

COMMENT

Sheltering Deprivations: FEMA, Section 408 Housing, and Procedural Redesign

Having weathered nearly two years of unprecedented disasters and unrelenting public criticism, the Federal Emergency Management Agency (FEMA) is the most indispensable—and most distrusted—pillar of the nation’s emergency management infrastructure. A constellation of well-documented failures, mostly in the wake of Hurricane Katrina, has created an image of an agency adrift. Yet FEMA’s role in the Gulf Coast recovery effort has only intensified; the agency is now responsible for sheltering over a million disaster survivors.

Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (“Stafford Act”)¹ forms the core of the federal government’s emergency housing regime. The provision guarantees up to eighteen months of housing benefits for all disaster survivors—regardless of their means—who can demonstrate substantial damage to their primary residence.² As the agency charged with administering this program, FEMA has earned stinging rebukes from survivors and lawmakers for erroneously denying thousands of meritorious housing requests while paying out millions of dollars in fraudulent claims.³ FEMA’s mistakes are in part the product of two mutually reinforcing

1. 42 U.S.C. §§ 5121-5206 (2000).

2. This eighteen-month deadline can, however, be extended at FEMA’s discretion if “due to extraordinary circumstances an extension would be in the public interest.” Federal Assistance to Individuals and Households, 44 C.F.R. § 206.110(e) (2006). Indeed, FEMA recently bowed to public pressure and extended the duration of housing benefits for Katrina survivors. *See, e.g.*, Spencer S. Hsu, *Housing Aid Extended for ’05 Storm Victims*, WASH. POST, Jan. 20, 2007, at A2; Editorial, *Nowhere To Turn for Shelter*, N.Y. TIMES, Jan. 19, 2007, at A22.

3. *See, e.g.*, U.S. GOV’T ACCOUNTABILITY OFFICE, HURRICANES KATRINA AND RITA: UNPRECEDENTED CHALLENGES EXPOSED THE INDIVIDUALS AND HOUSEHOLDS PROGRAM TO

factors. First, the agency's organizational structure relies heavily on a combination of contract and temporary employees to conduct housing inspections that determine benefit eligibility.⁴ Second, with survivors scattered across the country and unable to attend FEMA inspections, many claimants have been forced to rely on FEMA's sometimes cursory, and potentially erroneous, *ex parte* conclusions.

FEMA has also proven incapable of communicating the reasons underlying its eligibility determinations. Unable to decipher the grounds for benefit denials, some hurricane survivors with valid claims have failed to take advantage of FEMA's appeals process.⁵ And although a dedicated cadre of volunteer lawyers has helped survivors navigate the section 408 process, its ranks are limited and its time spread thinly among the myriad legal issues associated with Hurricane Katrina.⁶

FEMA's recent troubles foreshadow what will likely occur when future catastrophes, natural or man-made, stretch the agency's capacity and thrust countless citizens into the unfamiliar role of government dependents. In response, administrative law scholars should consider ways to insulate this unique class of beneficiaries from the consequences of agency failure.

After describing the section 408 program in Part I, this Comment offers two positive procedural reforms to reduce the incidence of erroneous emergency housing deprivations. The first proposal, outlined in Part II, calls on FEMA to grant an in-person hearing to any section 408 claimant who wishes to challenge the agency's eligibility determination. The second proposal, presented in Part III, seeks to make this adjudicatory process more effective and to further reduce agency error by awarding attorney's fees for successful section 408 appeals. I conclude by asking Congress—which is led by

FRAUD AND ABUSE; ACTIONS NEEDED TO REDUCE SUCH PROBLEMS IN FUTURE 4 (2006), available at <http://www.gao.gov/new.items/do61013.pdf>.

4. See *id.* at 9. These workers are often poorly trained to conduct inspections. See *id.* at 4.
5. See Minority Staff of the House Fin. Servs. Comm., Meeting Housing Needs Arising out of Hurricane Katrina: A Status Report One Year Later (Aug. 24, 2006), <http://financialservices.house.gov/KatrinaHousingReport.html> (“[A] significant number of families in financial need simply dropped out of the program, due to factors such as FEMA’s administrative incompetence, the difficulty in dealing with FEMA, and/or the failure to have any confidence that they are still eligible for assistance.”).
6. See Jonathan P. Hooks & Trisha B. Miller, *The Continuing Storm: How Disaster Recovery Excludes Those Most in Need*, 43 CAL. W. L. REV. 21, 36-37 (2006).

some of section 408's fiercest critics⁷—to amend the Stafford Act to incorporate these procedural redesign proposals.

I. THE MECHANICS OF SECTION 408 HOUSING

Shuffled from makeshift camps to hotels and motels and finally to mobile homes and subsidized apartments, Katrina survivors have endured a long road toward normalcy—one made more difficult by FEMA's inadequate administration of section 408. This Part briefly describes the standard process used to determine emergency housing eligibility and the problems FEMA experienced in meeting its statutory mandate after Katrina.

To qualify for section 408 assistance, an applicant must: (1) have incurred uninsured (or underinsured) damage in a federally declared disaster area; (2) be a citizen or legal resident of the United States; (3) have resided in the damaged home at the time of the disaster; and, most critically, (4) be unable to access or live in the home because of disaster damage.⁸ Once an applicant contacts FEMA for assistance, the agency arranges for one of its contract or temporary employees (who often operate out of FEMA's Disaster Recovery Centers) to meet with the survivor at her home and to perform an inspection to determine the extent of damage.⁹ If, after inspection, an applicant is accepted into the program, she receives a check from FEMA covering the cost of either an apartment or a mobile home. The agency also requires a beneficiary periodically to recertify her "continuing need"¹⁰—presumably an antifraud mechanism designed to ensure that disbursed funds are not being used for nonhousing expenditures. If rejected, an applicant must be told the grounds for the denial and can appeal the decision by writing a letter to the agency stating why she thinks the decision is incorrect.¹¹ FEMA then reconsiders the application before making a final determination.

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7. See, e.g., Letter from Rep. Barney Frank et al. to Michael Chertoff, Sec'y of the Dep't of Homeland Sec. (Feb. 3, 2006), available at <http://financialservices.house.gov/pro2032006.html> (protesting the inadequate administration of section 408).
 8. See Federal Assistance to Individuals and Households, 44 C.F.R. § 206.110 (2006); U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 3, at 57.
 9. See U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 3, at 10–11.
 10. *Id.* at 65.
 11. See FEMA, HELP AFTER A DISASTER: AN APPLICANT'S GUIDE TO THE INDIVIDUALS & HOUSEHOLDS PROGRAM 10–11 (2005), available at http://www.fema.gov/pdf/assistance/process/help_after_disaster_english.pdf; cf. 42 U.S.C. § 5189a(c) (2000) (authorizing the executive to "issue rules which provide for the fair and impartial consideration of appeals").

In the case of Hurricane Katrina, the application process was beset with severe confusion and repeated accusations of erroneous housing denials.¹² FEMA was twice haled into federal court for failing to provide adequate notice of the grounds for its housing determinations.¹³ The agency also had considerable difficulty adjusting to the human displacement caused by the disaster.¹⁴ Specifically, because Katrina scattered victims across the country, many applicants were unable to return to their homes to accompany FEMA employees during the inspection process.¹⁵ Without the applicant or her designated agent present, FEMA could only inspect the exterior of the house, thus remaining ignorant of any interior damage.¹⁶ While it is impossible to determine the precise rate of agency error, one report tracing FEMA's section 408 stewardship documented a 50% error rate in a sample of approximately 12,000 housing denials.¹⁷

Anecdotal evidence from section 408 claimants paints an equally sobering picture. Some survivors have complained that FEMA has cancelled scheduled inspections, adding to the time applicants must wait to transition into stable housing.¹⁸ Others have noted FEMA's curious, but seemingly widespread, pattern of denying housing damage in areas that the agency's own geospatial mapping showed to be entirely uninhabitable.¹⁹

Charitably put, FEMA has been underperforming. The agency's post-Katrina record demonstrates a troubling gap between its actual administration of section 408 and its duty to distribute housing benefits fairly to those in need

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12. To manage the unexpected demands placed on it by Hurricane Katrina, the agency first relied on local governments and private organizations to provide stopgap housing and later reimbursed them for doing so. This intermediate step was funded by section 403 of the Stafford Act, *see* 42 U.S.C. § 5170b, and allowed survivors to obtain federally funded shelter without first having to establish their eligibility under section 408, *see* U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 3, at 26-27 (noting that delays were avoided by resorting to section 403).
 13. *See* Ass'n of Cmty. Orgs. for Reform Now (ACORN) v. FEMA, 463 F. Supp. 2d 26 (D.D.C. 2006); *McWaters v. FEMA*, 436 F. Supp. 2d 802 (E.D. La. 2006).
 14. *See* Hooks & Miller, *supra* note 6 (chronicling anecdotal evidence from disaster survivors).
 15. To complete a breathtaking 1.9 million inspections for Hurricanes Katrina and Rita, the agency relied on alternative forms of damage verification, including geospatial mapping and satellite images, to estimate the amount of flooding in particular areas of Louisiana and Mississippi. *See* U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 3, at 19 & n.21.
 16. *See id.* at 24 tbl.4.
 17. *See* Hurricane Katrina Project, Appleseed, Houston City Report 26 (2006), <http://www.appleseeds.net/servlet/GetArticleFile?articleFileId=239>.
 18. *See* Hooks & Miller, *supra* note 6, at 68-69.
 19. *See id.* at 67; Hurricane Katrina Project, *supra* note 17, at 26.

after a catastrophic event. Although Congress has unveiled a series of structural reforms to reorganize the agency,²⁰ the existing policy agenda sweeps too broadly (and at great cost) while neglecting the implementation failures described above. Instead of reflexively opting for far-reaching agency reorganization, policymakers should consider a few carefully crafted and minimally invasive procedural reforms that may reduce erroneous housing deprivations more quickly and efficiently.

II. DISPLACEMENT, DEMOGRAPHICS, AND DIGNITY: THE CASE FOR DEPRIVATION HEARINGS

From initial application to final appeal, the existing section 408 procedures provide few safeguards to prevent agency error. This Part focuses on redesigning the administrative appeals process to reduce the incidence of erroneous housing deprivations. Specifically, the Stafford Act should be amended to provide section 408 claimants the right to an in-person hearing to contest their eligibility status. Such deprivation hearings need not incorporate a full bundle of trial-type procedural rights.²¹ The hearings should, however, provide the right to present evidence, including oral testimony, in front of an impartial administrative judge who will make a final—and judicially unreviewable²²—determination on the basis of the evidence presented. Additionally, the hearings should be conducted at a time and place reasonably convenient for the claimant.²³

Three considerations—each evident in the aftermath of Katrina but not necessarily unique to it—would support an enhanced appeals regime that includes deprivation hearings. First, the physical displacement that attends events causing mass devastation puts survivors at a distinct disadvantage in rebutting FEMA’s initial damage assessment. Under the current process, displaced survivors have trouble marshaling physical evidence of disaster

20. See generally KEITH BEA ET AL., CONG. RESEARCH SERV., FEDERAL EMERGENCY MANAGEMENT POLICY CHANGES AFTER HURRICANE KATRINA: A SUMMARY OF STATUTORY PROVISIONS (2006), available at <http://www.fas.org/sgp/crs/homsec/RL33729.pdf> (discussing congressional reform measures).

21. Indeed, I am mindful of the diminishing marginal utility of additional procedures.

22. Given the program’s eighteen-month duration, adding judicial review would undermine prompt claim resolution.

23. To be clear, I base my arguments on what would make the best policy, not on what might be the constitutional minimum under prevailing procedural due process doctrine. See, e.g., *Mathews v. Eldridge*, 424 U.S. 319 (1976). This approach undoubtedly strikes a balance that is more favorable to the claimant.

damage to demonstrate their section 408 eligibility. A deprivation hearing with the possibility of oral testimony would alleviate this evidentiary deficit, animating an appeal in ways that a sterile letter might not²⁴ and potentially providing critical damage details unknown to FEMA.²⁵

Second, compared to previous disaster victims, Katrina survivors are disproportionately low-income and elderly²⁶—a function, to be sure, of the Gulf Coast's particular demographics, but also a reflection of those most at risk in major urban disasters. Without deprivation hearings, these survivors have been unable to present their section 408 claims in the strongest light. This is not to say, of course, that FEMA should always fashion its procedures to give claimants the best chance of winning. This consideration merely suggests that the current process, applied to certain high-risk demographic groups, is ill suited for proper claim resolution.²⁷

Finally, there is a distinct dignity interest that should not be ignored.²⁸ The immense stress placed on survivors as a consequence of unpredictable, and sometimes erratic, agency behavior cuts in favor of providing deprivation hearings before the government closes the door to what may be its most fundamental post-disaster benefit. Though dignity concerns have long been regarded as unprincipled or immeasurable,²⁹ disaster situations should push

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24. Cf. Jerry L. Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value*, 44 U. CHI. L. REV. 28, 43 (1976) (“[A] face-to-face encounter with the claimant has a substantial positive correlation with acceptance of the claim.”).
 25. Such a hearing would be particularly important if FEMA had conducted the inspection without the applicant or her designated agent present. See *supra* note 16 and accompanying text.
 26. See, e.g., U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 3, at 12; Mark Henderson, *Katrina Hit the Old of All Races*, TIMES (London), Feb. 18, 2006, at 33 (“The truly unique signature of Katrina is the selectivity for the oldest members of the population” (quoting John Mutter, deputy director of the Earth Institute)).
 27. Cf. *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970) (noting, in the welfare context, that “[w]ritten submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance”).
 28. See STEPHEN G. BREYER ET AL., *ADMINISTRATIVE LAW AND REGULATORY POLICY: PROBLEMS, TEXT, AND CASES* 675 (6th ed. 2006) (commenting that the objective of dignitary interests “is for the claimant to feel that her interests have been recognized and respected and that justice has been done”).
 29. See Mashaw, *supra* note 24, at 50 (“The obvious difficulty with a dignitary theory of procedural due process lies in defining operational limits on the procedural claims it fosters.”). But see *Gray Panthers v. Schweiker*, 652 F.2d 146, 162 (D.C. Cir. 1980) (“[P]erhaps [the] most important reason for generally insisting upon a hearing is that no

this soft variable to the forefront of procedural design. Indeed, maintaining the dignity of survivors stands at the core of FEMA's stated mission, which recognizes that the "emotional toll that disaster brings can sometimes be even more devastating than the financial strains of damage and loss of home, business, or personal property."³⁰

Is FEMA capable of conducting deprivation hearings? History suggests as much, given that the agency successfully constructed an identical process for section 408 claimants before it quietly—and without comment—discarded the procedure in 2002.³¹ FEMA is also capable of shouldering the additional cost of deprivation hearings, particularly because not all disaster victims will request a hearing³² and because the hearings themselves are unlikely to be time-intensive. Additionally, the eighteen-month duration of section 408 benefits will limit the opportunities to request a deprivation hearing, thereby reducing the total cost to FEMA. Thus, like the housing program itself, deprivation hearings will not be a permanent fixture in the federal budget.

Another familiar objection is that the fiscal burden of deprivation hearings, however limited, might reduce the overall pool of money available to disaster victims.³³ Stated differently, might not deprivation hearings unwittingly deprive survivors of much-needed assistance? In the traditional welfare context, this argument carries considerable force. But disasters may be different. Unlike welfare budgets, emergency budgets (backed by "do what it takes" funding commitments) are highly flexible and not strictly capped,³⁴

other procedure so effectively fosters a belief that one has been dealt with fairly, even if there remains a disagreement with the result.").

30. FEMA, *Coping with Disaster*, <http://www.fema.gov/rebuild/recover/cope.shtm> (last visited Apr. 25, 2007).
31. See *Temporary Housing Assistance for Emergencies and Major Disasters Declared on or Before October 14, 2002*, 44 C.F.R. § 206.101(m)(3)(ii)(E)(2) (2006) (providing claimants with, among other things, "basic safeguards of due process, including cross-examination of the responsible official(s), access to the documents on which FEMA is relying, the right to counsel, the right to present evidence, and the right to a written decision").
32. Cf. David A. Super, *Are Rights Efficient? Challenging the Managerial Critique of Individual Rights*, 93 CAL. L. REV. 1051, 1087-88 (2005) (discussing the food stamp program).
33. Cf. *Wheeler v. Montgomery*, 397 U.S. 280, 284 (1970) (Burger, C.J., dissenting) ("[N]ew layers of procedural protection may become an intolerable drain on the very funds earmarked for food, clothing, and other living essentials.").
34. See, e.g., Jonathan Weisman & Jim VandeHei, *Bush To Request More Aid Funding: Analysts Warn of Spending's Impact*, WASH. POST, Sept. 15, 2005, at A1 (noting the Bush Administration's belief that "the U.S. economy can safely absorb a sharp spike in spending and budget deficits" and its willingness "to spend whatever it takes to rebuild the region and help Katrina's victims get back on their feet").

making concerns about budgetary tradeoffs less worrisome than they otherwise would be.

III. DISASTER REPRESENTATION AND COST INTERNALIZATION: THE CASE FOR ATTORNEY'S FEES

By itself, the addition of deprivation hearings likely will not do enough to avoid erroneous section 408 denials.³⁵ To make such hearings more effective, and to respond to a severe but underappreciated structural deficiency, this Part proposes the awarding of attorney's fees to successful section 408 appellants. A fee-shifting provision would specifically address two kinds of problems—one grounded in the post-disaster realities of available legal assistance, and one stemming from concerns about agency decision-making.

Data gathered by the Government Accountability Office reveal a sharp decline in the rate of post-Katrina section 408 appeals (9%) as compared to appeal rates from previous disasters (23%).³⁶ The most plausible explanation for this troubling decline is a shortage of legal assistance to shepherd claimants through the appeals process.³⁷ Unlike in other markets for legal representation that develop and adapt over time, disasters of Katrina's scope immediately increase demand for already scarce legal services.³⁸ Providing attorney's fees would mitigate this problem, incentivizing entry into the thinly stretched legal assistance market and enhancing the informed vindication of rights.

Three concrete benefits would flow from compensating attorneys for successful representation: (1) the *quantity* of appeals would increase as the market for legal representation expanded; (2) the *quality* of appeals would increase as attorneys, in the hopes of a fee award, would rationally sort

35. See, e.g., BREYER ET AL., *supra* note 28, at 672; Super, *supra* note 32, at 1086 (“[T]he mere possibility of a fair hearing is unlikely to influence an eligibility worker that otherwise would have disregarded the program’s rules.”).

36. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 3, at 18 tbl.3 (noting the decline from the 2003 hurricanes to Hurricanes Katrina and Rita in the percentage of applicants appealing assistance decisions).

37. See, e.g., Hooks & Miller, *supra* note 6, at 36-37; see also BREYER ET AL., *supra* note 28, at 673 (“The main factors [for low appeal rates] seem to be availability of legal representation and socioeconomic background.”).

38. See Super, *supra* note 32, at 1093-94 (noting limitations in access to legal representation for public benefits claims); see also Hooks & Miller, *supra* note 6, at 36-37 (remarking that after Katrina, “many remaining attorneys, hurricane survivors themselves, had lost their offices and were unable to provide . . . services alone”).

meritorious cases from less promising ones;³⁹ and (3) attorneys would be encouraged to perform an investigatory role—uncovering factual evidence, such as proof of property damage, insurance coverage, and occupancy, that would be too financially onerous to seek out without the promise of fees. Indeed, in the context of a section 408 appeal, such evidence has been critical in correcting FEMA’s mistakes.⁴⁰

A fee provision would also improve the accuracy of agency decisions. An additional cost that attached only as a result of successful appeals would incentivize the agency to reduce its errors *ex ante*, rather than rely on the administrative appeals process to catch its mistakes *ex post*.⁴¹ Under the current system, FEMA externalizes the cost of erroneous denials; the survivors bear the burden of the agency’s mistakes.⁴² The addition of fee shifting would force the agency to internalize the cost of error. Consequently, the threat of fees would sharpen the agency’s approach to housing decisions, encouraging it to move quickly to grant or deny benefits in clear cases and to focus more intently on the close cases likely to generate appeals.⁴³

Might these altered incentives encourage FEMA to err in favor of the survivor to avoid incurring the expense of an appeal and fee award? Perhaps. In fact, this may be an unavoidable consequence of my proposal. But compared to the individual survivor, FEMA (and society as a whole) is better suited to absorb the cost of an erroneous determination. A measure of caution, even if suboptimal in terms of efficiency, might in fact be a normatively preferable result—particularly if one credits the view implicit in my argument that in times of disaster, society should act as an insurer against the costs of agency error.⁴⁴

39. This sorting effect would be weakened if attorneys bundled claims indiscriminately in the hopes of winning the maximum number of appeals.

40. See Hooks & Miller, *supra* note 6, at 52; cf. Hurricane Katrina Project, *supra* note 17, at 26 (suggesting the importance of having on-the-ground evidence of agency error).

41. See, e.g., Super, *supra* note 32, at 1094 (commenting that attorney’s fees can “deter[] some unlawful behavior” in the administration of public benefits programs).

42. See, e.g., Erika Geetter, Comment, *Attorney’s Fees for § 1983 Claims in Fair Hearings: Rethinking Current Jurisprudence*, 55 U. CHI. L. REV. 1267, 1290 (1988) (“[A]gencies have no financial incentive to reduce the rate of error since no penalty is imposed for losing when a decision is challenged.”).

43. Cf. BREYER ET AL., *supra* note 28, at 680 (noting that adjusting agency incentives “may do more to cure administrative errors and promote consistency than an array of formal hearing rights”).

44. This conception of disaster exceptionalism reflects longstanding notions of enhanced government duty after catastrophes. See, e.g., Lawrence M. Friedman & Joseph Thompson, *Total Disaster and Total Justice: Responses to Man-Made Tragedy*, 53 DEPAUL L. REV. 251

To prevent this fee provision from blossoming into an unwieldy expense, but to preserve its deterrent and representation-enhancing effect, all fees should be crafted as flat, fixed payouts. Under this approach, FEMA would retain a degree of control over the total impact of fee outlays on its budget; the number of erroneous decisions would necessarily determine the amount it would be forced to pay in attorney compensation. Indeed, this degree of control is critical to maintain the deterrent impact of the award—if FEMA wishes to pay less, it must be more careful in its eligibility decisions.⁴⁵ At the same time, because many section 408 claims are relatively simple and can be handled concurrently, capping the fee (even at below-market rates) should not dissuade attorneys from bundling individual cases to boost their compensation.⁴⁶ Thus, fees need not be large or unpredictable to produce their intended effect.

CONCLUSION

For many survivors, the section 408 housing program represents a transitional benefit, marking the boundary between continued insecurity and personal stability following a disaster. FEMA's ineffective administration of the program demands close attention and substantive change. This Comment has offered two minimally invasive reforms to the section 408 program that can safeguard the interests of survivors while improving agency performance. Given the myriad difficulties FEMA has faced, the ideas presented here by no means represent the only options worthy of consideration. But by focusing on procedural design, my proposal offers a remedy that addresses issues of

(2003); Michele L. Landis, *Fate, Responsibility, and "Natural" Disaster Relief: Narrating the American Welfare State*, 33 LAW & SOC'Y REV. 257 (1999).

45. In the environmental law context, some commentators have suggested that asymmetric attorney's fee awards in federal litigation can lead to inefficient agency expenditures due to protracted litigation. See, e.g., Chad Settle et al., *Citizen Suits*, in THE LAW AND ECONOMICS OF THE ENVIRONMENT 217, 245 (Anthony Heyes ed., 2001); see also Rosemary O'Leary, *The Impact of Federal Court Decisions on the Policies and Administration of the U.S. Environmental Protection Agency*, 41 ADMIN. L. REV. 549, 562 (1989) (noting that the EPA spent 150 staff work-years contesting a claim that was projected to prevent one cancer death every thirteen years).
46. I hasten to caution that setting this fee too low will likely drain the proposal of its usefulness, both in terms of adequately stimulating the legal assistance market and in terms of generating quality representation for victims. Cf. Robert R. Rigg, *The Constitution, Compensation, and Competence: A Case Study*, 27 AM. J. CRIM. L. 1, 24 (1999) ("[E]xperience leads one to conclude that the quality of the representation a client receives is inexorably intertwined with the level of compensation the lawyer receives.").

practical implementation often lost in larger structural debates.⁴⁷ It thus rejects both the unacceptable status quo and the equally unattractive (but oft-mentioned) option of dismantling the agency.⁴⁸ The result is an approach that strives to ensure that future survivors will not have to endure “Hurricane FEMA”⁴⁹: the administrative disaster that, so far, has characterized the agency’s emergency housing stewardship.

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47. See BREYER ET AL., *supra* note 28, at 681 (“[T]here do not appear to be large political rewards from improving administration.”).
 48. See, e.g., COMM. ON HOMELAND SEC. & GOVERNMENTAL AFFAIRS, HURRICANE KATRINA: A NATION STILL UNPREPARED, S. REP. NO. 109-322, at 607 (2006) (proposing “to abolish FEMA and build a stronger, more capable structure within [the Department of Homeland Security]”).
 49. Peter Whoriskey, “*We Called It Hurricane FEMA*”: *Trailer Park Was Hastily Emptied*, WASH. POST, Mar. 12, 2007, at A1.