

**Chapter 2**

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## Chapter 2

# Federal Emergency Management Agency (FEMA)

## I. Introduction

The Federal Emergency Management Agency (FEMA) provides assistance to disaster victims through a variety of programs. In general, FEMA programs are designed to provide immediate assistance following a presidential disaster declaration, especially if insurance or other aid is delayed, and to cover some longer-term needs not met by insurance or other aid.

The eligibility rules for each FEMA program are different. Farmers failing to qualify for one FEMA program may still qualify for another.

Application deadlines are especially important for FEMA programs. Note that there are several different deadlines, sometimes even within the same program.

## II. Federal Assistance to Individuals and Households Program (IHP)

Farmers who experienced natural disasters in the past may be familiar with FEMA's longstanding primary disaster assistance programs: the Individual and Family Grant program (IFG) and the Temporary Housing Assistance program (THA).<sup>1</sup> The Disaster Mitigation Act of 2000 made substantial changes to these programs and consolidated them into a single program called the Federal Assistance to Individuals and Households Program.<sup>2</sup> Interim final regulations for the new Individuals and Households Program (IHP) were issued on September 30, 2002, and the

program became effective on October 15, 2002.<sup>3</sup> IHP is authorized to provide various types of housing assistance as well as assistance for so-called “other needs,” which include disaster-related medical, dental, funeral, personal property, and transportation expenses.<sup>4</sup>

Housing assistance under IHP is wholly federally funded and is administered by FEMA alone.<sup>5</sup> Assistance for “other needs” under IHP is funded by both FEMA and by individual states, and each state may decide how involved it will be in administering that assistance.<sup>6</sup> As a result, there will likely be state-to-state variations in procedures for obtaining “other needs” assistance. This section discusses the basic features of IHP.

### **A. IHP Deadline – Generally Within 60 Days of Disaster Declaration**

Ordinarily, persons suffering disaster-related losses must apply for IHP assistance within 60 days of the disaster declaration.<sup>7</sup> There are three exceptions to this general rule.

#### **1. Exception: State Requests More Time**

A FEMA Regional Director may extend the period for accepting IHP applications if a state requests more time to collect applications from the affected populations.<sup>8</sup>

#### **2. Exception: Setting Same Deadline for Contiguous Areas**

A FEMA Regional Director may also extend the period for accepting IHP applications if “necessary” to establish the same registration deadline for contiguous counties or states.<sup>9</sup> The regulations do not indicate how FEMA will determine whether such an extension is necessary.

#### **3. Exception: Additional 60 Days If Delay Is Justified**

After the regular IHP application period ends, FEMA will continue to accept late applications for an additional 60 days from persons who provide justification for the delay.<sup>10</sup> A late application must be in writing, must explain the reason(s) for the

delay, and must include “suitable documentation to support and justify the reason for the delay.”<sup>11</sup> If the application is filed late, FEMA’s determination of whether there was good cause for late filing is appealable. Appeals are discussed below.

## **B. Applying for IHP – What to Expect<sup>12</sup>**

To apply for the IHP, disaster victims can call the toll-free FEMA number at 800-621-FEMA (TTY: 800-462-7585) or apply online at [www.disasteraid.fema.gov](http://www.disasteraid.fema.gov). Applicants will be asked to provide a Social Security Number, a description of the disaster damage, insurance information, directions to the damaged property, and a telephone contact number.<sup>13</sup> After registering, it is possible to make an optional visit to a Disaster Recovery Center to receive more information.

After an application is submitted, an inspector will call to schedule an appointment to visit the property.<sup>14</sup> There is no fee for the inspection. The inspector will assess the damage, verify ownership and occupancy, and make a report to FEMA. Inspectors do not determine eligibility.

Within about ten days after the inspection, the applicant should receive a decision on IHP eligibility.<sup>15</sup> If eligible for housing assistance, the applicant will receive a check soon after, or even with, the decision. Later the applicant will receive a packet in the mail with instructions for seeking further assistance. If the applicant is required to apply for a Small Business Administration (SBA) disaster loan before receiving other IHP assistance, an SBA application will be included in the packet.<sup>16</sup>

## **C. General IHP Eligibility**

An applicant is only eligible for IHP assistance if the following conditions are met.

## **1. Necessary Expense or Serious Need**

In order to be eligible for IHP, a person must have incurred a necessary expense or a serious need in a declared disaster area.<sup>17</sup> FEMA regulations define a necessary expense as the cost of meeting a serious need and define a serious need as the need for an item or service that is “essential to an applicant’s ability to prevent, mitigate, or overcome a disaster-related hardship, injury or adverse condition.”<sup>18</sup>

## **2. Insurance and Other Assistance Is Inadequate**

IHP assistance is only available if insurance and other assistance are inadequate to meet the applicant’s necessary expenses or serious needs.

### **a. Must File Insurance Claim**

Applicants for IHP assistance who are insured must file claims for all possible insurance coverage.<sup>19</sup> Although applicants are generally not required to have insurance coverage to be eligible for IHP, refusing assistance from insurance providers will make an applicant ineligible.<sup>20</sup> Flood insurance coverage may be required in some areas.<sup>21</sup>

#### ***(1) Insurance Claim Denied***

IHP assistance is available if an applicant has filed claims for all possible insurance coverage and the claims have been denied.<sup>22</sup>

#### ***(2) Insurance Proceeds Inadequate to Meet Authorized Expenses***

IHP assistance is available if insurance proceeds are less than the maximum amount of assistance authorized by FEMA and are insufficient to cover the applicant’s necessary expenses and serious needs.<sup>23</sup>

**(3) *Insurance Payment Delayed***

IHP assistance is available if the applicant's insurance proceeds are "significantly delayed" through no fault of the applicant.<sup>24</sup> The applicant must agree to repay the IHP assistance from insurance proceeds that are later received.<sup>25</sup>

**b. May Need to Apply for Other Assistance**

Under the former Individual and Family Grant program, an applicant had to apply for all governmental disaster assistance programs and either be rejected or show that available assistance did not cover all qualifying needs.<sup>26</sup> Under the new Individuals and Households Program, an applicant's obligation to apply for other types of government assistance depends on the type of IHP assistance sought.

**(1) *Housing Assistance—Need Not Seek Other Assistance***

An individual or household applying for housing assistance under IHP is not required to apply for other government assistance. Under the statute, aid in the form of temporary housing, replacement housing benefits, or permanent housing construction cannot be denied solely on the basis that the applicant has not applied for or received a loan or other financial assistance from SBA or any other federal agency.<sup>27</sup> An applicant seeking IHP benefits to repair a private residence need only show that the needs cannot be met through insurance proceeds, without regard to other types of possible assistance.<sup>28</sup>

**(2) *Assistance for "Other Needs"—Must Apply for Other Assistance***

An individual or household applying for IHP assistance for "other needs"—medical, dental, funeral,

transportation, and personal property expenses—must be unable to cover those expenses through “other means.”<sup>29</sup> The regulations require that applicants seeking benefits for necessary expenses or serious needs must apply to the SBA disaster home loan program for all available assistance and either be rejected by SBA or show that the SBA assistance received does not cover all the qualifying expenses.<sup>30</sup> (See Chapter 9 of this book for information about SBA disaster loan programs.) The regulations also state that funds for “other needs” are not to duplicate assistance from “monetary or in-kind contributions from voluntary or charitable organizations, insurance, other governmental programs, or from any sources other than those of the applicant.”<sup>31</sup>

### ***(3) Must Promise to Return Duplicate Benefits***

To be eligible for IHP, an applicant must promise to return any duplicate benefits.<sup>32</sup> Each need that is eligible for FEMA assistance can only be met once. If the applicant later receives or is eligible to receive assistance from another source—including insurance, charitable organizations, or government programs—for the same loss, the IHP payment must be returned.<sup>33</sup> Benefits are only considered duplicative if the total amount received is greater than the applicant’s eligible loss.<sup>34</sup> For example, someone who suffered \$20,000 in eligible housing damages could receive aid for those damages from several different sources, so long as the total received is not more than \$20,000.

FEMA has the power to pursue collection against a person receiving duplicate assistance.<sup>35</sup> The amount to be repaid will never exceed the amount the applicant receives from the other source.<sup>36</sup>

### **3. May Need to Buy Flood Insurance**

IHP recipients living in a Special Flood Hazard Area who intend to use IHP money for acquisition or construction purposes may need to purchase and maintain flood insurance.<sup>37</sup> According to FEMA regulations, to use IHP money for acquisition and construction purposes means to “buy, receive, build, repair or improve the insurable portions of a home and/or to purchase or repair insurable contents.”<sup>38</sup>

If the recipient of IHP assistance is a homeowner, flood insurance coverage must be maintained on the residence for as long as the structure exists.<sup>39</sup> If the recipient is a renter, flood insurance must be maintained on the contents of the home for as long as the renter resides at the same address.<sup>40</sup> If the IHP assistance is used to purchase a dwelling, flood insurance coverage must be maintained for as long as the dwelling exists and is located in a designated Special Flood Hazard Area.<sup>41</sup>

### **4. Must Have Satisfied Past Flood Insurance Requirements**

Some people who received disaster assistance in the past from FEMA or SBA will only be eligible for IHP if they have maintained flood insurance.<sup>42</sup> If the property was not eligible for flood insurance, this requirement may not apply.<sup>43</sup>

### **5. Business Losses, Including Farm Losses, Not Eligible**

FEMA may not provide assistance for business losses, including farm business and self-employment.<sup>44</sup>

## **D. Assistance Available Under IHP**

Households are eligible to receive up to \$28,800 under IHP for any single disaster or emergency.<sup>45</sup> A household is defined as “all persons, adults and children, who lived in the pre-disaster residence who request assistance under [IHP], as well as any other person, such as infants, spouse, or part-time residents who were not present at the

time of the disaster, but who are expected to return during the assistance period.”<sup>46</sup>

In general, an applicant may receive assistance for a maximum of 18 months after the date of the disaster declaration.<sup>47</sup>

## **1. Housing Assistance Under IHP**

The housing assistance available under the new IHP is quite similar to the former FEMA housing program—Temporary Housing Assistance—but there are some changes. Most notably, unlike the former program, IHP does not provide assistance for persons threatened with eviction or foreclosure as a result of disaster-related financial hardship.<sup>48</sup>

### **a. Housing Assistance Eligibility**

To be eligible for IHP housing assistance, an applicant’s primary residence must have been destroyed or become uninhabitable or inaccessible.<sup>49</sup> Applicants will not be eligible for housing assistance if they have adequate rent-free housing accommodations or own a secondary or vacation residence or available rental property within a reasonable commuting distance.<sup>50</sup> Persons who receive housing assistance under IHP are expected to obtain and occupy permanent housing as soon as possible.<sup>51</sup>

#### ***(1) Primary Residence***

A primary residence is the “dwelling where the applicant normally lives, during the major portion of the calendar year; or the dwelling that is required because of proximity to employment, including agricultural activities, that provide 50 percent of the household’s income.”<sup>52</sup>

#### ***(2) Destroyed, Uninhabitable, or Inaccessible***

FEMA considers a residence uninhabitable when it is not secure from disaster-related hazards or threats to

occupants, including health hazards, or is not fit to occupy.<sup>53</sup> A residence is considered inaccessible when “the applicant cannot reasonably be expected to gain entry to his or her pre-disaster residence due to the disruption, or destruction, of access routes or other impediments to access, or restrictions placed on movement by a responsible official due to continued health, safety or security problems.”<sup>54</sup>

If the applicant is a renter, the primary residence must be no longer available as a result of the disaster.<sup>55</sup>

**b. Types of Housing Assistance**

FEMA provides four types of housing assistance under IHP: temporary housing, repairs, replacement, and permanent housing construction.<sup>56</sup> More than one type of housing assistance may be available to an applicant, but FEMA will decide the appropriate type of housing assistance for that applicant.<sup>57</sup> An applicant must generally accept the first offer of housing assistance. If the first offer is refused, the applicant may forfeit future housing assistance.<sup>58</sup>

*(1) Temporary Housing*

FEMA may provide financial or direct assistance for temporary housing. In general, assistance will be provided for one temporary residence per household.<sup>59</sup>

*(a) Cash for Rent*

IHP may provide financial assistance (cash) for applicants to rent existing housing or temporary housing units. This includes assistance to pay the cost of utilities, except telephone service.<sup>60</sup> FEMA may also provide assistance for the reasonable cost of transportation, utility hookups, or installation of a manufactured home or recreational vehicle to be used

as housing.<sup>61</sup> Security deposits are typically the responsibility of the applicant.<sup>62</sup> Additionally, applicants may receive reimbursements for reasonable short-term lodging expenses incurred immediately before and after the disaster.<sup>63</sup> The amount of cash rental assistance is based on fair market rates, the bedroom requirement of the household, and the location of the unit.<sup>64</sup>

***(b) Temporary Housing Units***

Direct housing assistance in the form of temporary housing units is available under IHP when there is a lack of available housing.<sup>65</sup> If the applicant remains in the temporary housing unit after the 18-month IHP eligibility period, FEMA may charge rent for the housing unit provided.<sup>66</sup>

FEMA may terminate direct housing assistance when: (1) the assistance period has expired, (2) adequate alternative housing becomes available, (3) the applicant has received the assistance fraudulently or fails to comply with the terms of the rental agreements, or (4) the applicant is not working on a realistic plan to get back into permanent housing similar to the pre-disaster housing within a reasonable time.<sup>67</sup>

A temporary housing unit purchased by FEMA to provide direct housing assistance may be sold to the occupants if they lack permanent housing.<sup>68</sup> The sale will be based on the fair market value of the housing unit, but FEMA may adjust the sale price if the occupant is unable to pay fair market value, and the sale is in the best interests of FEMA and the occupant.<sup>69</sup> FEMA may sell the unit only if the purchaser agrees to obtain and maintain

homeowner's hazard insurance and, if the housing unit is in a Special Flood Hazard Area, flood insurance.<sup>70</sup>

*(c) IHP Pilot Program Housing*

In October 2006, Congress mandated the creation of a new pilot program under IHP that would "make better use of existing rental housing" in disaster-affected areas to provide temporary housing assistance to eligible individuals and households.<sup>71</sup> Through this pilot program, FEMA may enter into leases with owners of rental property so that households displaced by a natural disaster may temporarily live there.<sup>72</sup> FEMA is also authorized to make improvements and repairs to leased rental properties to bring them up to federal housing quality standards.<sup>73</sup> The goal of the program is to better use existing rental housing to "provide timely and cost-effective temporary housing assistance" to victims of natural disasters who are eligible for housing assistance.<sup>74</sup> The program is scheduled for review by no later than March 31, 2009. No new assistance may be granted under this program after December 31, 2008.<sup>75</sup>

*(2) Repairs*

FEMA may provide up to \$28,800 in financial assistance under IHP for repairs of disaster-related damage to the applicant's primary residence and replacement of items ruined by the disaster.<sup>76</sup> When IHP was created, repair assistance was capped at \$5,000 (adjusted annually for inflation), and home replacement assistance, discussed below, was capped at \$10,000 (also adjusted annually for inflation). In 2006, the federal disaster assistance laws were amended to remove these caps.<sup>77</sup> As a result of these

changes, homeowners are now allowed to receive up to the overall cap on FEMA assistance, currently \$28,800, for any combination of repairs and home replacement.<sup>78</sup> This amount is adjusted annually for inflation.

Repair assistance is intended to allow the applicant to restore the residence to a safe, sanitary, and functional condition.<sup>79</sup> Generally, IHP repair assistance may not be used to make improvements or additions beyond the pre-disaster condition of the house.<sup>80</sup> Assistance may also be available for mitigation practices to reduce the likelihood of damage from future disasters.<sup>81</sup> To be eligible for this assistance, the applicant must show that insurance proceeds are insufficient to cover the needs.<sup>82</sup>

FEMA regulations include a detailed list of items considered eligible for repair or replacement. The new items must be of average quality, size, and capacity, taking the needs of the applicant into account.<sup>83</sup> Eligible items include: (1) structural components of the house, including foundation, exterior walls, and roof; (2) windows and doors; (3) heating, ventilation, and air conditioning systems; (4) utilities, including electrical, plumbing, gas, water, well, and sewer/septic systems; (5) interior structure, including floors, walls, ceilings, doors, and cabinetry; (6) access to and from the residence, including privately owned access roads or bridges; (7) blocking, leveling, and anchoring of a mobile home, and reconnecting its utilities; and (8) hazard mitigation measures.<sup>84</sup>

### ***(3) Replacement of the Primary Residence***

FEMA may provide financial assistance to replace a primary residence that is no longer safe, sanitary, or functional.<sup>85</sup> The residence must have suffered damage valued at a minimum of \$10,000.<sup>86</sup> The replacement

assistance funds may be used to replace the residence in its entirety or be put toward the cost of acquiring a new residence costing more than \$10,000.<sup>87</sup> The IHP regulations state that this type of assistance must be individually approved by the FEMA Associate Director, which suggests that it will not be offered in the typical case.<sup>88</sup>

#### ***(4) Permanent Housing Construction***

FEMA may provide assistance under IHP to applicants in insular areas outside the continental United States or in other locations who must construct new permanent housing because of a disaster.<sup>89</sup> This assistance is only available where alternative housing is not available and the other types of IHP housing assistance are unavailable, infeasible, or not cost-effective.<sup>90</sup> Assistance will be limited to constructing a residence of average quality, size, and capacity, taking the needs of the applicant into account.<sup>91</sup>

## **2. “Other Needs” Assistance Under IHP**

Similar to the assistance available under the former Individual and Family Grant Program, FEMA provides financial assistance under IHP for a variety of personal expenses resulting from a natural disaster.<sup>92</sup> FEMA refers to these expenses as “other needs” to distinguish them from the housing assistance discussed earlier.<sup>93</sup>

### **a. Eligibility for “Other Needs” Assistance**

To be eligible for “other needs” assistance under IHP, an applicant must have applied for an SBA disaster home loan and either have been rejected for the SBA assistance or show that the SBA assistance received does not satisfy eligible needs.<sup>94</sup> See Chapter 9 of this book for information about SBA disaster loan programs.

**b. Expenses Covered by “Other Needs” Assistance**

The IHP regulations set out a detailed list of expenses that can be covered under “other needs” assistance.<sup>95</sup>

**(1) Medical Expenses**

IHP assistance is available for disaster-related medical costs, dental costs, and repair or replacement of medical equipment.<sup>96</sup>

**(2) Funeral Expenses**

FEMA may provide financial assistance under IHP to cover disaster-related funeral services, burial or cremation, and other related funeral expenses.<sup>97</sup>

**(3) Personal Property Expenses**

Personal property expenses eligible for “other needs” assistance under IHP include repair or replacement of disaster-damaged clothing, household items (including furnishings and appliances), tools, specialized or protective clothing, equipment required by an employer as a condition of employment, computers, school uniforms, schoolbooks, and supplies required for education.<sup>98</sup> IHP can also cover the cost of cleaning or sanitizing any eligible personal property item.<sup>99</sup>

**(4) Transportation Expenses**

Eligible transportation expenses under IHP include the cost of repairing or replacing vehicles, the cost of using public transportation, and any other transportation-related costs or services.<sup>100</sup>

**(5) Moving and Storage**

“Other needs” assistance under IHP also covers the costs of moving and storing personal belongings to avoid

additional disaster damage, including storage of personal property while disaster-related repairs are being made to the primary residence, and returning personal property to the residence.<sup>101</sup>

**(6) *Other Costs***

Other costs may be eligible for IHP assistance.<sup>102</sup> These include “miscellaneous items” that are determined by FEMA to be necessary expenses and serious needs.<sup>103</sup> The IHP regulations also state that FEMA may provide financial assistance for other items or services not included in the specified categories if needed to meet unique disaster-related necessary expenses and serious needs.<sup>104</sup>

**E. IHP Appeals**

If an applicant is denied IHP assistance or receives an unfavorable decision as a participant in IHP, the applicant may generally appeal the decision. Although FEMA does not have formal appeal procedures, it does impose strict deadlines for filing an appeal. IHP applicants who are considering an appeal of an unfavorable decision should familiarize themselves with the FEMA appeal requirements.

**1. Appealable IHP Decisions**

The IHP regulations set out a detailed list of program decisions that may be appealed.<sup>105</sup> These include any decision related to: (1) eligibility for assistance; (2) the amount or type of assistance; (3) cancellation of an IHP application; (4) rejection of a late IHP application; (5) denial of continued assistance; (6) the decision to collect rent for FEMA-provided housing; (7) termination of direct housing assistance; (8) sale of FEMA-provided housing, including sale price and denial of a purchase request; and (9) recoupment.

## **2. Deadline: 60 Days After Notice of Decision**

The applicant must file an appeal of an unfavorable IHP decision within 60 days after being notified by FEMA of the decision.<sup>106</sup> According to FEMA's "Applicant's Guide to the Individuals & Households Program," the postmark on the appeal will be used to determine whether the request is timely.<sup>107</sup>

## **3. Where to Send It**

IHP regulations state that appeals related to housing assistance under IHP must be filed with the FEMA Regional Director, and that appeals related to "other needs" assistance should be filed with the state (or with FEMA if the state is not administering the program).<sup>108</sup> However, FEMA's "Applicant's Guide to the Individuals & Households Program" states that appeal requests should be sent to: FEMA—Individuals & Households Program, National Processing Service Center, P.O. Box 10055, Hyattsville, MD 20782-7055, or faxed to 800-827-8112 (Attention: FEMA—Individuals & Households Program).<sup>109</sup>

Applicants considering an appeal should be guided by any specific direction in the decision letter to be appealed. If there is a question, contact FEMA at 800-621-3362 (TTY 800-462-7585).

## **4. Reviewing Your File**

Applicants have a right to see their IHP file, and may ask for a copy of it by writing to FEMA—Records Management, National Processing Service Center, P.O. Box 10055, Hyattsville, MD 20782-7055.<sup>110</sup>

## **5. Contents of the Appeal Request**

An IHP appeal request must be in writing and signed and must explain the reasons for the appeal.<sup>111</sup> If the applicant authorizes someone else to submit and sign the appeal on his or her behalf, the appeal must include a statement signed by the applicant to that effect.<sup>112</sup>

The appeal request should also include the applicant's FEMA registration number and the disaster number, if known.<sup>113</sup>

There is no special form for IHP appeal requests. In most cases, the applicant will want to provide some evidence for the case to improve the chances of succeeding. This evidence can be anything sensible—photos, receipts, estimates, statements from other people—but without any evidence at all, the appeal is likely to fail.

For example, one common appeal claim is that the amount of assistance awarded is too low. Rather than simply stating that the amount is lower than expected or needed, an applicant appealing an IHP award will want to demonstrate the error. The inspector might have missed household damage, or the applicant might have discovered additional damage after the inspector left. For example, if a water heater was ruined in the disaster but the inspection report fails to mention it, the damage can be documented with a photo and a receipt or estimate for a new water heater. Photographs, receipts, or estimates for damages underestimated by the agency will greatly improve the likelihood of a successful appeal.

## **6. The Appeal Process**

An applicant is entitled to fair and impartial consideration of an IHP appeal.<sup>114</sup> The applicant should receive a written notice that the appeal request has been received.<sup>115</sup> The agency must reach a decision in the appeal and provide written notice to the applicant within 90 days of receiving the appeal request.<sup>116</sup> The appeal decision is final.<sup>117</sup>

### **F. IHP Does Not Affect Public Benefits Eligibility**

An IHP award does not affect an applicant's eligibility or benefits level under any income- or resource-tested federally funded assistance programs.<sup>118</sup> This includes such programs as SSI, AFDC, Medicaid, and food stamps.

### **G. IHP Exempt From Garnishment and Other Creditor Actions**

IHP awards are exempt from collection action by an applicant's creditors, including garnishment, levy, seizure, encumbrance, execution, pledge, attachment, release, or waiver.<sup>119</sup> IHP assistance may not be reassigned or transferred.<sup>120</sup>

## **III. Disaster Unemployment Assistance**

Disaster Unemployment Assistance (DUA) provides assistance to people who normally would not qualify for unemployment benefits. This includes farmers. Funded by FEMA, the DUA program is administered by each state's department of labor.<sup>121</sup>

### **A. DUA Deadline**

An application for DUA must be filed with the state within 30 days of the official announcement date of the disaster.<sup>122</sup> If the applicant can show good cause for filing late, however, the state must accept the application.<sup>123</sup> FEMA regulations do not define what is meant by good cause. FEMA's determination of whether there was good cause for filing an application late is appealable. Appeals are discussed below.

### **B. Farmers Are Eligible for DUA**

Although we do not normally think of farmers as "unemployed," DUA covers farmers affected by a disaster. Farmers qualify under the awkward term of "unemployed self-employed," which is explained below. In addition, some farmers with significant income from off-farm work can qualify for DUA based on their off-farm work. The rules for determining this requirement vary depending on whether the person is employed or self-employed.

The following sections discuss DUA eligibility in detail.

## **1. Employed or Self-Employed Before the Disaster**

To qualify for DUA, a person must either be an unemployed worker or an unemployed self-employed individual—which can include farmers. Before the disaster, therefore, applicants need either to have been employed or self-employed, or about to be employed or self-employed.

### **a. Self-Employed Individual**

To be eligible for DUA as a self-employed individual, the person must have been self-employed, or have been about to be self-employed, in the disaster area at the time of the disaster. Self-employment can include farming.<sup>124</sup> This self-employment must have been the principal source of income for the applicant, and the applicant's livelihood must have depended on that employment.<sup>125</sup>

### **b. Employed Worker**

In order to be eligible for DUA as an employed person, the applicant must have been employed or about to begin employment in the disaster area at the time of the disaster. The job must have provided, or was about to provide, the principal source of the applicant's income and livelihood.<sup>126</sup>

## **2. Unemployed Because of the Disaster**

In order to be eligible for DUA, the applicant must have been made unemployed by the disaster. FEMA has detailed and somewhat confusing regulations for this part of the eligibility requirements.

### **a. Unemployed Self-Employed Individual**

In order to be considered an unemployed self-employed individual, the applicant must meet one of the following conditions.

***(1) Week of Unemployment Caused by the Disaster***

An unemployed self-employed individual must have what FEMA regulations call a “week of unemployment” following the disaster, and the unemployment must be a direct result of the disaster.<sup>127</sup> In general, continued eligibility for DUA is determined week by week.

A person can have a week of unemployment even if he or she was able to work for a part of the week.<sup>128</sup> In addition, if the applicant works off the farm a few hours for a wage or salary, he or she may still qualify for DUA.

***(2) Unable to Reach Work***

A person qualifies as an unemployed self-employed individual if he or she is unable to reach work as a direct result of the disaster. This provision applies even if the applicant was about to begin self-employed work and could not reach the work site.<sup>129</sup>

***(3) Injury***

A self-employed person who is injured as a direct result of the disaster and cannot work qualifies as an unemployed self-employed individual.<sup>130</sup>

**b. Unemployed Worker**

An applicant qualifies as an unemployed worker if the unemployment is caused by the disaster. For the purposes of DUA, unemployment is caused by the disaster if one of the following is true.

***(1) Week of Unemployment***

The applicant must have what FEMA regulations call a “week of unemployment” that is caused directly by the disaster.<sup>131</sup> Applicants do not need to have been unemployed for the whole week to have a week of

unemployment.<sup>132</sup> In general, DUA eligibility is determined week by week.

**(2) *Unable to Reach Workplace***

Unemployed workers are eligible for DUA if they are unable to reach work as a direct result of the disaster.<sup>133</sup> This provision applies even if the applicant was about to begin working and could not reach work.

**(3) *Injury***

Applicants qualify for DUA if they cannot work because of an injury caused as a direct result of the disaster.<sup>134</sup>

**(4) *New Breadwinners***

Applicants qualify for DUA if they have become the breadwinner or major supporter for the household because the head of household has died as a direct result of the disaster.<sup>135</sup>

**3. File DUA Applications**

Applicants must file an initial application for DUA. They may also need to file additional applications for additional weeks of unemployment.<sup>136</sup>

**4. Able and Available to Work**

DUA recipients must be able and available to work.<sup>137</sup> The laws of each state define the meaning of this requirement. Applicants are still eligible for the program if they suffered a disaster-caused injury that prevents them from working.<sup>138</sup>

**5. Have Not Refused to Work**

Applicants must not have refused a bona fide offer of employment in a suitable position and must not have refused without good cause to resume or begin suitable self-employment.<sup>139</sup>

## **6. Not Eligible for Other Compensation**

In general, DUA applicants must not be eligible for other forms of unemployment compensation.<sup>140</sup>

### **C. DUA Benefits**

FEMA regulations controlling the calculation of DUA benefits can be confusing. In addition, the benefits vary according to the way each state calculates its own regular unemployment benefits. As a result, DUA benefits vary somewhat from state to state.

#### **1. States Must Meet Minimum DUA Requirements**

States must follow the minimum federal DUA regulations, even if they are inconsistent with the state's normal practice. For example, if the state does not usually give unemployment benefits to the self-employed, in the case of DUA the state must treat self-employment "in the same manner and with the same effect as covered employment and wages."<sup>141</sup>

#### **2. Calculating DUA Benefits—Based on Past Income**

Since state unemployment laws are not written with farmers in mind, the state's formula for figuring benefits may be complicated and seem unrealistic. A central factor in calculating most state unemployment benefits, for example, is past income. In general, the more a person earned before the disaster, the more he or she will receive as a DUA benefit. In some cases, state calculations would leave many farmers with no DUA benefits at all.

Federal regulations require the state to do three things that help the situation somewhat. First, the DUA calculation for the unemployed self-employed must be based on the person's most recent tax year that ended before the disaster.<sup>142</sup> Some states normally use a much shorter period, which could show that a farmer had no income at all. If the applicant has not filed taxes for that year, the income will be based on the applicant's statements.<sup>143</sup>

Second, federal regulations say that, at a minimum, everyone who qualifies for DUA as unemployed self-employed due to the disaster—including farmers—should receive at least 50 percent of the state’s average weekly payment of regular unemployment.<sup>144</sup> Thus, even if a farmer had a negative income in the previous year, he or she can still be eligible for DUA.

Third, federal regulations provide that each adult member of a family that is self-employed as a family unit in the same business can qualify for DUA benefits based on an allocation of the total net income from the self-employment business.<sup>145</sup>

### **3. Reductions in DUA Benefits**

If a person was self-employed less than full-time before the disaster, DUA benefits may be reduced based on the percentage of the person’s time that is customarily not spent working at the self-employment.<sup>146</sup> In addition, benefits are reduced by any other wages or income earned during the disaster.<sup>147</sup>

### **4. Immediate Determination of Benefits**

An immediate determination of DUA benefits will be based on the applicant’s statement of income or a combination of a statement, documentation, and other records. If the determination is based on the person’s statement alone, he or she must provide evidence of employment or self-employment within 21 days.<sup>148</sup>

## **D. DUA Appeals**

Any decision regarding initial eligibility for DUA, continued DUA eligibility, or the level of DUA benefits may be appealed.<sup>149</sup>

### **1. Deadline—60 Days to File**

A DUA appeal must be filed within 60 days after the state’s decision is issued or mailed.<sup>150</sup>

## **2. Stages of Appeal**

There are three stages of a DUA appeal.

### **a. First Stage**

In the first stage of a DUA appeal, the appeals process for the state's regular unemployment compensation program is used.<sup>151</sup> Any decision on the appeal must be made within 30 days.<sup>152</sup> The notice of decision, along with the reasons for the decision, must be given to the applicant.<sup>153</sup> The notice of decision should provide information about how to seek a second-stage appeal.<sup>154</sup>

### **b. Second Stage**

In the second stage of DUA appeals, the appeal is made to the Regional Administrator of the United States Department of Labor's Employment and Training Administration.<sup>155</sup> This second-stage appeal must be filed within 15 days after the first-stage decision was mailed or delivered to the person who appealed. This appeal may be filed with the state agency, which will forward the request to the Regional Administrator, or with the Regional Administrator directly.<sup>156</sup> The Regional Administrator must make a decision within 45 days after the second-stage appeal was filed or within 90 days after the first stage appeal was filed, whichever is earlier.<sup>157</sup>

### **c. Third Stage**

A second-stage appeal decision is final unless the Assistant Secretary of Labor for Employment and Training decides to review the case.<sup>158</sup> The Assistant Secretary's review is the third stage of a DUA appeal. Review by the Assistant Secretary is based solely on a written record. The person who appealed has 15 days from the time the Assistant Secretary mails notice that the appeal will be heard to present his or her own written arguments.<sup>159</sup> The decision of the Assistant Secretary is final.<sup>160</sup>

## **IV. Cora Brown Fund**

FEMA also administers the Cora Brown Fund, which was created by a private gift and is intended to help disaster victims.

The Fund is assistance of last resort. It is designed to provide for disaster-related needs that “have not been or will not be met by governmental agencies or any other organizations which have programs to address such needs.”<sup>161</sup>

### **A. Purpose**

The Fund may not be used to replace other programs.<sup>162</sup> If the IHP program can meet a particular need, for example, Cora Brown Fund money cannot be used as a substitute. Assistance that can be provided by the Fund includes the following.

#### **1. Housing**

The Fund may be used for disaster-related home repair and rebuilding assistance to families for permanent housing. This may include site acquisition and development, relocation of a residence out of a hazardous area, and assistance with other costs connected with temporary or permanent housing.<sup>163</sup>

#### **2. Other Unmet Needs**

The Fund may be used for disaster-related unmet needs of families. Such assistance may include, but is not limited to: health and safety measures, evacuation costs, other assistance often provided by disaster programs,<sup>164</sup> and hazard mitigation or floodplain management.<sup>165</sup>

In addition, the Fund is specifically authorized to help self-employed persons reestablish a business. For the purpose of the Cora Brown Fund, self-employed means that the applicant does not hire any employees.<sup>166</sup>

### **3. Removing Suffering and Promoting Well-Being**

The Fund can pay for other services that alleviate human suffering and promote the well-being of disaster victims. For example, services to the elderly, children, or handicapped persons, such as transportation, recreational programs, provision of special ramps, or hospital or home visiting services, may be funded.<sup>167</sup>

### **4. Aid to Individuals or Groups**

Fund money may be provided to individual disaster victims or to benefit a group of disaster victims.<sup>168</sup>

## **B. Eligibility**

People who are in an area designated as eligible for disaster relief are potentially eligible for assistance from the Fund.

### **1. Application Is Through Agencies or Groups**

FEMA regulations say that individuals should not apply directly to the agency for Cora Brown Fund assistance.<sup>169</sup> FEMA uses contacts with other agencies, local governments, the American Red Cross, and other volunteer agencies to identify potential recipients. People interested in the Fund should therefore approach one of these agencies or groups and ask them to forward their cases to the FEMA Regional Director.

### **2. FEMA Discretion in Awarding Funds**

Assistance from the Fund is made at the discretion of FEMA.<sup>170</sup> There are no specific eligibility requirements. FEMA must administer the Fund in an "equitable and impartial manner without discrimination on the grounds of race, color, religion, national origin, sex, age, or economic status."<sup>171</sup>

### **C. Benefit Amounts**

Normally, each disaster victim will receive no more than \$2,000 from the Fund in any one disaster. The Assistant Associate Director of FEMA may give more if it is in the best interests of the victim and the federal government.<sup>172</sup>

### **D. Restrictions**

Cora Brown Fund benefits are restricted in the following ways.

#### **1. Duplication of Benefits**

Fund money may not be used to duplicate assistance for which a person is eligible from other sources.<sup>173</sup> Applicants may receive a combined award from the Fund and other sources, so long as the purpose of the gift does not overlap with the other source.<sup>174</sup>

#### **2. Flood Insurance**

If applicants use money from the Fund for any “acquisition or construction” purposes, they will be required to purchase and maintain adequate flood insurance.<sup>175</sup>

#### **3. Joint Award with an Organization**

Fund money may be awarded jointly to individuals and a volunteer organization or other agency.<sup>176</sup>

#### **4. Consistent with Other Programs**

The Fund may not be used in a way that is inconsistent with other federally mandated disaster assistance or insurance programs or to modify other generally applicable requirements.<sup>177</sup>

### **E. Cora Brown Fund Appeals**

Disaster victims must be notified in writing of the results of requests made on their behalf. The notice should also explain appeal procedures.<sup>178</sup>

## **V. Crisis Counseling**

FEMA provides crisis counseling services to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by the disaster or its aftermath.<sup>179</sup>

People are eligible for crisis counseling if they were residents of the disaster area or were located there at the time of the disaster, and: (1) they have a mental health problem that was caused or aggravated by the disaster or its aftermath, or (2) they may benefit from preventive care techniques.<sup>180</sup>

Counseling is provided at no cost for eligible disaster victims.<sup>181</sup>

## **VI. Disaster Legal Services**

FEMA is authorized to provide disaster legal services to low-income individuals who require such services “as a result” of the disaster.<sup>182</sup> A low-income individual must have “insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or results from the major disaster.”<sup>183</sup> Available services include legal advice, counseling, and some forms of representation.<sup>184</sup>

Disaster legal services are provided at no charge for eligible individuals.<sup>185</sup>

## **VII. Nondiscrimination**

All FEMA relief is to be administered in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.<sup>186</sup>

## Chapter 2 Notes

- <sup>1</sup> See 44 C.F.R. pt. 206, subpt. D (2008).
- <sup>2</sup> Pub. L. No. 106-390, Title II, § 206(a), 114 Stat. 1566 (Oct. 30, 2000) (codified at 42 U.S.C. § 5174).
- <sup>3</sup> 67 Fed. Reg. 61,446 (2002) (codified at 44 C.F.R. pt. 206). FEMA continued to provide assistance under the prior IFG and THA programs for all emergencies and major disasters declared on or before October 14, 2002. See 44 C.F.R. §§ 206.101(a), 206.131(a) (2008). Previous editions of this book include a detailed description of IFG and THA. To obtain earlier editions, contact FLAG by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 360 North Robert Street, Suite 500, Saint Paul, MN 55101; or by electronic mail at [lawyers@flaginc.org](mailto:lawyers@flaginc.org).
- <sup>4</sup> 42 U.S.C. § 5174; 44 C.F.R. §§ 206.117, 206.119 (2008).
- <sup>5</sup> 42 U.S.C. § 5174(f), (g); 44 C.F.R. § 206.110(i)(1) (2008). See also 67 Fed. Reg. 61,446 (2002) (prefatory comments to interim final rule stating: "...we have concluded that Congress did not intend to authorize State participation in disaster housing activities under [IHP]...").
- <sup>6</sup> 42 U.S.C. § 5174(f), (g); 44 C.F.R. §§ 206.110(i)(2), 206.119, 206.120 (2008). See also 67 Fed. Reg. 61,446 (2002) (prefatory comments to interim final rule stating that FEMA is "offering three options to the State for the implementation of the 'Other Needs' assistance program—a program administered exclusively by FEMA, one administered by the State with substantial FEMA assistance, and one administered by the State with minimal FEMA participation.").
- <sup>7</sup> 44 C.F.R. § 206.112(a) (2008). Note that the new program regulations refer to the application as a "registration."
- <sup>8</sup> 44 C.F.R. § 206.112(b) (2008).
- <sup>9</sup> 44 C.F.R. § 206.112(b) (2008).
- <sup>10</sup> 44 C.F.R. § 206.112(c) (2008).
- <sup>11</sup> 44 C.F.R. § 206.112(c) (2008); 67 Fed. Reg. 3412, 3416 (2002) (Abstract for Information Collection: "Request for Approval of Late Application").
- <sup>12</sup> See [www.fema.gov/assistance/register](http://www.fema.gov/assistance/register).

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- <sup>13</sup> FEMA, APPLICANT'S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM (August 2005), at 2, available at [www.fema.gov/pdf/about/process/help\\_after\\_disaster\\_english.pdf](http://www.fema.gov/pdf/about/process/help_after_disaster_english.pdf).  
The Applicant's Guide is also available:  
in Spanish at [www.fema.gov/pdf/assistance/process/help\\_after\\_disaster\\_spanish.pdf](http://www.fema.gov/pdf/assistance/process/help_after_disaster_spanish.pdf);  
in Korean at [www.fema.gov/pdf/assistance/process/help\\_after\\_disaster\\_korean.pdf](http://www.fema.gov/pdf/assistance/process/help_after_disaster_korean.pdf); and  
in Vietnamese at [www.fema.gov/pdf/media/2006/vie\\_after\\_disaster.pdf](http://www.fema.gov/pdf/media/2006/vie_after_disaster.pdf).
- <sup>14</sup> APPLICANT'S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM, at 3.
- <sup>15</sup> APPLICANT'S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM, at 3.
- <sup>16</sup> APPLICANT'S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM, at 3.
- <sup>17</sup> 44 C.F.R. § 206.113(a)(1) (2008).
- <sup>18</sup> 44 C.F.R. § 206.111, "Necessary expense," "Serious need" (2008).
- <sup>19</sup> 44 C.F.R. §§ 206.110(h)(2), 206.113(a)(2) (2008). See also, APPLICANT'S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM, at 4.
- <sup>20</sup> 44 C.F.R. § 206.113(b)(6) (2008).
- <sup>21</sup> If the applicant's primary residence is in a designated Special Flood Hazard Area and the community did not participate in the National Flood Insurance Program (NFIP), the applicant will not be eligible for some types of IHP assistance. 44 C.F.R. §§ 206.110(k)(2), 206.113(b)(7) (2008). Financial assistance to rent alternate housing and pay for medical, dental, and funeral expenses and uninsurable items will still be available. 44 C.F.R. § 206.113(b)(7) (2008). If the community qualifies for and enters the NFIP within six months after the disaster declaration, the applicant may be eligible for all IHP types of assistance. 44 C.F.R. §§ 206.110(k)(2), 206.113(b)(7) (2008).
- <sup>22</sup> 44 C.F.R. § 206.113(a)(2) (2008).
- <sup>23</sup> 44 C.F.R. §§ 206.110(h)(3), 206.113(a)(4) (2008).
- <sup>24</sup> 44 C.F.R. §§ 206.110(h)(1), 206.113(a)(3) (2008).
- <sup>25</sup> 44 C.F.R. § 206.113(a)(3) (2008).
- <sup>26</sup> See 44 C.F.R. § 206.131(d)(1)(i)(A)-(B) (2008).
- <sup>27</sup> 42 U.S.C. § 5174(a)(2).

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- 28 42 U.S.C. § 5174(c)(2)(B); 44 C.F.R. § 206.117(b)(2)(iv) (2008). Both the statute and regulation use “can be met” language, but it seems that “cannot be met” must be the intent.
- 29 42 U.S.C. § 5174(a)(1).
- 30 44 C.F.R. § 206.119(a) (2008).
- 31 44 C.F.R. §§ 206.111, “Assistance from other means,” 206.120(d)(4)(i), (f)(5) (2008). See also 44 C.F.R. § 206.113(a)(6)(2008) (but using the term “all assistance from other sources”).
- 32 42 U.S.C. § 5155; 44 C.F.R. §§ 206.113(a)(7), 206.191(c)(1) (2008).
- 33 FEMA has created a priority list to determine when benefits for the same damage or need are considered duplicative. 44 C.F.R. § 206.191(d)(2) (2008). Assistance duplicates other aid that is higher on the list. It is intended that assistance that is higher on the list be offered first. For example, if an SBA loan was made for losses later covered by insurance, the SBA loan would be duplicative and would need to be returned. The priority list follows:
1. Insurance and emergency assistance from voluntary agencies. Assistance in the form of expendable items, such as clothes, linens, and basic kitchenware, is not duplicative.
  2. Housing Assistance under the Individuals and Households Program.
  3. Small Business Administration and Farmers Home Administration (now Farm Service Agency) disaster loans.
  4. “Other needs” assistance under the Individuals and Households Program.
  5. Volunteer agencies’ additional assistance programs.
  6. The Cora Brown Fund.
- 34 42 U.S.C. § 5155(b)(3).
- 35 42 U.S.C. § 5155(c); 44 C.F.R. § 206.191(f) (2008).
- 36 44 C.F.R. § 206.116(a) (2008).
- 37 44 C.F.R. § 206.110(k)(3)(i) (2008).
- 38 44 C.F.R. § 206.110(k)(1) (2008).
- 39 44 C.F.R. § 206.110(k)(3)(i)(A) (2008). The flood insurance obligation will be reassigned to any subsequent owner of the residence.

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- 40 44 C.F.R. § 206.110(k)(3)(i)(B) (2008).
- 41 44 C.F.R. § 206.110(k)(3)(i)(C) (2008). The flood insurance obligation will be reassigned to any subsequent owner of the residence.
- 42 44 C.F.R. §§ 206.110(k)(3)(ii), 206.113(b)(8) (2008).
- 43 44 C.F.R. § 206.110(k)(3)(i) (2008).
- 44 44 C.F.R. § 206.113(b)(9) (2008).
- 45 42 U.S.C. § 5174(h); 72 Fed. Reg. 57,341 (2007) (adjusting maximum amount of assistance from \$25,000 to \$28,800 for disasters declared on or after October 1, 2007). This amount is adjusted annually for inflation. 42 U.S.C. § 5174(h); 44 C.F.R. § 206.110(b) (2008).
- 46 44 C.F.R. § 206.111, "Household" (2008).
- 47 44 C.F.R. § 206.110(e) (2008). The Associate Director may extend the period in extraordinary conditions. Criteria for obtaining continued assistance are set out at 44 C.F.R. § 206.114 (2008).
- 48 See Pub. L. No. 106-390, Title II, § 206(a), 114 Stat. 1522, 1566 (Oct. 30, 2000) (codified at 42 U.S.C. § 5174) (removing rent and mortgage payment assistance provisions). The relevant provisions of the old Temporary Housing Assistance program can still be found in FEMA regulations at 44 C.F.R. § 206.101(f)(i)(D), (g)(3) (2008), but they do not apply to any disaster declared after October 14, 2002.
- 49 44 C.F.R. § 206.113(a)(8) (2008). Housing assistance will not be available if the residence was vacated as a precautionary measure and the residents are able to return immediately after the disaster. 44 C.F.R. § 206.113(b)(4) (2008).
- 50 44 C.F.R. § 206.113(b)(2)-(3) (2008).
- 51 44 C.F.R. § 206.114(a) (2008).
- 52 44 C.F.R. § 206.111, "Primary residence" (2008).
- 53 44 C.F.R. § 206.111, "Safe," "Sanitary," "Uninhabitable" (2008).
- 54 44 C.F.R. § 206.111, "Inaccessible" (2008).
- 55 44 C.F.R. § 206.113(a)(9) (2008).
- 56 42 U.S.C. § 5174(c).
- 57 44 C.F.R. § 206.110(c) (2008).
- 58 44 C.F.R. § 206.110(c) (2008).

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- 59 44 C.F.R. § 206.117(b)(1)(i)(A), (ii)(B) (2008). The Regional Director may determine that the household requires more than one residence.
- 60 42 U.S.C. § 5174(c)(1)(A)(i); 44 C.F.R. § 206.117(b)(1)(i) (2008). In 2006, federal disaster assistance laws were amended to make clear that IHP assistance can be used to pay utilities. Before this change, IHP generally could not be used for this purpose. See Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295, 120 Stat. 1355 (October 4, 2006) (codified in scattered sections of the U.S.C.) (striking limitations on use of IHP assistance to pay utilities). FEMA regulations have not been updated to reflect this statutory change and continue to state that utility costs are the responsibility of the occupant. See 42 C.F.R. § 206.117(b)(i)(C) (2008).
- 61 42 U.S.C. § 5174(c)(1)(A)(ii); 44 C.F.R. § 206.117(b)(1)(i) (2008).
- 62 44 C.F.R. § 206.117(b)(1)(i)(D) (2008).
- 63 42 U.S.C. § 5189b; 44 C.F.R. §§ 206.110(d), 206.117(b)(1)(i) (2008).
- 64 44 C.F.R. § 206.117(b)(1)(i)(B) (2008).
- 65 42 U.S.C. § 5174(c)(1)(B); 44 C.F.R. § 206.117(b)(1)(ii) (2008). The applicant will be responsible for utility costs. 44 C.F.R. § 206.117(b)(1)(ii)(D) (2008).
- 66 42 U.S.C. § 5174(c)(1)(B)(iii); 44 C.F.R. § 206.117(b)(ii)(F) (2008). The rental rate will be based on the number of bedrooms occupied and needed by the household and will take into account the household's financial circumstances.
- 67 44 C.F.R. § 206.117(b)(1)(ii)(G) (2008).
- 68 42 U.S.C. § 5174(d)(2)(A)(i); 44 C.F.R. § 206.118(a)(1) (2008). The site must comply with local codes and ordinances and floodplain management standards. 44 C.F.R. § 206.118(a)(1)(i) (2008).
- 69 44 C.F.R. § 206.118(a)(1)(ii) (2008).
- 70 42 U.S.C. § 5174(d)(2)(A)(iv); 44 C.F.R. § 206.118(a)(1)(iii) (2008). See also 67 Fed. Reg. 61,446, 61,448 (2002) (prefatory comments to interim final rule).
- 71 Pub. L. 109-295, Title VI, Subtitle E, § 689i, 120 Stat. 1454 (Oct. 4, 2006) (codified at 6 U.S.C. § 776).
- 72 6 U.S.C. § 776.
- 73 6 U.S.C. § 776(a)(2)(A)(ii)(iv).
- 74 6 U.S.C. § 776(a)(1).

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- <sup>75</sup> 6 U.S.C. § 776(b).
- <sup>76</sup> 42 U.S.C. § 5174(c)(2); 44 C.F.R. § 206.117(b)(2) (2008).
- <sup>77</sup> Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295, Title VI, Subtitle E, § 686, 120 Stat. 1355 (Oct. 4, 2006) (codified at 42 U.S.C. § 5174(c)) (striking repair and home replacement caps and setting one overall cap for FEMA assistance).
- <sup>78</sup> 72 Fed. Reg. 57,341 (2007) (adjusting maximum amount of assistance from \$25,000 to \$28,800 for disasters declared on or after October 1, 2007).
- <sup>79</sup> 42 U.S.C. § 5174(c)(2)(A)(i); 44 C.F.R. § 206.117(b)(2)(i), (ii) (2008).
- <sup>80</sup> 44 C.F.R. § 206.113(b)(5) (2008). If improvements or additions are necessary to comply with state or local laws or “eligible mitigation measures,” IHP assistance may be used to make the necessary improvements or additions.
- <sup>81</sup> 42 U.S.C. § 5174(c)(2)(A)(ii); 44 C.F.R. § 206.117(b)(2)(iii) (2008).
- <sup>82</sup> 42 U.S.C. § 5174(c)(2)(B); 44 C.F.R. § 206.117(b)(2)(i), (iv) (2008).
- <sup>83</sup> 44 C.F.R. § 206.117(c)(1) (2008).
- <sup>84</sup> 44 C.F.R. § 206.117(b)(2)(i), (c)(1) (2008).
- <sup>85</sup> 42 U.S.C. § 5174(c)(3); 44 C.F.R. § 206.117(b)(3) (2008).
- <sup>86</sup> 44 C.F.R. § 206.117(b)(3) (2008). In extraordinary cases, the FEMA Associate Director may approve replacement assistance for an applicant with less than \$10,000 in damage to the primary residence where replacement assistance is “more appropriate” than other forms of housing assistance.
- <sup>87</sup> 44 C.F.R. § 206.117(b)(3) (2008).
- <sup>88</sup> 44 C.F.R. § 206.117(b)(3) (2008).
- <sup>89</sup> 42 U.S.C. § 5174(c)(4); 44 C.F.R. § 206.117(b)(4) (2008). Previously, funding for permanent construction was only available to applicants from insular or remote areas. Now, permanent construction assistance is more widely available and may be used in any location so long as the general eligibility criteria for permanent housing construction assistance are met. See Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295, Title VI, Subtitle E, § 635, 120 Stat. 1355 (Oct. 4, 2006) (codified at 42 U.S.C. § 5174(c)(4)) (striking restriction that limited funding for permanent housing construction assistance to remote and insular areas). The FEMA regulations have not been updated to reflect this statutory change.

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- 90 42 U.S.C. § 5174(c)(4); 44 C.F.R. § 206.117(b)(4) (2008).
- 91 44 C.F.R. § 206.117(c)(3) (2008).
- 92 See 44 C.F.R. pt. 206, subpt. E (2008).
- 93 44 C.F.R. § 206.119 (2008).
- 94 44 C.F.R. § 206.119(a)(1)-(3) (2008).
- 95 44 C.F.R. § 206.119(b) (2008).
- 96 44 C.F.R. § 206.119(c)(3) (2008).
- 97 44 C.F.R. § 206.119(c)(4) (2008).
- 98 44 C.F.R. § 206.119(b)(2)(i), (c)(1) (2008).
- 99 44 C.F.R. § 206.119(c)(1)(v) (2008).
- 100 44 C.F.R. § 206.119(c)(2) (2008).
- 101 44 C.F.R. § 206.119(5) (2008).
- 102 44 C.F.R. § 206.119(c)(6) (2008). The premium under a Group Flood Insurance Policy, if applicable, is an eligible “other cost.” 44 C.F.R. § 206.119(c)(6)(i), (d) (2008). See also 67 Fed. Reg. 61,446, 61,449 (2002) (prefatory comments to interim final rule).
- 103 44 C.F.R. § 206.119(c)(6)(ii) (2008).
- 104 44 C.F.R. § 206.119(b)(2)(ii) (2008).
- 105 44 C.F.R. § 206.115(a) (2008).
- 106 42 U.S.C. § 5189a(a); 44 C.F.R. § 206.115(a) (2008).
- 107 APPLICANT’S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM, at 11. If the person submitting the request is not a member of the household, the request must include a signed statement from a household member authorizing the request.
- 108 44 C.F.R. § 206.115(c) (2008).
- 109 APPLICANT’S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM, at 11.
- 110 44 C.F.R. § 206.115(d) (2008); APPLICANT’S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM, at 11. If the request is sent by someone other than the applicant, it must include a signed statement from the applicant authorizing the request.
- 111 44 C.F.R. § 206.115(b) (2008).

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- <sup>112</sup> 44 C.F.R. § 206.115(b) (2008).
- <sup>113</sup> APPLICANT'S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM, at 11.
- <sup>114</sup> 42 U.S.C. § 5189a(c).
- <sup>115</sup> 44 C.F.R. § 206.115(e) (2008).
- <sup>116</sup> 42 U.S.C. § 5189a(b); 44 C.F.R. § 206.115(f) (2008).
- <sup>117</sup> 44 C.F.R. § 206.115(f) (2008).
- <sup>118</sup> 42 U.S.C. § 5155(d); 44 C.F.R. §§ 206.110(f), 206.191(b)(2) (2008).
- <sup>119</sup> 44 C.F.R. § 206.110(g) (2008).
- <sup>120</sup> 44 C.F.R. § 206.110(g) (2008).
- <sup>121</sup> DUA is authorized by 42 U.S.C. § 5177.
- <sup>122</sup> 20 C.F.R. § 625.8(a) (2008). If the 30th day falls on a Saturday, Sunday, or legal holiday in the area, the 30-day time limit is extended to the next business day.
- <sup>123</sup> 20 C.F.R. § 625.8(a) (2008). The application cannot be accepted if it is filed after the expiration of the Disaster Assistance Period, which is usually 26 weeks. 20 C.F.R. §§ 625.2(f), 625.8(a) (2008).
- <sup>124</sup> 20 C.F.R. §§ 625.2(n), 625.4(c) (2008).
- <sup>125</sup> 20 C.F.R. § 625.2(t), (n) (2008).
- <sup>126</sup> 20 C.F.R. § 625.2(s) (2008).
- <sup>127</sup> 20 C.F.R. §§ 625.2(w)(2), 625.5(b) (2008).
- <sup>128</sup> 20 C.F.R. § 625.2(w)(2) (2008). A week of unemployment is a week in which the person is totally, part-totally, or partially unemployed during the week. A week of total unemployment is a week in which the person performs no services in self-employment or in an employer-employee relationship, or performs services less than full-time and earns wages not more than an amount set by the state. A week of part-total unemployment is a week of otherwise total unemployment in which the individual has odd jobs or other work and earns wages not more than an amount set by state law. A week of partial unemployment is a week during which the individual performs less than the customary full-time services in self-employment, as a direct result of the disaster, and earns wages not more than an amount set by the state, or a week during which the only activities or services performed are for the sole purpose of enabling the individual to resume self-employment. If the week of

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unemployment is a week in which the person is reemployed or begins self-employment again, the week qualifies as a week of partial employment.

- <sup>129</sup> 20 C.F.R. § 625.5(b)(3) (2008).
- <sup>130</sup> 20 C.F.R. § 625.5(b)(4) (2008).
- <sup>131</sup> 20 C.F.R. § 625.5(a)(1) (2008).
- <sup>132</sup> 20 C.F.R. § 625.2(w)(1) (2008). See note 128 for a detailed definition of “week of unemployment.”
- <sup>133</sup> 20 C.F.R. § 625.5(a)(2)-(3) (2008).
- <sup>134</sup> 20 C.F.R. § 625.5(a)(5) (2008).
- <sup>135</sup> 20 C.F.R. § 625.5(a)(4) (2008).
- <sup>136</sup> 20 C.F.R. § 625.4(e)-(f) (2008).
- <sup>137</sup> 20 C.F.R. § 625.4(g) (2008).
- <sup>138</sup> 20 C.F.R. § 625.5(a)(5), (b)(4) (2008).
- <sup>139</sup> 20 C.F.R. § 625.4(h) (2008).
- <sup>140</sup> 20 C.F.R. § 625.4(i) (2008). See 20 C.F.R. § 625.2(d) (2008) for a discussion of the types of relevant compensation.
- <sup>141</sup> 20 C.F.R. § 625.6(a)(1)-(2) (2008).
- <sup>142</sup> The calculation is based on net income, and the income generally is divided among adult family members in the same business. 20 C.F.R. §§ 625.6(a)(2), 625.2(u) (2008).
- <sup>143</sup> 20 C.F.R. § 625.6(e) (2008).
- <sup>144</sup> 20 C.F.R. § 625.6(b) (2008). This was a significant change in the DUA regulations. See 60 Fed. Reg. 25,560 (1995).
- <sup>145</sup> 20 C.F.R. § 625.6(a)(3) (2008). In some cases, family members under the age of majority who work on the farm may qualify as either employed or self-employed. If so, their benefits are determined based on their actual wages or income rather than an equal allocation of the family’s income.
- <sup>146</sup> 20 C.F.R. § 625.6(b)(1) (2008).
- <sup>147</sup> 20 C.F.R. § 625.6(f)(1) (2008). If the person’s other predisaster employment results in a higher DUA benefit, the higher benefit may be taken.
- <sup>148</sup> 20 C.F.R. § 625.6(e)(1) (2008).
- <sup>149</sup> 20 C.F.R. §§ 625.9, 625.10(a)(1) (2008).

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- 150 20 C.F.R. § 625.10(a)(1) (2008).
- 151 20 C.F.R. § 625.10(a)(1) (2008).
- 152 20 C.F.R. § 625.10(a)(1) (2008).
- 153 20 C.F.R. § 625.10(a)(2) (2008).
- 154 20 C.F.R. § 625.10(a)(2) (2008).
- 155 20 C.F.R. § 625.10(c) (2008).
- 156 20 C.F.R. § 625.10(c)(2), (3)(i) (2008).
- 157 20 C.F.R. § 625.10(c)(4) (2008).
- 158 20 C.F.R. § 625.10(c)(5), (d) (2008).
- 159 20 C.F.R. § 625.10(d)(4) (2008). The Regional Administrator and the state agency must submit all written records to the Assistant Secretary when the Assistant Secretary decides to conduct a review. The Assistant Secretary may request other written evidence or contentions.
- 160 20 C.F.R. § 625.10(d)(7) (2008).
- 161 44 C.F.R. § 206.181(b) (2008).
- 162 44 C.F.R. § 206.181(b) (2008).
- 163 44 C.F.R. § 206.181(b)(1) (2008). This can include such things as utility deposits, access, transportation, and connection of utilities.
- 164 Specifically, this means assistance set out in the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121, *et seq.*, or provided through other federal, state, local, or volunteer programs. 44 C.F.R. § 206.181(b)(2) (2008).
- 165 44 C.F.R. § 206.181(b)(2) (2008).
- 166 44 C.F.R. § 206.181(b)(2) (2008).
- 167 44 C.F.R. § 206.181(b)(3) (2008).
- 168 44 C.F.R. § 206.181(b)(3), (d)(4) (2008).
- 169 44 C.F.R. § 206.181(d)(3) (2008).
- 170 44 C.F.R. § 206.181(c)(1) (2008).
- 171 44 C.F.R. § 206.181(c)(7) (2008).
- 172 44 C.F.R. § 206.181(c)(2) (2008).
- 173 44 C.F.R. § 206.181(c)(5) (2008).

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- <sup>174</sup> 44 C.F.R. § 206.181(c)(8) (2008).
- <sup>175</sup> FEMA will determine what is adequate based on the purpose of the award.  
44 C.F.R. § 206.181(c)(6) (2008).
- <sup>176</sup> 44 C.F.R. § 206.181(c)(4) (2008).
- <sup>177</sup> 44 C.F.R. § 206.181(c)(3) (2008).
- <sup>178</sup> 44 C.F.R. § 206.181(d)(3) (2008).
- <sup>179</sup> 44 C.F.R. § 206.171(c)(1) (2008). Crisis counseling is authorized by 42 U.S.C.  
§ 5183.
- <sup>180</sup> 44 C.F.R. § 206.171(h)(1) (2008).
- <sup>181</sup> 44 C.F.R. § 206.171(c)(1) (2008).
- <sup>182</sup> 44 C.F.R. § 206.164(a) (2008). Disaster legal services are authorized by  
42 U.S.C. § 5182.
- <sup>183</sup> 44 C.F.R. § 206.164(a) (2008).
- <sup>184</sup> 44 C.F.R. § 206.164(a) (2008).
- <sup>185</sup> 44 C.F.R. § 206.164(b) (2008).
- <sup>186</sup> 42 U.S.C. § 5151; 44 C.F.R. § 206.11 (2008).