

National Disaster Attorney Guidebook



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/ Introduction

The frequency and intensity of disasters continue to rise, and so do the legal needs of disaster survivors. The forces of a disaster do not discriminate in terms of where or how they strike, however the mechanisms, processes and procedures for response and recovery efforts do not always produce equitable outcomes. Disasters and emergencies compound inequities for those living on the margins of society. Disasters exacerbate legal issues, increase poverty, and create uncertainties for necessities in life. Those residing in low-income communities suffer disproportionately from the effects of disasters and are also the least likely to have access to an attorney. Lawyers play a critical role in helping individuals and communities prepare for and recover from disasters.

This Guidebook is intended to serve as an overview of disaster assistance available under various state and federal laws, the steps that an attorney advocate should take to help ensure that this assistance reaches low-income disaster survivors, and practice pointers to guide the advocate in representing clients. Law and policy discussed in this Guidebook are subject to periodic change. It is important to verify the continued accuracy of the law and policy discussed herein before relying on any of this Guidebook's content.

During and immediately after a declared disaster, and continuing for several weeks, the priority is ensuring the safety and well-being of disaster survivors. Many need help tending to immediate medical, physical, and emotional needs; finding shelter; and confirming the safety of family, friends, and pets. Assessing and documenting damages to possessions such as the home, auto, or other personal property will begin. Employment may also be affected, leaving some without income who are in need of additional financial resources. Survivors also need to be aware of scams, price gouging, or consumer fraud.

Short-term recovery, in a declared disaster, may last up to a month. Some disaster survivors need help ensuring their rights in transitional housing activities and in general fair housing protections; recovering lost income and protecting employment rights; gaining equitable access to federal & state disaster assistance; and maximizing any private insurance options available.

Long-term recovery, after a declared disaster, lasts anywhere from six months to years after an event. Survivors may need help understanding housing issues related to insurance claims, available FEMA assistance, bankruptcies, custody modifications, probate and estate planning, navigating recovery resources, repair and rebuild options, and many other civil and disability rights issues. Homeowners and

renters may need help understanding and navigating options when a residence is damaged, landlord's responsibility for repairs of their residence, and requesting government assistance for temporary housing, employment and food benefits, expenses, and serious needs. Communities are often destroyed and access to employment and education becomes a very serious issue. If you are a lawyer, you may need help understanding the best way to advocate for a disaster survivor.

Groups like the American Bar Association Young Lawyers Division Disaster Legal Servicers Program, Equal Justice Works Disaster Resilience Program, and many other legal services organizations provide free legal assistance to disaster survivors around the country every day, but they need your help. This Guidebook is designed to encourage and assist pro bono and legal services attorneys in representing disaster survivors.

Statutory Authority

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended 42 U.S.C. §5121, created a system for financial and physical assistance to disaster survivors of presidentially declared disasters. The Act gives FEMA authority to coordinate relief efforts that may include legal services to low-income individuals affected by the disaster.

Presidential Declaration

Under the Stafford Act, a Presidential Declaration is made only after a request from a state governor or tribal chief within thirty days of a disaster.

The Stafford Act outlines two types of disaster declarations: emergency declarations and major disaster declarations. Both declarations trigger FEMA assistance. However, the scope and amount of aid will vary depending on the declaration.

The President may make an **Emergency Declaration** for any event that they deem requires federal assistance. The assistance supplements state, local, tribal, and territorial (SLTT) government efforts in providing emergency relief to eligible impacted individuals.

The President may declare a **Major Disaster** after any natural event, including but not limited to hurricanes, tornados, flooding, tsunamis, earthquakes, fires, floods, or explosions. The disaster must cause such severe damage that SLTTs are unable to respond. **Major Disaster Declarations** trigger the Disaster Legal Services program.



Types of Assistance: Major Disaster Declarations

CATEGORIES OF FEMA ASSISTANCE

- **Individual Assistance:** This is aid available to individuals and households.
- **Public Assistance:** This is aid available to public entities and some non-profits to replace or repair facilities damaged by disasters.
- **Hazard Mitigation Assistance:** This assistance comes in the form of funding for measures to reduce future losses to public and private property.

For the purposes of this guidebook, we will focus on **Individual Assistance**.

Partner Organizations

FEMA works with multiple partner organizations to coordinate and facilitate assistance. Several significant organizations include:

Disaster Legal Services (DLS) and the American Bar Association Young Lawyers Division (ABA YLD):

DLS provides free legal assistance to disaster survivors from low-income communities. FEMA has partnered with the YLD to develop this program to assist individuals with various legal services, as outlined below.

The American Red Cross (ARC): The ARC provides emergency financial assistance in the immediate aftermath of a disaster, as well as shelter, food, and disability services to those impacted.

National Voluntary Organizations Active in Disaster (National VOAD): National VOAD is a coalition of more than seventy of the nation's most reputable national organizations (faith-based, community-based, and other non-profit organizations) and fifty-six State/Territory VOADs, which represent Local/Regional VOADs and hundreds of other member organizations throughout the country.

Legal Aid Offices: Legal aid providers assist low-income individuals with a variety of legal services. After a disaster, legal aid offices work with DLS to assist individuals with FEMA appeals, landlord-tenant disputes, drafting of legal documents, and other legal needs arising from the disaster.

Types of Legal Services

Volunteer attorneys may be asked to provide advice and/or representation on any of the following, although this is not an exhaustive list:

- FEMA application issues and appeals;
- FEMA recoupment issues;
- Landlord-tenant issues;

- Foreclosure proceedings and other homeowner issues;
- Drafting and replacement of wills and other legal documents;
- Drafting Powers of Attorney;
- Disability discrimination;
- Assistance with immigration related issues;
- Small Business Administration loan applications and appeals;
- Contractor fraud and other consumer issues.

Equity and Diversity Insights

Disasters exacerbate inequities already existing in society. Equitable access to safe and affordable housing, healthcare, employment, or education can all be compounded after a disaster because without the appropriate resources or knowledge, disaster survivors face unlawful barriers and lack the resiliency to recover. The intersectionality between wealth status, race, national origin, and persons with disabilities is evident. Underserved communities are continuously disproportionately affected because of disasters and emergencies and yet are least likely to qualify for disaster services, programs, and activities. Preparedness activities can mitigate some of these legal needs to help build resiliency. Unfortunately, disasters and emergencies will continue to exacerbate the societal inequalities in play, advocates, however, can do a better job in educating the communities we serve and advocate for a more inclusive emergency preparedness process and response to address the impact and unlawful barriers disaster survivors experience. Equity in disasters is not defined by one protected class or limited to one societal domain, rather it is advocating for the whole community to build resiliency for all.

This Guidebook was created and edited in October 2021.



/ Introduction to Equal Justice Works

About Equal Justice Works

[Equal Justice Works](#) is a nonprofit organization that creates opportunities for lawyers to transform their passion for public service into a lifelong commitment to equal justice. As the nation's largest facilitator of opportunities in public interest law, Equal Justice Works brings together an extensive network of law students, lawyers, nonprofit legal aid organizations, and supporters to promote public service and inspire a lifelong commitment to equal justice.

They do this through:

- Connecting law students and law school professionals with opportunities to serve the public interest law community on campus and nationwide.
- Collaborating with law schools to enhance and expand their public interest law programming.
- Hosting the largest national public interest legal career fair that brings together law students and public interest employers from across the country to interview for job opportunities, build their public interest law network, and hear from noteworthy speakers.
- Facilitating Fellowships for public interest lawyers and law students to serve at legal services organizations across the nation to increase equal access to justice for communities in need.
- Educating law students and lawyers about options to manage their student debt and advocating for loan repayment assistance programs and Public Service Loan Forgiveness.

Following their Fellowships, more than 85% of our Fellows remain in public service positions, continuing to pursue equal justice for underserved communities across the country.

Equal Justice Works believes that a community of lawyers committed to public service can fulfill our nation's promise of equal justice for all.

Equal Justice Works Disaster Resilience Program

Equal Justice Works issue-specific Fellowship programs enable aspiring and committed public interest lawyers to serve communities in need of legal assistance and be part of a larger cohort and community of practice facilitated by Equal Justice Works. Their Fellowship Programs range in geography and issue area and address housing, disaster recovery, elder abuse, immigration, and the unmet legal needs of veterans and crime victims.

Since 2005, Equal Justice Works has developed targeted programs to mobilize lawyers to support disaster-affected communities. In 2020, Equal Justice Works launched its [Disaster Resilience Program](#). This program mobilizes public interest lawyers to serve in disaster-prone areas to ensure vital legal services are accessible, comprehensive, and responsive to the unique legal needs of individuals, families, and communities.

In June 2020, Equal Justice Works mobilized an initial cohort of six lawyers (Fellows) and law students (Student Fellows). These Fellows worked at legal services organizations in Texas and Florida to assist individuals and families with their COVID-19 related legal issues while also helping them recover from natural disasters and working toward building stronger and more resilient communities for the future.

In Fall 2021, Equal Justice Works mobilized the second cohort of 14 Fellows and law students, expanding the Disaster Resilience Program into California, New Mexico, and Louisiana, to assist wildfire survivors, hurricane survivors, and immigrant communities, and address the eviction crisis in their respective areas.¹

¹ Equal Justice Works' Disaster Resilience Program is funded by the Bigglesworth Family Foundation, California Community Foundation, Carnegie Corporation of New York, the Center for Disaster Philanthropy, W. K. Kellogg Foundation, individual contributions and supplemented by Equal Justice Works.

Read more stories about the work of our Fellows and how they are supporting communities with disaster-responsive lawyering:

- [Disaster Preparedness Starts with an Investment in Public Interest Law](#)
- [Equal Justice Works Raises Visibility of Role of Legal Aid in Disaster Response and Preparedness](#)
- [Supporting Communities with Disaster Resilience Lawyering](#)
- [Working Together Across the Spectrum of Disaster Legal Needs](#)
- [EJW Fellows Testify to the U.S. Commission on Civil Rights Re: Hurricane Harvey Response](#)
- [EJW Fellow Appointed to Gov. Abbott's Disaster Task Force](#)
- [These Lawyers are Helping Low-Income People Navigate the Complicated Process of Post-Disaster Recovery](#)

Through the Disaster Resilience Program, Equal Justice Works Fellows:

- Provide holistic legal services for communities impacted by disasters.
- Increase capacity and readiness of host organizations to assist disaster survivors.
- Engage in community education and outreach to further awareness about disaster preparedness and available services.
- Cultivate relationships among Fellows and community partners to build a robust referral network for clients.
- Receive opportunities to attend and partake in leadership development training and technical assistance.
- Host [Disaster Resilience Awareness Month](#) every March.

The Equal Justice Works Disaster Resilience Program is committed to ensuring that all disaster survivors have an equitable recovery and are resilient for the future, not just those who can afford an attorney.

We continue to explore ways to expand the Disaster Resilience Program into new areas across the country and seek partners to help us do so. If you'd like to learn more about partnering with Equal Justice Works, please reach out to DisasterResilienceProgram@equaljusticeworks.org.

Fellows from cohort 1 of the Disaster Resilience Program contributed to the content of this guidebook.



/ Introduction to the American Bar Association Young Lawyers Division

ABA Young Lawyers Division

The [American Bar Association's Young Lawyers Division](#) (ABA YLD) is the national home for the new attorney. The YLD provides members with vital tools to navigate the early years of a career, key opportunities to build a national network of peers and mentors, and valuable resources to help members grow personally and professionally. Membership in the ABA YLD is complimentary with any ABA membership for those attorneys in their first 10 years of practice.

Disaster Legal Services Program

The [Disaster Legal Services](#) (DLS) Program is a federal disaster legal assistance program operated by the ABA YLD pursuant to a Memorandum of Understanding with the Federal Emergency Management Agency (FEMA), a division of the Department of Homeland Security. Beginning in 1973, FEMA designated the DLS program to serve as the exclusive coordinator of free legal services to disaster survivors.

Through this program, thousands of young lawyers have provided free legal advice and representation to hundreds of thousands of disaster survivors around the nation. Although DLS is the touchstone public service program of the ABA YLD, many other organizations, law students, non-YLD attorneys, and other legal professionals contribute to the success of this program.

When the President makes a Major Disaster Declaration and authorizes Individual Assistance, FEMA will determine the need for DLS. If requested, the regional FEMA Human Services officer will contact the DLS Director and request activation of the program through a letter of intent. The letter of intent includes authorization of initial funding of \$5,000 to implement the program for that disaster declaration.

Activation of the DLS program in a declared disaster area includes implementing a toll-free disaster legal help hotline, recruiting and training pro bono attorneys, and providing free legal assistance to low-income disaster survivors. Legal help may include assisting survivors with FEMA applications and

appeals, landlord-tenant issues, existing legal matters exacerbated by the disaster, and other non-fee generating legal issues that arise in the aftermath of a disaster. Disasters and emergencies come in all shapes and sizes, however the substantive legal issues that attorneys may help with are consistent across regions and often require helping community members regain a sense of stability after a disruptive event.

With more and more disasters impacting communities across the U.S. and other unprecedented events like the COVID-19 pandemic affecting individuals and families, the DLS program continues to explore ways to innovate and reach more people. In 2020, for example, the program launched a [national hotline](#)¹ to connect people with local COVID-19 and disaster legal help hotlines, and a [pro bono portal](#)² that enables attorneys to filter pro bono opportunities by disaster area.

Since 2007, the DLS program has responded to hundreds of disaster declaration across the county and its territories including hurricanes, floods, tornadoes, fires, mudslides, lava flow, earthquakes, winter storms, cyclones, and even acts of terror.

DLS Team Members from the 2020-2021 ABA Bar Year contributed to the content of this Guidebook.

Standing Committee on Response and Preparedness

The ABA [Standing Committee on Disaster Response and Preparedness](#) strives to educate lawyers, bar associations, and the justice system to help them prepare for and respond to disasters; provide resources to assist lawyers and the public recover from disasters; and, ensure the rule of law in times of disaster.

Read more about the work of the DLS Program and access helpful information:

- [Introducing DLS](#)
- [45 Years of the ABA YLD DLS Program](#)
- [Responding to Disaster Survivors' Needs Amid COVID-19](#)
- [Disaster Resilience Conversation](#)

¹ 888-743-5749

² <https://aba.joinpaladin.com/aba-disaster-relief/>

A photograph showing a man in a striped shirt and a woman in a pink top engaged in a conversation with a practitioner whose back is to the camera.

CHAPTER 1:

/ FEMA Individual Assistance: Tips for Practitioners

Kayla Barbour, Hannah Dyal, Brittanny Gomez, Meghan Smolensky

The Individual Assistance Program and Policy Guide (IAPPG) is the best resource for information on individual assistance programs administered by FEMA. Section I of the IAPPG explains what types of disasters qualify, the geographic and temporal scope of eligible households, the sequence of delivery, and applicable federal statutes governing the individual assistance program. The IAPPG explains the specifics of each type of assistance in the following order:

Mass Care and Emergency Assistance (MC/EA) provides the following service activities for immediate disaster response: sheltering; feeding; distributing emergency supplies; supporting disability access and needs; reuniting families; supporting pets, service animals, and assistance animals; and supporting mass evacuees.

Individuals and Households Program (IHP) Assistance consists of both Housing Assistance (HA) and Other Needs Assistance (ONA). HA and ONA provide aid for long-term repair or replacement of homes and critical personal property. The Individuals and Households Program is the primary focus of this chapter.

Disaster Case Management (DCM) connects disaster survivors to a case manager who will work with them on a short-term basis to design and initiate a long-term personal disaster recovery plan.

Crisis Counseling Assistance and Training Program (CCP) supports state and local government efforts to provide social recovery and counseling services in the immediate aftermath, specifically, to help individuals experiencing adverse reactions to the trauma of the disaster.

The ABA YLD Disaster Legal Services Program (DLS). See intro to the ABA YLD DLS section for more information.

Disaster Unemployment Assistance (DUA) provides limited income for survivors who are ineligible for state unemployment insurance despite losing their income as a result of a disaster.

Voluntary Agency Coordination seeks to organize and support non-governmental organizations providing response and recovery assistance such as the Red Cross and local churches.

Individuals and Households Program Overview

Typically, the client's most significant disaster damage will be to their home and belongings. Assistance for this type of damage falls under HA and ONA. FEMA assistance is not intended to make a disaster survivor whole. Instead, it is intended to meet basic needs and supplement disaster recovery efforts.¹ There are different types of HA and ONA depending on the client's circumstances (individuals vs. businesses, homeowners vs. renters, etc.), but all clients start with the same FEMA application. HA and ONA each have their own max award amount that is adjusted by statute each year. FEMA assistance maximums are published annually in the federal register. Home repair assistance required for accessibility does not count towards the maximum cap for disaster survivors with disabilities.²

HOME REPAIR/REIMBURSEMENT

This type of assistance is provided to disaster survivors to help them make repairs to their home. FEMA awards this type of assistance if they find the survivor's home is "uninhabitable." A home is considered uninhabitable if the "dwelling...is not safe, sanitary, or fit to occupy."³ Safe and sanitary evaluations consider whether the occupants are subject to health risks, disaster-caused hazards, or threats due to damage caused by the declared disaster. Functionality is determined by whether an item or home is available for use for its intended purpose. In addition to the condition of the home or items, clients may provide documentation of ability or illness if their needs impact habitability differently. Home Repair Assistance is intended to return the client's primary residence to a livable condition, but not to its pre-disaster condition. See Chapter 5, which addresses habitability issues for individuals with disabilities and how to ensure an equitable opportunity to benefit from FEMA's IHP.

The Housing Assistance Program also includes Temporary Housing Assistance which provides Lodging Expense Reimbursement, Rental Assistance, or Continued Temporary House Assistance. FEMA may also provide direct housing in the form of a Temporary Housing Unit (THU) or a Transportable Temporary Housing Unit (TTHU). TTHU's include readily fabricated dwellings such as an RV or mobile home owned or leased by FEMA. Most of these services are available for up to 18 months but will be subject to review upon the use of the initial disbursement.

OTHER NEEDS ASSISTANCE

This type of assistance is funded by a combination of state and federal funds. A state can elect to administer the ONA portion of individual assistance. If your state does make this election, appeals will go to, and decisions will come from, an agency within the state government. The agency within the state government that oversees the administration of ONA will depend on the individual state. The client will still send the appeal documents to FEMA, and FEMA will forward the appeal to the state agency in charge of those appeals. Some states may allow for a further appeals process. Check the regulations in your state for potential further appeals. If your state does not make the election to administer ONA, then it will be administered by FEMA, and the appeals process will be similar to the process for HA.

1 IAPPG Ch. 3 § I, p. 41.

2 IAPPG Ch. 3 § IV, p. 85.

3 IAPPG Ch. 3 § IV, p. 78.

PRACTICE TIP: Even in states that have elected to administer the ONA program, most of the guidance, as well as the amounts of assistance, are set by FEMA.

Some types of ONA assistance are only available if the client applies for a Small Business Administration (SBA) Disaster Loan and does not qualify. This type of ONA assistance is referred to as SBA Dependent ONA. If the client is approved for an SBA loan, they may choose not to accept the loan. If the client decides to reject an SBA loan award, they will not necessarily be precluded from non-SBA dependent types of ONA. Still, it may be a contributing factor in FEMA's decision about approving or denying the client's application. Clients may apply for non-SBA Dependent ONA whether they elect to apply for an SBA loan or not.

SBA Dependent ONA includes Personal Property Assistance (room furnishings, clothing, appliances, and essential tools for work or school, etc.), Transportation Assistance, and Group Flood Insurance Policy. These types of assistance are subject to a "pause" until an SBA application is submitted and decided. Non-SBA Dependent ONA programs are: Funeral Assistance, Medical and Dental Assistance, Child Care Assistance, Assistance for Miscellaneous Items, Critical Needs Assistance, Moving and Storage Assistance, and Clean and Removal Assistance⁴.

IHP ASSISTANCE ELIGIBILITY

To be eligible for IHP assistance, clients must show:

1. Disaster-Caused Damage
2. Eligible Immigration Status
3. Occupancy
4. Ownership (for homeowners requesting home repair assistance)

The inability to prove one of these factors is the primary reason for a denial of FEMA assistance following a disaster. We will discuss these factors in more depth below.

Preparing to Apply to FEMA

DOCUMENT DAMAGE AND KEEP RECEIPTS

Advise the client to document all the damage caused by the disaster. The client should take photos of the damage as soon as they are able. Clients may need to show their disaster damage to FEMA or their insurance company months after the disaster. The client may make some repairs to their home before resolving their application with FEMA, and they should be able to prove both their damage and the costs of making repairs if needed.

⁴ Please see FEMA's IAPPG Ch. 3 § VI for specific program requirements.

MAKE AN INSURANCE CLAIM

If the client has insurance that may cover their disaster-caused damaged, advise them to apply for FEMA anyway. FEMA cannot duplicate insurance payments, but underinsured clients may receive assistance after their claims are settled. The client should make it clear to FEMA that they have insurance and that they are making a claim, or they must explain why they cannot make a claim on that insurance. The client must also provide to FEMA all relevant documentation related to their insurance. This proof may include documentation showing relevant coverage, as well as any settlement decisions the client has received. Relevant coverage includes any insurance that can be used to recover from the particular disaster that resulted in the damage. For example, there is no need to provide fire insurance documentation for a flood-only disaster. While the client is waiting for their insurance company to make a decision, FEMA will likely deny the client for assistance. If the client's insurance later denies coverage, they may then appeal the FEMA decision.

PRACTICE TIP: Late applications to FEMA are often unsuccessful. Applying to FEMA late because the client was waiting on an insurance decision is not likely to be an acceptable reason for a late application and may lead to a denial of benefits. Always recommend that the client submit a timely application to FEMA clearly describing the status of their insurance claim.

If the insurance company does not reach a settlement in a timely manner, FEMA may allocate funds in the meantime. Upon receipt of an insurance settlement, the client must send FEMA documentation of their insurance settlement and will need to pay back any duplicate funds. Please note, however, that FEMA funds generally cannot be used to cover insurance deductibles. For more specifics about FEMA's relationship with insurance, please see Chapter 5.

APPLY FOR A SMALL BUSINESS ADMINISTRATION (SBA) LOAN

All clients should apply for an SBA Disaster Loan. While the name "Small Business Administration" may be misleading, these loans are not just for businesses. These are low-interest, long-term disaster loans to repair and replace real and personal property for homeowners and businesses who do not qualify for standard bank loans. These loans are a last resort, but, as previously mentioned, survivors are required to apply for SBA loans before they become eligible for certain types of FEMA ONA. If the client does not apply for an SBA loan, they may not be eligible for critical FEMA benefits that may assist in their recovery. For more information on SBA loans, please see Chapter 3.

AVOID DUPLICATE BENEFITS

FEMA cannot award assistance for a disaster need that the client has already received assistance for, regardless of the source of the assistance. If the client receives FEMA assistance and FEMA later determines there was a duplication of benefits, it may result in recoupment, discussed further in Chapter 6. Generally, recoupment means that the client will have to pay some or all of their award money back to FEMA in the future. Disaster survivors are not excluded from seeking assistance from more than one source; however, each form of assistance must cover a different need. Survivors may also receive multiple forms of assistance for the same need so long as the resources do not exceed the approved cost for that need.

The two primary reasons clients end up with duplicate benefits are through insurance settlements or SBA Disaster Loans. Look out for other, less common duplication of benefit situations, such as charity or the help of a friend or a family member. For example, if the client's friend gives them a refrigerator free of charge to replace a refrigerator destroyed in the disaster, FEMA will no longer pay to replace that item. Suppose the client does receive money to replace or repair the refrigerator. In that case, there is a duplication of benefits that could result in recoupment down the line if FEMA discovers the duplication.

Applying to FEMA

Generally, the deadline to apply for FEMA assistance is sixty days after the disaster declaration. Counties designated for IA after the declaration may have an extension. Historically, FEMA has extended the application period fairly often, typically at the state government's request. Pay attention to FEMA's website, local media, and press releases for deadline updates. Once established, the deadline is quite firm. However, if the client has certain extenuating circumstances, FEMA may accept a late application for "good cause" with documentation proving the cause of the late application. "Good cause" can include but is not limited to: records of hospitalization, illness, or disability of the client or an immediate family member; record of death for an immediate family member; or proof of personal or business travel that kept the client out of the area for the full application period.⁵ In theory, other good faith causes for late applications are acceptable, but in practice, if the client applied late for any reason other than the causes listed above, FEMA is likely to deny the client's request for FEMA assistance. See Chapter 5 for more information on clients with disabilities that might require a reasonable accommodation to ensure an equitable opportunity to participate.

THE FEMA APPLICATION

An initial FEMA application must include the following:

- Name and SSN of the primary client.
- Name and SSN of secondary/co-applicant.
Note—this is optional but recommended. Incomplete information often causes delays later in the process.
- Pre-disaster address and proof of occupancy within three months before the disaster declaration
Note—homeowners applying for IHP must also include proof of ownership⁶.
- Current mailing address and contact information.
Note—if this changes at any point, notify FEMA immediately. Incorrect contact information is one of the most common reasons a client might not hear back from FEMA.
Additionally, all communication from FEMA, including notices and requests for more information that can trigger strict deadlines, is sent to the listed current mailing address. Ensure that the client remembers where they elected to have communications sent (by mail or electronically) and that they check that inbox or mailbox frequently.

⁵ IAPPG Ch. 3 § III, p. 71.

⁶ <https://www.fema.gov/assistance/individual/after-applying/verifying-home-ownership-occupancy>.

- Names of all occupants of the pre-disaster household.
Note—this is the client's legal household—it does not include other people living in the home who are financially independent.
- Types of relevant insurance held by the household if any.
Note—it is not necessary to include insurance coverage for hazards that do not apply to this disaster.
- Household annual gross income (pre-disaster), usually in the form of pay stubs for three months leading up to the disaster or a public benefit award letter, such as a Supplemental Security Income (SSI) award.
- Banking information for direct deposit.
Note – FEMA does not require direct deposit. If the client does not include this information, FEMA will mail checks to the mailing address provided in the application.
- Documentation of losses caused by the disaster
Note—photos are not required, and FEMA says that they do not consider photos. However, in our experience, they may be helpful to document damages for ONA, particularly if a messy appeals process arises later.

Once the client has compiled all relevant documentation, they must apply themselves – an attorney cannot apply on their behalf. There are several ways to apply. They can apply in person at the nearest available disaster recovery center (DRCs can be located here <https://egateway.fema.gov/ESF6/DRCLocator>), over the phone at 1-800-621-3362, or TTY only at 1-800-462-7585; or on the internet at www.disasterassistance.gov. Clients can check on the status of their application, submit additional requested documents, update their contact information, and more using the FEMA website.

PRACTICE TIP: If the client requests legal assistance months after an application to FEMA for assistance, and has not received any decision letters from FEMA, check to see if they have set up an online account and received decision letters there. Sometimes clients who do not have reliable access to the internet set up online accounts because a family member or friend helps them, and then they later cannot access the online account.

Clients should make copies of their application materials—and any subsequent communication they have with FEMA—in case FEMA makes a mistake or loses track of something, or if they are denied and need to prepare an appeal. If you are involved in the application phase, make one physical copy of the application for the client and one for yourself, and advise them to upload the application to a cloud-based drive for their records.

FEMA APPLICATION SUBMITTED

Once the client's application is submitted, FEMA will verify the information in the application. They will generally try to verify the client's identity and immigration status, whether the client occupied the home at the time of the disaster, and, if the client is requesting home repair assistance, whether the client owned the home at the time of the disaster. If FEMA cannot verify the information, they will send the client a written request for information or a denial letter. If FEMA can verify the client meets the eligibility standards, they will contact the client to set up an inspection of the property. This contact should happen within ten to fifteen days of FEMA's receipt of the application materials. The goal of the inspection is to verify damages directly caused by the disaster and determine if a home is habitable or not.

Clients must be present for their inspection, but advocates should consider joining the inspection to ensure a correct and thorough inspection. In major disasters, FEMA applicants often report that inspectors conduct what clients may call "drive-by inspections," or an inspection that is patently too short to analyze structural damages effectively. Sometimes clients report that the FEMA inspector does not even get out of their vehicle. Most inspectors are third party contractors and not FEMA employees. The expertise of these inspectors varies greatly. Generally, FEMA only requires inspectors to pass a criminal background check.

If an applicant is not English proficient, FEMA is required to provide effective communication, including an inspector who the client understands. FEMA often does not provide an inspector who speaks the same language as the client, especially after a major disaster when FEMA hires many new inspectors at once. Be sure to keep a record of any occasions when the client was denied effective communication, as this may be key to a successful appeal.

Upon completion of the inspection, FEMA should notify clients of their decision within ten days. All communications will be sent directly to the client and not to the advocate or representative. Be sure the client keeps their contact information up to date and regularly checks for FEMA correspondence.

Appealing FEMA Decisions

Most clients will likely seek out an attorney after they have already applied to FEMA. FEMA Applicants may seek out legal assistance because they have not heard from FEMA in some time or because they have received a denial from FEMA, and they would like to appeal it. Deadlines for FEMA appeals are almost always sixty days from the date on the denial letter. Occasionally, FEMA will request additional information from the applicant, and those requests typically have a deadline of twenty-one days.

PRACTICE TIP: FEMA has a deadline for its appeals but generally accepts appeals submitted after the deadline for a good cause reason. Generally, even if the client's only reason for a late appeal is a lack of knowledge about the deadline, FEMA may consider the appeal. While it is always best to appeal before the deadline, consider appealing FEMA denials for clients who are past the deadline if they have an otherwise strong case.

DETERMINE THE STATUS OF THE CLIENT'S FEMA APPLICATION

First, determine the status of the client's FEMA application. Discuss the client's case with them. Determine what they have already submitted to FEMA, what communication they have received from FEMA, and, most importantly, what assistance they are qualified for.

If the client has decision letters from FEMA, ask for copies and review them. Denial letters will provide the denial reason. FEMA may list multiple denial reasons in the same letter. For example, the client may have received a letter denying them for home repair assistance because the "home is safe to occupy" and because they did not successfully prove ownership.

PRACTICE TIP: Always get written, signed consent from the client to release their FEMA disaster assistance records to a third party and a copy of the client's ID at the beginning of the representation. Both documents must be submitted with all appeals to FEMA, so having them ready will save time in the future.

REQUEST A COPY OF THE CLIENT'S FEMA FILE

After determining the status of the client's application with FEMA, request the FEMA file. To request a FEMA file, submit a cover letter making the request for the FEMA file, a copy of the client's government-issued ID, and a written consent authorizing an attorney to speak to FEMA on the client's behalf. Throughout the FEMA application process, FEMA will not communicate with an attorney or third party unless the client has submitted signed written consent authorizing FEMA to release the client's information to the advocate. The written consent should include the following information:

- The client's full name;
- The client's date and place of birth;
- The client's current mailing address (if they are not currently living on the damaged property);
- The client's damaged property address, and phone number;
- The last four digits of the client's Social Security number;
- The client's signature (dated)
- A notarization or the statement "I hereby declare under penalty of perjury that the foregoing is true and correct;"
- The client's FEMA Application Number and the relevant disaster number;
- Specific indication of what information can be released (likely all information relevant to the client's case); and
- Specific third-party designation identifying the individuals, entities, or organizations to which disclosure is being consented.

Submitting a FEMA file request early into the representation of the case's case is helpful for several reasons. First, FEMA files should contain all the documents both that the client has provided to FEMA and that FEMA has sent to the client. Secondly, the FEMA file may contain some notes from the caseworkers who made the decision in the client's case. This information may be helpful while putting together an appeal of FEMA's decision. Lastly, for the advocate to speak to FEMA on the client's behalf, FEMA must have a copy of the signed written consent on file. Requesting a FEMA file is an easy way to provide a copy of the written consent to FEMA early in the case.

FEMA files can sometimes arrive only a few weeks after requested, but they may also take several months or more. Advocates should not wait to receive the FEMA file to submit a timely appeal to FEMA.

CONTACT FEMA

If you need more information about the client's case quickly, contact the FEMA helpline⁷ directly for more information. To avoid delays, the advocate should contact FEMA directly once written consent is on file or join in on the call with the client. After a disaster, survivors may experience trauma, and trying to navigate FEMA may cause additional pain or confusion. Furthermore, FEMA hotline agents, DRC staff, and inspectors are not the decision-makers, so they may give conflicting or even incorrect information or agree to things they have no authority to give (such as ordering another inspection). As the advocate, you will likely know much more about the FEMA process, and you will be better equipped to recognize when information is false, and to push the FEMA hotline agents to obtain the correct information.

Common Appeal Reasons and How to Handle Them

A FEMA applicant can appeal any initial eligibility determination for assistance, including the amount of assistance awarded. Even if the client did receive some assistance from FEMA, they can appeal and request more assistance if they believe their disaster damages are more than the amount of assistance they received.

All appeals should follow the same outline and contain the following elements⁸:

- A cover letter written by the attorney;
- Signed written consent;
- A copy of the client's ID;
- A signed declaration from the client explaining the facts of the case and requesting the appeal of the FEMA decision; and
- Supporting documents.

The contents of the cover letter, the client's declaration, and the supporting documents will change depending on the type of appeal, but the general format is the same. FEMA may not consider an appeal

⁷ The FEMA helpline number is 1-800-621-3361.

⁸ See here for sample FEMA appeal templates: <https://lonestarlegal.blog/dls-pro-bono-forms/>.

from a third party without including a copy of the client's ID and the signed written consent. Never send a FEMA appeal without these two documents.

In some cases, the client may be denied because they are just missing one document. For these clients, you may decide to send and appeal with a copy of the relevant document and no declaration from the client. FEMA will often accept an ownership or occupancy document without a declaration and approve the client for assistance. However, under FEMA's rules, an appeal must include a signed declaration to be considered an appeal of a decision.

Fax⁹ or mail¹⁰ the FEMA appeal. As a best practice, fax a copy of the appeal and mail a hard copy as well as the facsimile may distort photo quality and other documents.

IMMIGRATION STATUS

Eligible immigration statuses for IHP include United States Citizen, a non-citizen national, or a qualified alien. The IAPPG contains a more in-depth explanation of the types of qualified aliens eligible for IHP¹¹. Clients may be eligible for mass care/emergency assistance, crisis counseling, disaster case management, and disaster legal services even if they do not have a valid immigration status for other types of assistance.

PRACTICE TIP: **For mixed status families, a US citizen minor child of undocumented parents may be the applicant to FEMA, even though minor children are typically not permitted to apply to FEMA. The undocumented parent must register as a co-applicant. FEMA often cannot verify the identity of these minor children because they often do not have government issued IDs, which are the primary method used to verify identity. To show the identity of minor children, the easiest method is typically to submit a copy of the child's birth certificate and social security card or other documentation from the Social Security Administration showing the child's social security number.**

OWNERSHIP

Only clients who are requesting home repair or replacement assistance must show ownership of their home at the time of the disaster. Once the client represents that they are the owner of their home, FEMA may try to verify the client's ownership by looking at the client's county or other local government's records. If the records are incorrect, FEMA may deny the client for inability to prove homeownership even if the client is the legal owner of the home. Additionally, if the title documents are state-specific or uncommon, FEMA caseworkers, (who are not attorneys), may need you to interpret the law in the relevant state and explain how the client owns the home.

FEMA also has an alternate ownership standard if the client does not have legal title to the property. If the client does not pay rent to live in the home and can show that either they pay the property taxes or

⁹ Fax FEMA appeals to: 1-800-827-8112. Mark it "Attention: FEMA-Individuals & Households Program."

¹⁰ Mail FEMA appeals to: FEMA National Processing Service Center, P.O. Box 10055, Hyattsville, MD 20782-8055.

¹¹ IAPPG Ch. 3 § II, p. 46, 47.

are responsible for maintenance to the home, then they are the owner for the purposes of FEMA home repair assistance.

As a last resort, FEMA may accept a sworn statement from the client with heirship property or those who own mobile homes or travel trailers. For a full explanation of the list of ownership documents see the IAPPG¹².

PRACTICE TIP: If FEMA awards the client rental assistance, this means the client has met the general qualifications for FEMA assistance. If the client has also been denied for home repair assistance, the last thing they need to prove is ownership. Understanding this makes it easier to determine the denial reason if you are not able to access the full FEMA file.

For ownership appeals, as with all FEMA appeals, draft a declaration for the client laying out the ownership of their property. If the client has a deed, and FEMA just made a mistake, the declaration may be succinct and state that the client is the owner of the property and request that FEMA provide them with home repair assistance. If the situation is more complex, the client's declaration and the cover letter will likely be more complex as well.

Submit to FEMA any client documents that clarify the title. If the client is attempting to show ownership under FEMA's alternate ownership standard, submit proof that the client is responsible for the property tax or maintenance of the property, as well as a sworn statement that they do not pay rent. If the home's legal owner is willing, a notarized statement from them confirming the client does not pay rent and is responsible for the property taxes or pays for maintenance is beneficial.

OCCUPANCY

Eligible for IHP assistance of any kind requires the client to have occupied the home at the time of the disaster. FEMA typically uses the client's government-issued ID to verify occupancy. If the client does not have a state-issued ID or the address on their ID does not match their home address, FEMA may deny them until they can show that they occupied the home at the time of the disaster. There are many documents that FEMA will accept to show occupancy. The most common documents to show occupancy include utility bills, bank statements, credit card statements, pay stubs, rent receipts and rental/residency agreements. These documents must be dated within the three months prior to the disaster. The complete list of documents to prove occupancy is in the IAPPG¹³.

1. Disaster Caused Damage

Disaster related damage can be both obvious and obscure. Obvious and direct evidence generally warrants a FEMA award. Roofs ripped off and trees through windows are easy to proffer evidence. But effects from rising flood waters and exacerbation of already deferred maintenance can be harder to

12 FEMA Fact Sheet, Update to FEMA's Individual Assistance Program and Policy Guide, Version 1.1; p.6-8 https://www.fema.gov/sites/default/files/documents/fema_updated-iappp-version-1.1.pdf

13 FEMA Fact Sheet, Update to FEMA's Individual Assistance Program and Policy Guide, Version 1.1; p.2-5 https://www.fema.gov/sites/default/files/documents/fema_updated-iappg-version-1.1.pdf.

prove. Thus, denial letters state the reason as "the home is safe to occupy". Focus on the habitability of the residence, is it safe, sanitary, and fit for the occupant to remain in? If not, document how the disaster related damage makes the home uninhabitable or unsafe, unsanitary, and unfit to occupy. The client may also appeal an approval if they believe the assistance is not sufficient to sustain the habitability or an environment free from disaster-related hazards. The content of these appeals will be the same whether the client is appealing a total denial or an approval for an insufficient amount.

To appeal a "home is safe to occupy" denial, provide a declaration from the client explaining the damage to their home, identify any damages missed by the original inspector, and then explain how the damage was caused by the disaster. List what if any repairs have been made, and why more financial assistance is necessary to make the home habitable. If the client has already received some repair assistance and spent that money on repairs, provide receipts to show how they spent the money.

The client must obtain a repair estimate. Without a repair estimate, FEMA will likely deny the client immediately. The estimate should be itemized, and it should contain the contractor's name and contact information. FEMA will typically contact the contractor to confirm they inspected the home, and that the disaster caused the damage. If the contractor does not respond, FEMA will likely deny the client's request for a second inspection.

PRACTICE TIP: A common misconception of appeals for home repair assistance is that FEMA will provide the client with the specific amount of money shown in a repair estimate. Unfortunately, FEMA does not make decisions about home repair assistance amounts based on estimates or receipts from the client. FEMA only awards money based on the inspection reports from their own inspectors. The purpose of appealing a home repair assistance decision is to ask that FEMA issue a new inspection. Hopefully, the second inspector will determine there is more damage.

Disaster survivors with disabilities who are denied FEMA benefits and whose underlying health conditions were not considered while determining eligibility, should have a right to appeal, please refer to Chapter 5 for more information.

2. Rental Assistance/Continued Rental Assistance

Rental assistance is available both for renters and homeowners when they are displaced from their residences. Rental assistance for homeowners is available if the home was damaged in the disaster and the client needs to relocate while the repairs to the home are made. Rental assistance for renters is available when the renter's unit was damaged and is no longer accessible.

PRACTICE TIP: To determine whether the client needs rental assistance, FEMA asks the client if they are willing to relocate. Clients often misunderstand this question and believe that FEMA is asking whether they want to relocate permanently. If the client does want rental assistance to temporarily relocate while repairs are being made, but they have told FEMA they do not want to relocate, submit a declaration from the client requesting rental assistance. If FEMA has already found that the home was damaged, this request will likely be approved.

In theory, continued rental assistance is available for 18 months following the disaster. However, in practice, continued rental assistance is much harder to receive than the original rental assistance disbursement. To receive continued rental assistance, the client must fill out and submit the continued rental assistance form. The rental assistance form must also contain the following documents: a copy of the current lease, proof that prior rental assistance from FEMA was properly spent, proof of pre-disaster housing costs including property taxes and utility bills, and proof of pre- and post-disaster income for all adults in the home.

Most importantly, the client will have to show that their pre-disaster residence is uninhabitable, inaccessible, or not available due to the disaster. For homeowners, if FEMA determines they have provided funds to make the client's home habitable, FEMA will likely determine that the client should return to their pre-disaster home, even if the client believes the home is still unsafe to live in. For renters, if there are rental properties in the area charging rent comparable to pre-disaster rent prices, FEMA will likely conclude the client is in the same position they were in prior to the disaster. Therefore, the client no longer needs continued rental assistance.

Appealing continued rental assistance denials is possible, but it is often unsuccessful in practice. To bolster the appeal, include complete documentation that the original FEMA award was spent on rent for another residence and documentation as to why the original residence remains uninhabitable.

See Appendix A for a FEMA Appeal Template. Use this quick reference guide to follow along when drafting FEMA appeals.

FEMA Appeal Submitted

After submitting the FEMA appeal on the client's behalf, be sure to check on the status periodically to see if FEMA has made a decision. FEMA will not send appeal decisions to an attorney, even with written consent on file. Be sure to remain in contact with the client. Contact FEMA directly to get status updates if it has taken more than thirty days for FEMA to reach a decision.

Warn the client that any funds received must be used for the exact purposes specified in the award letter. Be sure to tell the client to keep documentation proving they were eligible for the assistance when they received it, and proof of how they spent the assistance, as FEMA may demand reimbursement for up to three years if they determine afterwards that the client wrongfully received FEMA assistance. Advise the client to make extra copies to keep or suggest creating electronic copies. See Chapter 6 for more information on FEMA recoupment.

Conclusion

Consider taking FEMA appeal cases pro bono to help communities recover after disaster. FEMA assistance is typically some of the earliest financial help to arrive in a disaster impacted area. Getting FEMA assistance can be vital to preventing the damage from becoming worse and make recovery faster.

After a major disaster, it can be overwhelming for attorneys to assist their communities. Learning a new area of law is daunting, but expertise with FEMA appeals can be picked up quickly. Many FEMA denials, especially those caused by ownership and occupancy issues, are difficult for disaster survivors to handle on their own, but simple to resolve with the assistance of an attorney. Additionally, elderly survivors or survivors who do not have access to reliable technology struggle the most to work with FEMA. The legal community's advocacy in the immediate months following a disaster could shape the recovery for the whole region.



CHAPTER 2:

/ Housing: National Insights and Resources

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Introduction and Preparation Insights

INTRODUCTION

Access to safe, stable housing is critical to the well-being of families and communities following a disaster. This chapter will provide an overview of the information that an attorney will need to know while advocating for the housing needs of survivors before, shortly after, and well after a disaster.

HOUSING MITIGATION PLANNING

Housing mitigation programs help individuals prepare their homes before a disaster strikes but are contingent on a disaster declaration that occurred previously. The programs are designed to break the cycle of disaster damage, reconstruction, and repeated damage. Hazard mitigation includes long-term solutions that reduce the impact of disasters in the future. FEMA's hazard mitigation assistance provides funding to areas that have been approved for mitigation based on a declared disaster for eligible mitigation measures that reduce disaster losses. The program:

- Reduces the vulnerability of communities to disasters and their effects.
- Promotes individual and community safety and their ability to adapt to changing conditions and withstand and rapidly recover from disruption due to emergencies (resilience).
- Promotes community vitality after a disaster.
- Lessens response and recovery resource requirements after a disaster.
- Results in safer communities less reliant on external financial assistance¹.

¹ Mitigation Assistance, U.S. Small Business Administration, <https://www.sba.gov/funding-programs/disaster-assistance/mitigation-assistance> (last visited Jul 27, 2021).

The Disaster Recovery Reform Act of 2018 (DRRA) amended the Stafford Act to, among other aspects, help “build the nation’s capacity for the next catastrophic event.”² DRRA provided funding for FEMA to administer several programs, including the Hazard Mitigation Grant Program (HMGP).³ HMGP can provide grants to State and local governments after a major disaster is declared. These grants provide funds to assist with the cost of mitigation measures like strengthening buildings to withstand earthquakes or raising furnaces, storage areas, or entire buildings above flood elevations.⁴

HAZARD MITIGATION ASSISTANCE PROGRAMS:

- [Hazard Mitigation Grant Program \(HMGP\)](#) assists in implementing long-term hazard mitigation planning and projects following a Presidential major disaster declaration.
- [HMGP Post Fire Grant](#) makes assistance available to help communities implement hazard mitigation measures after wildfire disasters.
- [Flood Mitigation Assistance \(FMA\) Program](#) provides funds for planning and projects to reduce or eliminate the risk of flood damage to buildings that are insured annually under the National Flood Insurance Program.
- [Building Resilient Infrastructure & Communities \(BRIC\)](#) supports states, local communities, tribes, and territories as they undertake hazard mitigation projects, reducing the risks they face from disasters and natural hazards.
- [Pre-Disaster Mitigation \(PDM\) Program](#) provides funds annually for hazard mitigation planning and projects.⁵

Climate adaptation, disaster risk reduction, and hazard mitigation involve working with moving targets, which change with development patterns, changing natural processes, the climate, the economy, and human developments. Good mitigation benefits families, businesses, communities, and large projects, by limiting the use of floodways, protecting land with high value, protecting investments, and ensuring the safety of individuals on the ground.

Before a disaster strikes, become familiar with the mitigation efforts that are taking place in the area. Make the community aware of the available programs to ensure residents and their homes can withstand the next disaster.

EMERGENCY SHELTER

Unfortunately, there are instances in which shelters are the only form of safe housing for community members before, during, and after a disaster. Sheltering is appropriate when conditions require that residents seek protection at home, work, or other locations when other emergencies arise. The length of time required to take shelter may be short, such as during a tornado warning, or long, such as during

2 Disaster Recovery Reform Act of 2018, FEMA (2021), <https://www.fema.gov/disaster/disaster-recovery-reform-act-2018> (last visited Sept. 22, 2021).

3 Elizabeth M. Webster. ET AL., The Disaster Recovery Reform Act of 2018 (DRRA): Implementation Updates for Select Provisions, 2 (2021), <https://crsreports.congress.gov/product/pdf/R/R46776/3>.

4 A Citizen's Guide to Disaster Assistance, supra, at 3-26.

5 Hazard Mitigation Assistance Grants, FEMA (2021), <https://www.fema.gov/grants/mitigation> (last visited Jul 27, 2021).

a pandemic. In all cases, residents must stay informed and follow the instructions of local authorities.⁶ Shelter outside of the hazard area could include staying with family or friends, seeking a hotel room, or staying in a mass shelter.

For adequate shelter after a disaster, several resources are available. For many storms, the American Red Cross will set up [shelters](#).⁷ Survivors can find emergency shelter resources through their local emergency management offices. Then, survivors can visit a [Disaster Recovery Center](#).⁸ Homeless individuals can search for emergency shelters on the Salvation Army's [website](#).⁹ When an emergency shelter becomes the client's only option for housing, several resources are available to them.

To help reduce the spread of the virus COVID-19, the FEMA Public Assistance program provided funding to the states, localities, tribes, and territories for non-congregate emergency shelter for disaster survivors. Non-congregate sheltering includes hotels, motels, or dormitories. The program has been extended through November 30, 2021.¹⁰ Before advising clients of this program, attorneys should ensure the non-congregate sheltering program remains available.

Insurance

HOMEOWNER'S (AND RENTER'S) INSURANCE

Maintaining adequate insurance is a critical aspect of protecting housing and belongings before a disaster. To the fullest extent permitted by law, disaster survivors should be compensated for their losses through insurance coverage.¹¹ Standard homeowner's policies cover many potential disasters, from tornadoes to lightning strikes to winter storm damage. Policies do vary, so homeowners should check their policies for the specific events that are covered.

DISASTER ISSUES NOT COVERED BY HOMEOWNER'S INSURANCE

- Flood damage is excluded under standard homeowner's and renter's insurance policies. Separate flood insurance coverage, however, is available for both homeowners and renters as a separate policy both from the [National Flood Insurance Program \(NFIP\)](#) and from a few private insurers.¹²
- Earthquake coverage is available from most insurance companies as a separate policy or an endorsement of a homeowner's or renter's policy.
- The owner's responsibility is to maintain their home and take reasonable precautions to protect the home from damage. An insurance policy will not cover damage due to lack of maintenance, mold, or infestation from termites or other pests.

6 Shelter, Shelter | Ready.gov, <https://www.ready.gov/shelter> (last visited Jul 27, 2021).

7 <https://www.redcross.org/get-help/disaster-relief-and-recovery-services/find-an-open-shelter.html>

8 <https://egateway.fema.gov/ESF6/DRCLocator>

9 <https://www.salvationarmyusa.org/usn/plugins/gdosCenterSearch?start=1>

10 FEMA, FEMA Emergency Non-Congregate Sheltering during the COVID-19 Public Health Emergency (Interim) FEMA Policy 104-009-18, Version 3 (2021).

11 Rule of Law, *supra* note 7, at 6.

12 National Flood Insurance Program, [Benefits.gov](https://www.benefits.gov/benefit/435), <https://www.benefits.gov/benefit/435> (last visited on Sept. 22, 2021).

- Sewer backups are not covered under a typical homeowner's insurance policy, nor are they covered by flood insurance. This type of coverage must be purchased either as a separate product or as an endorsement to a homeowner's policy, usually at a nominal cost.¹³

Additional Living Expenses (ALE) may also be covered by the homeowner's insurance policy. ALE covers the living expenses incurred after an insured suffers a covered loss to a part of their residence that renders that portion of the residence uninhabitable. Homeowner's insurance policies may include loss of use provisions that provide funds for rental income lost when the dwelling becomes uninhabitable. This coverage pays for the fair rental value of that part of the residence premises rented to others or held for rental less any expenses no longer incurred.¹⁴

In addition to establishing that a particular loss is covered, most policies contain a list of post-loss duties that an insured must comply with or potentially risk forfeiture of coverage. These duties include giving the insurer and/or its agent prompt notice of the loss; notifying the police in case of loss by theft; protecting the property from further loss; preparing an inventory of damaged personal property showing its quantity, description, and actual cash value; and submitting a signed, sworn proof of loss.¹⁵ As often as the insurer reasonably requires, the client will also be required to show damaged property, provide requested records and documents, and permit copies to be made.¹⁶

To file a claim, contact the insurance agent or company immediately and find out:

- Whether the terms of the policy cover the damage.
- The deadline to file a claim.
- Whether the claim exceeds the deductible (the amount of loss the client agrees to pay before insurance kicks in).
- The processing time for the claim.
- Whether estimates for repairs will be needed.

The insurance company may send the client a proof of loss form to complete, or an adjuster may visit the insured home first. An adjuster is a person professionally trained to assess the damage. To substantiate the loss, prepare an inventory of damaged or destroyed items. Provide a copy to the adjuster, along with copies of any receipts. Do not throw out damaged items until the adjuster has visited. It is useful to consider photographing or videotaping the damage. If personal property was destroyed and there is no proof of the items lost, clients should work from memory. The more information documented about the damaged possessions (a description of the item, approximate date of purchase, and what it would cost to replace or repair) the faster the claim generally can be settled. Still, attorneys suggest documenting all possessions before a disaster by taking pictures or making videos.

13 Insurance Information Institute, <https://www.iii.org/article/which-disasters-are-covered-by-homeowners-insurance> (last visited Jul 27, 2021).

14 Florida Disaster Assistance Manual for Legal Services Advocates, Florida Legal Services (2019) <https://www.floridalegal.org/disaster-manual> (last visited on Sept 22, 2021).

15 https://www.floir.com/siteDocuments/InventoryChecklist_6-26-08.pdf

16 Coble, supra note 1, at 68.

Identify structural damage to the home and other structures such as a garage, tool shed, or in-ground swimming pool. Make a list of everything to show the adjuster, for example, cracks in the walls and missing roof tiles. Also, check the electrical system. Most insurance companies pay for these inspections.

After assessing the damage, take reasonable steps to protect the property from further damage. Save receipts for what is spent and submit them to the insurance company for reimbursement. Payments for temporary repairs are also part of the total settlement. Beware of contractors who ask for a large amount of money upfront and contractors whose bids are very low because they might attempt to cut corners, resulting in shabby work. Extensive permanent repairs should not be made until the claims adjuster has assessed the damage.

Get written bids from licensed contractors. The bids should include details of the materials to be used and prices on a line-by-line basis. Keep copies of the lists and other documents to submit to the insurance company. Also, keep copies of whatever paperwork is submitted to the insurance company and record the names and phone numbers with whom the claim is discussed.

Sometimes after a major disaster, state officials ask insurance company adjusters to see everyone who has filed a claim before a certain date. When there are numerous claims, the deadline may force some to make a rough first estimate. If the first evaluation is not complete, set up an appointment for a second visit. The first check from the insurance company is often an advance. When offered an on-the-spot settlement, the client can accept the check right away. Later, if more damage is found, the claim can be reopened for an additional amount.¹⁷ If the policy includes replacement cost coverage, the insurance company will pay up to the full cost of repairing or replacing the damaged structure with a building of "like kind and quality," depending on the policy.

Those filing an insurance claim must pay any deductible before receiving a payout from the insurance claim. The insurance policy deductible is a share of the total cost of the damage. The cost of the repairs will be applied to the deductible. After the deductible is paid, the policyholder will receive money from the payout of the claim.

Hurricane deductibles can range from 2% to 10% of the home's coverage amount. For example, if a home is insured for \$100,000 and has a 2% deductible, the annual deductible is \$2,000.00. This is the amount the policyholder would be expected to contribute toward the damage claim per calendar year. Once a hurricane has been declared a watch/warning, the deductible applies, coverage is locked, and new policies are not usually issued. This period usually ends 72 hours after the storm warning is lifted.¹⁸

In recent years, the assignment of benefits (AOB) (i.e., policy proceeds) is a practice commonly used by insured homeowners.¹⁹ An AOB gives the third-party vendor, such as a contractor, authority to file a claim, make repair decisions, and collect insurance payments without the homeowner's involvement. It also

17 Settling insurance claims after a disaster, Insurance Information Institute, <https://www.iii.org/article/settling-insurance-claims-after-a-disaster> (last visited Jul 27, 2021).

18 Homeowners insurance after disaster, Community Legal Services of Mid-Florida (2020), <https://www.clsmf.org/homeowners-insurance-after-disaster/> (last visited Jul 27, 2021).

19 Coble, supra note 1, at 80.

allows the third-party vendor to seek direct payment from the insurance company to pay for repairs that the third-party vendor has agreed to perform. Advise the client of the risks involved in proceeding with such a contract and to think carefully before assigning benefits of an insurance policy to a third-party.

When multiple payouts are received for the same damage reported to FEMA and the insurance company, a “duplication of benefits” has occurred. If the client receives money from FEMA before receiving a decision on their insurance claim or before receiving a payout from their insurance company, then they must pay back the money they received from FEMA after receiving money from the insurance claim.²⁰ See Chapter 1 for more information on FEMA duplication of benefits issues.

Before a disaster, ensure clients are aware of what their insurance does and does not cover, how to file a claim, and the obligations the client must fulfill to obtain the maximum benefit.

NATIONAL FLOOD INSURANCE PROGRAM

Flood damage is excluded under standard homeowner’s and renter’s insurance policies. Flood coverage, however, is available as a separate policy from the federal government’s National Flood Insurance Program (NFIP) and a few private insurers.²¹ The NFIP partners with more than fifty insurance companies and thousands of independent agents across the country offer the same affordable NFIP rates and crucial insurance coverage. Flood insurance covers losses directly caused by flooding or by an excess of water on land that is normally dry, affecting two or more acres of land or two or more properties.²² The NFIP provides coverage up to \$250,000.00 for the home structure and \$100,000.00 for personal possessions. File flood insurance claims with the homeowner’s insurance company.²³

Purchasing flood insurance can help protect valuable items in a home. Many property owners, particularly those in [high-risk flood areas](#), may be required to have flood insurance.²⁴ The NFIP offers two types of coverage – building coverage and contents coverage – to protect homes and belongings. Building coverage protects items such as foundation walls, anchorage systems, and staircases, electrical and plumbing systems, refrigerators, cooking stoves, and built-in appliances (like dishwashers). In contrast, content coverage protects personal belongings such as clothing, furniture, and electronic equipment. Flood insurance policyholders in high-risk flood areas may also receive up to \$30,000.00 to help offset the costs to bring their home or business into compliance with their local community’s floodplain management ordinance or regulations.²⁵

Clients should report a loss immediately to the flood insurance agent or carrier to receive assistance after a flood. Be sure to ask them about advance payments. Anyone needing help finding their insurance agent or carrier can call the NFIP. Before discarding items, take photos and videos of the damage, including structural and property damage on the inside and outside of the home. Remember to take photos of the insides of closets and cabinets. The adjuster will need evidence of the damage to prepare to file a claim.²⁶

20 Homeowners insurance after disaster, *supra* note 19.

21 Settling insurance claims after a disaster, *supra*.

22 Why Buy Flood Insurance?, FloodSmart, <https://www.floodsmart.gov/flood-insurance/why> (last visited Jul 27, 2021).

23 Settling insurance claims after a disaster, *supra*.

24 <https://www.floodsmart.gov/flood-map-zone/find-yours>

25 What flood insurance covers, FloodSmart, <https://www.floodsmart.gov/how/what-is-covered> (last visited Jul 27, 2021).

26 How do I start my flood claim?, FloodSmart, <https://www.floodsmart.gov/start> (last visited Jul 27, 2021).

After an official Presidential Disaster Declaration, NFIP flood insurance policyholders are encouraged to apply for FEMA disaster assistance in addition to their flood insurance claim. FEMA disaster assistance may help with uncovered expenses like temporary housing assistance or other needs for eligible individuals. See Chapter 1 for more information on FEMA benefits.

File flood insurance appeals directly to FEMA, the federal agency that oversees the National Flood Insurance Program (NFIP). On appeal, FEMA will work with both the client and insurer to gather the claim facts, review the policy, and provide an appeal decision. There is no fee for filing an appeal, and policyholders do not need a third-party representative. Appeals must be filed within sixty days of the date of the insurer's denial letter.

NFIP APPEALS PROCESS

To file an appeal, the client must do the following within sixty calendar days of the date written on the denial letter:

- Explain the issue(s) in writing;
- Include a copy of the denial letter from the insurer; and
- Provide any supporting documentation (e.g., photos of the flood damage, itemized estimates signed by a contractor, properly completed drying logs).²⁷

There is no fee to file an appeal. FEMA will not pay for any costs incurred for third-party representation such as the costs incurred when hiring an attorney. Appeal requests must be sent to FEMA.²⁸ Before a disaster, make clients aware of the NFIP to ensure that damage to clients' homes and belongings will be covered by insurance if impacted by a flood.

Title Issues

Helping the client obtain clear title to their property before a disaster can dramatically improve their ability to recover from a disaster. The term "title" refers to a legal interest in a piece of property, such as land. It can also refer to the document that establishes ownership. A clear title generally means that no one else has a financial interest in a property. It also means there is no question of ownership, and that the ownership history is easily traceable. Anyone who has a title, or rights to a property, can access the land, potentially modify, or seek to sell their portion of ownership.

When a property is not legally transferred or deeded over to another person, the title or ownership can become "cloudy." This can happen when someone dies without a will or a similar document, or when a family does not administer a will. A "cloudy" title can cause challenges because disaster recovery home repair programs require proof of ownership to qualify. Homeowners with a "cloudy title" have been denied access to these programs. On a larger scale, properties with a lack of clear title can lead to underinvestment in the land, the deterioration of property and neighborhoods, and the abandonment of property that becomes extremely difficult to redevelop.²⁹

27 FEMA Form 206-FY-21-115 Claim Appeal (<https://www.fema.gov/flood-insurance/find-form/policyholders>).

28 Options if a flood claim has been denied, FloodSmart, <https://www.floodsmart.gov/flood/appeal-your-claim-payment> (last visited Jul 27, 2021).

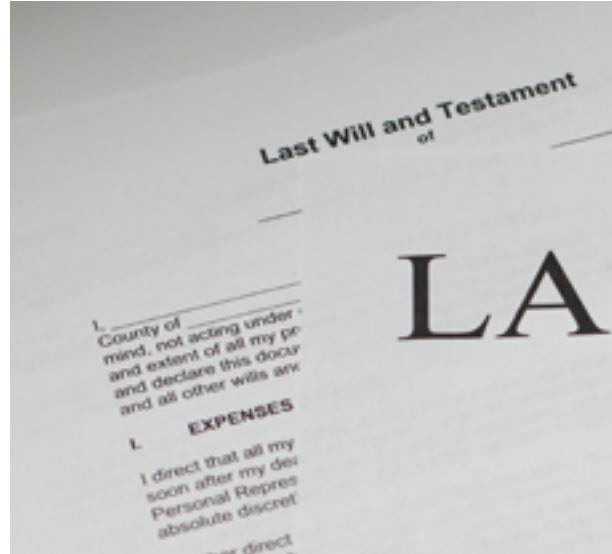
29 Clearing Title Guide, 2-3, https://static1.squarespace.com/static/57ff988ef7e0abb9f7b1a868/t/5d8e693562d7a44f2410e7e5/1569614151141/19-0830_CLEAR_TITLE_spread.pdf (last visited Jul 27, 2021).

ESTABLISHING CLEAR TITLE

The way to establish clear title is to search back through deeds and other public records, often as far back as sixty years, to trace the chain of ownership and show that no one else lays claim to the land. A competing claim can threaten ownership of the land.³⁰

COMMON DOCUMENTS USED IN CLEARING TITLE

- **A will**—a document the decedent uses to determine how and to whom their property goes when they die. Anyone listed in the will who receives the house can use the will to help prove ownership. If it has been more than four years since the person who wrote the will died, a probate court must be attended to use the will.
- **An application to determine heirs**—a document used to determine who inherits property after somebody dies without a will.
- **A muniment of title**—a document used when there is a will, and the only thing the client is seeking is title to the home.
- **A small estate affidavit**—a document used when there is no will, and the estate is worth less than \$75,000.00 when the only property is the home, and the home will be inherited by the deceased person's spouse and/or minor children.
- **An affidavit of heirship**—a document that lets people know that a home was inherited. There must be information gathered on the person who died, as well as a witness who can say under oath that the affidavit is true and correct. This document should be used when a homeowner does not have a will as proof of ownership.
- **A quitclaim deed**—a legal document used to transfer ownership of a property or someone's share of ownership to another person or organization. If other heirs to a property are willing to give up their ownership stake, this document could help to consolidate ownership.³¹



Assist clients with resolving title issues before a disaster strikes so that homeowners can access the full amount of disaster assistance. If not possible, there are benefits to assisting clients after a storm, especially when a client has been denied FEMA assistance for failing to prove homeownership.

³⁰ Dealing with property title issues, Disaster Central, <https://disastercentral.org/content/dealing-property-title-issues-1> (last visited Jul 27, 2021).

³¹ Clearing Title Guide, supra.

Immediate Post-Disaster Housing Needs

The housing needs of disaster survivors in the days and weeks after a disaster will differ from their housing needs in the months and years after a disaster.

COMMON TENANT ISSUES POST DISASTER

State landlord-tenant law varies widely in the United States. This section aims to provide a general overview of tenant issues in the disaster context. A lease is a contract between a landlord and a tenant. Some states do not require a lease to create a tenancy. Always defer to the lease and local law when interpreting tenant rights. See the end of this guidebook for a list of local resources.

Please note this section does not address all tenant issues. Issues not addressed include premises owned by the tenant (where the tenant owns the mobile home, but not the lot) and tenants in hotels, motels, boarding houses, Public Housing, and Subsidized Housing.

Advise clients to inspect the premises at move-in, before a disaster, and after a disaster. Tenants should keep photos and/or videos of these inspections for their records. Additionally, advise clients to keep electronic copies or screenshots of their lease and rental insurance policy, if any, for easy access post-disaster. Notices are also extremely important. Advise clients to be wary of any notices received from their landlord and deadlines within those notices.

TENANT REMEDIES FOR REPAIRS

After a disaster, a renter's main concerns are what to do if the property is damaged and what to do if their personal property was damaged. The actions that a renter should take will differ depending on whether they are seeking repairs to the physical property or repairs and/or replacement of personal property.

TENANT REMEDIES FOR PERSONAL PROPERTY REPAIR/REPLACEMENT

Damage to personal property is typically the burden of the tenant and may be addressed through a tenant's renter's insurance. If a tenant client does not have renter's insurance, they should file a FEMA claim for personal property that was damaged. See Chapter 1 for more information on FEMA personal property assistance.

TENANT REMEDIES FOR REPAIRS OF THE PROPERTY

A tenant or the landlord may be responsible for damages to the premises. The lease and local law should dictate who is responsible for repairs. The lease may determine who is responsible for repairs based on how the damage occurred (i.e., negligence of one of the parties, Act of God, etc.). Where the lease is silent, local law will determine the course of action for the parties. If the landlord is aware of and willing to make repairs, the landlord may request to inspect the premises to determine the damage and make an insurance claim. Local law may dictate whether reasonable notice is required before a landlord may enter to conduct an inspection.

Where the landlord is unaware of the damage, the tenant can make a request for repairs. Requests for repairs must be made in writing with proof of delivery. Most states have a Warranty of Habitability that dictates the landlord's obligation to maintain the habitability of the premises. Some states may have a remedy where a tenant provides a notice to the landlord requesting the repair within a certain timeline. If the landlord fails to complete the repairs, the tenant may, depending on the local laws, terminate the lease or withhold rent. On the other hand, some states may allow a tenant to make repairs themselves and deduct the expenses from their rent. Terminating the lease and withholding the rent can have consequences for the client, such as an eviction filing. Terminating the lease or withholding the rent should only be done with the help of an attorney. Furthermore, where the client requests a repair and the landlord makes reasonable efforts to repair the property during the prescribed time period, the client may be required to keep up the lease and pay the full amount of rent. Advocates should become familiar with the applicable state and local law before advising clients on landlord tenant laws.

If the entire property is damaged so that the client cannot remain, and the landlord fails to make repairs to improve the condition of the property, the client may have been constructively evicted. Importantly, a court may not find that a constructive eviction has taken place if a portion of the property is lived in. After a constructive eviction, a client may be entitled to withhold rent, seek damages against the landlord, and more. Attorneys should research their local jurisdictional elements for constructive eviction and ascertain the remedies that the client may be entitled to. If a landlord does file an eviction for nonpayment of rent and a constructive eviction has taken place, the client may have a defense to the lawsuit under local landlord-tenant.

The Casualty Damage provision of the Florida Statutes illustrates a state law that permits a tenant to terminate the tenancy or withhold rent due to the landlord's failure to remedy repairs not caused by the tenant's negligence. Some leases incorporate this language where the landlord can terminate the tenancy if the premises are damaged beyond reasonable repair. It is important to document everything as litigating these matters can be heavily fact sensitive.

In some instances, defer to applicable building, housing, or health codes to pressure a landlord to make the property habitable. Where the property is unsafe or uninhabitable, contact code enforcement officials to request that they inspect the property. After inspecting the property, code enforcement may require the landlord to make the necessary repairs.

NON-PAYMENT OF RENT

A client who has an enforceable contract or lease agreement must continue to pay rent as it becomes due during a disaster.

Some state or local social service organizations may have rental, utility, and food assistance year-round, not dependent on a disaster or pandemic, therefore connecting a client to those resources is crucial.³² In some instances, a broader form of rental financial assistance might be available. For example, during the COVID-19 pandemic Emergency Rental Assistance programs were implemented nationwide. Also, disaster survivors can apply for FEMA IHP renter's assistance in a disaster. See Chapter 1 for more information on FEMA assistance available to tenants.³³

³² What to Do When You Can't Pay Your Rent, United Way, <https://www.unitedway.org/my-smart-money/immediate-needs/i-can't-afford-stable-secure-housing/coming-up-short-on-monthly-rent/> (last visited Sept. 23, 2021).

³³ Fla. Stat. § 83.63 (2013).

TERMINATION OF RENTAL AGREEMENT

There are various ways by which a landlord or tenant may terminate a tenancy. Some options for a tenant to terminate a tenancy were mentioned in this section, including a landlord's failure to repair and casualty damage. Tenancies may also terminate on their own, by the landlord's decision for no cause or for cause, by the tenant, or other reasons. During the COVID-19 Pandemic there was nationwide protection implemented by the Center for Disease Control (CDC). Still, in some jurisdictions, when the lease expired or was not renewed by the landlord, the Courts decided the protection no longer applied to those tenants. Knowing when a tenant may be displaced is crucial to their housing stability.

The client may also be at risk for termination of the tenancy if the landlord is in foreclosure. Often, during disasters, homeowners may have protections preventing displacement through foreclosure. Federal and/or local law may have protections for tenants who reside in homes in foreclosure. Determine whether the local jurisdiction has any protections for tenants residing in properties in foreclosure.

SECURITY DEPOSIT

Oftentimes, tenants must pay landlords a sum before move-in to cover potential damages by the tenant beyond normal wear and tear after moving out. Each jurisdiction has a process by which a tenant may receive their security deposit back after the tenancy terminates. This process may have various deadlines for both parties and can be important for a tenant's ability to pay a future security deposit. A landlord may not keep the security deposit without a valid claim to the deposit. Providing a future address to a landlord is important for the return of this deposit. Additionally, in some jurisdictions tenants cannot use the security deposit to cover any owed rent. Attorneys should check their local jurisdictional rules on the return of the security deposit during or after a disaster.

EVICTION/UNLAWFUL DETAINER PROCESS

The legal process to remove a tenant is typically called an eviction or unlawful detainer. The law dictates when a landlord can file an eviction and what conditions must precede a filing. Since this area of the law varies state to state, consult with a local legal aid provider.

Many jurisdictions are incorporating a diversion aspect to eviction cases, including pre-filing and post-filing remedies such as rental assistance and mediation. The COVID-19 pandemic has shed light on the great benefit these programs have for both landlords and tenants.

During a disaster, local jurisdictions may choose to implement protections for tenants. Such protections may include eviction moratoria, court closures, prohibition on displacing tenants during and immediately after a disaster, local administrative orders, implementing increased protections for tenants, etc. If such protections do not exist in the local jurisdiction, consider collaborating with local tenant rights organizations and legal aid organizations to advocate for similar or new protections. The American Bar Association is a good resource to inquire about advocacy and have supported such initiatives in the past including task forces. Advocacy for both moratoria and eviction court diversion offer practical community-wide benefits. For example, many jurisdictions have implemented eviction court diversion programs with Emergency Rental Assistance Program (ERAP) and wrap-around resources as elements of the eviction proceeding. While ERAP funds are a temporary solution to the pandemic-related eviction crisis, eviction court diversion is a worthwhile community benefit.

ILLEGAL EVICTION/PROHIBITED PRACTICES

In some jurisdictions, landlords cannot use self-help to remove a tenant from a property. This includes changing the locks, disconnecting utilities, etc. Doing so in some jurisdictions can result in a claim against the landlord. The landlord must go through the legal process, typically called an eviction or unlawful detainer prior to removing a tenant.

SUBSIDIZED HOUSING CONSIDERATIONS

In some instances, the United States Department of Housing and Urban Development (HUD) may release additional guidance for local housing authorities offering additional protections or benefits for tenants.

One example is Emergency Housing Vouchers. Emergency housing vouchers are provided during clear sky times if an individual is in imminent danger of homelessness. If the vouchers in the local community cannot meet the need, vouchers may be donated by a public housing authority from any jurisdiction. To apply for these vouchers, disaster survivors must apply as any other applicant would. If chosen, the Public Housing Authority will provide additional vouchers for eligible families. There may be certain requirements that a potential tenant may have to meet, including but not limited to being at risk for homelessness, experiencing intimate partner violence, etc.

Tenants may also benefit through leniency from Housing Authorities. Typically, this comes at the direction of HUD, including guidance, letters, or memos. Admission rules, violations, certain waivers, screening requirements, recertification requirements, and other matters may be given more discretion in the disaster context. This will vary by Housing Authority in each jurisdiction.

Housing stability is crucial to individuals and families in the United States, especially renters. Some matters may be easily addressed without an attorney, but it is always best to have an attorney analyze the matter to advise a tenant holistically.

Post-Disaster Long-Term Needs

An attorney may be called upon to assist a survivor with long-term housing needs. These needs will arise in the months to years after the disaster.

HUD CDBG DR - DISASTERS

HUD provides flexible grants called Community Development Block Grants-Disaster Recovery (CDBG-DR) as grants to help cities, counties, parishes, and states recover from presidentially declared disasters, and are intended for low- and moderate-income areas (AMI eligibility). When major disasters occur, Congress may appropriate additional funding for the CDBG-DR program to supplement the disaster programs of FEMA and the Small Business Administration.³⁴ They are also subject to requirements of the Stafford Act³⁵

³⁴ Community Development Block Grant Disaster Recovery Program, HUD Exchange (2021), <https://www.hudexchange.info/programs/cdbg-dr/> (last visited Sept. 23, 2021).

³⁵ Stafford Act, as Amended, and Related Authorities, 11, (2019), https://www.fema.gov/sites/default/files/2020-03/stafford-act_2019.pdf.

CDBG NATIONAL OBJECTIVES

- An activity that benefits low- and moderate-income (LMI) persons.
- An activity designed to meet community development needs having a particular urgency. The activity must be designed to alleviate existing conditions that pose a serious and immediate threat to the community's health or welfare, which is of recent origin or that recently became urgent. The recipient must demonstrate an inability to finance the activity on its own and other funding sources are not available.
- An activity that aids in the prevention or elimination of slums or blight.³⁶

Because CDBG funds a broad range of activities, CDBG-DR assistance helps communities and neighborhoods that otherwise might not recover due to limits on other resources. The special appropriation provides funds to the most impacted and distressed areas for disaster relief, housing, restoration of infrastructure, and economic revitalization.

State and local governments act as grantees for the funds and administer the funds to individual community members. Individuals and communities can apply for funds, based on HUD's approved Action Plan; for example, homeowners may apply to local grantees for assistance to rebuild primary residences. Participation is both encouraged and required throughout the CDBG-DR grant process. Each grantee's Action Plan must include a Citizen Participation Plan, which describes how the public will be informed and engaged throughout the use of the grant. All comments on the Action Plan or any substantial amendment received orally or in writing will be considered. Afterward, the approved Action Plan, along with any changes or updates, will be displayed on the grantee's disaster recovery web page.³⁷

Mortgage Hardship

Disaster survivors must continue to pay their mortgage even while waiting for payment on an insurance claim or if displaced from the home. If an insurance claim is approved and repairs are underway, clients must still pay their mortgage as usual. If the insurer determines that the home is a total loss and the insurance settlement is less than what the client owes on their mortgage, they are still responsible for paying the difference.

Contact the mortgage servicer as soon as possible to explain the current circumstances and see which options are available for the client. Mortgage modifications, suspensions or forbearance may be available. Failure to make timely mortgage payments can lead to foreclosure on a home. There are judicial and non-judicial foreclosure processes. In a judicial foreclosure, the lender must go through the Courts. In a non-judicial foreclosure process, the lender does not need to go through the Court. In either process, the client will receive a written foreclosure notice. However, the non-judicial foreclosure process is much quicker, and disaster survivors need the assistance of an attorney quickly if their mortgage loan permits a non-judicial foreclosure.³⁸ Non-payment may also be reported to credit agencies that will seriously affect the client's credit history.

36 Stafford Act, as Amended, and Related Authorities, 11, (2019), https://www.fema.gov/sites/default/files/2020-03/stafford-act_2019.pdf.

37 Fact Sheet Community Development Block Grant Disaster Recovery (CDBG-DR), HUD Exchange, <https://files.hudexchange.info/resources/documents/CDBG-DR-Fact-Sheet.pdf> (last visited Sept. 23, 2021).

38 Non-Judicial Foreclosure, Legal Information Institute, https://www.law.cornell.edu/wex/non-judicial_foreclosure (last visited Sept 23, 2021).

AVOIDING FORECLOSURE

Depending on who the lender is and whether the mortgage is government-sponsored, clients affected by a disaster may have the following rights.

- By granting forbearance, the loan servicer can defer mortgage payments, waive late fees, and not report the debt to the credit bureaus
- Foreclosure and other legal proceedings may be suspended for up to ninety days.
- The lender will evaluate the need for any available loss mitigation assistance to help retain the home.
- The lender may execute a loan modification or a partial claim if these actions will help retain and pay for the home.
- If saving the home is not feasible, lenders have some flexibility in using the pre-foreclosure sales program or may offer to accept a deed-in-lieu of foreclosure.

Clients must notify their lender to be sure that they realize the client is a disaster affected borrower.

FORECLOSURE MORATORIUM

The following groups of people may qualify for a foreclosure moratorium:

- A family living within the geographic boundaries of a Presidentially declared disaster area is automatically covered by a ninety-day foreclosure moratorium.
- A household member of someone deceased, missing, or injured directly due to the disaster.
- Someone whose financial ability to pay their mortgage debt was directly or substantially affected by a disaster.

If available, clients who were injured or whose income relied on individuals who were injured or died in the disaster will be asked for documentation such as medical records or death certificates. Once identified as an affected client, a lender can stop the foreclosure and reinstate the loan.³⁹

Fannie Mae and Freddie Mac have programs to help borrowers affected by natural disasters. If a disaster impacts the ability to pay a mortgage, and the home loan is owned by Fannie Mae or Freddie Mac, the client may be eligible to delay monthly mortgage payments for up to twelve months (or more with permission).⁴⁰ No late fees will be incurred during this temporary period, and foreclosure and other legal proceedings will be suspended.

39 Disaster relief options for FHA Homeowners, U.S. Department of Housing and Urban Development (HUD), https://www.hud.gov/program_offices/housing/sfh/nsc/qaho0121 (last visited Jul 30, 2021).

40 Fannie Mae Reminds Homeowners and Mortgage Servicers of Assistance Options for those Affected by Hurricane Ida, Fannie Mae, (2021), <https://www.fanniemae.com/newsroom/fannie-mae-news/hurricane-ida-assistance-options> (last visited Sept. 23, 2021); Servicing: Disaster Relief Policies FAQ, Freddie Mac Single-Family, (2021), <https://sf.freddiemac.com/faqs/servicing-disaster-relief-policies> (last visited Sept. 23, 2021).

Be sure to understand what the forbearance from a mortgage will specifically include. The mortgager should send documentation that has information on how many months the payments will be postponed and when they are due, whether there will be any fees for payment deferral, and whether the missed payments be repaid over a long time, rather than all at once.

Mortgage lenders are not required by law to offer special consideration for late or missed payments, even for those experiencing financial hardship following a disaster. Accommodations are made on a case-by-case basis. If the client cannot make their payment, contact their loan servicer as soon as possible to discuss their situation and see if they can make a temporary deal on past due payments until their financial situation improves.⁴¹

Contact the Homeowner's HOPE™ Hotline for additional assistance and free confidential support from a HUD-approved housing counselor⁴² Clients can also contact HUD's National Servicing Center.⁴³

Access to Affordable Housing

The federal government has resources to assist individuals and families who require affordable housing due to displacement from disasters. These programs include Low Income Housing Tax Credit; Housing Choice Voucher program (i.e., HUD, VA, and USDA voucher programs); public housing Operating Fund and Capital Fund; Choice Neighborhoods; HOME Investment Partnerships Program (HOME); Community Development Block Grant (CDBG); National Housing Trust Fund; Capital Magnet Fund; Rural Housing Service programs; and Qualified Opportunity Zone Designations. Non-profit organizations may be an additional resource for individuals and families that require affordable housing due to displacement from disasters.

LOW INCOME HOUSING TAX CREDIT

The Low-Income Housing Tax Credit (LIHTC) program is a federally funded program established to subsidize housing for the economically vulnerable populations of urban, suburban, and rural communities. Specifically, state, and local agencies allocate federal tax credits to developers to develop affordable housing that reduces the rent for homes or units.

The subsidized homes or units are provided for individuals making less than or equal to 60% of the Area Median Income (AMI), the midpoint of a region's income distribution. The rent may not be greater than 30% of the qualifying income of the individual. To obtain more information for the LIHTC program, please see guidance from state/local [Public Housing Agencies](#)⁴⁴

41 Mortgage hardship after Disaster, Community Legal Services of Mid-Florida (2021), <https://www.clsmf.org/mortgage-hardship-after-disaster/> (last visited Jul 30, 2021).

42 Mortgage Relief for Homeowners, *supra* note 41.

43 Disaster relief options for FHA Homeowners, *supra* note 45.

44 https://www.hud.gov/program_offices/public_indian_housing/pha/contacts

HOUSING CHOICE VOUCHER PROGRAM

The Housing Choice Voucher (HCV) program, provided by the U.S. Department of Housing and Urban Development (HUD), is a tenant-based rental assistance program. Low-income individuals or families receive vouchers to subsidize housing costs at participating privately owned rental units. Voucher recipients may also have a choice to purchase affordable housing using the HCV program. Voucher recipients are allowed to relocate to participating housing units using the HCV.

The HCV is provided to low-income individuals or families with less than or equal to 80% of the AMI. Approximately 75% of newly enrolled households entering the program have incomes less than or equal to 30% of the AMI or meet the federal poverty income level.

For rental units, voucher recipients pay 30% of the balance for rent and utilities. The housing authority agency pays the remaining balance up to a maximum amount outlined in the program guidelines.⁴⁵

Similar programs to the HCV include the HUD-Veterans Affairs Supportive Housing Program and the Family Unification Program, including the Foster Youth Initiative. For more information about HCV and similar programs, please see guidance from HUD and state/local [Public Housing Agencies](#)⁴⁶.

PROJECT-BASED SECTION-8 PROGRAM

Project-Based (PB) Section-8 is a Rental Assistance program in which affordable housing units are provided by private owners who receive contracts from HUD's Housing Assistance Payment contracts program.

PB Section-8 is provided to low-income households with less than or equal to 80% of the AMI. Approximately 40% of newly enrolled participants have incomes less than or equal to 30% of the AMI or meet the federal poverty income level.

For rental units, low-income households pay 30% of the balance for rent and utilities or a minimum of less than or equal to \$25.00 (or the greater amount of those mentioned). The housing authority agency pays the remaining balance to the landlord.

For more information about the Project Based Section 8 program, please see guidance from HUD and the state/local [Public Housing Agency](#)⁴⁷

45 https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet

46 *Id.*

47 https://www.hud.gov/topics/housing_choice_voucher_program_section_8

Pandemic Housing Concerns

PANDEMICS IN GENERAL

Due to the economic devastation brought about by the Coronavirus pandemic (COVID-19), millions of Americans face an affordable housing crisis. Federal legislation has afforded appropriations for state, and county regulated programs and resources to assist individuals who may face eviction or loss of property. These programs include the Emergency Rental Assistance program, the Mortgage Assistance Program, and the Homeowners Assistance Fund.

EMERGENCY RENTAL ASSISTANCE PROGRAM

ERAP is a federal program that is overseen by the U.S. Department of Treasury to assist renters facing eviction due to the loss of wages and/or jobs related to COVID-19. The program pays individuals' rent or utilities, permits wrap-around services to support housing stability and encourages eviction court diversion.⁴⁸ Specifically, the Emergency Rental Assistance (ERA) is divided into two programs ERA1, under the Consolidated Appropriations Act of 2021, and ERA2, under the American Rescue Plan Act of 2021.⁴⁹



ERA1 funding is made directly to the U.S. states and territories. Funds must be used for costs directly associated with housing expenses, with any remaining funds used for housing stability services, such as case management. The expiration of funds provided under ERA 1 is September 30, 2022.

ERA2 funding is made directly to the U.S. states and territories. Funds are allocated for low-income renters paying more than 50% of their income on rent or living in inferior or congested living conditions. Funds must be used for costs directly associated with housing expenses, with any remaining funds used for housing stability services, such as case management. The expiration of funds provided under ERA2 is September 30, 2025.

To obtain more information on the ERA programs, see the U.S. Department of Treasury guidance.⁵⁰

⁴⁸ Implementation of the ERA programs was left up to each state and individual jurisdictions. As an example, some jurisdictions paid rent directly to the tenant if the landlord did not participate, however, some did not. Each jurisdiction has its own nuances.

⁴⁹ American Rescue Plan of 2021, H.R. 1319, 117th Cong. (2021); Consolidated Appropriations Act of 2021, H.R. 113, 116th Cong. (2021).

⁵⁰ Emergency Rental Assistance Program, U.S. Department of Treasury, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> (last visited Sept. 23, 2021).

HUD CDBG CV – PANDEMICS

CDBG-CV was appropriated in the CARES Act, which implemented a variety of programs to address issues related to the onset of the COVID-19 pandemic.⁵¹

In general, CDBG-CV funds can be used for the same wide range of eligible activities under the annual CDBG program, and grantees must have adequate policies and procedures to prevent duplication of benefits. Though CDBG-CV funds may be used for activities that achieve any of the three national objectives, the elimination of slums and blight does not often apply. Under this national objective, CDBG-CV records must document the activity that alleviates blighting conditions. It may be difficult to relate activities that primarily meet this national objective to prevent, prepare for, and respond to a pandemic.

EXAMPLES OF USES FOR THE CDBG-CV

- Education programs targeting students that fell behind in their education because of COVID-19 due to absenteeism, inadequate internet access, or other lack of other support for remote learning.
- Job training programs to support career changes for individuals who lost their jobs because of the pandemic.
- Housing counseling and credit repair services for individuals who lost income and whose credit scores and/or rental history were negatively impacted.
- Broadband infrastructure projects to expand high-speed internet access to LMI communities.
- Public facility improvements to enhance ventilation and create other protections against contagious airborne viruses.

Emergency grant payments, also known as subsistence payments, are a popular CDBG-CV activity available to grantees, as they can help prevent a family from being evicted and/or losing their home due to non-payment of their rent or mortgage. Additionally, emergency grant payments may be made directly to providers for rent or mortgage and utilities for up to six consecutive months on behalf of an individual or family experiencing a loss or reduction of income because of a pandemic under the Public Services category.⁵² The Public Services category also provided funding for legal aid providers fighting COVID-19-related evictions. These payments may also assist families with other essential costs, such as food, clothing, and utilities if provided by a grantee social service organization.

MORTGAGE ASSISTANCE PROGRAM

The federal government implemented mortgage relief for individuals suffering from economic hardship due to issues arising from COVID-19. Particularly, homeowners who have loans with Fannie Mae or Freddie Mac may be eligible for postponing mortgage payments. The postponement of the mortgage payments may stop a foreclosure action and/or may prevent the homeowner from facing late fees.

51 About the CARES act and the Consolidated Appropriations Act, U.S. Department of the Treasury (2021), <https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act> (last visited Jul 30, 2021).

52 CDBG-CV Toolkit, supra note 37

Deferred payments are not required to be paid all at once when the postponement ends. Repayment plans, such as loan modifications, are an available option to repay deferred payments. Homeowners should contact their mortgage lender for more information.⁵³

HOMEOWNER ASSISTANCE FUND

The Homeowner assistance fund (HAF) is a federal program available to assist homeowners facing economic hardship after January 21, 2020, and need assistance with paying homeowner's insurance, monthly mortgage payments, utilities, and other home-related expenses as specified in the HAF guidelines.

HAF funds are paid directly to state/local agencies. These agencies allocate funds to homeowners who have experienced the greatest hardships, such as homeowners who are thirty days or more behind on their mortgage payments.⁵⁴



Additional Resources

The information contained in this chapter is not meant to be an exhaustive accounting of the material an attorney should know before assisting a disaster survivor with a housing issue. Attorneys should access the resources in this section as well as their local state laws to continue their research.

[Federal Emergency Management Agency](#). The Federal Emergency Management Agency is an organization under the Department of Homeland Security that assists individuals and states before, during, and after disasters. See Chapter 1 for more information on FEMA housing benefits available to disaster survivors.⁵⁵

[Freddie Mac/Fannie Mae](#). Freddie Mac and Fannie Mae are organizations created by the U.S. government to provide mortgage funds and increase access to affordable housing. These organizations provide mortgage relief programs to disaster survivors with Freddie Mac or Fannie Mae-owned loans.⁵⁶

[National Housing Law Project](#). The National Housing Law Project conducts public policy advocacy, engages in impact litigation, provides trainings, releases publications, and provides technical assistance to legal aid organizations to promote housing justice for poor people and poor communities across the country.⁵⁷

53 COVID-19 Resources and Information, Federal Housing Finance Agency, (2021), <https://www.fhfa.gov/Homeownersbuyer/MortgageAssistance/Pages/Coronavirus-Assistance-Information.aspx> (last visited Sept. 23, 2021).

54 Homeowner Assistance Fund, U.S. Department of Treasury, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/homeowner-assistance-fund> (last visited Sept. 23, 2021).

55 We Are FEMA: Helping People Before, During, and After Disasters, FEMA, https://www.fema.gov/sites/default/files/2020-03/publication-one_english_2019.pdf (last visited Sept. 23, 2021).

56 Fannie Mae and Freddie Mac, Federal Housing Finance Agency, (2021), <https://www.fhfa.gov/about-fannie-mae-freddie-mac> (last visited Sept. 23, 2021).

57 What We Do, National Housing Law Project, (2017), <https://www.nhlp.org/about/what-we-do/> (last visited Sept. 23, 2021).

National Low Income Housing Coalition. The National Low Income Housing Coalition is a housing public policy advocacy organization that seeks to "reserve existing federally assisted homes and housing resources, expand the supply of low-income housing, and establish housing stability as the primary purpose of federal [low-income] housing policy."⁵⁸

The U.S. Department of Housing and Urban Development. The U.S. Department of Housing and Urban Development is a federal agency that works "to strengthen the housing market to bolster the economy and protect consumers; meet the need for quality, affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination; and transform the way the Department does business."⁵⁹

The U.S. Small Business Administration. The U.S. Small Business Administration is a federal agency that helps "Americans start, build, and grow businesses." The agency also administers the SBA Disaster Loan Program. See Chapter 3 for more information on SBA Loans.⁶⁰

The National Housing Law Project Green Book. The Green Book is a treatise on "the laws governing HUD's housing programs."⁶¹

58 About Us, National Low Income Housing Coalition, (2021), <https://nlihc.org/about> (last visited Sept. 23, 2021).

59 <https://www.hud.gov/sites/dfiles/SPM/documents/HUDSTRATEGICPLAN2018-2022.pdf>

60 Mission, U.S. Small Business Administration, <https://www.sba.gov/about-sba/organization> (last visited Sept. 23, 2021).

61 Now Released! Green Book 5th Edition, The National Housing Law Project, (2017), <https://www.nhlp.org/products/green-book/> (last visited Sept. 23, 2021).



CHAPTER 3:

/ Small Business Association Disaster Loan Overview

Brittany Gomez and Hannah Dyal

SBA Disaster Loans

The “primary source of Federal money for long-term disaster recovery”¹ for individuals and non-farm businesses comes in the form of the Small Business Association’s (SBA) low-interest, long-term loans to repair, rehabilitate, or replace real or personal property in disasters to its pre-disaster condition. These loans are made through the SBA Office of Disaster Assistance, pursuant to § 7(b)(1) of the Small Business Act.

Despite the name, these loans are not limited to small businesses; rather, businesses of all sizes, most private non-profit organizations, homeowners, and renters may all qualify for different SBA disaster loans. Types of loans include physical loans for both home loans and businesses, as well as Economic Injury Disaster Loans (EIDL). Homeowners may receive loans up to \$200,000 for real property. Both renters and owners may receive up to \$40,000 for personal property losses, and additional loans may compensate businesses in certain circumstances with both physical loss loans and economic loss loans up to \$2 million, as well as economic recovery of up to twenty percent of losses.

Availability of SBA Disaster Loans

SBA Disaster loans may become available for damage caused by federally declared disasters or agency declared disasters by the SBA under certain conditions. Federal Declarations by the U.S. President will automatically activate all of the SBA’s disaster assistance programs.² See Appendix B.

Disaster survivors can apply for an SBA disaster loan online at [online](#)³, by phone⁴, or at a local Disaster Recovery Center (DRC).

1 <https://disasterloanassistance.sba.gov/ela/s/article/FAQ>.

2 <https://disasterloanassistance.sba.gov/ela/s/search-declarations>.

3 <https://disasterloanassistance.sba.gov/ela/s/>.

4 800-659-2955.

Agency Declaration by the SBA's Administrator may activate the physical loan programs when a disaster causes physical damage to at least twenty-five homes and/or businesses, resulting in uninsured losses of at least forty percent. Certification from a State Governor, the U.S. Secretary of Agriculture, or the U.S. Secretary of Commerce may also activate the programs for smaller disasters. The EIDL program can be activated by certification if at least five small businesses are substantially economically injured.

The SBA is a lender of last resort, so the terms of a loan may be determined by the client's credit score. That is, if the client's credit is high enough to get a loan elsewhere, an SBA loan—if approved—will have a higher interest rate not to exceed eight⁵ percent. Clients whose credit scores preclude them from receiving loans elsewhere will have a lower interest rate not to exceed four percent. The interest rates are fixed rates for the loan term—up to 30 years—and are specifically determined by the legislature for each specific disaster.

Qualification

The client must be the occupant and/or the owner of the damaged property, and the damages must not be insured or otherwise compensated. Clients must also be legally allowed to contract for debt, which varies by age among states. Citizenship status may include U.S. Citizens, non-citizen nationals, and qualified aliens. Clients must have the ability to repay the loan.

While receipt of a previous SBA disaster loan does not prevent a disaster survivor from qualifying for a new one, defaulting on a prior SBA loan will. Another reason for denial of a disaster loan is failure to maintain required hazard insurance. Finally, borrowers must also have filed all required federal income tax returns or have approved IRS extensions.

Eligible Property Assistance

Home loan applicants may be the owners of real and/or personal property, so long as the damaged home is the primary residence of at least one applicant. Renters are eligible for personal property assistance only unless they are responsible for repairing the property's structure, defined in their lease. This situation often comes up with renters of Condominiums. Commercial or residential rental property owners, on the other hand, may be eligible for Business loans. The predominant use of the structure will determine Mixed-Use structure eligibility. If dedicated residential and commercial areas are separate, the proceeds will be divided. This can be advantageous for survivors who live in their place of business because the interest on a home loan is lower than a business loan. Property substantiated by Federal Income Tax Returns (FTR) as rental income property cannot be established as the owner's primary residence. Still, rental property ownership does not preclude owners from establishing primary residence at another home they own.

Secondary homes, personal pleasure boats, airplanes, recreational vehicles, and similar property do not qualify for disaster loans unless used for business purposes. However, a boat, motor home, travel trailer, or other mobile homes will qualify for a home loan if it is the primary residence of at least one applicant

⁵ <https://disasterloanassistance.sba.gov/ela/s/article/Fact-Sheet-for-Businesses-of-All-Sizes> and <https://disasterloanassistance.sba.gov/ela/s/article/Fact-Sheet-for-Homeowners-and-Renters>.

and it is located within the declared area at the time of the disaster. This qualification also extends to a traveler's personal property temporarily located in the declared area at the time of disaster.

Owners of an eligible property jointly owned by two or more parties may each qualify for an SBA loan. However, joint owners may not duplicate eligibility. In general, either all owners must file jointly, or non-applicants must waive their eligibility at or before closing. Clients whose co-owners waive may apply for the full eligible disaster loan amount for that property. If a joint owner does not sign a waiver, the client may only be eligible for the amount of assistance in relation to their percentage of ownership of the property. This waiver only applies to initial eligibility for a loan application. Non-applicant owners must still execute the required security document(s) if the property is used for collateral securing this loan.

The Application Process

After registering with FEMA⁶, Clients may apply for SBA disaster loans.

First, applications may be submitted online⁷, in person at the Disaster Recovery Center (DRC), or by mail⁸. In addition to the application form, clients will need to submit a signed and dated IRS form 4506-T⁹, which allows the SBA to receive their tax information directly from the IRS. Business owners must submit additional information such as a personal financial statement, a schedule of liabilities, and a copy of their most recent FTR.¹⁰ Owners of property in a homeowner's association (HOA) must submit all association resolutions passed and all conditions, covenants, and restrictions (CC&R's) or the association Declaration, including amendments and exhibitions¹¹. HOA Unit owners must also submit all information about insurance coverage and settlements¹², including association coverage and recoveries.

Next, an SBA loan officer verifies credit scores and considers the client's ability to repay the loan. If documentation is approved, the loan officer then verifies disaster-related losses. Loan approval typically takes up to three weeks, but missing information is the primary cause of delays.

If approved, loan processing moves to drafting. Upon receipt by mail, the client must sign and return the Loan Closing Documents (LCDs) to the SBA. Homeowners must also submit a copy of their ownership documents, such as a Deed, Statement of Ownership, Finance Agreement, Judgement, etc. The client will have a Case Manager throughout the life of the loan but can anticipate both the Case Manager and the loan amount changing over time.

Generally, loan proceeds are disbursed in \$25,000 increments once required documents are received.

6 To register with FEMA, call 1-800-621-FEMA (3362), or visit www.FEMA.gov.

7 To begin an application with SBA, visit <https://disasterloanassistance.sba.gov/ela/s/start-application>.

8 14525 Kingsport Rd., Fort Worth, TX 76155 (Processing and Disbursement Center).

9 For your IRS form 4506-T, visit https://disasterloanassistance.sba.gov/ela/file-asset/ELA0Request_for_Transcript_of_Tax_Ret_B.

10 <https://disasterloanassistance.sba.gov/ela/s/article/FAQ>.

11 <https://disasterloanassistance.sba.gov/ela/s/article/Fact-Sheet-Homeowner-Association-Unit-Owners>.

12 Note: insurance information may be updated later as settlements are approved or denied.

Denied Loan Applications

Clients determined ineligible for an SBA loan due to inability to repay the loan should contact FEMA for Other Needs Assistance (ONA). ONA is a last resort grant, and several forms of ONA assistance require an SBA loan denial. See Chapter 1 for more information on FEMA ONA.

Individual and business SBA loan denials are appealable. Common reasons for denial include lack of repayment ability, credit reporting issues, and whether or not a home is a client's primary residence. Clients should file a request for reconsideration with the Disaster Assistance Processing and Disbursement Center (DAPDC)¹³ in Fort Worth within six months of the date of denial. If the request is approved, SBA will assign the client a new case manager. If the request is denied, Clients may appeal to the DAPDC Director within thirty days of the reconsideration denial date.



Receiving Additional Assistance

The SBA application has a strict 60-day deadline. Do not wait to file until after insurance settlements or other assistance is determined—insurance information can be continually updated. The SBA may extend this deadline. If applying for an SBA disaster loan after the deadline, SBA may consider late applications when the SBA determines that the late filing resulted from "substantial causes beyond the control of the applicant."¹⁴ Most other forms of compensation will ultimately be deducted from the final SBA disaster loan amount. For example, if a client receives insurance compensation, the amount received from insurance is subtracted from the loan proceeds in determining the amount of the disaster loan. This also applies to disaster assistance received from FEMA.

13 The mailing address for DAPDC is 14925 Kingsport Rd., Fort Worth, TX 76155.

14 13 CFR § 123.3(b).

Types of SBA Disaster Loans

There are many different types of SBA disaster loans. The two main categories are Physical Disaster Loans (PDL) and Economic Impact Disaster Loans (EIDL). Clients may not duplicate SBA disaster loans for the same benefit or receive SBA loans in addition to insurance settlements for the same purpose.

PHYSICAL DISASTER LOANS HOMEOWNERS - REAL PROPERTY REPAIR

Homeowners may receive up to \$200,000 for replacing or repairing their primary residence. The SBA may occasionally approve refinancing all or part of a previous mortgage if the client does not have credit available elsewhere, has suffered substantial disaster damage not covered by insurance, and intends to repair the damage.¹⁵

Collateral is generally required for loans over \$25,000 (a loan will not be denied based on insufficient collateral).

Owners of rental property must instead apply through the business disaster loan program. If the rental property is also the owner's primary residence, the owner must still apply through the business disaster loan program for the parts of the property that are not their primary residence. If a property is mixed-use, then SBA will apply a predominate purpose test or authorize both a home and business loan for the appropriate portion of the property.

PERSONAL PROPERTY - REPAIR OR REPLACEMENT

Homeowners and renters may receive up to \$40,000.00 for personal property. If the disaster loan contains only loan proceeds for personal property, it will remain unsecured, even if over \$25,000.00.

BUSINESSES

Business Physical Disaster Loans may be approved to repair or replace real property, machinery, equipment, fixtures, inventory, or leasehold improvements up to \$2 million. EIDL's up to \$2 million may be available for businesses that cannot meet their operating costs until normal operations resume after a disaster. A business may obtain both PDLs and EIDLs, but they may not, in combination, exceed \$2 million. Qualified businesses include small businesses, small agricultural cooperatives, and most non-profit organizations. Physical damage is not required because the loan amount is calculated based on actual economic injury and financial needs. Unlike PDLs, EIDLs are unavailable to those who qualify for loans elsewhere.

15 <https://disasterloanassistance.sba.gov/ela/s/article/Fact-Sheet-for-Homeowners-and-Renters>.

MITIGATION FUNDS

Recipients may not use funds for preexisting damages unless upgrades are code required. However, additional loan proceeds, up to twenty percent of losses, may be approved for disaster mitigation upgrades such as storm shutters, etc.

RELOCATION OR HOME REPLACEMENT

The SBA must specifically approve relocation plans before using funds to relocate.

LIMITATIONS

Farm-owners may only apply for damages to their home and its contents.¹⁶ Agricultural recovery assistance is covered through the USDA.

Homeowners with housing associations cannot use funds for common areas—nor will they include your share of the common areas if you voluntarily relocate.¹⁷ The association must apply for its own loan for common areas up to \$2 million. Homeowners may be able to apply for relocation funds, including the value of the home and share in common areas, if the HOA will not rebuild or repair common areas.

Additional Resources

- During a disaster, the SBA's Disaster Hotline is 800-659-2955.
- Before a disaster, the [SBA website](#)¹⁸ is a great disaster preparedness resource - download templates for emergency plans and detailed business continuity and preparedness information, as well as preparedness checklists¹⁹.
- Disaster Loans: [The Three Step Process](#)²⁰ and required documentation.

16 <https://disasterloanassistance.sba.gov/ela/s/article/Fact-Sheet-for-Homeowners-and-Renters>

17 <https://disasterloanassistance.sba.gov/ela/s/article/Fact-Sheet-Homeowner-Association-Unit-Owners>.

18 <https://www.ready.gov/>.

19 These resources may be ordered by calling 1-800-BE-READY (237-3239).

20 https://www.sba.gov/sites/default/files/files/Three_Step_Process_SBA_Disaster_Loans.pdf.



CHAPTER 4:

/ Consumer Issues After a Disaster

Meghan Smolensky

After a disaster, survivors are at risk from different fraudulent consumer transactions and scams. This chapter will discuss the different scams that disaster survivors might face, the advice that attorneys can give clients, and the available legal remedies.

Contractor Fraud

Contractor Fraud is the number one consumer issue after a disaster¹. Many times, survivors are exhausted after enduring a crisis and make quick decisions where they normally would conduct more research. As an attorney, advise clients to do the following.

ADVICE FOR CLIENTS

- **Always get bids from multiple contractors.** Make sure the client understands that they do not have to hire the first contractor that they find. They should get at least 3 contractor bids. Each bid should be typed or written and include: the contractor's information, a detailed description of the job to be performed, separate costs for labor and materials, itemized costs for any specific materials, and a timeline for work.
- **Obtain and verify contractor's information.** Clients should try to verify licensure and insurance information. Clients should have the contractor's insurance coverage information, current license and know if the contractor is reputable. If available, ask for a copy of their identification and references from past clients.
- **Ask for recommendations for contractors from trusted sources.** These trusted sources include friends and family who have used the contractor before. Alternatively, the client can contact the Better Business Bureau.² Be careful when dealing with out-of-state contractors. It is common for

1 <https://vimeo.com/showcase/6852332/video/395515666>

2 <https://www.bbb.org/>

out-of-state contractors to come into a disaster area, disappear once they have received payment, leave a fake name, contact information, and the client will never hear from them again.

- **After choosing a contractor, the contract should include a timeline for how long the job will last.** Make sure the client knows to confirm the material and labor costs. Like the bid, the contract should have an itemized list of all materials and labor cost broken down by tasks. The contract should contain the cost of the job and instructions for how the client and the contractor agree on any additional costs during the project. The payment schedule should also be outlined in the contract. Advise clients never to pay for the entire job upfront. It is against the law for contractors in disaster areas to take any money upfront unless they have had a local office for at least a year. It is recommended that the contract require phase billing, which means that when some milestones are reached, payment will be due. Final payment should only be made upon completion of the project.
- **Contracts should include a warranty for work.** Make sure that there are guarantees or warranties included. If the contractor provides a warranty, it should clearly state what is guaranteed, who is responsible, and how long the guarantee is valid. As a general note, the contractor's warranty may not cover certain subcontractors. Usually, one to three-year warranties are standard.
- **Once the contractor completes the assignment, close out the project.** Advise the client to check if the proper permits have been obtained and the certificate of occupancy is secured, if applicable. Clients should work with the contractor to make a list of remaining work and make sure each has a copy of the end of the worklist. The client should do a final walk-through and ensure all work has passed the required inspections and the agreed work has been completed. Clients always have the right to arrange for an independent inspection. Finally, get the home warranty information from the contractor and make the final payment.³



WARNING SIGNS

Look out for contractors that go door to door to get business; contractors who do not have proper ID, licensure, etc.; contractors who refuse to provide a written estimate; contractors who demand full payment upfront; contractors who want the client to sign a contract that has blanks; and contractors who offer to waive insurance deductible.

³ <http://www.ladrc.org/wp-content/uploads/2020/10/Avoiding-Contractor-Fraud-Texas.pdf>

Insurance Rights

Insurance is another frustrating consumer issue. Unfortunately, many people believe that insurance will cover the entirety of their loss, but this is not always the case. Clients discover that there is a gap between the loss that they have suffered and the amount of money they receive from their insurance claim. It is especially frustrating when clients then apply to FEMA to fill the gap between the money received from insurance and the total amount of money it will cost to fix the property. It is important to understand how FEMA works when advising clients.

FEMA AND HOME INSURANCE TIPS

FEMA

FEMA will automatically deny the client if they have home insurance claiming they are "ineligible" for assistance. Thus, many people who have registered for FEMA and have insurance do not believe they are eligible and will not appeal this denial although they might be eligible for additional assistance. See Chapter 6 for more information on FEMA eligibility and appeals.

MOBILE AND MANUFACTURED HOMES

Mobile home and manufactured home policies are not designed to address complete loss of use. In contrast, traditional homes have loss of use or additional living expense coverage i.e., temporary housing while rebuilding. A traditional home insurance policy will have no limit to loss of use, or if there is a value attached, it is about 20-50% of the client's dwelling coverage. While mobile/manufactured home policies have only \$4,000.00-\$10,000.00 of additional living expenses, that is not likely enough money to survive and recover.

LEGAL IMPACT

FEMA will grant assistance to one client and other times assistance will not be granted to another client for the same or similar issue. The same can be said with insurance. There will be situations where survivors are underinsured, uninsured, or are having trouble obtaining benefits that they are entitled to. This is where attorneys can step in and advocate for clients with FEMA and insurance companies.

HOMEOWNER'S INSURANCE POLICY

As a general overview, home insurance policies usually cover the cost of damage to the insured's personal property (e.g., furniture, clothes, and appliances) and real property (i.e., the insured's house and other building on the premises). Policies may also include cost of additional living expenses incurred by the insured, as a direct result of the loss. These costs include food and temporary lodging. Still, there are sometimes uncovered costs in a traditional home policy. Ensure client is aware of the type of policy they have. See Chapter 2 for more information on homeowner's insurance.

RENTER'S INSURANCE

Renter's Insurance covers damage to the insured personal property and the cost of the loss of use of the rental. Rental insurance may be a lower amount than the client expects.

When assisting tenant clients after a disaster that they have renter's insurance but have not yet filed a claim, treat this as an emergency case. Walk the client through filing a claim with their insurance provider as soon as possible. This is a time sensitive case because most insurance companies have a twenty-four-to-forty-eight-hour window to file a claim. Keep communication with the insurance provider in writing, over email, to establish a record.

ADVOCATE FOR THE CLIENT AFTER FILING AN INSURANCE CLAIM

EXPECTATIONS AFTER FILING AN INSURANCE CLAIM

The insurance company or their designated adjuster will ask to examine evidence to validate the claim of loss. Each state does this differently, but the insurance company must let the client know when the claim has been received within a certain amount of days. The company might ask the client for more information to investigate the claim. This might include asking them to fill out a proof-of-loss form. The company must accept or reject the claim within a certain number of business days of receiving all the necessary information. If the company rejects the client's claim, it must state why in writing. These deadlines may be extended after disasters.



IF THE INSURANCE CLAIM IS DENIED

If the client disagrees with the adjuster's final estimate, write a letter to the company describing why the client disagreed with the decision. The company may have overlooked something and may make adjustments. Send any supporting documentation, such as a contractor's estimate for the repairs. If the client still disagrees, they have several options to challenge the insurer's decision.

- **Demand appraisal.** The appraisal process begins with the client and the insurance provider each hiring an appraiser. The two appraisers then choose a third appraiser as the umpire. The client's appraiser and the insurance provider's appraiser may have differing estimates. If the estimates are different, the umpire will decide the final monetary estimate of the client's loss, which is binding on both the client and the insurance provider. The client is responsible for the expenses of the appraiser hired and for half of the umpire's expenses. The client should check their policy for any deadlines to demand appraisal. If the client needs help finding an appraiser, they can search the internet for a "property damage appraiser" or check with their contractor.
- **File a complaint.** If the client believes the insurance provider treated them unfairly, they can file a complaint with the state department of insurance, which regulates insurance activity and insurer compliance with state laws and regulations. The client should also file an internal complaint with the insurance provider.
- If the client is not satisfied with the outcome of the dispute, **they have the right to sue** the insurance provider in a court of law or mediate the matter outside of court.

COMMON INSURANCE ISSUES

- Dealing with an out-of-state adjuster.
- Understanding and utilizing the negotiation process.
- Ensure the client knows when negotiating with their insurance company that they (the client) have(has) rights and obligations.
- Client's being underinsured.
- Addressing issues of bad faith.

Federal Tax Relief

IRS provides several tax relief alternatives for those affected by disasters⁴. Under the tax relief code⁵, relief is available after a federally declared disaster. Relief is limited to taxpayers with a filing obligation. If a person's income falls below certain income thresholds or is exempt from filing taxes, then no relief is available.

Extensions of filing and payment deadlines; deductions and qualified disaster losses; recoupment; option to amend tax returns for fast relief; tax-exempt assistance; withdrawals from retirement accounts, and access to past tax information are all potential forms of tax relief available.⁶

Debt Collection

Disasters can trigger financial crises as victims fall behind in their bills. Missed payments or collection actions can damage their credit ratings. Disaster survivors should not avoid dealing with their financial situations. Attorneys can advise clients on proper debt collection practices and possible actions they can take to protect themselves.

FAIR DEBT COLLECTIONS PRACTICE ACT

The Fair Debt Collections Practices Act⁷ prohibits debt collectors from:⁸

- Making false statements or using offensive language.
- Telling the client that failure to pay the debt is a crime or threatening the client with jail time.
- Threatening to collect the debt from a third party, like a family member or neighbor.
- Threatening foreclosure or wage garnishment.

4 http://www.ladrc.org/wp-content/uploads/2020/11/LSC-Disaster-Relief-Tax-A_Final-dated.pdf

5 I.R.M. §4.2.2.2

6 <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>

7 <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-debt-collection-practices-act-text>

8 <https://www.consumer.ftc.gov/articles/debt-collection-faqs>

- The collection agency cannot call the client at work or between the hours of nine pm and eight am unless the client has previously agreed to receiving calls during this time.
- The client can send a "cease and desist" letter to the debt collection agency by certified mail, demanding that the debt collector stop harassing the client at their home or work. The client should keep a copy of the letter for their records. If the debt collector continues to harass the client, this is grounds for a lawsuit.

DEFENDING AGAINST A LAWSUIT FROM A CREDITOR⁹

The creditor must file a lawsuit within four years from the date of the client's last minimum payment or promise to pay on the debt. Even if the client owes the debt, challenge it if it is over four years from the client's last payment or promise to pay. The creditor must send a written demand for payment ("demand letter") at least thirty days before filing a lawsuit. If the client claims they do not owe the debt or the amount owed is wrong, reply to the demand letter within thirty days.

The collection agency must provide a copy of the creditor contract if asked for it. If the creditor has sold the client's debt to a collection agency, the agency is required to keep a copy of the contract between the client and the original creditor on file that shows the client's account number with the original creditor. The client has a legal right to ask for a copy of this contract to make the collection agency prove that they have the authority to collect the debt. Often the debt collection agency would rather not go through the trouble of locating, copying, and sending a copy of the creditor contract and will stop collection efforts against the client rather than go through these extra steps.

Creditors with a judgment can use a *writ of garnishment or receivership* to take all the money from the client's bank account. Certain monies cannot be garnished from a bank account, but this will depend on the state.

PAYMENT OPTIONS

- Ask for a payment plan
- Some creditors will agree to reduce, reschedule, or even postpone payment for certain periods.

CREDIT REPORTING

Credit reporting is governed by the federal Fair Credit Reporting Act¹⁰, which requires that credit reporting agencies furnish a free copy of a consumer's credit report on request within thirty days after the consumer is notified of adverse action. Credit reporting agencies also have a statutory obligation to investigate consumers' claims. If the client discovers information on their credit report that is incorrect, the client can request to have it removed in a process known as a dispute. Each credit reporting agency has different ways of disputing a credit report error, but the client can start this process online, by phone or by mail.

⁹ <https://texaslawhelp.org/article/debt-collection>

¹⁰ 15 U.S.C. § 1681 et seq.

Price Gouging

There is no federal law that broadly prohibits price gouging. Section 102 of the Defense Production Act (DPA) authorizes the President to order that "designated" materials necessary to promote the national defense cannot be accumulated beyond reasonable business or personal needs.¹¹

Under the DPA, it is a crime for a person to accumulate a designated item in excess of their reasonable needs, or for the purpose of selling the item in excess of prevailing market prices. A willful violation of this statute is punishable by a fine up to \$10,000.00 and/or imprisonment for up to a year.¹²

State officials have always been more involved in policing price gouging.¹³ Approximately thirty-nine states, Guam, Puerto Rico, the U.S. Virgin Islands and the District of Columbia have some manner of anti-price-gouging statutes. These laws and orders vary widely. Some states' laws only apply to narrow categories of goods, such as petroleum products, while others only apply to retailers. Some states interpret their deceptive sales practices acts to cover price gouging, and those statutes do not contain any standards that define price gouging.

Most state statutes that expressly apply to price gouging are only enforceable by the state and provide for fines, restitution, and, in some instances, criminal enforcement.¹⁴ Price gouging can be reported to the state's Attorney General.¹⁵

Identity Theft

PERSONAL IDENTIFICATION

There are three ways that someone can steal the client's identity.

PHYSICALLY

After a disaster, if the client must evacuate, their residence will be left unattended. Advise clients not to leave documents lying around with their name or personal information on them. Thieves have been known to break into homes and take that information.¹⁶ Thieves can also sift through disaster-related debris or garbage and steal personal information.

MISREPRESENTATION

Clients might receive unsolicited phone calls from scam artists misrepresenting themselves as the IRS, a disaster relief service, or even government officials. They will ask for the client's personal information. As a reminder, at no time will the IRS or any government service contact the client via telephone.

11 50 U.S.C. § 4512

12 50 U.S.C. § 4513

13 <https://time.com/wp-content/uploads/2014/12/price-gouging-statutes.pdf>

14 <https://www.ncsl.org/research/financial-services-and-commerce/price-gouging-state-statutes.aspx>

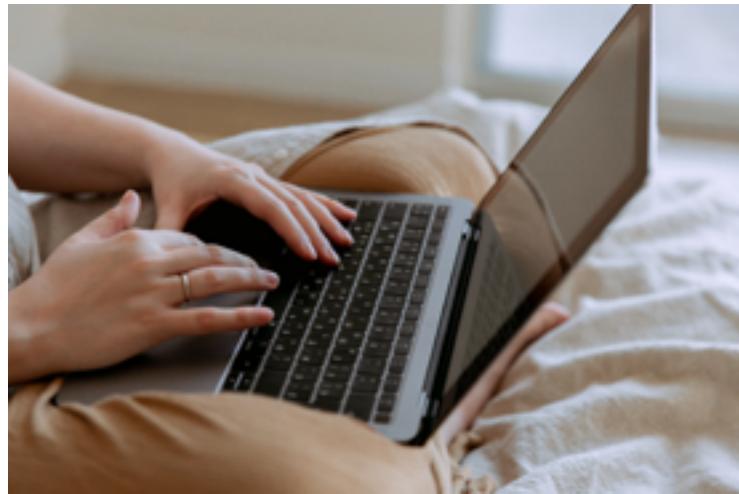
15 <https://www.usa.gov/state-attorney-general>

16 <https://www.disabilityrightstx.org/en/video/after-a-disaster-id-theft-scams-and-insurance/>; <https://www.equaljusticeworks.org/news/disaster-legal-aid-trainings-after-a-disaster-id-theft-scams-and-insurance/>

EMAILS

Scam artists may attempt to steal identities through phishing or sending emails from legitimate sources asking for personal information. These emails will ask intrusive questions under the guise that the email is legitimate. Make sure to advise clients on never responding to an email that they believe is not legitimate.

Advise clients to never speak to someone on the phone that they do not trust. If a client does not trust the source, they can call back using a secure number. Advise clients not to use the same passwords. Using the same passwords can make it easier for scammers to access private information. After a disaster, make sure clients monitor their credit statements to check that their information has not been stolen. Have clients keep all important documents in a safe place, and if they must evacuate, make sure they are kept in a dry and safe place.



Chapter 7 Bankruptcy¹⁷

After a disaster, clients may fall so behind on their payments that they need a fresh start. A Chapter 7 bankruptcy allows for the discharge of certain debts. Filing for bankruptcy is a complicated process, but below are some examples of what a Chapter 7 bankruptcy can do.

A CHAPTER 7 BANKRUPTCY CAN:

1. Stop the foreclosure of a home and allow the client to catch up on missed payments.
2. Stop repossession of a car or other property, or, in some situations, force the creditor to return property even after repossession.
3. Stop debt collection harassment.
4. Restore or prevent termination of utilities for nonpayment of previous bills.
5. Restore the client's driver's license if it was suspended because the client failed to pay court-ordered damages for a driving accident (unless the accident involved a DUI).
6. Eliminate the legal obligation to pay most or all of debts. This is called a "discharge" of debts.

17 <https://texaslawhelp.org/article/chapter-7-bankruptcy-fact-sheet>

The court will appoint a "trustee" to represent the interests of the creditors and can sell certain property to pay debts. In most Chapter 7 cases, however, homestead property will be "exempt" by law and cannot be sold to satisfy creditor's claims. When the client's Chapter 7 case is over ("final discharge"), most debts are erased. If the client filed under Chapter 7 and their debts were discharged, the client must wait eight years before filing another Chapter 7.

A CHAPTER 7 BANKRUPTCY CAN NOT

1. Discharge past-due child support, property taxes, recent IRS debts, and most student loans.
2. Protect the client from **bounced checks or bad checks**, checks in which the amount they are written for cannot be collected because of lack of funds in the account, or other criminal charges, or waive criminal fines, fees, penalties, and restitution.
3. Discharge debts that arise after the filing of the bankruptcy.
4. Eliminate the obligation of a co-signer on the client's loan in most cases.
5. Eliminate creditor's rights to secured property like car loans and home mortgages. Chapter 7 can discharge the debt, but not the creditor's lien or legal claim. After bankruptcy, the client's home can still be foreclosed, and the client's car repossessed if the client do not make payments.



CHAPTER 5:

/ Accessibility

Stephanie Duke

Introduction

This chapter provides attorneys with the knowledge and tools necessary to advocate for clients with disabilities as they navigate the effects of a disaster. Individuals with disabilities are often marginalized and their needs overlooked in the chaos of disaster response. It is important that the disability community has advocates equipped with knowledge about the legal framework, architectural and systemic barriers that disaster survivors with disabilities face and remedying those barriers to ensure an equitable opportunity to benefit from all available disaster services.

Laws and Statutes

Both state and federal laws provide protection for individuals with disabilities. The Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Stafford Act of 1988, and state laws or administrative codes govern equitable access to societal functions thus are applicable to disaster services.

REHABILITATION ACT OF 1973

The Rehabilitation Act applies to federal agency programs, federal employment, and federally funded programs.¹ Section 504 of the Act prohibits discrimination against an individual based on their disability. This section is especially relevant in disaster services when interacting with the Federal Emergency Management Agency (FEMA), the U.S. Department of Housing and Urban Development (HUD), or other federal and state programs that receive federal money. The analysis and definitions under Section 504 are consistent with the Americans with Disabilities Act explained below.

¹ Rehabilitation Act of 1973, 29 U.S.C. § 794 (2016); Legal Aid Disaster Resource Center, Disability Rights, 2 (Nov. 2020).

Section 508 of the Rehabilitation Act regulates accessible information and communication technology (ICT) and electronic and information technology (EIT).² The legal standard for ICT/EIT accessibility for federal agencies is the Web Content Accessibility Guidelines (WCAG), this also serves as the de facto standard for state programs which serves as practical guidance for compliance.³

AMERICANS WITH DISABILITIES ACT OF 1990

The Americans with Disabilities Act (ADA) extended protection against discrimination to include state and local jurisdictions. The ADA prohibits discrimination based on disability in employment, state and local governments, commercial facilities, transportation, telecommunications, and public accommodations.⁴ Section 504 of the Rehabilitation Act and the ADA serve the same function, to prohibit discrimination on the basis of disability, in the federal and state/local jurisdictions, respectively.

The Act applies to "activities of a public entity." This use of the term "public entity" refers to any state or local government, department agency, special purpose district, or other instrumentality of a state or local government.⁵

The ADA Amendments Act of 2008 (ADAAA) made it easier for people with disabilities to qualify for protection by broadening the definition of "disability" and rejecting the Supreme Court's narrow interpretations.⁶ "A disability is a physical or mental impairment which substantially limits a major life activity, a record of such an impairment, or being regarded as having such an impairment"⁷. A non-exhaustive list of major life activities includes walking, hearing, breathing, and performing manual tasks. The ADAAA definition of disability is broad. The only limitation is that the disability cannot be minor or transitory, lasting less than six months.

The ADA is separated into Titles, each of which prohibits discrimination based on disability in a specific area. Title I of the ADA applies to employment in the private sector. Title II applies to state and local government activities. Title II is almost a direct reflection of Section 504 of the Rehabilitation Act, except as applied in the state and local jurisdiction instead of federal. This Title is implemented by 28 C.F.R. Part 35, which provides for Nondiscrimination on the Basis of Disability in State and Local Government Services.⁸ Title III regulates public accommodations with businesses, common carriers, and nonprofit service providers. Finally, Title IV regulates accessible Telecommunication Relay Services. These Titles will be explored and applied later in the chapter.

THE STAFFORD ACT OF 1988

The Stafford Act authorizes and regulates federal disaster relief and emergency disaster services.⁹

2 Rehabilitation Act of 1973, 29 U.S.C. § 794d (2000).

3 U.S. GEN. SERV. ADMIN., IT Accessibility Laws and Policies, <https://www.section508.gov/manage/laws-and-policies> (last updated July 2020).

4 Americans with Disabilities Act of 1990, 42 U.S.C. § 12101-12213 (2009); Legal Aid Disaster Resource Center, Disability Rights, 2 (Nov. 2020).

5 Legal Aid Disaster Resource Center, Disability Rights, 2 (Nov. 2020).

6 U.S. EQUAL EMP. OPPORTUNITY COMM'N, The Americans with Disabilities Act Amendments Act of 2008, <https://www.eeoc.gov/statutes/americans-disabilities-act-amendments-act-2008> (last visited July 16, 2021).

7 Americans with Disabilities Act of 1990, 42 U.S.C. § 12102 (2009).

8 28 C.F.R. § 35.101-35.999 (2016)

9 Stafford Act of 1988, 42 U.S.C. §§1211-5208 (2018); Legal Aid Disaster Resource Center, Disability Rights, 3 (Nov. 2020).

Furthermore, 42 U.S.C. §5151 prohibits discrimination in disaster assistance. Nondiscriminatory obligations apply but is not limited to the distribution of supplies, processing of applications, and other relief and assistance activities.¹⁰ This section of the Stafford Act serves to ensure equitable and impartial relief operations.

STATE LAWS

Each state has regulations that protect individuals with disabilities from discrimination. An example of one such provision is found in Chapter 121 of the Texas Human Resource Code.¹¹ To find the relevant state law in your jurisdiction, visit one of the following sites that serve as compiled databases of all state codes and regulations.¹²

Architectural and Universal Barriers

Individuals with disabilities face barriers that are both architectural (physical) and universal (systemic). It is important, as attorneys, to help clients overcome and navigate barriers of both kinds, especially when it comes to participating in and benefiting from disaster services.

ARCHITECTURAL BARRIERS

Architectural barriers are “physical features that limit or prevent people with disabilities from obtaining the goods or services that are offered.”¹³ Examples of architectural barriers include parking spaces that are not wheelchair accessible, steps where there are no ramp available, round doorknobs, fixed seats at a table, and narrow isles that do not allow for wheelchairs, electric scooters, or walkers.¹⁴ The Architectural Barriers Act of 1968 (ABA) requires that all buildings and facilities designed, built, altered, or leased using federal funds be accessible to individuals with disabilities.¹⁵

An accessible facility will include accessible routes into and within the building, parking spaces that can accommodate wheelchair accessible vehicles, the appropriate number of those spaces in accordance with 2004 ADAAG requirements, toilet and bathing facilities that are properly marked by the International Symbol of Accessibility (ISA), elevators (when necessary), accessible doors, hi-lo height water fountains, emergency warning systems that are both audio and visual, accessible storage, shelving, and display units, controls and operating mechanisms in accessible places, accessible seating, curb ramps, handrails, and edge protections.¹⁶ Consideration should also be made for surface textures, width, slopes, protruding objects, and mirror heights.

10 Stafford Act of 1988, 42 U.S.C. §5151 (2006).

11 TEX. HUM. RES. CODE § 121.001-011, <https://statutes.capitol.texas.gov/?link=HR>.

12 <http://www.administrativerules.org/administrative-rules/>; <https://www.llsdc.org/state-legislation>; <https://fclawlib.libguides.com/50statesurveys/statecodesandregs>.

13 U.S. Small Business Admin. & U.S. Dep't of Just., ADA Guide for Small Businesses, 3 (1999), <https://www.ada.gov/smbusqd.pdf>.

14 *Id.*

15 U.S. ACCESS BOARD, Architectural Barriers Act: Accessibility Standards, <https://www.access-board.gov/aba/> (last visited July 16, 2021); Architectural Barriers Act of 1968, 42 U.S.C. § 4151-4157.

16 AM. NAT'L STANDARDS INST., ADAAG: Accessibility Guidelines for Buildings and Facilities, <http://www.statereview.com/adaag.htm#4.1> (last visited July 16, 2021).

Entities included under Title II of the ADA, state and local government facilities, are held to the 2010 ADA Standards for Accessible Design.¹⁷ The 2010 ADA standards incorporate Title II regulations found in 28 C.F.R. § 35.151 and the 2004 ADAAG regulations found in 36 C.F.R. Part 1191.¹⁸ Public accommodations and commercial facilities accountable under ADA Title III must comply with 2010 Standards for Accessible Design according to Title III regulations in 28 C.F.R. Part 36 and 2004 ADAAG regulations mentioned above.

All buildings open to the public must be accessible to people with disabilities and compliant with requirements. This includes the public, state, and local facilities under Title II and private commercial facilities such as businesses, nonprofits, and common carriers under Title III. As long as the facility is open to the public, it must feature public accommodations. Buildings used exclusively as employee work areas must still be accessible for approach, entrance, and exit.¹⁹ This minimal accommodation requirement is known as an accessible path of travel.²⁰ It ensures a continuous, unobstructed pedestrian pathway that includes necessary curb ramps, elevators, and parking aisles.

Title II state and local facilities need not accommodate the path of travel where there is structural impracticability or disproportionality.²¹ Construction is disproportional when the cost to accommodate exceeds 20% of the total alteration cost. Additionally, there is a safe harbor protection for renovated buildings, according to the 1991 Standards or Uniform Federal Accessibility Standards before March 15, 2012. Title III facilities also receive an exemption where there is structural impracticability and disproportionality. Additionally, Title III alterations must be made "to the maximum extent feasible." This requirement states that even when wheelchair accessibility is not feasible, the facility should still be accessible to those who rely on crutches, have impaired vision or hearing, etc. The requirements are slightly relaxed for commercial facilities in comparison to state and local government entities.

Building permits can only certify compliance with state and local accessibility requirements, but not federal ADA compliance.²² An exception to this exists when the state building codes are ADA certified by the Department of Justice. Currently, at least six states have received this certification (Maryland, North Carolina, Washington, Texas, Maine, Florida), and more have received detailed technical guidance or have pending reviews for certifications.²³ Furthermore, there is no governing body to regulate even 'accessible' products that feature the International Symbol of Accessibility.²⁴ Unfortunately, ADA compliance is enforced through litigation instead of regulation.²⁵

Architectural barriers that impede a disaster survivor from physically accessing disaster and emergency services, activities, and programs are unlawful and actionable. For example, emergency sheltering operations during any event and FEMA's Disaster Recovery Centers (DRCs) must be accessible to all individuals with disabilities.

17 ADA COMPLIANCE, 2010 ADA Standards ADA Regulations for Accessible Design (Sep.15, 2010), <https://www.ada-compliance.com/ada-compliance/2010-ada-standards>.

18 *Id.*

19 See *supra*, note 13.

20 See *supra*, note 14.

21 *Id.*

22 Janis Kent, Building Permits – Accessibility approved...or not? STEPPING THRU ACCESSIBILITY (Apr. 2014) <https://steppingthruaccessibility.com/building-permits-accessibility-approved-or-not/>.

23 ADA.GOV, VI. Certifying State Accessibility Codes, https://www.ada.gov/5yearadarpt/vi_certifying.html (last visited July 16, 2021).

24 *Id.*

25 ADA.GOV, Department of Justice ADA Responsibilities: ADA Certification of State and Local Accessibility Requirements, <https://www.ada.gov/certcode.htm> (last visited July 16, 2021).

UNIVERSAL BARRIERS

Individuals with disabilities also face universal or systemic barriers. These are non-physical barriers, or policies and procedures, that prevent individuals with disabilities from meaningful participation in services or programs. These are often areas of accessibility that get overlooked and further exacerbate inequitable opportunities for people with disabilities and might require a reasonable accommodation, a modification to programs, policies, and procedures. This is especially important in disaster-related services because, a coordinated response or planning in blue sky times is complex and involves many moving parts. Any barrier that excludes people with disabilities is unlawful and is a systemic issue that perpetuates lasting inequity.

Universal or systemic barriers might look like inadequate staff training on the interactive process to determine if reasonable accommodations or applications for services that are inaccessible. It can also look like messaging and announcements not available in braille, American Sign Language, plain language, other languages, or closed captioning. Universal barriers are much harder to recognize, and for that reason, they tend to persist until society gains awareness of the issue.

The relevant legal framework for challenging system barriers depends on the substantive issue being addressed. For example, inaccessible technology has been a major systemic barrier in our innovative age. Individuals with disabilities often use screen readers, which are not always compatible with websites and other tech platforms. Additionally, the availability of both audio and visual components, accessible font size and color, and alternative text for images are important considerations for making technology accessible.

Section 508 of The Rehabilitation Act requires that technology developed, maintained, procured, or used by the federal government be accessible to people with disabilities.²⁶ Like the other sections of the Rehabilitation Act, this regulation applies to federal agency programs and other organizations operating using federal funds. Notice that other organizations, like those included under the ADA regulations, are not held to the 508-technology standard. Furthermore, there is no official legal standard for compliance and, although the internet is considered a common carrier, there is still judicial ambiguity as to whether accessibility of public accommodations applies to both physical and digital platforms.²⁷

Title IV of the ADA, the Telecommunications Act of 1996, and Federal Communications Commission (FCC) regulations have provided some assurances for accessible technology.²⁸ Title IV of the ADA provides the Telecommunication Relay Services (TRS), ensuring equitable telephone and television access to individuals with disabilities affecting hearing and speech. Telephone companies are considered common carriers and therefore must allow for TTY-accessible technology 24/7. Additionally, federally funded public service announcements must be equipped with closed captioning. The FCC regulates TRS standards. The Telecommunications Act of 1996 works in conjunction with the Communications Act of 1934 to ensure that people with disabilities have equal access to telecommunication services such as telephones, cell phones, pagers, call waiting, and operator services.²⁹

26 ADA.GOV, A Guide to Disability Rights Laws (Feb. 2020), <https://www.ada.gov/cguide.htm#anchor65610>.

27 <https://www.culawreview.org/journal/internet-ada-compliance>

28 Katy Brennan, *The Internet as a Place of Public Accommodation: Are Business Websites Required to Be ADA Compliant?* COLUM. UNDERGRADUATE L. REV. (Jan. 24, 2020) <https://www.ada.gov/cguide.htm#anchor65610>.

29 *Id.*

Just as Section 508, ADA Title IV, and the Telecommunications Act apply to technology and digital platforms, equitable access to other areas of societal domains is addressed by their respective laws. As attorneys, it is important to recognize these universal barriers in advocating for individuals with disabilities.

Equitable Access to Disaster Services

Using the legal framework outlined above, it is clear that disaster services, like any other program, must be accessible and equitably delivered. Disaster services come from both state and federal sources. This section will explore the various types of assistance and potential accessibility issues they create.

FEDERAL

FEMA APPLICATION AND ELIGIBILITY

The Federal Emergency Management Agency (FEMA) is the primary federal source of disaster services. Their authority is made possible by the Stafford Act, and therefore they are held to the non-discriminatory standard of 42 U.S.C. § 5151, and obligations under 504.

The survivor may initiate the FEMA application process in several ways; completing a tangible application at a shelter or a similar transitional housing location, completing the application online, or completing the application over the phone with FEMA's employees.

Ensuring an equitable opportunity for disaster survivors with disabilities to participate in FEMA's programs starts with the opportunity to complete the application itself. Survivors with sensory impairments might require accommodations to access the application, i.e.-large print, braille, or plain language. Or someone might need assistance with the application process, i.e., comprehending what the questions are asking, or how to upload documents.

If any of these or similar barriers have prevented a disaster survivor with a disability from accurately completing the application and was denied assistance, an appeal is warranted as FEMA has failed to fulfill its non-discriminatory obligations.

In addition, FEMA has not provided a public facing process for individuals with disabilities to request a reasonable accommodation or initiate the interactive process. The only explicit opportunity to disclose a functional access need (FAN) or disability related need is found in Question #24 of FEMA's application.³⁰ Answering Q 24 should initiate an opportunity to elaborate further on their needs and to engage in an interactive process.³¹ If a disaster survivor is aware of and does request a reasonable accommodation, it becomes a note in their file that next caseworker may or may not read.

30 FEMA, Help Available for Texans with Access and Functional Needs, (March 11, 2021) <https://www.fema.gov/fact-sheet/help-available-texans-access-and-functional-needs>. FEMA application revised September 2021, Q 24 now allows ability to request reasonable accommodation. At time of publication, official FEMA process had not been received.

31 U.S. Gov't Accountability Off., GAO-19-318, *Disaster Assistance: FEMA Action Needed To Better Support Individuals Who Are Older or Have Disabilities* 39 (May 14, 2019) <https://www.gao.gov/assets/700/699539.pdf>.

Accessibility issues also arise around physical access to DRC's.³² Many individuals with disabilities are unable to stand in line for long periods or physically wait for assistance or with the lack of DRC's due to other protective measures, individuals might not have access to the assistance they require. Internet access is another common issue. FEMA appeals and other resources are primarily accessible online. Those with limited or no internet access often experience difficulty participating in the services and programs available.

Some individuals with internet access still experience technological barriers for other reasons. Disaster survivors may have access to a computer or internet but still experience challenges because their disability makes it difficult or impossible to use a computer.³³ Some people experience barriers due to the complexity of the forms and processes themselves. For all of these reasons, it is imperative that DRCs are staffed with interpreters, guides, and other individuals who are equipped, educated, and able to accommodate when needed and all of FEMA's employees, including call center assistance, be knowledgeable to include disability-related needs. For this reason, if at any point the process denies an equitable opportunity to participate in or benefit from FEMA's programs, an appeal to a denial of services would be warranted.

Individuals have a right to request reasonable accommodations at any point during the FEMA process.³⁴ For example, an applicant with a disability may receive a reasonable accommodation in the form of extended time for filing the initial application and meeting appeal deadlines. The survivor must provide evidence that their disability prevented them from submitting an application and appeal within the time frame provided. This is often relevant when the survivor with a disability was hospitalized due to a medical issue during the application time frame. Additionally, a survivor with a disability may request a reasonable accommodation anytime FEMA's policy or procedure denies an equitable opportunity for them to participate in or benefit from FEMA's programs. Another example, is during FEMA's recertification process and reviewing the Permanent Housing Plan (PHP).³⁵ If FEMA's periodic visits are negatively impacting the mental health and well-being of a survivor and they have made reasonable efforts towards progress on the PHP a disaster survivor with a disability, might request as a reasonable accommodation that the visits be less frequent. Or if the disaster survivor with a disability cannot fulfill all of the requirements of the PHP due to their disability, a modification to the PHP policy may be requested.

Disaster survivors with disabilities may experience barriers regarding FEMA eligibility. FEMA uses a "one size fits all" habitability standard.³⁶ FEMA's definition of uninhabitable means the dwelling is not safe, sanitary or fit to occupy.³⁷ However, FEMA does not deem the presence of mold to determine the residence uninhabitable. Not considering this disaster related hazard puts individuals with cancer, sickle cell, lupus, COPD, asthma, cardiovascular disease, or any other immunocompromised health condition at risk, as they would be unable to live safely in a mold-infested home. Therefore, individuals

32 See *supra*, note 5 at 4.

33 See *supra*, note 5 at 8.

34 State Bar of Tex. & Houston Bar Assoc., *Resource Materials for Responding to Legal Questions from those Affected by Disasters*, 18-3 (2020).

35 *Id.*

36 Advisory Memorandum of the Texas Advisory Committee to the U.S. Commission on Civil Rights, *Government Response to Hurricane Disasters* 27 (March 2021), <https://www.usccr.gov/files/2021/05-19-TX-SAC-Government-Response-to-Hurricane-Disasters-in-Texas.pdf>.

37 44 c.f.r. 206.111

with disabilities must practice self-advocacy to request a reasonable accommodation to modify FEMA's habitability standard equitable opportunity IHP.

FEMA updated the Individual Assistance Policy and Program Guide (IAPPG) in September 2021 to include home repair assistance for disaster caused mold.³⁸ However, eligibility requirements must still be met and the current habitability standard remains a barrier for disaster survivors with underlying health conditions.

The Disaster Recovery Reform Act of 2018 (a revision to the Stafford Act) no longer permits line items necessary for accessibility to contribute to the maximum financial award for FEMA's Individual Housing Program assistance.³⁹ This means that ramps, handrails, shower chairs, and other costly accessibility items should not prevent applicants from otherwise receiving the maximum award without these items contributing to the total. It is considered discrimination to minimize a survivor's award due to the cost of necessary accommodations.



The September 2021 update to IAPPG also included assistance for Disaster-Caused Accessibility Real Property Needs.⁴⁰ This assistance would permit eligible applicants who require items to access their home because of an injury or illness caused by the disaster an award to make the necessary accommodations.

Because individuals with disabilities experience barriers when engaging with FEMA, their recovery process is often longer than others. FEMA provides rental assistance to eligible disaster survivors for the first one to two months.⁴¹ After this period has expired, survivors must submit a new application for continued eligibility. To be eligible for continued rental assistance, a survivor must provide documentation of how the initial aid was used. It is important to keep all receipts to prove that rental assistance funds were not used for other disaster-related needs. Additionally, a survivor must demonstrate disaster-related financial need by providing: (1) a copy of the current lease, (2) current household income status, and (3) household financial obligations. Finally, the survivor must prove some progress towards a permanent, long-term housing plan. This last requirement could be satisfied

³⁸ FEMA, Individual Assistance Program and Policy Guide, Version 1.1, CH. 3 Section IV.E.; May 2021.

³⁹ 42 U.S.C. 5121 et seq.

⁴⁰ *Id.*

⁴¹ FEMA, Use Disaster Funds as Intended to Ensure Continued Eligibility (July 16, 2019), <https://www.fema.gov/press-release/20210318/use-disaster-funds-intended-ensure-continued-eligibility>.

by providing evidence of a contractor's estimate for repairs.⁴² It may be up to the disaster survivor to request a continued rental assistance application. FEMA will only automatically provide the application to homeowners whose verified loss exceeds the initial rental assistance award. All other individuals must request an application from the FEMA helpline or at a DRC.⁴³ See Chapter 1 for more information on FEMA applications and appeals.

STATE

Individual states are delegated the authority to regulate some disaster service programs for more efficient delivery. Additionally, some state and local organizations receive federal funds to use towards their disaster recovery programs. Some of the major programs include Other Needs Assistance (ONA), Disaster Case Management and Crisis Counseling, Community Development Block Grant Disaster Recovery Programs (CDBG-DR), and non-government organization assistance.

OTHER NEEDS ASSISTANCE (ONA)

Other Needs Assistance (ONA) is a branch of FEMA's Individuals and Households Program (IHP) that may be distributed through a state agency under a bifurcated system with FEMA. Unlike the federally distributed IHP assistance, which deals with housing assistance, ONA covers many other areas. These areas include assistance for personal property, childcare, medical and dental, funeral, transportation, moving and storage, critical needs, cleaning and removal, group flood insurance policy, and other expenses.⁴⁴ This assistance, like other FEMA provisions, may be contingent on SBA loan approval; therefore, always submit an SBA loan application. If a state agency administers ONA, more procedural protections might be available to ensure equitable access to this program. See Chapter 1 for more information on ONA.

Critical Needs Assistance (CNA) awarded through the program can be used on immediate or critical life-saving and sustaining items.⁴⁵ These items include water, food, first aid, prescriptions, infant formula, diapers, consumable medical supplies, durable medical equipment, personal hygiene items, and fuel for transportation. Critical needs must be identified and requested when submitting the initial FEMA application. All eligible applicants may receive the maximum CNA award is \$500 per household.

Clean and Sanitize assistance under an ONA award, has also been updated to provide a limited amount of financial assistance to applicants with disaster-caused real property damage, who do not qualify for housing assistance because the damage did not render their home uninhabitable.⁴⁶ This assistance must be requested by the state, tribal or territorial government, in writing to Federal Coordinating Officer and approved by the Regional Administrator prior to implementation. Conditions of eligibility are stipulated in the IAPPG to include the condition the primary residence must be deemed safe to occupy.

42 FEMA, Continued Temporary Rental Assistance (Nov. 15, 2017), <https://www.fema.gov/news-release/20200220/asistencia-de-alquiler-continua>.

43 *Id.*

44 DISASTERASSISTANCE.GOV, FEMA Individuals and Households Programs (IHP) – Other Needs Assistance, <https://www.disasterassistance.gov/get-assistance/forms-of-assistance/4473> (last updated July 1, 2021).

45 FEMA, Critical Needs Assistance (Sep. 1, 2020), <https://www.fema.gov/fact-sheet/critical-needs-assistance#:~:text=Immediate%20or%20critical%20needs%20are,items%20and%20fuel%20for%20transportation>.

46 FEMA, IAPPG, Ch. 3 Section VI.B.7.

SUBGRANTEES OF FEDERAL FUNDS

All grantees of federal funds must remain compliant with non-discriminatory obligations under Section 504 and Section 508 of the Rehabilitation Act, ADA, and Stafford Act. Thus, all programs run by state agencies or non-governmental partners providing disaster services must ensure an equitable opportunity to benefit from and participate in all services, activities, and programs.

Disaster Case Management and Crisis Counseling (DCM) are two programs available under the FEMA Individual Assistance Program at the state governor's request.⁴⁷ Federal DCM is made available immediately to serve short-term needs, while the DCM State Grant follows later as a long-term recovery program. Unfortunately, there is often a delay before DCM is made available. This delay could put recipients past the deadline for FEMA appeals and other assistance. For this reason, individuals cannot solely rely on their DCM to help them navigate the recovery process. Additionally, turnover in case managers often leaves survivors as their own best advocates. These issues often disproportionately affect individuals with disabilities who often need immediate assistance after a disaster.

LONG-TERM RECOVERY

The U.S. Department of Housing and Urban Development (HUD) also offers funding for housing programs following a disaster. HUD maintains long-term recovery programs for disaster survivors via Community Development Block Grant-Disaster Recovery (CDBG-DR) funds granted to the states.⁴⁸ The Fair Housing Act and its amendments impose accessibility requirements on public housing. Still, the limited availability of accessible housing options after a disaster can be a significant barrier for survivors with disabilities.⁴⁹ Additionally, the HUD "Heartbeat Rule" can enforce an undue burden on individuals with disabilities. The Heartbeat Rule states that housing options should allow for at least "two heartbeats per bedroom."⁵⁰ This regulation does not account for individuals with disabilities that require live-in medical/care assistance. These individuals require at least two bedrooms to ensure they remain integrated into their community and not unnecessarily institutionalized. This modification to policy would violate the HUD Heartbeat Rule but is a necessary reasonable accommodation to ensure an equitable opportunity to benefit from HUD's long-term recovery programs. Additionally, many individuals with disabilities have durable medical equipment, wheelchairs, oxygen tanks, or other devices that require more storage space and might warrant a modification to the Heartbeat Rule for an additional room or unit size.

The CDBG-DR program is provided at the end of FEMA's transitional sheltering assistance.⁵¹ These funds are used to help rebuild homes and infrastructure that were damaged by a disaster. CDBG-DR grants may be approved and allocated directly to local jurisdictions at the state agency's authority, which oversees disaster housing within the long-term recovery process. Survivors with disabilities must request

47 <https://www.phe.gov/Preparedness/planning/abc/Documents/disaster-case-management.pdf>

48 .S. DEP'T OF HOUS. AND URBAN DEV., HUD Disaster Resources, <https://www.hud.gov/info/disasterresources> (last visited July 16, 2021).

49 U.S. DEP'T OF HOUS. AND URBAN DEV., Fair Housing Accessibility Guidelines, https://www.hud.gov/program_offices/fair_housing_equal_opp/disabilities/fhefhag (last visited July 16, 2021).

50 Scott M. Badami, *Occupancy Standards – Why They Matter*, FAIR HOUSING DEFENSE (Sep. 3, 2009), <https://fairhousing.foxrothschild.com/2009/09/articles/discrimination/occupancy-standards-why-they-matter/>.

51 U.S. DEP'T OF HOUSE. AND URBAN DEV., HUD Disaster Resources, <https://www.hud.gov/info/disasterresources> (last visited July 16, 2021).

reasonable accommodations throughout the CDBG-DR process to ensure an equitable opportunity to benefit from the program. Additionally, it is important to maintain records of both federal FEMA and state awards to avoid duplication of benefits. If a disaster survivor receives multiple awards to be used for the same purpose, they will need to report the duplication to the relevant authorities to avoid recoupment. See Chapter 6 for more information on recoupment.

Finally, some disaster services are provided by non-government organizations such as the American Red Cross, Catholic Charities, BakerRipley, and others. These organizations face similar accessibility obligations regarding web content, delivery of services, and applications.

Disaster survivors with disabilities are afforded equal protection under the law by ensuring an equitable opportunity to benefit from and participate in disaster services, programs, and activities. Whether a federal agency, state agency, or a grantee of federal funds, non-discriminatory obligations must be met to ensure this equitable opportunity. Advocates assisting disaster survivors with disabilities should consider the individual's need, the barrier the individual is facing to determine the appropriate course of action.



CHAPTER 6:

/ FEMA Recouplement

Kayla Barbour and Hannah Dyal

Recoulement is FEMA's process of recovering awards that they have determined were improper. It is imperative for FEMA applicants to keep receipts and other documentation related to usage of the funds. For disasters declared on or after October 28, 2012, FEMA can claim recoulement for up to three years from the date applicant received assistance.

Primary Reasons for Recoulement

DUPLICATION OF BENEFITS

Duplication of benefits occurs when an applicant receives FEMA funds to pay for a disaster-damaged item or repair when the applicant has already been made whole by any other source, including a charity or a third party. FEMA funds are often awarded before insurance, Small Business Association (SBA) loans, and other long-term relief, and applicants may be unaware that they are required to report these additional funds to FEMA. To avoid a duplication of benefits, the applicant must return the applicable FEMA funds once issued other funding.

ASSISTANCE PROVIDED IN ERROR

FEMA's quick issuance of funds in the immediate aftermath of a disaster is critical in assisting disaster survivors. However, this quick turnaround sometimes causes errors in FEMA's processing. As such, reevaluating funds allocated after the disaster period closes is part of FEMA's standard operating procedures.

MISUSE OF FUNDS

FEMA funds are issued for specific recovery purposes, such as replacing windows or patching up holes in the roof. These funds may only be used for a primary residence, or critically necessary personal property. An applicant who uses their home repair funds to repair their second home, or transportation funds to replace the family vehicle with a Harley Davidson, must return the funds—even if the original need still exists.

Significant issues may arise if the inspector's opinion of "necessary repairs" differs from the homeowner's opinion. While FEMA has specific recovery purposes in mind for the issued funds, FEMA rarely explains those specific purposes in detail. Rather, award letters typically include something along the lines of "home repair" or "personal property" making it difficult for applicants to comply.

FRAUD

This is the most serious of all four categories and may preclude applicants from receiving FEMA funds in a subsequent disaster. This can occur even when the applicant does not have malicious intent, and often arises in living situations with multiple different households in one home. Providing false information about roommates or family members who live elsewhere may count as fraud, so be sure to advise the applicant to provide honest and complete information throughout the entire application process.

NOTE: suspected fraud goes through a different process. FEMA refers the investigation to the Department of Homeland Security Office of Inspector General (OIG). If fraud is found, the case will proceed through Department of Justice (DOJ). Criminal fraud charges may be initiated beyond the three-year limit.

Recoulement Process

After initial funds are issued, FEMA reviews all cases to identify potential debt. Any potential debt found is assigned to a FEMA agent to review and verify. At this stage, FEMA may contact applicants to request documentation supporting their application. If it appears that the applicant was overpaid, FEMA assigns multiple FEMA managers to review the application again. In general, FEMA will not pursue collection of a debt if the sole applicant was a minor at the time.

If no validating circumstances are found, the managers will evaluate and agree upon the amount owed, and FEMA will proceed with the recoulement process as follows.

NOTICE OF POTENTIAL DEBT LETTER (NPDL)

If FEMA determines that a disaster survivor received funds for which they were ineligible, they will mail a NPDL to the address on file. Thus, it is important to notify FEMA of any address update. The letter identifies the amount owed and the source therein, the reason they determined that the applicant was ineligible, documentation required to prove eligibility, and information about how to appeal and/or request an oral hearing.

APPEALING POTENTIAL DEBT

A written appeal to FEMA is due within sixty days of receipt of the NPDL. See below for more specific appeal request requirements.

ESTABLISHING DEBT

If no appeal is requested within sixty days of the date on the NPDL, or if the appeal is denied, the debt is finalized.

DEBT COMPROMISE, SUSPENSION, OR TERMINATION

Applicants who owe a debt are referred to the FEMA Finance Center (FFC) to agree upon payment arrangements. Most often this involves a payment plan, but in rare cases the FFC can also suspend or terminate the debt.

TRANSFER OF DEBT TO TREASURY

If no repayment has occurred or been agreed to within 120 days of the date on the final Notice of Debt Letter (NDL), the debt will be transferred to the Treasury, and will be subject to significant additional costs.

Evaluating and Preparing for Recoupment Cases

STATUS OF RECOUPMENT

First, determine the status of the client's FEMA recoupment case. Discuss the client's case with them to determine if they submitted any response to the NPDL. Ask the client if they know why FEMA believes that they were overpaid.

Ask the client to provide copies of the NPDL and the initial FEMA decision letters granting them the funds. These letters will contain the purpose of the intimal FEMA award and the reason those funds should not have been issued.

Always get a signed written consent and a copy of the client's ID at the beginning of the representation. Both documents are necessary to submit an appeal to FEMA, so having them ready will save time in the future.

PREPARE NECESSARY DOCUMENTATION AND REQUEST A COPY OF THE FEMA FILE

In a recoupment case, immediately request a copy of the client's FEMA file. To request a FEMA file, submit a cover letter making the request for the FEMA file, a copy of the client's government issued ID, and signed written consent. Throughout the entire FEMA application process, FEMA will not

communicate with an attorney or third party unless the client has submitted a signed written consent authorizing FEMA to release the client's information to that particular third party. For more information about the information that should be included in the written consent form, refer to the list of required information on page 7.

Occasionally, FEMA operators will claim they are not authorized to communicate with anyone an attorney without the client present, even if there is an authorization on file. If this happens, one option is to simply call back later to get a different helpline worker. Keep the client's FEMA Application Number handy, as well as their social security number (SSN), current mailing address, damaged property address, and phone number as the helpline worker will ask for verification of this information before speaking with a third party.

Submitting a FEMA file request early into a recoupment case is even more critical than during a regular FEMA appeal. FEMA files will contain all the documents that the client has provided to FEMA and that FEMA has sent to the client. Additionally, the FEMA file will likely contain some notes from the case workers who made the original decisions in the client's case, and it may contain some notes from the case workers who made the decision to try to recoup from the client. Review all the case worker's notes to help understand exactly why FEMA is trying to recoup and help show that recoupment is not correct.

CONTACTING FEMA THROUGHOUT THE CASE

Contact FEMA as soon as possible to obtain more information about the status of the recoupment. The decision to recoup is harder to fight once FEMA finalizes the debt and sends it to the FFC. Keep a close eye on the status of the claim by contacting the FEMA hotline often. To avoid delays, the advocate should contact FEMA directly once the written consent is on file or join in on the call with the client.

Appealing FEMA's Recoupment Decision

AFTER NOTICE OF POTENTIAL DEBT

Appeals are due within sixty days of issuance of the NPDL. Extensions may be granted to an applicant with a disability who has been denied a reasonable accommodation. Appeals should contain a cover letter explaining the reason that the client was eligible for FEMA assistance, a signature and a sworn statement in the appeal saying, "I hereby declare under penalty of perjury that the foregoing is true and correct," copies of any documents which would support eligibility (including everything identified in the NPDL), and a copy of the client's state-issued identification (driver's license, passport, etc.). Every page submitted in the appeal, including documentation of proof, should include the client's full name, the last four digits of their SSN, the disaster number, and the FEMA application number. Whatever decision FEMA issues in response to the appeal is considered a final decision. Typically, FEMA does not allow for another appeal. Despite this standard, FEMA often does consider further appeals. If the client has new documentation or a hotline worker indicates that an additional item may resolve the issue, it is worth attempting to submit the documentation.

Clients may also apply for an Oral Hearing if there is a question about identity theft, credibility, or truthfulness of the original application to be heard by the Alternative Dispute Resolution Division of FEMA's Office of Chief Counsel. If the client was investigated for potential fraud, the Oral Hearing Officer will include the material from that investigation in their decision, as well as the new appeals material. The appellant may present new information and witness statements at the hearing. FEMA will notify the appellant of the oral hearing decision by written notice within forty-five days of the hearing.

If client does not request an oral hearing, FEMA will issue written notice within ninety days of receipt of the appeal. An appeal may result in forgiveness of all or part of the debt. FEMA will repay any debt paid in excess of the final decision amount.

AFTER DEBT IS ESTABLISHED

If all or part of the debt is not forgiven, the FFC issues a final written NDL explaining interest; penalties; and the client's right to request payment arrangements, compromise, and a debt waiver.

Payment arrangements must be made with the FFC's approval, subject to verification of the client's income. If the FFC determines that the client's income is insufficient to recover the full debt, they may offer a Compromise, or an agreement to recover only a reduced amount of funds.

The FFC may issue debt waivers if the client does not qualify for a full compromise. Compromises are decided at the sole discretion of the FFC, who may waive all or part of the debt based on "equity and good conscience" if the overpayment was the fault of FEMA errors. The burden of proof is on the client to establish FEMA's fault.

The FFC may grant temporary debt suspension if the client is currently experiencing financial difficulties but has previously made consistent payments.

Debt termination occurs when FEMA determines that continuing to collect the debt is financially inefficient or "otherwise inappropriate," including when:

- No substantial amount can be recovered by FEMA or others
- The debtor cannot be located
- Legal merits of the debt no longer exist, or the statute of limitations bars enforcement of the debt
- Bankruptcy successfully discharged the debt
- The applicant is deceased without sufficient assets to pay part of the debt in their estate or co-applicants/debtors
- The Treasury returned the debt to FEMA as uncollectible

AFTER DEBT IS REFERRED TO THE TREASURY

If an appellant neither makes payments nor submits request for payment arrangement, compromise, or debt waiver within a timely manner, FEMA will issue a letter notifying the appellant of delinquency. FEMA may then refer the debt to the US Treasury Department after sixty days have elapsed, and no later than 120 days. The Treasury has a debt collection department, Debt Management Services (DMS), that handles the case and initiates the debt collection process. DMS may deduct the debt from eligible Federal payments until it is paid without notice, including federal tax refunds; Federal or state salary pay or retirement, including military pay or retirement; contractor vendor payments; and certain Federal benefit payments.

Avoiding the Recoupment Process

Follow these tips to throughout the FEMA application process to minimize the client's risk of facing recoupment. Of course, the first and most important thing is to avoid any confusion. Advise the client to be honest and complete when submitting necessary information, such as occupancy and roommates, sources of income or private donations, pre-disaster conditions, and contractor costs.

The second most important step to avoid recoupment is to maintain thorough documentation for three years (from the time of disbursement.) Advise the client to keep both a physical and an electronic folder containing: all communication and documents submitted to FEMA; itemized receipts with dates showing how the funds were used; evidence of damages caused by the disaster; FEMA and SBA award letters; insurance policy and settlement information; homeownership documentation; bank statements and FTRs; any information proving who the occupants of the house were at the time of the disaster; and documentation of any other sources of disaster recovery funding. This list is not exhaustive.

Third, ensure FEMA funds are used for the purpose intended. The client must show that the expenditures match the FEMA funds and their purposes.

Fourth, double check everything the client receives from FEMA during the application process, including information generally, inspection reports, and letters of decision. FEMA may make mistakes during the aftermath of a disaster, especially if the disaster is unusually widespread and requires significant amounts of assistance. These errors can be spotted as they are happening and addressed to avoid recoupment later. Report all errors, including errors that may be in the client's favor.

Finally, make sure the client is aware of the process of recoupment so that they will continue to respond to FEMA letters. Often, after their case is over, clients may assume that other mail from FEMA is junk and will not open and read it. For at least three years following the award, the client should review any documents received from FEMA. Understanding the possibility of recoupment at the beginning of the disaster will give the client time to prepare to challenge FEMA rather than scrambling to pull together proof later.



CHAPTER 7:

Immigration and Disaster Preparedness

Robert Flores and Eric Rhoton

Immigrants face nuanced issues and challenges that others affected by disasters do not experience. Some of those issues may arise directly from a disaster, but most issues are preexisting or exacerbated by the disaster. Preparation and recovery can be particularly difficult depending on immigration status. For example, immigrants without status are not able to make the necessary arrangements to prepare for a disaster strike and may be ineligible for recovery assistance after a disaster.

Finding legal assistance is difficult when economic resources are limited. Immigration legal services providers and pro bono attorneys are necessary to help the immigrant community become disaster resilient.

Direct Representation or Pro Se Assistance

Legal aid and pro bono attorneys who want to assist the immigrant community become disaster resilient can do so in many ways. Legal aid organizations can host clinics in their communities. Clinics are a simple way to help immigrants complete standardized applications (for example, a naturalization application). Pro bono attorneys can volunteer at legal aid organizations or propose an informal partnership to refer cases when the organization is at capacity. There are many ways to help, and the need for help is at its highest during and after a disaster.

Assistance to Individuals in Removal Proceedings

Disasters can interrupt and delay the process for those in removal proceedings. A disaster may cause delays in immigration courts or possibly shutdowns for several days. The immigration court system was closed for over one year during the COVID-19 pandemic, during which time many people were scheduled to have their individual hearings. A delay in removal cases can either be a relief or frustration depending on the expected outcome. Individuals with difficult cases that do not have the highest probability of

success may welcome the delay. However, other individuals eager to have their individual hearing may become more frustrated by the additional delay. If a hearing, whether a Master Calendar Hearing or an Individual Hearing, is canceled due to a disaster, the court will reschedule without the Respondent asking for the rescheduling. The court will mail a notice of the new hearing date to the Respondent or the Attorney of Record. Certain processes may need to be completed to ensure a Respondent does not miss any important updates to their open immigration court case.



Change of Address

Many people are displaced after a disaster. If someone moves away from the address the immigration court has on record, the address must be updated within five days of the most recent move.

CHANGE OF ADDRESS INSTRUCTIONS (EOIR)

1. Go to the Department of Justice Immigration Court [website](https://www.justice.gov/eoir/form-eoir-33-eoir-immigration-court-listing).¹
2. Click on the state of the hearing location currently handling the client's case. Download the PDF next to the court's location.
3. Provide the client's name and A number (the nine-digit identification number assigned by DHS, begins with letter "A"). Then fill out the client's former and current address. Next, sign the document.
4. Make sure to also send service to the Office of Chief Counsel for DHS and ICE.²
5. Click [here](#)³ to find the address of the immigration court currently handling the client's case and to which the change of address form should be mailed, follow the [link](#). Then, select the state and find the court. It will also be included on the PDF change of address form.⁴

1 <https://www.justice.gov/eoir/form-eoir-33-eoir-immigration-court-listing>

2 <https://www.ice.gov/contact/field-offices>.

3 <https://www.justice.gov/eoir/eoir-immigration-court-listing>.

4 <https://www.justice.gov/eoir/eoir-immigration-court-listing>.

AR-11 CHANGE OF ADDRESS INSTRUCTIONS (USCIS)

A client can change their address in one of two ways:

- [Online](#)⁵
- Or by mail⁶

Filing [Form AR-11](#)⁷ online will update the client's address on all pending applications, petitions, or requests included on the form.

1. After clicking on the web link above, click "File Online." Next, it will take the client to a considerations page where if the client has a USCIS account or is a victim of domestic violence, trafficking, or other crime, the client should file for a change of address by following the links listed. If those considerations do not apply to the client, click continue.
2. Next, it will ask if the client has filed an immigration-related application or petition and has not yet received a decision notice, card, or document. Answer yes or no.

If the client answered yes, select the option that best describes the form they are filing. Then, enter the receipt number from the application and the zip code used when they originally filed. There is an option to add more receipt numbers if the client filed for more than one application or are changing the address for more than one person.

If the client answered no, continue to Step 4.

4. Fill out the client's personal information, including name, date of birth, and A-number.
5. Select the client's country of citizenship and select what type of status he, she, or they have in the US (Permanent Resident, Other, Visitor, or Student)
6. Fill out the address the client used on the application, then fill out the new address (the address the client moved to).
7. There is an option to select the client's new address as their mailing address or provide another mailing address. Select the address that the client wishes to use as their mailing address.
8. Provide the client's email address to send a confirmation number to their email. Make sure to record the confirmation number.
9. Provide the information on who filed this change of address form (client/ petitioner, legal representative, or parent or guardian).
10. Fill out the security check box and select the box certifying that the information provided is correct and true. Then press submit. It will provide a confirmation number. Make sure to record and safeguard the confirmation number.

5 <https://www.uscis.gov/ar-11>.

6 Mail completed AR-11 Forms to U.S. Department of Homeland Security, Citizenship and Immigration Services, Attn: Change of Address, 1344 Pleasants Dr. Harrisonburg, VA 22801.

7 <https://www.uscis.gov/sites/default/files/document/forms/ar-11.pdf>.

Change of Venue

In extreme cases, a disaster may cause some to relocate to a completely different city or state. They may have family elsewhere providing them assistance, or they may have had to move to find employment. Whichever the reason, the Respondent may need to change immigration court venue. If the relocation is only temporary or traveling back to their original place of residence is not difficult, a change of venue may not be necessary. However, it is likely that a change of venue will have to be submitted to the court.

A change of venue must be submitted through a Motion to Change Venue. All motions to the Court must be timely submitted. For non-detained proceedings, all filings must be submitted at least fifteen days in advance of the hearing.

MOTION TO CHANGE VENUE FROM THE COURT PRACTICE MANUAL

A request to change venue should be made by written motion. The motion should be supported by documentary evidence.⁸ The motion should contain the following information:

- The date and time of the next scheduled hearing.
- An admission or denial of the factual allegations and charge(s) in the Notice to Appear.⁹
- A designation or refusal to designate a country of removal.
- If the alien will be requesting relief from removal, a description of the basis for eligibility.
- A fixed street address where the alien may be reached for further hearing notification or if the address at which the alien is receiving mail has changed, a properly completed Alien's Change of Address Form.¹⁰
- A detailed explanation of the reasons for the request.¹¹

File the motion with a cover page labeled "MOTION TO CHANGE VENUE," accompanied by a proposed order for change of venue and comply with the deadlines and requirements for filing.¹² The filing of a motion to change venue does not excuse the appearance of an alien or representative at any scheduled hearing. Therefore, until the motion is granted, parties must appear at all hearings as originally scheduled.

See Appendix D for a template for the Motion to Change Venue.

8 See Chapter 5.2(e) (Evidence) - <https://www.justice.gov/eoir/page/file/1084851/download>.

9 Form I-862 - <https://www.justice.gov/eoir/dhs-notice-appear-form-i-862>.

10 Form EOIR-33/IC - <https://www.justice.gov/eoir/form-eoir-33-eoir-immigration-court-listing>.

11 See generally Matter of Rahman, 20 I&N Dec. 480 (BIA 1992), 8 C.F.R. § 1003.20.

12 See Chapter 5.2 (Filing a Motion), Appendix F (Sample Cover Page) of the Immigration Court Practice Manual - <https://www.justice.gov/eoir/page/file/1084851/download>.

How to Change Venue

INSTRUCTIONS FOR MOTION TO CHANGE VENUE¹³

COVER SHEET

- Write the client's name in the top left corner. Enter their address below the name.
- Next, below "In the Matter of", write the name of the Respondent.
- Write the Respondent's A-number on the right side above "In Removal Proceedings."
- Near the bottom left corner, write the name of the assigned immigration judge next to "Immigration Judge."
- To the right of the judge's name, write in the date of the client's next hearing, "Next Hearing Date:"

MOTION TO CHANGE VENUE

- In the next paragraph, write "(Respondent's name) seeks this change of venue pursuant to 8 CFR § 1003.20."
- Then write, "in support of this motion (Respondent's name) states as follows:". Then explain the reason for changing the venue.
- At the bottom of the page, after the reason, put the client's name and the date. And attach any evidence.

SAMPLE ORDER

Attach a sample order as follows:

- In the top left corner put the Respondent's name. Below the name enter their address.
- Next, below "In the Matter of:" put the name of the Respondent's case. Write the A-Number on the right side above 'In Removal Proceedings.'

CERTIFICATE OF SERVICE

Certificate of Services must be included with every court filing.

CERTIFICATE OF INTERPRETATION

- Bolded and underlined in the center of the page type, Certificate of Interpretation.
- Below the title, in the right corner of the page, include the following phrase, "I, (Interpreter's name) declare that I am proficient in the English and Spanish languages, and the foregoing was read to

¹³ Sample Motion For Change of Venue Packet - https://asylumadvocacy.org/wp-content/uploads/2019/07/9-ASAP-Redacted-Sample-Motion-to-Change-Venue-for-Formerly-Separated-Family_Redacted.pdf.

(Client's name) in Spanish before he, she, or they signed the document. I further declare that I am competent to render this translation, and I would testify to the same penalty of perjury if I were called upon to do so."

- Write the name of the Interpreter and the date.

Replacing Lost or Damaged Documents

Important documents may be lost or damaged during a disaster. Depending on the document lost, it can either be quick or very lengthy to replace it. The cost will also vary. Freedom of Information Act (FOIA) requests are free. However, they are limited to replacing records. More official documents, like Permanent Resident cards, must be formally replaced by submitting an application with a fee. It is important to point out that a replacement document can take months to process, whether submitting a FOIA or submitting an application with USCIS. When possible, the best practice is to secure documents before a disaster and have copies available.

Freedom of Information Act

FOIA INSTRUCTIONS (EOIR)

ABOUT FOIA

The Freedom of Information Act/Privacy Act (FOIA/PA) provides any person the right to request access to federal agency records, except those exempted by the Acts.¹⁴ Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA.¹⁵

A FOIA request for EOIR can be used to replace court orders, copies of applications previously filed with the court, or evidence submitted to the court.

FOIA REQUEST

Submit FOIA requests by mail.¹⁶

A FOIA request should reasonably describe the records sought. The request should include identifying information, including full name, any other names used, the immigration hearing location, and A-number if known. If the A-number is not known or the case occurred before 1988, provide the Order to Show Cause date, the country of origin, and the location of the immigration hearing.

The client must verify their identity by providing a notarized original signature or by submitting a Certification of Identity.¹⁷

14 5 U.S.C. § 552/552a.

15 See 5 U.S.C. Section 552(c) (2006 & Supp. IV 2010). See also <http://www.justice.gov/oip/foiastatute/2012foiastatute9.html>

16 Submit FOIA requests to Office of the General Counsel, Attn: FOIA Service Center, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1903, Falls Church, VA 22041, EOIR.FOIARequests@usdoj.gov.

17 https://www.justice.gov/ust/file/doj361_form.pdf/download.

If the client is submitting a request regarding another person, the client should include an authorization to release information from the person who is subject to the request; or an explanation of how the public interest outweighs the privacy interest of the subject of the records. The authorization or explanation should be enclosed in the mail with the request.

COST

Except for commercial requesters, there is no charge for the first 100 pages of reproductions and two hours of search time. Search fees are charged per quarter hour; \$4.75 (administrative) and \$10.00 (professional). Fees must exceed \$25.00 before a fee is charged.

An agency may charge for retrieving records stored at a National Archives and Records Administration (NARA) operated records center and the costs associated with scanning the responsive records. Requests are deemed to constitute an agreement to pay any applicable fees up to \$25.00 without notice. Most requests do not require any fees; however, if fees exceed \$25.00, the Justice Department will the client prior to completing the request. The client must agree to pay, or EOIR will not release the records.¹⁸

PROCESSING

A FOIA request usually takes twenty to thirty business days. EOIR FOIA requests are placed on one of three tracks. Track one is for requests which receive expedited processing. Track two is for simple requests which do not involve voluminous records or lengthy consultations with other entities. Track three is for complex requests which involve voluminous records and for which lengthy or numerous consultations are required or those requests which may involve sensitive records.

To have a FOIA request expedited, the client must demonstrate a compelling need such as (1) imminent threat to the life or physical safety of an individual; (2) an urgency to inform the public concerning actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information; (3) loss of substantial due process rights; or (4) a matter of widespread and exceptional media interest in which there exists possible questions about the government's integrity which affect public confidence.

TRACKING AND APPEALS

To follow up on the status of a FOIA request, call (703) 605-1297 and ask to speak to (1) the FOIA Specialist assigned to the client's request or (2) Crystal Souza, the FOIA Public Liaison.¹⁹

If the client is not satisfied with EOIR's response to their FOIA request, he, she, or they may file an appeal with the Office of Information Policy (OIP), United States Department of Justice. Guidance on filing an appeal can be found online.²⁰

18 See 28 C.F.R. § 16.10.

19 For more information, <https://www.justice.gov/oip/department-justice-freedom-information-act-reference-guide>.

20 <https://www.justice.gov/oip/submit-and-track-request-or-appeal>

FOIA INSTRUCTIONS (ICE):

A FOIA request with ICE can be used to retrieve a copy of the Notice to Appear, latest Order of Supervision documents, and other documents related to entries and departures from the United States.

SUBMITTING THE FOIA APPLICATION ONLINE

- Access the [FOIA Request Form](https://www.ice.gov/webform/foia-request-form).²¹
- Fill in the client's contact information, including full legal name, address, phone number, and fax number, if any.
- Describe the type(s) of document(s) for which the request is being made, including the company name, address, and any other information relevant to the request.
- Select the option that best describes the description of the client and the purpose of the request.
- Next, select the maximum amount the client is willing to pay for processing the FOIA request. Information about FOIA exemptions is available online.²²
- Certify that the client is not a robot, then press submit.
- Mail the form using a mail service with a tracking number.

SUBMITTING THE FOIA APPLICATION BY MAIL

All requests can be faxed or emailed.²³

- Access the FOIA Request - [Form G-639](https://www.dhs.gov/foia-exemptions).²⁴
- Select Freedom of Information Act (FOIA) under "Type of Request."
- Provide the client's contact information, including full legal name, address, phone number, and the date. Next, sign consenting to pay all costs incurred for the search up to \$25.00.
- If the client is submitting a request for a third party or someone other than the requesting party, they must put their name and sign.
- Provide the information needed to search for record(s), including document or record names, dates, subject matter, and location. The client may also provide the purpose of the request.
- Enter the data needed on the subject of record, including name, other names used if any, name at the time of entry to the U.S., A-number, petition or claim receipt #, country of birth, and DOB.
- Sign and date. Include the client's phone number.
- Finally, notarize the document by putting the date, the client's signature, and the date the client's commission expires.
- Mail form using a mail service with a tracking number.²⁵

21 <https://www.ice.gov/webform/foia-request-form>.

22 <https://www.dhs.gov/foia-exemptions>.

23 Mail Requests (U.S. Postal System and all overnight mail/FedEx) to U.S. Immigration and Customs Enforcement Freedom of Information Act Office, 500 12th Street SW, Stop 5009, Washington, D.C. 20536-5009.

24 <https://www.uscis.gov/sites/default/files/document/forms/g-639.pdf>.

25 *Id.* at 23.

Replacing Legal Permanent Resident Card

FORM I-90 INSTRUCTIONS:

PART 1 - INFORMATION

- Access the Application to Replace Permanent Resident Card – [Form I-90](#).²⁶
- Provide A #, USCIS Online Account # (if applicable), and the client's name.
- Select the best option that describes if the client's name has legally changed since he, she, or they received their last Permanent Resident Card. Select N/A if the client never received their previous card.
- Provide the client's name as it is printed on their current Permanent Resident Card.
- Provide the client's mailing address and physical address if it is different from the mailing address.
- Select the client's gender and provide their DOB, place of birth, and country of birth.
- Provide the names of the client's parent(s) and their class of admission, date of admission, and social security number, if any.

PART 2 - APPLICATION TYPE

- Select the client's status as a resident of the U.S. If the client is a Lawful Permanent Resident, proceed to Section A. If the client is a Conditional Permanent Resident, proceed to Section B.
 - Section A: Select the option that best describes the client's reason for applying for a new card.
 - Section B: Select the option that best describes the client's reason for applying for a new card.

PART 3 - PROCESSING INFORMATION

- Provide the location where the client applied for an immigrant visa/adjustment of status and where it was issued. If the client entered the US with an Immigrant visa, complete question 3.a-3.a1. If the client was granted adjustment of status, proceed to Part 4.
 - Question 3.a-3.a1: Provide the client's destination when he, she, or they were admitted to the country and the Port of Entry?
 - 4: select whether the client has been in exclusion, deportation, or removal proceedings or ordered removed from the U.S.
- Indicate whether the client has ever filed an I-407, Abandonment by Alien Status as a Lawful Permanent Resident, or otherwise been determined to have abandoned the client's status. (If yes to 4 or 5, then explain in Part 8. Additional information section.)
- Select the option that best describes the client's biographical information. (Ethnicity, race, height, weight, eye color, hair color).

26 <https://www.uscis.gov/sites/default/files/document/forms/i-90.pdf>.

PART 4 - ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES AND/OR IMPAIRMENTS

- Select if the client is applying for an accommodation because of their disability and/or impairment. Then select the client's disability and or impairment and list the accommodation the client is requesting (Blind, Deaf, or other type of disability/impairment).

PART 5 - STATEMENT & CONTACT INFO

- Select the option that best describes whether the client read and understood the application in English or if the client had an interpreter or preparer read or prepare the application for them.
- Provide the client's daytime phone number, mobile phone number, if any, email address, if any, and signature.

PART 6 - INTERPRETER'S CONTACT INFO

- Provide the Interpreter's information including full name, business organization, if any, mailing address, and contact information).
- The interpreter should certify the application and sign.

PART 7 - CONTACT INFO OF PERSON PREPARING THE APPLICATION

- Provide the Preparer's information including full name, business organization, if any, mailing address, and contact information.
- Attorneys should check the box indicating they are an attorney.
- The preparer should sign and date.

FILING INFORMATION:

The client can either file the I-90 Form online²⁷ or by mail.²⁸ However, if the client is applying for a fee waiver, the client cannot file online and must file by mail.

FILING FEE

The client will be charged a non-refundable fee of \$455.00 and a biometric services fee of \$85.00 may also be required.

If the client is filing the I-90 because their current Card contains incorrect information due to a Department of Homeland Security error, such as a misspelled name, the client does not have to pay the filing fee. However, the client must send the original card that contains the error and evidence documenting the client's correct name or biographical information.

27 For filing online: The client must create a USCIS online account - <https://www.uscis.gov/file-online/how-to-create-a-uscis-online-account> - then file the form online - <https://www.uscis.gov/file-online>.

28 Submit the application can be submitted through mail to USCIS PO Box 21262, Phoenix, AZ 85036.

Naturalization

In preparing for all possible disasters, legal permanent residents should consider naturalization. Becoming a United States Citizen removes all worries regarding immigration status. Legal Permanent Residents should consult with an immigration attorney to verify if they are eligible to apply.

GENERAL REQUIREMENTS

A client may apply for naturalization if:

1. The client is at least 18 years of age at the time of filing (except activity duty members of the U.S. Armed Forces);
2. The client is a permanent resident of the U.S. for a required period of time;²⁹
3. The client has lived within the state or USCIS district where he, she, or they claim residence for at least three months prior to filing;
4. The client has demonstrated physical presence within the U.S. for a required period of time;
5. The client has demonstrated continuous residence for a required period of time;
6. The client demonstrated good moral character;
7. The client has demonstrated an attachment to the principals and ideals of the U.S. Constitution;
8. The client has demonstrated a basic knowledge of the U.S. history and government as well as an ability to read, write, speak, and understand basic English; and
9. The client takes an Oath of Allegiance to the U.S. Some clients may be eligible for a modified oath.

The client's application will be mailed to a USCIS lockbox determined by where the client lives.³⁰

FORM N-400 INSTRUCTIONS

PART 1 - INFO ABOUT ELIGIBILITY

- Access the Application for Naturalization [Form N-400](#).³¹
- Provide the client's A-Number and then select the box that best describes the client's eligibility for naturalization.

PART 2 - INFO ABOUT THE CLIENT

- If applicable, provide the client's current full legal name and any other names the client has used since birth. There is also the option to legally change the client's name if so desired.

29 See N-400 Application for Naturalization, Part 1, Question 1.

30 "Where to File" <https://www.uscis.gov/n-400>.

31 <https://www.uscis.gov/sites/default/files/document/forms/n-400.pdf>.

- Provide the client's social security number and USCIS Online account number, if any.
- Provide the client's gender, DOB, the date the client became a lawful permanent resident, country of birth, and country of nationality.
- Select the box that best describes if the client has any physical or developmental disability or mental impairments that prevents them from demonstrating their knowledge of English and/or civics requirements. If so, the client will need to submit an N-648, Medical Certification for Disability Expectations, when he, she, or they file.³²
- Select the box that describes any exceptions, if any, for the English Language Test.

PART 3 - ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES/IMPAIRMENTS.

- Select the option that best describes if the client is requesting an accommodation for their disability or impairment, and if so, what types of accommodation he, she, or they are requesting.

PART 4 - CONTACT INFO

- Provide the best number(s) to reach the client and an email address, if any.

PART 5 - INFO ABOUT CURRENT AND PREVIOUS ADDRESSES

- Provide the client's current and previous addresses lived in during the last 5 years, including the street number and name, the apartment, suite, or floor number, the city or town, county, state, and zip code.
- Provide the client's mailing address if the information is different from the current address.

PART 6 - INFO ABOUT THE CLIENT'S PARENTS

- If neither of the client's parents are U.S. citizens, then skip to part 7.
- Select the box that best describes if the client's mother and/or father are U.S. Citizens, then provide the client's mother and father's full legal name, country of birth, DOB, the date they became citizens, and A-Number.

PART 7 - BIOGRAPHICAL INFO

- Select the boxes that best describe the client's ethnicity, race, eye, and hair color.
- Provide the client's height and weight.

PART 8 - INFO ABOUT EMPLOYMENT AND EDUCATION

- List where the client has worked/attended school during the last 5 years, including the employer/school name, the address, and the dates the client worked or attended school there.

³² <https://www.uscis.gov/n-648>.

PART 9 - TIME OUTSIDE THE U.S.

- List all the trips the client has taken outside of the U.S. in the last five years, including the total amount of days traveled, and trips taken.
- If a trip outside of the United States was for 6 months or longer, the client will need to show that the client did not terminate their employment in the United States, their immediate family members remained in the United States, and retained full access to or continued to own or lease a home in the United States.

PART 10 - INFO ABOUT THE CLIENT'S MARITAL HISTORY

- Select the box that best describes the client's marital status and if the client's spouse is a member of the U.S. armed forces.
- Provide the number of times the client has been married and information of the client's current and previous marriages, including information about their full legal name, DOB, the date the client entered into the marriage with their current spouse, and their address.
- Select the box that best describes if the client's spouse is a current U.S. citizen and fill out their citizenship information.

STEP 11 - INFO ABOUT THE CLIENT'S CHILDREN

- List the client's total number of children.
- Fill in the information about their children, including their current legal name, A- Number, DOB, Country of birth, and address.

STEP 12 - MORE INFO ABOUT THE CLIENT

- Select the boxes to the best of the client's knowledge.
- If the client answers yes to any questions 1-21, provide an attachment with an explanation for the client's answer.

FEES

The filing fee for an Application for Naturalization, is \$640. A biometric service fee of \$85 is also required for clients under 75 years of age.

FILING ADDRESS

The client can either file online by creating a [USCIS online account](#)³³ or by mail (mailing address depends on the client's state.)³⁴

33 <https://myaccount.uscis.gov/>.

34 "Where to File" <https://www.uscis.gov/n-400>.

Naturalization Issues

Attorneys assisting with naturalization cases should be aware of potential barriers to becoming a United States Citizen. Certain activities may be temporary or permanent bars to naturalization. If an attorney identifies any potential bars, they should explain to the client why naturalization might not be possible at this time. The client should understand why the temporary or permanent bar applies and how to resolve the issue. See Appendix C, Naturalization, Permanent and Temporary Bars for a list of issues.

Fee Waivers and Reduced Fee Requests

FEE WAIVER – FORM I-912 INSTRUCTIONS

Access [Form I-912](#).³⁵

PART 1 - BASIC FOR REQUEST

- Select the box that best describes the client's basis for requesting a fee waiver.

PART 2: INFO ABOUT THE CLIENT

- Provide information about the client or if a legal guardian is filling out the application on behalf of their child, the information on their child, including full name, other names used in the past if any, A-number, USCIS account number if any, DOB, and social security number. Then select the box that best describes the client's marital status.

PART 3 - APPLICATIONS AND PETITIONS FOR WHICH THE CLIENT IS REQUESTING A FEE WAIVER

- List the form numbers of the applications and petitions for which the client is requesting a fee waiver.

PART 4 - MEANS-TESTED BENEFITS

- If the client selected "means-tested benefits" in Part 1, list the information about the means-tested benefits the client is receiving and attach any supporting documents.

PART 5 - INCOME AT OR BELOW 150% OF THE FEDERAL POVERTY GUIDELINES

- If the client selected "income at or below 150% of poverty" in Part 1, select the box that best describes the client's employment status.
- If the client is receiving unemployment benefits, provide the date the client became unemployed.
- Select the box that best describes the client's spouse and provide the information about the client's household size.
- Provide information about the client's income and the income counted as part of the client's household.

³⁵ <https://www.uscis.gov/sites/default/files/document/forms/i-912.pdf>.

PART 6 - FINANCIAL HARDSHIP

- If the client selected “financial hardship” in Part 1, describe any situation that has caused the client or any family member to incur expenses, debts, or loss of income, including the amounts of expenses, debts, and income losses.
- Provide any cash assets that the client can quickly convert into cash.
- List total monthly expenses and liabilities and check the box that best describes the type of expense.

REDUCED FEE REQUEST - FORM I-942 INSTRUCTIONS

USCIS allows any eligible application to apply for reduced fee for naturalization applications. The income requirement for eligibility is found online.³⁶ The I-942 form should be submitted with the N-400 application. Proof of income should also be included.

Access [Form I-942](#).³⁷

PART 1 - INFO ABOUT THE CLIENT

- Provide information about the client, including full name, DOB, A-Number, and marital status.
- Provide information about family member(s) filing this request with the client.

PART 2 - HOUSEHOLD INCOME

- Select the box that best describes the client’s employment status.
- Select the box that best describes the information about the client’s spouse and household size.
- Provide information about the client’s spouse and any other household members.
- Provide the requested information about annual household income.

Description of Interview Process

After submitting the N-400 application, the client will receive a notice for interview. The interview notice will have the date, time, address, and other instructions relating to the interview. The processing time to receive an interview appointment will depend on the local office.

DOCUMENTS REQUIRED FOR INTERVIEW

1. Appointment notice.
2. Permanent resident card.
3. All valid and expired passports, and state-issued identification card (ex. driver’s license).

36 <https://www.uscis.gov/i-942p>.

37 <https://www.uscis.gov/sites/default/files/document/forms/i-942.pdf>.

BRING THE FOLLOWING IF APPLICABLE:

4. Proof of marital status.
5. Court decree of name change.
6. Spouse's marital history.
7. Court disposition in criminal cases
8. If the client is a man between 18-31, proof that he has registered with the selective service.

Upon arrival at the interview, the client will be asked to enter through a security checkpoint, and he, she, or they must show the naturalization interview notice and identification. Then the client will be directed where to go to find the customer service waiting area where he, she, or they will need to present their interview notice.

During the interview, the client will first take an oath swearing that everything he, she, or they say is true. A large part of the interview will include asking questions about the client's application for naturalization, the provided information, and the documents provided with the client's application. The officer is also testing the client's knowledge of the English language during the interview. If the client does not understand a question, he, she, or they should ask the interviewer to repeat the question or explain the question using other words. Other questions may include information about trips outside the U.S., past marriages, membership in any organizations, problems with the law, military service in the U.S., and support of the U.S. Constitution and government.

After the interview, the officer will ask the client to sign a series of documents, and then the client will continue to the civics and reading and writing tests. Study materials are available on the [USCIS website](https://www.uscis.gov/citizenship/find-study-materials-and-resources/study-for-the-test)³⁸ as well as a [practice civics test](https://www.fema.gov/fact-sheet/hazard-mitigation-under-individuals-and-households-program).³⁹ The civics test includes 10 questions asked orally and answered orally. The client must answer six out of the ten questions correctly to pass.

The reading and writing tests each have three sentences, and the client only needs to get one reading and one writing sentence correct to pass.

The officer will tell the client the results of the naturalization tests and interview. If the office recommends the client's application for approval and their recommendation is accepted, the client will be sent a notice by mail of when to come back for their oath ceremony.

Replacing Naturalization Certificate

When a Legal Permanent Resident naturalizes, they receive a naturalization certificate. The certificate is printed on card stock material and is vulnerable to wear and tear. It is recommended that copies be made and for a digital image to be saved, as well. A replacement can be issued by submitting an Application for Replacement Naturalization/Citizenship Document, N-565 Form, through USCIS.

38 <https://www.uscis.gov/citizenship/find-study-materials-and-resources/study-for-the-test>.

39 <https://www.fema.gov/fact-sheet/hazard-mitigation-under-individuals-and-households-program>.

FORM I-565 INSTRUCTIONS

Access [Form N-565](#).⁴⁰

PART 1 - INFO ABOUT CLIENT

- Fill out personal information including Certificate number, A number, and Mailing Address.

PART 2 - TYPE OF APPLICATION

- Select the type of Certification the client is applying to replace and the reason why a new certificate is needed.
 - Example Reason for 2a.: My certificate was lost due to flooding or other disasters.

PART 3 - PROCESSING INFO

- Select the information that best describes the client's gender, height, and marital status.

PARTS 4-8

These sections may or may not be applicable to disaster affected individuals. Consult with the client to verify if these sections apply.

PART 9 - CLIENT'S STATEMENT

- Select Item 1A if the client can read and understand English and has read and understood the application.
- If an interpreter helped with the client's understanding of the application, select 1B and list the name of the interpreter and the name of the person who prepared the application for the client.

PART 10 - INTERPRETER'S CONTACT INFO

- If an interpreter was used, provide the interpreter's contact information.
- The interpreter must sign and certify the application.

PART 11 - CONTACT INFO OF PREPARER

- List the Preparer's Name, Business Organization, Contact Info.
- Attorneys should check the box indicating they are an attorney.
- The Preparer should sign and date.
- Fill out the information about the client's last Certificate of Intention including the name of the USCIS Office or Court, the date, the name on the document, and other names, if any, that the client has previously used.
- Select whether the client has lost or renounced their citizenship in any way since becoming a citizen.

40 <https://www.uscis.gov/sites/default/files/document/forms/n-565.pdf>.

FILING INFORMATION

The client can either file their N-565 form with USCIS online⁴¹ by creating an account or submit the form by mail.⁴²

Mail the client's original certificates and photos, if applicable, to the Nebraska Service Center after applying online electronically through the online account.⁴³

FILING FEE

There is a non-refundable \$555.00 filing fee for replacing a naturalization certificate. For applications submitted online, payment can also be made online. For paper applications, payment may be made with a money order, personal check, cashier's check, or credit card, using [Form G-1450, Authorization for Credit Card Transactions](#).⁴⁴ If the client is paying by check, make the check payable to the U.S. Department of Homeland Security.

REQUIRED INITIAL EVIDENCE

Do not send original documents, unless requested in the form instructions or applicable regulation. Only attach the documents as requested on the application.

EXAMPLE CHECKLIST

1. Two identical passport-style photographs.
2. Original document or certificate if the client is applying for a new or replacement document due to a name, date of birth, or gender change.
3. A copy of the original document if the client is applying for replacement of a lost, stolen, or destroyed document (if applicable).
4. A police report or a sworn statement if the client is applying for replacement of a lost, stolen, or destroyed document.
5. Evidence of a USCIS typographical or clerical error (if applicable).
6. Evidence of the client's legal name change (if applicable).
7. Evidence of the client's legal date of birth change (if applicable).
8. Evidence of the client's legal gender change (if applicable).
9. Evidence of the marital status change (if applicable).
10. A copy of the client's original naturalization certificate if applying for a special certificate of naturalization.

41 *Id.* at 33.

42 Mail to USCIS Phoenix Lockbox, USCIS, PO BOX 20050, Phoenix, AZ 85036.

43 <https://www.uscis.gov/n-565>.

44 <https://www.uscis.gov/g-1450>.

Fee Waivers and Reduced Fee Requests

A Request for Fee Waiver is available to clients who cannot afford the USCIS filing fee. For the Naturalization application, there is also a Request for Reduced Fee available. The requests will be mailed with the applications.

FEE WAIVER – FORM I-912 INSTRUCTIONS

Access [Form I-912](#).⁴⁵

PART 1 - BASIC FOR REQUEST

- Select the box that best describes the client's basis for requesting a fee waiver.

PART 2: INFO ABOUT THE CLIENT

- Provide information about the client or if a legal guardian is filling out the application on behalf of their child, the information on their child, including full name, other names used in the past if any, A-number, USCIS account number if any, DOB, and social security number. Then select the box that best describes the client's marital status.

PART 3 - APPLICATIONS AND PETITIONS FOR WHICH THE CLIENT IS REQUESTING A FEE WAIVER

- List the form numbers of the applications and petitions for which the client is requesting a fee waiver.

PART 4 - MEANS-TESTED BENEFITS

- If the client selected "means-tested benefits" in Part 1, list the information about the means-tested benefits the client is receiving and attach any supporting documents.

PART 5 - INCOME AT OR BELOW 150% OF THE FEDERAL POVERTY GUIDELINES

- If the client selected "income at or below 150% of poverty" in Part 1, select the box that best describes the client's employment status.
- If the client is receiving unemployment benefits, provide the date the client became unemployed.
- Select the box that best describes the client's spouse and provide the information about the client's household size.
- Provide information about the client's income and the income counted as part of the client's household.

⁴⁵ <https://www.uscis.gov/sites/default/files/document/forms/i-912.pdf>.

PART 6 - FINANCIAL HARDSHIP

- If the client selected “financial hardship” in Part 1, describe any situation that has caused the client or any family member to incur expenses, debts, or loss of income, including the amounts of expenses, debts, and income losses.
- Provide any cash assets that the client can quickly convert into cash.
- List total monthly expenses and liabilities and check the box that best describes the type of expense.

Immigration System Resources

- ICE Immigration and Customs Enforcement [Detention Locator⁴⁶](https://locator.ice.dhs.gov/) can help family members find individuals who ICE has detained. A search can be done by either (1) using the noncitizen’s alien number and their country of birth or (2) using their last name, date of birth, and country of birth. If using the second option, the last name must be entered exactly as ICE has recorded it.
- Immigration Court Locations: <https://www.justice.gov/eoir/eoir-immigration-court-listing>.
- ICE Offices of Chief Counsel: <https://www.ice.dhs.gov/contact/field-offices>.
- EOIR Hotline Number: 1-800-898-7180.
 - Individuals can find information on their open immigration court cases using their A Number.
- USCIS Hotline Number: 1-800-375-5283.
 - Individuals can check the status of their cases, make inquiries, or reschedule appointments by calling the USCIS Hotline number.
 - A caller has to provide the application receipt number to check the status of a current case.
 - An immigration agent will only speak to the individual whose case is filed or the legal representative on record.
- Disaster Shelter Locator: <https://www.redcross.org/get-help/disaster-relief-and-recovery-services/find-an-open-shelter.html>.
- Naturalization Study Materials: <https://www.uscis.gov/citizenship/find-study-materials-and-resources>.
- Disaster Distress Hotline (mental health): 1-800-985-5990 and press 2 for Spanish.
- USCIS Contact Center (Track client’s case): <https://www.uscis.gov/contactcenter>.

⁴⁶ <https://locator.ice.dhs.gov/#/index>.



CHAPTER 8:

Immigration Status for Victims of Crime

Maria Vazquez

In the wake of natural disasters, the rate of violent crimes tends to increase.¹ Marginalized populations are at an increased risk of experiencing violent crimes or becoming victims of domestic violence.² Therefore, it is imperative that attorneys working with immigrant populations after natural disasters identify when clients are eligible for immigration benefits predicated on being victims of certain crimes. Resiliency in disasters for immigration population can be aided by obtaining secure legal status. This status helps immigrants rebuild their lives more efficiently after a disaster and prevents future victimization by mitigating marginalization. The following section focuses on three types of immigrant visas available for victims of crime: the U-visa, T-visa, and VAWA petition.

U-Visas

The U-visa was created by the Victims of Trafficking and Violence Prevention Act (TVPA) of 2000. U-visas provide a path to legal permanent residence for immigrants who have been victim of a serious crime and assisted law enforcement in the investigation of that crime. Though the entire visa process can take several years, U-visa recipients are eligible for a waiver for most grounds of inadmissibility, making it a desirable option for immigrants who may otherwise face a bar to obtaining legal permanent residence.

CRIMES THAT QUALIFY FOR A U-VISA

The following is a general list of qualifying crimes for U-visa eligibility:³

- Abduction/Kidnapping/False Imprisonment
- Blackmail/Extortion

¹ See, e.g., Mohsen Rezaeian, *The Association Between Natural Disasters and Violence: A Systematic Review of the Literature and a Call for More Epidemiological Studies*, 18 J. of Res. Med. Sci. 1103-1107 (2013).

² *Id.*

³ 8 U.S.C. § 1101(a)(15)(U)(iii).

- Domestic Violence
- Felonious Assault
- Female Genital Mutilation
- Involuntary Servitude/Slavery
- Murder/Manslaughter
- Obstruction of Justice
- Perjury
- Prostitution
- Rape/Sexual Assault/Abusive Sexual Contact/Incest/Sexual Exploitation
- Stalking
- Torture
- Trafficking
- Witness Tampering
- A Conspiracy, Attempt, or Solicitation to Commit any of the aforementioned crimes

The crime in question does not need to receive the exact label listed above to qualify; any crime of a substantially similar nature and with substantially similar elements may be eligible.⁴ Generally, the crime must have occurred in the United States or its territories.⁵

In addition, the applicant does not need to be the direct victim of the crime to be eligible for a U-visa. Indirect victims—meaning a spouse, child under twenty-one years of age, parent, or unmarried sibling under the age of eighteen who steps into the shoes of the direct victim by providing information about the crime when the direct victim is incompetent or incapacitated—may also be eligible for a U-visa.⁶ For example, if a child is the victim of a felonious assault, the child's parent is an indirect victim and may apply for a U-visa if the parent assisted with the investigation of the crime. These immediate family members are also indirect victims in the case of murder or manslaughter.

ADDITIONAL ELIGIBILITY REQUIREMENTS

A crime victim must meet the following additional requirements for U-Visa eligibility:

1. The applicant had information concerning the crime and assisted law enforcement in investigating or prosecuting the crime.⁷ The investigation does not have to result in an arrest or conviction for the applicant to be eligible for a U-visa. The applicant is only required to assist law enforcement in its investigation of the crime and remain available for further assistance.

4 8 C.F.R. § 214.14(a)(9).

5 8 U.S.C. § 1101(a)(15)(U)(i)(IV).

6 8 C.F.R. § 214.14(a)(14)(i).

7 8 U.S.C. § 1101(a)(15)(U)(i)(II)-(III).

2. The applicant suffered substantial physical or mental abuse, having been a victim of criminal activity.⁸ Whether the abuse was "substantial" is determined by considering:
 - a. The nature of the injury inflicted or suffered.
 - b. The severity of the perpetrator's conduct.
 - c. The severity of the harm suffered.
 - d. The duration of the infliction of the harm.
 - e. The extent to which there is permanent or serious harm to the appearance, health, or physical or mental soundness of the victim, including aggravation of pre-existing conditions.⁹

When the crime constitutes a series of events, the events can be considered in the aggregate to constitute "substantial" physical or mental abuse.¹⁰

Certain family members of an applicant may qualify for derivative U-visa status as part of the principal applicant's application. If the applicant is under 21 years of age when the application is submitted, qualifying family members include the applicant's spouse, unmarried children under 21 years of age, parents, and unmarried siblings under 18 years of age. If the applicant is over 21, qualifying family members include the applicant's spouse, and unmarried children under 21 years of age.¹¹

THOSE WHO DO NOT QUALIFY FOR A U-VISA

The following potential U-visa applicants do not qualify:

1. The perpetrator of the crime as an indirect victim or derivative applicant;¹²
2. Immigrants who have participated in Nazi persecution, genocide, acts of torture, or extrajudicial killings.¹³

Because U-visa recipients are eligible for an extensive waiver of grounds of inadmissibility, this list is short.

U-VISA APPLICATION PROCESS

The following is a general guideline to the U-visa application process. Please note that all cases are unique and require individualized screening.

1. Gather relevant documents, such as police reports and court proceedings, proving that the client assisted in the investigation and prosecution of a qualifying crime.

8 8 U.S.C. § 1101(a)(15)(U)(i)(I).

9 8 C.F.R. § 214.14(b)(1).

10 *Id.* For example, victims of abuse may prove that the pattern of abuse over a course of time caused substantial physical and mental harm even if the reported offense would not meet this element when viewed in isolation.

11 8 C.F.R. § 214.14(f)(1).

12 8 C.F.R. § 214.14(a)(14)(iii).

13 8 U.S.C. § 1182(d)(14).

2. Complete [Form I-918¹⁴](#) Supplement B, U Nonimmigrant Status Certification. This form requires a signature from a law enforcement official involved in investigating or prosecuting the crime. Qualifying officials include:
 - a. The head of the law enforcement agency that investigated the crime (i.e., city police chief).
 - b. The head of the prosecutor's office that prosecuted the crime.
 - c. A judge who oversaw any part of the crime's judicial proceeding.
 - d. The head of a federal, state, or local Family Protective Services that participated in the investigation of a crime.
 - e. The head of other investigative agencies.
 - f. A person in a supervisory role designated by the head of the certifying agency to issue U-visa certifications on behalf of that agency.¹⁵

Because certifying agencies have the discretion to decline to sign the certification even if the client qualifies, it is important to make an eloquent and informative request for an I-918B certification. A sample cover letter for the request is included as Appendix E.

IMPORTANT: A U-visa application must be filed within 6 months of the dated signature on the I-918B certification.¹⁶

3. Prepare the U-visa application packet,¹⁷ including:
 - a. A cover letter listing the content of the packet;
 - b. [Form I-918](#);¹⁸
 - c. [Form I-918 Supplemental B](#);¹⁹
 - d. [Form I-765](#), Application for Employment Authorization;²⁰
 - e. If applicable:
 - i. [Form I-918 Supplement A](#), Petition for Qualifying Relative,²¹ and evidence of a qualifying relation to the applicant, such as a birth or marriage certificate,
 - ii. [Form I-765](#), Application for Employment Authorization for derivative applicants,²²

14 <https://www.uscis.gov/I-918>.

15 Dep't of Homeland Sec., *U Visa Law Enforcement Certification Resource Guide*, https://www.dhs.gov/xlibrary/assets/dhs_u_visa_certification_guide.pdf.

16 8 C.F.R. § 214.14(c)(2)(i).

17 A description of required evidence and filing fees can be found at Dep't of Homeland Sec., *Instructions for Petition for U Nonimmigrant Status and Supplement A, Petition for Qualifying Family Member of U-1 Recipient*, <https://www.uscis.gov/sites/default/files/document/forms/i-918instr.pdf>.

18 <https://www.uscis.gov/I-918>.

19 <https://www.uscis.gov/I-918>.

20 <https://www.uscis.gov/I-765>.

21 <https://www.uscis.gov/I-918>.

22 <https://www.uscis.gov/I-765>.

- iii. [Form I-192](#), Application for Advance Permission to Enter as a Nonimmigrant,²³ if the client faces grounds of inadmissibility listed in INA § 212(a), and
 - 1. The filing fee or [Form I-912](#) Request for Fee Waiver,²⁴
 - a. See Chapter 7 for more information on how to file a fee waiver
 - 2. Evidence of national or public interest in granting waiver;²⁵
 - f. Identity documents for the client and derivative applicants;
 - g. Two identical passport-style photographs of the client and derivative applicants;
 - h. Supporting documentation of the law enforcement assistance, such as police reports, court documents, trial transcripts, news articles, affidavits, or an order of protection;
 - i. Supporting documentation of substantial physical and/or mental abuse, such as medical reports, affidavits from therapists or medical personnel, and photographs of injuries;
 - j. A personal narrative statement of the crime, describing:
 - i. The nature of the criminal activity,
 - ii. When the criminal activity occurred,
 - iii. Who was responsible,
 - iv. The events surrounding the criminal activity,
 - v. How the criminal activity came to be investigated or prosecuted, and
 - vi. What substantial physical and/or mental abuse the applicant suffered, having been the victim of the criminal activity;
 - k. If applicable: A comparison of the statutory elements of the charged crime with the statutory elements of a substantially similar qualifying federal crime; and
 - l. If the victim was under 16 years of age or was declared incompetent, provide documentation, such as a birth certificate of the victim demonstrating their age or reports of medical professionals demonstrating incapacity or incompetence.

The average wait time for U-visa application processing is about five to six years. However, USCIS recently allowed for Bona Fide Determinations on pending U-visa applications, meaning that as long as an application meets certain minimum standards, the applicant is eligible for employment authorization and deferred action while their application is pending.²⁶ After being approved for U-visa status, the client must remain continuously present in the United States. Three years after final U-visa approval, the client may be eligible to apply for legal permanent resident status.²⁷

23 <https://www.uscis.gov/I-192>.

24 <https://www.uscis.gov/i-912>.

25 For a non-exhaustive list of potential evidence for Form I-192, see Nat'l Immigrant Just. Ctr., *NIJC Pro Bono Attorney Manual On Immigration Relief For Crime Victims: U Visas*, <https://immigrantjustice.org/for-attorneys/legal-resources/file/nijc-pro-bono-attorney-manual-immigration-relief-crime-victims-u-at-35>.

26 U.S. Citizenship & Immigr. Servs. Policy Manual, Chapter 5 - Bona Fide Determination Process, <https://www.uscis.gov/policy-manual/volume-3-part-c-chapter-5>.

27 8 U.S.C. § 1255(m).

T-Visas

The T-visa was created by the Survivors of Trafficking and Violence Protection Act of 2000 (TVPA). T-visas provides a path to legal permanent residence for immigrants without secure status in the United States whose presence in the United States results from a severe form of trafficking.²⁸ Like the U-visa, recipients of T-visas have the opportunity to waive many grounds of inadmissibility, making it a desirable form of immigration status. The T-visa adjudication process moves faster than the U-visa process because the congressional cap of annual T-visas is normally not met.

CRIMES THAT QUALIFY FOR A T-VISA

To qualify for a T-visa, an applicant must be the victim of a severe form of trafficking.²⁹ A "severe form of trafficking" can refer to either sex or labor trafficking. A "severe form of sex trafficking" is trafficking in which a commercial sex act is induced (1) by force, fraud, or coercion; or (2) in which the person induced to perform such act is under the age of 18 years. A severe form of labor trafficking is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery.

ADDITIONAL ELIGIBILITY REQUIREMENTS

A crime victim must meet the following additional requirements³⁰ for T-Visa eligibility:

1. The applicant is physically present in the United States or at a port of entry due to a severe form of trafficking. Because there is a nexus requirement between the applicant's presence in the United States and their trafficking, it is best to submit the T-visa application as soon as possible to demonstrate that the applicant has not had the clear chance to leave the United States since being trafficked. Applicants who escaped trafficking a significant amount of time before their T-visa application could be filed should explain why they have not had the chance to leave the United States, such as trauma, lack of resources, or seizure of travel documents during trafficking. In addition, in certain circumstances, the nexus requirement can be met when someone enters the United States and is then trafficked within the country.
2. The applicant has complied with any reasonable request for assistance in an investigation or prosecution of trafficking. However, minor applicants and applicants who cannot comply with the request due to physical or psychological trauma are not required to meet this condition.
3. The applicant would suffer extreme hardship involving unusual and severe harm upon removal.³¹

Certain family members of a victim may qualify for derivative T-visa status.³² If the applicant is under 21 years of age when the application is submitted, qualifying family members include the applicant's

28 8 U.S.C. § 1101(a)(15)(T).

29 8 C.F.R. § 214.11(a).

30 8 C.F.R. § 214.11(b)(2)-(4).

31 For an in-depth explanation of meeting this element in the T-visa context, see Kids in Need of Defense, *Chapter 7: T Visa Relief*, <https://supportkind.org/wp-content/uploads/2015/04/Chapter-7-T-Visa-Relief-107.pdf> at 7-8.

32 8 C.F.R. § 214.11(a).

spouse, unmarried children under 21 years of age, parents, and unmarried siblings under 18 years of age. If the applicant is over 21, qualifying family members include the applicant's spouse, and unmarried children under 21 years of age. Additionally, if a family member faces a present danger of retaliation due to an applicant's escape from trafficking or cooperation with law enforcement, family members eligible for derivative status include an applicant's parents, unmarried siblings under 18 years of age, and adult or minor child of a derivative (grandchild, spouse's child, niece or nephew, or sibling).

THOSE WHO DO NOT QUALIFY FOR A T-VISA

The following potential T-visa applicants do not qualify for this form of relief:

1. Applicants for whom there is substantial reason to believe that they have committed an act of a severe form of human trafficking;³³
2. Applicants who face inadmissibility on certain non-waivable grounds.³⁴

T-VISA APPLICATION PROCESS

The following is a general guideline to the T-visa application process. Please note that all cases are unique and require individualized screening.

In contrast to U-visa applications, a certification from a law enforcement agency is not necessary to submit a T-visa application. However, a completed Form I-914 Supplement B, Declaration of Law Enforcement Officer for Victims of Trafficking in Persons, is persuasive evidence of eligibility for a T-visa and should be completed if possible. If certification could not be obtained, the applicant's statement should describe the efforts taken to obtain certification and why these efforts were not successful.

Prepare the T-visa application packet, including:

1. A cover letter listing the content of the packet;
2. [Form I-914](#), Application for T Nonimmigrant Status;³⁵
3. If Applicable:
 - a. [Form I-914 Supplement B](#),³⁶ Declaration of Law Enforcement Officer for Victim of Trafficking in Persons,
 - b. [Form I-914 Supplement A](#),³⁷ Application for Family Member of T-1 Recipient, with
 - i. Documentation of relationship to the applicant, and
 - ii. Fear of retaliation, if applicable,

³³ 8 C.F.R. § 214.11(b)(5).

³⁴ 8 U.S.C. § 1182(a)(3) (including espionage, terrorist activities, adverse foreign policy considerations, member of totalitarian party, participants in Nazi persecution, genocide, or extrajudicial killings, recruitment/use of child soldiers, international child abduction, and former citizens who renounced citizenship to avoid taxation).

³⁵ <https://www.uscis.gov/i-914>.

³⁶ <https://www.uscis.gov/i-914>.

³⁷ <https://www.uscis.gov/i-914>.

- c. [Form I-765](https://www.uscis.gov/i-765),³⁸ Application for Employment Authorization for derivative applicants with a filing fee or [I-912 Request for Fee Waiver](https://www.uscis.gov/i-912),³⁹
 - d. [Form I-192](https://www.uscis.gov/i-192), Application for Advance Permission to Enter as a Nonimmigrant,⁴⁰ if the client faces grounds of inadmissibility listed in INA § 212(a), with
 - i. The filing fee or [Form I-912](https://www.uscis.gov/i-912), Request for Fee Waiver,⁴¹
 - ii. Evidence of nexus between grounds of inadmissibility and trafficking, or
 - iii. Evidence of national or public interest in granting waiver,
4. The client and derivative applicant's identity documents;
5. Two identical passport-style photographs of the client and derivative applicants;
6. A personal narrative statement of the trafficking, describing:
- a. The circumstances of the client's entry into the United States,
 - b. The purpose for which the client was brought to the United States,
 - c. How the client was recruited or otherwise became involved in the trafficking situation,
 - d. When these events took place,
 - e. Who was responsible,
 - f. How long the traffickers detained the client,
 - g. How and when the client escaped, was rescued, or otherwise became separated from the traffickers,
 - h. What the client has been doing since they were separated from the traffickers,
 - i. Why the client was unable to leave the United States after they were separated from the traffickers,
 - j. What harm or mistreatment the client fears if they are removed from the United States,
 - k. Why the applicant fears they would be harmed or mistreated; and
7. Supporting documentation of the law enforcement assistance, such as police reports, court documents, trial transcripts, news articles, affidavits, or an order of protection.

After the application is submitted, USCIS will make a preliminary Bona Fide Determination on the client's eligibility for T-visa status.⁴² If the application is found to be bona fide, the client will automatically be granted a stay of any removal order.⁴³ Though there is a five thousand cap on T-visas per year, this cap has never been met, so T-visas become available much quicker than U-visas. When a client's T-visa is approved, the client will automatically receive employment authorization without needing to complete an I-765.⁴⁴ Derivative applicants will not automatically receive work authorization; derivatives can file an

³⁸ <https://www.uscis.gov/i-765>.

³⁹ <https://www.uscis.gov/i-912>.

⁴⁰ <https://www.uscis.gov/i-192>.

⁴¹ <https://www.uscis.gov/i-912>.

⁴² 8 C.F.R. § 214.11(e).

⁴³ 8 C.F.R. § 214.11(e)(3).

⁴⁴ 8 C.F.R. § 214.11(d)(11).

I-765 concurrently with the principal application or may file after being granted derivative status.⁴⁵ After three years of maintaining continuous physical presence in the United States and meeting the additional statutory requirements, a client can apply for legal permanent residence.⁴⁶

VAWA Self-Petition

A VAWA self-petition was created by the Violence Against Women Act (VAWA) in 1994 in response to the widespread problem of immigrants feeling compelled to maintain their relationship with abusers who hold legal status in the United States to go through the family petition process. Using a VAWA application, survivors of domestic violence can apply for legal residence without the acquiescence or assistance of their abuser.

CIRCUMSTANCES THAT QUALIFY FOR VAWA STATUS

An applicant is eligible for the VAWA process if they were a victim of "battery or extreme cruelty" perpetrated by:⁴⁷

1. A U.S. Citizen or Legal Permanent Resident spouse;
2. A U.S. Citizen or Legal Permanent Resident parent, if the applicant is under the age of 21⁴⁸; or
3. A U.S. Citizen child, if the child is over the age of 21.⁴⁹

The term "battery or extreme cruelty" is expansive, including acts or threats of physical violence, psychological abuse, sexual abuse, and other evidence of an overall pattern of abuse.⁵⁰ Practitioners may find the Power and Control Wheel diagram useful when developing evidence of an overall pattern of abuse.⁵¹ In contrast to a U- and T-visa, there is no requirement that law enforcement was notified of the abuse.

ADDITIONAL ELIGIBILITY REQUIREMENTS

In addition to establishing an abusive relationship, the following are requirements for the VAWA process:⁵²

1. The abuser held the requisite legal status;⁵³
2. The applicant was in a qualifying relationship with the abuser;⁵⁴

45 8 C.F.R. § 214.11(k)(10).

46 8 U.S.C. § 1255(l).

47 8 U.S.C. § 1154(a)(1)(A)(iii).

48 An abused child may apply for VAWA until they turn 25 if the abuse was a central reason for the delay in filing. 8 U.S.C. § 1154(a)(1)(D)(v).

49 An applicant is still eligible for VAWA status if during the time of abuse, their abuser was not a USC or LPR, but later obtains status.

50 8 C.F.R. § 204.2(c)(1)(vi).

51 Nat'l Cent. on Domestic & Sexual Abuse, developed by the Domestic Abuse Intervention Project, Power and Control Wheel, <http://www.ncdsv.org/images/PowerControlwheelNOSHADING.pdf>.

52 8 C.F.R. § 204.2(c)(1)(i).

53 If the abuser lost their legal status because of the abuse (i.e. an LPR lost their status due to a domestic violence conviction), the applicant can still qualify if they submit their application within two years of the abuser's loss of status. 8 U.S.C. § 1154 (a)(1)(B)(ii)(II)(aa)(CC)(aaa).

54 When the qualifying relationship is a marriage, the marriage must be valid in the place where it was enacted. This includes common law marriages in states that recognize this type of marriage, and cases where the marriage was not legally binding because the abuser was married to someone else. Additionally, applicants whose marriage with the abuser ended through divorce or annulment may apply for VAWA status for two years after the marriage terminated. While this two-year grace period also applies when an abusive USC spouse dies, there is no two-year grace period after the death of an abusive LPR spouse. 8 U.S.C. § 1154 (a)(1)(B)(ii)(II)(aa)(CC)(bbb).

3. The applicant resided with the abuser for some period of time;
4. The applicant was a person of good moral character for the three years preceding their application;⁵⁵ and
5. If the abuser was the applicant's spouse, the applicant must show that the relationship was entered into in good faith.

VAWA applicants can also include unmarried children under the age of 21 as derivatives of their application.⁵⁶

IMPORTANT: When an applicant files a VAWA petition based on an abusive marriage, they may not remarry until their petition is approved. If they remarry, they are no longer eligible for VAWA status.⁵⁷ Derivative children also may not marry until their VAWA status is approved.

THOSE WHO DO NOT QUALIFY FOR VAWA STATUS

When adjusting status, VAWA recipients may be subject to all the grounds of inadmissibility listed in INA § 212(a) except for unlawful entry and public charge.⁵⁸ Therefore, attorneys should carefully screen potential VAWA applicants for grounds of inadmissibility that may prevent a client from obtaining legal permanent residence down the road.⁵⁹

VAWA APPLICATION PROCESS

Unlike the U- and T-visa, there is no police certification for a VAWA petition. Therefore, the only step is preparing the VAWA petition packet, including:

1. A cover letter listing the content of the packet;
2. [Form I-360](#), Petition for Amerasian, Widow(er), or Special Immigrant;⁶⁰
3. If applicable:
 - a. If the client would have a visa immediately available and is admissible, [Form I-485](#), Application to Register Permanent Residence,⁶¹ with
 - i. Required evidence in Form I-485 instructions,
 - ii. [Form I-765](#) Application for Work Authorization under category c(9),⁶² and
 - iii. The filing fee or [Form I-912](#), Request for Fee Waiver;⁶³

⁵⁵ 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(bb). Acts that would prevent a person from establishing good moral character are listed in INA § 101(f). Possible waivers for disqualifying acts are listed in INA § 204(a)(1)(c).

⁵⁶ 8 C.F.R. § 204.2(c)(4).

⁵⁷ 8 C.F.R. § 204.2 c)(1)(ii).

⁵⁸ 8 U.S.C. § 1182(a)(4)(C)(i)(III). Other grounds of inadmissibility can be waived at the discretion of the Attorney General for VAWA self-petitioners. See 8 U.S.C. § 1182(a)(6)(A)(ii); 8 U.S.C. § 1182 (a)(9)(C)(iii); 8 U.S.C. § 1182(g)(1)(C); 8 U.S.C. § 1182(h).

⁵⁹ For additional information on grounds of admissibility and waivers, see U.S. Citizenship & Immigr. Servs., *Inadmissibility and Waivers*, https://www.uscis.gov/sites/default/files/document/foia/Inadmissibility_and_Waivers.pdf.

⁶⁰ U.S. Citizen and Immigration Services, Petition for Amerasian, Widow(er), or Special Immigrant, <https://www.uscis.gov/i-360>.

⁶¹ <https://www.uscis.gov/i-485>.

⁶² <https://www.uscis.gov/i-765>.

⁶³ <https://www.uscis.gov/i-912>.

4. Identify documents, such as a birth certificate or passport;
5. An affidavit from the client describing situation and eligibility for VAWA;
6. Evidence of the abuser's USC or LPR status;
7. Evidence of relationship to the abuser, such as birth or marriage certificate;
8. Evidence that the applicant resided with the abuser, such as leases, mortgages, insurance policies, utility receipts, or affidavit;
9. Evidence of an abusive relationship, such as police reports, medical records, school officials, social workers, protective order, or affidavits from counselors, family, and friends;
10. If the client is over the age of 14, an affidavit of good moral character with a police clearance or background check for each state or country where the applicant has lived for more than six months in the three years preceding the application; and
11. If the client is the abuser's spouse, evidence that the marriage was entered into in good faith, meaning that the couple had plans for a future together will be required. Evidence may include joint tax forms, joint bank statements, joint leases, and evidence from the applicant and others about the couple's courtship, marriage, and experiences.

Upon approval of a VAWA self-petition, the client automatically receives deferred action of removal and employment authorization under the category of (c)(14) or (c)(31).⁶⁴ Clients who are concurrently applying for adjustment of status should file a Form I-765 under the category of (c)(9). Derivatives also become eligible for employment authorization upon approval of their petition and may file a Form I-765 concurrent to their application. After approval, the client may apply for legal permanent residency if they are admissible.⁶⁵

Extensions of Status

All nonimmigrant statuses are granted for a set period, after which this status expires. If the visa-holder cannot leave the country or adjust their status before the expiration date, an immigrant may file a Form I-539 Application to Extend/Change Nonimmigrant Status. This application is frequently needed in the context of natural disasters when a recipient is unable to obtain legal assistance, afford the application fee to adjust status, or travel outside of the country before their visa status expires.

U- AND T-VISA RECIPIENTS

Three years after receiving a U- or T-visa, the client may adjust their status to a legal permanent resident. However, U- or T- nonimmigrant status expires four years after approval. If the U- or T-visa holder cannot file for adjustment of status before their visa expires, they must file Form I-539 predicated on either (1) law enforcement needs or (2) exceptional circumstances.⁶⁶ Clients can demonstrate law enforcement

⁶⁴ 8 U.S.C. § 1154(a)(1)(K).

⁶⁵ 8 U.S.C. § 1255(a).

⁶⁶ For complete instructions and up-to-date filing fees, please see U.S. Citizenship & Immigr. Servs., Instructions for Application to Extend/Change Nonimmigrant Status, <https://www.uscis.gov/sites/default/files/document/forms/i-539instr.pdf>.

needs with a law enforcement certification, and exceptional circumstances with an affidavit and any additional supporting evidence. In the context of natural disasters, evidence of financial harm, a government declaration of emergency, and news articles about the disaster's impact may be appropriate evidence of exceptional circumstances.

A U- or T-visa holder client may also include any derivative recipients in their application for extension using Form I-539A. A derivative recipient can also independently file for an extension and include a justification for extension, copy of I-94, passport, and evidence of relationship to the principal holder.

For U- and T-visa holder clients, extension of status is not necessary when the client files an I-485 to adjust their status before the expiration of their nonimmigrant status.⁶⁷ Their U- or T-visa status is automatically extended when the I-485 is filed and continues while the application is pending.

VISITOR VISA RECIPIENTS

A [Form I-539](#) may also be used for temporary visitors to the United States who need to extend their legal status in the United States.⁶⁸ Such clients should explain the reason for their request and any arrangements they have made to depart from the United States.⁶⁹ When a natural disaster prevents a temporary visitor from leaving, the client should describe the impact that the disaster had on their travel plans and include any government-issued state of emergency to support the severity of the disaster.

Online Case Inquiry

USCIS

Upon applying with USCIS, clients receive a receipt notice that includes a receipt number, a thirteen-digit number preceded by three letters such as EAC, WAC, or IOE. Using this receipt number, a client can check the status of their case [online](#)⁷⁰. Additionally, clients may create a USCIS account to track their immigration case and submit any unsolicited evidence they may have collected after filing their application. Information on setting up a USCIS account is sent out in the mail after a receipt notice. Below is a list of common statuses the client may find upon checking their status:

- Application was received.
- Application is being actively reviewed.
- Request for Evidence: If USCIS wants additional evidence before they decide on an application, they will issue a Request for Evidence (RFE). Depending on the amount of additional information needed, and the difficulty in obtaining this information, an applicant may have between thirty to ninety days to respond to an RFE.⁷¹

⁶⁷ *Id.*

⁶⁸ <https://www.uscis.gov/i-539>.

⁶⁹ *Id.*

⁷⁰ <https://egov.uscis.gov/casestatus/landing.do>.

⁷¹ 8 C.F.R. § 103.2(b)(8)(iv). The clock starts when the notice is mailed out by USCIS, not when the notice is actually received in the mail by the applicant.

- Notice of Intent to Deny: If USCIS does not believe that the applicant qualifies for the requested relief, USCIS will issue a Notice of Intent to Deny, or NOI. Typically, applicants have thirty days upon receiving a NOI to respond with additional evidence.⁷²

During the COVID-19 pandemic, USCIS extended the deadline for responses for RFEs and NOIs, allowing an additional sixty days after the deadline.⁷³ If a natural disaster prevents a timely response to an RFE or NOI, USCIS requires evidence demonstrating why the application was delayed.⁷⁴

IMMIGRATION COURT

A similar status-checking service is available for clients who are in removal proceedings. Clients may call 800-898-7180 or check their immigration status online⁷⁵. When prompted, the client may input their "alien number," or A-number, a 9-digit number preceded by an "A" that appears on most court documents.

In the event of a natural disaster, a client's immigration court date may be postponed. However, this should not be assumed and should always be confirmed before an attorney and their client do not attend the court date. If a client fails to appear at a hearing, they will likely be ordered removed in absentia and require a Motion to Reopen to continue with their case. For this reason, check the case status to confirm the date and time of their next hearing.

ICE CHECK-INS

Some clients in removal proceedings may be required to attend regular ICE check-ins during the pendency of their proceedings. If a client cannot attend an ICE check-in due to a natural disaster, instruct the client to persistently call their ICE officer to explain why they could not make their appointment. The client must continue calling until they reach their officer. To demonstrate compliance with their conditions of release, the client should screenshot their call log.

Replacement of Employment Authorization Document

A common problem arising from disasters is the loss of important legal documents. This can have particularly severe consequences for immigrants, who could be at risk of losing their job if they cannot prove they have employment authorization in the United States. As a best practice in disaster preparation, instruct clients to take a picture of employment authorization cards and email it to a secure email or upload copy to digital storage. This picture or document can serve as temporary proof of work authorization status and can speed up obtaining a replacement card. It is also important to remember that even if an employment authorization card is lost, a card holder still retains their employment authorization for the duration of the authorization period.

72 *Id.*

73 U.S. Citizenship & Immigr. Servs., USCIS Extends Flexibility for Responding to Agency Requests, <https://www.aila.org/File/Related/20050133f.pdf>.

74 U.S. Citizenship & Immigr. Servs., Special Situations, <https://www.uscis.gov/humanitarian/special-situations>. Practitioners should note that untimely filings are rarely accepted due to 8 C.F.R. § 103.2(b)(8)(iv), which states, "Additional time to respond to a request for evidence or notice of intent to deny may not be granted."

75 <https://portal.eoir.justice.gov/InfoSystem/Form?Language=EN>.

When a work permit is lost following a disaster, it is important to take steps to obtain a replacement immediately. The client needs to file a new Form I-765 with either the filing fee or a Form I-912 Request for Fee Waiver.⁷⁶ If there is an urgent need to replace the work permit, the client can consider filing a request for expedited processing.⁷⁷

Know Your Rights During Disasters

PUBLIC CHARGE CONSIDERATIONS

An applicant for legal permanent residence who is “likely at any time to become a public charge” is generally inadmissible to the United States, and therefore ineligible to become an LPR.⁷⁸ Following disasters, many immigrants who are not yet permanent residents have concerns about the impact that applying for post-disaster federal aid has on their admissibility. The public charge grounds of inadmissibility do not apply to some eligibility categories, including asylees, refugees, U- and T-visa recipients, VAWA petitioners, and special immigrant juveniles.⁷⁹ Immigrants who hold any other status and wish to ultimately adjust their status to legal permanent resident may be subject to the public charge ground of inadmissibility.

However, following disasters, most types of federal aid do not negatively impact an immigrant’s public charge assessment.⁸⁰ Once the President makes an official disaster declaration; federal aid programs become available for people living in disaster areas. Federal aid programs, such as the Individuals and Households Program and Disaster Unemployment Assistance, are available for U.S. citizens, LPRs, and “qualified aliens,” meaning immigrants with certain lawful statuses. “Qualified aliens” include refugees, asylees, recipients of withholding of removal, parolees of at least one year, Cuban-Haitian entrants, VAWA recipients, and T-visa holders.⁸¹ People without lawful status may apply for federal aid through a household member, such as a USC child, or may apply for certain short-term, noncash disaster relief aid.⁸² Federal aid programs through the Federal Emergency Management Agency (FEMA), Small Business Administration (SBA) loans, and the DSNAP program do not impact the public charge determination for admissibility.⁸³ For more information on how to apply for FEMA see Chapter 1. For more information on how to apply for SBA see Chapter 3.

⁷⁶ See U.S. Citizenship & Immigr. Servs., Instructions for Application for Employment Authorization, <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>.

⁷⁷ U.S. Citizenship & Immigr. Servs., Immigration Help Available to Those Affected by Natural Disasters, <https://www.uscis.gov/archive/immigration-help-available-to-those-affected-by-natural-disasters>.

⁷⁸ 8 U.S.C. § 1182(a)(4)(A). *Id.*

⁷⁹ A full list of exempted categories is found at 8 C.F.R. § 212.23(a).

⁸⁰ Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19, 84 Fed. Reg. 41363 (July 10, 2020) (“[I]n its public charge inadmissibility determination DHS will not consider receipt of . . . a wide range of other benefits, such as emergency or disaster relief.”); Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (Mar. 26, 1999) (listing “Emergency disaster relief” as an example of “supplemental non-cash benefits or special purpose cash benefits that an [immigrant] may receive that should not be considered for public charge purposes”).

⁸¹ Fed. Emergency Mgmt. Agency, Fact Sheet: *Citizenship Status and Eligibility for Disaster Assistance FAQ*, <https://www.fema.gov/press-release/20210318/fact-sheet-citizenship-status-and-eligibility-disaster-assistance-faq>.

⁸² *Id.*

⁸³ Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19, 84 Fed. Reg. 41363 (July 10, 2020) (“[I]n its public charge inadmissibility determination DHS will not consider receipt of ... a wide range of other benefits, such as emergency or disaster relief.”).

Immigrants who have employment authorization may also be eligible to receive unemployment benefits. Generally speaking, immigrants who have a work permit may obtain unemployment benefits if they meet the state's additional non-immigration-related criteria. Some exceptions include H-1B and L-1⁸⁴ visa holders, whose immigration status is tied to a specific employer. Unemployment benefits are considered a right, and therefore do not count towards any future determinations of public charge.⁸⁵

RIGHTS IN SEEKING MEDICAL TREATMENT AFTER A DISASTER

Regardless of immigration status, if a client is seriously injured following a disaster, the individual should seek medical treatment. Under the law, a hospital cannot deny emergency medical care, regardless of a patient's immigration status or ability to pay for the treatment.⁸⁶ If the client meets other eligibility requirements of Medicaid, hospitals may bill the patient's care under Medicaid if they have an "emergency medical condition."⁸⁷ Such treatment will not be considered in a public charge determination.⁸⁸ Additionally, health centers must provide medical care regardless of the severity of the medical need, the patient's immigration status, or the patient's ability to pay.⁸⁹ Hospitals must provide a qualified interpreter for patients who have limited English proficiency.^{90 91}

Though immigration enforcement agencies have policies of avoiding enforcement at hospitals, officials can detain undocumented patients at a hospital, though it is very rare.⁹² However, it is not required that undocumented immigrants disclose their immigration status to hospital officials.⁹³ In addition, immigration enforcement must abide by immigrants' Fifth Amendment privacy rights in these situations.⁹⁴

In the context of the COVID-19 pandemic, the federal government affords non-discriminatory procedures and activities, regardless of legal status, for testing, treatment, and vaccines for the virus.⁹⁵ Receiving testing or other health care services related to COVID-19 are not considered a negative factor in public charge determinations.⁹⁶

84 <https://www.uscis.gov/working-in-the-united-states/temporary-nonimmigrant-workers>.

85 See Field Guidance on Deportability and Inadmissibility on Public Charge Grounds, 64 Fed. Reg. 28689 (Mar. 26, 1999) (unemployment benefits not listed under aid programs that factor into public charge determination).

86 42 U.S.C. § 1395dd.

87 42 U.S.C. § 1396b(v)(3)(A)-(C). An emergency medical condition is defined as "a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (A) placing the patient's health in serious jeopardy, (B) serious impairment to bodily functions, or (C) serious dysfunction of any bodily organ or part."

88 U.S. Citizenship & Immigr. Servs., Public Charge Fact Sheet, <https://www.uscis.gov/archive/public-charge-fact-sheet>.

89 Health Resources and Service Administration, What is a Health Center, <https://bphc.hrsa.gov/about/what-is-a-health-center/index.html>.

90 Gaurab Basu, Vonessa Phillips Costa, & Priyank Jain, Clinicians' Obligations to Use Qualified Medical Interpreters When Caring for Patients with Limited English Proficiency, AMA Journal of Ethics (Mar. 2017), <https://journalofethics.ama-assn.org/article/clinicians-obligations-use-qualified-medical-interpreters-when-caring-patients-limited-english/2017-03>.

91 <https://findahealthcenter.hrsa.gov/>.

92 Memorandum from David V. Aguilar, Deputy Commissioner, U.S. Customs & Border Prot., U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations (Jan. 18, 2013), http://file.lacounty.gov/SDSInter/bos/supdocs/US_Border.pdf.

93 See Protecting Immigrant Families, You Have Rights: Protect Your Health - Going to the Doctor, <https://protectingimmigrantfamilies.org/wp-content/uploads/2020/02/You-Have-Rights-Protect-Your-Health-Updated-February-2020-ENGLISH.pdf>.

94 For more information on immigrants' right to privacy in hospitals, see Nat'l Immigr. L. Ctr, *Health Care Providers and Immigration Enforcement*, https://www.nilc.org/issues/immigration-enforcement/healthcare-provider-and-patients-rights-imm-enf/#_ftn13.

95 See U.S. Citizenship & Immigr. Servs. Policy Manual, Chapter 10 - Public Benefits, https://www.uscis.gov/sites/default/files/document/policy-manual-resources/PMVolume8PartGChapter10_external-archive.pdf. ("The Public Charge rule does not restrict access to testing, screening, or treatment of communicable diseases, including COVID-19.")

96 *Id.*

RIGHTS IF STOPPED BY LAW ENFORCEMENT

If the client is stopped by law enforcement or immigration officials, they must know their rights. First and foremost, the client should ask if they are free to leave. Law enforcement cannot stop or detain someone without a valid reason. If the client is free to leave, they should do so immediately.

If the client is not free to leave, the best course of action is for the client to exercise their right to remain silent. As a best practice, clients should carry a card stating that they are exercising this right and give it to the police upon being stopped.⁹⁷ There are only a few exceptions to exercising the right to remain silent. First, if the client is pulled over while driving, an officer can require them to show their license, vehicle registration, and proof of insurance. Second, some states require individuals to identify themselves to law enforcement, even without reasonable suspicion; if the client is in one of these states, the client must give the law enforcement officer their name if asked.⁹⁸ Additionally, if the client has legal immigration status and an immigration officer asks the client for their immigration papers, the client must provide them.⁹⁹ If an officer asks about immigration status when the client is undocumented, the client should remain silent. The client may remain silent to every other question asked by law enforcement. The client should never give false information or false documentation to law enforcement. Fraud can have serious consequences to receiving any immigration benefit down the line. If an officer asks to search the client's person or belongings, the client has the right to say no.



If the client is detained or arrested, they should speak to their attorney as soon as possible. If the police arrest an immigrant, and they cannot afford an attorney, they have a right to an attorney to represent them free of charge. It is also important that the client talk to their attorney about the impact of any conviction or plea deal on their immigration case. If immigration officials arrest the client, they have the right to talk to a lawyer at their own cost. If the immigrant does not have a lawyer, they can ask for a list of free or low-cost attorney immigration services. The client should not sign any paperwork until they have talked to a lawyer.

⁹⁷ An example of such card can be found at Nat'l Immigr. L. Ctr, *Know Your Rights*, <https://www.nilc.org/issues/immigration-enforcement/everyone-has-certain-basic-rights/>.

⁹⁸ For a list of states with stop and identify statutes, see Immigr. Legal Res. Ctr, *Stop and Identify Statutes in the United States*, https://www.ilrc.org/sites/default/files/resources/stop_identify_statutes_in_us-lg-20180201v3.pdf.

⁹⁹ Common ways to prove legal immigration status are a legal permanent residence card ("green card"), a work permit, or an I-94 card with entry information. If you have these documents, you should always carry them with you in case you are stopped by law enforcement.



CHAPTER 9:

/ Collaborating with Community Advocates and Organizations in Times of Disasters

Stephanie Duke, Shrushti Kothari, Jeanne Ortiz-Ortiz

Coordinating with Local Disaster Organizations/Response Organizations

Partner collaboration is key for a strong community disaster response infrastructure. Disasters affect all aspects of life. While legal issues often take precedence, there are a variety of other needs left unaddressed. Local organizations, government, neighbors, and neighborhood groups are always options to turn to for assistance. As an attorney assisting disaster survivors, consider the different issues a disaster survivor faces. Legal issues are not the only unmet need faced by disaster survivors. Survivors are likely also in need of assistance from community-based organizations for necessities such as shelter, housing, and food.

Mark Sloan, the Homeland Security and Emergency Management Coordinator of Harris County, Texas, once stated, “[T]he important thing is that we know about who you are and what you do. What do you provide back to those individuals? And if I don’t know you exist, then we end up exchanging business cards at 2:00 AM—that’s not when we should be doing that. We should know each other by face and by name.”¹ This statement emphasizes the need for preparedness and collaboration between organizations before a disaster, also known as “blue sky times”.

Local disaster organizations can include many entities, beginning with the local emergency management agency and expanding to various social services organizations. Each region in the country has different systems in place. To quickly access location-specific resources and find the organizations in each state or territory that contribute to disaster management, please refer to the [State and Territory Resources page](#) on Legal Services Corporation’s Multi-Partner Legal Aid Disaster Resource Center website.²

1 LSC Disaster Task Force Report, Page 23, <https://lsc-live.app.box.com/s/vro33yjtx6nlgurh434fw9jh7npz4sh>.

2 Legal Aid Disaster Resource Center. www.LADRC.org.

"The most effective disaster response and recovery efforts are locally developed and executed, state/tribal/territorially managed, and federally supported."³ Every state, and some counties, have a type of Office of Emergency Management that responds to disasters. These offices coordinate disaster response and recovery throughout their region and provide timely information about current disasters to ensure that the constituents are well-prepared and have the assistance they need to combat the disaster.

The purpose is to *build* bridges, not burn them. Cultural competency is especially important with minority, rural, and Native American communities. Isolated and minority communities may seem insular and isolated simultaneously, but this is often due to bad experiences. Disaster relief must be sensitive to their communities' needs, as well as to their cultures and practices. Ensure that partners from minority organizations always have a seat at the table. While the list is exponential, some minority partners to remember are the local tribes, LGBTQ+ community, persons with disabilities, racial minorities in your community, veterans, and persons facing homelessness.⁴

Many states and many disaster-prone areas also have long-term recovery groups or committees (LTRGs or LTRCs). A Long-Term Recovery Group is a "cooperative body consisting of representatives from voluntary, faith-based, and community-based organizations, government agencies, the private sector, schools, foundations, and others who work together within a community to assist individuals and households recovering from a disaster." Each LTRG forms to deal with local needs. An LTRG may refer to itself as a "committee," or by some other name entirely. The member organizations of LTRGs typically include the local emergency management offices, social services organizations such as the American Red Cross or United Way, legal services organizations, and other institutions which are active during disasters in that region.

Like LTRGs/LTRCs, many states and regions also have a group called Volunteer Organizations Active in Disasters (VOAD) or Community Organizations Active in Disasters (COAD). VOADs are coalitions of faith-based, community-based, and non-profit voluntary organizations that play a role in disaster preparedness, response, and recovery. VOADs aim to help communities make the best use of their resources in a disaster by facilitating relationships between organizations before a disaster occurs. VOADs do not provide direct services; their members do. All state and local VOADs fall under the umbrella of the [National VOAD organization](#).⁵ States that are prone to disasters are generally well-prepared and have stronger response infrastructures. This includes having a state VOAD and multiple local VOADs. Texas, for example, has a [State VOAD](#),⁶ a Gulf Coast Region VOAD, a [Southeast Texas VOAD](#),⁷ a [Central Texas VOAD](#),⁸ and a [Texas Panhandle VOAD](#).⁹

3 Recovery Through Federal-State-Local Partnership, White House Office of Intergovernmental Affairs at 2 (Dec. 2018), available at <https://www.whitehouse.gov/wp-content/uploads/2019/03/DisasterRecovery.pdf>.

4 <https://disasterphilanthropy.org/blog/other/lessons-for-supporting-native-led-disaster-recovery/>

5 National VOAD, <https://www.nvoad.org/>.

6 Texas State VOAD, <https://www.txvoad.org/>.

7 Southeast Texas VOAD, <http://setxvoad.org/>.

8 Central Texas VOAD, <http://centraltxvoad.com/>.

9 Texas Panhandle VOAD, <https://www.hpfb.org/VOAD>.

Coordinating with Different Levels of the Government

FEMA

The Federal Emergency Management Agency¹⁰ ('FEMA') addresses disasters and emergencies at the national level. FEMA coordinates the federal government's role in preparing for, responding to, and recovering from disasters and provides national frameworks to ensure the safety and recovery of the country.^{11 12}



PUBLIC ASSISTANCE PROGRAM

FEMA's Public Assistance Program

provides grants to state and local governments and some non-profit entities for "debris removal, life-saving emergency protective measures, and the repair, replacement, or restoration of disaster-damaged publicly-owned facilities."¹³

INDIVIDUAL ASSISTANCE PROGRAM

FEMA's Individual Assistance Programs "help individuals and households with housing, personal property losses, transportation, medical, dental, and funeral costs, childcare expenses, and more."¹⁴ If Individual Assistance is requested by the governor and approved by the President, individuals in the affected locality can register for assistance directly with FEMA.¹⁵ See Chapter 1 for more information on FEMA's Individual Assistance Program.

HAZARD MITIGATION GRANT PROGRAM

FEMA's Hazard Mitigation Grant Program provides grants for work "[d]esigned to reduce future losses to public and private property."¹⁶

FEMA provides guidance to meet the U.S. preparedness goal via the five national frameworks, which foster a shared understanding of roles and responsibilities from the "firehouse to the White House" for disaster preparedness, response, and mitigation.¹⁷

10 About the Agency: History, FEMA, available at <https://www.fema.gov/about-agency>.

11 FEMA responds to both natural and man-made disasters.

12 When a governor requests a federal disaster declaration, the state can request three categories of FEMA assistance.

13 Recovery Through Federal-State-Local Partnership, White House Office of Intergovernmental Affairs at 4 (Dec. 2018), <https://www.whitehouse.gov/wp-content/uploads/2019/03/DisasterRecovery.pdf>.

14 *Id* at 10.

15 *Id.*

16 *Id.*

17 <https://www.fema.gov/emergency-managers/national-preparedness/frameworks>.

OTHER FEDERAL AGENCIES

In addition to FEMA, other federal agencies assist in disaster relief. For example, the U.S. Department of Agriculture ("USDA") provides various forms of relief to farmers¹⁸ and provides food assistance to low-income people and families affected by natural disasters through the Disaster Supplemental Nutrition Assistance Program ("D-SNAP").¹⁹ The U.S. Department of Housing and Urban Development ("HUD") provides mortgage assistance and funds to pay hazard insurance deductibles to affected homeowners.²⁰ The U.S. Department of Home and Human Services ("DHHS") works to prevent, prepare for, and respond to adverse health effects caused by public health emergencies and disasters.²¹

The national framework provides a complex network to foster collaboration between all agencies with roles and responsibilities and to prepare for all types of events. This network and hierarchy should also be followed at the state and local levels.

STATE AND LOCAL EMERGENCY MANAGEMENT

Disasters occur at the local level. Thus, the industry of emergency management follows a bottom-up approach. "The most effective disaster response and recovery efforts are locally developed and executed, state/tribal/territorially managed, and federally supported."²² Local governments take the lead in preparing their communities for disasters and responding to disasters when they occur.²³ When a locality cannot effectively respond to a disaster, because of a lack of resources or personnel or other factors, state and non-governmental resources can support the local community.²⁴ When the state is overwhelmed by a disaster, the governor can request federal assistance if the disaster meets the requisite criteria. The governor does this by requesting that the President make a federal disaster declaration.²⁵ A federal disaster declaration is a statement by the president, based on information from local government officials, that a disaster has occurred and that the state or locality affected cannot adequately respond to the disaster without additional resources.²⁶ A federal disaster declaration triggers financial and physical assistance by the federal government through FEMA.²⁷ A request for a disaster declaration is appropriate if "the situation is of such severity and magnitude that effective response is beyond the capabilities of the state and the affected local governments and that Federal assistance is necessary."²⁸ The governor's request must be supported by findings that the disaster "[r]equires supplementary Federal emergency assistance to save lives and to protect property, public health and safety, or to lessen or avert the threat of a disaster."²⁹ Even when the federal government assists with disaster response, the state and local governments still take the lead. The state governor "define[s] the type and extent of Federal aid required."³⁰

18 *Id.* at 13.

19 Disaster Supplemental Nutrition Assistance, [DisasterAssistance.gov](https://www.disasterassistance.gov), available at <https://www.disasterassistance.gov/getassistance/forms-of-assistance/5769>.

20 *Id.* at 13.

21 Emergency Preparedness & Response, U.S. Department of Health and Human Services, available at <https://www.hhs.gov/programs/emergency-preparedness/index.html>.

22 *Id.* at 13.

23 *Id.*

24 *Id.*

25 *Id.*

26 42 U.S.C. § 5170(a).

27 About the Agency: Statutory Authority, FEMA, available at <https://www.fema.gov/about-agency>.

28 42 U.S.C. § 5170(a).

29 44 C.F.R. § 206.35(b)(2).

30 42 U.S.C. § 5191(a).

FEMA is not a regulatory agency, and thus, the duties of emergency management are delegated to the state's purview. At the state and local level, Offices of Emergency Management or Emergency Management Agencies are counterparts to FEMA and are responsible for identifying the hazards and risks of their community and preparing in such a way to mitigate those risks. Each state, county, and city are different, so they do not all organize their disaster response the same way. However, each state has an Office of Emergency Management or equivalent to respond to disasters, and many localities have offices of their own. These offices coordinate disaster response and recovery throughout their region and provide valuable information about preparation for a disaster and current disaster responses and recovery programs.

OTHER AGENCIES

Emergency management delegated to the states must still adhere to FEMA's national framework. Federal guidance delineates roles and responsibilities across agencies and departments contingent upon the emergency support function sought to sustain.³¹ These roles and responsibilities are similar at the state and local levels and can follow the same hierarchy. Foundational components consist of stabilizing community lifelines (safety/law enforcement, food/water/shelter, healthcare, energy, communications, transportation, infrastructure) and operationalizing core capabilities within agencies and departments to respond to a disaster.³² These capabilities are designated to the relevant agency and thus require a cross-collaboration to align response and recovery efforts in disasters at state and local levels.³³ To verify agency duties and obligations, refer to the relevant states' Emergency Operation Plan.

COURTS

Since September 11, 2001, federal and state governments have taken steps to ensure the continuity of government, at all levels, in the event of a disaster. While the judicial branch is not generally required to comply with executive branch policies, many of the policies, programs, and approaches to emergency management and preparedness can be very helpful to courts' emergency planning efforts. Therefore, the judicial branch must understand and apply, where appropriate, these policies and procedures as well as those that are unique to each state and territory, such as pandemic-related quarantine and isolation policies and public health laws.³⁴ Disruptive events can affect court operations and staff at the state and federal levels. For this reason, there is an increased focus on emergency management, prevention, preparedness, and training within the judiciary.

The purpose of establishing an emergency management program within the courts is to ensure that the capability exists to respond effectively to a broad array of potential operational interruptions. Thus, courts at all levels should have a Continuity of Operations Plan ("COOP"). Be sure to check state and local judicial branches for these plans.

Related to this rise of the statewide, state-level, judicial continuity-of-operations plan has been an increase in the formal, legal authority vested in chief justices and their courts to direct emergency operations. Several states have given, by statute, their chief justices, or high courts broad authority, in

31 FEMA's, *National Response Framework*, Oct. 2019. <https://www.fema.gov/emergency-managers/national-preparedness/frameworks/response>.

32 *Id* at 13.

33 *Id* at Table 4, p.39.

34 https://www.ncsc.org/_data/assets/pdf_file/0021/17391/program-management.pdf.

the event of a disaster or emergency, to ensure the continued efficient operation; the prompt disposition of cases; and the proper administration of judicial business. Look to the highest state court in times of disaster for continuity of operations.

Coordinating with Social Service Organizations

Disasters can either create legal issues for individuals and families affected by the emergency or exacerbate existing legal problems. Families and communities with limited means or individuals systemically blocked from access to recovery are most likely to succeed in that recovery with the help of an attorney. However, research has shown that many people reasonably assess that their situation does not have a remedy or a justice problem that may have a legal solution.³⁵ Similarly, people often seek advice and help within their communities and networks, especially in emergencies. Social service organizations have proven effective partners to legal service organizations in times of crisis. Staff at social service agencies, most of which are community-based, play an important role in case management and finding, community outreach, and advocacy on behalf of clients.³⁶ Social service organizations can also support legal service organizations by coordinating and facilitating community preparedness trainings and know-your-rights events for community members.³⁷

Organizations and attorneys interested in learning more about how to work with and collaborate with social service organizations before, during, and after climate disasters should refer to the resources below:

- The [National Disaster Interfaiths Network](#) is a “consortium of subject matter experts who collaborate with faith communities and their partners to reduce disaster-caused human suffering through the exchange of training, research, resources and best practices.”³⁸
- [Engaging Faith-based and Community Organizations](#) by the U.S. Department of Homeland Security - Although this is a resource for emergency managers, it includes helpful information about how to successfully identify and engage with community organizations when planning for disaster preparedness and recovery.³⁹
- [Engaging Non-Legal Providers in the Legal Response](#), includes testimonials from the legal community in the aftermath of Superstorm Sandy.⁴⁰
- The [Disaster Assistance & Recovery Tool \(DART\)](#) is an example of how legal service organizations can leverage community partner relationships to reach and assist more individuals and families affected by emergencies.⁴¹ DART allows community partners staff to screen low-income disaster survivors for potential legal issues and refer them to a legal service organization for help.

35 Access to What?, Rebecca Sandefur, *Dædalus*, the Journal of the American Academy of Arts & Sciences (Winter 2019) https://www.amacad.org/sites/default/files/publication/downloads/19_Winter_Daedalus_Sandefur.pdf

36 Disaster Relief Social Workers and Their Roles (December 16, 2019) <https://online.yu.edu/wurzweiler/blog/disaster-relief-social-workers-and-their-roles>.

37 Improving Individual, Family, and Community Preparedness, Legal Services Corporation Disaster Task Force Report (2019) <https://www.lsc.gov/our-impact/publications/other-publications-and-reports/lsc-disaster-task-force-report>.

38 <http://www.n-din.org/>.

39 <https://www.fema.gov/sites/default/files/2020-07/engaging-faith-based-and-community-organizations.pdf>.

40 https://www.disasterlegalaid.org/disasterresponsetoolkit/item.5536-Engaging_NonLegal_Providers_in_the_Legal_Response.

41 Disaster Assistance Recovery Tool <https://www.connectingjusticecommunities.com/announcing-dart-tool/2020/09/>.



CHAPTER 10:

/ Engaging Law Students in the Aftermath of a Disaster

Shrushti Kothari and Jeanne Ortiz-Ortiz

Introduction

Law students can be a great resource in responding to disasters.¹ Although law students require attorney supervision when providing legal representation to survivors, there are many other ways students can engage in pro bono work. Studies suggest that “engagement in pro bono as a law student may lead to increased pro bono services provided after graduation.”² Therefore, developing a pro bono culture in the aftermath of disasters can benefit more survivors in the long term. Engaging law students to assist in the disaster field of law also expands their horizons to the different aspects of the legal field. Thus, affording them the opportunity to broaden their career prospects.

Cultivating Relationships with Law Schools

Cultivating relationships with law schools before an emergency or disaster occurring is key in maintaining a strong response. Mark Sloan, the Homeland Security and Emergency Management Coordinator of Harris County, Texas, stated, “the important thing is that we know about who you are and what you do. What do you provide back to those individuals? And if I don’t know you exist, then we end up exchanging business cards at 2:00 AM— that’s not when we should be doing that. We should know each other by face and by name.” This thought can be applied in the context of getting to know your local law school faculty, as well. When there are ongoing conversations between the legal aid and the law schools, requesting assistance from the students at the onset of an emergency or disaster is not as cumbersome of a task.

It is important to have an agreed-upon plan of action to activate the assistance of law students before a disaster strikes. This will allow the faculty to maintain a system where they can immediately train the

1 In this chapter, the definition of disaster specifically relates to climate-specific disasters.

2 Supporting Justice, A Report on the Pro Bono Work of America's Lawyers, Standing Committee on Pro Bono & Public Service (April 2018) https://www.americanbar.org/content/dam/aba/administrative/probono_public_service/lspb_supporting_justice_iv_final.authcheckdam.pdf

students. Upon the arrival of the cases, students can hit the ground running and begin to assist in any capacity possible. Generally, it falls upon the legal aid offices to provide education and training for their pro bono attorneys and other volunteers. But if a plan is implemented earlier in conjunction with the law schools, it can help alleviate the burden from the legal aid offices.

How Law Students Can Help

Below are examples of how programs can engage law students to support disaster recovery efforts. However, it is important to note that preparedness and legal capacity are paramount to the success of disaster legal services and support. Therefore, programs should consider the necessary and appropriate training, resources, and strategies in engaging law students to ensure meaningful and ethical legal assistance to survivors.

In the aftermath of Hurricanes Rita and Katrina, law students mobilized to form the Student Hurricane Network, an effort to coordinate volunteer efforts and educate on the legal needs of communities in the Gulf Coast.³ Several years later, after Hurricane María hit Puerto Rico, law students at Columbia Law School, and legal service organizations in Puerto Rico, did something similar by recruiting law students across the U.S. who were ready, willing, and able to assist with disaster-related legal needs of Puerto Ricans.⁴

WAYS LAW STUDENTS CAN CONTRIBUTE TO DISASTER RESPONSE & RECOVERY

- Assist with client intake and screening.
- Assist survivors with understanding documentation they need to complete, such as a FEMA application.
- Help staff a disaster legal help hotline, a Disaster Recovery Center, and/or a pro bono clinic.
- Conduct legal research.
- Assist with drafting, reviewing, and translating legal documents.
- Prepare legal education materials such as informational flyers on recovery assistance available.
- Assist with curating content on websites and/or social media.
- Raise awareness of the legal issues and pitfalls to avoid, such as contractor fraud.

The effort was divided into three phases to ensure that law students could effectively support the legal needs of communities impacted by the disaster:

1. Conducting legal research and identifying organizations with experience to assist with training law students.
2. Organizing legal capacity trainings to cover the relevant laws and regulations around disaster relief and recovery.
3. Mobilizing law students to assist lawyers on the ground.⁵

3 The Student Hurricane Network <https://www.studentjustice.org/>.

4 Columbia Law Students Create "Legal Corps" For Puerto Rico, <https://practicesource.com/columbia-law-students-create-legal-corps-for-puerto-rico/>.

5 Hurricane María Legal Assistance: Building a Legal Corps for Puerto Rico <https://docs.google.com/forms/d/e/1FAIpQLSe2nQRpUk9Sc5u78lg-IRBO2S0jyjCCoNsREEceD7gpwZ1BQA/viewform>.

Another common way to engage law students in the aftermath of disasters is by creating law school legal assistance clinics. The clinics mentioned below are good models to follow for guidance:

- Touro Law Center's Hurricane Emergency Assistance and Referral Team (TLC-HEART), an effort that started as a legal help hotline and later developed into a full-time representation legal clinic for people affected by Superstorm Sandy.⁶
- Pepperdine Caruso School of Law's Disaster Relief Clinic, which provides legal assistance to individuals and families affected by the California wildfires, the COVID-19 pandemic, and other disasters across the country.⁷

For additional examples of disaster legal assistance clinics and efforts, you can visit the Law School Resources section on DisasterLegalAid.org.⁸

The Katrina Rule

The ABA Model Court Rule of Legal Services Following Determination of Major Disaster, generally known as the Katrina Rule, provides out-of-state attorneys with the ability to provide pro bono legal services in the affected jurisdiction. Law students may not practice under the Katrina Rule. However, depending on the state law, they may assist out-of-state attorneys with their cases. Under the Katrina Rule, the out-of-state attorneys must be under the supervision of civil legal aid or pro bono programs in order to provide these services during a declared emergency. Currently, only 18 states have adopted the Katrina Rule.⁹

Qualification for Free Legal Services

Legal Services Corporation (LSC) is the single largest funder of civil legal aid for low-income Americans in the nation. LSC-funded programs help people who live in households with annual incomes at or below 125% of the federal poverty guidelines – in 2015, \$14,713.00 for an individual, \$30,313.00 for a family of four. Clients come from every ethnic group and age group and live in rural, suburban, and urban areas. They are the working poor, veterans, homeowners and renters, families with children, farmers, people with disabilities, and the elderly. Women, many of whom are struggling to keep their children safe and their families together, comprise seventy percent of clients.¹⁰ Approximately 57.3 million Americans were eligible for LSC-funded civil legal aid in 2018.¹¹ The guidelines for qualifying for legal services are starkly low. Due to the nature of the funding, legal aid offices can only help the poorest of the poor. Law schools are not necessarily bound to these requirements. They may be able to assist a demographic with a higher income than that required by an LSC-funded organization and yet cannot afford to hire an attorney. Disasters can prove to be extremely devastating to many, and any form of legal assistance is welcome.

6 Touro Law Opens Pro Bono Storm Help Center - "TLC-HEART" (November 12, 2012) <https://www.tourolaw.edu/AboutTouroLaw/News/145>.

7 Pepperdine Caruso School of Law Disaster Relief Clinic <https://law.pepperdine.edu/experiential-learning/clinical-education/clinics/disaster-relief-clinic/>.

8 Law School Resources. Disaster Legal Aid, September 9, 2021, https://www.disasterlegalaid.org/volunteer/item.5655-Law_School_Resources.

9 Pro Bono and Disasters. American Bar Association, September 9, 2021, https://www.americanbar.org/groups/probono_public_service/policy/disasters/.

10 Who We Are - LSC. <https://www.lsc.gov/about-lsc/who-we-are>.

11 2019 LSC By The Numbers: The Data Underlying Legal Aid Programs <https://lsc-live.app.box.com/s/xjztcphiu3cr9yb7o9rd9996pyvwi3i>.

Benefits of Pro Bono Service

Not only do law students gain valuable experience from their pro bono efforts, but they also get a peek into the vast world of disasters. Providing opportunities for them to contribute their services to pro bono efforts in law school cultivates a future pro bono mindset. Many law schools require students to contribute a set amount of pro bono hours in order to qualify for graduation. Schools that do so can take this opportunity to encourage the students to participate in disaster relief pro bono work in order to fulfill their hours. Law schools may also want to consider providing pro bono hours, a formal mentorship, or making the disaster program a part of their clinical curriculum.

Conclusion

Engaging law students in the disaster response framework is mutually beneficial for the disaster survivors, the legal aid organizations, the law school, and the law students. Encouraging such a partnership early on enables a strong partnership with the law school that will last over the years and over many disasters if you live in a disaster-prone area. Tapping into law students as a resource also allows the legal service organizations to have a stronger capacity to take on more cases and support a larger number of disaster survivors in their area. Engaging the law students in disaster work during their educational careers exposes them to a field of law that they may not have initially considered or known about. This can lead to a strong pipeline for a future generation of disaster attorneys.



CHAPTER 11:

/ State-Specific Disaster Legal Assistance Resources

Below is a compilation of state-specific disaster legal assistance resources. States that have published an official disaster guide are marked with an asterisk. If there is no official disaster guidebook, we have provided links to opportunities for state-specific pro bono programs, or legal aid organizations in that state that might be able to provide additional resources or answers to state specific legal questions. Descriptions for each resource are provided in the column on the right and can be accessed by clicking on the state's name. *If you are aware of a disaster legal assistance resource in your state that is missing from this guide, please email us a link to the resource at DisasterResilienceProgram@equaljusticeworks.org.*

Alabama	Legal Services Alabama (LSA) has seven offices and a centralized intake call center working together to fulfill its mission statement: To serve low-income people by providing civil legal aid and by promoting collaboration to find solutions to problems of poverty.
Alaska	Alaska Legal Services Corporation's Pro Bono Training Academy (PBTA) provides support for successful pro bono advocacy through legal webinars and library resources. The PBTA's new Advocate Training program works to train non-attorney volunteers in specific legal topics and match them with clients from rural-Alaska who need help in those legal areas.
Arizona*	A comprehensive guide to equip volunteer attorneys with the information they need to effectively provide pro bono services following a disaster.
Arkansas*	A resource guidebook for attorneys providing pro bono legal assistance to the victims of natural disasters.
California	Disaster Legal Services of California recruits disaster first responders to staff telephone hotlines and field legal inquiries after disasters. DLAC members have access to free trainings and resources for assisting California residents after major disasters. Register to be a first responder here .

<u>Colorado</u>	Colorado Legal Services provides trainings for attorneys regarding evictions and other landlord/tenant issues. CLS also posts current pro bono needs and positions.
<u>Connecticut</u>	CTLawHelp's Pro Bono Portal is Connecticut's one-stop resource for pro bono attorneys who would like to provide free legal assistance to people with very low income.
<u>Delaware</u>	Legal Services Corporation of Delaware, Inc. is a non-profit organization that offers legal advice and assistance to people who cannot afford a private attorney. Contact them for Delaware specific legal issues.
<u>Florida*</u>	This is an overview of disaster assistance available under various state and federal laws, 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.
<u>Georgia</u>	When a natural disaster strikes, Georgia Legal Services Program allocates resources to assist clients with the resulting housing issues including helping tenants and homeowners access emergency services and benefits. Contact them for Georgia specific legal issues.
<u>Hawaii*</u>	A comprehensive training guide for common legal issues after a disaster.
<u>Idaho</u>	Idaho Legal Aid Services, Inc. is a nonprofit statewide organization dedicated to providing equal access to justice for low-income people through quality advocacy and education. Contact them for Idaho specific issues.
<u>Illinois*</u>	A comprehensive guidebook for Illinois lawyers looking to volunteer after disasters.
<u>Indiana</u>	Indiana Legal Services helps clients who are faced with legal problems that harm their ability to have such basics as food, shelter, income, medical care or personal safety. Contact them with Indiana specific questions.
<u>Iowa</u>	Attorneys throughout the state of Iowa are recruited to help provide equal access to justice through the Iowa Legal Aid Volunteer Lawyers Project and the Polk County Bar Association Volunteer Lawyers Project.
<u>Kansas</u>	Kansas Legal Services, a statewide non-profit corporation, is devoted to helping low-income Kansans meet their basic needs through the provision of important legal and mediation services. Contact them with Kansas specific legal issues.
<u>Kentucky</u>	AppalReD provides attorneys with opportunities for pro bono service to help serve low-income clients in AppalReD's service area.
<u>Louisiana*</u>	The purpose of this plan is to assist in the coordinated legal response of Louisiana's Legal Community in the event of a major disaster and proactively provide leadership and guidance in preparing for future disasters.
<u>Maine</u>	The mission of the Maine Volunteer Lawyers Project is to increase access to justice in Maine through volunteer engagement. To achieve this end, the VLP acts as a nexus, connecting pro bono attorneys and individuals with civil legal issues who cannot afford attorneys. Contact them for Maine specific legal issues.
<u>Maryland*</u>	A comprehensive guidebook regarding disaster-related legal issues is available to all registered users at the link provided.
<u>Massachusetts*</u>	Emergency assistance advocacy guide: a Guide to Emergency Shelter and Re-housing Services for Families with Children Experiencing Homelessness in Massachusetts.

<u>Michigan</u>	The American Bar Association Young Lawyer's Division ("ABA YLD") and the State Bar of Michigan Young Lawyers Section ("SBM YLS") have established the Michigan Disaster Legal Service Committee (the "Committee") and the Disaster Legal Service Response Program ('DLSR Program"). The DLSR Program is aimed at assisting persons who have incurred legal issues resulting from a declared disaster.
<u>Minnesota</u>	Help low-income clients maintain housing. You will spot issues, determine eviction defenses, and draft and file expungement motions or negotiate with landlords. There are opportunities to directly represent clients or to provide behind the scene assistance to housing attorneys who will be handling large numbers of evictions after the pandemic related eviction moratorium is lifted.
<u>Mississippi*</u>	A comprehensive guidebook for Mississippi attorneys looking to provide pro bono assistance after declared disasters.
<u>Missouri*</u>	This manual was prepared to assist Missouri lawyers whose clients may be facing legal issues new to lawyers or unique to disasters. This manual is designed to assist and train those volunteer lawyers who graciously agree to help disaster survivors through on-site assistance.
<u>Montana</u>	In the aftermath of a disaster Montana Legal Services Association (MLSA) represents individual clients primarily in the areas of housing, consumer protection, domestic violence, family law, and public benefits. Contact them with Montana specific issues.
<u>Nebraska*</u>	Legal Aid of Nebraska's Disaster Relief Project Guidebook is a resource for pro bono attorneys that covers a variety of legal issues that occur after disasters, including landlord/tenant disputes, FEMA appeals, and Wills & Estates.
<u>Nevada*</u>	The Nevada Response and Recovery Guide provides a basic overview of disaster-related issues.
<u>New Hampshire</u>	New Hampshire Legal Assistance provides free civil legal services to New Hampshire's poor, including education and empowerment, advice, representation, and advocacy for systemic change. Contact them for New Hampshire specific issues.
<u>New Jersey</u>	Legal Services of New Jersey (LSNJ) coordinates the statewide Legal Services system in New Jersey, providing free legal assistance to low-income people in civil matters. Contact them for New Jersey specific issues.
<u>New Mexico</u>	New Mexico Legal Aid provides a civil legal advocacy throughout New Mexico by providing outreach, training, education, and quality representation. Contact them for New Mexico specific issues.
<u>New York*</u>	After Super Storm Sandy, The New York City Bar and Morrison & Foster LLP put together a disaster relief handbook for individuals, families, and small businesses. The New York State <u>Disaster Assistance Handbook</u> also provides an overview of some of the issues faced and resources available as a result of a disaster.
<u>North Carolina</u>	Legal Aid of North Carolina's Disaster Relief Project provides legal assistance and education to survivors of natural disasters in North Carolina. View their collection of resources and disaster relief videos.
<u>North Dakota</u>	Legal Services of North Dakota provides legal advice, education and representation to low-income North Dakotans in the areas of civil law. Contact them for North Dakota specific issues.

<u>Ohio</u>	Ohio Legal helps all Ohioans access the civil justice system by providing plain language legal help information, interactive self-help tools and connections to local legal and community resources that can help people resolve their legal issues. Contact them for Ohio specific issues.
<u>Oklahoma</u>	Legal Aid Services of Oklahoma, Inc. (LASO) is a non-profit, 501(c)(3) organization that provides civil legal assistance to low-income persons throughout Oklahoma.
<u>Oregon</u>	Oregon's Disaster Assistance Panel assists wildfire survivors with FEMA disaster benefit appeals. The panel is a virtual volunteer opportunity. DAP offers training and mentoring for volunteer attorneys. When you sign up to volunteer you will receive regular emails with the latest training and volunteer opportunities.
<u>Pennsylvania</u>	The Disaster Relief Project was created by the Allegheny County Bar Association/Foundation. Volunteer attorneys advice and represent victims of disasters and catastrophes.
<u>Rhode Island</u>	The Volunteer Lawyer Program (VLP) is a public service program of the Rhode Island Bar Association designed to help people who have low-incomes obtain legal help when they need it. Its purpose is to provide legal assistance to those who cannot obtain legal representation either on their own or through other existing agencies.
<u>South Carolina</u>	Quick-Reference Guide to assist young lawyers who agree to handle pro bono cases in times of disaster.
<u>South Dakota</u>	SDLawHelp is a consortium of South Dakota legal service providers who are dedicated to helping people in all corners of the state navigate the legal system and provide assistance on matters that can drastically impact their lives. Contact them for South Dakota specific issues.
<u>Tennessee</u>	The Tennessee Bar Association Young Lawyers Division's Disaster Assistance Manual was created to equip volunteer attorneys with the information they need to effectively provide pro bono services following a disaster.
<u>Texas*</u>	This document is provided as a resource to attorney volunteers who are fielding questions from those affected by disasters.
<u>Utah</u>	Utah Legal Services (ULS) is a nonprofit law office providing free legal help in non-criminal cases to low-income Utahns. Contact them for Utah specific issues.
<u>Vermont*</u>	This manual includes an overview of disaster-related issues and resources, a description of the process of providing legal assistance to disaster victims, information you may need to help answer frequently asked questions on issues such as housing, insurance, unemployment compensation and other relevant issues.
<u>Virginia*</u>	This comprehensive Statewide Emergency Legal Service Response Plan (the Plan). established a disaster response network consisting of one local liaison per judicial circuit and streamlines the coordination of free legal services to Virginia citizens in the event the President or Governor declares a state of emergency.
<u>Washington</u>	Volunteer lawyers from the Washington State Association for Justice are now offering legal assistance to those affected by natural disasters in Washington State. Contact them for Washington state specific issues.

<u>West Virginia</u>	Legal Aid of West Virginia's Pro Bono Portal offers attorneys online training, the opportunity to view cases that need help, and the ability to provide LAWV with updates on pro bono cases.
<u>Wisconsin*</u>	This manual will assist Wisconsin lawyers whose clients may be facing legal issues that are new to the lawyers or unique to disasters. The manual will assist and train volunteer lawyers helping disaster survivors.
<u>Wyoming</u>	Legal Aid of Wyoming, Inc. (LAW) provides legal assistance to low-income individuals living in Wyoming. After major disasters, LAW staffs legal hotlines. Contact them for Wyoming specific issues.
<u>District of Columbia</u>	The Office of the Tenant Advocate provides a series of free information regarding landlord-tenant issues to help your clients understand their rights and the processes for ensuring they are treated fairly under the law.
<u>American Samoa</u>	American Samoa Legal Services provides free civil legal assistance to low-income persons in the types of cases listed in the ASLA Priorities. ASLA also provides free disaster trainings and local workshops.
<u>Guam</u>	Landlord Tenant Rental Act of 2018.
<u>Northern Mariana Island</u>	Many organizations in the Northern Mariana Islands play a role in disaster preparation and recovery, providing information and assistance specific to the area. Find the organizations and resources that could be most helpful to you at the link provided.
<u>Puerto Rico</u>	Multiple organizations are involved in recovery efforts after a disaster in Puerto Rico. Legal Services of Puerto Rico and Pro Bono, Inc. provide assistance to survivors and training to local attorneys. Ayuda Legal Puerto Rico (Legal Help Puerto Rico) has self-help resources for the public, as well as a Disaster Manual for pro bono attorneys licensed in Puerto Rico (requires log-in, but free to join).
<u>U.S. Virgin Islands</u>	The LSVI Disaster Advocacy Program provides for the critical needs of low-income disaster survivors. LSVI is the only organization in the Virgin Islands that provides free legal assistance to low-income individuals for disaster legal needs.

About the Editors

Linda Anderson Stanley

Linda Anderson Stanley is the senior manager of disaster programing at Equal Justice Works; mobilizing public service attorneys across the country to assist disaster survivors with their unique legal issues. In this position, Linda led the award-winning Disaster Recovery Legal Corps and created and implemented the Disaster Resilience Program. Linda is also an adjunct professor and teaches a Disaster Law Primer at Stetson University College of Law. Prior to joining Equal Justice Works, Linda worked as a Staff Attorney at Bay Area Legal Services in Tampa, Florida assisting individuals with limited access to legal services with their civil legal needs. She focused primarily on disaster relief; housing law; consumer law; and some Veteran's issues. In her capacity as staff attorney at Bay Area Legal Services, Linda was awarded the Hillsborough County Outstanding Young Lawyer of the year award for 2018.

In 2021, Linda was appointed for her third term as the Director of the ABA YLD Disaster Legal Services program. She is also a Cabinet member of the ABA YLD, the YLD liaison to the ABA Standing Committee on Disaster Relief and Preparedness, a member of the ABA COVID-19 task force, and recognized as an ABA Star of the Year for both 2020 and 2021. Linda is a recipient of the ABA Top 40 Young Lawyers On the Rise award for 2021.

Linda is also active in her local bar, as demonstrated by the 2021 Thirteenth Judicial Circuit Outstanding Pro Bono Service by a Young Lawyer award. She is currently serving her fourth year as a member of the board of directors of the Hillsborough County Bar Association Young Lawyers Division and serves as the liaison to the HCBA YLD Pro Bono Committee.

Linda received her undergraduate degree in psychology from the University of Illinois and her J.D. from the John Marshall Law School in Chicago, Illinois. She is licensed to practice in both Florida and Illinois and holds court admissions in the U.S. District Court for the Northern District of Illinois and the U.S. Middle District of Florida.

Stephanie Duke

Stephanie Duke is a staff attorney at Disability Rights Texas (DRTx) and former Equal Justice Works Disaster Resilience fellow and Disaster Legal Corps Fellow. DRTx is the Protection & Advocacy agency for Texas and operates to ensure Texans' with disabilities rights are upheld by affording equitable opportunities across all societal domains. Ms. Duke focuses on mitigating barriers that disaster survivors with disabilities face in response and recovery efforts by building resiliency for the disability community during inclusive planning processes and addressing systemic barriers in federal and state programs. Ms. Duke is actively involved in statewide and local disaster networks, coalitions and committees to bring awareness about legal aid services after disasters and facilitate inclusive emergency planning to ensure equitable response and recovery programs for the disability community. Ms. Duke is a member of the American Bar Associations, Young Lawyers Division, Disaster Legal Services Team; she currently serves on the Board of Directors for Texas Volunteer Organization Active in Disasters (VOAD); she is the Chair of the State Bar of Texas, Disaster Law Task Force and is an appointed member to the Governor's Task force on Disaster Issues Effecting Older Persons and Persons with Disabilities.

About the Contributors

Kayla Barbour

Kayla Barbour is a J.D. candidate at the University of Washington, anticipating graduation in the Spring of 2023. Her legal interests include advancement of diversity and access to justice, disaster recovery, environmental resource management and protection, and natural hazard mitigation/planning. She is the 2021-2022 co-President of the National Lawyers Guild and the Diversity Chair of the Environmental Law Society, as well as a member of Washington Women Lawyers and Washington State Association for Justice.

Donna Boyce

With experience gained in government, NGO/non-profit and private-sector, Donna Boyce is a subject matter expert (SME) on disaster recovery/resiliency and related areas. Boyce develops policies, then creates, implements and provides executive management for publicly and privately-funded programs for disaster recovery, resilience planning, community and economic development, often with a housing focus.

Boyce's recent work includes research and development of plans to improve multiple bottom-line ROI for public contracting, technical assistance on COVID-19 CARES Act and ARP recovery policies and programs. Her American Bar Association's service includes as a Commissioner on Homelessness & Poverty Commission and ongoing engagement after formal service on the ABA Standing Committee on Disaster Response & Preparedness.

As a NIST Community Resilience Fellow, Boyce provided policy expertise on underserved population program administration as well as practical, community-level insights on state and local government, funding and resilience challenges/opportunities. She is on the boards of Community Advocates (LI, NY affordable housing), Natural Hazard Mitigation Association and recognized by State University of New York (SUNY) -Farmingdale Social Justice Institute as a Social Justice Distinguished Scholar.

Boyce earned a BA in History and Political Science from SUNY-Albany and a JD from Georgetown University Law Center.

Garry Brown

Garry Brown, Jr. is an intellectual property attorney in the Well Construction division at Schlumberger in Houston, TX. His practice focuses on preparing and prosecuting patent applications for Schlumberger's global patent portfolio; drafting and negotiating development, confidential, collaboration, and consulting agreements; partnering with engineering to secure new invention disclosures; and providing advice in support of new product development and manufacturing.

During law school, Brown interned at the United States Patent and Trademark Office as a patent examiner in the Electrochemistry division. He also provided patent preparation services as an extern at Lewis & Clark Law School's patent clinic. In addition, Brown has interned at Oregon Health and Science University Technology Transfer Office, where he assisted with the prosecution of chemical patents.

Before obtaining his law degree, Brown received his Ph.D. in chemistry from The University of Mississippi. He was a postdoctoral fellow for the Research Foundation of the City University of New York. His dissertation and postdoctoral work focused on the global study of environmental pollutants and their biogeochemical cycling in water, sediment, and fish tissue.

Nicole Del Rio

Nicole M. Del Rio is a Staff Attorney at Bay Area Legal Services, Inc. Del Rio primarily defends tenants in housing litigation. In house, she manages the Social Services Navigator Program, where social work interns address clients' social needs. Del Rio has held leadership positions in HAWL, the HCBA YLD, and the ABA YLD. She graduated, as a first-generation student, with a Bachelor's degree in Legal Studies from the University of Central Florida and a Juris Doctor from Florida International University's College of Law. She is of Puerto Rican descent and speaks Spanish fluently.

Hannah Dyal

Hannah Dyal is a staff attorney with Texas RioGrande Legal Aid. Hannah was previously an Equal Justice Works Disaster Resilience Program Fellow and an Equal Justice Works Disaster Recovery Legal Corps Fellow. Hannah has been responding to disasters since shortly after Hurricane Harvey impacted the Gulf Coast of Texas. Hannah has since worked on several flooding disasters in the Rio Grande Valley as well as a mass shooting in El Paso, and the ongoing COVID-19 pandemic. Hannah was a Team Member on the American Bar Association Young Lawyers Division Disaster Legal Services Team from 2019-2020 where she responded to disasters on a national level.

Robert Flores

Robert Flores is an Equal Justice Works Disaster Resilience Fellow. He is immigration attorney in Houston, Texas with YMCA International Services. Flores graduated from South Texas College of Law in December 2013. He has practiced immigration law for seven years working with refugees, asylees, and immigrants admitted for humanitarian reasons. Robert started working with disaster affected immigrants as a Equal Justice Works Fellow in the Disaster Recovery Legal Corps and continued with the Disaster Resilience Program.

Brittanny Gomez

Brittanny Gomez is the Disaster Benefits Team Manager at the second-largest public interest organization in the nation, Texas RioGrande Legal Aid, representing low-income residents of South Texas who are directly impacted by disasters. Gomez is on the American Bar Association Young Lawyers Division Disaster Legal Services Team and has been recognized by Forbes Magazine 30 Under 30 Law and Policy for helping her clients who are affected by community and natural disasters. She was also previous Equal Justice Works Disaster Recovery Legal Corps Fellow.

Gomez works on direct service cases against FEMA, SBA, and Texas Health and Human Services to ensure equal and swift access to relief for disaster survivors. Through her advocacy, she has assisted numerous clients obtain financial disaster assistance in the form of home repairs, personal property replacement, and new homes.

Touri Goode

Touri Goode is a program coordinator supporting legal Fellowship programs (Disaster Resilience Program and Elder Justice Program) at Equal Justice Works. Touri previously worked on a grant funded project that aimed to close gaps and reduce disparities within tech education in Central Virginia.

Megan Rowjohn

Megan is a Disaster Legal Extern for the ABA YLD Disaster Legal Services program and law student at Stetson University College of Law in Gulfport, Florida. Megan also serves as legal panel chair for the Sarasota chapter of the ACLU, where she focuses on social injustices, civil rights violations, and voter-rights issues. Outside of the disaster-realm, Megan works as a research assistant, studying a variety of social justice issues and their impact on legal curriculum and education.

April Hewko

April Hewko is a program manager for legal Fellowship programs (Disaster Recovery Legal Corps; New Mexico Immigration Corps; Disaster Resilience Program) at Equal Justice Works. April worked at the American Bar Association Rule of Law Initiative from 2012- 2019 supporting and managing offices and programs in Armenia, Georgia, Russia, and Moldova. These programs primarily focused on refugee and displaced persons' rights, accessible legal aid, and legal and human rights education and capacity development for law students, lawyers, and the public.

Shrushti Kothari

Ms. Kothari is the Disaster Grants Program Counsel II in the Office of Program Performance at Legal Services Corporation (LSC). She previously served as Project Manager of National Disaster Content and Resources and as a Staff Attorney in the Disaster Relief Unit at Lone Star Legal Aid in Houston, TX. She also served as a Subject-Matter Expert and Content Manager for LSC's multi-partner Legal Aid Disaster Resource Center website and the Disaster Assistance Recovery Tool. Ms. Kothari is a member of the American Bar Association's Standing Committee on Disaster Response and Preparedness and the ABA Young Lawyers Division's Disaster Legal Services Program.

Jeanne Ortiz-Ortiz

Jeanne is the Pro Bono & Strategic Initiatives Manager at Pro Bono Net, a national nonprofit dedicated to building innovative technology tools for legal service organizations and pro bono programs. After the 2017 major disasters, she worked as Pro Bono Net's Disaster Response Legal Fellow and volunteered as a disaster legal assistance attorney for survivors affected by Hurricane María in Puerto Rico. Ortiz-Ortiz also co-authored Touro Law Review's "Disaster Legal Tech: Strategies for Providing Legal Information to Survivors."

In Puerto Rico, Ortiz-Ortiz provided free legal representation and employment discrimination litigation on behalf of low-income LGBT individuals. During law school, she founded and led an award-winning Ms. JD

chapter and facilitated workshops on reproductive justice. She has been a part of the ABA YLD Disaster Legal Services Program since 2019 and has presented on technology, pro bono, and disaster recovery at events hosted by the ABA, the Pro Bono Institute, the Practising Law Institute, the Legal Services Corporation, the Legal Talk Network, and the National Legal Aid & Defender Association. In 2021, she was honored as one of the ABA Top 40 Young Lawyers On the Rise. She is bilingual and admitted to practice in the Commonwealth of Puerto Rico and New Jersey.

Eric Rhoton

Eric Rhoton is a J.D. candidate at the Elon University School of Law. Rhoton served as an Equal Justice Works Summer Law Student Fellow in the Disaster Resilience Program at YMCA International Services of Houston. Eric worked to address the needs of refugees, asylees, and other immigrants who are disproportionately affected by natural disasters and systemically cut off from public services.

Al Roberts

Alexander (Al) Roberts is a program manager at Equal Justice Works. In early years with the organization, Roberts supported the execution of two prominent AmeriCorps fellowship programs, which aimed to provide legal assistance to immigrant communities in New York State and nationally. Transferring skills acquired through the oversight of these programs, he began his work in the disaster field in 2018 with the implementation of the Disaster Recovery Legal Corps, which had placed Fellows in Texas and Florida to assist survivors of Hurricanes Harvey, Irma, and Maria. Roberts now supports management of the Disaster Resilience Program, expanding the scope of Equal Justice Works Fellows' work to aid clients beyond the Gulf Coast region, and onto a national stage. Roberts graduated from Florida State University with a B.S. in Political Science.

Meghan Smolensky

Meghan Smolensky is an Equal Justice Works Disaster Resilience Fellow and a Staff Attorney in the Disaster Relief Unit at Lone Star Legal Aid in Houston, Texas. This program currently helps victims of natural disasters through assistance with a multitude of legal matters. Prior to joining, Smolensky was a part of the Equal Justice Works Disaster Recovery Legal Corps and assisted with the repair and mitigation efforts for Hurricane Harvey. Smolensky is a 2017 graduate of the South Texas College of Law. She holds a Bachelor of Arts from Louisiana State University

Brianna Williams

Brianna Williams is an Equal Justice Works Disaster Resilience Fellow. She is a Staff Attorney at Community Legal Services of Mid-Florida where she predominantly provides representation to tenants facing COVID-19-related evictions. Before joining Community Legal Services of Mid-Florida, Williams served as an Assistant Public Defender in the Ninth Judicial Circuit of Florida. Williams holds a Bachelor

of Arts in Political Science and African American Studies from the University of Florida and a law degree from the University of Florida Levin College of Law.

Maria Vazquez

Maria Vazquez is an Equal Justice Works Disaster Resilience Fellow at the Cabrini Center for Immigrant Legal Assistance at Catholic Charities of the Archdiocese of Galveston – Houston. She graduated from South Texas College of Law in 2017. Shortly after, she joined the Cabrini Center as an Equal Justice Works Disaster Recovery Legal Corps. Fellow where she assisted individuals who were impacted by natural disasters in their immigration processes. Vazquez continues her commitment to advocate for the immigrant population. As a Disaster Resilience Fellow, she represents disaster impacted individuals applying for Deferred Action for Childhood Arrivals (DACA), family-based legal permanent residence, employment authorization, Temporary Protected Status (TPS), asylum, U-visa, and U-visa adjustment of status.

APPENDIX A

Disaster Resilience Program: FEMA Appeal Resource

WHAT may you appeal (44 C.F.R §206.115)		
<ol style="list-style-type: none">1. Initial eligibility determinations for Housing Assistance and ONA* including:<ol style="list-style-type: none">a. The amount or type of Housing Assistance and ONA an applicant receivedb. A decision to withdraw an application from FEMA disaster assistancec. Recovery of funds improperly awarded by FEMA (recoupment)d. Denial of late application for good cause2. A denial of continued temporary housing assistance3. Direct Housing Assistance Determinations<ol style="list-style-type: none">a. Termination of eligibility to remain in direct housingb. FEMA intent to collect rentc. Denial of request to purchase FEMA's MHUd. Sales price of FEMA's MHU4. Any Individual Assistance eligibility or participation-related determination, action or in-action		
<p><i>Temporary Housing Assistance=Rental assistance for applicants displaced from residence</i></p>		
<p>*ONA (Other Needs Assistance) maybe administered by a state entity under a Joint or State Option described in ONA cost share, which creates a bifurcated system. If this is applicable, the applicant must submit their appeal to the correct state entity.</p>		
WHEN can you appeal (44 C.F.R. §206.112 9(c))		
<p>Applicant must appeal initial eligibility determination within sixty (60) days from the date on their eligibility notification letter. There is an additional <i>60 day grace period for extenuating circumstances</i>, must have letter explaining why application not timely filed and with supporting documentation: hospital records, illness or disability of applicant/family member; record of death for immediate family member, proof of travel.</p>		
Initial Eligibility Denials	Continued Temporary Housing Assistance Denials	Direct Housing Assistance Denials
Citizenship Status=US citizen, non-citizen national, qualified alien; *alternatives=another adult household member or if parent/guardian of child who is US citizen, non-citizen national or qualified alien	Renters=must request Application for Continued Temporary Housing Assistance (FEMA form 010-0-12); *Homeowners mailed Initial rental assistance=2 months.	Unavailability of affordable housing in impacted areas, and applicant unable to make use of temporary housing assistance.
Disaster damage: <ul style="list-style-type: none">• Pictures• Estimates/bids to repair	Ownership: <ul style="list-style-type: none">• Deed• Mortgage	Documentation showing used initial rental assistance for rent and previous residence still uninhabitable or inaccessible Applicant reasonably denied 1st offer because of commuting impact, health care services, public transportation.

Occupancy: <ul style="list-style-type: none"> Lease agreement Utility bills/Rent receipts Roommate/boarder-agreement or proof of financial responsibility 	Lodging Reimbursement: (limit 7 days) <ul style="list-style-type: none"> Receipts/invoice Show utility outage 		Failure to provide effective warning notice and notice of revocation or surrender. i.e.-not timely, not in language that could be understood
Identity of Applicant: <ul style="list-style-type: none"> US Passport Employer payroll with SS # Military ID 	Unmet needs: <ul style="list-style-type: none"> Insurance denials Insurance settlement Uninsurable items 		Applicants required to establish a Permanent Housing Plan (PHP) 44 CFR 206.114(a) at initial request for continued rental assistance; future denials of continued rental assistance or DHA might be for unreasonable requirement of documentation of progress being made toward PHP. Have applicants keep log of phone calls to developments/LL; brochures when visited sites or name of property managers; in the event shortage of affordable housing-wait list for voucher programs.

Rental Assistance: Inaccessible residence: residence cannot be entered due to access impediments, utility outages or unavailable due to forced relocation by LL. Uninhabitable residence: not safe, sanitary or fit to occupy or requires repairs to make habitable (44 CFR 206.110). Appeals related to habitability standards should be considered on a case-by-case basis. Additional inspections or modifications to standard may be necessary to ensure equitable and impartial benefit.

Required in Appeal Letter:	Requesting FEMA file:
1. Applicant's full name 2. Applicant's FEMA application number and disaster number 3. Address of damaged residence 4. Applicant's current phone number and address <i>*Can upload appeal to on-line account or mail/fax</i>	1. Applicant full name 2. FEMA application number and DR # 3. Damaged property address and current mailing address 4. Applicant's date and place of birth 5. Applicant's signature with: notary stamp or attestation statement, "I hereby declare under penalty of perjury that the foregoing is true and correct."

FEMA Individuals and Household Program, National Processing Service Center (appeal letter and request of file)
P. O. Box 10055 Hyattsville, MD 20782-7055 Fax: 800-827-8112; Attention: FEMA

Substance of FEMA appeal letter	Representing FEMA applicant
FEMA's denial letters contain minimal information about reason for denial. Sometimes they will stipulate additional documentation needed. However, the burden is on the applicant to show why FEMA was incorrect in its decision. Thus, requesting FEMA file may be beneficial, but no guarantee it will be timely received. Documentation that bolsters the applicant's unmet need and substantiated damage will be advantageous. A thorough explanation establishing the nexus of what FEMA may provide between the applicant's status relative to the disaster damage will be critical. Ensure effective communication, accessibility (architecturally and systemically), not denied because of lack of technology or inability to contact FEMA.	<ul style="list-style-type: none"> Must be in writing Include applicant's identity verification info: full name, current address, date and place of birth Notarized or attestation statement: "I hereby declare under penalty of perjury that the foregoing is true and correct." FEMA app. #, current phone # and address Specify what info can be released (entire file) 3rd party designation for disclosure

Other Needs Assistance Appeals		
Non-SBA dependent	SBA dependent	Bifurcated System (state agency)
<ul style="list-style-type: none"> • Funeral • Medical/Dental • Child care • Critical Needs • Clean and Removal • Moving and storage 	<ul style="list-style-type: none"> • Personal Property • Transportation • Group Flood 	Fair hearing process might be applicable and afford additional procedural protections, as well as offer a formal adjudication process.
*Documentation will be necessary for appeals, see FEMA's Individual Assistance Program and Policy Guide (IAPPG) for specifics.		
Resources		
<p>National Disaster Legal Aid: https://www.disasterlegalaid.org/</p> <p>FEMA's disaster operations legal reference: https://app.box.com/s/i8bh5rgn1shp5wwbfcbvc1hvk8ddwggf</p> <p>FEMA's IAAPG: https://www.fema.gov/assistance/individual/program-policy-guide</p>		

Created by: Stephanie Duke, Equal Justice Works Disaster Resilience Program Lead Fellow at Disability Rights Texas

APPENDIX B

Individual Assistance Sequence of Delivery

VOLUNTEER AGENCIES

Emergency Food, Shelter, Clothing, Medical Needs

INSURANCE

Such as Homeowners, NFIP, etc.

FEMA HOUSING ASSISTANCE (NOT SBA DEPENDENT)

Applicants can receive more than one type of assistance

1. Temporary housing assistance: Applicants can receive financial assistance to reimburse lodging expenses and/or rental assistance for up to 18 months or the program maximum, whichever occurs first. Applicants can receive direct assistance (FEMA mobile home or travel trailer) for up to 18 months.
2. Repair assistance: Owners can receive up to the IHP cap for repairs.
3. Replace assistance: Owners with destroyed homes can receive up to the IHP cap towards the purchase of a new home.
4. Permanent or Semi-Permanent Construction: Owners with destroyed homes can receive direct assistance or financial assistance for the construction of permanent or semi-permanent homes in insular areas outside the continental U.S. and in other locations.

FEMA/STATE OTHER NEEDS ASSISTANCE (ONA)

Non-SBA Dependent Items

Assistance for Medical, Dental, Funeral, Other

SBA INCOME EVALUTION (REPAYMENT CAPABILITY)

To determine if applicant can qualify for a low interest SBA loan

Applicants must complete the SBA loan application and be denied for a loan to be eligible for further assistance.

SBA REFERRAL

For SBA Dependent items and those applicants who qualify for a low interest loan

Real Property (owners): Loans up to \$200,000

Personal Property (owners & renters): Loans up to \$40,000

* If it is later determined that an applicant cannot qualify for a loan, the applicant is referred to FEMA

FEMA/STATE OTHER NEEDS ASSISTANCE (ONA)

For those applicants who do not qualify for an SBA loan

Personal Property
Moving and Storage

Transportation
Group Flood Policy

UNMET NEEDS - VOLUNTARY AGENCIES

If the applicant has received the maximum amount of assistance from FEMA, State, and/or SBA's federal disaster assistance programs, or the federal disaster assistance programs do not provide for the need, FEMA may refer the applicant to Voluntary agencies.

APPENDIX C

Motion to Change Venue

Non Detained

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT**

In the matter of:	§ § §	A _____
_____	§ §	_____
Respondent	§ §	In Removal Proceedings

Immigration Judge: _____	Next Hearing: _____
--------------------------	---------------------

RESPONDENT'S MOTION TO CHANGE VENUE

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT**

RESPONDENT'S MOTION TO CHANGE VENUE

**TO THE HONORABLE IMMIGRATION JUDGE
COMES NOW RESPONDENT:**

Respondent submits this motion is submitted to request the court to change venue from

_____ (City, State) to _____ (City, State)*

In support of this motion the respondent states the following:

WHEREFORE, movant pray that the Immigration Judge allow a change of venue.

Respectfully submitted,

Signature

(Name of Person in Proceedings)

A_____

CERTIFICATE OF SERVICE

On _____, I, _____,
(date) (name)

served this copy of a Motion to Change Venue to office of chief counsel at the following address: _____

(address where motion sent)

by mail.

(Signature)

(Date)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
BALTIMORE, MARYLAND

In the matter of:	§	A _____
_____	§	
Respondent	§	In Removal Proceedings

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondent's Motion to Change Venue, it is HEREBY ORDERED that the motion be [] **GRANTED** [] **DENIED** because:

- [] DHS does not oppose the motion.
- [] The respondent does not oppose the motion.
- [] A response to the motion has not been filed with the court.
- [] Good cause has been established for the motion.
- [] The court agrees with the reasons stated in the opposition to the motion.
- [] The motion is untimely per _____.
- [] Other: _____.

Deadlines:

- [] The application(s) for relief must be filed by _____.
- [] The respondent must comply with DHS biometrics instructions by _____.

Date

Hon.
Immigration Judge

Certificate of Service

This document was served by: Mail Personal Service

To: Alien Alien c/o Custodial Officer Alien's Attorney DHS

Date: _____

By: Court Staff _____

APPENDIX D

Naturalization, Temporary and Permanent Bars (Reasoning)

You made trips out of the U.S. for more than six (6) months.

- Continuous residence is needed to obtain citizenship. An absence of 6 months or longer is presumed to break continuous residence.
- <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-3>

You moved to another country since getting your green card

- <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-3>
- <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-4>
- Need both continuous residence and physical presence. Continuous residence can be broken either by spending 6 months outside of the U.S., but less than 1 year; or by being absent from the U.S. for 1 years or more. (The U.S. must be your principal actual dwelling place.)

Exceptions: <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-5>

You ever failed to file federal, state or local taxes or you owe taxes

- <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5>

You haven't supported your children or you owe child support

- [INA 101\(f\)](#)
- [8 CFR 316.10\(b\)\(3\)\(i\)](#)
- <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5>

You are male and did not register for the Selective Service between the ages of 18 and 26

- <https://www.uscis.gov/policy-manual/volume-12-part-d-chapter-7> (Naturalization will be denied for male applicants between the ages of 18 and 26 if they refuse to register for the selective service).

You are on probation or parole for a criminal conviction

- <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-2>

You have contradictory information on your application

- <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5>

You lied or committed fraud to get your green card or you weren't originally eligible for your green card when you got it.

- <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5>

You have been arrested or convicted of a crime or you have committed a crime

- <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-2>

You lied or committed fraud to receive or to continue to receive public benefits

- [\(See 1.\)](https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5#footnote-92)

You helped someone enter the U.S. illegally, even if it was a relative

- [INA 101\(f\)\(3\)](#)
- [8 CFR 316.10\(b\)\(2\)\(viii\)](#)

You ever claimed to be a U.S. citizen but weren't

- <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title18-section1001&num=0&edition=prelim>
- [\(See 3.\)](https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5#footnote-92)

You have been charged with committing domestic violence, child abuse, or child neglect

- [\(See 1.\)](https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5#footnote-92)

You have voted illegally in the U.S. or registered to vote in the U.S. and weren't eligible to.

- [\(see 3.\)](https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5#footnote-92)

You have made a living by illegal gambling

- [INA 101\(f\)\(4\)-\(5\)](#)
- [8 CFR 316.10\(b\)\(2\)\(x\)-\(xi\)](#)

You have been involved in prostitution

- [INA 101\(f\)\(1\)](#)
- [8 CFR 316.10\(b\)\(2\)\(xii\)](#)

You have been a habitual drunkard, a drug abuser or a drug addict

- [INA 101\(f\)\(1\)](#)
- [8 CFR 316.10\(b\)\(2\)\(xii\)](#)

Good Moral Behavior Bars: <https://www.uscis.gov/policy-manual/volume-12-part-f-chapter-5>

APPENDIX E

Law Enforcement Certification Cover Letter Template

[date]

[Name of certifying official]

[Name of certifying agency]

[Address of office]

Dear [name]:

My name is _____ and I am an attorney at _____ writing on behalf of [Applicant's name]. On [date], [Applicant] was the victim of [crime] within your jurisdiction. [Applicant] promptly reported this crime to law enforcement officials at [agency name] and gave a detailed statement. [Applicant] has continued to make him/her/themself available to assist law enforcement in investigating this crime. [include any additional assistance, i.e., answering follow up questions, testifying in court]. Please find the police report and court documents of this crime enclosed to confirm.

As the victim of [crime] who has assisted law enforcement with investigating and prosecuting this crime, [Applicant] is *prima facie* eligible for a U-visa. Congress created this visa in 2000 with bipartisan support to encourage victims without secure immigration status in the United States to report and assist in the prosecution of egregious crimes. A U-visa provides temporary legal status for victims of serious crimes to ensure the victim can remain in the country during the pendency of law enforcement's investigation and prosecution. If an applicant is found admissible to the United States, a U-visa recipient may be eligible to become a legal permanent resident.

As part of his/her/their application for a U-visa, [Applicant] must obtain a certification from the head of law enforcement who participated in the investigation or prosecution of the crime. Your signature certifies that the description on Form I-918B of the crime and [Applicant's] involvement in the investigation is accurate. Your signature does not sponsor or endorse [Applicant] for a U-visa, and United States Citizenship and Immigration Services conducts further fact-finding to determine whether approval of the petition is warranted based on the totality of the evidence.

If you find the information in Form I-918B to be accurate, please sign on the flagged signature space on page 4 and return *it* to me via the enclosed pre-addressed and pre-paid envelope. Feel free to amend or add any information on the form in the additional space provided on page 5. Please contact me at [phone number] or [email address] with any questions. Thank you for your time and consideration.

Sincerely,

[name]