

# **Government Response to Hurricane Disasters**



**An Advisory Memorandum of the  
Texas Advisory Committee to the  
U.S. Commission on Civil Rights**

**March 2021**

## **Advisory Committees to the U.S. Commission on Civil Rights**

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

## **Acknowledgements**

The Texas Advisory Committee wishes to thank the speakers who participated in its public meetings, as well as the organizations and individuals who submitted written comments in connection with our investigation. The Committee also wishes to thank U.S. Commission on Civil Rights intern, Kimberly Henry, for her significant contributions and leadership in this project.

## **Advisory Memorandum**

**To:** The U.S. Commission on Civil Rights

**From:** The Texas Advisory Committee to the U.S. Commission on Civil Rights

**Date:** March 2021

**Subject:** Government Response to Hurricane Disasters

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The Texas Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) convened a series of online public meetings in November and December of 2020 to hear testimony regarding the local, state, and federal government response to hurricane disasters, specifically Hurricane Harvey, which made landfall on August 25, 2017, near Rockport, Texas.

The following advisory memorandum (“The Memorandum”) results from the testimony provided during the virtual panels, as well as related testimony submitted to the Committee in writing during the relevant period of public comment. The Memorandum begins with a brief background of the issue to be considered by the Committee, and then identifies primary findings as they emerged from the testimony. Finally, the Committee conveys its recommendations for addressing related civil rights concerns. The Memorandum is intended to focus specifically on the local, state, and federal government response to hurricane disasters, specifically Hurricane Harvey. While other important topics may have surfaced throughout the Committee’s inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. The Memorandum and the recommendations included within it were adopted unanimously by the Committee on March 15, 2021.

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## **Background**

### *Federal Emergency Management Agency (FEMA)*

The Federal Emergency Management Agency (FEMA) was established to coordinate the federal government's role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters, whether natural or man-made, including acts of terror.<sup>1</sup> FEMA is regulated by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (“Stafford Act”), signed into law November 23, 1988.<sup>2</sup> This Act constitutes the statutory authority for most federal disaster response activities. The Act was amended further as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and Related Authorities as of June 2007.

In the event of a major disaster, the Governor of a state or territory may request the President declare that a major disaster or emergency exists, thus activating an array of federal programs to assist in the response and recovery effort.<sup>3</sup> Section 308 of the Stafford Act, as amended, includes provisions for ensuring that the distribution of supplies, the processing of applications, and other relief and assistance activities are accomplished in an equitable and impartial manner without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.<sup>4</sup> The Stafford Act also makes compliance with FEMA regulations a prerequisite to participation by other bodies in relief operations. Specifically, as a condition of participation in the distribution of assistance or supplies under this act, governmental bodies and other organizations are required to comply with regulations relating to nondiscrimination.

Among other things, in operating a FEMA-assisted program, a recipient government agency receiving FEMA disaster funds cannot, on the basis of race, color, religion, disability, nationality, sex, English proficiency, age, or economic status, either directly or through contractual means:

- Deny access to program services, aids, or benefits; or
- Provide a different service, aid, or benefit, or provide them in a manner different than they are provided to others; or
- Segregate or separately treat individuals in any matter related to the receipt of any service, aid, or benefit.

Prior to Hurricane Harvey FEMA’s Office of Equal Rights (“OER”) focused on providing a discrimination-free workplace for FEMA employees while also providing guidance and support to government officials and the American people to mitigate the occurrence of discrimination in disaster recovery.<sup>5</sup> However, it was not until after Hurricane Harvey that FEMA established the

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<sup>1</sup> Federal Emergency Management Agency Website. *About the Agency*. History, <https://www.fema.gov/about-agency>.

<sup>2</sup> 42 U.S.C. § 5121 (1988).

<sup>3</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and Related Authorities § 401(a), 42 U.S.C. § 5170 (2013).

<sup>4</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and Related Authorities § 308, 42 U.S.C. § 5170 (2013).

<sup>5</sup> Leslie Saucedo, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, December 10, 2020, transcript, p. 2 (hereafter cited as *Transcript V*).

FEMA External Civil Rights Division (ECRD) specifically to address discrimination claims made by survivors and advocates.<sup>6</sup>

Once established, FEMA's ECRD received 98 discrimination complaints specific to Hurricane Harvey mostly from individual survivors.<sup>7</sup> Of those complaints, FEMA's ECRD concluded that almost 25% were not civil rights related because the complainant did not specifically identify which protected class was the basis of discrimination.<sup>8</sup> The other 75% of complaints identified at least one and, in some cases, multiple, protected class bases. The most common complaint was discrimination based on race, followed by economic status and disability. All but two of the 98 allegations received were closed without an investigation.<sup>9</sup>

ECRD Director Leslie Saucedo reported during a web hearing that these 96 allegations were closed for one of two reasons: either the individuals elected not to proceed after being advised of the process or the complaints were closed after their underlying concerns were addressed during a limited inquiry which explained FEMA's program and decisions. The two complaints that were filed and investigated were ultimately resolved.<sup>10</sup> The Office for Civil Rights and Civil Liberties at the United States Department of Homeland Security received one civil rights discrimination claim, but the complaint was closed after the allegation was unable to be substantiated.<sup>11</sup> Ms. Saucedo also explained that most civil rights concerns that arose following Hurricane Harvey were addressed without formal investigations or compliance reviews.<sup>12</sup> Following initial assistance denial and then appeal denial, the only option left for a survivor seeking FEMA assistance is to sue.<sup>13</sup>

The Stafford Act, The Public Readiness and Emergency Preparedness Act, The Disaster Recovery Reform Act of 2018 and associated programs describe specific groups of people or protected classes who are more predisposed to potential harm and/or have a history of being discriminated against. Although all survivors of a natural disaster are vulnerable, there are certain marginalized populations who face additional challenges and barriers, i.e., people with disabilities who do not have access to accommodations like wheelchairs, oxygen, or safe environments helpful to their mental illness. Throughout this report, where not identifying a specific group, the Committee will refer to these protected populations, which include race, individuals with disabilities, the elderly, immigrants, and low socioeconomic communities, as marginalized populations.

### *Hurricane Harvey*

On August 25, 2017, Hurricane Harvey made landfall near Rockport, Texas, as a Category 4 hurricane with disastrous 150-mile-per-hour winds. After it weakened and slowed, the storm stalled over the Houston area for the next four days. Harvey dropped a record-shattering 34 trillion

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<sup>6</sup> Saucedo Testimony, *Transcript V*, p. 3.

<sup>7</sup> Saucedo Testimony, *Transcript V*, p. 3.

<sup>8</sup> Saucedo Testimony, *Transcript V*, p. 3.

<sup>9</sup> Saucedo Testimony, *Transcript V*, p. 4.

<sup>10</sup> Saucedo Testimony, *Transcript V*, p. 4.

<sup>11</sup> Saucedo Testimony, *Transcript V*, p. 3-4.

<sup>12</sup> Saucedo Testimony, *Transcript V*, p. 6.

<sup>13</sup> Stephanie Duke, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, November 12, 2020, transcript, p. 24 (hereafter cited as *Transcript II*).

gallons of rainfall on Southeast Texas. Beaumont, Texas received over 60 inches of rainfall, slightly more than Houston. The storm caused nearly 780,000 Texans to evacuate their homes.

Ultimately, Harvey was the second most costly hurricane in U.S. history with \$125 billion in losses, and it caused at least 103 deaths. More than half a million households across the region applied for FEMA assistance in the aftermath of the hurricane.<sup>14</sup> In the wake of Hurricane Harvey, FEMA designated 41 Texas counties for individual assistance and 53 counties for public assistance. In addition to FEMA programs, the U.S. Department of Housing and Urban Development (“HUD”) allotted more than \$5 billion in Community Development Block Grant Disaster Recovery (CDBG-DR) funds for Texas. These funds are provided as flexible grants by HUD to help cities, counties, parishes, and states recover from presidentially declared disasters, especially in low- and moderate-income areas.<sup>15</sup> Funds are made available to states, units of general local governments, Indian tribes, and insular areas designated by the President of the United States as disaster areas.<sup>16</sup>

A specific example of a federal program implemented in the Hurricane Harvey recovery efforts is the FEMA manufactured housing unit (MHU) program. The MHU program sends what is known as “FEMA trailers” to disaster areas but it was mismanaged and prevented other programs from assisting disaster survivors. When a FEMA trailer was either unavailable or inaccessible, The City of Houston Housing and Community Development office offered to put an accessory dwelling unit on a survivor’s property during their home’s necessary post-disaster renovations. The City of Houston claimed this plan would also be less expensive than the cost of bringing in one FEMA trailer. FEMA will not provide aid to properties with accessory dwelling units because it is only authorized to provide temporary housing, and the accessory dwelling units do not have a chassis to allow this option because the accessory dwelling units are intended to be provided immediately following the storm, which HUD claims is not its designated time frame for recovery assistance.<sup>17</sup>

At the local level, Texas’ General Land Office (“GLO”) was responsible for allocating Harvey recovery funds to local governments. The GLO partnered with the University of Texas at Austin to develop the regional Methods of Distribution (“MOD”) for housing (Homeowner Assistance Program and Local Buyout/Acquisition Program) and to build infrastructure developments to remediate future disasters. The MODs for these allocations used census data, FEMA Individual Assistance data, FEMA Public Assistance data, and measurement of the impact of Hurricane Harvey to distribute funds. In both housing and infrastructure, the MODs established a balance between the total unmet need, the ability to recover, and the relative population of impacted areas.<sup>18</sup> Regional boards known as Councils of Governments drew up the plans for distributing

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<sup>14</sup> Jie Wu, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, December 1, 2020, transcript, p. 21 (hereafter cited as *Transcript III*).

<sup>15</sup> U.S. Department of Housing and Urban Development Website. *Programs of HUD*. Community Development Block Grants (Disaster Recovery Assistance). Found at: <https://www.hud.gov/hudprograms/disaster-recovery>.

<sup>16</sup> Texas General Land Office Website. *Community Development Block Grant – Disaster Recovery (CDBG-DR) Overview*. Found at: <https://recovery.texas.gov/local-government/resources/overview/index.html>.

<sup>17</sup> McCasland Testimony, *Transcript I*, p. 15.

<sup>18</sup> McCasland Testimony, *Transcript I*, p. 15.

CDBG-DR funds for housing. There are 24 Councils of Government across Texas, each one representing multiple counties.<sup>19</sup>

However, in a letter to Shaun Davis, Executive Director of the Southeast Texas Regional Planning Commission (SETRPC), from Madison Sloan, Director of Disaster Recovery and Fair Housing Project of Texas Appleseed, Sloan stated that SETRPC allocated funds based solely on level of inundation and total population in the inundated area without considering unmet need, ability to recover, or the relative population of the impacted area.<sup>20</sup> Sloan stated that “this distribution is blatantly inequitable and inconsistent with damage data.” For example, Port Arthur would receive only about twice as much funding as cities with less than 1% of its population. Beaumont will receive less than twice the funding of cities that are 0.5% of its size.<sup>21</sup> Sloan concluded that this distribution of funds disproportionately benefitted White and wealthy residents.

In addition, the GLO established a minimum grant award of \$1 million. The GLO did not explain how or why this minimum was established. As a result, small cities which submitted requests for \$1 million or more received disproportionately large allocations. For example, Taylor Landing, (a city of about 237 people, of which 87.3% are non-Hispanic White) with a median income of \$45,390 and with 22 people (9%) impacted, was approved for an allocation of \$1,333,160, or \$151,495.45 per home (\$60,598 per impacted person). Bevil Oaks (which is 81.8% non-Hispanic White), received \$2 million, or over \$4,000 per affected person. In Port Arthur (a city that is 38.2% Black, 31.8% Hispanic, and 22% non-Hispanic White), the figure was \$85 per home, and in Beaumont (a city which is 34% non-Hispanic White, 48% Black, and 14.4% Hispanic), the figure was \$41.<sup>22</sup> Many small communities with primarily marginalized populations did not have the resources or expertise to prepare a funding proposal, or needed assistance in amounts less than \$1 million, which eliminated them from the process.

In its written testimony submitted to the Committee, the GLO denied the allegation of racial disparity, stating that of the 22 cities and counties allocated funds, Port Arthur received the highest allocation.<sup>23</sup> Further, each city and county must spend at least 70 percent of their funds to benefit low- and moderate-income persons. However, the SETRPC’s MOD did not include a plan to meet the 70 percent low- and moderate-income benefit requirement, and as described above, disproportionately benefitted higher income, smaller and primarily White communities. The “storm impact” methodology used did not consider unmet need, ability to recover, and relative population.<sup>24</sup> Sloan commented that “low-income communities and communities of color are

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<sup>19</sup> Texas General Land Office Website. Local Buyout & Acquisition. Found at: <https://recovery.texas.gov/local-government/programs/local-buyout-acquisition/index.html>.

<sup>20</sup> Letter from Madison Sloan Director, Disaster Recovery and Fair Housing Project at Texas Appleseed to Shaun Davis, Executive Director at Southeast Texas Regional Planning Commission. *Re: Texas Appleseed Comments on SETRPC’s Hurricane Harvey Round 1 Method of Distribution*. July 20, 2018. Found at: <https://www.texasappleseed.org/sites/default/files/7-20-18%20TA%20comments%20on%20SETRPC%20MOD.pdf>

<sup>21</sup> *Ibid.*

<sup>22</sup> Karen Paup, Co-Director, Texas Housers & Texas Low Income Housing Information Service, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, November 11, 2020, at 2. (hereinafter Paup Statement).

<sup>23</sup> Sarah Douglas, Intergovernmental Relations, Texas General Land Office, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, January 15, 2021, at 1 (hereafter GLO Statement).

<sup>24</sup> Letter from Madison Sloan Director, Disaster Recovery and Fair Housing Project at Texas Appleseed to Shaun Davis, Executive Director at Southeast Texas Regional Planning Commission. *Re: Texas Appleseed Comments on SETRPC’s Hurricane Harvey Round 1 Method of*



disproportionately affected by and have a harder time recovering from disasters because of both geographic and social vulnerability forced on them by segregation, discrimination, and often the cumulative effects of previous disaster, on wealth and access to opportunity. Failure to consider these issues is a failure to comply with the obligation to affirmatively further fair housing.”<sup>25</sup>

On August 25, 2018, Harris County voters approved \$2.5 billion in bonds to finance flood damage reduction projects.<sup>26</sup> These funds, along with additional federal funds such as CDBG-DR funds, will result in an estimated \$4.8 billion in infrastructure improvements.<sup>27</sup> In May 2020, the Harris County Commissioners Court approved details and modifications to the 2018 Bond Program, including issuing its prioritization framework and establishing its plan for equitable distribution of funding.<sup>28</sup>

Despite Harvey being a massive event that affected over 45% of Houstonians, losses of homes and damage to homes were larger in lower income neighborhoods.<sup>29</sup> In the Houston area, 30,000 survivors remained displaced a year after the storm.<sup>30</sup> Specifically, at that time, 25% of a combined population of White residents and higher income residents reported their lives still severely disrupted from the storm. By comparison, approximately 40% of low-income residents and Black residents reported their lives were severely disrupted one year later.<sup>31</sup> Furthermore, 27% and 20% of Hispanic and Black people, respectively, stated their living conditions a year after Hurricane Harvey were not safe, compared with 11% of Whites.<sup>32</sup>

Various research foundations, government agencies, and nonprofits analyzed Hurricane Harvey. The common area discussed in various data analysis reports covers 24 of the 41 counties that were declared as a federal disaster area. The 24 counties selected were the counties most impacted by Hurricane Harvey and were home to 7.95 million people (94% of the impacted population).<sup>33</sup> Some of the analyses are referenced in the findings of this Memorandum. Race and ethnicity data were very diverse in this focused area, with the population being 40% White, 36% Hispanic, 16% Black, 6% Asian, and 2% others. Economic status was also diverse with 15% of the population in the 24

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*Distribution*. July 20, 2018. Found at: <https://www.texasappleseed.org/sites/default/files/7-20-18%20TA%20comments%20on%20SETRPC%20MOD.pdf>

<sup>25</sup> *Ibid*.

<sup>26</sup> Harris County Flood Control District Website. *2018 Bond Program*. Found at: <https://www.hcfd.org/2018-bond-program>.

<sup>27</sup> *Ibid*.

<sup>28</sup> Harris County Flood Control District. *Prioritization Framework for the Implementation of the Harris County Flood Control District 2018 Bond Projects*. August 27, 2019. Found at: [https://www.hcfd.org/Portals/62/Resilience/Bond-Program/Prioritization-Framework/final\\_prioritization-framework-report\\_20190827.pdf?ver=2019-09-19-092535-743](https://www.hcfd.org/Portals/62/Resilience/Bond-Program/Prioritization-Framework/final_prioritization-framework-report_20190827.pdf?ver=2019-09-19-092535-743).

<sup>29</sup> Pablo Pinto Testimony, *Transcript III*, p. 14.

<sup>30</sup> Pinto Testimony, *Transcript III*, p. 13.

<sup>31</sup> Liz Hamel, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, December 3, 2020, transcript, p. 4 (hereafter cited as *Transcript IV*).

<sup>32</sup> Hamel Testimony, *Transcript IV*, p. 4; Pinto Testimony, *Transcript III*, p. 14.

<sup>33</sup> Liz Hamel et al., “One Year After the Storm: Texas Gulf Coast Residents’ Views and Experiences with Hurricane Harvey Recovery,” August 2018, p. 3, [https://www.episcopalhealth.org/wp-content/uploads/2020/01/EHFKFF\\_Hurricane\\_Harvey\\_anniversary\\_survey\\_report.pdf](https://www.episcopalhealth.org/wp-content/uploads/2020/01/EHFKFF_Hurricane_Harvey_anniversary_survey_report.pdf); The Kaiser Family Foundation and Episcopal Health Foundation, *One Year After the Storm: Texas Gulf Coast Residents’ Views and Experiences with Hurricane Harvey Recovery*, p. 3, available at: [https://www.episcopalhealth.org/wp-content/uploads/2020/01/EHFKFF\\_Hurricane\\_Harvey\\_anniversary\\_survey\\_report.pdf](https://www.episcopalhealth.org/wp-content/uploads/2020/01/EHFKFF_Hurricane_Harvey_anniversary_survey_report.pdf).

counties officially designated as living in poverty.<sup>34</sup> In this same area, approximately 25% of these residents were immigrants.<sup>35</sup>

Although Hurricane Harvey occurred over three years ago, it continues to burden Texas families. The most recent data from the summer of 2020 by the University of Houston School of Public Affairs found that 20% of Houstonians have not fully recovered from Harvey's consequences.<sup>36</sup>

### *Racial Disparities*

Communities of color have the fewest resources, face the longest, deepest paths to recovery, and are more vulnerable to the stress and shocks caused by a natural disaster.<sup>37</sup> Recovery varies by race and ethnicity: White respondents reported lower rates of losses (2.6%) and higher rates of recovery; 7% of African American respondents and 8% of Hispanics reported having recovered little or not at all.<sup>38</sup>

In a 2018 study, researchers from Rice University and the University of Pittsburgh found that FEMA aid increased wealth inequality, stating, "These findings are disconcerting because such damages are widespread; they are projected to increase dramatically over coming years; and FEMA aid—as currently administered—appears to exacerbate the problem."<sup>39</sup>

Based on historical disaster trends, FEMA designated 100-year flood zones across the country to show zones with higher risk of flooding compared to those outside the zone. However, regardless of which side of the zone marginalized populations reside, they face disparities during and after disasters. Black and Hispanic residents in Harris County outside the flood zone were flooded at disproportionately higher rates during hurricane Harvey than White residents.<sup>40</sup> This was particularly true in the city of Houston, where these groups, as well as immigrants, traditionally live on low lying land because of historic segregation and discriminatory housing policies, with neighborhoods that experienced decades of disinvestment, such as poor storm water infrastructure.<sup>41</sup>

Areas of need with scarce capacity to recover are often overlooked for mitigation projects.<sup>42</sup> For example, because of the proximity of low-income communities of color to environmental hazards, historic disinvestment, and segregation, the home values in these neighborhoods are much less than comparable homes in areas that are less flood prone. The locally administered buyouts offered

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<sup>34</sup> Liz Hamel et al., "One Year After the Storm: Texas Gulf Coast Residents' Views and Experiences with Hurricane Harvey Recovery," August 2018, [https://www.episcopalhealth.org/wp-content/uploads/2020/01/EHFKFF\\_Hurricane\\_Harvey\\_anniversary\\_survey\\_report.pdf](https://www.episcopalhealth.org/wp-content/uploads/2020/01/EHFKFF_Hurricane_Harvey_anniversary_survey_report.pdf).

<sup>35</sup> Bryan Wu et al., "Hurricane Harvey: The Experiences of Immigrants Living in the Texas Gulf Coast," March 2018, <http://files.kff.org/attachment/Report-Hurricane-Harvey-The-Experiences-of-Immigrants-Living-in-the-Texas-Gulf-Coast>.

<sup>36</sup> Pinto Testimony, *Transcript III*, p. 14.

<sup>37</sup> Maddie Sloan, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, August 20, 2020, transcript, p. 4 (hereafter cited as *Preliminary Hearing*); Sarah Saadian Testimony, *Transcript II*, p. 13; Wu Testimony, *Transcript III*, pp. 20-21.

<sup>38</sup> Pinto Testimony, *Transcript III*, pp. 14-15.

<sup>39</sup> Junia Howell & James R. Elliott, "Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States." *Social Problems*, Volume 66, Issue 3, August 2019, Pages 448-467, <https://doi.org/10.1093/socpro/spy016>

<sup>40</sup> Wu Testimony, *Transcript III*, p. 20.

<sup>41</sup> Wu Testimony, *Transcript III*, p. 20.

<sup>42</sup> Rebecca Hersher and Robert Benincasa, "How Federal Disaster Money Favors the Rich." *Houston Public Media*. March 5, 2019. Found at: <https://www.npr.org/2019/03/05/688786177/how-federal-disaster-money-favors-the-rich>.

to these homeowners are often not enough to help them afford new homes away from flood zones.<sup>43</sup>

At this time, there is minimal disaggregated FEMA data that would provide insight on disaster response or verify that procedures and operations are equitable.<sup>44</sup> For example, a recently passed Texas law<sup>45</sup> makes the addresses of disaster survivors confidential. Without being able to analyze what areas and locations received what help, it is impossible for advocates to assess whether aid is being distributed equitably.<sup>46</sup>

### *People with Disabilities*

Harris County, Texas' most populous county, is home to 410,000 people with disabilities; 215,000 in the city of Houston alone.<sup>47</sup> Cognitive impairment was the most prevalent type of disability for minors, and for those 18 years of age and older, ambulatory difficulty and independent living difficulty were the top two most prevalent types of disability.<sup>48</sup> Sixty-two percent (62%) of persons with a disability over the age of 16 are Hispanic, Black, or another non-White race or ethnicity in Harris County.<sup>49</sup>

There have been concerns over the response of local officials to the specific needs of the nearly 861,000 people with disabilities in the area damaged by the storm during and after Hurricane Harvey.<sup>50</sup> FEMA has “no way of knowing” how many people with disabilities were impacted by the hurricane, agency spokesperson Lauren S. Hersh said in an email to the Texas Tribune.<sup>51</sup> There is also no data to show how many individuals with disabilities filed for assistance following Hurricane Harvey. However, data has been released that show 10,949 individuals with a disability of an unknown number of applicants were denied housing assistance because the residences were deemed safe to occupy.<sup>52</sup> A disability disaster survivor hotline was operated by The Houston Mayor's Office for People and the Partnership for Inclusive Disaster Strategies for nine months following Hurricane Harvey. The administrators reported the hotline was overrun with requests from survivors, some of whom waited hours or even days before receiving helpful information or being evacuated.<sup>53</sup>

### *Disaster Recovery Workers*

A report from the Great Cities Institute at the University of Illinois found that in just the first four weeks after Hurricane Harvey, more than one-quarter (26%) of day laborers were victims of wage

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<sup>43</sup> Ibid.

<sup>44</sup> Elena White Testimony, *Transcript III*, p. 9; Saadian Testimony, *Transcript II*, p. 18; Duke Testimony, *Transcript II*, p. 24.

<sup>45</sup> Acts 2019, 86th Leg., R.S., ch. 1065, § 418.054(d) (2019)

<sup>46</sup> Rachel Zummo Testimony, *Transcript II*, p. 4.

<sup>47</sup> Gabe Cazares Testimony, *Transcript IV*, p. 19.

<sup>48</sup> Harris County Community Services Department. *Harris County Community Profile & Housing Market Analysis*. Found at: [https://csd.harriscountytexas.gov/Documents/Section\\_3\\_Community\\_Profile\\_and\\_Market\\_Analysis.pdf](https://csd.harriscountytexas.gov/Documents/Section_3_Community_Profile_and_Market_Analysis.pdf).

<sup>49</sup> Harris County Community Services Department. *Harris County Community Profile & Housing Market Analysis*. Found at: [https://csd.harriscountytexas.gov/Documents/Section\\_3\\_Community\\_Profile\\_and\\_Market\\_Analysis.pdf](https://csd.harriscountytexas.gov/Documents/Section_3_Community_Profile_and_Market_Analysis.pdf).

<sup>50</sup> U.S. Census Bureau. (2016). American Community Survey 5-year estimate.

<sup>51</sup> Marissa Evans. “After Harvey, questions remain about whether registry helped people with disabilities.” *The Texas Tribune*. Aug. 22, 2018. Found at: <https://www.texastribune.org/2018/08/22/did-state-registry-help-people-disabilities-during-harvey/>

<sup>52</sup> Stephanie Duke, Attorney, Disability Rights Texas, *Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights*, November 25, 2020, at p. 4 (hereinafter Duke Statement).

<sup>53</sup> Evans. *The Texas Tribune*. Aug. 22, 2018.

theft, including being underpaid for overtime.<sup>54</sup> The same report found that 85% of day laborers who worked in hurricane-affected areas reported that they did not receive any training for the worksites they entered nor were they informed of the risks related to mold and working in contaminated water.<sup>55</sup> Ultimately, this led to a third of those respondents being injured on the job due to unsafe conditions, lack of protective equipment, and pressure to work faster.<sup>56</sup>

Furthermore, immigrant workers were much more likely to be employed as informal day-laborers in the extensive demolition and construction following Hurricane Harvey. Dangerous working conditions, poverty wages, and chronic wage theft for immigrant workers in the construction industry is already common without a disaster and are only worsened in the wake of a large-scale disaster.<sup>57</sup>

### **Overview of Testimony**

The Texas Advisory Committee is comprised of Texas citizens who strove to evaluate the local, state, and federal government response to hurricane disasters, specifically Hurricane Harvey, from an open- minded and neutral posture. During a series of online panels, the Committee heard from academic experts, community advocates, federal, state, and local government officials, and directly impacted individuals. The agendas, minutes, and presentation slides for these panels can be found in Appendix A. The Committee also invited broad participation through written testimony and received a number of written statements offering supplemental information on the topic. Written testimony was accepted until January 15, 2021, when the official record was closed.<sup>58</sup>

The Committee went to great lengths to solicit participation from stakeholders representing diverse perspectives. The Committee made many outreach attempts over several months to engage government agencies relevant to disaster response, including FEMA, HUD, South East Texas Regional Planning Commission, and the Texas Windstorm Insurance Association, soliciting their participation at the public meeting, through written testimony, and/or by joining a Committee meeting. Regrettably, after multiple attempts by Committee members and U.S. Commission on Civil Rights staff, the views of these stakeholders remain largely absent from this memorandum. A full list of individuals and organizations that were invited, but were unable or unwilling to participate, is attached in Appendix III.

Initially, FEMA's Office of External Affairs agreed to respond in writing to a list of questions compiled by the Committee. This written testimony was intended to complement the participation of the Director of FEMA's External Civil Rights Division. However, the Committee was later informed that they were unable to answer the questions in the given timeframe, and all the questions went unanswered. A full list of the questions can be found in Appendix VI.

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<sup>54</sup> Nick Wertsch Testimony, *Transcript III*, p.14.

<sup>55</sup> Nick Wertsch Testimony, *Transcript III*, p.14.

<sup>56</sup> Katy Atkiss Testimony, *Transcript IV*, p.9; Wertsch Testimony, *Transcript III*, p.14.

<sup>57</sup> Wertsch Testimony, *Transcript III*, p.14.

<sup>58</sup> Written testimony submitted can be found in Appendix V.

## **Findings**

The section below provides findings from the Committee’s work and reflects views of the cited panelists, not necessarily the members of the Committee. While the Committee has not independently verified each assertion, panelists were chosen to testify due to their professional experience, academic credentials, subject matter expertise, and/or first-hand experience with the topics at hand.

1. Experiencing a natural disaster, like Hurricane Harvey, exacerbates pre-existing systemic inequalities.
  - a. Data show that low-income and marginalized populations suffer more and are more vulnerable to natural disasters, have fewer recovery resources,<sup>59</sup> and are less able to rely on their neighbors and community programs than higher income residents.<sup>60</sup> Therefore, marginalized families living in more racially heterogeneous communities are automatically at a disadvantage compared to White, more affluent neighbors with respect to receiving aid and successfully recovering.<sup>61</sup>
  - b. Lack of access to information, low technology literacy, and/or limited English proficiency is common in immigrant communities and/or communities with low rates of education.<sup>62</sup>
  - c. Race, directly or indirectly, affects the economic impacts of a natural disaster. Following Hurricane Harvey, 15% of White residents affected by the hurricane reported that a household member lost their job due to Harvey, compared to 33% of Black and Hispanic households.<sup>63</sup> Wage losses were more severe among nonwhite respondents and renters with an annual income below \$50,000.<sup>64</sup> Seventy-one percent (71%) of Hispanic respondents reported wage losses, compared to only 50% of White respondents.
  - d. The Houston-Galveston Area Council of Governments and other agencies utilize FEMA’s post disaster assessment criteria in their own aid decisions and program operations, therefore potentially extending inequalities in the hardest hit communities.<sup>65</sup> If the data are inaccurate, biased, misleading, or unclear, the factors and information used by other agencies can continue to exacerbate the

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<sup>59</sup> Wu Testimony, *Transcript III*, p. 21; Sarah Douglas, Intergovernmental Relations, Texas General Land Office, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, January 15, 2021, at 1 (hereafter GLO Statement).

<sup>60</sup> Wu Testimony, *Transcript III*, p. 21.

<sup>61</sup> Pinto Testimony, *Transcript III*, p. 15.

<sup>62</sup> Ann Morse. “A Look at Immigrant Youth: Prospects and Promising Practices,” *National Conference of State Legislatures*, March 2005. Found at: <https://www.ncsl.org/research/immigration/a-look-at-immigrant-youth-prospects-and-promising.aspx>.

<sup>63</sup> Pablo Pinto, Director, Center for Public Policy, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, December 10, 2020, at p. 1 (hereinafter Pinto Statement).

<sup>64</sup> Pinto Testimony, *Transcript III*, p. 14; Pinto Statement, at 1.

<sup>65</sup> Chuck Wemple, testimony, *Web Briefing Before the Texas Advisory Committee to the U.S. Commission on Civil Rights*, November 10, 2020, transcript, p. 21 (hereafter cited as *Transcript I*).

harm to marginalized populations which have already experienced discrimination.

- e. The Gulf Coast region has very high rates of inherited property ownership, which occurs most often in minority and lower income families.<sup>66</sup> In the event of a natural disaster, it is challenging if not impossible to prove ownership without a copy of the will (if any) or other documentation to prove they are eligible for aid.<sup>67</sup>
2. Inconsistent and inadequate policies, programs, and eligibility criteria create unnecessary, compounding challenges for already marginalized populations.
    - a. Trauma from disaster-related challenges experienced by marginalized populations leads to cumulative, negative mental health outcomes for many survivors.<sup>68</sup> This trauma and the subsequent mental health impacts can weigh heavier and remain longer for these populations when programs fail to address these impacts.
    - b. While higher income communities are more resilient<sup>69</sup> when disaster strikes, the lowest income and most marginalized survivors are often the hardest hit and most vulnerable to flooding because of where their homes are located.<sup>70</sup>
    - c. After Hurricane Harvey made landfall, FEMA deployed one person to serve as a liaison for the 410,000 people with disabilities in Harris County.<sup>71</sup>
    - d. Although there are 145 languages spoken in Houston alone, when Hurricane Harvey made landfall, real-time information was rarely available except in English and Spanish.<sup>72</sup> Even so, three in 10 residents in the 24 counties surveyed reported that it was either very or somewhat difficult to find information about recovery assistance in Spanish.<sup>73</sup> Houston government employees have access to a real time translation line, but many were not aware they had access to this service.<sup>74</sup>
    - e. Lifesaving disaster preparedness information is not always accessible and/or understandable. Even when there are disaster preparation and recovery materials available, research has found they do not match the literacy and language skills of many adults.<sup>75</sup>

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<sup>66</sup> Saadian Testimony, *Transcript II*, p. 26.

<sup>67</sup> Sapna Aiyer Testimony, *Transcript II*, p. 7; Rachel Zummo Testimony, *Transcript II*, p. 3; Saadian Testimony, *Transcript II*, p. 13 & p. 26.

<sup>68</sup> Wu Testimony, *Transcript III*, p. 22.

<sup>69</sup> Karen Paup Testimony, *Transcript II*, p. 12.

<sup>70</sup> Sloan Testimony, *Preliminary Hearing*, p. 4; Saadian Testimony, *Transcript II*, p. 13, Wu Testimony, *Transcript III*, p. 20.

<sup>71</sup> Cazares Testimony, *Transcript IV*, p. 19.

<sup>72</sup> Atkiss Testimony, *Transcript IV*, p. 8.

<sup>73</sup> Hamel Testimony, *Transcript IV*, p. 5.

<sup>74</sup> Atkiss Testimony, *Transcript IV*, p. 8.

<sup>75</sup> Atkiss Testimony, *Transcript IV*, p. 8.

- f. FEMA overestimated how many trailers it would need for Hurricane Harvey efforts by 2,600 trailers, which cost \$152 million. Another \$29 million was wasted in transportation costs of the 2,400 tank and pump systems.<sup>76</sup>
  - g. FEMA has no proactive post-disaster outreach. Already traumatized from a natural disaster, survivors are burdened with getting help themselves, regardless of known limitations due to disability, age, or location. Survivors must get to an aid location, request assistance, justify the need, and wait for approval or denial before a FEMA official will come to the home to address the emergency needs of the survivor, such as a wheelchair or oxygen tank.<sup>77</sup>
  - h. FEMA focuses its disaster preparedness campaigns on encouraging residents to have insurance.<sup>78</sup> Since Hurricane Harvey, FEMA increased public education about the importance of buying insurance. However, the reason why families often do not have flood insurance is not a lack of education but rather the unaffordable cost of that insurance, climbing as high as \$2,200 per year.<sup>79</sup>
3. Applications for recovery assistance are overly complicated and further separate marginalized populations from fairly and adequately receiving aid.
- a. Applying for aid was the top item people said they need help with after a disaster.<sup>80</sup> Only one in four applicants will complete the housing aid application process.<sup>81</sup> Lawyers have described having to develop a “special skillset to navigate the system.” Therefore, applicants without access to legal services were at a disadvantage when seeking assistance.<sup>82</sup>
  - b. The process is not transparent and lacks a reasonable accommodation process. There are case managers deployed by FEMA following a natural disaster to assist with the application process; however, these case managers are overstretched and performing multiple roles.<sup>83</sup> The burden to receive help is subsequently placed on the FEMA applicant.<sup>84</sup>
  - c. Applications for aid and resources can be extensive, redundant, and only accessible online. This can be difficult for any survivor to navigate immediately

<sup>76</sup> Homeland Security Today, *FEMA Purchased More Manufactured Housing Units Than It Needed in Texas After Hurricane Harvey*, 2020, [https://www.hstoday.us/subject-matter-areas/emergency-preparedness/fema-purchased-more-manufactured-housing-units-than-it-needed-in-texas-after-hurricane-harvey/#:~:text=CBP%20photo\)-.FEMA%20Purchased%20More%20Manufactured%20Housing%20Units%20Than,in%20Texas%20After%20Hurricane%20Harvey&text=The%20Federal%20Emergency%20Management%20Agency,Office%20of%20Inspector%20General%20found](https://www.hstoday.us/subject-matter-areas/emergency-preparedness/fema-purchased-more-manufactured-housing-units-than-it-needed-in-texas-after-hurricane-harvey/#:~:text=CBP%20photo)-.FEMA%20Purchased%20More%20Manufactured%20Housing%20Units%20Than,in%20Texas%20After%20Hurricane%20Harvey&text=The%20Federal%20Emergency%20Management%20Agency,Office%20of%20Inspector%20General%20found).

<sup>77</sup> Saucedo Testimony, *Transcript V*, p. 6.

<sup>78</sup> The Gulf Coast has been affected by devastating hurricanes 64 times between 1851 and today. (National Weather Service. *The Official South Texas Hurricane Guide*. Found at: [https://www.weather.gov/media/crp/Hurricane\\_Guide\\_Final\\_English.pdf](https://www.weather.gov/media/crp/Hurricane_Guide_Final_English.pdf)) If residents received disaster assistance in the past and did not subsequently purchase flood insurance and/or make improvements to their housing, they were not eligible for federal assistance after Hurricane Harvey. The occurrence of storms is expected to rise, with 30 named storms occurring in the Atlantic in 2020, breaking previous years' records. (*Record-breaking Atlantic Hurricane Season Draws to an End*, National Ocean and Atmospheric Administration, November 25, 2020. <https://www.noaa.gov/media-release/record-breaking-atlantic-hurricane-season-draws-to-end>).

<sup>79</sup> Zummo Testimony, *Transcript II*, p. 3.

<sup>80</sup> Hamel Testimony, *Transcript IV*, p. 18.

<sup>81</sup> Wemple Testimony, *Transcript I*, p. 23.

<sup>82</sup> Zummo Testimony, *Transcript II*, p. 3; White Testimony, *Transcript III*, p. 9; Atkiss Testimony, *Transcript IV*, p. 9.

<sup>83</sup> Atkiss Testimony, *Transcript IV*, p. 9; White Testimony, *Transcript III*, p. 9; Stoecker Testimony, *Transcript III*, p. 5

<sup>84</sup> Duke Testimony, *Transcript II*, p. 10.

following a disaster, but it is disproportionately burdensome on disabled individuals, the elderly, those with little or no access to or proficiency with technology (e.g., the Internet), and people with limited English proficiency.<sup>85</sup> A significant barrier for some low-income survivors requesting aid is the requirement to produce numerous documents when they are already facing economic-related limitations such as lack of access to reliable technology and/or transportation.<sup>86</sup>

- d. Low-income families and seniors in Houston are eligible and already receiving other forms of federal aid like Supplemental Nutrition Assistance Program (SNAP).<sup>87</sup> Allowing these other aid programs to qualify an applicant for disaster recovery funds would eliminate an unnecessary barrier to families receiving assistance.<sup>88</sup>
  - e. Applications and other aid forms are translated using Google Translate rather than live person or proper document translation, leading to possible misunderstandings of crucial legal forms necessary to get help.<sup>89</sup>
4. Aid distribution policies and decisions had a disparate impact on marginalized populations and contributed to widening wealth inequality.<sup>90</sup>
- a. The more FEMA aid an area received, the more wealth inequality and racial disparity is increased.<sup>91</sup> For example, 95% of homes in Port Arthur flooded, a city where 70% of residents are people of color and 22% are non-Hispanic White.<sup>92</sup> Taylor Landing, a city that is 87% non-Hispanic White, received \$60,000 of relief funding per person; each Port Arthur resident received only \$84.<sup>93</sup> Although Texas GLO reported that Port Arthur received the highest allocation in the Hurricane Harvey Local Buyout and Acquisition Program,<sup>94</sup> the Port Arthur Mayor reported shortcomings, such as lack of funding for apartment repairs from Hurricane Harvey.<sup>95</sup>
  - b. The three cities in the Southeast Texas region with the highest percent of Black non-Hispanic people were also allocated the lowest per capita funding for buyouts of flood-devastated homes. Nearby cities with an average non-Hispanic White population of 88% received the highest per-capita funding.<sup>96</sup>
  - c. Disaster aid and recovery programs, especially FEMA's, do not necessarily consider the impact that disaster related hazards can have on specific individuals,

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<sup>85</sup> Aiyer Testimony, *Transcript II*, p. 8.

<sup>86</sup> Tom McCasland Testimony, *Transcript I*, p. 8.

<sup>87</sup> McCasland Testimony, *Transcript I*, p. 4.

<sup>88</sup> McCasland Testimony, *Transcript I*, p. 4.

<sup>89</sup> Tomas Aguilar Testimony, *Transcript IV*, p. 6.

<sup>90</sup> Saadian Testimony, *Transcript II*, p. 14; Atkiss Testimony, *Transcript IV*, p. 7; Palay Testimony, *Transcript IV*, p. 12.

<sup>91</sup> Chrishelle Palay Testimony, *Transcript IV*, p. 12.

<sup>92</sup> Robert Grimm Testimony, *Transcript I*, p. 5; Paup Statement, at 2.

<sup>93</sup> Paup Statement, at 2.

<sup>94</sup> GLO Statement, at 2.

<sup>95</sup> Mayor Thurman Bartie, *Transcript I*, p. 25.

<sup>96</sup> Paup Statement, at 2.



and their health and safety, within their disaster damaged residence.<sup>97</sup> When these programs do not consider these factors, residents who are unable to make expensive home renovations that can withstand hurricane damage are left to deal with further damage, such as mold and leaks, years later.<sup>98</sup>

- d. Many advocates recommended increasing training for aid program employees around the needs of people with disabilities and trauma informed care<sup>99</sup> at all levels of government.<sup>100</sup> Panelists raised concerns about inadequate training, inability to manage disability-related issues, inconsistency in filing procedures, and minimal supervision.<sup>101</sup> For example, FEMA staff are required to take only a 30-minute training video on disability related matters.<sup>102</sup>
- e. FEMA's "50% Rule"<sup>103</sup> disproportionately impacts Black and Hispanic people, elderly people, and people living with disabilities,<sup>104</sup> populations that do not necessarily have the means to fulfill these requirements, resulting in aid denial.
- f. In Houston, homes requiring a full rebuild are older homes<sup>105</sup> and disproportionately owned by minority individuals.<sup>106</sup> However, the value of a home could be justification for FEMA or HUD to not approve a rebuild. Therefore, residents are left to live in unsafe, unsanitary homes with the inevitability of a future disaster in the area.
- g. FEMA's habitability standard and process for determining eligibility is not practical for all survivors, especially those with disabilities who may need special accommodations like specifically angled ramps, wider opening doorways, and disability-accessible appliances. In a documented appeal, FEMA acknowledged the applicant had a disability, but declared it is ultimately the responsibility of the applicant to meet their own accessibility needs.<sup>107</sup>
- h. Before Hurricane Harvey, a federal court found a disqualifying factor to receive aid known as "deferred maintenance," a standard of a resident not meeting a certain home standard pre-disaster, to be illegal. However, during Hurricane Harvey recovery, FEMA continued to apply the same standard using a different term- "pre-existing conditions."<sup>108</sup>

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<sup>97</sup> Duke Testimony, *Transcript II*, p. 9; Duke Statement, at 2.

<sup>98</sup> Palay Testimony, *Transcript IV*, p. 14.

<sup>99</sup> Atkiss Testimony, *Transcript IV*, p. 29.

<sup>100</sup> Cazares Testimony, *Transcript IV*, p. 11.

<sup>101</sup> Zummo Testimony, *Transcript II*, p. 2 & p. 3; Duke Testimony, *Transcript II*, p. 10.

<sup>102</sup> Duke Testimony, *Transcript II*, p. 10.

<sup>103</sup> FEMA's Substantial Improvement Rule and Substantial Damage Rule are also known as the "50% rule." This rule requires that when the cost of the project exceeds 50% of the building's market value, the building must be brought into compliance as if it were new construction. This also includes elevating the building if that is the current code for new construction.

<sup>104</sup> Zummo Testimony, *Transcript II*, p. 3.

<sup>105</sup> Wu Testimony, *Transcript III*, p. 25.

<sup>106</sup> Sloan Testimony, *Preliminary Hearing*, p. 5; Palay Testimony, *Transcript IV*, p. 12; Wu Testimony, *Transcript III*, p. 21; Aiyer Testimony, *Transcript II*, p. 6; Tom McCasland, Director, City of Houston Housing and Community Development Department, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, November 10, 2020, at 3. (hereinafter McCasland Testimony).

<sup>107</sup> Duke Testimony, *Transcript II*, p. 9 & 17; Duke Statement, at 2.

<sup>108</sup> FEMA Website. "Pre-disaster Conditions," <https://www.fema.gov/appeal/pre-disaster-conditions> (last accessed April 28, 2021).

- i. No single disaster aid program may be enough to cover all necessary recovery expenses. However, overly complicated policies to prevent duplication of benefits creates a massive barrier to residents moving forward with rebuilding and recovery.<sup>109</sup>
5. Recovery construction workers, many of whom were immigrants, experienced high rates of wage theft following Hurricane Harvey, with little accountability from local or state agencies. There were also unsafe working conditions caused by a lack of both safety equipment and training.
  - a. Hurricane Harvey wage theft victims and construction workers exposed to dangerous work conditions are the least likely disaster recovery workers to come forward with a complaint.<sup>110</sup>
  - b. Protective devices, such as respirators, that were used in the Hurricane Harvey clean-up were being used long after the effective use period had ended. Workers devised creative ways to safeguard themselves against exposure to health hazards. For example, workers reported tying a tee shirt over their mouths and noses or devising other similar ways of safeguarding against exposure to health hazards.<sup>111</sup>
  - c. One wage theft aid organization documented \$1.2 million in wage theft claims at about \$3600 per case (roughly 25% of the worker's annual take home pay).<sup>112</sup>
  - d. Texas is the only state that does not require companies to carry workers' compensation coverage, even during disaster recovery work.<sup>113</sup> 34% of Hurricane Harvey day laborers reported being injured; 16% of those workers reported that they had received medical attention. However, 70% of these individuals covered medical expenses through personal insurance or, more commonly, paying these expenses directly themselves, not by the employer.<sup>114</sup>
  - e. Currently, there is no way to verify how many workers do not get compensation they are entitled to because there is no data to show how many didn't file a complaint out of fear, filed and lost.<sup>115</sup>
  - f. The contracting and sub-contracting chain set up during and after disasters often limited workers' legal claims to the smallest and less established contractors, while the larger, wealthier companies that have the ability and means to ensure proper pay and safety measures are not held liable.<sup>116</sup>

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<sup>109</sup> McCasland Testimony, *Transcript I*, p. 6.

<sup>110</sup> Wertsch Testimony, *Transcript III*, p.18.

<sup>111</sup> Nik Theodore, *After the Storm: Houston's Day Labor Markets in the Aftermath of Hurricane Harvey*, University of Illinois at Chicago, 9, November 2017, [https://greatcities.uic.edu/wp-content/uploads/2017/11/After-the-Storm\\_Theodore\\_2017.pdf](https://greatcities.uic.edu/wp-content/uploads/2017/11/After-the-Storm_Theodore_2017.pdf).

<sup>112</sup> Atkiss Testimony, *Transcript IV*, p.9.

<sup>113</sup> Wertsch Testimony, *Transcript III*, p.14.

<sup>114</sup> Nik Theodore, *After the Storm: Houston's Day Labor Markets in the Aftermath of Hurricane Harvey*, University of Illinois at Chicago, 9, November 2017, [https://greatcities.uic.edu/wp-content/uploads/2017/11/After-the-Storm\\_Theodore\\_2017.pdf](https://greatcities.uic.edu/wp-content/uploads/2017/11/After-the-Storm_Theodore_2017.pdf).

<sup>115</sup> Nick Wertsch, Houston Staff Attorney, Workers Defense Project, Written Statement for the Texas Hearing before the U.S. Commission on Civil Rights, February 23, 2021. (hereinafter Wertsch Testimony)

<sup>116</sup> Wertsch Testimony, *Transcript III*, p.17.

6. Texas' large immigrant population faced distinct challenges in recovering from hurricanes and navigating disaster recovery programs.
  - a. 78% of possibly undocumented immigrants in the 24 hardest hit counties were affected by Hurricane Harvey, compared to fewer than 60% of immigrants with legal resident status and native-born residents.<sup>117</sup>
  - b. A survey conducted a year after Hurricane Harvey found that over 50% of immigrants impacted by the storm were more likely than native born residents (39%) to say they weren't getting the help they needed.<sup>118</sup>
  - c. FEMA requires aid applicants to provide information on every member of a household, not just a U.S. citizen or an eligible immigrant. Many mixed-status homes with eligible residents do not apply for aid for fear of identifying undocumented household members, including the 250,000 U.S. citizen children in the Houston area, as well as refugees.<sup>119</sup>
  - d. FEMA applications clearly state that information may be shared with other U.S. agencies, including U.S. Immigrations and Customs Enforcement (ICE).<sup>120</sup> 38% of immigrants who were possibly undocumented avoided seeking help in recovery because they were afraid of calling attention to their own or a family member's immigration status.<sup>121</sup>
  - e. The environment of mass shelters and other locations of assistance can deter immigrants from seeking help out of fear of deportation. For example, FEMA used trucks with the Department of Homeland Security logo labeled "police/rescue" to provide security with at least 200 ICE officers.<sup>122</sup> Although it was reported that immigration and customs operations would not be conducted during Hurricane Harvey recovery efforts,<sup>123</sup> these trucks increased fear of seeking assistance, resulting in qualified residents not getting help.<sup>124</sup>
  
7. HUD's policies, like FEMA's, for disaster housing assistance are inefficient and negatively impact mostly low-income people of color and/or people with disabilities, who are statistically less resourced.<sup>125</sup>
  - a. Currently, there is no permanent statutory authority for Community Development Block Grant Disaster Recovery (CDBG-DR) assistance, funds that are often used to supplement major disaster programs like FEMA. This results in

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<sup>117</sup> Hamel Testimony, *Transcript IV*, p. 5.

<sup>118</sup> Hamel Testimony, *Transcript IV*, p. 5.

<sup>119</sup> Aiyer Testimony, *Transcript II*, p. 6; Atkiss Testimony, *Transcript IV*, p. 7.

<sup>120</sup> Aiyer Testimony, *Transcript II*, p. 6.

<sup>121</sup> Hamel Testimony, *Transcript IV*, p. 5; Atkiss Testimony, *Transcript IV*, p. 7.

<sup>122</sup> U.S. Department of Immigration and Customs Enforcement, *ICE Deploys Over 200 Personnel to Assist with Hurricane Harvey Rescue Efforts*, 2017, <https://www.ice.gov/news/releases/ice-deploys-over-200-personnel-assist-hurricane-harvey-rescue-efforts> (last accessed Mar. 7, 2021).

<sup>123</sup> U.S. Department of Immigration and Customs Enforcement, *ICE Deploys Over 200 Personnel to Assist with Hurricane Harvey Rescue Efforts*, 2017, <https://www.ice.gov/news/releases/ice-deploys-over-200-personnel-assist-hurricane-harvey-rescue-efforts> (last accessed Mar. 7, 2021).

<sup>124</sup> Atkiss Testimony, *Transcript IV*, p. 6.

<sup>125</sup> Zummo Testimony, *Transcript II*, p. 3.

new sets of state and local regulations that can be complicated for both HUD staff and assistance applicants.<sup>126</sup> CBDG-DR funds come much later in the recovery process,<sup>127</sup> and new regulations after each disaster only delay these funds even more.

- b. Multiple levels of government fear future HUD Inspector General audits, leading to the creation of more rules to protect their agency while causing significant delays and sometimes insurmountable hurdles for the low income and racially minority families these programs are intended to serve.<sup>128</sup>
  - c. HUD does not directly aid renters but rather developers, reinforcing discrimination of low-income, largely minority populated areas and families.<sup>129</sup> Additionally, the approval rate for Hurricane Harvey assistance is lower for renters (34%) than for homeowners (46%). Homeowners were more likely to be approved than renters in seven out of the last nine disasters.<sup>130</sup>
  - d. Fraud has not been shown to be a significant problem, especially among low-income seniors, but far more is spent on fraud prevention than what would be wasted due to fraud.<sup>131</sup>
  - e. In recent years, the Community Planning and Development (CPD) Inspector General received an amount of funding equal to its disaster recovery programs.<sup>132</sup>
  - f. 42% of all residents in the hardest hit 24 counties stated they were not getting the help they needed in the first few months following the storm. That number rose to 55% of marginalized populations in those same counties.<sup>133</sup>
  - g. The Disaster Housing Assistance Program (DHAP) provides temporary rental assistance and case management for low-income survivors with barriers to accessing FEMA's transitional sheltering assistance.<sup>134</sup> However, to be implemented in any disaster, both FEMA and HUD must agree to start up the program each time. FEMA has not agreed to do so since Hurricane Katrina.<sup>135</sup>
8. The State of Texas Emergency Assistance Registry (STEAR), one of the largest state and local resource established to assist recovery operations for people with access and functional needs, was inadequate in fulfilling its purpose during Hurricane Harvey.

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<sup>126</sup> McCasland Testimony, *Transcript I*, p. 9; Saadian Testimony, *Transcript II*, p. 19; GLO Statement, at 1.

<sup>127</sup> McCasland Testimony, *Transcript I*, p. 9; Saadian Testimony, *Transcript II*, p. 19.

<sup>128</sup> McCasland Testimony, *Transcript I*, p. 3.

<sup>129</sup> Zummo Testimony, *Transcript II*, p. 3.

<sup>130</sup> "Zip Codes with the Highest and Lowest Percent of Approved FEMA Applications" n.d.,

[http://www.episcopalhealth.org/files/8415/1369/0866/Zip\\_Codes\\_with\\_the\\_Highest\\_Lowest\\_Percent\\_of\\_Approved\\_FEMA\\_Applications\\_Approved.pdf](http://www.episcopalhealth.org/files/8415/1369/0866/Zip_Codes_with_the_Highest_Lowest_Percent_of_Approved_FEMA_Applications_Approved.pdf).

<sup>131</sup> McCasland Testimony, *Transcript I*, p. 9.

<sup>132</sup> McCasland Testimony, *Transcript I*, p. 11.

<sup>133</sup> Hamel Testimony, *Transcript IV*, p. 4.

<sup>134</sup> Saadian Testimony, *Transcript II*, p. 13 & p. 24.

<sup>135</sup> Saadian Testimony, *Transcript II*, p. 13 & p. 24.

- a. STEAR exists to give local emergency managers information about residents who may require additional assistance during an evacuation.<sup>136</sup> Unfortunately, despite having a disclaimer that assistance is not guaranteed, many who registered expected assistance or proactive contact during and after a disaster, but they did not receive it.<sup>137</sup>
  - b. Following Hurricane Harvey, there is an increasing mistrust with STEAR, and many have refused to re-register.<sup>138</sup> This mistrust was also exacerbated when STEAR registrants were evacuated to mass shelters without accommodations rather than shelters focused on and equipped to address the needs of the people the program intended to serve.<sup>139</sup>
  - c. Reregistration with STEAR is required every year with few, if any, reminders to do so. As a result, registration is normally done immediately following a disaster, which overloads the system, and as time passes, individuals do not reregister.<sup>140</sup>
  - d. The management of STEAR is also inefficient as the database is not necessarily equipped with adequate registrant information requiring periodic reviews of the data to manually sort out any duplicates or verify contact information.<sup>141</sup>
9. Based on the lessons learned from Hurricane Harvey, local, state, and federal agencies reported that they made improvements to their disaster response operations and allocation of resources, including:
- a. Harris County implemented a \$2.5 billion bond project to finance flood damage reduction projects. Most notably, this new bond project will utilize a social vulnerability index as a way of prioritizing the most marginalized populations.<sup>142</sup>
  - b. Houston's Mayor, Sylvester Turner, ensured the disability community was adequately represented in his resilience plan, released in February 2020, including establishing a STEAR Advisory Group. The disability community also has been more involved in the City of Houston evacuation hub exercises post-Hurricane Harvey.<sup>143</sup>
  - c. Harris County and the City of Houston implemented higher recovery worker protection standards, including a \$15 minimum wage, workers' compensation insurance, mandatory safety training, and independent monitoring for all construction workers on county construction projects, including projects with federal disaster recovery funding.<sup>144</sup>

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<sup>136</sup> Cazares Testimony, *Transcript IV*, p. 10.

<sup>137</sup> Cazares Testimony, *Transcript IV*, p. 10.

<sup>138</sup> Cazares Testimony, *Transcript IV*, p. 10.

<sup>139</sup> Atkiss Testimony, *Transcript IV*, p. 24.

<sup>140</sup> Cazares Testimony, *Transcript IV*, p. 23; Aguilar Testimony, *Transcript IV*, p. 25.

<sup>141</sup> Cazares Testimony, *Transcript IV*, p. 24.

<sup>142</sup> Wertsch Testimony, *Transcript III*, p. 26

<sup>143</sup> Cazares Testimony, *Transcript IV*, p. 11.

<sup>144</sup> Wertsch Testimony, *Transcript III*, p. 18.

- d. Connective, a disaster recovery and preparedness nonprofit serving the Texas Gulf Coast region, was established to coordinate recovery programs for marginalized communities through a centralized intake process, which has increased the number of homes repaired after applying from 5% to 49%.<sup>145</sup>
- e. The Hurricane Harvey Homeowner Assistance Program (HAP) by Texas' GLO was the largest CDBG-DR recipient with more than \$1.3 billion allocated to the program, and benefitting more than 4,100 residents in 48 counties for construction on their home. Of the approved HAP applicants, 34% are Black, 35% Hispanic, 24% White, and 7% other.<sup>146</sup>
- f. FEMA has revised its assistance application to allow applicants with disabilities to disclose their functional or access needs.<sup>135</sup> However, this disclosure does not guarantee FEMA will effectively address the applicants' unique needs, but rather it is used to match applicants with additional assistance for completing the application.<sup>147</sup>
- g. FEMA's Office of Equal Rights deployed an unknown number of civil rights leads, advisors, and specialists during Hurricane Harvey for the first time. The External Civil Rights Division was created to oversee all personnel and external civil rights functions, including policies, training, complaints processing, compliance reviews, and community outreach. Its 86 employees include leads, advisors, and sign language interpreters.<sup>148</sup> These 86 employees engaged with only 87 of the 98 survivors and organizations that contacted FEMA and the Office of Equal Rights claiming civil rights disparities.<sup>149</sup>

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<sup>145</sup> White Testimony, *Transcript III*, p. 7 & p. 23.

<sup>146</sup> GLO Statement, at 2.

<sup>147</sup> Duke Statement, at 1.

<sup>148</sup> Saucedo Testimony, *Transcript V*, p. 4.

<sup>149</sup> Saucedo Testimony, *Transcript V*, p. 5.

## **Recommendations**

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.<sup>150</sup> In keeping with these responsibilities, and in consideration of the oral and written testimony received on this topic, the Texas Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to Congress and the President to pass legislation to:
  - a. Modify policies and/or procedures that enable discriminatory practices.
    - i. Adopt and define each of the protected classes in the Stafford Act according to their specific governing law, e.g., The Americans with Disabilities Act’s definition of “disability.”
    - ii. Allow proof of eligibility in other government aid programs such as Medicaid, Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF) to automatically qualify individuals and families for aid following a disaster for all federal emergency management programs.
    - iii. Require a “reallocation recommendation” for all federal, state, and local aid to recommend where remaining funds should be used. The Houston-Galveston Area Council of Governments currently utilizes this and can be referred to as a model.
  - b. Implement new or modify current operating procedures and policies to improve disaster recovery response from federal agencies including, but not limited to:
    - i. Approve the Reforming Disaster Recovery Act of 2019 (S.2301) bill that codifies CDBG-DR requirements into statute.
    - ii. Amend the Stafford Act to require that all federally funded emergency response, recovery, and reconstruction work be done in compliance with the federal prevailing wage laws.
    - iii. Require FEMA to enter into an Interagency Agreement (IAA) with HUD to allow HUD to set up the Disaster Housing Assistance Program as quickly as possible following a disaster.

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<sup>150</sup> 45 C.F.R. § 703.2 (a).

- iv. Establish or connect agency database tools to share relevant information needed in applying for disaster recovery to improve application processing timelines.
  - v. Establish an agency or department, like Harris County, Texas’s Department of Economic Equity, to develop proactive plans for government agencies to protect workers’ rights during reconstruction, including dedicated funding for the protection of reconstruction workers’ rights, coordination across government agencies, collaboration with worker centers and workers’ rights advocates on the ground, and outreach to communities of workers to provide safety training and know-your-rights workshops.
  - vi. Implement independent, third-party monitoring of compliance with federal worker protection laws and standards, including extensive outreach to workers, worker’s rights education, and gathering information directly from workers regarding their working conditions. A successful monitoring model recommended by advocates is the program implemented during Hurricane Sandy in New York.
- c. Require all federal, state, and local agencies receiving aid assistance or grant monies to implement the following or similar standards to improve the aid application process for disaster survivors:
- i. Utilize a social vulnerability index, like the Center for Disease Control’s, to determine aid approval and amount.
  - ii. Adopt the Americans with Disabilities Act’s definition of “disability.”
  - iii. Provide timely, actionable information that includes resource options, special needs assistance contact information, and feasible, life-saving tips available in both large print and the top six languages<sup>151</sup> of a disaster area.
  - iv. Create a widely distributed, thorough, and valid feedback and evaluation system of application and aid systems with data analysis that is shared publicly.
  - v. Expand efforts and enforcement to prevent wage theft and improve the working conditions of disaster recovery workers.
- d. Strive to improve communication and access to resources for survivors in all disaster recovery agencies and programs.
- i. Require consistent, public criteria that clearly defines aid eligibility, the

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<sup>151</sup> U.S. Department of Justice, Civil Rights Division, Federal Coordination and Compliance Section. 2011. “Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs.” Available at: [https://www.lep.gov/resources/2011\\_Language\\_Access\\_Assessment\\_and\\_Planning\\_Tool.pdf](https://www.lep.gov/resources/2011_Language_Access_Assessment_and_Planning_Tool.pdf)



application process, resources, and options for survivors following a disaster, e.g., a flow chart.

- ii. Display and distribute information of specialized services to applicants who have unique needs or requirements.
  - iii. Adopt the method of a centralized-intake process and resource center in the planning and implementation of new policies and procedures.
- e. Improve and increase oversight of programs and agencies receiving federal aid to ensure:
- i. Freedom of Information Act requests concerning a disaster survivor's application and/or documentation is responded to within 20 working days, as required Freedom of Information Act (FOIA).
  - ii. Valid data gathering, analysis, and assessment of federal emergency agency operations, practices, and aid applications and distribution is occurring on an annual basis.
- f. Allocate adequate funding for the following:
- i. Outreach to marginalized communities, including communities of color, neighborhoods with lower socio-economic status, immigrant populations, individuals with disabilities, and people with limited English proficiency.
  - ii. Interagency collaboration between government agencies and nonprofits.
- g. Allocate funding and direct federal disaster recovery agencies to implement the following staff management and operations improvements:
- i. Employ full-time employees that are subject matter experts in each of the protected classes throughout the year, regardless of disaster occurrences, to continue to enhance programs, processes, and approaches to disaster response with the goal of minimizing future discrimination.
  - ii. Establish deployable, civil rights outreach task forces and immediately activate them following a disaster. These task forces will:
    - 1. Be culturally competent and specially trained in all the protected classes, including common and special needs, available external resources, and challenges and solutions to completing the aid applications.
    - 2. Be reasonably proportionate to the protected classes' population in the disaster area.

3. Work directly with survivors and nongovernmental organizations to ensure they are connected and have the ability and access to receive resources that can fulfill survivors' needs.
  4. Be aware of specific, unique challenges experienced by certain protected classes, like individuals with a disability or the elderly.
  5. Include on the task force a member who is a translator or ensure that members of the task force have access to and are aware of translator services.
- iii. Increase civil rights-focused staff who have received special training concerning disability needs, Trauma Informed Care, mental health, and cultural needs and practices.
  - iv. Require a minimum standard of Continuing Education Units for all staff of government disaster recovery programs focused on the need to respond to diverse populations.
2. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the United States Department of Labor to:
    - a. Expand enforcement efforts to prevent wage theft and improve working conditions of disaster recovery workers.
      - i. Establish safety training standards, safety plans for contractor site management and apprenticeship opportunities.
      - ii. Require disaster recovery contractors and subcontractors to carry worker's compensation insurance.
      - iii. Require general contractor liability for workers' rights abuses committed by their subcontractors.
      - iv. Require that any recipient of disaster recovery money must meet the state's prevailing wage requirements.
      - v. Set specific targets for the number of Section 3<sup>152</sup> workers and apprentices who must be employed on a particular jobsite and be employed as W-2 employees rather than 1099 contractors, providing additional protection against wage theft.
      - vi. Implement independent, third-party monitoring of compliance with state

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<sup>152</sup> 12 U.S.C. §1701u (2015); Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low-income residents in connection with projects and activities in their neighborhoods.

and local worker protection laws and standards, including extensive outreach to workers, worker's rights education, and gathering information directly from workers regarding their working conditions. A successful monitoring model recommended by advocates is the program during Hurricane Sandy in New York.

3. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the United States Department of Homeland Security, FEMA, to:
  - a. Increase transparency in pre-disaster and post-disaster assistance to reduce survivor trauma and mitigate challenges to receiving aid, including:
    - i. Allocating funding specifically for outreach to marginalized communities, including communities of color, neighborhoods with lower socio-economic status, immigrant populations, individuals with disabilities, and people with limited English proficiency.
    - ii. Establishing a division within the agency solely to conduct data gathering, analysis, and assessment of agency operations, agency practices, and aid applications and distribution by the following (at a minimum): demographics, protected classes, locations, and different disasters. This extensive data shall be presented publicly on at least an annual basis.
    - iii. Improve communication and access to resources for survivors to ensure all survivors have an equitable opportunity for recovery assistance.
      1. Establish a consistent, public criteria to define aid eligibility, application process, resources, and options for survivors following a disaster, e.g., a flow chart.
      2. Provide public notice of specialized services to applicants who have unique needs or requirements.
      3. Provide translators and increase awareness of real-time language translation services and allow all disaster recovery agencies to utilize it.
  - b. Modify policies and/or procedures that enable discriminatory practices.
    - i. Repeal the policy of forwarding aid applications to other federal government agencies, including Immigration, Customs, and Enforcement. Update all necessary materials and application information to reflect the change.
  - c. Implement new tools and enhance the current aid application process.

- i. Clearly outline the standards, expectations, and decision-making factors in disaster recovery aid and assistance, e.g., a flow chart.
- ii. Adopt and define each of the protected classes in the Stafford Act according to their specific governing law, e.g., The Americans with Disabilities Act's definition of "disability."
- iii. Develop and implement criteria that allow for special hardship factors, such as the loss of job due to the disaster and unique needs or challenges of the individual residents, on applications, e.g., wheelchair mobility.
- iv. Implement a Habitability Standard which does not take into account the pre-disaster condition of residences, which can be applied consistently and fairly by all decision-makers, and which can be customized based on the specific needs of individual residents.
- v. Restructure decision letters to applicants to clearly state whether an applicant is "eligible and will be receiving aid," "ineligible for a clearly stated reason," or "more information or documentation is needed prior to a final decision," including what specifically is needed.
- vi. Establish and implement a centralized-intake process and resource center similar to Connective's<sup>153</sup> disaster response following Hurricane Harvey.
- vii. Create an alternative for applicants who do not have an official, legal copy of ownership or title of the property on which they reside for which they are requesting aid for. Two examples are provided below:
  1. Accept current state procedures for acknowledging proof of ownership or title of property of applicant residents. For example, Texas allows documentation with the current homestead exemption form to be filed as an affidavit with property records to verify and certify property ownership or title.
  2. Create or apply an already state and/or county established affidavit to attest under penalty of perjury to establish ownership of home.
- viii. Ensure requests for applications by applicants and advocates with a signed authorization of release of information receive the requested application and/or documentation within 20 working days as required by the Freedom of Information Act (FOIA).
- ix. Establish an efficient, thorough, and valid feedback and evaluation system for applicants, agencies, and advocates to use regarding the

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<sup>153</sup> Connective is a disaster recovery, and preparedness nonprofit serving the Texas Gulf coast region that was established after Hurricane Harvey to provide centralized intake and recovery resources for disaster survivors.

application process. This information should be analyzed and shared in an annual report.

- d. Collaborate with other federal and state agencies to apply best practices in disaster recovery efforts.
  - i. Enter into an Interagency Agreement (IAA) with HUD to allow HUD to set up the Disaster Housing Assistance Program as quickly as possible following a disaster.
  - ii. Utilize a social vulnerability index, like the Center for Disease Control's, rather than property value when conducting and determining damage assessment.
  - iii. Implement clear policies that will allow proof of eligibility in other government aid programs, such as Medicaid, Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF) to automatically qualify individuals and families for aid following a disaster.
  - iv. Connect agency databases to share relevant information needed in applying for disaster recovery to improve application processing timelines. For example, paperwork and information needed for a federal aid program like Medicaid could be similar and relevant to a FEMA aid application.
  - v. Require a "reallocation recommendation" to recommend where remaining funds should be used. The Houston-Galveston Area Council of Governments currently utilizes this and can be referred to as a model.
- e. Increase current resources and establish divisions within emergency management programs to facilitate services for highest-risk residents and populations with greater barriers to recovery.
  - i. Employ full-time employees who are subject matter experts in each of the protected classes throughout the year, regardless of disaster occurrences, to continue to enhance programs, processes, and approaches to disaster response with the goal of minimizing future discrimination.
  - ii. Establish deployable, civil rights outreach task forces and immediately activate them following a disaster. These task forces will:
    - 1. Be culturally competent and specially trained in all the protected classes, including common needs, available external resources, and aid application challenges and solutions.

2. Be reasonably proportionate to the protected classes' population in the disaster area.
  3. Work directly with survivors and nongovernmental organizations to ensure they are connected and have the ability and access to receive resources that can fulfill the survivors' needs.
  4. Be aware of specific, unique challenges experienced by certain protected classes like individuals with a disability and the elderly.
  5. Include a member of the task force who is a translator or have immediate access to translator services.
- iii. Increase civil rights focused staff who have relevant training dedicated to addressing civil rights concerns including disability needs, Trauma Informed Care, mental health, and cultural requirements and practices.
  - iv. Require a minimum standard of Continuing Education Units for all staff of government disaster recovery programs focused on the need to respond to diverse populations.
- f. Reduce the attention and resources given to fraud prevention and duplication of benefits.
    - i. Remove restrictions on local and county governments and nongovernmental agencies that prohibit them from reimbursing assistance agencies when survivors used the initial assistance to meet urgent needs, such as food and medical care, rather than, for example, house repairs, which then makes the residents ineligible for further agency assistance.
    - ii. Allow local and county governments to address the gaps in a survivor's overall recovery without risk of negatively impacting that survivor's ongoing claim with FEMA and/or HUD. For example, any gaps less than \$5,000 can be waived for any family at 80% of the Area Median Income (AMI) or below.
4. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the United States Department of Housing and Urban Development to:
    - a. Implement statutory, permanent regulations for CBDGR funds for all disasters.
    - b. Increase transparency in pre-disaster and post-disaster assistances to reduce survivor trauma and mitigate challenges to receiving aid, including:
      - i. Allocate funding specifically for outreach to marginalized communities, including, communities of color, neighborhoods with lower socio-economic status, immigrant populations, individuals with disabilities,

and people with limited English proficiency.

- ii. Establish a division within the agency solely to conduct data gathering, analysis, and assessment of agency operations, agency practices, and aid applications and distribution by the following (at a minimum): demographics, protected classes, locations, and different disasters. This extensive data shall be presented publicly on at least an annual basis.
- iii. Improve communication and access to resources for survivors to ensure all survivors have an equitable opportunity for recovery assistance.
  1. Establish a consistent, public criteria that clearly identifies aid eligibility, the application process, available resources, and options for survivors following a disaster, e.g., a flow chart.
  2. Provides public notice of specialized services to applicants who have unique needs or requirements.
  3. Provide translators and increase awareness of real-time language translation services and allow all disaster recovery agencies to utilize it.
- c. Implement new tools and enhance the current aid application process.
  - i. Clearly outline the standards, expectations, and decision-making factors in disaster recovery aid and assistance, e.g., a flow chart.
  - ii. Adopt and define each of the protected classes in the Stafford Act according to their specific governing law, e.g., The Americans with Disabilities Act’s definition of “disability.”
  - iii. Develop and implement criteria that allow for special hardship factors, such as the loss of job due to the disaster and unique needs or challenges of the individual residents, on applications, e.g., wheelchair mobility.
  - iv. Implement a Habitability Standard which does not take into account the pre- disaster condition of residences which can be applied consistently and fairly by all decision-makers and which can be customized based on the specific needs of individual residents.
  - v. Implement a centralized-intake process and resource center similar to Connective’s<sup>154</sup> disaster response following Hurricane Harvey.

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<sup>154</sup> Connective is a disaster recovery and preparedness nonprofit serving the Texas Gulf coast region that was established after Hurricane Harvey to provide centralized intake and recovery resources for disaster survivors.

- vi. Create an alternative for applicants who do not have an official, legal copy of ownership or title of the property on which they reside and for which they are requesting aid. Two examples are provided below:
  - 1. Accept current state and/or county procedures for acknowledging proof of ownership or title of property of applicant residents. For example, Texas allows documentation of the current homestead exemption form as an affidavit with property records to verify and certify property ownership or title.
  - 2. Create or accept an existing state or county established affidavit to attest under penalty of perjury to show ownership of home.
- vii. Ensure requests for applications by applicants and advocates with a signed authorization for release of information receive the requested application and/or documentation within 20 working days as required Freedom of Information Act (FOIA).
- viii. Establish an efficient, thorough, and valid feedback and evaluation system for applicants, agencies, and advocates to use regarding the application process. This information should be analyzed and shared in an annual report.
- d. Collaborate with other federal and state agencies to apply best practices in disaster recovery efforts.
  - i. Enter into an Interagency Agreement (IAA) with FEMA to allow HUD to set up the Disaster Housing Assistance Program as quickly as possible following a disaster.
  - ii. Utilize a social vulnerability index, like the Center for Disease Control's, rather than utilizing property value when conducting and determining damage assessment.
  - iii. Implement clear policies that will allow proof of eligibility in other government aid programs, such as Medicaid, Supplemental Security Income (SSI), or Temporary Assistance for Needy Families (TANF) to automatically qualify individuals and families for aid following a disaster.
  - iv. Connect agency databases to share relevant information needed in applying for disaster recovery to improve application processing timelines. For example, paperwork and information needed for a federal aid program like Medicaid could be similar and relevant to a HUD aid application.



- v. Require a “reallocation recommendation” to recommend where remaining funds should be used. The Houston-Galveston Area Council of Governments currently utilizes this and can be referred to as a model.
- e. Increase current resources and establish divisions within emergency management programs to facilitate services for highest-risk residents and populations with greater barriers to recovery.
  - i. Employ full-time employees who are subject matter experts in each of the protected classes throughout the year, regardless of disaster occurrences, to continue to enhance programs, procedures, and approaches to disaster response with the goal of minimizing future discrimination.
  - ii. Establish deployable civil rights outreach task forces and immediately activate them following a disaster. These task forces will:
    - 1. Be culturally competent and specially trained in all the protected classes, including common and special needs, available external resources, and aid application challenges and solutions.
    - 2. Be reasonably proportionate to the protected classes’ population in the disaster area.
    - 3. Work directly with survivors and nongovernmental organizations to ensure they are connected and have the ability and access to receive resources that can fulfill survivors’ needs.
    - 4. Be aware of specific, unique challenges experienced by certain protected classes such as individuals with a disability or the elderly.
    - 5. Include a member of the task force who is a translator and/or have immediate access to translator services.
  - iii. Increase civil rights focused recovery staff who have received training on disability needs, Trauma Informed Care, mental health, and cultural requirements and practices.
  - iv. Require a minimum standard of Continuing Education Units for all staff of government disaster recovery programs focused on the need to respond to diverse populations.
- f. Reduce the attention and resources given to fraud prevention and duplication of benefits.
  - i. Remove restrictions on local and county governments and nongovernmental agencies that prohibit them from reimbursing assistance agencies when survivors used initial assistance to meet urgent needs, such

as food and medical care, rather than, for example, house repairs, which then makes the residents ineligible for further agency assistance.

- ii. Allow local and county governments to address the gaps in a survivor's overall recovery without risk of negatively impacting that survivor's ongoing claim with FEMA and/or HUD. For example, any gaps less than \$5,000 can be waived for any family at 80% of the Area Median Income (AMI) or below.
5. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the Texas State Governor and Texas Legislature to:
- a. Amend the law allowing landlords the option to disclose to renters previous flooding. Require landlords to disclose previous flooding to prospective renters.
  - b. Establish and implement a certification program to allow local partners or community-based organizations to assist with local families applying for aid, e.g., the San Antonio Housing Authority.
  - c. Establish a document-saving database and, in collaboration with organizations such as STEAR and MetroLyft, to effectively utilize these records to provide disaster assistance.
  - d. Increase transparency in pre-disaster and post-disaster assistance to reduce survivor trauma and mitigate challenges to receiving aid, including:
    - i. Allocating funding specifically for outreach to marginalized communities, including communities of color, neighborhoods with lower socio-economic status, immigrant populations, individuals with disabilities, and people with limited English proficiency.
    - ii. Establishing a division within the Texas Department of Emergency Management solely to conduct data gathering, analysis, and assessment of state emergency response agency operations, practices, and aid applications and distribution by the following (at a minimum): demographics, protected classes, locations, and different disasters. This extensive data shall be presented publicly on at least an annual basis.
    - iii. Developing and implement a disaster preparation plan, emergency response plan, and periodic emergency drills for high disaster-prone areas.
    - iv. Improving communication and access to resources for survivors to ensure all survivors have an equitable opportunity for recovery assistance.

1. Establish consistent, public criteria that clearly defines aid eligibility, application processes, available resources, and options for survivors following a disaster, e.g., a flow chart.
  2. Provide public notice of specialized services to applicants who have unique needs or requirements.
- v. Providing numerous promotional and educational materials in high traffic areas where people who may be or should be in the STEAR system, e.g., SSI Offices, Nursing Home, etc.
  - vi. Providing more funding for STEAR and maintain data year-round in order to improve data management and allow case managers to use time more effectively.
  - vii. Sharing changes, improvements, and expectations of the new, updated STEAR system by the Houston Mayor's Office of Disabilities to increase trust and participation of survivors.
  - viii. Providing translators and increase awareness of real-time language translation services and allow all disaster recovery agencies to utilize it.
- e. Expanding enforcement efforts to prevent wage theft and improve working conditions of disaster recovery workers.
- i. Increase safety training standards, safety plans for contractor site management, and apprenticeship opportunities.
  - ii. Require disaster recovery contractors and subcontractors to carry Worker's Compensation Insurance.
  - iii. Require general contractor liability for workers' rights abuses committed by their subcontractors.
  - iv. Require that any recipient of disaster recovery money must meet the state's prevailing wage requirements.
  - v. Set specific targets for the number of Section 3 workers and apprentices who must be employed on a particular jobsite and be employed as W-2 employees rather than 1099 contractors, providing additional protection against wage theft.
  - vi. Model Harris County's newly established Department of Economic Equity throughout the state to develop proactive plans for government agencies to protect workers' rights during reconstruction, including dedicated funding for protection of workers' rights, coordination across government agencies, collaboration with worker centers and workers'

rights advocates on the ground, and outreach to communities of workers to provide safety training and know-your-rights workshops.

- vii. Implement independent, third-party monitoring of compliance with state and local worker protection laws and standards, including extensive outreach to workers, workers' rights education, and gathering information directly from workers regarding their working conditions. A successful monitoring model recommended by advocates is the program during Hurricane Sandy in New York.

6. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the State of Texas General Land Office to:

- a. Reduce the minimum amount of funds that can be requested by a locality to not higher than \$500,000.
- b. Review and ensure all Hurricane Harvey applications between the GLO and City of Houston are processed, and survivors are contacted regarding the status of their application. In the case of a lost or mishandled application during the 2020 transition of applications, allow applicants to resubmit an application.

7. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to all Regional Councils of Governments to:

- a. Coordinate with local schools, and if feasible, churches, to utilize their notification systems to disseminate emergency information.

## **Appendices**

- A. Panel Agendas, Minutes, and Presentation Slides**
  - a. August 20, 2020 Online Panel
  - b. November 10, 2020 Online Panel
  - c. November 12, 2021 Online Panel
  - d. December 01, 2021 Online Panel
  - e. December 03, 2021 Online Panel
  - f. December 10, 2021 Online Panel
  
- B. Transcripts**
  - a. August 20, 2020 Online Panel (AKA Preliminary Transcript)
  - b. November 10, 2020 Online Panel (AKA Transcript I)
  - c. November 12, 2021 Online Panel (AKA Transcript II)
  - d. December 01, 2021 Online Panel (AKA Transcript III)
  - e. December 03, 2021 Online Panel (AKA Transcript IV)
  - f. December 10, 2021 Online Panel (AKA Transcript V)
  
- C. Written Testimony**
  
- D. List of Individuals and Organizations Invited, but Declined to Participate**
  
- E. Questions Submitted to FEMA which were not Answered**

## **Appendix A – Panel Agendas, Minutes, and Presentation Slides**

*August 20, 2020 Online Panel*

*November 10, 2020 Online Panel*

*November 12, 2021 Online Panel*

*December 01, 2021 Online Panel*

*December 03, 2021 Online Panel*

*December 10, 2021 Online Panel*

Documents found at:

[https://securisync.intermedia.net/us2/s/folder?public\\_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0h1cnJpY2FuZSBIYXJ2ZXkvQXBwZW5kaXggQQ%3D%3D](https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0h1cnJpY2FuZSBIYXJ2ZXkvQXBwZW5kaXggQQ%3D%3D)

## **Appendix B – Panel Transcripts**

*August 20, 2020 Online Panel; Preliminary Panel*

*November 10, 2020 Online Panel; Transcript I*

*November 12, 2021 Online Panel; Transcript II*

*December 01, 2021 Online Panel; Transcript III*

*December 03, 2021 Online Panel; Transcript IV*

*December 10, 2021 Online Panel; Transcript V*

Documents found at:

[https://securisync.intermedia.net/us2/s/folder?public\\_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0h1cnJpY2FuZSBIYXJ2ZXkvQXBwZW5kaXggQg%3D%3D](https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0h1cnJpY2FuZSBIYXJ2ZXkvQXBwZW5kaXggQg%3D%3D)

## Appendix C – Written Testimony

All written testimony can be found at:

[https://securisync.intermedia.net/us2/s/folder?public\\_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0h1cnJpY2FuZSBIYXJ2ZXkvQXBwZW5kaXggQw%3D%3D](https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L1RYL0h1cnJpY2FuZSBIYXJ2ZXkvQXBwZW5kaXggQw%3D%3D)

Testimony submitted by:

Sapna Aiyer, Attorney, Lone Star Legal Aid

Nick Wertsch, Houston Staff Attorney, Workers Defense Project

Pablo Pinto, Director, Center for Public Policy, University of Houston

Karen Paup, Co-Director, Texas Housers, Texas Low Income Housing Information Service

Stephanie Duke, Attorney, Disabilities Rights Texas

Tom McCasland, Director, City of Houston Housing and Community Development Department

Texas General Land Office



## **Appendix D – List of Individuals and Organizations Invited, but Declined to Participate**

South East Texas Regional Planning Commission

FEMA Regional Office

FEMA Office of Equal Rights – Office of Response and Recovery

Houston District FEMA Coordinator

Texas Division of Emergency Management

Texas Department of Insurance

Texas Windstorm Insurance Association

Greater Houston Community Foundation

State Senator Juan Hinojosa

Harris County Housing Authority

HUD

Project Recovery

American Red Cross

Mayor, City of Houston

Baker Ripley

United Way

## Appendix E – Questions for FEMA

- **General FEMA operations and functioning**
  - How many requests for FEMA assistance were received from Hurricane Harvey victims?
    - Does FEMA have demographic information regarding impacted persons?
    - Does FEMA have demographic information regarding applicants?
  - How many of these requests were granted?
    - During what time frame were the requests granted?
    - Does FEMA have demographic information regarding assistance requests that were granted?
  - Is FEMA aware of any accessibility issues in requesting assistance following Harvey?
  - Is there information about how allocated funding was broken out for individuals and communities? (Please also provide any relevant demographic information.)
  - Can FEMA provide an overall timeline of resources provided (i.e., how much funding was provided and when, over the course of the response to the storm)?
  - If possible, we are also interested in learning how these numbers compare to other recent hurricane responses.
- **Office of Disability, Integration, and Coordination vs External Civil Rights Division vs Office of Response and Recovery**
  - What outreach and resource sharing activities are done prior to, during, and after a disaster by each office for survivors who experience discrimination?
  - What differences and/or similarities of these different offices result in limitations in ensuring requirements under Sections 308 and 309 of the Stafford Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, Title IX of the Education Amendments Act of 1972, and the Age Discrimination Act of 1975?
  - The FEMA 2018-2022 Strategic Plan has the word “disability” mentioned twice, both in a photo caption. Other terms such as elderly, rights, people of color, and disparities are not mentioned. Was addressing disparities of highest risk populations during a disaster not proposed to be in the Strategic Plan?
  - What agency milestones have been reached in improving preparedness and response to high-risk populations and cases of discrimination?
  - Are there avenues in place to communicate with other divisions within FEMA the unique needs of survivors who are at risk of experiencing disparities including elderly, persons with a disability, people of color, and immigrants?
    - What is that process and is there accountability for those factors to ensure it is done effectively?
  - Are there avenues in place for survivors to communicate misinterpretations or misdirection of policies that ultimately have a detrimental impact on survivors who are at risk of experiencing disparities including elderly, persons with a disability, people of color, and immigrants to other divisions within FEMA? (i.e. Program addressing lack of security deposits because it discriminates against higher income population but really prevents families from moving in adequate housing)
- **FEMA Organization**

- What safeguards are in place to ensure that FEMA priorities are validated under the Department of Homeland Security?
- What safeguards are in place to ensure communication, efforts, programs, and disaster response of FEMA is effective, ethical, and free of disparities?
- **FEMA Preparedness**
  - What specific training is provided to FEMA inspectors regarding:
    - Cultural Competence
    - Unique needs of immigrants
    - Unique needs of elderly
    - Unique needs of persons with a disability
  - What factors are put in place to mitigate language barriers and barriers to accessing FEMA resources during and after a disaster? It was stated during the panel that there FEMA distributes materials in different languages but there are over 140 different languages in the Houston Area alone. How accessible are these materials following a disaster?
- **Claim Requirements**
  - Is there a clear, easy to understand explanation, graphic, etc of the complaint process that a survivor would be able to navigate without any assistance? If so, may we see it?
  - What factors does the Title Clearing Process consider, if any, following a disaster that could impact an applicant's ability to file a complete or adequate application?
    - Are there alternative options for low-income applicants, applicants that do not have the capacity to generate and provide required documents, or applicants of inheritance?
  - FEMA does not use a social vulnerability index. We would like to understand the justification of not using such type of index.
  - Would a form allowing an applicant to verify ownership of home, under penalty of perjury if false, be adequate for applicants of all populations to verify ownership?
  - If FEMA does not apply state laws/regulations regarding property ownership (i.e. Texas homeowners who inherit the property are listed as homeowners), what prevents them from doing so?
- **Claim assistance**
  - Attorneys testified they are currently still waiting on client FEMA files requested following Hurricane Harvey. Is there an explanation?
  - Are there response guidelines for persons requesting claim assistance or documentation? (i.e., deadlines, resources for elevating request, etc.)
- **Data**
  - Is there any consistent data analysis conducted to identify and correct any potential disparities of FEMA programs and services?
  - Does either office provide any lessons learned following a disaster or on a timely schedule (quarterly, annually, etc.)
  - Is sharing data publicly a privacy issue or concern?
    - Could data be shared similar to other agencies? (i.e., DoD Annual Report on Sexual Assault-provides extensive data without identifying victims)
  - What data gathering and analysis is conducted to verify higher risk populations

are receiving the help they need?

- **FEMA and Other Agency Collaboration**
  - What risks are involved with FEMA not being a part of the approval process of the Disaster Housing Assistance Program?
- **Fraud**
  - Is the prevalence of fraud high in areas of populations primarily made of low-income and/or people of color?
  - If not, what efforts can be redirected from fraud concerns to ensuring program effectiveness and providing adequate assistance to higher risk populations during and after a natural disaster?
  - If the prevalence is high, what efforts have been done to analyze the causes or implications of fraud from these communities?