



316 South Closner Blvd.  
Edinburg, TX 78539  
Phone: 956-393-6200  
Toll Free: 888-988-9996  
Fax: 956-383-4688  
[www.trla.org](http://www.trla.org)

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*Comment submitted via regulations.gov*

Federal Emergency Management Agency  
500 C St. SW  
Washington, DC 20472

RE: Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for Civil Rights and Equity; Docket ID: FEMA–2022–0006, 87 Fed. Reg. 3,836

Texas RioGrande Legal Aid (TRLA) is a non-profit law firm that provides free legal services to eligible low-income persons in 68 counties in south, central, and west Texas, which includes representing disaster survivors in obtaining disaster benefits from federal and state administrative agencies. TRLA provides direct legal services to almost 23,000 people every year and assists more than 10,000 individuals and families through outreach to learn more about their legal rights.

For nearly two decades, TRLA has responded to natural disasters and assisted survivors in over 17 major declared disaster such as Hurricane Katrina, Hurricane Harvey and more recently, Winter Storm Uri. We participate in Voluntary Organizations Active in Disasters (VOAD), Community Organizations Active in a Disaster (COAD), and Long-Term Recovery Group (LTRG) meetings across our service area and conduct trainings on “Legal Issues Arising After a Disaster,” to disaster case management and nonprofit organizations. Our experience enables our attorneys to witness first-hand the impact FEMA’s current programs, regulations, and policies have had on low-income survivors. TRLA appreciates the opportunity to provide comments on the above-referenced notice.

On January 24, 2022, FEMA published 87 FR 3836 and proposed “collect[ing] demographic Information” from disaster assistance applicants to improve civil rights compliance, nondiscrimination, and equity requirements. This data “increase[s] FEMA’s ability [to] evaluate *sic* the accessibility and distributional equity of their programs and then make alterations or pivot based upon identified areas of concern[.]”

It is no secret that FEMA has historically struggled with distributing benefits and assistance equitably, as recent news articles<sup>1</sup> and governmental agency reviews<sup>2</sup> have reported. Despite the reservations below, TRLA commends FEMA's efforts to begin identifying ongoing discrimination and discriminatory practices in the Agency and its programs. This data collection action, if done with transparency, will substantially benefit underserved disaster survivors. We stress the importance of transparency because TRLA has continuously raised concerns with FEMA's lack of transparency in the way it administers disaster recovery assistance<sup>3</sup> and are concerned that this will be yet another area of obfuscation. Before we commend FEMA's actions and offer suggestions, we must express TRLA's frustration with FEMA's lack of response up until now, and why TRLA is concerned about the data collection/sharing program as it is described now.

## **I. FEMA Should Have Addressed This Issue to Comply with the Stafford Act**

While we do appreciate FEMA's decision to act in this regard, we must also note that FEMA has likely been in violation of the Stafford Act by not addressing the ongoing discrimination in the Agency and its programs. The Stafford Act requires that "all personnel carrying out Federal major disaster or emergency assistance functions . . . shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status."<sup>4</sup> It is unlikely FEMA is satisfying this requirement.<sup>5</sup> However, with no internal data of their own, FEMA cannot show whether it is in compliance with the Stafford Act and other civil rights laws. The Office of Budget and Management has issued guidance about collecting demographic data for decades<sup>6</sup>—it is high time FEMA starts complying with their mandates.

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<sup>1</sup> Christopher Favelle, *Why Does Disaster Aid Often Favor White People?*, N.Y. TIMES, (June 7, 2021), <https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html>; Rebecca Hersher & Ryan Kellman, *Why FEMA Aid Is Unavailable To Many Who Need It The Most*, NPR, (June 29, 2021), <https://www.npr.org/2021/06/29/1004347023/why-fema-aid-is-unavailable-to-many-who-need-it-the-most>; Thomas Frank, *FEMA Says It Will Make Disaster Response More Equitable*, SCIENTIFIC AMERICAN, (Mar. 15, 2021), <https://www.scientificamerican.com/article/fema-says-it-will-make-disaster-response-more-equitable/>.

<sup>2</sup> U.S. Gov. Accountability Off., GAO-22-104039, *Additional Actions Needed to Identify and Address Potential Recovery Barriers*, (2021). *See also*. Additionally, an ongoing investigation by the U.S. Commission on Civil Rights regarding the federal response to Hurricane Harvey. <https://www.usccr.gov/meetings/2021/10-21-civil-rights-implications-disaster-relief-hurricane-harvey-texas>; Thomas Frank, *Civil rights panel probes hurricane response for first time*, E&E NEWS, (Dec. 1, 2021), <https://www.eenews.net/articles/civil-rights-panel-probes-hurricane-response-for-first-time/>.

<sup>3</sup> *Barbosa v. United States Dep't of Homeland Sec.*, 916 F.3d 1068 (D.C. Cir. 2019).

<sup>4</sup> 44 CFR § 206.11.

<sup>5</sup> *Supra* Notes 1 and 2.

<sup>6</sup> *See* 62 FR 58782. This 1997 guidance have since been reviewed and updated. 81 FR 67398.

## **II. Concerns Regarding the Data Collection**

The notice raises concerns about the logistics (or lack thereof) of this initiative.<sup>7</sup> Namely, it is unclear whether the data will be available to the public. Since this information is not included in the notice, we want to address why it should be.

First, if one of the goals is the evaluation of accessibility, and the data is not made public, then that goal is hardly accomplished in the dark. It is possible that FEMA may collect this data, perform an internal analysis with no external accountability, state a determination of little to no discrimination, and then move on with no substantive steps towards equity. FEMA has not yet said who will have access to the demographic data, what the data will be used for, and what training there will be for those handling the data. With this initiative, if employees and contractors have access to applicants' demographic information, it might increase the risk of discrimination at all stages. Phone operators will have knowledge about an applicant's race, which may allow personal biases (if unchecked) to play a role. Research has shown that nearly every person harbors implicit bias against certain groups, including racial minorities.<sup>8</sup> For this reason, we find the lack of detail in this notice concerning.

Fortunately, this issue is easily addressed. As more information about the process is learned, hesitations about who handles the data may fall by the wayside; but, until this information is disclosed to the public, we must prepare for broad access within FEMA. With respect to training, another substantive step towards equity is to require adequate sensitivity and diversity training. Requiring implicit bias training for the data handlers will help alleviate this issue.<sup>9</sup>

Second, private demographic data may create impenetrable insulation for FEMA decision making, meaning any time claims of inequity or discrimination are levied against FEMA or one of FEMA's programs, FEMA could use this data as a shield justifying its actions. This effectively quashes external equity initiatives and diminishes the role of public accountability—this undercuts any messaging on equity and nondiscrimination on the part of FEMA and the Biden Administration.

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<sup>7</sup> Although, we do hope that FEMA follows other guidance about how to pose such sensitive demographic questions. *Id.*

<sup>8</sup> Cheryl Staats, *State of the Science: Implicit Bias Review 2014*, Kirwan Inst., (2014), <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/03/2014-implicit-bias.pdf>

<sup>9</sup> We also recommend that all FEMA employees undergo implicit bias training which furthers the first goal of the strategic plan, but that is broader than the scope of this Notice. <https://www.fema.gov/about/strategic-plan/goal-1>. Patricia G. Devine et al., *Long-term reduction in implicit race bias: A prejudice habit-breaking intervention*, 48 *Journal of Experimental Social Psychology* 1267 (2012).

Disclosing demographic data is no more burdensome than other procedures currently in place. At this time, FEMA places data on the OpenFEMA platform, such as data about registrations, eligibility, and assistance.<sup>10</sup> A model currently exists for FEMA to share its newly collected demographic data on the OpenFEMA platform along with other, non-personally identifying information. Disclosure would promote public participation (discussed more below) and efficiency. Furthermore, by proactively publishing the data on OpenFEMA, organizations and citizens will not have to request the data through a Freedom of Information Act request. This would reduce administrative burden and avoid inconsistent determinations.<sup>11</sup>

### **III. Opportunity for Growth**

Despite the reservations stated above, there is an entire landscape of opportunities FEMA can explore while pursuing equity and equality.

First, collecting and disseminating this data provides FEMA adequate tools for rooting out discrimination. Other organizations and agencies,<sup>12</sup> have determined a problem exists regarding an inequitable distribution of assistance, but having specific data helps define the scope of the problem. Indeed, a report by the United States Government Accountability Office stated that “[l]imited research exists on the relationship between participation in select federal recovery programs and individual, community, and program characteristics.”<sup>13</sup> When dealing with equity, adequate scoping of the problem is key before developing remedies. This data allows FEMA to tailor its programmatic changes to its systemic issues.

Second, collecting and disseminating this data may illuminate problems that FEMA was unaware of. For example, we stated our concerns above about the discriminatory use of the data by FEMA operators; however, it is possible that this discrimination already occurs absent such information. Case handlers or operators may rely on accents, locations, or names and assume certain demographic information. In such cases, the discrimination is happening under FEMA’s nose and with no detection method in place. This initiative combined with proper collection, publication, and data analysis would allow FEMA to combat any implicit biases held by its operators, inspectors, or other case handlers and decision makers that may already be impacting the outcome of a survivor’s application.

Third, FEMA should partner with qualified researchers, research institutions, and other agencies in analyzing and utilizing this data. These other entities have unique insights and specializations which will assist FEMA in meeting their civil rights obligations and

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<sup>10</sup> See OpenFEMA Datasets, <https://www.fema.gov/about/openfema/data-sets>

<sup>11</sup> *News-Press v. U.S. Dept. of Homeland Sec.*, 489 F.3d 1173 (2007).

<sup>12</sup> *Supra* Note 2.

<sup>13</sup> *Id.*

furthering its equity initiatives.<sup>14</sup> A diverse set of viewpoints, values, and expertise ensures that any gaps are discovered and filled. If FEMA is serious about “evaluat[ing] the accessibility and distributional equity of their programs [,]”<sup>15</sup> then they should seek help from others who have already achieved such goals. And while TRLA acknowledges that FEMA has a responsibility to protect its applicant data, other agencies have already implemented models for achieving these twin aims (publishing data while protecting privacy) that FEMA may rely on.<sup>16</sup>

Lastly, TRLA encourages FEMA to partner with outside organizations, entities, and tribes while determining the next steps. President Biden called for agencies to consult “with members of communities that have been historically underrepresented in the Federal Government and underserved by, or subject to discrimination” and increased “coordination, communication, and engagement with community-based organizations and civil rights organizations.”<sup>17</sup> This is the ideal opportunity for FEMA to accomplish that goal.

### **Conclusion**

We await FEMA’s next steps in detailing their plans concerning this data and its publication. Despite this longstanding issue, TRLA commends FEMA’s movement towards satisfying their legal requirements of non-discrimination. Collecting this data is the first step in identifying the extent of discrimination, and hopefully, it is the first of many in addressing this problem.

We thank you for the opportunity to provide comment on this important issue and look forward to FEMA’s implementation of policies that ensure equitable access to relief by the hundreds of disaster survivors TRLA represents each year.

Respectfully Submitted,

TRLA’s Disaster Benefits Team  
Ana Laurel  
[alaurel@trla.org](mailto:alaurel@trla.org)  
Carey Buxton

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<sup>14</sup> 42 U.S.C. § 5151(a); Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C 794; 28 C.F.R. § 42.104(b)(2).

<sup>15</sup> *Supra* Note 1.

<sup>16</sup> See Dep’t of Housing and Urban Dev., *Data License Agreement*, [https://www.huduser.gov/portal/research/pdr\\_data-license.html](https://www.huduser.gov/portal/research/pdr_data-license.html) (HUD may enter into agreements with research organizations “for the explicit purpose of conducting innovative research projects that inform HUD’s policies and programs”); Donna K Ginther et al., *Race, ethnicity, and NIH research awards*, 333,6045 SCIENCE 1015 (2011).

<sup>17</sup> Exec. Order No. 13985, 89 C.F.R. 7009 (2021).



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Fax: 956-383-4688  
[www.trla.org](http://www.trla.org)

[cbuxton@trla.org](mailto:cbuxton@trla.org)

Texas RioGrande Legal Aid  
316 South Closner Blvd.  
Edinburg, Texas 78539

Brittanny Perrigue Gomez  
Team Manager, Disaster Benefits  
[bperrigue@trla.org](mailto:bperrigue@trla.org)

Texas RioGrande Legal Aid  
1111 N. Main Ave.  
San Antonio, Texas 78212