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Defining FEMA's Approach to Equity and Emergency Management: Policy Considerations

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A range of emergency managers, scholars, and representatives at federal and subfederal governments in the United States have found that underserved communities often suffer disproportionate impacts of disasters (such as exposure to extreme heat; incapacity to evacuate; greater likelihood to suffer injury or death), yet have fewer resources to cope. Further, some Members of Congress have expressed concern that federal disaster assistance does not adequately reach these populations. Members of the House and Senate have introduced several bills that would expand FEMA's authorities to improve assistance to underserved communities, and several congressional committees have conducted hearings examining equity in the context of emergency management.

Central to these concerns and actions is the question of how to define and interpret FEMA's existing authorities with regard to equity, including the application of federal civil rights law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act does not define equity, raising questions regarding what relevant actions FEMA is authorized or required to undertake. By contrast, FEMA's recently published definition of equity focuses on the fair, just, and impartial treatment of individuals whom the agency serves. FEMA's National Advisory Council, an advisory body of officials, emergency managers, and emergency responders from subfederal governments, the private sector and nongovernmental organizations, offers a different interpretation of equity, advising the agency to take action to improve equity in program outcomes.

FEMA has responded to such findings and concerns by undertaking a series of policy and procedure changes. These changes include, but are not limited to, the following:

- Forming a Civil Rights Advisory Group to promote equity in FEMA-administered assistance for COVID-19 vaccination efforts nationwide;
- Modifying documentation requirements found to impede access to Individual Assistance for some hazard-affected individuals and households, particularly those in underserved communities;
- Focusing the agency's 2022-2026 Strategic Plan around several goals related to equity, including diversifying the FEMA workforce and promoting equity in assistance programs;
- Incorporating four FEMA grant programs in the Biden Administration's Justice40 initiative, which aims to deliver 40% of overall benefits of certain federal investments to disadvantaged communities; and
- Publishing a definition of equity and underserved communities intended to inform the above efforts and future equity-focused initiatives.

The 117th Congress faces key questions regarding FEMA's approach to and definition of equity in the administration of federal disaster assistance. Policy issues include whether and how to further codify FEMA's authorities with respect to the promotion and assurance of equity in the administration of federal disaster assistance; how to monitor FEMA's collection of data to ensure the delivery of equitable disaster assistance; whether and how to respond to the varying capacity of subfederal governments to pursue and administer federal relief; and whether and how to modify eligibility requirements that may result in disparities in program access and outcomes.

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Introduction

Federal disaster relief may not adequately reach underserved individuals and communities in the United States, according to recent academic research and U.S. government reports (see text box for definition of “underserved”).¹ Further, some experts find that the current design of federal relief programs may exacerbate differences in the rate and extent of recovery among individuals and communities depending on their wealth, income, race, ethnicity, gender, sexual orientation, immigration status, age, and disability, among others.²

These findings build upon research of academics, government officials, and nonfederal stakeholders showing how underserved communities may be disproportionately affected by hazards.³ Individuals and communities with fewer financial and social resources often inhabit places that are more physically vulnerable to hazards—for example, lowlands prone to flooding, deteriorating or mobile homes, or remote, rural areas that are easily cut off from emergency supplies and responders—resulting in greater risk and losses.⁴ Additionally, individuals and communities with lower incomes and fewer resources are often less likely to have access to financial resources (insurance, savings, or safety net through personal loans or gifts), to cover

¹ See, for example, National Advisory Council (NAC), *2020 Report to the FEMA Administrator*, November 2020, p. 6, https://www.fema.gov/sites/default/files/documents/fema_nac-report_11-2020.pdf (hereinafter NAC, *2020 Report*); Government Accountability Office (GAO), Statement of Chris P. Currie, Director, Homeland Security and Justice, Testimony Before the Committee on Homeland Security, House of Representatives, *Disaster Recovery: Efforts to Identify and Address Barriers to Receiving Federal Recovery Assistance*, GAO-22-105488, October 27, 2021, <https://www.gao.gov/assets/gao-22-105488.pdf>; and Oronde Drakes et al., “Social Vulnerability and Short-Term Disaster Assistance in the United States,” *International Journal of Disaster Risk Reduction*, vol. 53 (February 2021). For different findings, see Angel Griego et al., “Social Vulnerability, Disaster Assistance, and Recovery: A Population-Based Study of Hurricane Harvey in Greater Houston, Texas,” *International Journal of Disaster Risk Reduction*, vol. 51 (December 2020).

² See, for example, prepared Statement of Chauncia Willis, Co-Founder and CEO of the Institute for Diversity and Inclusion in Emergency Management, U.S. Congress, House Committee on Homeland Security, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*, 117th Cong., 1st sess., October 27, 2021, H.Rept. 117-35, pp. 17-18 (hereinafter House Homeland, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*); GAO, *Disaster Recovery: Additional Actions Needed to Identify and Address Potential Recovery Barriers*, GAO-22-104039, December 15, 2021, <https://www.gao.gov/products/gao-22-104039>; and Junia Howell and James Elliot, “Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States,” *Social Problems*, vol. 66, no. 3 (August 2019), pp. 448–467 (hereinafter Howell and Elliot, “Damages Done”).

³ See, for example, Kathleen Tierney, *The Social Roots of Risk* (Palo Alto: Stanford University Press, 2014) (hereinafter Tierney, *Social Roots of Risk*); GAO, *Disaster Recovery: School Districts in Socially Vulnerable Communities Faced Heightened Challenges After Recent Natural Disasters*, GAO-22-104606, January 2022, <https://www.gao.gov/assets/gao-22-104606.pdf>; and Curtis Brown, submitted testimony, U.S. Congress, House Appropriations Committee, *The Role of FEMA & Emergency Management in the COVID-19 Response*, 117th Cong., 1st sess., March 16, 2021, pp. 11-12 (hereinafter Curtis Brown, *Role of FEMA*). For recent discussion among emergency managers, see International Association of Emergency Managers, *Diversity in Emergency Management: Lessons Learned*, special issue, June 2021, https://www.iaem.org/Portals/25/documents/2021/IAEM_June%202021_Bulletin_FINAL_062521.pdf; and FEMA, “Social Vulnerability,” *National Risk Index: Technical Documentation*, November 2021, pp. 4-1 through 4-2, <https://hazards.fema.gov/nri/social-vulnerability>.

⁴ See, for example, Tierney, *Social Roots of Risk*; Jeremy Hoffman et al., “The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas,” *Climate*, vol. 8, no. 1 (2020); Bryan Boruff et al., “Erosion Hazard Vulnerability of US Coastal Counties,” *Journal of Coastal Research*, vol. 21, no. 5 (2005), pp. 932-942; and Alice Fothergill and Lori Peek, “Poverty and Disasters in the United States: A Review of Recent Sociological Findings,” *Natural Hazards*, vol. 32 (2004), pp. 89-110 (hereinafter Fothergill and Peek, “Poverty and Disasters”).

disaster-caused losses, unexpected costs, and local cost-shares.⁵ In short, underserved communities may suffer disproportionate impacts of disasters and have fewer resources to cope.

In the wake of such findings, the Federal Emergency Management Agency (FEMA) worked to redress potential inequities in its delivery of federal disaster assistance. FEMA established new work units to promote civil rights, modified agency policies that were found to result in inequitable outcomes, and solicited policy proposals with the goal of improving access to disaster relief programs. FEMA's 2022-2026 *Strategic Plan* (hereinafter *Strategic Plan*) acknowledges that some individuals and communities may struggle to understand and participate in FEMA's disaster assistance programs, and that FEMA must work with state, local, tribal, and territorial (SLTT) partners and underserved communities to understand their unique challenges.⁶ FEMA Administrator Deanne Criswell recently affirmed that "FEMA pursues a comprehensive approach to advancing equity as a critical and foundational part of our mission."⁷

Some Members of Congress and other stakeholders continue to raise concerns that federal disaster assistance may not assist survivors equitably. Areas of recent congressional interest include whether existing federal disaster assistance authorities appropriately consider underserved communities, and how to delimit FEMA's authority to enhance program access and promote equitable outcomes in disaster assistance. In the 117th Congress, some Members of the Senate and House introduced several bills that would expand FEMA's authorities to improve assistance to underserved communities.⁸ Congressional committees have also conducted hearings examining equity in the context of emergency management.⁹

What Is Equity?

The concept of equity generally relates to fairness. In U.S. law, this concept is exemplified in requirements for impartial treatment that are established in statute, regulations, and Executive

⁵ See for example, Carolyn Kousky and Roger Cooke, "Explaining the Failure to Insure Catastrophic Risks," *The Geneva Papers* 37, (2012); Lloyd Dixon et al., "The Cost and Affordability of Flood Insurance in New York City: Economic Impacts of Rising Premiums and Policy Options for One- to Four-Family Homes," *RAND Corporation*, 2017; GAO, *Puerto Rico Recovery: FEMA Made Progress in Approving Projects but Should Identify and Assess Risks to the Recovery*, GAO-21-264, pp. 33-35, <https://www.gao.gov/products/gao-21-264>; Fothergill and Peek, "Poverty and Disasters"; National Research Council, *Increasing National Resilience to Hazards and Disasters: The Perspective from the Gulf Coast of Louisiana and Mississippi: Summary of a Workshop*, Washington: National Academies Press, 2011.

⁶ FEMA, 2022-2026 *Strategic Plan*, December 2021, pp. 11-12; (hereinafter FEMA, *Strategic Plan*), <https://www.fema.gov/about/strategic-plan>. See also FEMA, "FEMA Administrator Deanne Criswell Delivers Speech at National Hurricane Conference," release, April 13, 2022, <https://www.fema.gov/fact-sheet/fema-administrator-deanne-criswell-delivers-speech-national-hurricane-conference> (hereinafter FEMA, "Administrator Criswell Speech at National Hurricane Conference").

⁷ Memorandum from Federal Emergency Management Agency (FEMA) Administrator Deanne Criswell to the National Advisory Council Chairman W. Nim Kidd, October 15, 2021, https://www.fema.gov/sites/default/files/documents/fema_response-2020-nac-report.pdf.

⁸ Examples include S. 4159/H.R. 7688—FEMA Equity Act; S. 3093/H.R. 5780—Disaster Equity and Fairness Act; S. 2471/H.R. 4707—Reforming Disaster Recovery Act; S. 2362—Fairness in Federal Disaster Declarations Act of 2021; and S. 3128/H.R. 5802—National Flood Insurance Program Reauthorization and Reform Act of 2021.

⁹ See, for examples, House Homeland, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*; U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Examining FEMA's Strategic Priorities and Disaster Preparedness*, 117th Cong., 2nd sess., June 22, 2022, <https://www.hsgac.senate.gov/imo/media/doc/Opening%20Statement-Peters-2022-06-22.pdf>; and U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *FEMA Priorities for 2022 and the 2022-2026 Strategic Plan*, 117th Cong., 2nd sess., April 5, 2022, <https://congressional.proquest.com/congressional/docview/t39.d40.tr04050122.o14?accountid=12084>.

Orders.¹⁰ However, stakeholders and scholars may retain quite different understandings of what equity means when it comes to the provision of federal assistance—like that authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (The Stafford Act, P.L. 93-288; 42 U.S.C. §§5121 et seq.).

Some policymakers and government officials focus on equity as measured by treatment of individuals in different stages of a program—e.g., access, evaluation, distribution. They question, for example, whether administrators treat each applicant impartially, ensure fair access, assess eligibility without discrimination, and administer assistance in the same manner.¹¹ One discrete measure of equity in this context could be the provision of application materials in all languages relevant to an affected community.

Others might measure equity through program outcomes. Among the relevant questions could be whether policies and programs exacerbate existing inequities among different applicants—for example, awarding greater sums to wealthier survivors, or to homeowners over comparably lower-income renters. Or, by contrast, do (and should) relief programs reduce pre-existing social disparities among program participants (particularly if those disparities contribute to their vulnerability to hazards)?¹²

These conceptions of equity are not exhaustive, but are common in discussions among emergency managements and disaster relief stakeholders, as detailed below.

This report discusses FEMA's existing authorities relevant to equity, operating definitions of equity in the context of emergency management, recent FEMA actions concerning equity, and related congressional considerations. Further, this report serves as a foundation for other products related to equity and emergency management, including CRS Report R47244, *FEMA's Approach to Equity and Emergency Management: Disaster Declarations and Policy Considerations*.

Terms

Underserved Communities: Different stakeholders use a range of terms to refer to groups that encounter barriers to accessing disaster assistance, experience discrimination, and/or face disproportionate risks from hazards.¹³ This report uses the term “underserved communities” to align with FEMA's use,¹⁴ defined as “populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.”¹⁵ Examples include

¹⁰ See, for example, the nondiscrimination provisions in Section 308 of the Stafford Act; 42 U.S.C. §§6101 et seq.; 42 U.S.C. §§12101-12213; 42 U.S.C. §§2000d et seq.; 29 U.S.C. §794; Executive Order 14020, “Establishment of the White House Gender Policy Council” (see Section 6); and Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.”

¹¹ See discussion of procedural equity, access, and quality in Susan T. Gooden, “From Equality to Social Equity,” *Public Administration Evolving*, 1st ed., Mary Guy and Marilyn Rubin, eds., New York: Routledge, 2015.

¹² See discussion in Oronde Drakes et al., “Social Vulnerability and Short-Term Disaster Assistance in the United States,” *International Journal of Disaster Risk Reduction*, vol. 53 (February 2021).

¹³ See, for example, “low-capacity community” in FEMA, *Summary of Stakeholder Feedback: Building Resilient Infrastructure and Communities*, March 2020, pp. 24-25, 36, https://www.fema.gov/sites/default/files/2020-06/fema_bric-summary-of-stakeholder-feedback-report.pdf; “populations of concern” in Gamble, J.L. et al., *Populations of Concern. The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment* (U.S. Global Change Research Program, Washington, DC, 2016), pp. 247-286 (chapter 9), <http://dx.doi.org/10.7930/JQ81B0T>.

¹⁴ See FEMA, *Glossary*, “Underserved Populations/Communities”; see also FEMA, *Strategic Plan*.

¹⁵ Section 2, definitions, in President Joseph R. Biden Jr., Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” 86 *Federal Register* 7009, January 25, 2021, [govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf](https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01753.pdf) (hereinafter Executive Order 13985).

communities of individuals that have been “denied consistent and systematic fair, just, and impartial treatment,” including “Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.”¹⁶

Social Vulnerability: This report adopts FEMA’s definition of social vulnerability in the context of emergency management, meaning “the susceptibility of social groups to the adverse impacts of natural hazards, including disproportionate death, injury, loss, or disruption of livelihood.”¹⁷ Per the U.S. Centers for Disease Control and Prevention (CDC), higher levels of social vulnerability (including poverty, limited English proficiency, disability, and minority status) within a disaster-affected community may correspond to fewer resources available to reduce and mitigate suffering and loss, and for this reason, warrant federal or other assistance.¹⁸

Equity: Neither the Stafford Act nor FEMA’s regulations define equity. In fall 2021, FEMA defined equity as “[t]he consistent and systematic fair, just and impartial treatment of all individuals.”¹⁹

State: For purposes of the Stafford Act and this report, “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands” (42 U.S.C. §5122(4)).

Tribes: The term “tribe” refers to Indian tribal governments. Per the Stafford Act, “[t]he term ‘Indian tribal government’ means the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994” (42 U.S.C. §5122(6)).

Chief Executive: Generally, Stafford Act assistance is requested by the “governor” (i.e., “the chief executive of any State” (42 U.S.C. §5122(5)), or the “chief executive” (i.e., “the person who is the Chief, Chairman, Governor, President, or similar executive official of an Indian tribal government” (42 U.S.C. §5122(12)).

Equity in FEMA’s Existing Federal Authorities

Statute and Regulations

The Stafford Act aims to alleviate “the suffering and damage which result from ... disasters,” given congressional findings that disasters severely affect communities, governments, individuals, and families.²⁰ The statute’s findings do not address the potentially disproportionate effects of hazards on underserved communities, as explained by a range of government and scholarly research.²¹ Furthermore, Stafford Act authorities generally do not specifically target assistance to underserved communities.²² Finally, FEMA’s ability to develop race- or sex-conscious programs for the benefit of certain minorities may be limited by the constitutional

¹⁶ Section 2, Executive Order 13985.

¹⁷ FEMA, *National Risk Index: Primer*, November 2020, https://www.fema.gov/sites/default/files/2020-11/fema_national-risk-index_primer.pdf.

¹⁸ U.S. Centers for Disease Control and Prevention (CDC), “CDC SVI Documentation 2018,” *CDC SVI 2018 Documentation—1/31/2020*, January 31, 2020, https://www.atsdr.cdc.gov/placeandhealth/svi/documentation/SVI_documentation_2018.html (hereinafter CDC, *SVI 2018*) (see for information on the CDC Social Vulnerability Index).

¹⁹ CDC, *SVI 2018*.

²⁰ 42 U.S.C. §5121(b).

²¹ See sources in footnote 3.

²² One exception, noted above, is Pre-Disaster Mitigation, which provides a higher federal cost share for “small, impoverished communities” than it does for others. Section 102(a) of the Disaster Mitigation Act of 2000 (P.L. 106-390), as it amends Stafford Act Section 203(a), 42 U.S.C §5133(a).

requirement that the government afford all individuals equal protection under the law.²³ All of these factors may constrain FEMA’s ability to address inequities observed in disaster relief access and program outcomes.

FEMA must comply with several statutory authorities related to equity. As a federal entity, FEMA is prohibited from intentionally discriminating on the basis of race.²⁴ FEMA is required to comply with federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). Under these laws, FEMA may not discriminate on the basis of different categories (e.g., nationality, age) when delivering federal assistance, and must ensure that individuals with disabilities may participate in FEMA’s programs. A declaration of emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, P.L. 93-288, as amended; 42 U.S.C. §§5121 et seq.) does not waive federal civil rights laws and legal authorities—all of which remain in effect.²⁵

Both the Stafford Act and FEMA’s regulations prohibit discrimination in the provision of disaster assistance.²⁶ The Stafford Act’s nondiscrimination provision requires FEMA and other organizations to perform disaster relief operations and provide assistance in an “equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.”²⁷ Additionally, federal regulations require that governments receiving FEMA assistance collect data necessary to demonstrate compliance with this requirement as well as other civil rights laws.²⁸ FEMA’s statutory and regulatory authorities relevant to equity are listed chronologically in **Table 1**.

Table 1. Equity and FEMA Authorities—Chronology

Statute/Regulation	Description
Title 32A of C.F.R. published January 9, 1965	Regulations prohibiting discrimination on the ground of race, color, or national origin, under any program or activity receiving federal financial assistance from the Office of Emergency Planning (a FEMA predecessor) were published to effectuate the provisions of Title VI of the Civil Rights Act of 1964. ²⁹

²³ See discussion of race-conscious programming and policies in CRS Legal Sidebar LSB10631, *The American Rescue Plan Act: Equal Protection Challenges*, by Christine J. Back and April J. Anderson; and CRS Report R45481, *“Affirmative Action” and Equal Protection in Higher Education*, by Christine J. Back.

²⁴ See relevant discussion in CRS Legal Sidebar LSB10737, *Equal Protection Does Not Mean Equal SSI Benefits for Puerto Rico Residents, Says Supreme Court*, by Mainon A. Schwartz.

²⁵ See also FEMA, “Office of Equal Rights, External Civil Rights Division,” <https://www.fema.gov/about/offices/equal-rights>.

²⁶ 42 U.S.C. §5151; see also 44 C.F.R. §206.11(b).

²⁷ 42 U.S.C. §5151; see also 44 C.F.R. §206.11(b). Other applicable authorities include 44 C.F.R. Part 7—Nondiscrimination in Federally-Assisted Programs; and 44 C.F.R. §206.11—Nondiscrimination in Disaster Assistance. See U.S. Departments of Justice, Homeland Security (DHS), Housing and Urban Development, Health and Human Services, and Transportation, “Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964,” January 9, 2020, <https://www.dhs.gov/publication/guidance-state-and-local-governments-and-other-federally-assisted-recipients-engaged> (hereinafter DHS, “Guidance to State and Local Governments on Compliance with Title VI of the Civil Rights Act of 1964”).

²⁸ 44 C.F.R. §7.10(b); DHS, “Guidance to State and Local Governments on Compliance with Title VI of the Civil Rights Act of 1964.”

²⁹ Section 1, Title 32A, Chapter 1—Office of Emergency Planning, 30 *Federal Register* 321-324, January 9, 1965, https://archives.federalregister.gov/issue_slice/1965/1/9/314-324.pdf. Section 1 of Title 32A stated, “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the

Statute/Regulation	Description
P.L. 93-288, enacted May 22, 1974	Section 311(a) of the Disaster Relief Act of 1974 required the President to issue regulations to ensure that personnel, governments, and organizations provide federal assistance “in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.” ³⁰
FEMA established, March 13, 1979	President Jimmy Carter created the Federal Emergency Management Agency (FEMA) in 1979 in Executive Order 12127, and subsequently delegated most response and recovery authorities authorized in the Disaster Relief Act of 1974 to the agency. ³¹ Subsequently, FEMA updated existing regulations on nondiscrimination in federal disaster assistance.
P.L. 100-707, enacted November 23, 1988	The Disaster Relief and Emergency Assistance Amendments of 1988 amended the Disaster Relief Act of 1974, retitling it “The Robert T. Stafford Disaster Relief and Emergency Assistance Act,” and retaining prior statutory language on nondiscrimination in the provision of federal disaster assistance.
P.L. 106-390, enacted October 30, 2000	The Disaster Mitigation Act of 2000 authorized pre-disaster mitigation assistance and a higher federal cost share for “small, impoverished communities.” ³²
Title VI of P.L. 109-295, enacted October 4, 2006	The Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) created the position of Disability Coordinator in FEMA to “ensure that the needs of individuals with disabilities are being properly addressed in emergency preparedness and disaster relief.” ³³ Additionally, PKEMRA amended the Stafford Act to specify that federal assistance must be provided without discrimination on the basis of disability or English proficiency. ³⁴
Division B of P.L. 113-2, enacted January 29, 2013	The Sandy Recovery Improvement Act of 2013 (SRIA) amended the Stafford Act to allow federally recognized tribes to request an emergency or major disaster declaration directly (rather than through a state request), and required FEMA to issue regulations implementing this authority with consideration of “the unique conditions that affect the general welfare of tribal governments.” ³⁵ Some tribal governments and members, Members of Congress, FEMA, and other stakeholders

benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Office of Emergency Planning.” Subsequently, per FEMA’s final rule, “The regulations of the former FPA [Federal Preparedness Agency] appear in Title 32A. This rule removes certain obsolete regulations from the Code, transfers the remaining regulations in title 32A CFR to Title 44, and makes changes for outdated nomenclature, statutory provisions and references and organization,” effective July 1, 1980. This followed the establishment of FEMA by Executive Order 12127 of March 31, 1979. See FEMA, Final Rule, “Transfer, Redesignation, Removal, and Revisions of Regulations,” 45 *Federal Register* 44575, July 1, 1980, https://archives.federalregister.gov/issue_slice/1980/7/1/44522-44777.pdf.

³⁰ Section 311(a) of the Disaster Relief Act of 1974 (P.L. 93-288), amended as Stafford Act Section 308; 42 U.S.C. §5151. Other applicable authorities include Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; 44 C.F.R. Part 7—Nondiscrimination in Federally-Assisted Programs; and 44 C.F.R. §206.11—Nondiscrimination in Disaster Assistance. See DHS, “Guidance to State and Local Governments on Compliance with Title VI of the Civil Rights Act of 1964.”

³¹ Executive Order 12127, “Federal Emergency Management Agency,” 44 *Federal Register* 19367-19368, April 3, 1979, https://archives.federalregister.gov/issue_slice/1979/4/3/19367-19368.pdf. See also FEMA, “History of FEMA,” <https://www.fema.gov/about/history>.

³² Section 102(a) of the Disaster Mitigation Act of 2000 (P.L. 106-390), as it amends Stafford Act Section 203(a); 42 U.S.C. §5133(a).

³³ Section 611 of the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA, Title VI of P.L. 109-295) amended Title V of the Homeland Security Act of 2002 (6 U.S.C. §§311 et seq.), including by establishing the Disability Coordinator position in Section 513; 6 U.S.C. §321b.

³⁴ Section 689a of PKEMRA; 42 U.S.C. §5151(a).

³⁵ Section 1110 of the Sandy Recovery Improvement Act of 2013 (SRIA, Division B of P.L. 113-2); 42 U.S.C. §§5170(b) and (c), and §5122(6).

Statute/Regulation	Description
	explained that this authority was necessary to recognize tribal independence and sovereignty. ³⁶
Division D of P.L. 115-254, enacted October 5, 2018	The Disaster Recovery Reform Act of 2018 (DRRA) authorized the President (through FEMA) to waive certain restrictions prohibiting the provision of duplicative assistance, and authorized the FEMA Administrator to waive the recoupment of assistance provided through the Individuals and Households Program if doing so would be against “equity and good conscience,” among other considerations. ³⁷ This provision followed congressional concern and related legislative actions that recouping disaster relief from individuals—particularly low-income individuals—constituted an “unfair financial hardship.” ³⁸

Source: Compiled by CRS.

FEMA Policies

FEMA has implemented federal statutes and regulations on equity, civil rights, and nondiscrimination through a number of means, including but not limited to those listed below (for recent actions, see “Recent FEMA Equity-Related Actions”).

- FEMA established the External Civil Rights Division within the Office of Equal Rights, which is responsible for compliance with and enforcement of federal civil rights authorities, including the nondiscrimination requirement in the Stafford Act, for public-facing programs.³⁹
- FEMA appointed a disability coordinator in 2007, as required by the Post-Katrina Emergency Management Reform Act of 2006 (Title IV of P.L. 109-295), and in 2010, FEMA created the Office of Disability Integration and Coordination to support the work of the disability coordinator.⁴⁰

³⁶ FEMA, *Tribal Declarations Pilot Guidance*, January 2017, p. 4, <https://www.fema.gov/sites/default/files/2020-04/tribal-declaration-pilot-guidance.pdf> (states, “The Stafford Act now reflects that tribal governments are sovereign and acknowledges the government-to-government relationship between the United States and tribal governments.”); Heidi Adams, “Sovereignty, Safety, and Sandy: Tribal Governments Gain (Some) Equal Standing Under the Hurricane Sandy Relief Act,” *American Indian Law Journal*, vol. 2, no. 1 (Spring 2013), pp. 376-387; Heidi Adams, “Sovereignty, Safety, and Security: Tribal Governments Under the Stafford and Homeland Security Acts,” *American Indian Law Journal*, vol. 1, no. 1 (Fall 2012), pp. 127-146; Rep. Rahall, Debate on the Sandy Recovery Improvement Act of 2013, *Congressional Record*, daily edition, vol. 159 (January 14, 2013), p. H72; Courtney Stouff, “Native Americans and Homeland Security: Failure of the Homeland Security Act to Recognize Tribal Sovereignty,” *Penn State Law Review*, vol. 103 (2003-2004), pp. 375-394; and Senators Begich and Tester, Letter for FEMA Administrator Craig Fugate, March 4, 2014, <https://www.indian.senate.gov/news/press-release/tester-and-begich-call-faster-action-tribal-disaster-recovery-provision-0>.

³⁷ Sections 1210 and 1216(a) of the Disaster Recovery Reform Act of 2018 (DRRA, Division D of P.L. 115-254). The DRRA Section 1216(a) waiver authority was similar to the waiver authority granted for survivors of disasters declared on August 28, 2005, through December 31, 2010, pursuant to Section 565 of the Disaster Assistance Recoupment Fairness Act of 2011 (Division D, Title V of P.L. 112-74) (for background, see Rep. Pryor, “Statements on Introduced Bills and Joint Resolutions,” *Congressional Record*, vol. 157 (April 12, 2011), pp. S2394-2395).

³⁸ Senate Committee on Homeland Security and Governmental Affairs website, “Pryor, Landrieu, and Cochran Announce FEMA Recoupment Plan,” February 9, 2012, <https://www.hsgac.senate.gov/subcommittees/disaster-recovery-and-intergovernmental-affairs/majority-media/pryor-landrieu-and-cochran-announce-fema-recoupment-plan>.

³⁹ FEMA, “External Civil Rights Division,” [fema.gov/about/offices/equal-rights/civil-rights](https://www.fema.gov/about/offices/equal-rights/civil-rights).

⁴⁰ FEMA, “Office of Disability Integration and Coordination,” <https://www.fema.gov/about/offices/disability>.

- FEMA provides accessible—and in some cases, multi-lingual—communication in certain FEMA guidance documents and public-facing virtual and in-person meetings.⁴¹
- FEMA established tribal consultation policy pursuant to Executive Order 13175 for “communicating and collaborating with tribal governments to exchange information, receive input, and consider the views of tribes on actions that have tribal implications.”⁴²
- FEMA has also developed policies and priorities that incorporate equity-based components in accordance with statutory authorities. For example, FEMA may waive the requirement to recoup assistance provided through the Individuals and Households Program (IHP) if enforcement of the debt would be against “equity and good conscience.”⁴³ FEMA’s instruction for implementing this authority includes examples of qualifying circumstances and explains “[t]he legal obligation to pay a debt to FEMA may be overcome by other consideration if enforcement of the debt would be unfair to the point of violating equity and good conscience.”⁴⁴

Congressional Considerations

Defining Equity: The Stafford Act and FEMA’s Authorities

There is not a single, unified concept of equity in the context of disaster assistance authorities and programs. As described above, the Stafford Act does not define equity, nor do FEMA’s regulations. In fall 2021, however, the agency offered a definition of *equity*: “[t]he consistent and systematic fair, just and impartial treatment of all individuals.”⁴⁵ This definition governs how FEMA approaches reported barriers faced by underserved populations to “ensure all survivors have access to disaster assistance.”⁴⁶

Other stakeholders have offered meaningfully distinct definitions of equity in the context of federal disaster assistance. Among these divergent definitions was one authored by FEMA’s National Advisory Council (NAC), a statutorily authorized advisory body of subfederal officials, emergency response providers, and related nonprofit and private sector representatives that serves at the pleasure of the Administrator.⁴⁷ In November 2020—ten months before FEMA issued its

⁴¹ FEMA, “Accessibility Statement,” <https://www.fema.gov/about/offices/equal-rights/accessibility>.

⁴² Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 *Federal Register* 67249-67252, November 9, 2000, <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>; FEMA, “Tribal Consultations,” <https://www.fema.gov/about/tribes/consultations>.

⁴³ 42 U.S.C. §5174a(a)(2)(iii). For additional information on Individuals and Households Program (IHP) debt recoupment waivers, see the “Section 1216: Flexibility” section of CRS Report R46776, *The Disaster Recovery Reform Act of 2018 (DRRA): Implementation Updates for Select Provisions*, coordinated by Elizabeth M. Webster and Bruce R. Lindsay.

⁴⁴ FEMA, “Instruction 116-1-2: Individuals and Households Program Recoupment,” vol. 2, May 2019, pp. 16-17, 30.

⁴⁵ FEMA, “FEMA Defines Equity in Its Mission of Making Programs More Accessible,” HQ-21-208, September 9, 2021, <https://www.fema.gov/press-release/20210909/fema-defines-equity-its-mission-making-programs-more-accessible> (hereinafter FEMA, “FEMA Defines Equity”).

⁴⁶ FEMA, “FEMA Defines Equity.”

⁴⁷ Section 508 of PKEMRA (P.L. 109-295) authorized the NAC to advise—without enforcement authorities—the FEMA administrator “on all aspects of emergency management.”

equity definition—the NAC offered a different definition to encourage the agency to incorporate equity in its relief programs: “The core definition of equity is to provide the greatest support to those with greatest need to achieve a certain minimum outcome.”⁴⁸ The NAC explicitly distinguished this from *equality*, defined as “providing the same resources to everyone regardless of need.”⁴⁹ As noted above, the U.S. Constitution and several statutes prevent FEMA from discriminating against individuals on the basis of race, national origin, sex, and other classes.

Considerations for Congress—Defining Equity

Some stakeholders, including FEMA’s National Advisory Council, argue that the Stafford Act’s nondiscrimination provisions require FEMA to improve program equity, such as by reducing barriers to accessing aid and promoting equitable outcomes.⁵⁰ One recent legal analysis, for example, argues the Stafford Act’s requirement that FEMA deliver assistance without discrimination requires FEMA to ensure disaster relief programs do not exacerbate preexisting inequities.⁵¹ FEMA’s NAC additionally asserted that the provision of federal assistance to wealthier communities that do not need the assistance undermines the core tenets of the Stafford Act to provide federal assistance only when necessary:⁵²

first responders do not rescue people who can evacuate themselves, they only rescue people who need help. Recovery programs, however, seem to do just that. They provide an additional boost to wealthy homeowners and others with less need, while lower-income individuals and others sink further into poverty after disasters.⁵³

Consistent with these ideas, the first goal of FEMA’s *Strategic Plan* is to “instill equity as a foundation of emergency management.” To that end, FEMA Administrator Deanne Criswell’s foreword to the *Strategic Plan* states:

Systems that foster inequality serve no one, especially in times of crisis. We must recognize that disasters affect individuals and communities differently, commit ourselves to reducing barriers to access, and deliver equitable outcomes for all whom we serve.⁵⁴

Yet the *Strategic Plan* concedes FEMA is limited in what it—as an agency—can provide in terms of federal assistance, acknowledging that “FEMA assistance is not designed to solve societal inequities.”⁵⁵ FEMA Assistant Administrator for Recovery Keith Turi previously acknowledged

⁴⁸ NAC, *2020 Report*, p. 11.

⁴⁹ NAC, *2020 Report*, p. 11.

⁵⁰ NAC, *2020 Report*, pp. 11-12; Thomas Frank, “How FEMA Helps White and Rich Americans Escape Floods,” *Politico’s E&E News*, May 25, 2022, <https://www.politico.com/news/2022/05/27/unfair-fema-climate-program-floods-00032080>; Thomas Frank, “FEMA Home Elevation Funds Could Violate Civil Rights Law,” *ClimateWire E&E News*, June 15, 2022, <https://www.eenews.net/articles/fema-home-elevation-funds-could-violate-civil-rights-law/>.

⁵¹ Hannah Perls and Dane Underwood, “Equitable Disaster Relief: An Analysis of FEMA’s Legal Authority to Integrate Equity Under the Stafford Act,” *Harvard Environmental and Energy Law Program*, October 13, 2021, <https://eelp.law.harvard.edu/2021/10/equitable-disaster-relief/>. See also Comment submitted by Texas Housers, FEMA, “Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period,” FEMA-2021-0011-0277, p. 5.

⁵² Per 42 U.S.C. §§5170(a) and (b)(1), and 5191(a) and (c)(1), a governor or tribal chief executive shall submit a request for a Stafford Act major disaster or emergency declaration “based on a finding that the [disaster/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.”

⁵³ NAC, *2020 Report*, p. 6.

⁵⁴ Letter from the Administrator in FEMA’s *Strategic Plan*, p. 3.

⁵⁵ FEMA, *Strategic Plan*, pp. 9, 13.

the different understandings of equitable relief: “Our programs have been built on providing equal treatment to survivors, but that’s not necessarily equal outcome.”⁵⁶

Must FEMA ensure simply fair and equitable treatment of survivors, or work to promote equitable outcomes in its programs? Congress could determine that the Stafford Act is not designed as a tool to promote or guarantee equity, particularly equitable outcomes, and decide to retain existing authorities. Alternatively, Congress could decide to clarify disparate interpretations of the Stafford Act’s requirements and ideas about equitable assistance. Congress could consider whether there is a need to amend the Stafford Act to define equity in the context of Stafford Act assistance, potentially drawing upon definitions based on fairness, minimum outcomes, or access, as outlined by FEMA and FEMA’s NAC. Alternatively, Congress could craft an equity definition, or require FEMA to undertake rulemaking to promulgate FEMA’s operational definition that currently exists in policy. Congress could also decide to leave in place FEMA’s current interpretation to preserve agency flexibility, or to clarify and limit FEMA’s authorities to undertake such action. Should Congress do so, Congress could consider the sufficiency of FEMA’s existing authorities to ensure equity in FEMA’s pre- and post-disaster assistance programs.

Recent FEMA Equity-Related Actions

FEMA has undertaken a series of recent actions with the goal of promoting equity in its operations and grant programs (see **Table 2** for a list of recent FEMA equity initiatives). FEMA, its state, local, tribal, and territorial (SLTT) partners, and stakeholders have long designed policy to recognize that some disaster survivors may have unique needs that must be considered (e.g., individuals with disabilities and others with access and functional needs).⁵⁷ FEMA’s more recent equity initiatives arguably broadened and centralized existing efforts to recognize the distinct needs of diverse survivor populations.

Table 2. Selected Recent FEMA Equity-Focused Actions and Policies

Date	Summary of Action or Policy
August 2016	DHS, of which FEMA is a component, issued guidance in concert with the Departments of Justice, Health and Human Services, Housing and Urban Development, and Transportation to federal grantees and subfederal governments on compliance with Title VI of the Civil Rights Act of 1964 during emergency preparedness, response, and recovery efforts. ⁵⁸ FEMA established a civil rights section of the agency website.
April 2020	FEMA released guidance on the enforcement of civil rights requirements in the delivery of Stafford Act assistance for the COVID-19 pandemic. ⁵⁹

⁵⁶ Quoted in Rebecca Hersher and Ryan Kellman, “Why Fema Aid Is Unavailable to Many Who Need It the Most,” *NPR Science*, June 29, 2021, <https://www.npr.org/2021/06/29/1004347023/why-fema-aid-is-unavailable-to-many-who-need-it-the-most>.

⁵⁷ FEMA, *Developing and Maintaining Emergency Operations Plans: Comprehensive Preparedness Guide (CPG) 101*, Version 3.0, September 2021, pp. 5-6, https://www.fema.gov/sites/default/files/documents/fema_cpg-101-v3-developing-maintaining-eops.pdf.

⁵⁸ U.S. Department of Justice, “Federal Agencies Issue Joint Guidance to Help Emergency Preparedness, Response and Recovery Providers Comply with Title VI of the Civil Rights Act,” August 16, 2016, <https://www.justice.gov/opa/pr/federal-agencies-issue-joint-guidance-help-emergency-preparedness-response-and-recovery>; DHS, “Guidance to State and Local Governments on Compliance with Title VI of the Civil Rights Act of 1964.”

⁵⁹ FEMA, “Ensuring Civil Rights During the COVID-19 Response,” April 9, 2020, <https://www.fema.gov/sites/default/>

Date	Summary of Action or Policy
February 2021	FEMA established the Civil Rights Advisory Group to promote equitable vaccine policies in distribution of Stafford Act assistance and in the operations of grantees. ⁶⁰
April 2021	FEMA issued a Request for Information (RFI) seeking information from the public on how the agency's programs, regulations, and policies could "better advance the goals of equity for all, environmental justice, and bolster resilience to the impacts of climate change." ⁶¹
July 2021	FEMA forms the Equity Enterprise Steering Group composed of members of different FEMA work units to focus on "assessing issues like access and delivery of FEMA programs, services, and activities." ⁶²
September 2021	FEMA released a memorandum amending FEMA's Individual Assistance program guidance in accordance with the Biden Administration and FEMA's equity initiatives "to Advance Equity for Disaster Survivors." ⁶³ Modifications include expanding the forms of accepted documentation to verify an applicant's occupancy and ownership, which is required before FEMA can provide certain types of assistance through the Individuals and Households Program (IHP). Policy changes make IHP assistance available, including to applicants with properties passed down via heirship, as well as people who own mobile homes or travel trailers. ⁶⁴ These documentation restrictions previously disproportionately affected low-income, Black applicants, according to FEMA and news sources. ⁶⁵
September 2021	FEMA publishes a definition of equity with reference to Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. ⁶⁶

files/2020-07/fema_ensuring-civil-rights-during-covid-19-response.pdf.

⁶⁰ FEMA, "FEMA Takes Action to Ensure Equity in Vaccine Distribution," February 9, 2021, <https://www.fema.gov/blog/fema-takes-action-ensure-equity-vaccine-distribution>; FEMA, "FEMA Ensures Equitable Distribution of COVID-19 Vaccines," HQ-21-060, March 9, 2021, <https://www.fema.gov/press-release/20210309/fema-ensures-equitable-distribution-covid-19-vaccines>; DHS Office of Inspector General, "FEMA Made Efforts to Address Inequities in Disadvantaged Communities Related to COVID-19 Community Vaccination Center Locations and Also Plans to Address Inequity in Future Operations," September 28, 2022, OIG-22-74.

⁶¹ DHS/FEMA, "Request for Information on FEMA Programs, Regulations, and Policies," 86 *Federal Register* 21325-21328, April 22, 2021.

⁶² FEMA, "FEMA Announces Initial Initiatives to Advance Equity," July 21, 2021, <https://www.fema.gov/press-release/20210721/fema-announces-initial-initiatives-advance-equity>.

⁶³ Memorandum from Keith Turi, Assistant Administrator of the FEMA Recovery Directorate, to FEMA Regional Administrators, "Amendment to FP 104-009-03, Individual Assistance Program and Policy Guide, Version 1.1," September 2, 2021, https://www.fema.gov/sites/default/files/documents/fema_iappg-policy-amendments-memo.pdf (hereinafter, "Memorandum from Keith Turi"); FEMA, "FEMA Makes Changes to Individual Assistance Policies to Advance Equity for Disaster Survivors," HQ-21-193, September 2, 2021, <https://www.fema.gov/press-release/20210902/fema-makes-changes-individual-assistance-policies-advance-equity-disaster> (hereinafter FEMA, "Changes to IA Policies to Advance Equity").

⁶⁴ "Memorandum from Keith Turi"; FEMA, "Changes to IA Policies to Advance Equity."

⁶⁵ "Memorandum from Keith Turi," p. 2; FEMA, "Changes to IA Policies to Advance Equity"; Hannah Dreier and Andrew Ba Tran, "The Real Damage: Why FEMA Is Denying Disaster Aid to Black Families That Have Lived for Generations in the Deep South," *Washington Post*, July 11, 2021, <https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property/>.

⁶⁶ FEMA, "FEMA Defines Equity in its Mission of Making Programs More Accessible," HQ-21-208, September 9, 2021, <https://www.fema.gov/press-release/20210909/fema-defines-equity-its-mission-making-programs-more-accessible>.

Date	Summary of Action or Policy
December 2021	FEMA publishes its <i>2022-2026 Strategic Plan</i> ; the first goal is to “instill equity as a foundation of emergency management.” ⁶⁷
February 2022	FEMA releases its “Equity Action Plan” delineating means to implement its commitment to equity in the <i>2022-2026 Strategic Plan</i> . ⁶⁸
July 2022	FEMA announces that four agency programs will be covered under President Biden’s Justice40 Initiative, which aims to deliver 40% of overall benefits of certain federal investments to disadvantaged communities. ⁶⁹

Source: Compiled by CRS.

Considerations for Congress—Recent FEMA Actions

Congress may continue or initiate oversight actions to monitor FEMA’s recent equity initiatives, including progress in achieving the goals set forth in the agency’s *Strategic Plan* and *Equity Action Plan*.⁷⁰ Congress could, for example, track FEMA’s progress towards meeting the equity-based goals and performance measures outlined in its *Strategic Plan*, and/or require FEMA to identify the specific resources needed to advance equity in fulfillment of FEMA’s goal of instilling equity as a foundation of emergency management. This could include potential congressional support, such as broadening agency authorities or appropriating funding for equity initiatives or in anticipation of expanded program access and expenditures.

Congress may also suggest new priorities. For example, through the *Equity Action Plan*, several Members of Congress and emergency management stakeholders have promoted efforts to streamline the application process for states and individual applicants’ applications for assistance—to promote equity, reduce administrative burdens, and expedite recovery.⁷¹ Given these overlapping interests, Congress could potentially direct FEMA to simplify its applications and review process.

Alternatively, Congress may decide to clarify FEMA’s authorities should it find that proposed agency actions exceed the scope of existing statute and regulations.

⁶⁷ FEMA, *Strategic Plan*.

⁶⁸ Department of Homeland Security (DHS)/FEMA, “Agency Equity Action Plan,” https://assets.performance.gov/cx/equity-action-plans/2022/EO%2013985_FEMA_Equity%20Action%20Plan_2022.pdf (hereinafter FEMA, “Equity Action Plan”). See also, General Services Administration and Office of Management and Budget, “Advancing an Equitable Government,” <https://www.performance.gov/equity/>; FEMA, “Equity Action Plan Summary,” <https://www.whitehouse.gov/wp-content/uploads/2022/04/FEMA-EO13985-equity-summary.pdf>.

⁶⁹ FEMA, “FEMA Announces Programs Included in the Biden-Harris Administration’s Justice40 Initiative to Increase Equity, Community Resilience,” July 15, 2022, <https://www.fema.gov/press-release/20220715/fema-announces-programs-included-biden-harris-administrations-justice40>.

⁷⁰ FEMA, “Equity Action Plan” (the FEMA equity action plan was required pursuant to Executive Order 13985). See also, General Services Administration and Office of Management and Budget, “Advancing an Equitable Government,” <https://www.performance.gov/equity/>.

⁷¹ FEMA, “Equity Action Plan,” p. 15; Comment submitted by United Way of Greater Houston, “Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period,” FEMA-2021-0011-0285; Testimony of Daniele Koerner, Delaware County Department of Emergency Services, in U.S. Congress, Senate Special Committee on Aging, *Inclusive Disaster Management: Improving Preparedness, Response, Recovery*, 117th Cong., 1st sess., November 18, 2021, pp. 11-12; Comments by Representative Mucarsel-Powell, U.S. Congress, Subcommittee on Economic Development, Public Buildings, and Emergency Management, House Committee on Transportation and Infrastructure, *An Assessment of Federal Recovery Efforts from Recent Disasters*, pp. 48-49.

Data Collection and Analysis for Program Evaluation

FEMA collects limited demographic data on program applicants and recipients.⁷² For example, applicants for Individuals and Households Program (IHP) assistance provide information on citizenship status, address, insurance, household pre-disaster annual gross income, and other applicant identifying information.⁷³ FEMA does not, however, currently collect data on applicants' race, ethnicity, education, and other demographic characteristics, which limits FEMA's ability to understand the nature and extent of disparities in the provision of federal disaster assistance across different population groups. GAO noted that the Individual Assistance program lacks data and analysis that it would need to identify potential access barriers and disparate outcomes.⁷⁴

In January 2022, FEMA published a notice and request for comment on the collection of demographic information from applicants for relief, and in May 2022 published responses to 32 comments received.⁷⁵ FEMA did not specify what additional data would be collected, though the agency did note that questions regarding race, ethnicity, and tribal membership would be included, and that the agency would not be adding a question regarding citizenship status.⁷⁶ The agency did explain that

FEMA intends to add demographic questions to existing data collections for grant programs.... Such information is necessary to assess and enforce FEMA's civil rights obligations; its nondiscrimination and equity requirements and obligations as outlined in federal civil rights laws, such as the Civil Rights Act of 1964, the Rehabilitation Act, and the Stafford Act, as well as relevant Executive Orders. Collection of this information will also allow grant offices to identify and remove barriers to application, qualification and award, and permitting activities directly affecting disaster survivors to identify and remove barriers to equity and enhance programmatic accessibility.⁷⁷

Among the comments were concerns that additional data collection could raise privacy concerns and exacerbate the demands on applicants, and suggestions for interagency data sharing.⁷⁸ Many other comments supported FEMA's efforts to solicit more data and ensure that different communities had access to FEMA assistance.

⁷² Existing statutes and the U.S. Constitution do not prohibit the collection of such data. See CRS Legal Sidebar LSB10631, *The American Rescue Plan Act: Equal Protection Challenges*, by Christine J. Back and April J. Anderson.

⁷³ FEMA, *Individual Assistance Program and Policy Guide (IAPPG)*, Version 1.1, FP 104-009-03, May 2021, p. 255, https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf, (hereinafter FEMA, *IAPPG*), p. 72.

⁷⁴ Statement of Chris P. Currie, Director, Homeland Security and Justice, Testimony Before the Committee on Homeland Security, House of Representatives, *Disaster Recovery: Efforts to Identify and Address Barriers to Receiving Federal Recovery Assistance*, GAO-22-105488, October 27, 2021, p. 6, <https://www.gao.gov/assets/gao-22-105488.pdf>.

⁷⁵ DHS/FEMA, "Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for Civil Rights and Equity," 87 *Federal Register* 3836-3837, January 25, 2022, <https://www.govinfo.gov/content/pkg/FR-2022-01-25/pdf/2022-01314.pdf>; DHS/FEMA, "Agency Information Collection Activities: Submission for OMB Review. See also Thomas Frank, "FEMA to Start Tracking Race of Disaster-Aid Applicants," *Scientific American E&E News*, January 26, 2022, <https://www.scientificamerican.com/article/fema-to-start-tracking-race-of-disaster-aid-applicants/>.

⁷⁶ Comment Request; Generic Clearance for Civil Rights and Equity," 87 *Federal Register* 30246-30251, May 18, 2022, <https://www.govinfo.gov/content/pkg/FR-2022-05-18/pdf/2022-10620.pdf>.

⁷⁷ DHS/FEMA, "Agency Information Collection Activities: Submission for OMB Review; Comment Request; Generic Clearance for Civil Rights and Equity," 87 *Federal Register* 30247, May 18, 2022, <https://www.govinfo.gov/content/pkg/FR-2022-05-18/pdf/2022-10620.pdf>.

⁷⁸ *Ibid.*

Considerations for Congress—Data Collection and Evaluation

Congress may wish to monitor FEMA's implementation of recent efforts to expand applicant demographic data collection efforts, including the scope, agency use, and public access to the data collected. Congress may also consider directing FEMA to utilize measurable criteria by which the agency may monitor progress on meeting equity criteria for each program. For example, FEMA's Flood Mitigation Assistance program utilizes quantitative criteria to meet their stated equity goals, whereas the Building Resilient Communities and Infrastructure (BRIC) program does not.⁷⁹ Relatedly, Congress may assess potential risks to disaster survivors' privacy and/or increased application complexity should FEMA collect additional demographic data.

FEMA's *Strategic Plan* includes research questions the agency may use to address "evidence gaps" relevant to its three strategic goals, including the goal to ensure the equitable delivery of assistance.⁸⁰ Congress could request periodic updates on FEMA's findings and conduct oversight over subsequent agency actions. For example, Congress may wish to monitor potential policy changes undertaken if certain groups are found to face significant barriers to access, and agency efforts to evaluate the efficacy of such policy changes. Congress may also request particular data and/or responses to particular program evaluation questions enabled by new data (e.g., disparities in program access or award amount by race).

SLTT Capacity Constraints

Governments serving disadvantaged communities may face capacity constraints that inhibit their ability to pursue and receive relief. Governments representing lower-income communities may have fewer financial resources, fewer emergency management and recovery personnel, and less technical expertise and experience navigating complex federal grant programs.⁸¹ Further, communities that are smaller, rural, and lower-income may not be able to easily afford and secure consultant services to assist with FEMA grant application and review.⁸² In recent years, experts

⁷⁹ See CRS Report R46989, *FEMA Hazard Mitigation: A First Step Toward Climate Adaptation*, by Diane P. Horn.

⁸⁰ FEMA, *Strategic Plan*, Appendix 2, pp. 32-35.

⁸¹ See remarks of FEMA Administrator Deanne Criswell at the *National Hurricane Conference* in which the Administrator states, "We know that small and disadvantaged communities continue to face barriers in taking on mitigation projects. This is because the development of plans and getting through the application process takes time, it can be costly, and it can be overwhelming.... This is especially difficult for emergency management offices with limited staff and small budgets. I personally know what it was like to have a team of two fulfilling our day-to-day duties while trying to navigate bureaucratic federal assistance programs—the issue is a lack of capacity, not of interest." (FEMA, "Administrator Criswell Speech at National Hurricane Conference"). See also FEMA, *Strategic Plan*, pp. 11-12; Carlos Martín, "How Our Disaster Recovery Should Improve in the Face of Stronger Hurricanes," *Urban Wire*, *Urban Institute*, September 4, 2019, <https://www.urban.org/urban-wire/how-our-disaster-recovery-should-improve-face-stronger-hurricanes>; Rachel Lawrence et al., "Disaster Preparedness Resource Allocation and Technical Support for Native American Tribes in California," *Journal of Homeland Security and Emergency Management*, vol. 13, no. 3 (2016), pp. 351-365; GAO, *Puerto Rico Recovery: FEMA Made Progress in Approving Projects, but Should Identify and Assess Risks to the Recovery*, GAO-21-264, May 2021, <https://www.gao.gov/assets/gao-21-264.pdf>, pp. 32-33; Nicole Dash and Walter Gillis Peacock, "And the Poor Get Poorer: A Neglected Black Community," in *Hurricane Andrew, Ethnicity, Gender and the Sociology of Disasters*, Walter Gillis Peacock, Betty Hearn Morrow, and Hugh Gladwin, eds., Routledge, 1997, pp. 216-219; and GAO, *Disaster Resilience: FEMA Should Take Additional Steps to Streamline Hazard Mitigation Grants and Assess Program Effects*, GAO-21-140, February 2021, <https://www.gao.gov/assets/gao-21-140.pdf>.

⁸² GAO, *Disaster Recovery: Additional Actions Needed to Identify and Address Potential Recovery Barriers*, GAO-22-104039, December 15, 2021, <https://www.gao.gov/products/gao-22-104039>; Thomas Frank, "FEMA Climate Grants Pose Challenge for Poor Communities," *E&E News ClimateWire*, June 1, 2021; GAO, *Disaster Resilience: FEMA Should Take Additional Steps to Streamline Hazard Mitigation Grants and Assess Program Effects*, GAO-21-140, February 2021, <https://www.gao.gov/assets/gao-21-140.pdf>; Comment submitted by Washington State

and emergency management stakeholders have raised concerns that SLTTs representing underserved communities receive fewer grants and lower grant awards, for reasons including insufficient capacity and financial resources.⁸³ Experts do not know to what extent grant application complexity may keep these communities from seeking available federal assistance.⁸⁴

To assist jurisdictions with such shortfalls, FEMA sometimes provides supplemental federal personnel to communities. For example, some states have embedded FEMA Integration Teams (FITs) in their emergency operations centers. Additionally, in response to specific incidents, FEMA may deploy FEMA Incident Management Assistance Teams, Urban Search and Rescue, and federal personnel from across the government through Mission Assignments, or work orders.⁸⁵ These resources are limited: for example, FITs are not embedded in every state. During times of high demand, FEMA may not be able to fulfill all requests for federal assets.

Among the programs that have raised equity-related concerns is FEMA Public Assistance. Public Assistance provides grants to SLTTs and eligible nonprofits for at least 75% of eligible disaster response and recovery costs. Lower-income communities that are unable to meet the 25% nonfederal cost share may not pursue every possible assistance opportunity, or may struggle to navigate the complex, multi-step application review process in a timely manner.⁸⁶ While the President is authorized to increase the federal cost share, FEMA generally supports such increases by considering recovery costs—not a community's financial resources. Additionally, PA is a reimbursement-based program. Applicants generally carry out—and pay for—eligible response and recovery activities before they receive reimbursement. The need to cover up-front costs has strained SLTTs with low financial resources—particularly those facing catastrophic damages.⁸⁷

Emergency Management Division, FEMA, "Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period," FEMA-2021-0011-0154.

⁸³ Alessandra Jerolleman, "Challenges of Post-Disaster Recovery in Rural Areas," in Shirley Laska, Ed., *Louisiana's Response to Extreme Weather* (Springer Open Press, 2020), pp. 285-310; GAO, Statement of Chris P. Currie, Director, Homeland Security and Justice, Testimony Before the Subcommittee on Emergency Preparedness, Response, and Recovery, Committee on Homeland Security House of Representatives, *Disaster Resilience: Opportunities to Improve National Preparedness*, GAO-22-106046, May 17, 2022, pp. 8-9, <https://www.gao.gov/assets/gao-22-106046.pdf>; questions from Delegate Eleanor Holmes Norton, U.S. Congress, House Committee on Oversight and Reform, *Hurricane Ida And Beyond: Readiness, Recovery, and Resilience*, 117th Cong, 1st sess., October 5, 2021; Comment submitted by California Office of Emergency Services, FEMA, "Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period," FEMA-2021-0011-0261, p. 5.

⁸⁴ For discussion of this issue with respect to hazard mitigation assistance, see GAO, *Disaster Resilience: FEMA Should Take Additional Steps to Streamline Hazard Mitigation Grants and Assess Program Effects*, GAO-21-140, February 2021, <https://www.gao.gov/assets/gao-21-140.pdf>, pp. 21-22.

⁸⁵ See, FEMA, "FEMA Integration Team Launches in Maryland," release R3-19-NR-007, May 2, 2019, <https://www.fema.gov/press-release/20210318/fema-integration-team-launches-maryland>; FEMA, "Field Operations, Incident Management Assistance Teams," <https://www.fema.gov/about/offices/field-operations#imat>; FEMA, "Urban Search & Rescue," <https://www.fema.gov/emergency-managers/national-preparedness/frameworks/urban-search-rescue>; and FEMA, "Federal Agency Mission Assignments," <https://www.fema.gov/partnerships/mission-assignments>.

⁸⁶ Jasmine Butler, "Turning the Tide Toward Equity: Simplifying Federal Flood Assistance Applications," *American Flood Coalition Blog*, May 2020, <https://floodcoalition.org/2020/05/turning-the-tide-toward-equity-simplifying-federal-flood-assistance-applications/>; Comment Submitted by Washington State Emergency Management Division, FEMA, "Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period," FEMA-2021-0011-0154.

⁸⁷ Comment Submitted by Washington State Emergency Management Division, FEMA, "Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period," FEMA-2021-0011-0154. The Commonwealth of Puerto Rico cites the reimbursement procedures as one of the primary factors contributing to territory-wide recovery delays following the 2017 hurricanes. FEMA, *Puerto Rico Recovery: FEMA Made Progress in Approving Projects but Should Identify and Assess Risks to Recovery*, GAO-21-264, May 2021, pp.

Considerations for Congress—SLTT Capacity Constraints

Congress could consider addressing concerns that SLTT capacity shortfalls create hardship for disadvantaged communities and individuals through several means. It could seek more information on the problem, perhaps by requiring FEMA to evaluate and report on its deployment of federal operational assistance. Congress could conduct oversight on the existing deployment of federal personnel, technical assistance, and financial assistance for staffing to evaluate the distribution of FEMA operational resources across communities with varying capacity and need. Should Congress identify shortfalls, Congress could consider appropriating additional funds to FEMA to expand federal resources available to enhance SLTT capacity.⁸⁸ Congress could also consider requiring FEMA to identify means of simplifying existing applications and requests for assistance that may disproportionately strain SLTT governments with fewer resources and less technical expertise.

Congress could also consider addressing concerns regarding disparate SLTT capacity to cover nonfederal cost shares. To that end, Congress could consider authorizing a means for the President to provide supplemental assistance to hazard-stricken, underserved communities. For example, Congress could amend the Stafford Act to allow for an increased cost share for the Public Assistance program for small, rural, impoverished, or otherwise disadvantaged communities, and require FEMA to engage in a rulemaking or develop guidance detailing such implementation. However, Congress may weigh the potential problems and legal restrictions on targeting federal assistance based on race or national origin, and consider alternative means of defining underserved populations.⁸⁹ For example, Congress could target assistance based on historical access to federal disaster assistance, vulnerability to future hazards, or physical isolation from emergency services.

Congress may wish to weigh potential burdens on federal finances and personnel that may result from expanding direct assistance to subfederal partners. Without additional appropriations, existing FEMA resources may be strained if the agency commits additional personnel or funds to subfederal response and recovery efforts. Additionally, Congress may determine that additional subfederal assistance is at odds with the tenet that Stafford Act assistance should supplement—rather than supplant—SLTT resources.

Stafford Act Eligibility and Equity

Under current law, different types of entities and groups of individuals are eligible for different forms of federal disaster assistance. Any affected disaster survivor may access certain forms of assistance (for example, Crisis Counseling) when they are made available to a jurisdiction under a Stafford Act declaration. Other forms of assistance have more restrictive eligibility requirements that must be met (for example, assistance for home repair is available only to homeowners).⁹⁰

33-36.

⁸⁸ Comment Submitted by State of Alaska Division of Homeland Security and Emergency Management, FEMA, “Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period,” FEMA-2021-0011-0001.

⁸⁹ See CRS Report R45481, “*Affirmative Action*” and *Equal Protection in Higher Education*, by Christine J. Back; and CRS Legal Sidebar LSB10631, *The American Rescue Plan Act: Equal Protection Challenges*, by Christine J. Back and April J. Anderson.

⁹⁰ Many forms of FEMA assistance are available to individuals regardless of citizenship, such as emergency sheltering support, Crisis Counseling, Disaster Case Management, and Disaster Legal Services; however, assistance through the Individuals and Households Program requires that the applicant be a U.S. citizen, non-citizen national, or qualified

Some Members of Congress and stakeholders have raised concerns that particular limitations on eligibility are at odds with the Stafford Act's nondiscrimination requirements. Concerns include limitations on IHP assistance for individuals who are homeless;⁹¹ relief programs directed at property owners and property damages that may favor wealthier and/or whiter communities;⁹² and restrictions on Stafford Act assistance for some nonprofit organizations that often serve vulnerable communities.⁹³

FEMA has modified some applicant eligibility policies to address findings that eligibility restrictions may have resulted in inequitable distribution of Stafford Act assistance. For example, FEMA adjusted the method to determine the minimum amount of damage required to qualify for Direct Temporary Housing Assistance to address restrictions on residents with lower-value homes.⁹⁴ FEMA also expanded the forms of documentation the agency will accept to establish occupancy and ownership.⁹⁵ Upon issuing this updated guidance, FEMA stated that the change

alien (FEMA, *IAPPG*, pp. 46-47).

⁹¹ FEMA, *IAPPG*, p. 61 details limitations on assistance to individuals who are homeless. See also comments by Christopher P. Currie in response to questions by Representative Barragán, House Homeland, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*, p. 62; Comment Submitted by National Low Income Housing Coalition, FEMA, "Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period," FEMA-2021-0011-0235.

⁹² See also comments by Representative Torres and Chauncia Willis, House Homeland, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*, p. 68; Christopher Flavelle, "Why Does Disaster Aid Often Favor White People?" *New York Times*, updated October 27, 2021, <https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html>; Rebecca Hersher and Ryan Kellman, "Why FEMA Aid Is Unavailable to Many Who Need It the Most," *NPR Science*, June 29, 2021, <https://www.npr.org/2021/06/29/1004347023/why-fema-aid-is-unavailable-to-many-who-need-it-the-most>; Gary Long, "FEMA Loses Dolly Battle; Disaster Aid Sparring Ends After Eight Years," *The Brownsville Herald*, February 23, 2017; *La Union Del Pueblo Entero et al. vs. Federal Emergency Management Agency (FEMA)*, Civil No. 1:08-Cv-487, United States District Court for the Southern District of Texas, Brownsville Division, 2017; Howell and Elliot, "Damages Done."

⁹³ For example, see concerns over restrictions of Public Assistance for protection and advocacy groups for individuals with disability, Comment Submitted by National Disability Rights Network, FEMA, "Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period," FEMA-2021-0011-0205.

⁹⁴ FEMA now uses a verified loss amount of at least \$12 per square foot as the threshold for providing such assistance for homeowners (FEMA, *IAPPG*, p. 96; see also testimony of FEMA Administrator Criswell, U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *FEMA Priorities for 2022 and the 2022-2026 Strategic Plan*, 117th Cong., 1st sess., April 5, 2022). Previously, property owners had to have a real property verified loss amount of at least \$17,000 (FEMA, *IAPPG*). The goal of this policy change, according to the FEMA Administrator, was to "ensure equitable damage evaluations regardless of the amount of damage to the home" (Statement of Deanne Criswell, FEMA Administrator Before the U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Economic Development, Public Buildings, and Emergency Management, *FEMA Priorities for 2022 and the 2022-2026 Strategic Plan*, 117th Cong., 1st sess., April 5, 2022, p. 2, <https://transportation.house.gov/imo/media/doc/Criswell%20Testimony2.pdf>).

⁹⁵ "Memorandum from Keith Turi"; FEMA, "Changes to IA Policies to Advance Equity"; and FEMA, *Strategic Plan*. For example, FEMA will accept a "written self-declarative statement ... from applicants whose pre-disaster residence was passed down via heirship," which in this context, FEMA defines as "the legal right to receive real and personal property under state law upon the death of an ancestor or next of kin," pp. 8-9. Prior to this policy change, there were reports that some African American families in the Southern United States were prevented from receiving assistance for which they may have otherwise been eligible because they own property passed down by heirship and lack the formal or traditional documentation FEMA previously would accept to prove ownership (e.g., deed or deed of trust to the property). Hannah Dreier and Andrew Ba Tran, "The Real Damage: Why FEMA Is Denying Disaster Aid to Black Families That Have Lived for Generations in the Deep South," *Washington Post*, July 11, 2021, <https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property/>.

was made to “reduce barriers to access experienced by underserved populations.”⁹⁶ Furthermore, FEMA’s *Strategic Plan* adopts a “people first approach” that seeks to expand eligibility to enhance underserved communities’ participation, including by revising its guidance.⁹⁷

Considerations for Congress—Stafford Act Eligibility

Congress may consider existing statutory eligibility restrictions and their consequences for disaster survivors and communities, particularly those that are socially vulnerable. For example, Congress may consider legislation extending existing forms of assistance to currently ineligible individuals experiencing homelessness and/or renters, who on average receive less federal disaster assistance than homeowners.⁹⁸ Alternatively, Congress may consider directing FEMA to identify forms of assistance needed by underserved groups that are not currently authorized in statute.

Congress could also address eligibility restrictions established in regulations or policy by directing FEMA to review and update such policies to address findings that they burden particular disadvantaged communities and individuals (e.g., rural communities, renters, certain nonprofits). Alternatively, Congress could consider directing FEMA to modify eligibility determination procedures to reduce burdens on these communities (simplifying processes and determination letters, for example).

Conclusion

Newly proposed legislation in the 117th Congress attempts to redress concerns that federal relief may not be equitably accessed and distributed. FEMA has separately undertaken a range of actions to promote equity in its disaster mitigation and relief programs. Differing interpretations of FEMA’s authority to redress these concerns may continue to face Congress as the extent, frequency, severity, and effects of disasters increase. Further discussion is likely to address equity issues in the context of the disaster declaration process and specific FEMA disaster assistance programs.

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⁹⁶ FEMA, “Changes to IA Policies to Advance Equity”; see also FEMA, *Strategic Plan*, p. 11 (see “Equity in Action” text box).

⁹⁷ FEMA, *Strategic Plan*, p. 11.

⁹⁸ Statement of Lori Peek, House Homeland, *Ensuring Equity in Disaster Preparedness, Response, and Recovery*, p. 8 (in which the witness stated that “[a]t present, ... many Government programs do not consider equity in providing aid and therefore can actually deepen and create sustained inequalities. This leaves already vulnerable people even more at risk. For example, a recent study by Drakes and colleagues revealed low levels of post-disaster aid disbursement in places where households have high levels of social vulnerability—specifically those in rural areas, renters, the unmarried, black and Asian Americans, and those with low incomes received less aid”).

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