



ENVIRONMENTAL &  
ENERGY LAW PROGRAM  
HARVARD LAW SCHOOL

# FEMA's IFR on Individual Assistance Program Equity

with feedback from:



# Overview: the BIG Changes

## Home Repair Assistance

- Changes definition of “uninhabitable” to now cover deferred maintenance
- Expanded coverage for accessibility-related items (ramps, grab bars, paved pathways), including unmet pre-disaster needs

## Treatment of Insurance Proceeds

- Insured applicants can get IHP even if settlement equals or exceeds IHP cap

## ONA

- Removes SBA pre-qualification requirement to receive ONA
- New **Displacement Assistance** (daily rate established by STT gov’t)
- Critical Needs Assistance → **Serious Needs Assistance** (\$750 up front)
- Expands Personal Property Assist. for computers, self-employed tools

# Acronyms

**ADA** - Americans with Disabilities Act

**APA** - Administrative Procedure Act

**CFR** - Code of Federal Regulations

**FEMA** - Federal Emergency Management Agency

**GFIP** - Group Flood Insurance Program

**IAPPG** - FEMA's [2021 Individual Assistance Program and Policy Guide](#)

**IFR** - Interim Final Rule

**IHP** - Individuals and Households Program

**ONA** - Other Needs Assistance

**SBA** - Small Business Administration

**STT** - State, Tribal, or Territorial Government

# Background and Next Steps

The IFR text includes a **preamble** responding to comments received on FEMA's June 2021 Equity RFI, and the **new regulatory text**

- Changes to the regulatory text are legally *binding*; preamble is legally *persuasive*

**Regulatory Impact Analysis (RIA)** assesses potential costs, benefits and transfer payments ([regulations.gov](https://www.regulations.gov), Docket No. [FEMA-2023-0003](https://www.fema.gov/docket/FEMA-2023-0003))

Changes will take effect on **March 22, 2024**

FEMA will collect public comment on the IFR for **180 days** until July 22

- Crucial for implementation, future regulatory or policy changes
- Affirm FEMA's legal authority to make changes

# Legal Authority

## Substantive

- “Clear Congressional intent” to increase federal disaster assistance based on prior amendments to Stafford Act
- Executive Orders on Racial Equity and Underserved Communities, Climate Crisis (13985, 13990, 14008, 14091)

## Procedural (Interim Final Rule vs. Proposed Rule)

- APA exception for grant programs
- [Previous FEMA rule](#) set agency’s policy under the Administrative Procedure Act (APA) for grant programming

# Home Repair Assistance

Applicants are no longer ineligible for home repair assistance because of pre-existing conditions or “deferred maintenance”.

- **Example:** If the applicant’s roof was damaged by the disaster, FEMA will provide assistance to repair or replace the roof even if it leaked before the disaster.
- FEMA will provide repairs “necessary for a safe and sanitary living or functioning condition”

# Home Repair: New Definitions

“Uninhabitable” = not safe or sanitary ~~or fit to occupy~~ (44 CFR 206.117)

- “Safe” = secure from ~~disaster-related~~ hazards or threats to occupants
- “Sanitary” = free of health ~~disaster-related~~ hazards

“Owner-occupied” = the home is occupied by:

- the legal owner **with verifiable documentation**; OR
- a person who does not hold formal title but **“can produce verifiable documentation demonstrative of legal responsibility”** (e.g. tax receipts, repair receipts)

FEMA’s 2021 revisions to the documentation requirements to show ownership are now in regulation and not just policy guidance.

# Treatment of Insurance Proceeds

- Insured applicants are now eligible for IHP housing and other needs assistance even if their insurance settlement equals or exceeds IHP cap
  - Goal is to cover underinsured losses → permanent housing solutions faster
- Changes allow FEMA to provide assistance when applicants cannot use their Additional Living Expenses or Loss of Use insurance benefits for temporary housing because “there is no housing” on the private market



# Treatment of Insurance Proceeds: Example

<b>IHP CAP: \$42,500</b>	<b>Old Rules</b>	<b>Old Rules</b>	<b>New IFR</b>	<b>New IFR</b>
Type of Assistance	Applicant A	Applicant B	Applicant A	Applicant B
<b>FEMA Verified Loss</b>	\$73,500	\$73,500	\$73,500	\$73,500
<b>Insurance Proceeds</b>	<b>\$43,000</b>	\$31,000	<b>\$43,000</b>	\$31,000
<b>Unmet Need</b>	\$30,500	\$42,500	\$30,500	\$42,500
<b>IHP Eligibility Amount</b>	<b><u>\$0</u></b>	\$42,500	<b><u>\$30,500</u></b>	\$42,500

# Home Repair for Accessibility-Related Costs

New section (44 C.F.R. 206.113(a)(9)) allows FEMA to provide “home repair for accessibility-related items” if the applicant

- Has a disability as defined under the ADA that predates or was caused by the disaster;
- Primary residence was damaged by the disaster;
- Real property “component” is “necessary” to meet accessibility-related needs; AND
- Component is not covered by insurance

# Accessibility-Related Costs, Cont.

The component *DOES NOT* have to be present and functional pre-disaster even if applicant's disability pre-dates the disaster.

People who acquire their disability during the disaster may be eligible for accessibility-related costs.

IFR reiterates that Home Repair will cover mold growth-related impacts (*see* Amendment 104-009-03 to IAPPG Version 1.1).

IFR adds new section (44 CFR 206.110(b)(2)) clarifying IHP cap does **not** include some accessibility-related assistance.

- Consistent with the Disaster Recovery Reform Act of 2018

# Accessibility-Related Costs, Limitations

FEMA adds non-regulatory requirement (ICR 1660-0002) that a “medical, health care, or rehabilitation professional” certify that home repair of accessibility-related items is necessary.

- FEMA will also accept prior medical, health care, or rehabilitation professional documentation supporting need for accessibility-related item.

Only three “components” are currently covered without a financial cap: exterior ramps, grab bars, and paved pathways.

*These requirements are not compelled by new regulatory language*

# Assistance for Self-Employed Applicants

IFR allows self-employed applicants to receive IHP to replace “essential tools” (new definition at 44 CFR 206.111)

- “Essential tools” = items required for employment or education

Applicants must submit written statement including itemized list of tools, specialized or protective clothing, computing devices, and equipment.

Must also submit tax return documentation establishing self-employment

# ONA: No more SBA requirement!

- Applicants no longer need to be denied an SBA loan to qualify for SBA-dependent ONA:
  - Personal Property Assistance (including computers used for any purpose)
  - Transportation Assistance
  - Group Flood Insurance Policies (GFIP)
- Removing SBA requirement for **GFIP** -> more applicants in Special Flood Hazard Areas (SFHAs) will be eligible to receive a 3-year policy
  - Note: affordability challenges will remain after those three years.

# New form of ONA: Displacement Assistance

- Covers costs associated with short-term lodging (hotels, motels, staying with friends and family, other options)
  - Timeframe set by FEMA
  - Amount based on daily rate established by STT government
  - No receipts required (unlike Lodging Expense Reimbursement)!
- Applicants' homes must be “uninhabitable” or “inaccessible”
- Recipients can still receive Initial Rental Assistance if they ask FEMA (but not Lodging Expense Reimbursement)

# “New” form of ONA: Serious Needs Assist.

- Replaces Critical Needs Assistance, increased to **\$750**
- Designed to address immediate needs related to sheltering, evacuation, or “other emergent disaster expenses”
  - Still includes water, food, first aid, infant formula, diapers, personal hygiene items, transportation or fuel costs
- Mostly widely available
  - Authorized for all disasters in which IHP is authorized (no STT request and FEMA approval needed)
  - FEMA will ***not*** require receipts
  - Applicants do not need to be “displaced” (44 CFR 206.111); may be sheltering in pre-disaster residence and report a need to shelter elsewhere
  - Applicants must assert a serious need at registration and request assistance
  - But, some survivors may need to provide additional documentation to prove eligibility



# Continued Temporary Housing Assistance (CTHA)

- IFR splits recertification process into stages
  - W/in first two payments, must ID plan for permanent housing
  - After “second two payments”, must show progress toward achieving plan, ID obstacles
- Codifies CTHA income threshold at 30% of applicant’s post-disaster income to cover post-disaster housing costs
- Required documentation depends on pre-disaster housing status
  - Applicants select from list of permanent housing plans on Applicant for Continued Housing Assistance form (see Tables 4-6 in the IFR)

# Direct Housing Assistance

- Available to “displaced applicants” unable to make use of financial assistance to rent adequate alternate housing
- To qualify for ***continued*** DHA, applicants must:
  - establish realistic permanent housing plan
  - provide documentation showing they’re trying to obtain permanent housing through recertification process

# Mitigation

IFR allows FEMA to include mitigation for components that weren't functional pre-disaster, if damage was exacerbated by the disaster

## Future Plans

- “FEMA plans to expand hazard mitigation under IHP in the future to include funds for additional mitigation measures, some targeted toward additional disaster causes.”

## Road Not Taken:

- FEMA opts *not* to require IHP applicants to adhere to minimum construction standards because it “would leave some recipients in a situation where FEMA would require repair work but would not be able to provide sufficient funding to cover it”

# Late Applications and Appeals

## Late Applications

- Late applications accepted within 60 days after applications closed
- Applicant must “explain” reason for delay, but IFR removes documentation requirement (verbal explanations OK)
- FEMA expands list of approved reasons to include incarceration, major life events etc. (still restricted to pre-approved list)

## Appeals

- Can provide a written explanation *or* verifiable documentation
- FEMA also developed optional Appeal Request Form in English and Spanish ([www.DisasterAssistance.gov](http://www.DisasterAssistance.gov))

# Failure to Address Subsistence Needs

Commenters encouraged FEMA to include subsistence under ONA, especially for Alaska Native fish camps

-----see IAPPG----->

**IFR:** “A close review of the specific circumstances for these subsistence cabins would be needed to determine whether they are in fact eligible.”

FEMA suggests subsistence items could be covered as self-employment “essential equipment”, but doesn’t provide options for targeted coverage

## 2. *Other Needs Assistance*

Applicants may receive financial assistance for other disaster-caused expenses and serious needs.<sup>64</sup> The types of ONA are divided into two categories that are either dependent or non-dependent on the applicant’s ability to secure a U.S. Small Business Administration (SBA) disaster loan. The SBA may provide low-interest, long-term loans to help applicants with transportation losses, as well as repair/replacement funds for real and personal property damage caused by the disaster.

Only applicants who do not qualify for a loan from the SBA may be eligible for assistance for the SBA-dependent category. SBA-dependent ONA includes Personal Property Assistance, Transportation Assistance, and Group Flood Insurance Policy (GFIP). Non-SBA-dependent types of ONA may be awarded regardless of the applicant’s SBA status and may include Funeral Assistance, Medical and Dental Assistance, Child Care Assistance, Assistance for Miscellaneous Items, Moving and Storage Assistance, Critical Needs Assistance, and Clean and Removal Assistance.



*FEMA and SBA conduct inspections along the Yukon River for applicants residing in fishing camps who were affected by severe flooding in Fort Yukon, Alaska.*

# Recent Executive Order Supports Targeted Coverage for Subsistence-Related Needs

The IFR Section 1 policy statement requires federal government to “recognize, honor and respect the different cultural practices—including *subsistence practices, ways of living, Indigenous Knowledge, and traditions*—in communities across America.”

Targeted protections bolstered by Biden Executive Orders on Environmental Justice (14096), Racial Equity (13985, 14091), and... [\*Support for Tribal Nations \(14112\)\*](#) issued Dec. 11, 2023

# Summary of Non-regulatory Changes

## Verifying Occupancy

- FEMA will now accept social service organization docs, local school docs, Federal/State benefit docs, motor vehicle registration, affidavits of residency/court docs, mobile home park docs + self-declarative statement, IAPPG.

## Verifying Ownership

- FEMA will accept receipts for major repairs/improvements, mobile home park letters, court docs, public officials' letter + self-declarative statement (heirship, mobile home, travel trailer, insular areas), IAPPG

# Preview of Changes to Online Application Process

FEMA will “streamline” application process by end of year (2023?) to enable applicants to select the type of assistance they need, and only answer questions relevant to that assistance (FN 184)

FEMA is developing a new NEMIS-IA system with increased capabilities (e.g., include pictures, home and property damage descriptions, inspection line-item pricing)

- Currently in the “very early stages” of Systems Engineering Lifecycle and Acquisition process (footnote 141) – “multi-year effort”