{195/} 13 C.F.R. §123.9.

7. Advocacy Issues

a. Refusal or Rescission of an SBA Loan

An eligible applicant who refuses an SBA loan will be precluded from obtaining an “Other Needs” award from the IHP program.^{196/} Applicants who believe they should be found ineligible for an SBA loan because of inability to repay the loan should ask the SBA to reconsider and establish that the award of the loan was a mistake by showing that their income is offset by high debt and existing obligations. Even applicants who have already signed an SBA loan agreement may be allowed to rescind their agreement if they were required to pledge collateral for their loan.^{197/} Such applicants may then be found ineligible by the SBA program and referred to the “Other Needs” portion of the IHP program on the condition that they agree to repay any portion of the SBA loan they have expended with the IHP award.

b. Need for Both SBA Loan and ONA

Disaster victims may qualify for both an SBA loan and an “Other Needs” IHP grant by showing that they continue to have “unmet needs” after receiving the maximum SBA loan for which they are eligible.^{198/} Unmet needs must be documented and presented to SBA for review. SBA may certify the amount of the individual’s unmet needs and refer the case to the IHP “Other Needs” program for award of a grant.

^{196/} 44 C.F.R. §206.119(a).

^{197/} 13 C.F.R. §123.15.

^{198/} 44 C.F.R. §206.119(a)(3).

c. Modification of the Terms of the Loan

Borrowers whose economic circumstances change may request that SBA modify the terms of a loan by extending the life of the loan or decreasing the amount of the monthly payments.^{199/} Borrowers may obtain an increase in the amount of their loan within two years of approval by showing that the cost of repair or replacement increased after loan approval due to circumstances beyond their control.^{200/} Borrowers who wish to use a loan for a purpose different from that originally authorized may request modification of the purpose of a loan, subject to the limitation that physical home disaster loans must be used to restore or replace the applicant's disaster-damaged primary home and/or personal property.^{201/}

^{199/} 13 C.F.R. §123.16(b).

^{200/} 13 C.F.R. §§123.18, 123.20.

^{201/} 13 C.F.R. §123.7.