

# Federal Legislative and Policy Recommendations Regarding Disaster Assistance

HB 2340

State of Texas

July 2020

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## Executive Summary

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The impetus for this report came from the 86<sup>th</sup> Texas Legislature's desire to improve disaster response and recovery and was focused on a recommendation from the *Eye of the Storm* report by the Governor's Commission to Rebuild Texas:

*Collaborate with Congress and the federal government to improve emergency management laws and policies:*

*The Texas Congressional delegation and state leaders should work together to collaborate with Congress and the federal government on these issues. The goal of this federal-state partnership would be to improve and streamline federal laws and policies related to procurement, housing assistance, sharing of data, staffing issues, and navigation through the maze of federal disaster assistance programs. The recommendation could be implemented without cost, being included in on-going state efforts to collaborate with federal officials on emergency management policy issues. (Eye of the Storm, pg 147)*

A working group composed of state and federal experts from a great variety of organizations was convened to address the issues listed within the *Eye of the Storm* report, but the examination of issues was not limited to the report itself. As issues were identified beyond the scope of the *Eye of the Storm*, those issues were added to the working group agenda for further examination.

The working group identified twenty-one issues from the report which would be impacted by federal laws and policies and examined each in detail. Separately, another issue was identified outside of the *Eye of the Storm* and added to this report.

From these 22 individual issues, 6 issues were found to require changes to either federal law or policy. The review of the remaining 16 issues resulted in no recommended change to a law or policy. While these 16 issues are critical to the overall success of emergency management, the means to improve the implementation may require more operational steps to provide education and action on the part of practitioners, jurisdictions, and the public rather than a change to federal law or policy.

# Overview

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## Goal

Study federal laws and policies related to issues affecting the ability of federal agencies, state agencies, and local governments to cooperate in responding to a disaster, including issues related to procurement, housing assistance, information sharing, personnel, and federal disaster assistance programs; and make recommendations to improve federal laws and policies.

## Objectives

- Examine current federal laws and policies
- Determine which federal laws and policies adversely affect cooperation in a disaster
- Recommend changes to improve cooperation in a disaster

## Audience

- TDEM Leadership
- Texas Office of State and Federal Relations
- Texas Legislature

# Authority

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House Bill 2340

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**For more information:**

Texas Legislature Online

<https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB2340>

## Stakeholders

Members are identified in the chart below.

Agent	Summary
Texas Division of Emergency Management (TDEM)	The Texas Division of Emergency Management is charged with carrying out a comprehensive all-hazard emergency management program for the state and for assisting cities, counties, and state agencies in planning and implementing their emergency management programs.
Texas Health and Human Services Commission (HHSC)	The Texas Health and Human Services (HHSC) Commission's Disaster Assistance Program works with the Federal Emergency Management Agency to offer housing and other assistance in the event of a federally declared disaster.
Texas Commission on Environmental Quality (TCEQ)	<p>The Texas Commission on Environmental Quality strives to protect our state's public health and natural resources consistent with sustainable economic development. To accomplish our mission, we will:</p> <ul style="list-style-type: none"> <li>• base decisions on the law, common sense, sound science, and fiscal responsibility;</li> <li>• ensure that regulations are necessary, effective, and current;</li> <li>• apply regulations clearly and consistently;</li> <li>• ensure consistent, just, and timely enforcement when environmental laws are violated;</li> <li>• ensure meaningful public participation in the decision-making process;</li> <li>• promote and foster voluntary compliance with environmental laws and provide flexibility in achieving environmental goals; and</li> <li>• hire, develop, and retain a high-quality, diverse workforce.</li> </ul>
Texas Department of Transportation (TxDOT)	The Texas Department of Transportation (TxDOT) mission is: Through collaboration and leadership, we deliver a safe, reliable, and integrated transportation system that enables the movement of people and goods. The TxDOT Vision is to be a forward-thinking leader delivering mobility, enabling economic opportunity, and enhancing quality of life for all Texans.

Texas Water Development Board (TWDB)	The mission of the Texas Water Development Board (TWDB) is to provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas. To accomplish the goals of planning for the state’s water resources and providing affordable water and wastewater services, the TWDB provides water planning, data collection and dissemination, financial assistance, and technical assistance services to the citizens of Texas.
Texas General Land Office (GLO)	Community Development and Revitalization (CDR) within the Texas General Land Office (TX GLO), is the state agency lead for administering the disaster recovery and mitigation funds provided by the U.S. Department of Housing and Urban Development (HUD), as well as, the FEMA funded temporary housing program. The HUD funded recovery programs may include housing, infrastructure, planning, and economic revitalization programs with a focus on low- moderate income communities.
Texas Department of State Health Services (DSHS)	<p>The Texas Department of State Health Services (DSHS) Center for Health Emergency Preparedness and Response is dedicated to mitigation, preparedness, response and recovery from natural disasters, terrorist attacks, and other public health emergencies in Texas. Based on potential health and safety threats, risks and vulnerabilities the Center for Health Emergency Preparedness and Response programs do the following:</p> <ol style="list-style-type: none"> <li>1. Assess state, regional and local preparedness programs;</li> <li>2. Establish preparedness program policies, guidelines and procedures;</li> <li>3. Strengthen state, regional and local preparedness program activities with technical assistance;</li> <li>4. Coordinate public health and medical emergency preparedness activities such as planning, training and exercises;</li> <li>5. Support local and regional response efforts;</li> <li>6. Provide oversight and support of state health and medical response to public health emergencies and disasters; and</li> <li>7. Distribute and administer preparedness funding to public health and healthcare stakeholders across Texas for health and medical disaster preparedness and response.</li> </ol>

<p>Texas Department of Housing and Community Affairs (TDHCA)</p>	<p>The mission of the Texas Department of Housing and Community Affairs (TDHCA) is to administer its assigned programs efficiently, transparently, and lawfully and to invest its resources strategically and develop high quality affordable housing which helps Texas communities to thrive. The Department accomplishes its mission largely by acting as a conduit for federal assistance for housing and community services. However, because several major housing programs require the participation of private investors and private lenders, TDHCA also operates as a housing finance agency.</p>
<p>Texas Department of Agriculture (TDA)</p>	<p>The Texas Department of Agriculture (TDA) mission is to partner with all Texans to make Texas the nation's leader in agriculture, fortify our economy, empower rural communities, promote healthy lifestyles, and cultivate winning strategies for rural, suburban and urban Texas through exceptional service and the common threads of agriculture in our daily lives.</p>
<p>Federal Emergency Management Agency (FEMA)</p>	<p>The Federal Emergency Management Agency (FEMA) helps people before, during, and after disasters to build a prepared and resilient Nation. FEMA accomplishes this by building a culture of preparedness, readying the nation for catastrophic disasters, and by reducing the complexity of FEMA.</p>
<p>US Small Business Administration (SBA)</p>	<p>Businesses of all sizes and private nonprofit organizations may borrow up to \$2 million to repair or replace damaged or destroyed real estate, machinery and equipment, inventory and other business assets. SBA can also lend additional funds to businesses and homeowners to help with the cost of improvements to protect, prevent or minimize the same type of disaster damage from occurring in the future.</p> <p>For small businesses, small agricultural cooperatives, small businesses engaged in aquaculture and most private nonprofit organizations of any size, SBA offers Economic Injury Disaster Loans to help meet working capital needs caused by the disaster. Economic injury assistance is available regardless of whether the business suffered any property damage.</p> <p>Disaster loans up to \$200,000 are available to homeowners to repair or replace damaged or destroyed real estate. Homeowners and renters are eligible for up to \$40,000 to repair or replace damaged or destroyed personal property.</p>
<p>US Department of Housing and</p>	<p>The US Department of Housing and Urban Development creates strong, sustainable, inclusive communities and quality affordable homes for all. HUD is working to strengthen the</p>



Urban Development (HUD)	housing market to bolster the economy and protect consumers; meet the need for quality affordable rental homes; utilize housing as a platform for improving quality of life; build inclusive and sustainable communities free from discrimination; and transform the way the Department does business.
US Department of Agriculture (USDA)	The United States Department of Agriculture (USDA) provides leadership on food, agriculture, natural resources, rural development, nutrition, and related issues based on public policy, the best available science, and effective management. The USDA has a vision to provide economic opportunity through innovation, helping rural America to thrive; to promote agriculture production that better nourishes Americans while also helping feed others throughout the world; and to preserve our Nation's natural resources through conservation, restored forests, improved watersheds, and healthy private working lands.
Natural Resources Conservation Service (NRCS)	The Natural Resources Conservation Service (NRCS) is a division within the USDA that seeks to deliver conservation solutions so agricultural producers can protect natural resources and feed a growing world. NRCS envisions a world of clean and abundant water, healthy soils, resilient landscapes, and thriving agricultural communities through voluntary conservation.
US Army Corps of Engineers (USACE)	The United States Army Corps of Engineers seeks to deliver vital public and military engineering services; partner in peace and war to strengthen our Nation's security, energize the economy, and reduce risks from disasters.
US Department of Transportation (DOT)	The mission of the U.S. Department of Transportation (DOT) is to ensure our Nation has the safest, most efficient and modern transportation system in the world, which improves the quality of life for all American people and communities, from rural to urban, and increases the productivity and competitiveness of American workers and businesses.

# Background, Discussion and Recommendations

**This section provides a summary of the project (background, discussion, recommendations, resource requirements, etc.)**

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BACKGROUND: The impetus for this report came from the 86<sup>th</sup> Texas Legislature's desire to improve disaster response and recovery and was focused on a recommendation from the *Eye of the Storm* report by the Governor's Commission to Rebuild Texas:

*Collaborate with Congress and the federal government to improve emergency management laws and policies:*

*The Texas congressional delegation and state leaders should work together to collaborate with Congress and the federal government on these issues. The goal of this federal-state partnership would be to improve and streamline federal laws and policies related to procurement, housing assistance, sharing of data, staffing issues, and navigation through the maze of federal disaster assistance programs. The recommendation could be implemented without cost, being included in on-going state efforts to collaborate with federal officials on emergency management policy issues. (Eye of the Storm, pg 147)*

A working group composed of state and federal experts from a great variety of organizations was convened to address the issues listed within the *Eye of the Storm* report, but the examination of issues was not limited to the report itself. As issues were identified beyond the scope of the *Eye of the Storm*, those issues were added to the working group agenda for further examination.

DISCUSSION: To build a logical framework for experts to examine and report on the issues, a format of Issue, Reference, Discussion and Recommendation was used in the working group and is presented below in that same fashion. The first 6 items represent those issues which would require federal law or policy change to implement. The remaining 16 issues may only require operational changes or continuation of current actions.

## ISSUES REQUIRING FEDERAL LAW OR POLICY CHANGE

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Issue: Direct Housing FEMA Verified Loss Calculation

Law and/or Policy Reference: Under the IHP Housing Assistance, authorized by Sec 408 (c) of the Stafford Act.

Discussion: Currently as the policy stands the eligibility criteria for the FEMA funded Direct Housing Mission with the IHP program is \$17,000 in FEMA Verified Loss (FVL) (FEMA IHPUG, pg 93, <https://www.fema.gov/media-library-data/1551713430046-1abf12182d2d5e622d16accb37c4d163/IAPPG.pdf> . This threshold is based on a 2012 statistical analysis of FEMA Direct Housing operations from 2008-2011. Whereas, renters are eligible based on the categories of Major or Destroyed. The \$17,000 in FVL disproportionately favors those with larger homes and higher value homes.

Recommendation: Change the eligibility criteria to percentage of the square foot of damage to the primary living structure or to a percentage of damage to primary living structure to move away from a dollar amount that is not equitable.

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Issue: Fast Track Funds

Law and/or Policy Reference: (1) The FEMA Public Assistance Program and Policy Guide (PAPPG) dated January 1, 2020 (p.185 B.) provides guidance on Expedited Projects for Emergency Work.

Discussion: FEMA may provide expedited funding for Emergency Work projects (Category A or B) that meet or exceed the large project threshold. FEMA funds Expedited Projects at 50 percent of the Federal share of the estimated project cost. Requests for Expedited Projects must be submitted to FEMA within 60 days of the Applicant's Recovery Scoping Meeting.

Recommendation: If disaster is determined to be catastrophic, provide expedited procedures in the Applicant Briefing presentation given to Local Jurisdictions. Provide outreach training either quarterly or semi-annual in every Region across the State. Also consider adding into The Local Catastrophic Debris Management Guide.

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Issue: 50 Week Rule

Law and/or Policy Reference: FD 122-2-1, *FEMA Travel Policy Manual* (Sept. 23, 2015) aka 50 Week Rule

Discussion: The *FEMA Travel Policy Manual* prohibits FEMA from deploying an employee to a single Temporary Duty (TDY) location for a period of time greater than 50 weeks. While the 50 week rule may pose a problem in catastrophic and some Type II events, the rule is a coordinated effort to ensure FEMA employees do not exceed a 50 week continuous deployment. I have include our latest Travel Policy to address specifically the 50 Week Rule. I don't believe that there will be a work-around on the current IRS rulings, although a few thoughts that come to mind as far as potential recommendations to FEMA and other federal agencies affected by this ruling are as follows:

Recommendations:

1. Transition in new staff members before demobilizing existing staff, whether it be due to the 50 Week Rule, or otherwise.
  - a. This will allow adequate situational awareness and training of transitioning staff.
  - b. State, Local, Tribal, Territory (SLTT) program leadership that are affected by these transitions are often made aware of the transition too late, after demobilization or not at all. Inform SLTT staff affected by transition operations much earlier in the process to ensure they can adequately prepare work stations for incoming personnel.
2. Fill key positions that leave due to the 50 Week Rule in advance of their departure.
  - a. At times, it takes a long time to fill these key positions or they are not filled at all.
  - b. This position vacancy can then leave a gap that SLTT communities must address.
  - c. This position vacancy can halt any momentum gained, and at times, reverse it.

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Issue: Consolidation of Public Infrastructure Projects

Law and/or Policy Reference:

7 CFR § 624, Emergency Watershed Protection

## M\_390\_510 - Parts 510-515 - Emergency Watershed Protection (EWP) Program Manual

Discussion: Currently, FEMA requires that the USDA Natural Resources Conservation Service (NRCS) deny an applicant under its jurisdiction assistance before that entity can apply for FEMA Public Assistance funding. This requirement particularly impedes the efforts of the Harris County Flood Control District where about 90 percent of the infrastructure is “natural channels” under the jurisdiction of NRCS, not FEMA. NRCS may grant approval for projects under its purview, but if funding is not appropriated, the project will stall. An approved but unfunded NRCS project cannot be funded by FEMA (Eye of the Storm, pg 139). The implementing law and policy also do not allow for the provision of mitigation measures to reduce or eliminate the same damage from recurring. In June 2018, flooding caused by torrential rains devastated south Texas, yet many of the publicly-owned waterway damages were not allowed to be counted towards the state’s damage threshold. Finally, The Emergency Watershed Protection Program is unfunded and must be sent to Congress to compete for additional funds before repairs can even begin.

### Recommendations:

Develop an interagency agreement between the NRCS and FEMA that overrides jurisdiction during disaster events and allows for FEMA to become the lead agency on all public infrastructure projects.

Alter the Code of Federal Regulations and Emergency Watershed Protection Policy to exclude non-federal publicly-owned facilities

Allow damage under Emergency Watershed Protection Program to be counted toward FEMA-state threshold

Alter Emergency Watershed Protection Program statute and policy to include mitigation measures

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Issue: More Flexible Timeframes

Law and/or Policy Reference:

7 CFR § 624, Emergency Watershed Protection

M\_390\_510 - Parts 510-515 - Emergency Watershed Protection (EWP) Program Manual

Discussion: The Natural Resources Conservation Service (NRCS) currently requires a project be completed 220 days from approval of the contract, which stakeholders indicate is impossible for a \$90 million repair. The state should work with the NRCS to allow more flexibility in completion time frames (Eye of the Storm, pg 139). 220 days is not enough time to complete a regular Emergency Watershed Protection project that includes engineering and design components for bank re-stabilization projects. 220 days is adequate for debris removal projects. Indeed, FEMA routinely grants extensions for long duration projects when adequately justified and NRCS should follow suit.

Recommendation: Rewrite the Code of Federal Regulation and the Emergency Watershed Protection program manual to incorporate achievable timeframes for the different types of projects that fall under EWP.

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Issue: Recovery Funded Projects Based on Maps that Update Over Time

Law and/or Policy Reference: N/A

Discussion: Often throughout the process of recovery, disaster projects are funded through multiple sources. The projects are also vetted across different timelines and thus as maps are updated those projects may face multiple maps for permitting and floodplain issues. For example, if FEMA wants a property to be 1 foot above base floodplain elevation (BFE) yet HUD asks for it to be 2 feet above BFE. A household that followed the map and rules for FEMA may not be eligible for a HUD funded program for the same disaster because those programs were funded at different times using the most recent maps at the time and had different rules.

Recommendation: Consistency in policies or rules for each disaster across multiple federal funding streams. For example, appropriation of funds by Congress need to emphasize that the rules for those funds are for that given disaster and should all follow the same rules for all projects for that disaster. Such as, housing should be rebuilt and elevated 1 foot above base flood elevation (BFE) should apply to housing rebuilt for houses built by FEMA funded programs, VOAD funded programs, HUD CDBG-DR funded program, etc. Codification of rules would help streamline this issue.

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## ISSUES NOT REQUIRING FEDERAL LAW OR POLICY CHANGE

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Issue: Working Together for Continuous Improvement

Law and/or Policy Reference: None

Discussion: *A critical step in this process is for state emergency managers to work closely with our federal agency partners to promote the continuous improvement of the processes involved in federal programs during major disasters (Eye of the Storm Report, 2018, pg 137).*

To enable continuous improvement in organizations, positive and collaborative relationships must be established to facilitate information flow and communication. Experts in continuous improvement, speaking with a common frame of reference, could be used on a permanent basis to establish improvement processes. These experts can be found in organizations with Lean 6 Sigma-trained personnel. The Lean 6 Sigma methodology focuses on the use of the Kaizen model and those trained in it are best positioned to enable continuous improvement in their organizations. Lean 6 Sigma-trained experts, in FEMA, other federal partners, TDEM, and other state agencies with emergency management roles, could form a joint team and integrate continuous improvement for the long-term in both organizations.

Recommendation: No change to federal law or policy, but urge FEMA, SBA, HUD, TDEM, HHSC, GLO, etc. to seek Lean 6 Sigma-trained personnel to lead continuous improvement teams and then link these teams in joint projects.

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Issue: FEMA Strategic Goals

Law and/or Policy Reference: 2018-2022 FEMA Strategic Plan, 15 March 2018

Discussion: To focus FEMA efforts during the period 2018 to 2022, FEMA published three specific strategic goals within their strategic plan:

Strategic Goal 1: Build a Culture of Preparedness

Strategic Goal 2: Ready the Nation for Catastrophic Disasters

### Strategic Goal 3: Reduce the Complexity of FEMA

Although these goals are couched within a national context, they are certainly applicable in Texas and prove useful in the relationship between FEMA and the state of Texas. To embrace these concepts and integrate them at the forefront of TDEM, they have been directed to be integrated into all TDEM planning activities and documents.

Recommendation: No change to federal law or policy but continue integrating the principles of the FEMA goals into all Texas emergency management planning activities.

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Issue: Texas as a Laboratory

Law and/or Policy Reference: None

Discussion: Texas is renowned for leading the nation in improving all phases of Emergency Management inclusive of response and recovery activities. Texas piloted the new Public Assistance delivery model and associated Grants Portal for several years, and then in August of 2017 it was fully implemented, just prior to Hurricane Harvey. Subsequently, hundreds of improvement suggestions were provided to FEMA that have significantly improved the processes. TDEM has further enabled the laboratory concept by soliciting for and integrating research efforts from Texas higher education institutions into all phases of emergency management. Also in keeping with the laboratory concept, TDEM is moving to establish a Research Operations Center in the near future which will enable higher education institutional contributions including cutting edge research efforts and subject matter expertise in all phases of emergency management. The Texas General Land Office (TX GLO) uses disaster recovery grant funds from The Department of Housing and Urban Development (HUD) to support planning and studies related to disasters, hazards, and resilience. Examples of TX GLO supported planning activities include resilient home building, flood studies, and the Texas Disaster Information System (TDIS).

Recommendation: No Federal law or policy changes are required. Although already well-aware of Texas' unique position to pilot new concepts and projects, the state's federal partners, including FEMA, SBA, USDA and HUD, should continue to consider testing new systems in the state. Likewise, at the state level, state agencies should embrace the potential value of working with higher education institutions in the state to pilot new programs, processes and procedures.

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Issue: Suspension of Federal Procurement Rules

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Law and/or Policy Reference: 2 Code of Federal Regulations (CFR), Grants and Agreements, Part 200 – *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*

Discussion: To ensure fair competition in procurement using federal funds, 2 CFR 200 specifies a great number of rules and requirements which apply to reimbursement following disasters. In particular, sections 317-326 provide the procurement standards applied when FEMA examines procurements for reimbursement. At issue is the suspension of the requirement for non-competitive procurement, also known as sole-source contracting, during the emergency period immediately following a disaster, also known as the exigent period. 2 CFR 200 makes allowance for the temporary suspension of the competitive solicitation rule in section 320 when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

There are no specific timelines involved in the exigent circumstances, however 30 or 60 days are generally accepted as the timeline within which competitive procurement can be executed within the period of the noncompetitive option. To ensure clarity of the declaration of exigent circumstances, a written declaration of exigency on letterhead and signed by the organization’s senior official, is sufficient to record the exigent period. A jurisdiction’s procurement organization should begin competitive solicitation as soon as possible following the disaster declaration so that, when the exigent period expires, competitive contract procurement has been accomplished and procurement concerns are alleviated.

Recommendation: Continue to educate jurisdictional procurement departments about this issue.

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Issue: Housing Program Coordination in Blue Skies

Law and/or Policy Reference: N/A

Discussion: Coordinate housing programs in blue skies – already underway through the Joint Housing Solutions Working Group – led by Michael Lyttle at the Texas Department of Housing and Community Affairs. The working group, commissioned by Texas Governor Greg Abbott just days after Hurricane Harvey made landfall in August 2017, worked on multiple projects to find assistance for storm survivors whose needs were unmet through more traditional disaster recovery programs. Members include from local, state, and federal government; housing and hospitality industry trade groups; nonprofit organizations; and, other stakeholder organizations with interest in disaster recovery. The group is currently putting together a state housing plan and a one-pager to better inform disaster survivors about disaster housing services. (*Eye of the Storm Report, 2018, pg 138*)

Recommendation: Keep up the work that is already in place.

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Issue: Advances in Technologies and Alternative Housing Solutions

Law and/or Policy Reference: N/A

Discussion: On page 138 of the *Eye of the Storm* report, Advances in Technologies and Alternative Housing Solutions. There are planning studies underway through the Texas General Land Office managed programs as funded by the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) funds to address these issues.

Recommendation: Keep up the work that is already in place.

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Issue: Alternatives to FEMA Trailers

FEMA Trailers—Alternatives. FEMA requirements for manufactured housing don't reflect industry standards and manufacturers find such housing more difficult to produce quickly. Modernizing requirements and considering a wider range of temporary housing options would allow survivors to be housed more quickly. The innovations achieved with the Katrina Cottages and Rapido housing design process exemplify possible new approaches for temporary housing of the future.

Law and/or Policy Reference: N/A

Discussion: Advances in Technologies and Alternative Housing Solutions. (*Eye of the Storm Report, 2018, pg 138*)

Manufactured homes and travel trailers are readily available in the State of Texas. During Hurricane Harvey the Texas General Land Office (TX GLO) did

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not have any supply-related issues when procuring units off the lot. The units per FEMA requirements were rated to the appropriate wind zone rating for that geographic region to withstand any future storm.

However, the TX GLO did request of FEMA to be permitted to explore alternative temporary housing options that still meet the federal requirements for wind zone and direct housing mission policy (see pgs. 61, 63-65, & 79-80 of the [FEMA IHPUG](#)) . The TX GLO has a preplaced contract in procurement for alternative housing solutions for temporary housing units. These alternative housing solutions may include, but are not limited to, shipping containers, tiny homes, 3-d printed homes, and other resilient and temporary housing options.

In addition, there are planning studies underway through the TX GLO managed programs as funded by the U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) funds to explore and further inform resilient housing options.

Recommendation: Keep up the work that is already in place.

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Issue: Data Sharing

Law or Policy Reference:

5 U.S. Code § 552. Public information; agency rules, opinions, orders, records, and proceedings

Privacy Act of 1974; Department of Homeland Security Federal Emergency Management Agency—008 Disaster Recovery Assistance Files System of Records

FEMA Directive #262-1, Data Sharing

FEMA Directive FD 103-1, Data Management

Discussion: Sharing of FEMA’s critical survivor information, such as addresses and phone numbers, with the General Land Office, local communities, and other partners was problematic and a complicating issue in addressing survivor needs quickly and effectively. Data sharing protocols fashioned to protect privacy and data security should be developed to allow appropriate sharing of this information (Eye of the Storm, pg 138).

The current Privacy Act, Department of Homeland Security and FEMA policies referenced above are provided by FEMA as barriers to moving forward with the Single Intake initiative and other data sharing arrangements.

Recommendation: That states, FEMA, Housing and Urban Development, and DHS convene a working group of experts to ensure that the documents referenced above and any related information security documents be updated to allow for states to take lead in disaster intake if they choose to do so.

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Issue: Single Intake

Law and/or Policy Reference:

5 U.S. Code § 552. Public information; agency rules, opinions, orders, records, and proceedings

Privacy Act of 1974; Department of Homeland Security Federal Emergency Management Agency—008 Disaster Recovery Assistance Files System of Records

FEMA Directive #262-1, Data Sharing

FEMA Directive FD 103-1, Data Management

Discussion: *HHSC and TDEM should work with FEMA and other appropriate state and federal partners to implement this recommendation. Disaster survivors currently fill out many different forms to apply for services such as case management and financial assistance. HHSC should work with TDEM and the state's federal partners to determine the feasibility of developing a single intake form and an automated intake system. HHSC and TDEM would need to ensure FEMA and any other involved entities would accept such a form. (Eye of the Storm Report, 2018, pg 94)*

*The state of Texas could design a simplified, single intake form for disaster survivors with FEMA's approval. A Turbo-Tax-like electronic interface for filling out required information for use by all state and federal agencies would simplify paperwork processes so disaster survivors could more easily fill out requests for assistance and avoid delays in receiving assistance. (Eye of the Storm Report, 2018, pg 138)*

A single intake form has been developed by the Single Intake task team and combines FEMA, state, local and voluntary agency information requirements per SB 6, HB 2330 and HB 1307. The form is developed for use in designing an online website to input data and features a variety of pull-down menus to reduce preparation time and simplify input. Once filled out, the survivors specify to whom the information is to be shared and it is then data-shared with the appropriate organizations. Data-sharing agreements, business rules and security arrangements must be developed with federal, state, local and voluntary organizations to ensure data integrity, data security and appropriate use. Since the state will be collecting the data at the outset of a disaster, it is imperative to share data with FEMA and, once a federal

declaration is made, FEMA should use the Texas intake rather than their traditional intake so that one single database is updated.

The current Privacy Act, Department of Homeland Security and FEMA policies referenced above are provided by FEMA as barriers to moving forward with the Single Intake initiative.

Recommendation: Follow the recommendations in the Single Intake and Disaster Case Management Reports developed in coordination with the Health and Human Services Commission and required by SB 6, HB 2330, and HB 1307.

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Issue: Speed up Debris Contracts

Law and/or Policy Reference: (1) 2 CFR §200.317-326 outlines Procurement Standards for Federal Awards (2) Each jurisdiction typically has its own procurement policy

Discussion: In the immediate aftermath of a disaster, communities look to quickly obtain resources to aid in a safe and speedy recovery. Federal regulations allow for non-competitive procurements under certain circumstances however, when the emergency or exigency no longer exists, the competitive procurement process must be implemented

Recommendation: : (1) Local jurisdictions should develop a comprehensive debris management plan (2) Encourage local communities to engage in pre-event contracts that have been reviewed for federal contracting and procurement compliance by FEMA's Procurement Disaster Assistance Team (PDAT) (3) Encourage local jurisdictions to engage in inter-governmental agreements or memorandums of understanding (4) the State should engage in Regional pre-event all-hazards contracts that address hazards that occur or could potentially occur in specific geographical areas (i.e. region-specific hazards) that communities within the region can utilize, and (5) Follow the guidance provided in the Catastrophic Debris Management Annex to the State of Texas Emergency Management Plan published in December 2019.

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Issue: Wet Debris – Who is Legally Responsible

Law and/or Policy Reference: The FEMA Public Assistance Program and Policy Guide (PAPPG) dated January 1, 2020 (p.102 C.1-3) Debris removal from waterways that is necessary to eliminate the immediate threat to life, public health and safety, or improved property is eligible. Removal of debris in a waterway that does not meet this criterion is ineligible, even if the

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debris is deposited by the incident. The EPA and U.S. Coast Guard (USCG) have the specific authority to remove hazardous materials, as described in the previous section. EPA is responsible for removing such material from inland water zones and USCG is responsible for coastal water zones. Debris removal from waterways usually requires coordination with the U.S. Army Corps of Engineers (USACE) for the use of a Nationwide permit and with the National Marine Fishery Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) to ensure compliance with Section 7 of the Endangered Species Act (ESA).

**Discussion:** Debris removal from certain bodies of water and streams has proven to be particularly complex and exasperating for a range of local jurisdictions and state and federal agencies. Responsibility for this debris depends on its location, whether in tidal waters, rivers or other bodies of water. Multiple agencies and jurisdictions have responsibilities for these waters, which makes identifying the responsible party and applicable law difficult.

**Recommendations:**

- (1) Follow the recommendations of the Wet Debris Work/Study Group that will provide its report to the Legislature as required by House Bill 5, Senate Bill 6, and Senate Bill 799 of the 86<sup>th</sup> Regular Legislative Session.

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**Issue:** Creation of Improved Flood Insurance Rate Maps, Expedient Update of Flood Insurance Rate Maps, length of time from start effective issuance.

**Background:** Flood Insurance Rate Maps (FIRMs) under the Risk MAP program undergo several phases from project identification, to discovery to engineering and mapping. These results are shared in the form of preliminary FIRMs and then undergo a public comment period and a six-month compliance period to allow communities to adopt the FIRM updates at the local level.

**Recommendation(s):**

Produce Base Level Engineering. The State of Texas has been working with FEMA to identify and assess flood risk at a watershed level using an approach piloted in FEMA Region 6. This approach provides broad engineering and mapping analysis that may be adopted and utilized at the local level prior to the State identifying the area for a FIRM update. The timeline to produce Base Level Engineering is 9-12 months. Texas Water Development Board (TWDB) has been providing priorities and producing Base Level Engineering with FEMA's assistance

over the past three years. The State of Texas will continue to produce flood hazard information in coordination with FEMA. Current plans will provide Base Level Engineering coverage for the entire state by 2025.

Planful Discovery Efforts. The State of Texas connects with communities through the Discovery process following the availability of Base Level Engineering data. Having Base Level Engineering data allows for more productive and planful interaction with community officials. This approach allows the State to provide flood hazard information for community development and planning far in advance of FIRM updates. This data delivery provides both engineering models and mapping information that may be shared with development community to aid in local planning and decision making.

BLE to Preliminary FIRM. Currently more than 70% of the miles shown on FIRMs identify a Zone A special flood hazard area. Base Level Engineering is produced to meet the engineering and mapping requirements of FIRM production. This allows the State to identify and prioritize areas that are currently under mapped (minimal flood coverage) and non-modernized (FIRMs are still in paper format) to be produced by FEMA through their contract services. A work split with FEMA allows FEMA to produce and oversee the production of FIRM updates, assuring a centralized process and efficiency. This allows TWDB to identify needs, produce engineering and mapping and better meet the needs of communities throughout the State.

Due Process. Community capability and capacity varies across the State. The current due process is 90-days and six-month compliance period.

Policy Change: No federal policy change is required to fulfill these recommendations.

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Issue: Creation of Improved Flood Insurance Rate Maps Age of data on FIRM panels. FIRMs do not include all development, creating out of date flood hazard information.

Background: Flood Insurance Rate Map (FIRM) updates occur through all levels of government. The Letter of Map Revision (LOMR) process is formalized in Title 44, Code of Federal Regulations, Part 65. Section 65.3 indicates *"A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as*

*practicable, but not later than six months after the date such information becomes available, a community shall notify the Administrator of the changes by submitting technical or scientific data...".*

The Letter of Map Revision process allows community officials to work with the development community to maintain the flood hazard data shown on the FIRMs when local development through physical modification, like earthwork and grading, modify the flood hazards within a community. Updates through the LOMR process are completed within 9-12 months versus multiple years. Unfortunately, the Letter of Map Revision (LOMR) process is rarely used at the local level. There are a few communities that have embraced ownership of their FIRM updates through the oversight of LOMR Delegation, but the capacity required will not allow this to

The LOMR process updates the FIRM panels are released on 8.5 x 11 or 11 x 17 format, the FIRM panel dates are not updated to reflect the incorporation of locally provided data through the LOMR process.

Recommendations:

More Education. The State of Texas will coordinate with communities and local officials, and team with the Texas Floodplain Management Association to educate and promote the use of Letters of Map Revision to update flood hazard information shown on FIRM more frequently. The cost of updating the FIRMs may be shared with the development community when the LOMR process is utilized. Map maintenance has become a frequent topic of conversation when new FIRMs are released to a community.

Support LOMR Delegates. The San Antonio River Authority and Harris County Flood Control District have embraced ownership and oversight of the flood hazard data in their vicinity. The resources required to take over the process are not available in most communities, but these two delegation areas account for the largest concentrated areas of Letter of Map Revision submittals.

Policy Change: No federal policy change is required to fulfill these recommendations.

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Issue: Creation of Improved Flood Insurance Rate Maps, Continued or increased Congressional appropriations for Flood Insurance Rate Map studies.

Background: The Federal Emergency Management Agency (FEMA) maintains a national level inventory of flood hazard areas for the United States. The flood inventory is shown on the nation's Flood Insurance Rate Maps (FIRMs), which are primarily funded by annual congressional appropriations to FEMA. This funding allocation has assisted in the



collection/processing of high-resolution elevation information, prepared engineering and mapping to expand the coverage areas, and modernized the flood inventory utilizing a digital platform.

At the Regional level, annual allocations are split to prepare, revise and update the flood hazard information on the FIRMs with the support of State, Federal and Local Cooperating Technical Partners (CTPs). The FEMA Region 6 office currently partners with each of its five states and a variety of Flood Control and River Authorities, Councils of Government, large communities, and non-technical partners throughout the State of Texas to:

- increase the transparency of the flood mapping program,
- align flood analysis and mapping across all levels of government,
- expand engineering and mapping resources,
- broaden the availability and coverage of flood data throughout the State
- formulated work areas to allow multiple CTPs to be engaged across the State of Texas

FEMA and the State of Texas define the division of work with each of its CTPs to reduce duplication of effort and assist in streamlining the map delivery and adoption processes. The State of Texas has partnered with FEMA to identify and prioritize areas of flood hazard data need, prepare broad scale analysis through the Base Level Engineering effort, perform discovery through Risk MAP to identify where more detailed study is needed, prepare engineering and mapping products, support for local data delivery and map adoption.

CTP teams across the State continue to mature their program/project planning, production and procedural knowledge. The increased use of CTPs within the State of Texas has allowed:

- increased engagement at the local level
- flood data release far in advance of FIRM updates
- local data leverage
- local cash match for project areas
- reduced processing time of detailed study areas
- process enhancements to expediate preliminary FIRM preparation
- increase of data availability and coverage

Since 2014, FEMA Region 6 has invested to provide complete coverage of LiDAR data for the State of Texas, created and delivered Base Level Engineering for 27 of 212 watersheds that exist in the State. Funding in FY19/20 will produce data for an additional 45 watersheds. Texas Water Development Board prioritizes BLE development and is currently producing BLE data for an additional 18 watersheds with through State funding in FY20. The Texas Water Development Board prioritizes all of the BLE

production in the state based on a number of factors to include: LiDAR data availability/currency, FIRM status and mileage, flood loss history and claims. The data is being prepared by river basin to allow efficiencies in data development. State coverage with Base Level Engineering is expected in late 2025, if not sooner.

The State and FEMA have plans for all remaining watersheds, producing full coverage of this base line flood data for availability prior to 2025. Funding through the CTP has increased with all active mapping partners as maturity of these partner programs have developed. FY2019 and FY2020 federal investments account for approximately 50% of the current Regional Allocation. Leverage in the form of local cash match added approximately \$5.6M to produce flood data throughout the State in FY2019.

Recommendations: Uninterrupted federal funding for Flood Insurance Rate Maps.

Do not modify funding stream, continue to allow Regional Investment planning with prioritization from State, Regional and Local CTPs. Continue coordination between State and FEMA to produce and refine flood risk data throughout the State in a coordinated manner.

Policy Change: No federal policy change is required to fulfill these recommendations.

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Issue: Eligibility for Reimbursement

Law and/or Policy Reference: None

Discussion: As mentioned in *The Eye of the Storm* report, "staff of the state and FEMA should be adequately trained to ensure that all staff have a shared understanding of eligibility guidelines and requirements for expenses at both the state and federal levels." (*Eye of the Storm Report, 2018, pg 139*)

In February of 2019, perhaps in recognition that recovery-focused topics represent a continuously evolving array of policy changes, systems changes and regulatory changes, FEMA released 28 new independent study courses focused on all aspects of recovery. These courses typically range from four hours in length to eight hours and include a knowledge test that must be successfully passed to complete each course. Because these courses are focused on the federal perspective, they do need some augmentation to ensure that Texas-specific material is covered as well. In line with this thought, Texas should develop and deliver Texas-specific material with a particular emphasis on procurement and reimbursement. In addition, once Texas material is developed, the FEMA recovery courses should contain a link to state specific materials.

In addition to this educational surge at the employee level, two major recovery manager events, the Regional Interagency Steering Committee (RISC) commits an annual meeting to recovery and recovery-focused topics. This event is important to educate recovery managers and serves as a forum for questions and answers at the manager level. Likewise, the FEMA Region VI Recovery Summit is an annual conference also dedicated for recovery managers.

Recommendation: No law or policy change is required, however:

- 1) FEMA and state employees dealing in recovery should take all 28 FEMA recovery courses.
- 2) FEMA should provide a link in each recovery course where there is state-specific material.
- 3) FEMA should sustain the conduct of Recovery RISC meetings and the annual Recovery Summit.

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Issue: Public Facility Grouping  
Law and/or Policy Reference:

FP 104-009-2, Public Assistance Program and Policy Guide, V3.1, April 2018

*2 CFR 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS*

Discussion: *The state should work with FEMA to change existing rules to allow public facilities operated by the same entity to be grouped together as one project to simplify reimbursement under FEMA's Public Assistance program. Currently, FEMA counts each facility as a separate project. This design requires the applying organization to isolate time keeping and expenses by facility, which is difficult and time-consuming. Employees may work at multiple facilities on response activities and one purchase order may be used to procure materials for repairs at multiple facilities. Tracking this level of detail during a disaster response is challenging and jeopardizes FEMA reimbursement for eligible activities. (Eye of the Storm Report, pg 139)*

FEMA has always allowed for logical grouping of sites on a single PW. There will be times when it may or may not be advantageous for a Subrecipient to utilize the logical grouping approach because of insurance, Environmental and Historic Preservation or mitigation considerations. This discussion should occur once the Subrecipient has identified damage and is ready to assist in the project formulation. FEMA does not want to hold up funding for

all facilities because one may need a Benefit Cost Analysis or Environmental Assessment or has insurance challenges. On a project worksheet, site sheets are utilized to capture multiple facilities, logically grouped, e.g., a school campus or damaged roads within a precinct.

From the FP 104-009-2: *"If the project involves multiple locations, FEMA may use site sheets to differentiate damage, work, and costs by site within the PW.<sup>306</sup> The disaster damage and dimensions, SOW, and costs for each site are documented on separate site sheets."* (Pg 133)

As for project thresholds, specifically, the minimum threshold, policy requires the minimum thresholds be applied to the project worksheet, not the individual site sheets:

*"FEMA establishes a minimum project threshold for each Federal fiscal year. The threshold applies to incidents declared within that fiscal year and is based on the Consumer Price Index. If a PW totals less than the minimum threshold<sup>327</sup> after the Applicant has accounted for all project costs—including DAC and reductions to avoid duplication of benefits—the project is not eligible.<sup>328</sup> This limitation applies to each PW and not to each site sheet used in one PW."* (Pg 143)

From compliance requirements per 2 CFR 200, for tracking of time, materials, labor, and costs – a lump sum cost for multiple facilities, without detail, is extremely difficult to validate for reasonableness. It can be extremely difficult to the point of having to have procurement legal, regular Office of the Chief Counsel, and high-level leadership engagement, to allow for processing of such a claim. This, in turn, adds length to the processing of the claim.

Insurance is another consideration – even with a "blanket policy," there is still a schedule of values which is facility specific. For a lump sum contract without detail, applying insurance without specificity toward per facility costs will create issues. If costs for work were over the limit of coverage, it is a question of how to get to reimbursement from the Program. If costs were below the limit, a full anticipated reduction could be taken. There is also the consideration on how to apply the deductible.

Recommendation: No change needed.

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Issue: Batch applications by location

Law and/or Policy Reference: N/A

Discussion: Batch applications by location. This is not feasible as it would create unequal distribution of resources post-disaster. It is not fair or

equitable to place all housing units in one location first as there may be delays in installation that could then delay other areas. The best approach is to place units as the property is deemed feasible as to not to impact the delay of service to other survivors. (*Eye of the Storm Report, 2018, pg 139*)

The Individual and Households Program (IHP) follows the process by which households register with FEMA, then if there is a Direct Housing Mission (to provide temporary housing) the households are vetted for eligibility in the Direct Housing Mission. If a household is deemed to be eligible they are contacted to see if they have a temporary housing need or want a temporary housing unit. If the household wants a temporary housing unit and has a need a site assessment is conducted for feasibility and to determine what type of unit fits their need. Due to the nature of this process it would not be fair or equitable to disaster survivors to place units geographically. If they were to be placed geographically that would delay services to households.

For example, if it were decided to batch applications and temporary housing units that would mean that County X would get all of their housing units before County Y. How fair is it to the residents of County Y that they have to wait on the permitting issues or utility issues to be ironed out in County X? It makes more sense to address each application as it allows the unit to be installed and addressed. That way delays in one jurisdiction does not hold up service to other households in other counties.

Recommendation: Keep up the work that is already in place.

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Issue: Individual Assistance: Eligibility Limiting Grants

Law and/or Policy Reference: N/A

Discussion: FEMA Individual and Household Program (IA) eligibility limiting grants contradicts the purpose of FEMA – which is to give individual households a start but not make them whole again. While this section of the report implies that FEMA should make people whole again, households should have and maintain the recommended and necessary insurance to be self-dependent as much as possible. Also, the new IA awards and calculations under the Disaster Recovery Reform Act of 2018 (DRRA) have been able to put more repair funds in the hands of the eligible disaster survivors. Now the calculation for the max award for a household does not include Other Needs Assistance (ONA) or rental assistance, it is based on their award for repair and rebuild. Based on this, the household may receive more funds.

Ultimately a Federal Disaster Declaration that includes an IA award must be issued to activate the program. Such a declaration is only issued when the state meets challenging disaster-related damage thresholds which continue to increase, making declarations less likely to be issued. (*Eye of the Storm Report, 2018, pg 139*)

Recommendation: Keep up the work that is already in place.

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Steps to Development and Implementation

**This section provides a summary of next steps including organizational approval, legislative approval and follow on steps if approved. It should also include resource requirements as identified.**

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### Detailed next steps

Due Date	Objectives	Team Assignments	Status
1 Aug 20	Review and Approval and provided to OSFR	Chief Kidd	
1 Nov 20	Legislative review	Legislature	
1 Jan 21	Form teams to work on specific recommendations	Project Manager	

## **For More Information**

For more information, please contact MacGregor Stephenson, Division Chief of Policy and Research, at [macgregor.stephenson@tdem.texas.gov](mailto:macgregor.stephenson@tdem.texas.gov).