

**U.S. House of Representatives
Committee on Oversight and Government Reform**



Recurring Problems Hinder Federal Disaster Response and Recovery Efforts

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I. Executive Summary

The Federal Emergency Management Agency (FEMA) is responsible for leading and coordinating federal disaster response and recovery efforts. Congress established a framework for FEMA—acknowledging states, territories, tribes, and local governments should generally control their own recovery—through the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). The resulting system of federal reimbursements for disaster-related expenses incurred at other levels of government, however, has become a bureaucratic quagmire.

The Committee began FEMA oversight after hearing numerous concerns about the federal response to the August 2016 Baton Rouge, Louisiana flood. Committee Members and staff traveled to the area in the immediate aftermath of the disaster, and in the ensuing months the Committee sent additional staff to Louisiana and held two hearings on the matter.

When Hurricane Harvey, Hurricane Irma, and Hurricane Maria struck the United States in quick succession in 2017, the Committee extended its oversight of FEMA's federal disaster assistance programs. Since September 2017, Committee staff has visited Texas, Puerto Rico, and the U.S. Virgin Islands (USVI), and the Committee has held two hearings—including one in the USVI—and requested documents and communications from FEMA, the Department of Homeland Security, the Department of Defense, the U.S. Army Corps of Engineers, the Department of Health and Human Services, and the Puerto Rico Electric Power Authority.

The Committee's investigation corroborated the initial complaints the Committee heard related to the flooding in Baton Rouge: FEMA's disaster assistance programs are too complicated; the reimbursement process is too slow; personnel turnover and other staffing issues contribute to confusion and delays; and some temporary housing programs are expensive, ineffective, and unreliable. The Stafford Act's federalist framework contemplates state and territorial governors leading the way following a disaster, with support from the federal government. In Puerto Rico and the U.S. Virgin Islands, however, this framework proved inadequate due to extensive damage from the hurricanes and the territories' lack of preparedness.

The Committee identified two main issues FEMA should prioritize: 1) FEMA should further expand its partnerships with states and look for additional opportunities to incorporate state, local, and private sector input; and 2) FEMA should simplify and streamline its programs, including the Public Assistance program. The Alternative Procedures for Public Assistance, authorized by Section 428 of the Stafford Act, is a step in the right direction, but its ultimate success has not yet been demonstrated.

The 2017 hurricane season also exposed the Department of Homeland Security's systemic mismanagement of federal civilian employee premium pay. The Committee found FEMA alone made approximately \$1 million in unauthorized payments in 2017 and had struggled to comply with the pay cap in previous years. DHS and FEMA must continue to assess internal controls and policies to ensure compliance with the federal statutory premium pay cap.

Finally, the Committee found a pattern of DHS Office of Inspector General (OIG) reports not objectively evaluating FEMA’s performance. Between 2013 and 2017 the OIG produced a series of reports OIG personnel referred to as “feel good reports” – all of which concluded FEMA was “effective.” After the Committee raised concerns, the OIG withdrew the reports.

II. The Committee’s Disaster Response and Recovery Oversight

On August 11, 2016, a slow-moving storm approached the Baton Rouge, Louisiana region.¹ Over the next two days, the storm poured more than 30 inches of rain over the area. Thirteen people died as a result of the storm² and tens of thousands of people were displaced.³ First responders, including private citizens who called themselves the Cajun Navy, rescued at least 20,000 people from the floodwaters.⁴

Just over two weeks later, Committee Members and staff traveled to the area to assess the damage and evaluate FEMA’s initial response efforts.⁵ Concerned by scarce housing options and reports FEMA was not communicating effectively with local officials, the Transportation and Public Assets Subcommittee held a hearing on September 9, 2016.⁶ FEMA Region VI Administrator Tony Robinson, Louisiana Governor John Bel Edwards, and the mayors of Denham Springs, Walker, and Central, Louisiana testified at the hearing.⁷ Governor Edwards implored FEMA to find “ways [to] expedite this process” and help affected communities more quickly.⁸ Mayor Junior Shelton of Central and Mayor Gerard Landry of Denham Springs discussed communication issues with FEMA. Mayor Shelton testified it took three weeks for FEMA to provide a liaison, and even then he had difficulty getting definitive answers from FEMA.⁹ Similarly, Mayor Landry said he and other residents of Denham Springs received “inconsisten[t] information” from FEMA, particularly about the eligibility and placement requirements for manufactured housing units (MHU).¹⁰ Rick Ramsey, the Mayor of Walker, summed up the primary challenge of disaster recovery. He testified:

¹ Mark Schleifstein, *Louisiana Flood of 2016 Resulted from ‘1,000-Year’ Rain in 2 Days*, TIMES-PICAYUNE (Aug. 17, 2016), http://www.nola.com/weather/index.ssf/2016/08/louisiana_flood_of_2016_result.html.

² Maya Lau, *13th Death Confirmed Related to Floods in Louisiana: 93-Year-Old Dies from Pneumonia*, ADVOCATE (Aug. 18, 2016), http://www.theadvocate.com/louisiana_flood_2016/article_6fd4ec3c-6554-11e6-bc36-6f07abca4701.html.

³ Lex Talamo, *Thousands Displaced, Seeking Disaster Relief in Recent Flooding*, SHREVEPORT TIMES (Aug. 15, 2016), <https://www.shreveporttimes.com/story/news/breaking/2016/08/15/thousands-displaced-seeking-disaster-relief-recent-flooding/88803226/>.

⁴ Campbell Robertson, *Thousands Displaced in Storm-Drenched Louisiana*, N.Y. TIMES (Aug. 14, 2016), <https://www.nytimes.com/2016/08/15/us/louisiana-storm-floods-rescue.html>.

⁵ Comm. Delegation to Louisiana (Sept. 2016) [hereinafter Sept. 2016 CODEL].

⁶ *Oversight of the Fed. Emergency Mgmt. Agency’s Response to the Baton Rouge Flood Disaster: Hearing Before the Subcomm. on Transp. & Public Assets of the H. Comm. on Oversight & Gov’t Reform*, 114th Cong. (2016), <https://oversight.house.gov/hearing/oversight-federal-emergency-management-agencys-response-baton-rouge-flood-disaster/> [hereinafter *Sept. 2016 Hearing*].

⁷ *Id.*

⁸ *Id.* (statement of Gov. Edwards).

⁹ *Id.* (statement of Mayor Shelton) (“Twenty-one days following this event is when I got a liaison appointed to me. A nice lady, but she has absolutely no authority. Every question I’ve asked her, she has had to go up the chain. And I can only imagine how that chain is placed upon her to try to get answers. So I don’t blame her, I blame the system.”).

¹⁰ *Id.* (statement of Mayor Landry).

My experience with the FEMA representatives on the ground is that they're actually caring people that feel the hurt and the needs of the citizens of our area. The problem is, their hands are tied. The bureaucratic maze that they have to weave their way through to get anything done is impossible.¹¹

After Committee staff traveled to Louisiana again in February 2017—where they learned an elderly man had died from excessive heat in a malfunctioning FEMA MHU—then-Chairman Jason Chaffetz sent a document request to FEMA on February 23, 2017.¹² The letter requested seven categories of information, including documents and communications related to the quality of MHUs and delays associated with their deployment, the costs of the Shelter at Home temporary repair program, and policies regarding coordination with local officials.¹³ The Committee received seven productions of documents and emails from FEMA, totaling more than 83,000 pages.

On March 21, 2017, the Committee sent letters to two of FEMA's MHU manufacturers and FEMA's primary MHU "haul-and-install" contractor in Baton Rouge, Chicago Bridge & Iron Federal Services (CB&I).¹⁴ These letters requested additional information on MHU inspections, repairs, and defects.¹⁵ The MHU manufacturers and CB&I also produced thousands of documents and emails to the Committee.

On April 5, 2017, the Committee held a second hearing to further evaluate the ongoing recovery in Baton Rouge.¹⁶ Just days before the hearing—nearly seven months after the disaster—seventeen people were still waiting for an MHU.¹⁷ Louisiana Governor John Bel Edwards returned to testify, along with then-Acting FEMA Administrator Robert Fenton, Livingston Parish Emergency Coordinator Mark Harrell, and Rear Admiral David Boone (Ret.), President of CB&I Federal Services.¹⁸

¹¹ *Id.* (statement of Mayor Ramsey).

¹² Letter from Jason Chaffetz, Chairman, Comm. on Oversight & Gov't Reform, to Robert J. Fenton, Jr., Acting Adm'r, Fed. Emergency Mgmt. Agency (Feb. 23, 2017), <https://oversight.house.gov/wp-content/uploads/2017/02/2017-02-23-JEC-to-Fenton-FEMA-Baton-Rouge-due-3-9.pdf>.

¹³ *Id.*

¹⁴ Letter from Jason Chaffetz, Chairman, & Elijah Cummings, Ranking Member, Comm. on Oversight & Gov't Reform, to Philip K. Asherman, President and CEO, Chicago Bridge & Iron Co. (Mar. 21, 2017), <https://oversight.house.gov/wp-content/uploads/2017/03/2017-03-21-JEC-EEC-to-Asherman-CBI-FEMA-Baton-Rouge-due-3-28.pdf>; Letter from Jason Chaffetz, Chairman, and Elijah Cummings, Ranking Member, Comm. on Oversight & Gov't Reform, to Greg Scott, President, ScotBilt Homes (Mar. 21, 2017), <https://oversight.house.gov/wp-content/uploads/2017/03/Scott-letter.pdf>; Letter from Jason Chaffetz, Chairman, & Elijah Cummings, Ranking Member, Comm. on Oversight & Gov't Reform, to Harold Weaver, President, Lexington Homes (Mar. 21, 2017), <https://oversight.house.gov/wp-content/uploads/2017/03/2017-03-21-JEC-EEC-to-Weaver-LexingtonHomes-FEMA-Baton-Rouge-due-3-28.pdf>.

¹⁵ *Id.*

¹⁶ *Oversight of the Fed. Emergency Mgmt. Agency's Response to the Baton Rouge Flood Disaster: Part II: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 115th Cong. (2017), <https://oversight.house.gov/hearing/oversight-federal-emergency-management-agencys-response-baton-rouge-flood-disaster-part-ii/> [hereinafter *Apr. 2017 Hearing*].

¹⁷ Email from FEMA to Committee Staff (Mar. 30, 2017, 5:13 PM) ("As of March 29, 2017, 17 registered survivors are in process for direct housing.").

¹⁸ *Apr. 2017 Hearing*, *supra* note 16.

Members of the Committee questioned CB&I about its failure to set up a working maintenance hotline for MHU occupants and address known issues with MHU thermostats.¹⁹ The hearing also focused on Louisiana’s expensive and ineffective Shelter at Home program, as well as FEMA’s slowness in deploying costly and defective MHUs.²⁰



August 2016 flooding in the Baton Rouge area. Source: The Advocate

Approximately four months later, on August 25, 2017, Hurricane Harvey struck Texas to begin the costliest U.S. hurricane season on record.²¹ Within the next four weeks Hurricanes Irma and Maria hit the U.S. Virgin Islands, Puerto Rico, and Florida.²² According to the National Hurricane Center, three out of the top five most destructive U.S. tropical cyclones occurred in 2017.²³ It was also the first time in recorded history “two Category 4 hurricanes . . . made continental United States landfall in the same year.”²⁴ As a result of the storms, President Trump “issued a total of 20 disaster or emergency declarations.”²⁵ Collectively, Hurricanes Harvey, Irma, and Maria impacted nearly eight percent of the U.S. population.²⁶

¹⁹ *Id.*

²⁰ *Id.*

²¹ TEXAS GEN. LAND OFF., HURRICANE HARVEY: TEXAS AT RISK 5 (2018), <http://www.glo.texas.gov/recovery/files/texas-at-risk-report.pdf>; FED. EMERGENCY MGMT. AGENCY, 2017 HURRICANE SEASON FEMA AFTER-ACTION REPORT 1 (2018), <https://www.fema.gov/media-library-data/1531743865541-d16794d43d3082544435e1471da07880/2017FEMAHurricaneAAR.pdf> [hereinafter FEMA AFTER-ACTION REPORT].

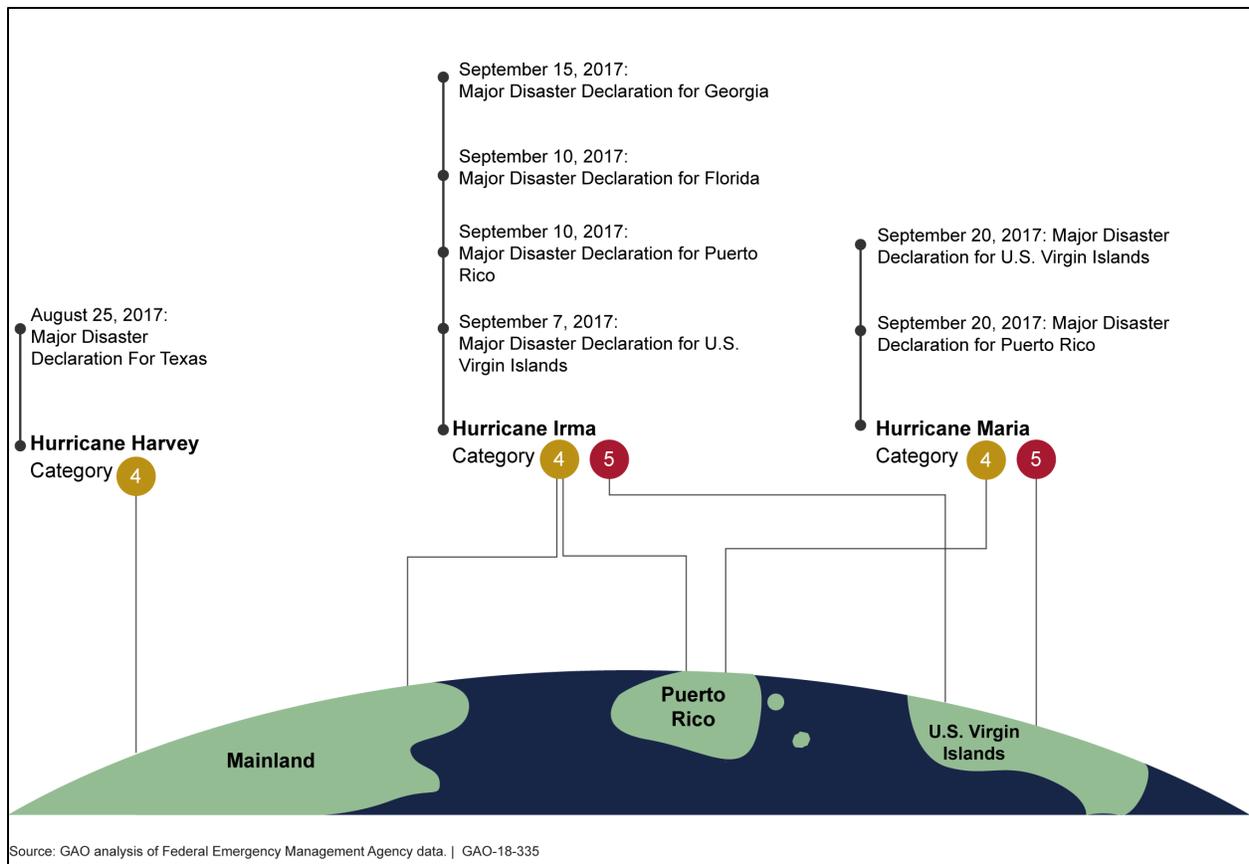
²² FEMA AFTER-ACTION REPORT, *supra* note 21, at v.

²³ NATIONAL HURRICANE CENTER, NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION, COSTLIEST U.S. TROPICAL CYCLONES TABLES UPDATED, <https://www.nhc.noaa.gov/news/UpdatedCostliest.pdf>.

²⁴ PHILIP J. KLOTZBACH & MICHAEL M. BELL, SUMMARY OF 2017 ATLANTIC TROPICAL CYCLONE ACTIVITY AND VERIFICATION OF AUTHORS’ SEASONAL AND TWO-WEEK FORECASTS, COLORADO STATE UNIVERSITY 10 (2017), <https://tropical.colostate.edu/media/sites/111/2017/11/2017-11.pdf>.

²⁵ FEMA AFTER-ACTION REPORT, *supra* note 21, at 3.

²⁶ Press Release, Fed. Emergency Mgmt. Agency, FEMA Reflects on Historic Year (Dec. 29, 2017), <https://www.fema.gov/news-release/2017/12/29/fema-reflects-historic-year>.



In the wake of the hurricanes, the Committee held a series of Member briefings with senior officials who were leading federal efforts across the affected states and territories. On October 3, 2017, Members spoke with Damon Penn, Assistant Administrator for FEMA’s Response Directorate.²⁷ Penn answered questions from Members—many specific to the U.S. Virgin Islands—and described FEMA’s efforts to preposition personnel and supplies in Puerto Rico, as well as the situation on the ground less than two weeks after Hurricane Maria hit Puerto Rico.²⁸

On October 11, 2017, the Department of Defense (DOD) and the U.S. Army Corps of Engineers (USACE) briefed Members on the response to Hurricanes Irma and Maria.²⁹ General Lori Robinson, then-Commander of U.S. Northern Command (NORTHCOM), and other senior leaders explained their priorities in Puerto Rico and the U.S. Virgin Islands: search and rescue first and foremost; opening airports and seaports for supply shipments; increasing medical capabilities; addressing power challenges; and clearing roads.³⁰ During the briefing, DOD officials told Members U.S. Transportation Command (TRANSCOM) had flown more than 2,000 sorties and the Defense Logistics Agency team had provided 80 million meals.³¹

²⁷ Briefing with Fed. Emergency Mgmt. Agency (Oct. 3, 2017).

²⁸ *Id.*

²⁹ Briefing with Dep’t of Def. & U.S. Army Corps of Eng’rs (Oct. 11, 2017).

³⁰ *Id.*

³¹ *Id.*

Dr. Robert Kadlec, Assistant Secretary for Preparedness and Response (ASPR) at the Department of Health and Human Services (HHS), met with Members on October 26, 2017.³² He discussed the conditions HHS was seeing in Puerto Rico and the USVI and emphasized HHS's focus remained on saving lives and stabilizing healthcare.³³ Specifically, he noted how challenging communications were in Puerto Rico due to poor existing infrastructure and damage from the storms, ineffective satellite phones provided by FEMA, and the post-hurricane reliance on runners (i.e., people having to physically return to the operations center to report the results of their assessments instead of calling or sending the results electronically).³⁴

In October 2017, the Committee also sent letters to the Department of Homeland Security and its components (including FEMA), DOD (including USACE), and HHS requesting documents and communications relating to preparedness, commodities, logistics, and power restoration in Puerto Rico and the U.S. Virgin Islands.³⁵ The Committee received a total of 13 document productions, as well as a complete response to its request for power restoration documents from the Puerto Rico Electric Power Authority (PREPA). In all, the Committee reviewed more than 17,000 pages of documents.

The same month, Committee staff traveled to Texas to meet with the federal, state, and local officials leading the recovery efforts.³⁶ Committee staff received briefings from FEMA, the DHS Office of Inspector General (OIG), and the Texas General Land Office (GLO). FEMA highlighted some of the changes the agency was making to the manufactured housing unit program after the Baton Rouge flood, including expanding the types of units it offers and working with the state to administer the program.³⁷ The DHS OIG discussed their efforts to coordinate with local and federal law enforcement officials to address fraud, impersonation, bribery, and extortion related to FEMA's disaster programs.³⁸ At the time, the OIG reported two arrests and twenty open criminal investigations.³⁹

Officials from the Texas GLO addressed some of the challenges associated with the housing mission—particularly the size of the event and the extent of the housing need.⁴⁰ During the meeting, GLO officials discussed steps they were taking to implement a new version of FEMA's Sheltering and Temporary Essential Power (STEP) program, called Partial Repair and

³² Briefing with Dep't of Health and Human Servs. (Oct. 26, 2017).

³³ *Id.*

³⁴ *Id.*

³⁵ Letter from Trey Gowdy, Chairman, & Elijah Cummings, Ranking Member, Comm. on Oversight & Gov't Reform, to Elaine Duke, Acting Sec'y, Dep't of Homeland Sec. (Oct. 11, 2017), <https://oversight.house.gov/wp-content/uploads/2017/10/2017-10-11-TG-EEC-to-Duke-DHS-Hurricane-Document-Request.pdf>; Letter from Trey Gowdy, Chairman, & Elijah Cummings, Ranking Member, Comm. on Oversight & Gov't Reform, to James Mattis, Sec'y, Dep't of Def. (Oct. 11, 2017), <https://oversight.house.gov/wp-content/uploads/2017/10/2017-10-11-TG-EEC-to-Mattis-DOD-Hurricane-Document-Request.pdf>; Letter from Trey Gowdy, Chairman, & Elijah Cummings, Ranking Member, Comm. on Oversight & Gov't Reform, to Dr. Don Wright, Acting Sec'y, Dep't of Health & Human Servs. (Oct. 11, 2017), <https://oversight.house.gov/wp-content/uploads/2017/10/2017-10-11-TG-EEC-to-Wright-HHS-Hurricane-Document-Request.pdf>.

³⁶ Comm. Staff Delegation to Texas (Oct. 2017) [hereinafter Oct. 2017 STAFFDEL].

³⁷ Briefing with Fed. Emergency Mgmt. Agency (Oct. 16, 2017).

³⁸ Briefing with Off. of Inspector Gen., Dep't of Homeland Sec. (Oct. 16, 2017).

³⁹ *Id.*

⁴⁰ Briefing with Texas Gen. Land Off. (Oct. 16, 2017).

Essential Power for Sheltering (PREPS), as well as their agreement with FEMA to administer FEMA’s manufactured housing program in Texas.⁴¹

Additionally, staff met with county judges, mayors, and emergency coordinators from the greater Corpus Christi area, where Hurricane Harvey first made landfall.⁴² While many of these local officials complimented the work of individual FEMA employees, they also noted high staff turnover had caused problems during the recovery.⁴³ Others said housing assistance did not arrive quickly enough and the reimbursement process for response and recovery expenses was too slow.⁴⁴



Damaged homes near Rockport, Texas. Source: Committee Staff

While in Texas, Committee staff also met with officials from the U.S. Coast Guard and the Port of Corpus Christi to discuss search and rescue efforts and port operations.⁴⁵ The following day, staff toured damaged neighborhoods in Houston and visited the Addicks and Barker Reservoirs with USACE and the Harris County Flood Control District.⁴⁶



Debris and storm damage in the U.S. Virgin Islands. Source: Committee Staff

⁴¹ *Id.*

⁴² Briefing with Local Officials in Portland, Texas (Oct. 16, 2017).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Briefing with U.S. Coast Guard Sector/Air Station Corpus Christi (Oct. 17, 2017); Briefing with Port of Corpus Christi (Oct. 17, 2017).

⁴⁶ Briefing with U.S. Army Corps of Engr’s & Harris County Flood Control District (Oct. 18, 2017).

On March 12, 2018, the Subcommittee on the Interior, Energy, and Environment held a field hearing in the U.S. Virgin Islands.⁴⁷ USVI Senate President Myron Jackson and Senator Tregenza Roach testified about communication challenges and delays, particularly with respect to debris removal.⁴⁸ The Subcommittee also received testimony on recovery efforts in the USVI from six federal agencies: FEMA, USACE, HHS, DOD, the National Park Service, and the U.S. Postal Service.⁴⁹ While in the USVI, then-Subcommittee Chairman Blake Farenthold and Committee staff toured St. John, which was still recovering from the effects of the 2017 hurricane season.



Field hearing in Charlotte Amalie, St. Thomas, U.S. Virgin Islands. Source: Committee Staff

In order to focus on some of the unique challenges hindering power restoration in Puerto Rico, such as the difficulty of obtaining needed materials and equipment, the Subcommittee on National Security held a hearing on March 22, 2018.⁵⁰ Witnesses from FEMA, the Department

⁴⁷ *The Historic 2017 Hurricane Season: Impacts on the U.S. Virgin Islands: Hearing Before the Subcomm. on the Interior, Energy, and Environment of the H. Comm. on Oversight & Gov't Reform, 115th Cong. (2018),* <https://oversight.house.gov/hearing/historic-2017-hurricane-season-impacts-u-s-virgin-islands/> [hereinafter *Mar. 2018 USVI Field Hearing*].

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Bureaucratic Challenges to Hurricane Recovery in Puerto Rico: Hearing before the Subcomm. on National Security of the H. Comm. on Oversight & Gov't Reform, 115th Cong. (2018),* <https://oversight.house.gov/hearing/bureaucratic-challenges-hurricane-recovery-puerto-rico/> [hereinafter *Mar. 2018 Hearing*].

of Energy, the Environmental Protection Agency (EPA), and the Edison Electric Institute testified at the hearing.⁵¹

In April 2018, Committee staff traveled to Puerto Rico to further assess the ongoing recovery efforts.⁵² Committee staff met with FEMA, USACE, PREPA, the Puerto Rico Department of Housing, Governor Rosselló's Central Recovery and Reconstruction Office (CRRO), local officials, power restoration contractors, and private sector business leaders.⁵³



Power Restoration Work in Puerto Rico. Source: Committee Staff

During the Committee's oversight of federal disaster response and recovery programs following Hurricanes Harvey, Irma, and Maria, it was readily apparent many of the same challenges, delays, and communication issues the Committee identified in Baton Rouge, Louisiana were recurring in Texas, Florida, Puerto Rico, and the U.S. Virgin Islands. In fact, some problems mirror those from Hurricane Katrina in 2005.

After Hurricane Katrina devastated New Orleans and the surrounding Gulf Coast areas in August 2005, the House of Representatives passed a resolution to create the Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina (Select Committee) on September 15, 2005.⁵⁴

⁵¹ *Id.*

⁵² Comm. Staff Delegation to Puerto Rico (Apr. 2018) [hereinafter Apr. 2018 STAFFDEL].

⁵³ *Id.*

⁵⁴ H.R. Res. 437, 109th Cong. (2005).

In February 2006, the Select Committee issued an exhaustive report detailing the “failures at all levels of government that significantly undermined and detracted from the heroic efforts of first responders, private individuals and organizations, faith-based groups, and others.”⁵⁵ The report contained both academic and practical impacts. The President Emeritus of the New York Institute of Public Administration called the report one of the “most important public documents” on “the aftermath of Hurricane Katrina.”⁵⁶ The Select Committee’s report also contributed to legislative changes intended to remedy the problems with the government’s response to Katrina.⁵⁷ Despite this progress, however, some of the Select Committee’s observations and recommendations remain relevant more than a decade later.

III. Continuing Applicability of the Select Committee’s Findings

A. Staffing: FEMA Continues to Lack Qualified Personnel

In 2006, the Select Committee noted “DHS and the states were not prepared for this catastrophic event.”⁵⁸ The Committee’s report said, “DHS and FEMA lacked adequate trained and experienced staff for the Katrina response.”⁵⁹ The federal government’s response to the Baton Rouge flood and Hurricanes Harvey, Irma, and Maria reiterated the need for FEMA to consistently prioritize the recruitment and retention of capable staff, as well as facilitate better training to ensure its employees are able to carry out their responsibilities.

After the Baton Rouge flood in 2016, Mayor Shelton of Central, Louisiana, a town in East Baton Rouge Parish, specifically addressed training and turnover issues during a Transportation and Public Assets Subcommittee hearing. He testified:

It [became] quickly apparent that the FEMA staff in our area had a lack of training and knowledge about the FEMA rules and regulations. The majority of the staff we have spoken to stated that they were brand new to the job with only 72 hours of training. Additionally, FEMA has a high turn over rate in the people on the ground. It has become common knowledge that your first interaction with a FEMA employee is more than likely to be your last with that same employee. In a disaster of this magnitude, it is important to establish consistent contacts and relationships as people are attempting to navigate the extremely complex FEMA process.⁶⁰

⁵⁵ H.R. REP. NO. 109-377, at 1 (2006) [hereinafter KATRINA REPORT].

⁵⁶ Dwight Ink, *An Analysis of the House Select Committee and White House Reports on Hurricane Katrina*, 66 PUB. ADMIN. REV. 800 (2006).

⁵⁷ REPUBLICAN STAFF OF H. COMM. ON TRANSP. & INFRASTRUCTURE, 111TH CONG., REP. ON FEMA’S TEMPORARY HOUSING: FOUR YEARS AFTER KATRINA THOUSANDS OF TRAILERS REMAIN IN STORAGE 14 (2009) (“Following Hurricane Katrina, the Committee on Transportation and Infrastructure, various other congressional committees and the Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina conducted investigations into the response to this major disaster. As a result of those investigations, Congress enacted the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA).”) [hereinafter T&I COMM. STAFF REPORT].

⁵⁸ KATRINA REPORT, *supra* note 55, at 151.

⁵⁹ *Id.* at 3.

⁶⁰ *Sept. 2016 Hearing, supra* note 6.

The same problems recurred in 2017. Local officials in Texas told Committee staff communicating with FEMA was challenging because of the high personnel turnover rate.⁶¹ As soon as local officials developed a good working relationship with one FEMA official, that person would rotate out and a new FEMA official would arrive.⁶² In Puerto Rico, an HHS official noted “a break in getting services out to the communities” due to the rotation of FEMA staff.⁶³ This may have created additional inefficiencies, such as lost paperwork—HHS reported FEMA repeatedly contacted Puerto Rican officials to request information that had already been provided.⁶⁴ Likewise, an emergency coordinator from Florida told Committee staff many of FEMA’s reservists lacked adequate training and were not prepared to handle their responsibilities.⁶⁵

FEMA acknowledged staffing deficiencies during the 2017 hurricane season, noting in its After-Action Report it “entered the hurricane season with a force strength less than its target, resulting in staffing shortages across the incidents.”⁶⁶ FEMA also noted a lack of appropriately certified staff may have contributed to “inefficiency in program delivery.”⁶⁷ According to FEMA, only 56 percent of its “incident management employees were considered certified” when Hurricane Harvey hit Texas,⁶⁸ and by October more than half of deployed staff were not considered qualified for the roles they were performing.⁶⁹ FEMA told the Committee it is undertaking a comprehensive workforce review to correct these systemic shortcomings.⁷⁰

Recommendation: FEMA needs to continue to assess its workforce, with an emphasis on retaining qualified staff. Additionally, FEMA should ensure its workforce is capable of providing clear, consistent guidance to individual applicants and Public Assistance grant recipients and subrecipients.

B. Communications: Communications Failures Still Pose Life-Threatening Challenges

The Select Committee found “[m]assive communications damage and a failure to adequately plan for alternatives impaired response efforts, command and control, and situational awareness” during the response to Hurricane Katrina.⁷¹ Despite this observation more than a decade ago, recent disasters have reemphasized the need for all levels of government to plan in

⁶¹ Oct. 2017 STAFFDEL.

⁶² *Id.*

⁶³ Email from Dep’t of Health and Human Servs., Oct. 2, 2017 (HHS Production 2/2/18, ABC-email Summary).

⁶⁴ *Id.* (“Senator Leon is requesting the contact information for the head of operations from FEMA who is on the ground. Currently she has been contacted by two FEMA personnel requesting [a] list of the independent living facilities, nursing homes and senior centers. List [has] been provided twice.”).

⁶⁵ Call with Polk Cty. Emergency Mgmt. (May 18, 2018).

⁶⁶ *FEMA After-Action Report, supra* note 21, at 15.

⁶⁷ *Id.* at 17.

⁶⁸ *Id.*

⁶⁹ U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-472, 2017 HURRICANES AND WILDFIRES: INITIAL OBSERVATIONS ON THE FEDERAL RESPONSE AND KEY RECOVERY CHALLENGES 90 (2018).

⁷⁰ Briefing with Fed. Emergency Mgmt. Agency (Aug. 3, 2018).

⁷¹ KATRINA REPORT, *supra* note 55, at 3.

advance for communications outages and establish resilient and redundant communications systems to maintain operational continuity and situational awareness during disasters.

In 2017, Puerto Rico experienced a near-total communications blackout after Hurricane Maria.⁷² The outage significantly impacted all aspects of the response and forced responders to communicate almost exclusively face-to-face.⁷³ For example, staff had to physically drive or fly back with the results of their field assessments rather than emailing or calling-in updates.⁷⁴ Since many mountainous roads and streams were impassable after the storm, it was effectively impossible to communicate with some remote communities in Puerto Rico until roads and bridges were passable again.⁷⁵ In the week after Hurricane Maria hit Puerto Rico, FEMA and its partners had no information on almost half of all wastewater treatment plants and more than half of all hospitals.⁷⁶ Despite experiencing a cellular outage in Baton Rouge the year before, “FEMA [still] struggled to overcome its reliance on commercial cellular and broadband communications” during the response in Puerto Rico.⁷⁷

When it became clear normal communications systems in Puerto Rico could not be reestablished quickly, FEMA purchased and distributed a number of satellite phones in an attempt to improve communications capabilities.⁷⁸ While well-intentioned, the inherent limitations of these phones only marginally improved the situation.⁷⁹ “Imagine,” said one official, “being sent back to the 1800s. That’s what it was like.”⁸⁰

The importance of reliable communications systems should not have been surprising in light of the lessons-learned during the Hurricane Katrina response and the response to the 2016 Baton Rouge flood. In 2005, wind and flooding affected telephone switching centers, cell sites, radio towers, and fiber-optic cables throughout the Gulf Coast region.⁸¹ Power outages predictably amplified these effects as communications infrastructure lost electricity and back-up generators ran out of fuel or flooded.⁸² Alternative methods of communication, including satellite phones, failed to significantly improve the situation due to weather impacts and user error.⁸³

⁷² *Update on the Restoration of Puerto Rico’s Electric Infrastructure: Hearing Before the Subcomm. on Oversight & Investigations of the H. Comm. on Energy & Commerce, 115th Cong. (2018)* (statement of Jeffrey Byard, Assoc. Adm’r, Office of Response and Recovery, Fed. Emergency Mgmt. Agency),

<https://energycommerce.house.gov/hearings/update-restoration-puerto-ricos-electric-infrastructure/>.

⁷³ Apr. 2018 STAFFDEL, *supra* note 52; *see also* Briefing with Dep’t of Health & Human Servs. (Oct. 26, 2017).

⁷⁴ Briefing with Dep’t of Health & Human Servs. (Oct. 26, 2017); FEMA After-Action Report, *supra* note 21, at 34.

⁷⁵ Apr. 2018 STAFFDEL, *supra* note 52.

⁷⁶ FEMA AFTER-ACTION REPORT, *supra* note 21, at 33.

⁷⁷ *Id.* at 35.

⁷⁸ *Id.*; *see also* Briefing with Dep’t of Health & Human Servs. (Oct. 26, 2017).

⁷⁹ For example, most satellite phones cannot be used indoors and typically need to be powered on with the antenna extended to receive calls. Various officials explained the satellite phones utilized after Hurricane Maria did not have signal indoors and could not reach other satellite phones that were not also powered on and receiving signal. Practically, this meant satellite phones could only be used to make pre-scheduled calls. Apr. 2018 STAFFDEL, *supra* note 52.

⁸⁰ *Id.*

⁸¹ KATRINA REPORT, *supra* note 55, at 163–164, 166.

⁸² *Id.*

⁸³ *Id.* at 173.

In 2016, a national wireless carrier’s service outage—caused by flooding and a resulting loss of electricity—impeded response efforts in Baton Rouge.⁸⁴ One local mayor testified a lack of cell service was one of the major problems his community faced.⁸⁵

FEMA, however, does not bear sole responsibility for communications and preparedness failures following Hurricane Maria. As has been extensively reported, Puerto Rico’s power and communications infrastructure was severely outdated and in disrepair prior to the hurricanes—leaving the territory particularly vulnerable to a severe storm.⁸⁶ Additionally, the Milken Institute School of Public Health at George Washington University found:

[A]t the time of [Hurricane Maria], neither the [Puerto Rico] Department of Public Safety (DPS) nor the Central Communications Office in the Governor’s Office had written crisis and emergency risk communication plans in place. The [Puerto Rico Department of Health’s] Office of Emergency Preparedness and Response had an outdated emergency plan, including annexes for Risk Communication in Emergencies and Mass Fatality Management. Agency emergency plans that were in place were not designed for greater than Category 1 hurricanes, and risk messages conveyed to the public in preparedness campaigns were reported by key leaders to inadequately prepare communities for a catastrophic disaster.⁸⁷

Furthermore, the Puerto Rico Emergency Management Agency (PREMA) experienced a severe command and control failure during Hurricane Maria when its office became inoperable and had to be abandoned. Territorial and federal officials told Committee staff the building flooded, causing the generator in the basement to fail and forcing PREMA to abandon its office in the midst of the storm.⁸⁸

<p>Recommendation: The Select Committee’s admonition twelve years ago to ensure resilience and redundancy in communications infrastructure must remain a priority at all levels of government.</p>

C. Housing: Post-Disaster Housing Programs Remain Slow and Unreliable

The Select Committee found disaster “[h]ousing plans were haphazard” and there were delays associated with temporary housing.⁸⁹ Although providing temporary housing for displaced disaster survivors is challenging, recent disasters demonstrate there is still significant room for improvement in this area.

⁸⁴ Della Hasselle, *Hours-Long AT&T Outage in Baton Rouge, Livingston Areas Undermines Rescue Efforts, But Some Say Service Returning*, THE ADVOCATE (Aug. 14, 2016), https://www.theadvocate.com/new_orleans/news/article_4fc33f0e-6255-11e6-9dd0-d3e354adba6e.html.

⁸⁵ *Sept. 2016 Hearing*, *supra* note 6 (statement of Mayor Ramsey).

⁸⁶ *See, e.g.*, U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-472, *supra* note 69, at 32–35.

⁸⁷ GEORGE WASHINGTON UNIVERSITY, MILKEN INSTITUTE SCHOOL OF PUBLIC HEALTH, ASCERTAINMENT OF THE ESTIMATED EXCESS MORTALITY FROM HURRICANE MARIA IN PUERTO RICO iv (2018), <https://publichealth.gwu.edu/sites/default/files/downloads/projects/PRstudy/Acertainment%20of%20the%20Estimated%20Excess%20Mortality%20from%20Hurricane%20Maria%20in%20Puerto%20Rico.pdf>.

⁸⁸ U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-472, *supra* note 69, at 35; Apr. 2018 STAFFDEL, *supra* note 52.

⁸⁹ KATRINA REPORT, *supra* note 55, at 312–313.

FEMA administers a variety of housing assistance programs for individuals affected by natural disasters through both Public Assistance (e.g. reimbursable STEP programs administered by states or territories to cover temporary home repairs) and Individual Assistance (e.g. manufactured housing units (MHUs) and temporary housing units provided directly to individuals).

In addition to numerous FEMA housing programs, USACE, the Small Business Administration (SBA), and the Department of Housing and Urban Development (HUD) also offer disaster-related housing assistance programs. Following natural disasters, USACE may install tarps on damaged roofs through its Blue Roof program,⁹⁰ and the SBA offers low-interest loans to qualifying applicants to help repair or replace damaged homes.⁹¹ Through the Community Development Block Grant Disaster Recovery Program (CDBG-DR), HUD provides housing and disaster recovery assistance to cities, counties, and states.⁹²

1. FEMA's Temporary Housing Unit Program

Since Hurricane Katrina, FEMA's temporary housing unit program has remained a central and highly visible challenge following natural disasters. In 2006, the Select Committee documented several findings with respect to sheltering and housing, including “[t]here was inappropriate delay in getting people out of shelters and into temporary housing – delays that officials should have foreseen due to manufacturing limitations.”⁹³ The Select Committee also noted “FEMA failed to take advantage of the Department of Housing and Urban Development’s expertise in large-scale housing challenges.”⁹⁴ Unfortunately, delays and manufacturing difficulties continue to hamper FEMA’s MHU program, and shifting to HUD-regulated housing units has not resolved the safety and reliability concerns associated with temporary housing.

⁹⁰ U.S. Army Corps of Engineers, Temporary Roofing, <https://www.usace.army.mil/missions/emergency-operations/national-response-framework/temporary-roofing/>.

⁹¹ Small Business Administration, Disaster Loan Assistance, <https://disasterloan.sba.gov/ela/Information/HomePersonalPropertyLoans>.

⁹² HUD Exchange, CDBG-DR: Community Development Block Grant Disaster Recovery Program, <https://www.hudexchange.info/programs/cdbg-dr/>.

⁹³ KATRINA REPORT, *supra* note 55, at 5.

⁹⁴ *Id.*



FEMA trailers in Mississippi in 2007. Source: The (Jackson, MS) Clarion-Ledger

The Select Committee and others criticized FEMA for the rollout of more than 100,000 trailers after Hurricane Katrina, many of which had extremely high levels of formaldehyde. This Committee held a hearing specifically on FEMA’s temporary housing unit program on September 19, 2007.⁹⁵ Titled “FEMA’s Toxic Trailers,” the hearing focused on evidence FEMA misled Congress about the actual levels of formaldehyde in the trailers.⁹⁶ Then-Ranking Member Tom Davis pointed out “FEMA’s concerns were legal liability and public relations, not health and human safety,” and noted “FEMA was not forthright with congressional investigators.”⁹⁷ Eventually, over twenty FEMA trailer manufacturers settled a lawsuit related to the formaldehyde levels for \$42.6 million.⁹⁸

In 2009, the Republican staff of the Committee on Transportation and Infrastructure evaluated FEMA’s temporary housing unit program after Hurricane Katrina.⁹⁹ Their report found FEMA spent “more than \$2.6 billion” acquiring temporary housing units around the time of Hurricane Katrina, but in 2009 “over 121,000 unused [units sat] in leased storage facilities awaiting disposal, costing taxpayers \$100 million to \$120 million annually.”¹⁰⁰

Extensive criticism of FEMA and its formaldehyde-ridden trailers following Hurricane Katrina prompted the Agency to reevaluate its temporary housing unit program. In 2011 and 2012, FEMA decided to discontinue the use of travel trailers and recreational vehicles and solely

⁹⁵ *FEMA’s Toxic Trailers: Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 110th Cong. (2007).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Mike Bruner, *Class-Action Suit Against FEMA Trailer Manufacturers Settled for \$42.6 Million*, NBC NEWS (Sept. 28, 2012), http://investigations.nbcnews.com/_news/2012/09/28/14140222-class-action-suit-against-fema-trailer-manufacturers-settled-for-426-million.

⁹⁹ T&I COMM. STAFF REPORT, *supra* note 57.

¹⁰⁰ *Id.* at 1.

deploy HUD-regulated models.¹⁰¹ The HUD-regulated models, or MHUs, resembled typical manufactured homes rather than the smaller trailers FEMA had used before.

Figure 1. Historical FEMA Temporary Housing Units	
<p>Travel Trailer</p> 	<p>Travel trailers are designed to provide temporary living quarters for recreational purposes. They are not regulated by HUD. FEMA told us that it decided to terminate the use of travel trailers in response to formaldehyde concerns following Hurricanes Katrina and Rita. FEMA now does not consider such units appropriate for long-term use as a dwelling.</p>
<p>Park Model</p> 	<p>Park models are 12 feet wide and 33 feet long. They are transportable, primarily designed for long-term or permanent placement, and are not regulated by HUD. Park models are designed to provide temporary living quarters for recreation, camping, or seasonal use, and some zoning laws provide more flexibility in their placement.</p>
<p>Manufactured Housing Unit</p> 	<p>Manufactured housing units are 12 to 14 feet wide and 40 to 64 feet long. They are designed in one-, two-, or three-bedroom models. They are regulated by HUD and are intended as permanent housing, with some zoning laws restricting their placement.</p>

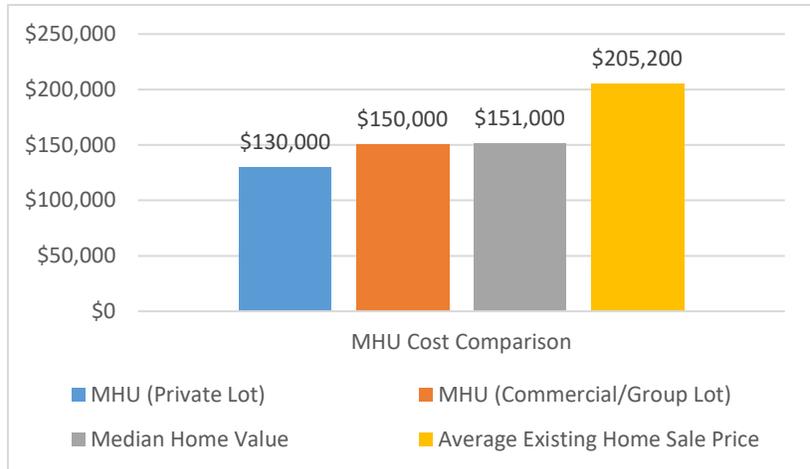
Source: Office of Inspector General, Department of Homeland Security

Though MHUs cost significantly more than the trailers used after Hurricane Katrina, FEMA believed the added expense and additional regulatory oversight from HUD would improve the quality of the units and provide a safer, more comfortable place for disaster survivors to live.¹⁰² The Committee’s investigation of FEMA’s MHU program for the 2016 Baton Rouge flood, however, found FEMA had not yet fully addressed the cost and quality issues associated with MHUs.

¹⁰¹ OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., OIG-13-102, UNLESS MODIFIED, FEMA’S TEMPORARY HOUSING PLANS WILL INCREASE COSTS BY AN ESTIMATED \$76 MILLION ANNUALLY 4 (2013), https://www.oig.dhs.gov/assets/Mgmt/2013/OIG_13-102_Jun13.pdf [hereinafter TEMPORARY HOUSING REPORT]; see also, FED. EMERGENCY MGMT. AGENCY, DIRECT HOUSING PROGRAM REVIEW (2012).

¹⁰² TEMPORARY HOUSING REPORT, *supra* note 101, at 2 (“FEMA received a great deal of criticism in the press, from Congress, and from the accountability community concerning [Hurricane Katrina-related] health and safety issues, particularly formaldehyde levels. . . . FEMA ultimately decided . . . to rely solely on HUD-certified units.”); see also, Briefing with FEMA (Mar. 27, 2017).

When the Committee reviewed the MHU program FEMA implemented in Louisiana after the August 2016 flood, the housing units were still expensive, wasteful, time-consuming, and had serious quality control issues.¹⁰³ Each of the units cost nearly as much as a single family home in Baton Rouge, required a lengthy installation process identical to that of a manufactured home meant for permanent occupancy, and was likely to have major—and sometimes fatally hazardous—electrical, plumbing, or thermostat issues.¹⁰⁴



Comparison of Housing Costs in Baton Rouge after the August 2016 flood

According to FEMA, it spent approximately \$62,500 to purchase each MHU, and the total lifecycle cost per unit—including delivery and transportation, installation, and maintenance for up to eighteen months—was \$130,000 to \$150,000, depending on where the unit was placed.¹⁰⁵ FEMA purchased 4,659 units after the Baton Rouge flood and deployed approximately 4,500 units.¹⁰⁶

The Committee’s review also found persistent MHU quality and safety issues. In December 2016, four months after the disaster, a FEMA employee notified FEMA leadership their MHU haul-and-install contractor, CB&I, was “reporting that 60% of the newly manufactured 2016 MHUs [had] major electrical and/or plumbing issues.”¹⁰⁷ USACE, which also helped FEMA install MHUs in Louisiana, prepared a report documenting extensive issues with the units it handled.¹⁰⁸

USACE MHU Maintenance Report – October 2016¹⁰⁹

Issue	% of Affected Units
HVAC – cross wired, thermostats not working, no Freon, and/or compressors not functioning	>10%
GFCI Outlets – electrical outlets not up to code	>60%
Lighting – broken or malfunctioning	>50%

¹⁰³ *Id.*

¹⁰⁴ *Apr. 2017 Hearing, supra* note 16; Briefing with USACE (May 9, 2017).

¹⁰⁵ FED. EMERGENCY MGMT. AGENCY, RESPONSE TO HOGGR COMM. QUESTIONS (Mar. 20, 2017).

¹⁰⁶ *Id.*; Press Release, Fed. Emergency Mgmt. Agency, FEMA Mobile Home Occupancy Declines, <https://www.fema.gov/disaster/updates/fema-mobile-home-occupancy-declines>.

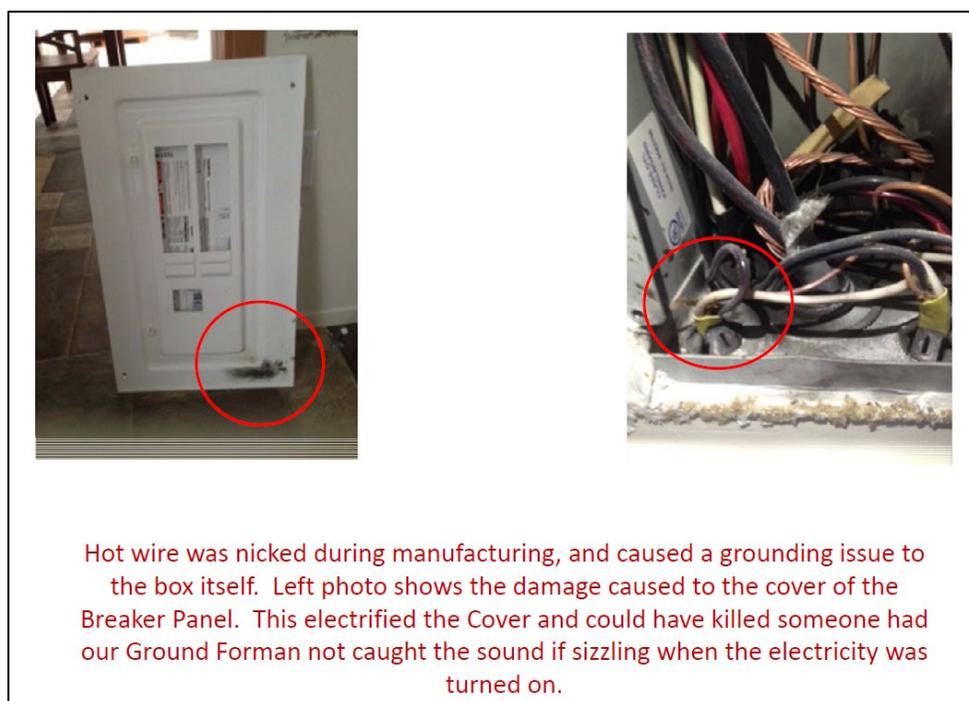
¹⁰⁷ Email from Fed. Emergency Mgmt. Agency (Dec. 21, 2016, 8:14 AM) (HOGGR/FEMA 03.09, Seventh Set, 022793).

¹⁰⁸ U.S. ARMY CORPS OF ENG’RS, LIST OF MANUFACTURED HOUSING ISSUES (2016) (HOGGR/FEMA 03.09, Second Set, 002827-002832).

¹⁰⁹ *Id.* At the time, USACE had installed 236 units for FEMA in Baton Rouge.

Strobes and Smoke Detectors – malfunctioning	>75%
Bathroom Fixture Damage – leaks, cracks, malfunctioning, or defective	>50%
Water Line Debris – low/no water pressure	>75%
Fixtures – malfunctioning kitchen fixtures, toilets, and showers	>35%
Dryer Vent & Exhaust – missing vent lines and exhaust deflectors	>75%
Doors – do not close/lock properly	100%
Damaged Siding, Walls & Molding	>30%
Keys – Missing all key sets	>75%
Home Furnishings Kit – missing/damaged items	>50%

In one case, USACE discovered the “MHU Manufacture[r] wired the refrigerator breaker for 200v instead of 110v, resulting in fire.”¹¹⁰ A USACE employee wrote to FEMA: “[t]his is a good example of the repairs USACE is having to make to these MHUs in the field to get [them ready for occupancy].”¹¹¹ In another instance, a manufacturing defect caused a fuse box cover to become electrified, which could have resulted in death or serious bodily injury if the foreman had not noticed the “sizzling” noise.¹¹²



Power Point Slide Showing Manufacturing Defects. Source: FEMA

In a January 2017 report, a haul-and-install subcontractor reported finding thousands of manufacturing defects in the MHUs.¹¹³ Multiple MHUs caught on fire, including one electrical

¹¹⁰ Email from U.S. Army Corps of Eng’rs (Dec. 31, 2016) (HOCR/FEMA 03.09 002886).

¹¹¹ *Id.*

¹¹² Email from CB&I Fed. Servs., to Fed. Emergency Mgmt. Agency (Jan. 12, 2017, 5:51 PM) (see attached Power Point presentation) (HOCR/FEMA 03.09, First Set, 001291).

¹¹³ TIMBERLINE CONSTRUCTION GROUP, TCG MAINTENANCE MEETING 1-12-17 1 (2017) (HOCR/FEMA 03.09, First Set, 002417).

fire that was extinguished by the fire department.¹¹⁴ The scope and severity of the defects rendered some MHUs uninhabitable and forced survivors to vacate the units.¹¹⁵

Such extensive MHU manufacturing defects not only consumed resources during the response and recovery, but also forced FEMA, USACE, and their contractors to spend time fixing the MHUs before applicants could move in. This delayed the deployment of additional housing units, slowed the recovery process, and caused unwarranted frustration to disaster survivors. Instances of incompetence—such as when contractors installed MHUs at the wrong locations, dropped an MHU in a ditch, busted a homeowner’s sewage pipe, and backed an MHU into a wheelchair-bound disaster survivor—also contributed to the delays.¹¹⁶ According to FEMA documents, the time from when a survivor submitted an application for assistance to the time the survivor moved into the MHU took an average of about 56 days.¹¹⁷ However, it took more than 60 days to install 1,474 of the MHUs (about 33 percent of the total units deployed) and more than 100 days for 483 of the MHUs (about 11 percent of the total MHUs).¹¹⁸

The Committee also found waste related to FEMA’s reuse and disposal of MHUs. Despite FEMA’s assertion its MHUs are stronger and more durable than regular manufactured homes, FEMA typically does not reuse MHUs once they have been deployed.¹¹⁹ FEMA also informed Committee staff the wear and tear associated with temporary MHU occupancy usually deteriorates the MHU to a condition rendering rehabilitation or sale cost prohibitive.¹²⁰ When FEMA does resell used MHUs, it recoups only a fraction of the costs.¹²¹

¹¹⁴ See, e.g., Email from Timberline Construction Group, to CB&I (Nov. 3, 2016, 8:53 AM) (“[A] junction box caught fire under the unit last night. The fire department was called and put out the fire and indicated . . . the junction box was the source of the fire. Power and water are off as the PVC was melted.”) (HOCR/FEMA 03.09, Second Set, 002911).

¹¹⁵ Email from Fed. Emergency Mgmt. Agency, to CB&I (Dec. 12, 2016, 6:10 PM) (“The applicants had to move out of the MHU because of the eyes and lung irritations.”) (CBIFEMA-CONG4E-0003425); see also Ashley Rodrigue, *Flood Victims, Put Out by Mold in FEMA Housing, Now Missing Belongings after Cleaning*, WWLTV, June 15, 2017, <http://www.wwltv.com/news/local/northshore/flood-victims-put-out-by-mold-in-fema-housing-now-missing-belongings-after-cleaning/449450751>.

¹¹⁶ Email to Comm. Staff (Mar. 28, 2017, 5:05 p.m.) (MHU dropped in a ditch); Email from CB&I, to Fed. Emergency Mgmt. Agency (Nov. 8, 2016, 5:52 PM) (CBIFEMA-CONG4E-0002503) (MHU delivered to wrong address); Email from Fed. Emergency Mgmt. Agency, to Fed. Emergency Mgmt. Agency (Feb. 28, 2017, 6:59 PM) (HOCR/FEMA 03.09, Second Set, 002505) (subcontractor backed an MHU into a wheelchair-bound disaster survivor, sending the man to the hospital).

¹¹⁷ Comm. Analysis of Fed. Emergency Mgmt. Agency, IA-TAC Master Tracking Report Spreadsheet.

¹¹⁸ *Id.*

¹¹⁹ Briefing with FEMA (Mar. 27, 2017).

¹²⁰ *Id.*

¹²¹ FEMA ordinarily disposes of used MHUs through donation or sale through the General Services Administration (GSA). According to 2016 figures provided by FEMA, FEMA sold MHUs through GSA for an average sale price of \$11,770 per unit—or about nine percent of the unit’s lifecycle cost. Email from FEMA, to Comm. Staff (Mar. 30, 2017, 1:16 PM).



FEMA MHU installed on private property in the Baton Rouge area in 2017. Source: Committee Staff

A year after the Baton Rouge flood, in the aftermath of Hurricane Harvey, FEMA decided to let Texas administer the MHU program.¹²² FEMA and Texas also agreed to expand the options offered under the program. Instead of being restricted to larger manufactured home models, which were costlier and more difficult to install on smaller lots, Texas had the option to use other temporary housing units, including recreational vehicles (RVs).¹²³ Texas, however, has encouraged FEMA to reduce its reliance on MHUs and RVs in favor of repair and construction programs that are more efficient in the long-term.¹²⁴

Recommendation: State and local governments should play a larger role in the direct housing program.

2. The Sheltering and Temporary Essential Power (STEP) Program

While FEMA has deployed temporary housing units for more than a decade, it first introduced an alternative housing program called Sheltering and Temporary Essential Power (STEP) after Hurricane Sandy in 2012.¹²⁵ STEP provides funding to states through the Public Assistance (PA) program to pay for temporary residential repairs and allow homeowners to

¹²² Press Release, Texas General Land Office, Texas GLO Signs Agreement Negotiated for Disaster Assistance with FEMA (Sept. 23, 2017), <http://www.glo.texas.gov/the-glo/news/press-releases/2017/september/texas-glo-signs-agreement-negotiated-for-disaster-assistance-with-fema.html>.

¹²³ TEXAS GENERAL LAND OFFICE, FACT SHEET: MANUFACTURED HOUSING OPTIONS, <http://texasrebuilds.com/pdf/fs-manufactured-housing-options.pdf>.

¹²⁴ TEXAS GEN. LAND OFF., HURRICANE HARVEY: TEXAS AT RISK, *supra* note 21, at 34.

¹²⁵ FEDERAL EMERGENCY MANAGEMENT AGENCY, RECOVERY PROGRAM GUIDANCE: SHELTERING AND TEMPORARY ESSENTIAL POWER (STEP) PILOT PROGRAM (2012), https://www.fema.gov/media-library-data/20130726-1858-25045-8258/step_pilot_program_final_111612.pdf.

safely remain in their own homes while continuing to rebuild.¹²⁶ As part of the PA program, FEMA funds state-administered STEP programs at the federal cost-share rate established for Category B (emergency protective measures), which can range from 75 percent to 100 percent.¹²⁷

Although FEMA created STEP nearly six years ago, the program policies and guidance are still lacking. As a result, each state or territory implementing a version of STEP has had to essentially rebuild the program from the ground up. In its After-Action Report for the 2017 hurricane season, FEMA acknowledged delays in establishing “standard national policies or training for the program.”¹²⁸

Following the August 2016 flood in Baton Rouge, Louisiana put together a version of STEP called Shelter at Home. To help establish the program, FEMA suggested Louisiana consult with New York, which implemented the original STEP program after Hurricane Sandy.¹²⁹ The results in Louisiana were less than encouraging. Shelter at Home had a high drop-out rate, many people who participated in the program did not end up moving back into their homes, and there were numerous allegations of substandard repair work (which, in at least one case, led to serious injury and hospitalization).¹³⁰

The Committee also found Shelter at Home repairs were performed at costs well beyond value. Survivors and stakeholders alike reported pervasive waste in the Shelter at Home Program, and Committee staff learned Louisiana allowed contractors to charge many times the actual cost of an item or labor. For example, Louisiana paid contractors anywhere from two to five times the retail value for items such as hot plates, battery operated smoke detectors, and microwaves.¹³¹ These appliances were ready to use out of the box, so the markup could not be attributable to installation or labor costs.

The Shelter at Home program also was susceptible to contractors taking advantage of covered repairs that did not require much labor, if any at all. An individual with knowledge of the program explained to Committee staff line items for “inspecting” or “testing” certain appliances or systems usually entailed less than five minutes of work.¹³² If a central HVAC unit did not turn on, for example, the contractor could conclude it was not working and charge

¹²⁶ *Id.*

¹²⁷ Fed. Emergency Mgmt. Agency, Amendment No. 6, DR-4277, <https://www.fema.gov/disaster/4277/notices/amendment-no-6> (raising the federal cost share to 90% in Louisiana); Fed. Emergency Mgmt. Agency, Amendment No. 1, DR-4339, <https://www.fema.gov/disaster/notices/amendment-no-1-24> (raising the federal cost share to 100% in Puerto Rico).

¹²⁸ FEMA AFTER-ACTION REPORT, *supra* note 21, at 42 (“Though FEMA created STEP during Hurricane Sandy and has used it in several large disasters since, the Agency has not established standard national policies or training for the program.”).

¹²⁹ Call with Louisiana Governor’s Office of Homeland Security and Emergency Preparedness (Mar. 24, 2017).

¹³⁰ Rebekah Allen, *Was Shelter at Home a Success? Almost Half of People Surveyed by State Said Temporary Repairs Didn’t Bring Them Home*, ADVOCATE (Jan. 21, 2017), http://www.theadvocate.com/louisiana_flood_2016/article_53c63b64-d916-11e6-9b9b-7321ab0fedd8.html; *Apr. 2017 Hearing*, *supra* note 16; Shelter at Home Meeting Notes (OIG-010618).

¹³¹ *Apr. 2017 Hearing*, *supra* note 16.

¹³² Confidential Meeting with Shelter at Home Contractor.

\$743.24 – per the state-approved price list – for “testing” the HVAC unit.¹³³ The same individual told Committee staff it was common for contractors to charge hundreds of dollars to “test” a water heater—even when water to the home was not turned on.¹³⁴

After Hurricane Harvey, Texas implemented its own version of STEP called Partial Repair and Essential Power for Sheltering (PREPS).¹³⁵ Like Louisiana, Texas had to consult with other states about how to develop the program because FEMA had not compiled centralized lessons learned.¹³⁶ Officials in Texas who were responsible for creating PREPS expressed frustration there were no manuals or documented best-practices to rely upon.¹³⁷

The Committee’s conversations with Texas officials also highlighted inconsistencies in the STEP program.¹³⁸ FEMA told Louisiana officials sheetrock did not qualify as a covered repair under Shelter at Home because it was considered permanent work, but reversed itself and approved the inclusion of sheetrock installation for Texas’s PREPS program roughly one year later.¹³⁹ The reason for the reversal remains unclear, which emphasizes the need for standard policies and guidance in order to avoid the appearance of reactive and arbitrary decision-making.

In the wake of Hurricanes Irma and Maria, Puerto Rico followed suit by creating the Tu Hogar Renace (Your Home Reborn) program.¹⁴⁰ On October 25, 2017, FEMA provided Puerto Rico with nine pages of guidance on the STEP program, including administrative timelines and the types of documentation to collect from applicants.¹⁴¹ According to the Puerto Rico Department of Housing, more than 200,000 residents have submitted applications for Tu Hogar Renace.¹⁴² The USVI has also begun implementing a STEP program, but the Committee has heard from one construction contractor that reimbursement delays are impacting the effectiveness of the program.¹⁴³ Ultimately, the success of these new STEP programs has yet to be proven.

3. *The Blue Roof Program*

USACE administers the Blue Roof program to “provide homeowners in disaster areas with fiber-reinforced sheeting to cover their damaged roofs until arrangements can be made for permanent repairs.”¹⁴⁴ During the 2017 hurricane season, USACE acknowledged there were some complications with the program in the U.S. Virgin Islands because its contractors were not familiar with tarp installation on metal roofs and roofs with cisterns, both of which are

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ TEXAS GENERAL LAND OFFICE, FACT SHEET: PARTIAL REPAIR AND ESSENTIAL POWER FOR SHELTERING, <http://texasrebuilds.com/pdf/fact-sheet-preps.pdf>.

¹³⁶ Oct. 2017 STAFFDEL.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ TU HOGAR RENACE, <https://tuhogarrenace.com/>.

¹⁴¹ Email from FEMA, to Comm. Staff (May 7, 2018).

¹⁴² TU HOGAR RENACE, *supra* note 140.

¹⁴³ Email from USVI STEP Contractor, to Comm. Staff (Aug. 2, 2018, 1:09 PM).

¹⁴⁴ U.S. ARMY CORPS OF ENG’RS, TEMPORARY ROOFING, <https://www.usace.army.mil/missions/emergency-operations/national-response-framework/temporary-roofing/>.

commonly found in the territory.¹⁴⁵ USACE’s implementation of the Blue Roof program in the U.S. Virgin Islands is another example of the importance of cooperation with stakeholders who have a better understanding of unique local needs.



Blue Roofs Visible in Puerto Rico in April 2018. Source: Committee Staff.

On the other hand, USACE did expand the Blue Roof program in Puerto Rico in order to qualify more homes for the program and help alleviate the desperate need for shelter.¹⁴⁶ Although Blue Roof program requirements state at least 50 percent of a roof must be intact in order for a home to be eligible—because the tarps cannot function as intended without structural support—USACE allowed for installation wherever feasible, which in some cases meant USACE rebuilt part of the roof structure prior to installing the tarp.¹⁴⁷ This increased both the time and the cost required for installation, but allowed USACE to provide temporary shelter for more families in need.¹⁴⁸

¹⁴⁵ Mar. 2018 USVI Field Hearing, *supra* note 47 (statement of Colonel Robert Clark) (“We were able to put on 3,658 roofs across the territory. As you mentioned, it’s really geared for shingle roofs like you would see in Florida and other places and not so much the metal roofing we have here. So one of the things we’re trying to strive to be better is next week we have . . . the remedial action plan workshop in which . . . the Corps of Engineers enterprise will look at procedures, techniques that would be more useful for the Virgin Islands.”).

¹⁴⁶ Apr. 2018 STAFFDEL, *supra* note 52.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

Recommendation: FEMA should continue to assess how to consolidate and streamline federal housing assistance programs, using an all-of-the-above strategy and incorporating additional state, local, territorial, and tribal involvement.

D. Contracting: FEMA has Made Progress, but Disaster Contracting Must be Improved

In 2006, the Select Committee found “[t]he failure at all levels to enter into advance contracts led to chaos and the potential for waste and fraud as acquisitions were made in haste.”¹⁴⁹ Specifically, FEMA’s lack of advance contracts inhibited its ability to quickly and responsibly obtain needed supplies, including housing.¹⁵⁰

FEMA has made progress in some areas related to disaster contracting. For example, following Hurricane Katrina, “more than 80 percent of FEMA’s \$1.5 billion in contracts were awarded on a sole-source basis or pursuant to limited competition.”¹⁵¹ In a near complete reversal, 81 percent of FEMA’s total obligations for Hurricanes Harvey, Irma, and Maria were competitive.¹⁵² Moreover, in 2017 FEMA had almost 80 advance contracts for food, prefabricated buildings, and various disaster-related services and support,¹⁵³ whereas at the time Katrina hit “FEMA had only one contract in place relevant to the . . . response for temporary housing.”¹⁵⁴

Staffing shortages, however, did affect FEMA’s contracting capacity. In its After-Action Report for the 2017 hurricane season, FEMA acknowledged the “increased contracting demands from the hurricane season severely taxed FEMA’s acquisitions process and contracting personnel.”¹⁵⁵ This almost certainly contributed to several high-profile canceled contracts, including a contract for meals with Tribute Contracting and a contract for tarps with Bronze Star.

FEMA’s continuing reliance on contractors with questionable past performance raises additional concerns. The Committee documented numerous questions about the performance of CB&I Federal Services, which served as FEMA’s haul-and-install contractor in Baton Rouge after the 2016 flood.¹⁵⁶ Yet the company—now known as Aptim Federal Services—continued to handle MHUs and other temporary housing units for FEMA following Hurricane Harvey.¹⁵⁷

¹⁴⁹ KATRINA REPORT, *supra* note 55, at 329.

¹⁵⁰ *Id.* at 329.

¹⁵¹ *Id.*

¹⁵² U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-472, *supra* note 69, at 85 (“Across All three hurricanes, we found that as of January 31, 2018, the overall competition rate—the percentage of total obligations reported under competitive contracts—was 81 percent.”).

¹⁵³ U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-335, 2017 DISASTER CONTRACTING: OBSERVATIONS ON FEDERAL CONTRACTING FOR RESPONSE AND RECOVERY EFFORTS 12 (2018).

¹⁵⁴ U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-472, *supra* note 69, at 330.

¹⁵⁵ FEMA AFTER-ACTION REPORT, *supra* note 21, at 30.

¹⁵⁶ *Apr. 2017 Hearing*, *supra* note 16.

¹⁵⁷ See Commonwealth of Virginia, State Corporation Commission, <https://sccefile.scc.virginia.gov/Business/T059813>; Federal Procurement Data System, Hurricane Harvey Report, https://www.fpds.gov/downloads/top_requests/Hurricane_Harvey_Report.xls.

IV. Other Issues the Committee Identified

The Committee’s review of the 2016 Baton Rouge flood and the 2017 hurricane season yielded several additional recommendations for improvement.

A. The Existing Disaster Response and Recovery Framework Failed in Puerto Rico and the U.S. Virgin Islands

The existing framework for federal disaster assistance created by the Stafford Act is built on the assumption states, territories, and tribes can, and will, lead their own recoveries.¹⁵⁸ Congress made clear the intent of the Stafford Act was “to provide . . . assistance . . . to State and local governments in carrying out their responsibilities.”¹⁵⁹ The disaster declaration process—which generally triggers federal assistance under the Stafford Act—explicitly contemplates governors implementing their states’ own emergency plans and assessing their capabilities as a precursor to receiving federal support.¹⁶⁰ Throughout the Stafford Act, Congress authorized the federal government to “assist,” “supplement,” “support,” and “coordinate” with state, territorial, tribal, and local governments,¹⁶¹ leading FEMA officials to reiterate “FEMA is not a first responder; disasters are state managed, locally executed and federally supported.”¹⁶²

¹⁵⁸ JARED T. BROWN & BRUCE R. LINDSAY, CONG. RESEARCH SERV., R41981, CONGRESSIONAL PRIMER ON RESPONDING TO MAJOR DISASTERS AND EMERGENCIES 1-2 (2018) (“The United States takes a ‘bottom up’ approach to both managing and providing assistance, during and following a disaster. The responsibility for responding to disasters begins at the local level with survivors, elected officials, and emergency service personnel. If local government resources are overwhelmed, nongovernmental voluntary organizations in the community and governments in neighboring jurisdictions may be called upon to provide assistance. If those sources of assistance become exhausted, state and tribal governments may supplement a local government’s resources, which may be coupled with the governor declaring a state disaster or emergency declaration. Generally, only after local and state/territory/tribal government resources have been overwhelmed, and the governor of the state or chief executive of a tribal nation has requested assistance, does the federal government begin to provide additional help. . . . Given this ‘bottom up’ approach, except in the most extraordinary circumstances, local and state/tribal governments are in charge of the disaster response. [FEMA], or any other federal agency, is there to aid the disaster response process . . . and to coordinate federal resources in response to state/tribal requests—not to be in the lead or take command.”).

¹⁵⁹ 42 U.S.C. § 5121 (“It is the intent of the Congress, by this Act, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters.”).

¹⁶⁰ 42 U.S.C. § 5170 (“As part of such request [for federal assistance], and as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate response action under State law and direct execution of the State’s emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this Act.”).

¹⁶¹ See, e.g., 42 U.S.C. § 5121 (authorizing measures intended “to assist the efforts of the affected States”); 42 U.S.C. § 5122 (defining a “major disaster” as one warranting federal assistance “to supplement the efforts and available resources of States [and] local governments”); 42 U.S.C. § 5170a (authorizing the President to assist and support state and local efforts, as well as “coordinate . . . disaster relief assistance”); 42 U.S.C. § 5192 (authorizing the President to offer various types of assistance and support).

¹⁶² Brock Long, *FEMA: We are not the First Responders*, USA TODAY, May 31, 2018, <https://www.usatoday.com/story/opinion/2018/05/31/fema-supports-puerto-rico-government-editorials-debates/35556537/>.

In 2017, this framework failed in Puerto Rico and the U.S. Virgin Islands. A lack of adequate preparation, preexisting financial difficulties, geographic factors, and the unprecedented effects of two major hurricanes made it impossible for the territories to lead the response and recovery within their own jurisdictions.

1. Puerto Rico and the U.S. Virgin Islands Were Not Prepared to Lead Response and Recovery under the Stafford Act

Following Hurricanes Irma and Maria, the Puerto Rican government lost the ability to maintain command and control of first responders, emergency managers, and law enforcement personnel. The Committee reviewed emails indicating both territories were completely unprepared to cope with the effects of a major natural disaster. For example, neither of the territorial emergency management agencies had operations centers in buildings that could withstand a major storm, and both agencies had to abandon their own facilities during the hurricanes.¹⁶³ As a National Guard Bureau leader described the state of Puerto Rico's Emergency Management Agency (PREMA) three days after Hurricane Maria struck the island, "PREMA- doesn't exist, building was compromised and it is just being stood up at convention center . . . It's [a] skeleton . . . [and] does explain the lack of coordination across the state and federal partners."¹⁶⁴

Numerous other instances exist demonstrating the territories' lack of preparedness and inability to lead recovery efforts—which resulted in delays. For example:

- A National Guard Bureau leader who was working to provide supplies to the U.S. Virgin Islands noted they "need[ed] VITEMA [Virgin Islands Territorial Emergency Management Agency] to make decisions on about 15 request[s] we have submitted over the past two weeks."¹⁶⁵
- A commander in Puerto Rico contacted Puerto Rican leaders "several times . . . to offer engineer support and was told that they would get back with her."¹⁶⁶
- The Chief of the National Guard Bureau wrote: "The normal response framework we're used to in states like Florida and Texas is challenged in Puerto Rico and the Virgin Islands. Civil response agencies in the territories were never as robust as other states and, unlike the others, all their members are victims of the storm to some degree. The ability for them to prioritize and orchestrate DoD and interagency response is strained at best, but it is improving. Both VI and PR have been slow to request additional [National Guard] forces for assistance. I have sent both additional [planning personnel] and liaisons from [the National Guard Bureau] to help smooth the requests."¹⁶⁷

¹⁶³ Apr. 2018 STAFFDEL, *supra* note 52; Email from National Guard Bureau, Sept. 6, 2017 ("VITEMA . . . lost its roof and had to jump from its EOC to the St. Thomas Armory."). (Sept. DOD Production, p. 728).

¹⁶⁴ Email from Nat'l Guard Bureau, Sept. 23, 2017. (Sept. DOD Production, p. 142)

¹⁶⁵ Email from Nat'l Guard Bureau, Sept. 24, 2017. P. 314

¹⁶⁶ Email from Office of the Chief Army Reserve, Sept. 22, 2017. (May DOD Production, p. 90).

¹⁶⁷ Email from Nat'l Guard Bureau, Sept. 25, 2017 (Sept. DOD Production, p. 308).

- Less than two weeks after Hurricane Maria hit Puerto Rico, federal personnel were continuing “to gain greater situational awareness of the Status of the PRNG and their capacity to support themselves and EMAC Force. . . . They just don't have the capacity to get in front of it. And the entire Logistic system is in distress from JFHQ down. [I]n addition the State capacity to do contracts, etc.... is non responsive. So they can't even support their own forces.”¹⁶⁸
- The Committee reviewed emails indicating the FEMA Administrator personally noted the “need to put [a] management structure in place since one doesn't exist,” and the federal government needed to “rethink how we do recovery in [Puerto Rico].”¹⁶⁹

Despite these shortcomings, Puerto Rican officials opposed the idea of a three-star general taking command of the situation in Puerto Rico. After a conversation with the senior military officer for the Puerto Rico National Guard, the Chief of the National Guard Bureau noted, “He was pretty distressed and said [the] government would resist [federal attempts to instate a three-star general].”¹⁷⁰

2. *The Reimbursement Process was Particularly Ineffective and Stymied Response and Recovery in the Territories*

According to FEMA, about ninety percent of grant funds awarded through its Public Assistance program are for procurements.¹⁷¹ Typically, states and local governments are able to enter into contracts for disaster related goods and services, as well as obtain assistance from neighboring states through the Emergency Management Assistance Compact (EMAC).¹⁷² FEMA then reimburses eligible expenses at the presidentially-established federal cost share rate.¹⁷³ Puerto Rico and the U.S. Virgin Islands, however, had no independent capacity to begin taking those initial steps toward recovery, and their relative geographic isolation further complicated their ability to obtain assistance through the typical framework.

National Guard deployments exemplified this dilemma, with one National Guard Bureau official explaining:

[T]he FEMA reimbursement process impacts our operational effectiveness – significantly. We've suffered the effects of this throughout Harvey and Irma, but we've managed our way through it. . . . Because of the fiscal realities at the state

¹⁶⁸ Email from Nat'l Guard Bureau, Oct. 2, 2017 (Sept. DOD Production, p. 330).

¹⁶⁹ Email from Nat'l Guard Bureau Contractor, Oct. 4, 2017 (Sept. DOD Production, p. 345).

¹⁷⁰ Email from Nat'l Guard Bureau, Sept. 26, 2017 (Sept. DOD Production, p. 603).

¹⁷¹ Fed. Emergency Mgmt. Agency, Procurement Disaster Assistance Team, <https://www.fema.gov/procurement-disaster-assistance-team> (“FEMA estimates that approximately 90% of all Public Assistance (PA) grant funds are expended through recipient and subrecipient procurements.”).

¹⁷² Grant recipients (e.g., states) and subrecipients (e.g., local governments) must meet a host of federal contracting and procurement requirements in order for their expenses to qualify for reimbursement.

¹⁷³ When the President declares a major disaster, the minimum federal cost share is 75 percent. *See* 42 U.S.C. § 5172(b)(1).

and territorial budget level, we will be forced into choosing the most expensive option possible to meet the needs of the Virgin Islands.¹⁷⁴

He went on to explain how deploying the Puerto Rico National Guard to assist the USVI after Hurricane Irma was not feasible because of the territories' financial situation.¹⁷⁵ Neither territory had the financial capacity to cover the Puerto Rico National Guard deployment—including salaries, housing, and other associated expenses—while waiting for FEMA to remit reimbursements for those disaster-related expenses.¹⁷⁶ As a result, the National Guard Bureau had to consider deploying National Guard units from mainland states, a more expensive option in the long run due to higher deployment costs.¹⁷⁷ The only other alternative was to find a way to speed up FEMA's reimbursement process to more quickly cover the cost of the Puerto Rico National Guard's deployment.¹⁷⁸ In the USVI, there were concerns the territory's financial situation was so dire it would not be able to “afford to purchase logistical items needed to support [other state National Guard] units [that did] offer[] support.”¹⁷⁹

Similarly, federal agencies struggled to support the recovery because the territories had difficulty entering into contracts for desperately-needed commodities. In the U.S. Virgin Islands, for example, the National Guard Bureau reported the USVI Commissioner of Property and Procurement indicated “he could not support [the National Guard's fuel] requirements.”¹⁸⁰ A National Guard Bureau leader clarified there were “no throughput/capacity/capability issues on St. Croix. It's who will pay for the fuel.”¹⁸¹

Puerto Rico's struggle to begin repairing its devastated electrical grid is another example of how the typical reimbursement model did not work in the territories. In the aftermath of Hurricane Maria, the Puerto Rican government and the territory's electric utility struggled to find a power restoration contractor willing to overlook the island's inability to independently pay for the work. After the Puerto Rico Electric Power Authority (PREPA) was criticized for signing a power restoration contract with Whitefish Energy, PREPA's executive director publicly stated the utility chose Whitefish specifically because they could not afford the sizeable deposit other contractors demanded.¹⁸²

Recommendation: States, territories, tribes, and local governments must strengthen their capacity to respond to and recover from a major natural disaster.

¹⁷⁴ Email from Nat'l Guard Bureau, Sept. 14, 2017 (Sept. DOD production, p. 749).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Email from Homeland Defense and Global Security, Office of the Secretary of Defense, Sept. 24, 2017 (May DOD production, p. 93).

¹⁸⁰ Email from Nat'l Guard Bureau, Sept. 24, 2017 (Sept. DOD production, p. 314).

¹⁸¹ Email from Nat'l Guard Bureau, Sept. 24, 2017 (Sept. DOD production, p. 313).

¹⁸² Stephanie Ebbs & Erin Dooley, *PR Gov. Threatens 'Hell to Pay' as Probes of Whitefish Contract Begin*, ABC NEWS (Oct. 27, 2017), <https://abcnews.go.com/US/pr-gov-threatens-hell-pay-probes-300m-repair/story?id=50742628> (“PREPA Executive Director Ricardo Ramos said Tuesday he ruled out APPA assistance because it would have required the agency, which is currently bankrupt, to handle logistics for crew lodging and food. Other power restoration companies were ruled out because they required a large upfront deposit, which PREPA cannot afford to pay, he said.”).

B. The Need for Increased Flexibility and Additional State, Local, and Private-Sector Involvement

Federal agencies should take steps to increase the involvement of states, territories, local governments, and the private sector whenever feasible. Not only do these stakeholders have a better understanding of their communities' specific needs, but also they have well-established networks and expertise to more efficiently deliver disaster assistance. Recently, FEMA has taken some steps to more appropriately leverage non-federal stakeholders' capabilities.

1. Opportunities for Additional State-Managed Housing Programs

One area where FEMA has begun to increase state involvement is the direct housing program in Texas. Prior to Hurricane Harvey in 2017, FEMA provided MHUs directly to disaster survivors through its Individual Assistance (IA) program. For example, FEMA deployed more than 4,000 MHUs in Louisiana after the August 2016 flood.¹⁸³ This effort, however, was plagued by unjustifiable delays, expensive and unreliable MHUs, and serious coordination issues.¹⁸⁴ In 2017, towards the end of the MHU mission in the Baton Rouge area, FEMA told the Committee it took almost twice as long for applicants to receive MHUs as it had in the past.¹⁸⁵

Although post-disaster housing needs are inherently challenging, particularly when housing stock is limited, states typically enjoy a better position than the federal government to provide housing to their own citizens. This is because states have stronger ties to their own local governments and generally have a clearer understanding of local needs. In April 2018, FEMA Region VI Administrator Tony Robinson highlighted FEMA's decision to shift more of the decision-making regarding direct housing to the State of Texas after Hurricane Harvey. He stated:

[W]e need to do more to empower the states to handle the challenge of a disaster-created housing mission. Texas stepped up to the plate in response to Harvey and sought to have a multi-pronged approach to the housing mission, allowing local jurisdictions to pick from a number of different options including mobile housing units and other programs designed to allow people to return home and shelter there as they completed the needed repairs. . . . There is still much work left to be done, but the partnership we have with the General Land Office of the State of Texas provides an innovative approach to streamline how we address disaster housing. While the housing mission has not been without its challenges, the lessons learned at the local, state, and federal level will allow us to further reform and reduce the complexity of our housing missions in the future.¹⁸⁶

¹⁸³ *Apr. 2017 Hearing, supra* note 16.

¹⁸⁴ *Id.*

¹⁸⁵ Email from Fed. Emergency Mgmt. Agency, to Committee Staff (Mar. 30, 2017, 11:24 AM) ("Historically, the time between [FEMA's] determination of applicant eligibility and when they were licensed into an MHU was 27.7 days; and for [the August 2016 Baton Rouge flood] it is 54 days.")

¹⁸⁶ *Houston Strong: Hurricane Harvey Lessons Learned and the Path Forward: Hearing Before the H. Comm. on Homeland Security, 115th Cong. (2018)* (statement of Tony Robinson), <https://homeland.house.gov/hearing/houston-strong-hurricane-harvey-lessons-learned-path-forward/>.

Giving states and local governments the flexibility to choose housing solutions functional for them, and allowing them to administer the program themselves, would provide more local control to communities and invariably lead to better outcomes for displaced disaster survivors. Such flexibility also allows FEMA to focus its attention on other critical missions.

<p>Recommendation: Incorporating state and local input is important. FEMA should continue to explore and refine agreements with states to manage federal assistance programs, including housing programs.</p>
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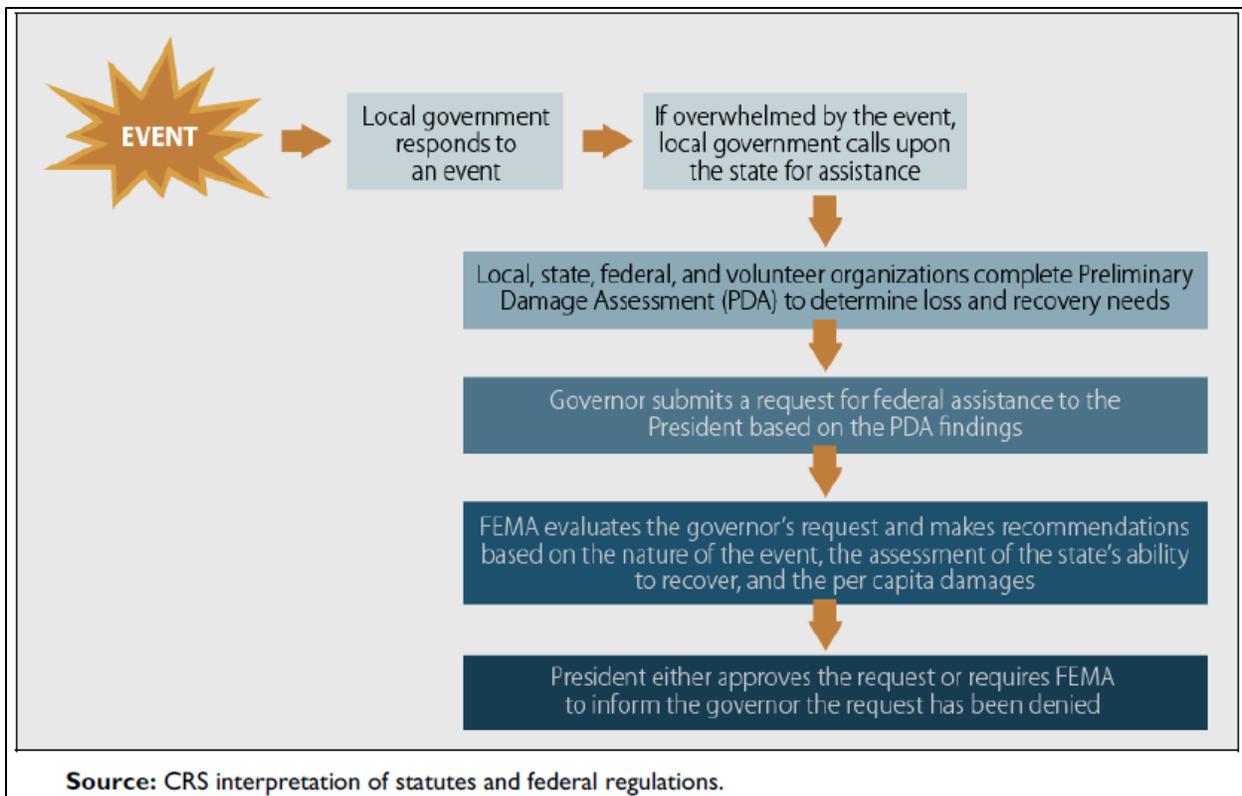
2. Potential for Increased Flexibility Through Section 428 Alternative Procedures

Another way FEMA is attempting to increase state involvement, reduce complexity, and enhance flexibility is through the implementation of the Section 428 program, sometimes called Alternative Procedures for FEMA's Public Assistance (PA) program.¹⁸⁷ The Stafford Act authorized FEMA to provide PA and established the disaster declaration process during which PA eligibility is determined.¹⁸⁸ During the disaster declaration process, the President determines which affected areas are eligible for certain PA categories and sets the federal cost share for each category.¹⁸⁹

¹⁸⁷ See ALTERNATIVE PROCEDURES, FEDERAL EMERGENCY MANAGEMENT AGENCY, <https://www.fema.gov/alternative-procedures>.

¹⁸⁸ See Robert T. Stafford Disaster Relief and Emergency Assistance Act § 401, 42 U.S.C. § 5170 (establishing the general process for major disaster declarations); Robert T. Stafford Disaster Relief and Emergency Assistance Act §§ 406-407, 42 U.S.C. §§ 5172-73 (authorizing permanent repair work and debris removal, two major components of the PA program).

¹⁸⁹ Robert T. Stafford Disaster Relief and Emergency Assistance Act § 401, 42 U.S.C. § 5170.



The Disaster Declaration Process. Source: Congressional Research Service

The traditional PA program is FEMA’s largest grant program for disaster recovery assistance and funds debris removal, emergency protective measures, and permanent work to rebuild infrastructure and public buildings.¹⁹⁰ Historically, one of the primary criticisms of the PA program is the Stafford Act’s restrictions on permanent work.¹⁹¹ In order to receive PA funding, recipients under the traditional program are limited to restoring facilities based on their pre-disaster design.¹⁹² For example, if an applicant requests funding under traditional PA to repair a damaged hospital, the hospital must be rebuilt to its pre-disaster condition. Although improvements can be made to bring the building up to code, the repairs covered by PA must otherwise return the hospital to the way it was prior to the disaster.

Traditional PA also places a heavy administrative burden on both FEMA and the PA recipient because recipients must be reimbursed based on actual costs. This requirement means the recipient and FEMA must work together continuously throughout the project’s life cycle—

¹⁹⁰ FED. EMERGENCY MGMT. AGENCY, FACT SHEET, PUBLIC ASSISTANCE, (2017), https://www.fema.gov/media-library-data/1534520705607-3c8e6422a44db5de4885b516b183b7ce/PublicAssistanceFactSheetJune2017_Updated2018.pdf.

¹⁹¹ See, e.g., Mark O’Mara, *Case Studies in Recovery—Implementing FEMA’s Section 428 Public Assistance Alternative Procedures Program*, HAGERTY, Jan. 24, 2018, <http://hagertyconsulting.com/about-us/blog/4681-2/> (“Under the standard PA program, communities are limited in recovery design flexibility and can only restore damaged facilities based on pre-storm design, capacity, and function. If communities determine that restoring damaged facilities to their pre-disaster design does not best serve the public interest, the standard PA program imposes somewhat restrictive rules.”).

¹⁹² JARED T. BROWN AND DANIEL J. RICHARDSON, CONG. RESEARCH SERV., R43990, FEMA’S PUBLIC ASSISTANCE GRANT PROGRAM: BACKGROUND AND CONSIDERATIONS FOR CONGRESS (2015).

which in many cases takes several years.¹⁹³ Reimbursement for actual costs can also cause cash-flow challenges for state and local entities lacking significant capital to push forward with a project while waiting for FEMA to process and approve submitted expenses and make funds available, creating delays for communities trying to recover following a disaster.

The complexity of the PA program is particularly burdensome for local governments. In Texas, city and county officials expressed concerns about reimbursements for debris removal work.¹⁹⁴ Specifically, they feared inadvertently failing to comply with complicated federal procurement rules and FEMA later seeking to recover millions of dollars in grants—a burden many counties would not be able to afford.¹⁹⁵ A Florida official similarly explained while he understands the need for integrity and controls in the PA program, the existing requirements are overly bureaucratic and negatively impact recovery efforts.¹⁹⁶

Public Assistance Categories
Category A – Debris Removal
Category B – Emergency Protective Measures
Category C – Roads and Bridges
Category D – Water Control Facilities
Category E – Buildings and Equipment
Category F – Utilities
Category G – Parks, Recreational Areas, and Other Facilities

To address some of these issues with the PA program, in the wake of Hurricane Sandy in 2012 Congress amended the Stafford Act and created the Section 428 pilot project.¹⁹⁷ Section 428 applies to large debris removal (Category A) and permanent work (Categories C-G) projects, but not emergency protective measures (Category B).¹⁹⁸ Participation in Section 428 is voluntary, but the program offers some advantages over traditional PA.

Section 428 does not include the same design restrictions as traditional PA.¹⁹⁹ Instead, the program essentially provides a block grant allowing the recipient greater flexibility to make improvements to the existing facility’s design or even build an alternative facility that better meets the needs of the community.²⁰⁰ In exchange for this greater flexibility, FEMA and the recipient agree on a fixed-cost estimate before the PA grant funds are disbursed, and the recipient accepts responsibility for any costs exceeding the agreed-upon estimate.²⁰¹ However, Section 428 allows recipients to hedge the risk of a project going over the estimated cost by pooling

¹⁹³ Briefing with FEMA (Apr. 10, 2018).

¹⁹⁴ Oct. 2017 STAFFDEL.

¹⁹⁵ *Id.*

¹⁹⁶ Call with Polk Cty. Emergency Mgmt., *supra* note 65.

¹⁹⁷ Press Release, Comm. on Transp. & Infrastructure, Sandy Recovery Improvement Act Goes to President, <https://transportation.house.gov/news/documentsingle.aspx?DocumentID=351082> (“The bill specifically targets and streamlines federal disaster recovery programs that can help strengthen the Hurricane Sandy recovery process and reduce costs. The bill will not only benefit communities and individuals in getting back on their feet following the recent superstorm that devastated the Northeastern United States; Americans and their communities to be impacted by future disasters will also be able to rebound faster because of the improvements in the legislation.”).

¹⁹⁸ Briefing with FEMA, *supra* note 193.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

multiple projects within the community.²⁰² If one project in the pool comes in under budget, the recipient does not have to return the funds to FEMA. Instead, the recipient may spend leftover funds on approved work, such as hazard mitigation or PA training, or apply it to another project in the same pool.²⁰³

In addition to increased project flexibility, Section 428 provides PA recipients with greater funding certainty. Once FEMA and the recipient agree to the fixed-cost estimate for the project, the funds are released in entirety at the beginning of the project.²⁰⁴ There is no need for the grantee to submit actual costs for reimbursement through the rebuilding process, which reduces the administrative burden and decreases the likelihood of delays once work begins.²⁰⁵

While Section 428 is promising, FEMA is working through the challenges of putting a pilot program into practice. FEMA told Committee staff many projects from Hurricane Sandy are still “in the queue,” and some are just approaching the construction phase—more than five years after the disaster.²⁰⁶ Originally, FEMA anticipated the fixed-cost estimates for Section 428 projects could be finalized within one year, but that has not materialized.²⁰⁷ FEMA now expects the estimate process for Section 428 projects in areas affected by recent disasters to take more than twelve months.²⁰⁸

3. *Lack of Flexibility when Infrastructure is Totally Devastated*

The flexibility afforded by Section 428 does not apply to all aspects of disaster response and recovery. Section 428 only applies to certain categories of work under the PA program, and USACE’s mission to restore temporary emergency power in Puerto Rico was not one of them. For example, USACE has explained its work in Puerto Rico was constrained by the “pre-disaster design” requirement.²⁰⁹ Temporary emergency power, which USACE usually provides via the installation of generators, is subject to the restrictions of traditional PA. As a result, USACE, which received a Mission Assignment from FEMA to assist with temporary power restoration in Puerto Rico, could only repair the grid to its pre-disaster condition.²¹⁰

In Puerto Rico, USACE had to obtain specially manufactured wire in order to perform repairs because standard wire used in the continental United States is not compatible with Puerto Rico’s transmission and distribution system.²¹¹ The entire island would have had to switch to standard wire in order to use off-the-shelf wire for emergency repairs.²¹² Because readily available materials could not be used with the existing system, USACE had to identify a manufacturer who could stop production, retool equipment, and then begin manufacturing

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Briefing with USACE (Oct. 11, 2017).

²¹⁰ *Id.*

²¹¹ Apr. 2018 STAFFDEL, *supra* note 52.

²¹² *Id.*

“Puerto Rican special” wire to proceed with power restoration work.²¹³ Doing this increased both costs and delays for the purpose of rebuilding an out-of-date grid and in need of major improvements even before the storm.²¹⁴ In light of some of the particular rebuilding challenges facing Puerto Rico, the Administration has called for “Congress [to] revisit the Stafford Act” and noted “the flexibility to do more than just restore back to pre-existing conditions in a situation like Puerto Rico is crucial.”²¹⁵

4. *Opportunities to Increase the Role of the Private Sector*

In addition to state and local governments, the private sector can and should play a role in disaster recovery efforts. FEMA already coordinates closely with a coalition of nonprofits called National Voluntary Organizations Active in Disaster (NVOAD), which was created as a forum to share resources and collaborate in an effort to help disaster survivors and their communities.²¹⁶ NVOAD is a part of the National Response Coordination Center located at FEMA headquarters and serves as the primary point of contact for voluntary organizations interested in assisting with disaster response efforts.²¹⁷

Committee staff spoke with the American Red Cross (ARC), one of NVOAD’s national members, to better understand federal-non-profit coordination during the 2017 hurricane season. A 20-year ARC veteran who oversees the Caribbean Region emphasized the need for local-led recovery, in partnership with federal support.²¹⁸ She told Committee staff better coordination generally leads to better recovery.²¹⁹ Additionally, she said she believed the federal government did the best it could, given the circumstances and resources available.²²⁰

In addition to working with NVOADs, federal agencies should take steps to increase coordination with the private sector. In many cases, individuals and private businesses already have the know-how, connections, and agility to provide and distribute aid. For example, grocery chains and big-box retailers have well-established supply chains to move food and other goods from ports and warehouses to store shelves.

Private sector business leaders in Puerto Rico told Committee staff it was difficult to coordinate with FEMA and FEMA was sometimes unresponsive to their offers of assistance.²²¹ They also believed FEMA’s efforts crowded out local businesses, particularly grocery stores.²²² For example, they said FEMA purchased the entire supply of bottled water available on the island, so when stores were able to reopen there was no water available for them to restock their

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Mar. 2018 Hearing, supra* note 50 (statement of William Parks, Senior Technical Advisor, Office of Electricity Delivery and Energy Reliability, Dep’t of Energy).

²¹⁶ DEPARTMENT OF HOMELAND SECURITY, VOLUNTARY ORGANIZATIONS ACTIVE IN DISASTER, <https://www.ready.gov/voluntary-organizations-active-disaster>.

²¹⁷ *Id.*

²¹⁸ Call with American Red Cross (Mar. 8, 2018).

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Apr. 2018 STAFFDEL, supra* note 52.

²²² *Id.*

shelves.²²³ The stores instead had to resort to ordering from mainland bottled water suppliers and faced lengthy shipping delays.²²⁴

Compounding the problem, goods in port when Hurricane Maria hit or arrived in the immediate aftermath were often inaccessible because FEMA prioritized getting its own supplies out first without regard to whether other containers held food, construction materials, or other needed supplies.²²⁵ Even businesses able to access warehouses or get supplies out of port faced additional challenges. Fuel was difficult to find, and private sector representatives told Committee staff no truck drivers were available after the storm because FEMA hired the drivers who were able to work.²²⁶

Although FEMA plays a crucial role in delivering aid, particularly to vulnerable populations, the Agency is still sensitive to its effects on recovering local economies. When FEMA received criticism for phasing out its distribution of food and water in Puerto Rico, a senior official explained: “‘If we’re giving free water and food, that means that families are not going to supermarkets to buy.’ . . . ‘It is affecting the economy of Puerto Rico. So we need to create a balance.’”²²⁷ By seeking closer coordination with the private sector, FEMA can more effectively leverage both resources and existing expertise. Placing a stronger emphasis on coordination with the private sector can also help FEMA better gauge the community’s steps toward resuming normal commercial activity.

Additionally, local governments, states, and territories should be cognizant of unintended consequences of their policies. Business leaders in Puerto Rico, as well as Puerto Rico and federal officials, told Committee staff about the inadvertent harm caused by Puerto Rico’s warehouse tax.²²⁸ The territory levies monthly taxes on warehoused goods, essentially penalizing businesses for keeping extra goods on hand.²²⁹ Following Hurricane Maria—when shipping was disrupted and ports were closed—businesses ran out of merchandise and could not restock their stores.²³⁰

Finally, coordination with the private sector is necessary because companies already take steps to provide aid and assistance following disasters. In Puerto Rico, for example, a big box retailer evacuated people in need of medical care and delivered medicine, food, and other aid to its employees and their families using private aircraft.²³¹ This kind of effort is not an exception

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Adrian Florido, *FEMA to End Food and Water Aid for Puerto Rico*, NPR (Jan. 29, 2018),

<https://www.npr.org/sections/thetwo-way/2018/01/29/581511023/fema-to-end-food-and-water-aid-for-puerto-rico>.

²²⁸ Apr. 2018 STAFFDEL, *supra* note 52.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*; see also Kavita Kumar, *Best Buy Reopens Store in Puerto Rico After Months of Helping Employees Recover*, MINNEAPOLIS STAR TRIB. (Dec. 17, 2017), <http://www.startribune.com/best-buy-spends-750-000-helping-puerto-rico-employees-after-hurricane/464844203/>.

in the wake of a disaster—Wal-Mart provided extensive aid to the Gulf Coast after Hurricane Katrina in 2005.²³²

FEMA staff in Puerto Rico explained how difficult coordinating with the private sector can be. In order to bring in private sector power and utility experts, FEMA attorneys developed a first-of-its-kind memorandum of understanding (MOU) allowing FEMA to consult with private sector partners as long as they agreed to do so on a not-for-profit basis.²³³ In this instance, working with the private sector was necessary because of the expertise needed to coordinate power transmission line repairs.²³⁴ According to FEMA staff, developing the MOU was a monumental, unprecedented challenge for agency attorneys. Looking ahead, FEMA is examining potential standards for such agreements in the future.²³⁵ Developing these standards allows FEMA to explore creating standing contracts to have in place for hurricane season in case a similar situation arises again.

<p>Recommendation: The 2017 hurricane season demonstrated the benefits of private-sector partnerships, the need for increased flexibility in federal recovery programs, and the potential value in further cooperation with states. FEMA should continue to pursue these partnerships.</p>

C. Compliance with the Federal Statutory Premium Pay Cap

DHS and FEMA have not taken adequate steps to responsibly manage employee pay. Beginning in late 2017, the Committee investigated reports FEMA paid its employees in violation of a statutory premium pay cap. Typically, federal law prohibits federal employees from receiving pay in excess of the congressionally-determined biweekly premium pay cap, which is derived from an annual premium pay cap based on employee location.²³⁶ The premium pay cap prevents federal agencies from paying excessive overtime to federal employees, and ensures a salary balance between front-line employees eligible for overtime and non-eligible supervisors. In 2017, the maximum annual premium pay cap was \$161,366.²³⁷

In some situations, such as during natural disasters, the Office of Personnel Management (OPM) or an agency head may waive the biweekly premium pay cap to allow federal employees to accrue premium pay—by, for example, working overtime or weekends—in order to protect lives and property.²³⁸ There is, however, no statutory exemption to the annual premium pay cap.

²³² Michael Barbaro & Justin Gillis, *Wal-Mart at Forefront of Hurricane Relief*, WASH. POST (Sept. 6, 2005), <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/05/AR2005090501598.html>.

²³³ Apr. 2018 STAFFDEL, *supra* note 52.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ 5 U.S.C. § 5547(a).

²³⁷ Pay & Leave, OFFICE OF PERSONNEL MGMT., <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/#url=2017> (last visited May 24, 2018); *see also* FEMA Briefing for Comm. Staff (Dec. 8, 2017). The cap applies to civilian federal employees on the General Schedule, but does not apply to active duty members of the military and certain categories of federal employees.

²³⁸ 5 U.S.C. § 5547(b)(1).

Agencies can ensure compliance with the annual pay cap by monitoring employee time and attendance and by coordinating with their payroll servicers to monitor payments. DHS and its components, including FEMA, use the Department of Agriculture’s National Finance Center (NFC) as their payroll service provider.²³⁹ The NFC system has some built-in flags and tools to help managers and human resources officers control employee pay. For example, if an employee submits a time sheet that would result in payment above the biweekly premium pay cap, the NFC will not authorize payment for time above the cap.

Agencies who waive the biweekly premium pay cap for certain employees can remove this limitation, however, and once it is removed the waiver remains in place until the agency resets the limitation. Due to software issues and problems inherent to predicting future premium pay, the NFC does not have any flags or alerts to warn the agency an employee is approaching, or has exceeded, the annual premium pay cap—though the NFC can send payroll reports to agencies.²⁴⁰

Regardless of the NFC system’s capabilities, the agency is ultimately responsible for inputting time and attendance settings and monitoring the pay of its own employees.²⁴¹ Even in situations where the biweekly premium pay cap is waived, agencies are responsible for ensuring they are not making unauthorized payments to their employees in violation of the annual premium pay cap.²⁴²

Although 2017 was certainly a particularly challenging year for federal agencies and employees who responded to natural disasters, not all agencies violated the premium pay cap. The Department of Health and Human Services (HHS), which has an in-house payroll service provider, avoided making payments in violation of the annual premium pay cap despite also sending employees to assist in hurricane recovery.²⁴³ HHS officials told Committee staff they successfully monitored their personnel and avoided making any payments in excess of the annual premium pay cap.²⁴⁴ Separately, HHS told the Committee they rotated medical personnel out every few weeks to make sure they were rested and able to perform their jobs.²⁴⁵ Likewise, DoD told the Committee it did not pay its civilian employees in excess of the premium pay cap.²⁴⁶

DHS, on the other hand, failed to take appropriate steps to manage its workforce and inform Congress it had violated the annual premium pay cap. In late 2017, Committee staff learned from a third party numerous FEMA employees exceeded the statutory annual premium pay cap for federal civilian personnel. The Committee requested a briefing and information from FEMA to understand how and why the federal government improperly paid hundreds of employees. Initially FEMA claimed the mistake was related to the unprecedented 2017 hurricane season, but the Committee then learned premium pay cap violations are a recurring, DHS-wide issue.

²³⁹ Briefing with FEMA (Dec. 8, 2017).

²⁴⁰ Briefing with National Finance Center, Dep’t of Agriculture (Jan. 16, 2018) [hereinafter Briefing with NFC].

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ Briefing with Dep’t of Health and Human Servs. (Jan. 23, 2018).

²⁴⁴ *Id.*

²⁴⁵ Briefing with Dep’t of Health and Human Servs. (Oct. 26, 2017).

²⁴⁶ Email from Dep’t of Def., to Comm. Staff (Feb. 22, 2018, 8:43 AM).

FEMA discovered it had overpaid some employees around November 1, 2017.²⁴⁷ By December 8, 2017, when FEMA provided initial data to the Committee, the Agency had improperly paid 138 employees a total of nearly \$1 million—an average of \$7,246 per employee.²⁴⁸ At the time, FEMA also had 102 additional employees who had already reached the cap and therefore became ineligible to receive a combined total of nearly \$400,000 in additional premium pay they otherwise would have received.²⁴⁹

As FEMA began collecting information in response to the Committee’s requests, the Agency discovered 2017 was not the first year it had violated the annual premium pay cap; after conducting a preliminary review of 2016 data, FEMA believed some of its employees exceeded the annual premium pay cap that year as well.²⁵⁰ As a result, on December 22, 2017 FEMA Administrator Brock Long requested the OIG review FEMA’s compliance with the pay cap.²⁵¹ The OIG released its report on FEMA’s noncompliance with the premium pay cap on July 31, 2018, and recommended FEMA complete its premium pay assessment and consider withholding premium pay until the end of the year in the future, among other things.²⁵²

On January 9, 2018, Committee staff asked the Department of Homeland Security whether any other DHS or DHS-component employees received pay in excess of the annual premium pay cap in 2016 or 2017.²⁵³ After Committee staff followed up multiple times, DHS confirmed on January 19, 2018 that “Premium Pay overpayments . . . extended beyond FEMA to other critical DHS Components,” and “DHS [was continuing] to validate Premium Pay overpayments . . . to determine the extent of overpayments across the Department.”²⁵⁴

When DHS failed to respond to basic inquiries about which components were affected and how many employees received overpayments, the Committee sent a letter to Secretary Kirstjen Nielsen on January 29, 2018.²⁵⁵ The letter requested documents and communications relating to DHS’s annual premium pay cap violations.²⁵⁶ DHS provided a partial response on May 10, 2018, and found a total of 176 DHS employees (including FEMA employees) who were paid a combined \$1,133,663 over the annual premium pay cap in 2017—an average of \$6,441 per employee.²⁵⁷ It appears some of these employees may not have worked on hurricane

²⁴⁷ Briefing with FEMA (Dec. 8, 2017).

²⁴⁸ Email from FEMA, to Comm. Staff (Dec. 11, 2017, 4:40 PM); Email from FEMA, to Comm. Staff (Dec. 14, 2017, 5:42 PM).

²⁴⁹ *Id.*

²⁵⁰ Letter from Brock Long, Adm’r, Fed. Emergency Mgmt. Agency, to John V. Kelly, Acting Inspector Gen., Dep’t of Homeland Sec. (Dec. 22, 2017).

²⁵¹ *Id.*

²⁵² OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SECURITY, OIG-18-71, SPECIAL REPORT: FEMA PAID EMPLOYEES OVER THE ANNUAL PREMIUM PAY CAP 17-18 (2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-08/OIG-18-71-Jul18.pdf>.

²⁵³ Email from Comm. Staff, to Dep’t of Homeland Sec. (Jan. 9, 2018, 4:57 PM).

²⁵⁴ Email from Dep’t of Homeland Sec., to Comm. Staff (Jan. 19, 2018, 1:41 PM).

²⁵⁵ Letter from Trey Gowdy, Chairman, Comm. on Oversight & Gov’t Reform, to Kirstjen Nielsen, Sec’y, Dep’t of Homeland Sec. (Jan. 29, 2018), <https://oversight.house.gov/wp-content/uploads/2018/01/2018-01-29-TG-to-Nielsen-DHS-Premium-Pay-Cap-due-2-12.pdf>.

²⁵⁶ *Id.*

²⁵⁷ Letter from Chip Fulghum, Deputy Under Sec’y for Mgmt., Dep’t of Homeland Sec., to Trey Gowdy, Chairman, Comm. on Oversight & Gov’t Reform (May 8, 2018).

response efforts.²⁵⁸ Despite subsequent requests for information by Committee staff, including during a briefing at the Department of Homeland Security on July 26, 2018, DHS still has not provided a complete response to the Committee’s request. DHS has acknowledged the Department has significant difficulties tracking employee pay and compliance with the annual premium pay cap.²⁵⁹

The Committee found FEMA was well aware of its struggles with premium pay. According to documents reviewed by the Committee, FEMA officials responding to the Baton Rouge flood voiced a number of complaints about how DHS and FEMA handled premium pay. For example, FEMA officials pointed out how long it took DHS to approve premium pay.²⁶⁰ In August 2016, FEMA officials circulated an email announcing premium pay had been approved for Winter Storm Jonas—which had affected the Washington, D.C. area seven months before.²⁶¹

FEMA officials also complained biweekly pay cap waivers had to go through DHS and could not be approved at the component level.²⁶² According to these officials, the DHS approval process was a “black hole” that could “take months.”²⁶³ Part of the issue is pay cap waivers used to be granted at the regional level, but now they have “to go to [the] under secretary for approval.”²⁶⁴ They also explained “FEMA has no way to reliably ID the[] people who have exceeded the pay cap.”²⁶⁵ The need to fix the pay cap waiver process, they said, is “a huge moral[e] issue”²⁶⁶ and the “defining need of [the Office of the Chief Component Human Capital Officer] or DHS.”²⁶⁷

Instead of accepting accountability for its mismanagement, DHS sought authority to bypass the annual premium pay cap by using the Disaster Relief Fund (DRF) to cover the overpayments. The DRF, however, was not intended as a means to circumvent Congress’s authority to regulate pay for the federal civilian workforce.

Recommendation: DHS and its components must critically evaluate their workforce needs and implement reforms to ensure their employees do not exceed statutory limitations on premium pay.

D. Independent and Impartial Oversight of FEMA

The Inspectors General who oversee agencies with disaster response authority must uphold their responsibility to be objective, impartial, and independent.²⁶⁸ The Committee investigated the appearance of partiality at the DHS Office of Inspector General (OIG) after the

²⁵⁸ *Id.*

²⁵⁹ Call with Dep’t of Homeland Sec. (May 3, 2018); Call with Dep’t of Homeland Sec. (Mar. 28, 2018).

²⁶⁰ OIG-005722.

²⁶¹ OIG-005723.

²⁶² OIG-005657.

²⁶³ OIG-005658.

²⁶⁴ OIG-009892.

²⁶⁵ OIG-005658.

²⁶⁶ OIG-009892.

²⁶⁷ OIG-005658.

²⁶⁸ Inspector General Act of 1978 § 2, Pub. L. 95-452, 92 Stat. 1101 (1978).

OIG released its June 2017 report on the Baton Rouge flood, titled “FEMA’s Initial Response to the Catastrophic Flooding in Louisiana.”²⁶⁹

The OIG report contained unsupportable statements, lacked quantitative evidence, and explicitly attempted to rebut the congressional testimony of Louisiana mayors who were critical of FEMA. The report also omitted any reference to the death of an elderly man in an overheated FEMA MHU, which occurred days before the OIG’s final visit to Baton Rouge.²⁷⁰ The OIG report praised FEMA’s “effective” performance and omitted damaging information to the Agency.

Committee staff met with the OIG on June 29, 2017 to discuss concerns about the OIG report.²⁷¹ During the meeting, one of the supervisors who oversaw the report told Committee staff she would not change the report, even if she was presented with contradictory facts.²⁷² Other OIG officials at the meeting explained senior OIG management had decided to “phase out” these types of reports because they did not believe the reports were particularly useful.²⁷³

After hearing the Committee’s concerns, the OIG launched a series of internal reviews related to the Baton Rouge report. At the OIG’s request, Committee staff met with the OIG’s Office of Integrity and Quality Oversight (IQO) on July 12, 2017, to discuss the Committee’s concerns in more detail. On July 17, 2017, the Committee sent a letter to then-Inspector General John Roth requesting the complete case file for the report so the Committee could better understand how the OIG conducted its review and what support the OIG collected for its report.²⁷⁴ Shortly thereafter, the OIG withdrew the report on the Baton Rouge flood from its website.²⁷⁵

Congressman Gary Palmer asked then-IG Roth about the OIG’s failure to produce the requested case file at a November 15, 2017 hearing.²⁷⁶ IG Roth announced his retirement five days later, and the OIG finally began producing documents to the Committee on December 14, 2017. Thereafter, the OIG made eight productions to the Committee totaling more than 14,000 pages of documents. The Committee also conducted transcribed interviews of three current or former DHS OIG officials who worked on, or had knowledge of, the report.

The Committee’s investigation found the entire series of Emergency Management Oversight Team (EMOT) reports going back to 2012 were commonly referred to as “feel good” reports. One OIG employee described the perspective on EMOTs within the OIG: “The . . .

²⁶⁹ OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., FEMA’S INITIAL RESPONSE TO THE 2016 CATASTROPHIC FLOODING IN LOUISIANA, OIG-17-80-D (June 22, 2017).

²⁷⁰ Briefing with Office of Inspector Gen., Dep’t of Homeland Sec. (June 29, 2017).

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ Letter from Trey Gowdy, Chairman, Comm. on Oversight & Gov’t Reform, to John Roth, Inspector Gen., Dep’t of Homeland Sec. (July 17, 2017), <https://oversight.house.gov/wp-content/uploads/2017/07/2017-07-17-TG-to-Roth-DHS-OIG-re-FEMA-Baton-Rouge-2016-due-7-31.pdf>.

²⁷⁵ Email from Office of Inspector Gen., Dep’t of Homeland Sec., to Comm. Staff (July 21, 2017, 10:21 AM).

²⁷⁶ *Recommendations and Reforms from the Inspectors General: Hearing Before the Comm. on Oversight & Gov’t Reform*, 115th Cong. (2017), <https://oversight.house.gov/hearing/recommendations-reforms-inspectors-general/>.

mindset is that EMOTs are generally feel good reports with few if any negative findings. So in other words the EMO culture in the past was EMOT are an opportunity to give FEMA credit for a successful deployment.”²⁷⁷

Another OIG employee told Committee staff the “direction wasn’t made . . . verbatim,” but the team understood the report they produced should conform to the format of other EMOT reports and omit any findings or conclusions.²⁷⁸ The employee generally understood that EMOT reports “start off saying that FEMA has done a sufficient job or they did a good job.”²⁷⁹ According to the employee, the audit team’s supervisor told the team their objective was to determine whether FEMA was “effective” and discussed using a different format for the Baton Rouge EMOT.²⁸⁰ The alternative format the team discussed, however, simply reorganized the typical report format, and the employee assumed the team would just “highlight the issues first instead of saying . . . FEMA did a good job first.”²⁸¹

Every single one of the OIG’s previous EMOT reports determined FEMA was “effective” in its response.²⁸² This appears to result from a mindset within the OIG that EMOT report conclusions were predetermined. An OIG supervisor who was involved in one of the OIG’s internal reviews of the Baton Rouge report pointed out “previous direction from senior management going back to the EMOT reports from Superstorm Sandy were ‘feel good reports’ vs. strictly factual reports.”²⁸³ Another OIG employee said she “kept hearing that everybody said that’s how all EMOT reports are done.”²⁸⁴ One OIG manager called the reports “useless,” but said the OIG kept producing them because that was what Deputy Inspector General John Kelly wanted when he previously led the Office of Emergency Management Oversight.²⁸⁵

One supervisor who oversaw the final stages of the Baton Rouge EMOT report was known to say she could “write a report. . . [She] just need[ed] the auditors to go out and support it.”²⁸⁶ With respect to the Baton Rouge report specifically, the audit team members said their original supervisor “added statements to the report that they were unable to support.”²⁸⁷ After the first supervisor retired and a second supervisor took over, the audit team was told to “support the report,” even though they thought that was “difficult” and “a stretch.”²⁸⁸

²⁷⁷ Office of Inspector Gen., Dep’t of Homeland Sec., Record of Discussion (Oct. 6, 2017) (OIG-040871).

²⁷⁸ Interview with Audit Manager, Office of Inspector Gen., Dep’t of Homeland Sec. 17 (Feb. 9, 2018).

²⁷⁹ *Id.* at 19.

²⁸⁰ *Id.* at 64.

²⁸¹ *Id.*

²⁸² Office of Inspector Gen. Emergency Mgmt. Oversight Team Deployment Audits, Audit Report Numbers OIG-13-84, OIG-13-117, OIG-13-124, OIG-14-50-D, OIG-14-111-D, OIG-15-92-D, OIG-15-102-D, OIG-15-105-D, OIG-16-53-D, OIG-16-85-D, OIG-16-106-D, OIG-17-37-D.

²⁸³ Office of Inspector Gen., Dep’t of Homeland Sec., Second Audit Team Notes (OIG-000336).

²⁸⁴ Interview with Audit Manager, *supra* note 278, at 28.

²⁸⁵ Interview with Former Deputy Assistant Inspector General and Director, Office of Inspector Gen., Dep’t of Homeland Sec. 34–35 (May 31, 2018).

²⁸⁶ Interview with Audit Manager, *supra* note 278, at 30.

²⁸⁷ Office of Inspector Gen., Dep’t of Homeland Sec., Record of Discussion (Oct. 11, 2017) (OIG-040873-REV).

²⁸⁸ Office of Inspector Gen., Dep’t of Homeland Sec., Interview with Louisiana Staff (Sept. 20, 2017) (OIG-040842-REV).

This mentality contributed to a lack of confidence in the OIG’s products among its own employees. One OIG employee felt the supervisor’s perspective that auditors were simply supposed to perform work to support the supervisor’s report made the supervisor “totally impaired”²⁸⁹ The employee also believed producing “feel-good” reports for the agency compromised the OIG’s independence and responsibility as an objective watchdog.²⁹⁰

The “feel good report” mentality may have led the OIG to omit information critical of FEMA. In the Baton Rouge report, for example, supervisors removed a draft section on the Department’s and FEMA’s struggle to manage employees in accordance with the federal premium pay cap. A FEMA official identified this issue as a “defining need of [the Office of the Chief Component Human Capital Officer] or DHS,”²⁹¹ and the team included the information in the draft report sent to their supervisor. The final report, however, included no reference to the issue.

The Committee also found evidence the OIG used its report to refute the testimony of Committee witnesses, and that FEMA officials complained to the OIG about congressional scrutiny. When the OIG team deployed to Baton Rouge following the flooding in August 2016, a FEMA official complained about the Committee’s oversight of the response and Congressman John Mica’s recent CODEL trip to Louisiana. “[It’s] very difficult to be transparent about something that would embarrass FEMA,” the FEMA official told the OIG.²⁹² “[We’ve] been taking a bashing since [Congressman] Micah [sic] came here [to Louisiana].”²⁹³

As the OIG team worked on the report, their manager emailed them about the Committee’s September 2016 hearing and suggested they refute the Louisiana mayors’ testimony in the OIG report. “I am a bit in love with using the testimony to highlight misunderstanding by the mayors, even refuting the mayors blaming FEMA for no food or water,” he wrote.²⁹⁴ The team followed his advice and included a statement about the mayors’ testimony in an early draft of the report.²⁹⁵ Following the first supervisor’s retirement, the OIG edited the section and ultimately included it in the final report:

During a congressional hearing in September 2016, elected officials complained that FEMA had not provided water to local communities and was ineffective in addressing survivors’ housing needs. However, based on our observations, these criticisms indicate a misunderstanding of FEMA, state, and local roles and responsibilities during disaster response and the complexity of the MHU installation process.²⁹⁶

²⁸⁹ Interview with Audit Manager, *supra* note 278, at 71.

²⁹⁰ *Id.* at 104.

²⁹¹ OIG-005658.

²⁹² Office of Inspector Gen., Dep’t of Homeland Sec., Interview Notes (OIG-006285).

²⁹³ *Id.*

²⁹⁴ Email from Audit Team Supervisor, to Audit Team (Sept. 14, 2016, 1:38 PM) (OIG-001641).

²⁹⁵ Draft Report to Audit Team Supervisor (Dec. 12, 2016).

²⁹⁶ OFFICE OF INSPECTOR GEN., DEP’T OF HOMELAND SEC., FEMA’S INITIAL RESPONSE TO THE 2016 CATASTROPHIC FLOODING IN LOUISIANA, *supra* note 269, at 8.

The OIG’s overt attempt to refute the mayors’ testimony is particularly troubling because the OIG never made an effort to formally interview local officials in Louisiana about the response, did not reach out to any of the mayors who testified at the hearing to discuss their testimony, and admitted they only talked to one local official during the course of their work in Baton Rouge—and only because he asked to speak with them.²⁹⁷

Finally, the Committee found signs of mismanagement and potential retaliation within the OIG. One OIG employee believed, prior to the recent reorganization within the OIG, she could not raise concerns with her supervisors. She told Committee staff she was unaware of any policies or procedures for reporting concerns to upper management and “assume[d] you’d go to your next supervisor or maybe possibly hotline it, but . . . didn’t know that for sure.”²⁹⁸ Even worse, she said she “didn’t feel comfortable” expressing her concerns to management because of her previous interactions with some OIG supervisors.²⁹⁹ She described a “heated” encounter she had with one supervisor when she expressed concerns the supervisor was not following proper auditing procedures.³⁰⁰ After the confrontation, the employee’s own supervisor reassigned her to a more junior role, for which she was overqualified, and told her she should learn how to follow the other supervisor’s instructions.³⁰¹

The apparent dysfunction within the OIG was further evidenced by its refusal or inability to respect the integrity of the Committee’s investigative process. OIG officials who attended the interviews, as well as all of the witnesses, were instructed to keep the contents of the interviews confidential. In the final interview the Committee conducted, however, the witness made it clear current and former OIG employees had widely discussed the contents of the Committee’s interviews. When asked whether she had spoken to anyone else about the interview, she responded:

Yes. . . . My son, grandson, my sister, my boyfriend. . . . Chris Dodd, Paige Hamrick, Pat Epperly, Patti Smith. I went to happy hour with those two ladies. . . . Patti Smith, she retired. Pat Epperly still works here. . . . I was trying to pump them if they knew anything. . . . Nobody had told us we weren't supposed to talk about things.³⁰²

As a result of the Committee’s investigation, the OIG ultimately withdrew all thirteen EMOT reports. Both of the supervisors who oversaw the Baton Rouge report have retired. In a memorandum announcing the decision to withdraw the reports, the OIG noted “the subject reports may not have adequately answered objectives and, in some cases, may have lacked sufficient and appropriate evidence to support conclusions.”³⁰³

²⁹⁷ Briefing with Office of Inspector Gen., Dep’t of Homeland Sec. (June 29, 2017); Interview with Audit Manager, *supra* note 278, at 37.

²⁹⁸ Interview with Audit Manager, *supra* note 278, at 78.

²⁹⁹ *Id.* at 46.

³⁰⁰ *Id.* at 45, 136–38.

³⁰¹ *Id.*

³⁰² Interview with Former Deputy Assistant Inspector General and Director, *supra* note 238, at 147–48.

³⁰³ Memo from John E. McCoy, Asst. Inspector Gen. for Audits, Office of Inspector Gen., Dep’t of Homeland Sec., to Jeff Byard, Assoc. Adm’r for Response and Recovery, Fed. Emergency Mgmt. Agency (Mar. 8, 2018).

V. Conclusion

Public expectations do not always coincide with the proper role and realistic capabilities of federal agencies. The Katrina Select Committee noted “the problematic reality that many Americans—and perhaps even some state and local officials—falsely view[] FEMA as some sort of national fire and rescue team. . . . FEMA is not a first responder agency with the resources to assume principal responsibility for overwhelmed state and local governments during a disaster.”³⁰⁴ Rather, federal agencies tasked with disaster response and recovery do so under the Stafford Act’s federalist structure, which ascribes primary leadership and responsibility to the affected state, territory, or tribe.³⁰⁵

Despite such previous warnings, misunderstandings remain. The Texas General Land Office recently acknowledged “many officials and the general public have not read or understood the Stafford Act, and therefore expect more from the federal programs than they can legally deliver.”³⁰⁶ As a result, individuals and communities may underprepare for disasters. For example, the GLO noted “83% of the homes impacted by Hurricane Harvey did not have flood insurance,” which made recovery even more difficult.³⁰⁷

Many of the Select Committee’s observations on the challenges and limitations of federal assistance remain true today. The 2016 Baton Rouge flood and the 2017 hurricane season have illustrated once again the federal government is not a cure-all solution when disaster strikes. All levels of government—down to the individual citizen—should take steps now to increase preparedness for future natural disasters.

³⁰⁴ KATRINA REPORT, *supra* note 55, at 13.

³⁰⁵ See Christina E. Wells, *Katrina and the Rhetoric of Federalism*, 26 MISS. C. L. REV. 127, 132 (2007) (“[T]he [Stafford Act] contemplates states and localities as having primary authority for disaster relief and response, with the federal government serving in a supplemental role. The Stafford Act further manifests federalism principles through its restrictions on federal authority. Specifically, the President may declare the existence of a ‘major disaster’ or an ‘emergency’ (with either designation triggering federal aid) only at the request of the governor of an affected state who finds that the disaster or emergency ‘is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary.’”).

³⁰⁶ TEXAS GEN. LAND OFF., HURRICANE HARVEY: TEXAS AT RISK, *supra* note 21, at 33.

³⁰⁷ *Id.* at 5.