



COLLEGE OF LAW
STUART H. SMITH LAW CLINIC

November 8, 2021

VIA EMAIL ONLY

Region 6 COVID-19 | FEMA | DHS

José M. Gil Montañez

Sandy Eslinger

Re: FEMA Referral to SBA Loans & HUD Tenant Denials

Dear Ms. Eslinger:

We recently received FEMA's response to our October 7th letter. FEMA's responses continue to concern us because the policies you described do not support the needs of the low-income population we serve. We have provided an explanation and response to your letter below. We would like set a meeting at your earliest convenience to discuss these matters. Please respond with your availability to meet by zoom.

First, FEMA's own policies do not require that low income persons be referred to the SBA and specifically direct FEMA otherwise¹. Your letter failed to address those policies and instead, wrongly points to the fact that FEMA assistance is not contingent on income; we have not suggested that it is. Rather, we pointed to FEMA's internal policies regarding referral to the SBA and your letter does not effectively address our concern regarding the ongoing referral of low-income persons to the SBA, which effectively cuts off the applicant's FEMA assistance for SBA-dependent ONA.²

Your letter describes how FEMA responds when applicants do not know their income when they apply: As we understand it, they are told they can return to FEMA with specific information. But in the meantime, FEMA's computer defaults the income field to zero income. Then, because the population listed as zero income includes people who may still need to provide their income, apparently all people with zero income are referred to the SBA, which is not correct under FEMA's policies³. Or, in our experience with applicants, the income field may be listed as "income refused." If this is a correct understanding, there are two problems here. First, folding people with

¹ 86 FR 48461-01, 2021 WL 3837718(F.R.) (*Privacy Act of 1974 Matching Program, which describes the purpose: "...DHS/FEMA and SBA will participate in a Computer Matching program to share data...to verify eligibility for benefits."*); IAPPG Version 1.1 FP1 104-009-03 5 MAY 2021; page 145; ((*FEMA refers the applicant's information to SBA if the applicant's income meets SBA minimum guidelines.*")); (Fig. 27: SBA Disaster Loan Application Process: "1- Disaster Survivor Registers with FEMA.--> 2- Refer to SBA? Referral is based on household income-> ..."(emphasis in original)).

² Similarly, when applicants must fill out a FEMA application and then an SBA application that has duplicative data, this creates an extra unnecessary step for applicants who are still surviving a disaster when there is an existing program to share this data so that the applicant does not have to do so.

³ *Id.*

unknown income in with people who have zero income is totally inappropriate. This results in referring people who actually have no income to the SBA when they should not be referred. There are better computer workarounds than assigning zero income, which would not have the illegal collateral consequence.⁴ Second, many traumatized disaster survivors are going to inevitably forget that they should return with income information. As a result, any referral to SBA should prominently include the fact that if the person failed to provide their income to FEMA, the referral may not be necessary, and they can provide their income information to FEMA as soon as possible. Better still, FEMA's referral to SBA should not be sent until FEMA has requested income verification as it is FEMA's task to determine whether an applicant should be referred to the SBA.

As to providing additional documentation to FEMA before needing to appeal, you responded that, "If an applicant is missing verification of occupancy, ownership, or identity, they can provide this documentation to FEMA without filing a formal appeal." First, please confirm that those are only examples and not a limited set of instances where supplementation is allowed. As an example, in our experience, disaster survivors often fail to understand how to convey the full damage that their property has endured: so they may submit a roof repair estimate and neglect to get an estimate for the interior damage caused, etc. Still more applicants may submit poor photographs or even instead an oral description that does not properly convey the scope of the damage. We have heard from multiple clients that uploading photos or documents to their FEMA account is a dead-end, as FEMA representatives have confirmed on follow-up calls that they cannot view uploads. Faxed photographs will not appear in color or detailed enough to make an assessment.

Second, we and our clients have been routinely advised by those working the FEMA call center phone line that applicants must file an appeal to update their file. Please provide the policy guidance to call center personnel regarding this issue so that we can confirm the policy as implemented, and point them to it when on the calls. A large swath of Ida-impacted areas remained without internet for many weeks and some areas continue to be disconnected making it rather difficult to routinely access on-line FEMA accounts. Additionally, low-income clients more heavily rely on phone communication over on-line access to FEMA. Thus, confirmation about the call center's operations on this issue is critical.

There is another pressing issue that needs immediate resolution: FEMA representatives are not allowing calls to proceed with advocates on the line. As the phone line is the primary access to most applicants' FEMA case file, it is imperative that this issue be corrected as soon as possible.

Further, in the frequent situations wherein the online application or the FEMA phone app have referred the applicant to the call center, the applicant is unable to apply for benefits or obtain a FEMA registration number entirely. Call center representatives have told multiple applicants to apply with the person who may have already filed a claim at the same address even if that person is not in the new applicant's household (ex: Landlord has already filed, but tenant is being blocked from applying). FEMA is not permitting the applicant to submit an application.

Next, we are dismayed to learn from your response that the previous HUD/FEMA Computer Matching Agreement is currently expired. We have since learned that the Agreement expired years ago. It does not serve the goals of equity and inclusion to implement federal government programs without the most basic information sharing systems in place so that federal agencies have the opportunity to engage in effective communication. If the Computer Matching Agreement has indeed been expired for years, we cannot understand why interim steps were not

⁴ Our practices 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.

taken to ensure that a base level of communication between the two agencies would be possible in the aftermath of a storm, for example having all tenants at HUD PBRA properties sign the FEMA ROI form so that after a storm they can more easily access assistance. We understand that instead of HUD sharing comprehensive data on impacted tenants with FEMA in order to streamline assistance, which is not possible absent the data sharing agreement, FEMA has assigned staff to go property by property in an effort to reach impacted tenants.

While we appreciate and applaud the hours that hardworking and dedicated FEMA staff are putting into this effort, the result has been inefficient and extremely chaotic for already-traumatized tenants. Clients are still trapped in unsafe storm-damaged units and/or sleeping in their cars due to inexplicable delays in processing their FEMA assistance and/or erroneous denials. We will certainly continue to reach out on a case-by-case basis about these issues. However, there is a better, more efficient way to serve HUD-assisted tenants post-disaster and it is inexcusable that the data-sharing agreements that would make such efficient service possible for our community's most vulnerable tenants was allowed to expire.

We certainly appreciate the referral to Ms. Bennet for assistance on our individual cases. We note that every FEMA applicant and in particular, the low-income clients we serve should have a similarly situated experienced and knowledgeable contact for FEMA assistance which is decidedly not the case in our experience with the call center.

Contact us to set a meeting as soon as possible as the issues above are time-sensitive. You may reach us at 504-861-5596 to set a meeting.

Sincerely,

A handwritten signature in black ink that reads "Davida Finger". The signature is fluid and cursive, with the first name "Davida" being more prominent than the last name "Finger".

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/s/ Laura Tuggle
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