



COLLEGE OF LAW  
STUART H. SMITH LAW CLINIC

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**VIA ONLINE COMMENT PORTAL ONLY**

COMMENT RESPONSE

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**Submitted via:** <https://www.regulations.gov/commenton/FEMA-2022-0006-0001>

**Re: Public Comment in support of 87 FR 3836, titled: Generic Clearance for Civil Rights and Equity. Docket ID: FEMA-2022-0006.**

To Whom it May Concern:

Please accept the following comments in on behalf of the groups listed below regarding the Federal Emergency Management Administration's proposed Generic Clearance for Civil Rights and Equity.

Per our evaluation, we believe that this data collection is **(A) necessary for the proper performance of the agency**, including that the collection and use of this data will have practical utility; **(B) useful** and that a few **additional data collection points may be identified and added to this proposal at minimum expense if incorporated with this proposed change**; **(C) this data will enhance the quality, utility, and clarity of the information to be collected**; and **(D) the collection techniques identified will minimize the burden of collection**.

On behalf of the undersigned, we are in full support of adding the questions from FEMA Form: FF-256-FY-21-100, Generic Clearance Civil Rights and Equity to the Individuals and Households program (IHP) registration in every possible form of application and/or registration.

**(A) Without collection of this data, this Agency is unable to accurately assess whether the civil rights, nondiscrimination and equity requirements, and obligations as outlined in federal civil rights laws such as the Civil Rights Act, Rehabilitation Act, and the Stafford Act are compliance<sup>1</sup>.**

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<sup>1</sup> The Recovery Reporting and Analytics Division has previously recognized that they have two historical challenges: "1 [-] FEMA does **not** collect demographic information at the time of Registration..." and "2 [-] FEMA has **minimal visibility on non-FEMA Registrants**, nor insight into their motives behind choosing not to Register." Recovery Reporting and Analytics Division, *Registering for Recovery: Exploring the Relationship between Demographics and the Decision to Apply for FEMA Individual Assistance*, FEMA, 2 (2019), <https://www2.census.gov/about/linkage/projects/evidence-building/fema-acshousehold-demographics.pdf> (last visited Feb. 18, 2022).

In our advocacy for low-income<sup>2</sup> persons, persons of color, women, persons with disabilities, persons whose preferred language is not English, and other protected populations, we do not have access to the data required to show systemic issues that disproportionately affect these populations. The only data available to advocates are limited to the small select populations who are able to access legal assistance through non-profit entities or by volunteers. Without a larger data set, there is no way to assess the systemic impact of FEMA responses to applicants and registrants beyond anecdotal and regional, independent data collection<sup>3</sup>. Therefore, there may be systemic issues that adversely impact specific protected populations that cannot be addressed prior to being identified. **We endorse the collection of this data with the following recommendations:**

- a. Collection of demographic data should begin at the start of the survivor's application and should be retained even if the survivor is ultimately unable to complete registration. This demographic data should also be available to the public for "applicants" (defined as persons who have started the application process for FEMA assistance but are unable to obtain a registration number); and for persons who register successfully (and thus, have a registration number).
- b. Applicants have been halted from continuing the application process resulting in them being unable to obtain a registration number (due to a variety of reasons). Currently, there is no data available or published about how many persons begin an application for FEMA assistance and are unable to continue to complete their registration and obtain a registration number<sup>4</sup>.
- c. The inability for an applicant to obtain a FEMA registration number occurs for a variety of reasons; we cannot obtain any data on the frequency of this unfortunate occurrence. Only when data is collected that reports both the 1-attempts to obtain FEMA assistance; and 2- successful FEMA registrants can a proper evaluation of civil rights duties be evaluated because these two data sets provide context for how survivors are able to access and obtain FEMA assistance. The only data that is publicly available is about applicants who were able to fully register; and no data is available about persons who began the registration process but were unable to finish it (unable to obtain a registration number) or why they were unable to obtain a registration number.

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<sup>2</sup> Our practices do serve people who have no income. Even if FEMA intends to treat people who never provided their income differently, and its computer logic treats non-responses differently than a field affirmatively filled in with a zero, staff or applicants completing screens may fail to enter zero in the income field, as there is no income to enter.

<sup>3</sup> Thomas Frank for Climate Wire, *FEMA wants to track race of disaster victims for the first time*, E&E News, Politico, LLC (Dec. 3, 2021), <https://www.eenews.net/articles/fema-wants-to-track-race-of-disaster-victims-for-first-time/> Accessed 2/18/2022 (FEMA currently collects no such information now about persons with protected statuses).

<sup>4</sup> See FEMA, *OpenFEMA Data Sets*, U.S. Dept. of Homeland Security (Feb. 3, 2022), <https://www.fema.gov/about/openfema/data-sets> (data sets available only report on registrant information. This data specifically excludes any information about persons who have tried or started to register but were never assigned a registration number).

Additionally, we have independently met with local FEMA Region 6 representatives and asked for this information and submitted multiple written requests to these contacts and FEMA has failed to respond. In addition to these requests, we have recently emailed FEMA in order to confirm whether any data sets exist that factor in applicants who do not obtain registration numbers. **See Appendix B.** Email from Rebecca Holmes, Attorney, Disaster Lawyering Project at Loyola Law Clinic, to [OpenFEMA@fema.dhs.gov](mailto:OpenFEMA@fema.dhs.gov), the designated email address for the OpenFEMA team for inquiries about FEMA's data and Open government program, (Feb. 16, 2022). See also Federal Emergency Management Agency (FEMA) OpenFEMA Dataset: Individuals and Household Program- Valid Registrations- v1. Retrieved from <https://www.fema.gov/openfema-data-page/individuals-and-households-program-valid-registrations-v1> on February 25, 2022, 8:33 AM CST. This product used the FEMA OpenFEMA API, but is not endorsed by FEMA. The Federal Government or FEMA cannot vouch for the data or analyses derived from these data after the data have been retrieved from the Agency's website(s).

- i. In our experience assisting survivors with disaster assistance registrations, we saw a spike of persons who were unable to obtain a registration number over the phone near the initial Disaster ID 4611- Hurricane Ida original application deadline. During that time, advocates and applicants were told by multiple FEMA call center representatives that they were unable to register until an identity verification was corrected, or an address was corrected, or to file a claim with a separate household, but were given no explanation of how to proceed to register.
  - ii. Some applicants were unable to apply online, on the app, or over the phone, and yet other applicants proceeded to Disaster Resource Centers (DRCs), but reported not being able to successfully register despite multiple visits to these centers.
- d. Persons are not given notice about why, specifically, they are unable to continue registration online or over the application. Instead, these applicants are simply shown a screen that indicates that FEMA could not verify their information<sup>5</sup> and that the applicant should continue to apply over the phone. We understand that under FEMA's current guidelines, this halt on application may also occur if an "unresolved high risk fraud indicator [is] associated with their registration."<sup>6</sup> In our experience volunteering to help survivors apply for FEMA, not all phone or Disaster Resource Center (DRC) registrations are successful or accurate. Therefore, it is imperative to the evaluation of FEMA's duty to respect civil rights of applicants to collect demographic data for both applicants and registrants.<sup>7</sup> Further, we request that data be collected and reported that demonstrates, in writing, why specifically the applicant was unable to register. Currently, applicants have no notice as to why they are unable to proceed with registration.
- e. We also recommend that the data collected by this proposed rule be used to specifically evaluate the disparity between disaster assistance provided to homeowners and assistance provided to renters, as natural disaster have been found to be responsible for an "...increase in inequality between homeowners and renters."<sup>8</sup> This data collected may also demonstrate disparate treatment of low-income households who are denied FEMA disaster assistance<sup>9</sup> that must be addressed. In our experience serving low-income

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<sup>5</sup> See **Appendix C** (screen shot of the Identity Verification Screen; which lists a number of reasons why an applicant may not be able to proceed with their application but must instead call the FEMA toll-free hotline. There is no notice of the specific reason why the applicant cannot proceed to register online or how they can address this issue other than have a verbal conversation with a FEMA customer service representative. Encountering this screen does not generate a letter or written notice of denial of registration to the applicant). FEMA, *Identification Verification Error*, DisasterAssistance.gov, (2021), [www.disasterassistance.gov](http://www.disasterassistance.gov).

<sup>6</sup> Keith Turi, *Individual Assistance Program and Policy Guide, Version 1.1 FP104-009-03*, FEMA, 165 (May 2021) [https://www.fema.gov/sites/default/files/documents/fema\\_iappg-1.1.pdf](https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf) (specifically pertaining to CNA: Applicants will not receive CNA if there are unresolved high-risk fraud indicators); See also pages 48-49 (describing FEMA's process for verifying identity prior to considering applicants for eligibility; which begins at registration).

<sup>7</sup> For more information, please see **Appendix A**, page 2, Paragraph 5 re: applicants unable to obtain registration numbers. Email from Davida Finger, Clinic Professor; Rebecca Holmes, Staff Attorney, Loyola New Orleans Law Clinic; Laura Tuggle, Executive Director; David Williams, Litigation Director; and Hannah Adams, Staff Attorney, Southeast Louisiana Legal Services, to José M. Gil Montañez and Sandy Eslinger, Region 6 COVID-19, FEMA, DHS (November 8, 2021) (on file with Davida Finger at the Stuart H. Smith Law Clinic and Center for Social Justice).

<sup>8</sup> Jim Elliott, Prof. of Sociology at Rice; commenting on his co-authored study. Science News, *Natural disasters widen racial wealth gap. Study also finds FEMA aid increased inequality*, Science Daily, Rice University (Aug. 18, 2018) <https://www.sciencedaily.com/releases/2018/08/180820164234.htm> (accessed Feb. 18, 2022) citing Junia Howell, James R. Elliott, *Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States*, Social Problems, v. 66, Issue 3, pages 448-67 (Aug. 14, 2018) <https://academic.oup.com/socpro/article/66/3/448/5074453>.

<sup>9</sup> Ameila Adams, *Low-income households disproportionately denied by FEMA is a sign of a system that is failing the most vulnerable*, Texas Housers (Nov. 30, 2018), <https://texashousers.org/2018/11/30/low-income-households->

populations, we have noted that Continued Rental Assistance (CNA) may be disparately denied to low-income persons and persons in other protected groups, such as by race or ethnicity. This problem may only be accurately assessed and addressed if demographic data is collected, as proposed in this rule.

- f. Lastly, we recommend that household income data collected be specific enough to determine whether a household is eligible for referral to the SBA for SBA-Dependent ONA (Other Needs Assistance, which is a part of the Individual and Households Program- IHP).

- i. For example, a household that reports:

1. zero income; or
2. income at or below 185% (adjusted annually) of the Federal Poverty Guidelines (FPG; FPL for “level”),
3. and has for the prior calendar year, and
4. does not report as self-employed;

should not be referred to the SBA for SBA-dependent ONA. However, data collected should indicate what factors were identified by FEMA to trigger a referral to SBA for SBA-Dependent ONA and whether the applicant was referred to the SBA for a disaster loan application. Without this information, FEMA is unable to determine whether the automation process that they use to collect data that they use in order to refer to the SBA for SBA-dependent ONA is working correctly<sup>10</sup>.

- ii. We also recommend that the following information should be collected when income information is collected: whether the applicant receives any sort of federally- or state-granted governmental assistance based on income. Questions that may be posed may include:

1. “Check yes or no: 1- I use SNAP benefits (commonly referred to as “food stamps”); 2- I received Federal or State-assisted payments for my housing, such as Section 8 “voucher” program, “public housing”, etc., 3- I have Medicaid benefits based on my household income; 4- I receive Retirement Social Security fixed income as my sole source of income; or 5- My primary form of income is disability income from the Social Security Administration in the amount of \$841.00 or below (year 2022).” [This last set of data on question 5 would indicate whether the recipient is receiving Supplemental Security Income, which is income-based disability income provided by the Social Security Administration, or whether the applicant receives SSDI, which is the Social Security Disability Income insurance benefit that the applicant paid into and has obtained after being deemed disabled by the Social Security Administration].

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[disproportionately-denied-by-fema-is-a-sign-of-a-system-that-is-failing-the-most-vulnerable/](#) accessed Feb 18, 2022.

<sup>10</sup> In our experience serving disaster assistance, households that have reported information that should preclude them from eligibility for SBA Disaster Loans [reporting zero, low-income, or disability-related income (SSDI, SSI, SSA retirement income that is at or below 185% of FPL) and have reported that they are not self-employed] have still been referred to the SBA to apply for SBA-dependent ONA; which is another unnecessary barrier to disaster relief when they were ineligible for these loans when referred. A copy of one such SBA disaster loan denial for a person who only has SSI income is attached. SSI disability income from the Social Security Administration is based on need, not based on disability income accrued and is therefore only provided to persons who have only accrued SSDI benefits below \$841/mo. (in 2022 dollars for one single person). Persons who receive only SSI income are, by definition, low-income individuals who lack repayment ability for SBA disaster loans. **See Appendix D**, Screenshot of SBA Home Loan denial due to lack of repayment ability. Small Business Administration, *SBA Home Loan Eligibility Evaluation*, SBA.gov (2021), <https://disasterloanassistance.sba.gov/ela/s/>.

**(B) If the only additional annual cost to the Federal Government is incurred due to the burden hours and respondent cost; and that operation and maintenance as well as capital and start-up costs are \$0; then we also believe that **implementing additional data points for collection at application would also share zero operation/maintenance and capital and start-up costs.****

**a. Such additional data points should include:**

- i. Whether the applicant started an application but was unable to obtain a registration number; and
  - ii. Whether the registrant was able to obtain a registration number;
  - iii. For applicants with registration numbers, the outcomes of such registrations should be included in available public data.
- b. Additionally, for efficiency, there are some data that may be collected at application at the same time of the proposed demographic information. Also, the system should process documentation in color.
- i. Collection of supporting documentation: it has come to our attention that, especially during a time of remote inspections due to COVID-19 concerns, it is particularly troublesome that FEMA will only accept documentation in black and white. In our experience, water damage and other types of damage can be very difficult to differentiate in black-and-white photos; especially if the photo was taken in color and not adjusted to grayscale. In our experience, most of the persons taking photos of damage are unaware that the photos they submit will be converted and saved only as black and white images.
  - ii. Both photos uploaded online, on the app, or sent to FEMA via Facsimile are ONLY saved in black-and-white. This reduces FEMA's ability to evaluate damage reported and may be generating appeals because damage has been underestimated when damage is apparent in color photographs.

**(C) This data will enhance the quality, utility, and clarity of the information to be collected because it will provide data to evaluate whether FEMA is providing service delivery to persons in accordance with their civil rights duties.**

- a. This demographic information will be especially useful if it includes collection of this data for both registrants and for persons whom have attempted to register but were unable to obtain a registration number, as identified under (A), above.
- b. The data to be collected should include, but not be limited to, race, ethnicity, sex, marital status, education level, tribal membership. We recommend that the following data is should also be collected: household income<sup>11</sup>- including households who report zero income<sup>12</sup>, sexual orientation, gender identity, and disability status (is the applicant regarded as a person with a disability or does this applicant report a disability?).
- c. Specifically, we recommend that additional probing questions be added to collect information about persons with disabilities. Even persons *regarded* as having a disability are protected from discrimination, and therefore questions about whether an applicant is *disabled* should include questions such as:
  - i. "Are you a person who is perceived to be "disabled" by others?"
  - ii. "Are you receiving any benefits based on a disability or multiple disabilities? These benefits could include Social Security Disability Income (SSDI), Supplemental

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<sup>11</sup> Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq (1988).

<sup>12</sup> Our practices do serve people who have no income. Even if FEMA intends to treat people who never provided their income differently, and its computer logic treats non-responses differently than a field affirmatively filled in with a zero, staff or applicants completing screens may fail to enter zero in the income field, as there is no income to enter. Treating an entry of "0" or a non-entry of any numbers when an applicant has zero income is not the same as "income refused" when the income has, in fact, been accurately reported as "none".

Security Insurance (SSI) [both SSDI and SSI are administered by the Social Security Administration, SSA].”

- iii. “Are you receiving any accommodations based on your disability or disabilities? Please describe.”
  1. An “accommodation” could be granted by your workplace, school, community center, place of worship, etc.
    - a. “Accommodations” are not limited to physical accommodations. Physical accommodation examples may include the use of ramps for persons who use medical devices to assist in walking or moving; ear plugs for persons who may become overstimulated without reduced sound; use of prosthetic equipment.
    - b. Non-physical accommodation examples may include flexibility to work from home due to a medical impairment, required advanced scheduling, prohibition of work before or after certain hours, etc., due to medical impairment.
  2. Perceived by others to be a person with a disability/ies: has someone asked you to undergo special testing for mental, cognitive, physical, or other medical impairments that they thought prevented you from communicating, understanding, emoting, or performing one or more daily activities (such as making food, dressing yourself, walking, performing certain work responsibilities, etc.)? Has a person or persons treated you differently because they thought you had a disability?
- iv. We also recommend that if an applicant answers on their application (or on a phone call to FEMA) that they need assistance making phone calls, need larger font print, or requested some other form of accommodation for your FEMA application, that this person should be *regarded* as a person with a disability by default to prevent discrimination based on perceived disability status.

(D) **Adding these questions to the IHP program applications will minimize the burden of collection by using the appropriate collection techniques identified and proposed.** By using existing systems for application, the user experience is only estimated to take an extra five minutes in a process that FEMA currently estimates to take 18 minutes<sup>13</sup>. If this is correct, then the collection of this data will increase the amount of time it takes to complete Registration for IHP by 27.8% (rounded to nearest tenth). However, in our experience with assisting disaster survivors apply for individual assistance, it usually takes much more time to apply for disaster assistance: anywhere between 30 minutes to an hour. According to our experience, this data collection proposed will increase the application time by a maximum of 20% or a minimum of 8%.

- a. Every avenue for application of FEMA benefits (by phone, website, phone application, or in person) should simply include these demographic questions, and the suggested additional questions above, at the beginning of the application process and should be saved along with any other data that is saved prior to the creation of registration number. This data should, of course, also be saved for persons with registration numbers.
- b. When considering this small time burden in relation to the reward of an entire cache of new data by which to evaluate the effective, non-discriminatory distribution of disaster

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<sup>13</sup> On page two of the Application/Registration for Disaster Assistance, the following statement supports the estimated time of completion for this form: “... Public reporting burden for this data collection is **estimated to average 18 minutes per response**. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and submitting this form. This collection of information is required to obtain or retain benefits...” (emphasis added). OFF. OF MGMT. & BUDGET, OMB No. 1660-0002, PAPERWORK BURDEN DISCLOSURE NOTICE (Exp. Aug. 31, 2022), <https://omb.report/icr/202108-1660-004/doc/114026900>, accessed Feb. 18, 2022.



assistance, it is our opinion that the proposed method of collecting this additional demographic data is the most efficient possible. Especially considering the immense value this data will have if it shows areas of disparate impact that must be improved, this miniscule time burden is well worth the public accountability that FEMA may demonstrate to taxpayers about whether FEMA funds are distributed equitably, as required by the Stafford Act.<sup>14</sup>

We agree that the collection of demographic data will help the IHP “improve operational outcomes for vulnerable communities by using analysis of demographic data against program outcomes to evaluate whether any disparities in eligibility determinations appear to impact vulnerable communities.” We applaud FEMA in using this data with the goal of improving service delivery for all survivors.

Not only will collection of this data be important for FEMA self-evaluation, but it will be important data that FEMA can disclose to show distribution of benefits on an impact-basis.

Please feel free to contact us at 504-861-5596 or [dfinger@loyno.edu](mailto:dfinger@loyno.edu) to discuss these issues further.

Sincerely,



Rebecca Holmes, Staff Attorney  
Davida Finger, Clinic Professor and Director  
**Loyola New Orleans Law Clinic**  
[Loyola Law Clinic and Center for Social Justice](#)



Dr. Ifeyinwa F. Davis, Policy Analyst  
Adrienne Wheeler, Executive Director  
**Louisiana Appleseed**  
<https://www.louisianaappleseed.org/about>

Encl:

**Appendix A-** Email from Davida Finger, Clinic Professor; Rebecca Holmes, Staff Attorney, Loyola New Orleans Law Clinic; Laura Tuggle, Executive Director; David Williams, Litigation Director; and Hannah Adams, Staff Attorney, Southeast Louisiana Legal Services, to José M. Gil Montañez and Sandy

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<sup>14</sup> The Stafford Act requires that “...relief and assistance activities **shall** be 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.” (emphasis added). Nondiscrimination in Disaster Assistance, 42 U.S.C. 5151(a). Commonly referred to as the *Stafford Act*, this federal law incorporates protections against discrimination that are commonly included in civil rights statutes (Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 31 et seq.; 34 C.F.R. Part 104.4; The Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101). 42 U.S.C. 5121 et seq., *amending* the Disaster Relief Act of 1974, PL 93-288.

Additionally, the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA) established a disability coordinator to ensure that the needs of individuals with disabilities are addressed and the assessment of these needs can be more effective if **accurate** data about applicants with disabilities is collected. (emphasis added). 6 USCS § 701 et seq. (2006); Pub. L. 109-295, title VI, §2202, Aug. 3, 2007, 121 Stat. 541 (Oct. 4, 2006).

Eslinger, Region 6 COVID-19, FEMA, DHS (November 8, 2021) (on file with Davida Finger at the Stuart H. Smith Law Clinic and Center for Social Justice) (Letter dated November 8, 2021, Letter sent to Region 6 FEMA representatives identifying, among other problems, applicants who have shown the inability to complete their registration and/or obtain a registration number after they began the application process. *See page 2 Paragraph 5.*).

**Appendix B-** Email from Rebecca Holmes, Attorney, Disaster Lawyering Project at Loyola Law Clinic, to [OpenFEMA@fema.dhs.gov](mailto:OpenFEMA@fema.dhs.gov), the designated email address for the OpenFEMA team for inquiries about FEMA's data and Open government program, (Feb. 16, 2022) (Email request to FEMA asking for what persons are represented by IHP data: registrants *only* or whether any of the data includes persons who began to apply but were unable to complete registration and/or obtain a registration number).

**Appendix C-** FEMA, *Identification Verification Error, DisasterAssistance.gov*, (2021), [www.disasterassistance.gov](http://www.disasterassistance.gov), (Screen shot of the Identity Verification Screen; which lists a number of reasons why an applicant may not be able to proceed with their application but must instead call the FEMA toll-free hotline.).

**Appendix D-** Screenshot of SBA Home Loan denial due to lack of repayment ability. Small Business Administration, *SBA Home Loan Eligibility Evaluation*, SBA.gov (2021), <https://disasterloanassistance.sba.gov/ela/s/>, (SBA Disaster Loan Denial based on inability to repay loan due to income for a person who reported SSI income as their only source of income. This income is below the 185% FPL threshold requirement that indicates to the SBA that an applicant has the ability to repay an SBA disaster loan).