Hurricane Disaster Relief:
FEMA Appeals Training

Monday, November 20, 2017 | 6:00 pm – 8:00 pm

Co-Sponsoring Organizations:
Chief Judge's Task Force on Hurricane Relief
Association of Pro Bono Counsel
City Bar Justice Center
Ayuda Legal Huracán María
Hurricane Disaster Relief: FEMA Appeals Training

Monday, November 20, 2017 | 6:00 pm – 8:00 pm

**Faculty**

**Thomas Maligno**  
Director of ProBono and Public Interest, Touro Law School

**William Friedman**  
Acting Director, Storm Response Unit  
New York Legal Assistance Group

**Mary Ellen Martinet**  
Associate Chief Counsel, Response and Recovery Legal Division  
Federal Emergency Management Agency

**Christopher Page**  
Branch Chief, Appeals, Attorney Advisor, Federal Insurance and Mitigation Legal Division  
Federal Emergency Management Agency

**Benjamin Rajotte**  
Attorney Advisor, Federal Insurance and Mitigation Legal Division  
Federal Emergency Management Agency
Hurricane Disaster Relief: FEMA Appeals Training

Monday, November 20, 2017 | 6:00 pm – 8:00 pm

Agenda

6:00 pm – 6:05 pm  Welcome and Call to Action  
John Kiernan, President, New York City Bar Association

6:05 pm – 6:10 pm  Introduction and overview of Disaster Relief Work  
Tom Maligno

6:10 pm – 6:55 pm  FEMA Appeals - the Agency Perspective  
Mary Ellen Martinet, Ben Rajotte & Christopher Page

6:55 pm – 7:40 pm  Advocating FEMA Appeals and Related Issues  
William Friedman

7:40 pm – 8:00 pm  Volunteer Opportunities
- City Bar, Direct Volunteering and Monday Night Clinics  
  Lynn Kelly, Director, City Bar Justice Center
- APBCo and Firms  
  Jennifer Cowan, Pro Bono Counsel & Litigation Counsel, Debevoise & Plimpton, LLP
- East Harlem Emergency Services Center for Displaced Hurricane Victims  
  Jordan Dressler, New York City, Civil Justice Coordinator, Office of Civil Justice, NYC Human Resources Administration

NY CLE Credit  
1.5 Skills
Hurricane Disaster Relief: FEMA Appeals Training

Monday, November 20, 2017 | 6:00 pm – 8:00 pm

Table of Contents

Notes on Faculty ............................................................................................................................................... i

Aftermath of Hurricanes Harvey, Irma & Maria: Federal Disaster Assistance (PPT) ......................... 1
   By: Mary Ellen Martinet

Hurricanes Harvey, Irma and Maria: National Flood Insurance Program (NFIP) – Overview and Claims Handling (PPT) .................................................................................................................. 15
   By: Christopher Page & Benjamin Rajotte

FEMA Appeals, Recoupment, and Other Issues for Disaster Survivors (PPT)................................. 51
   By: William Friedman

Volunteer Opportunities .............................................................................................................................. 70
Notes on Faculty

William Friedman is the Acting Director of the New York Legal Assistance Group (NYLAG)’s Storm Response Unit, which provides comprehensive legal services for victims of Superstorm Sandy. During the storm recovery process, he has advocated for clients across multiple practice areas, including landlord-tenant, foreclosure, consumer, insurance, and benefit programs. Prior to joining NYLAG, William practiced landlord-tenant and foreclosure defense litigation at Nassau-Suffolk Legal Services. He earned his J.D. from St. John’s University School of Law and his B.A. from Muhlenberg College.

Thomas Maligno is Director of ProBono and Public Interest at Touro College Jacob D. Fuchsberg Law Center and Executive Director of its William Randolph Hearst Public Advocacy Center (PAC), which was created by Touro Law in 2007 to bring together non-profit legal advocacy agencies to provide services to the community while providing opportunities for students to participate in pro bono work and gain hands-on legal training. Housed within the law school, the Center provides furnished offices to the advocacy groups. He oversees the Public Advocacy Center and works with its agencies and Touro Law students. In addition to working with the PAC, Mr. Maligno has developed a wide range of public interest career opportunities for Touro Law students and graduates, and has been a highly visible supporter of pro bono activities at the law school. He is the advisor for the Public Interest Law Organization of Touro (PILOT) and works with the organization in securing summer fellowships. Beyond helping students to fulfill their pro bono requirements, Mr. Maligno has been instrumental in helping students develop an understanding of the value of pro bono work. Student fellows defend the victims of domestic violence, guard the legal interests of children, and work with advocacy groups on a broad spectrum of poverty and civil rights issues. At Touro Law, Mr. Maligno uses the same creative energy for which he is known and applies it to the provision of pro bono work by students and PAC agencies. He serves as a role model for students and those in the community and is a strong advocate for public interest and pro bono work. He instills these values in our students and in everyone he meets. During his 40-year career in public interest law, Mr. Maligno has received numerous state, local and national awards for his efforts in pro bono and public interest work. He has been part of the organized pro bono movement since 1978 when he helped create the Pro Bono Project on Long Island and his leadership was integral in creating a nationally recognized volunteer effort. His ability to bring together the private bar, public interest community, government and legal services contributed to the success of the project. In 1989, Mr. Maligno left the Pro Bono Project to become the Executive Director of Nassau Suffolk Law Services, one of the largest legal services program in the country. During his tenure, the organization was often acknowledged for its creative ways of assisting clients. Mr. Maligno has a nationwide reputation for promoting pro bono representation and is a consultant for the American Bar Association, helping to organize pro bono efforts in numerous communities across the United States. He is also the leader of the organized pro bono effort of both local bar associations; the Nassau County Bar Association and the Suffolk County Bar Association.

Mary Ellen Martinet has been an attorney with the Office of Chief Counsel (OCC) for FEMA since 1995 and was named Associate Chief Counsel for the Response and Recovery Legal Division (RRLD) in July 2010. RRLD provides legal counsel and support to the FEMA Office of Response and Recovery on Stafford Act disaster and emergency assistance authorities. Ms.
Martinet is also responsible for oversight of the FEMA Disaster Operations Legal Reference (DOLR). Prior to becoming the Associate Chief Counsel for RRLD, Ms. Martinet served as the Associate Chief Counsel for Field Counsel (2007-2010) and was a senior field attorney for the Field Attorney Cadre. Ms. Martinet served as the primary field attorney for the 1999 Hurricane Floyd Disaster, NC; the 2000 Cerro Grande Fires, NM; the 2001 World Trade Center Disaster, NY; the 2002 Pacific Typhoons in Guam, CNMI, and FSM; the 2003 California Wildfires; and the 2005 Hurricane Katrina Disaster in MS. Additional deployments include the 2003 Columbia Space Shuttle Emergency and the 2004 Florida Hurricanes. In all, Ms. Martinet has deployed to over 50 disasters. Honors and awards include 2001-2002 and 2006-2007 OCC Awards of Excellence, 2010 OCC Shirley Levy Award, 2011 Chief Counsel Award for Accessibility and Client Services, 2011 FEMA Administrator’s Team Award for Innovation, 2012 and 2013 DHS Office of General Counsel Team Excellence Awards; 2016 FEMA Administrator Team Award; and 2016 DHS Secretary Team Award for Meritorious Service for the Oglala Sioux Housing Mission. Before joining FEMA, Ms. Martinet worked for legal aid and immigrants’ rights groups in California. She is a graduate of the University of California, Berkeley, Boalt Hall School of Law and is licensed in California.

Christopher Page is the Chief of the Appeals Branch of the Federal Emergency Management Agency’s National Flood Insurance Program and an Attorney Advisor within the Program. Chris has extensive experience in several aspects of the NFIP and FEMA overall including Individual Assistance, Public Assistance, and the Hazard Mitigation Grant Program. Chris graduated from Temple University Beasley School of Law and was previously a Presidential Management Fellow.

Ben Rajotte is an Attorney Advisor at the Federal Emergency Management Agency’s National Flood Insurance Program. Before joining FEMA, he was the faculty director of a law school clinic assisting Sandy survivors on Long Island. He graduated in 2002 from Loyola Law School in Los Angeles and in 2007 from NYU Law School with an LLM in environmental studies. Ben was previously an Associate at O’Melveny & Myers LLP before practicing public interest law and becoming a government attorney.
AFTERMATH OF HURRICANES HARVEY, IRMA & MARIA: FEDERAL DISASTER ASSISTANCE

November 20, 2017

Presenter:

Mary Ellen Martinet, FEMA, Washington, D.C.
Associate Chief Counsel, Response and Recovery Legal Division
(202) 646-3341, mary.martinet@fema.dhs.gov
Overview of Disaster Assistance

• The Federal Emergency Management Agency (FEMA) is responsible for implementing the Robert T. Stafford Disaster Relief and Emergency Act (Stafford Act) which is codified at 42 U.S.C. 5121, *et seq.*

• Stafford Act assistance is authorized when the President issues a federal declaration for a Major Disaster (DR) or an Emergency (EM).
FEMA Disaster Declarations

• See https://www.fema.gov/disasters
• For Hurricane Harvey (TX), see https://www.fema.gov/disaster/4332
• For Hurricane Irma (FL), see https://www.fema.gov/disaster/4337
• For Hurricane Irma (PR), see https://www.fema.gov/disaster/4336
• For Hurricane Irma (VI), see https://www.fema.gov/disaster/4335
• For Hurricane Maria (PR), see https://www.fema.gov/disaster/4339
• For Hurricane Maria (VI), see https://www.fema.gov/disaster/4340
Individual Assistance

• When IA is designated under a DR then the following programs may be implemented:
  • Federal Assistance to Individuals and Households Program (IHP), 42 USC 5174
  • Unemployment Assistance (DUA), 42 USC 5177
  • Benefits and Distribution (D-SNAP), 42 USC 5179
  • Food Commodities, 42 USC 5180
  • Legal Services (DLS), 42 USC 5182
  • Crisis Counseling 42 USC 5183 (DR only)
  • Transportation Assistance to Individuals & Households, 42 USC 5189c
  • Disaster Case Management, 42 USC 5189d
  • “Cora Brown” Fund, 42 USC 5201

IA Fact sheets are available under the Office of Response & Recovery, Recovery Directorate at https://www.fema.gov/fact-sheets

See also https://www.disasterassistance.gov/
FEMA Disaster Assistance for Individuals and Households (IHP), 42 USC 5174

• IHP is the primary IA program.

• The implementing regulations are found at 42 CFR 206.110-120.

• FEMA issued the Individuals and Households Program Unified Guidance (IHPUG) in September 2016. It is a single, comprehensive reference containing policy statements and conditions of eligibility for all forms of IHP assistance for all disasters declared on or after September 30, 2016 available at https://www.fema.gov/ihp-unified-guidance
IHP, cont’d

• IHP consists of:
  • **Housing Assistance (HA)**
    • Temporary (financial or direct),
    • Repair/Replacement (financial), and
    • Permanent Housing Construction (financial or direct).
  • **Other Needs Assistance (ONA)**
    • Medical, Dental, Child Care & Funeral Expenses (financial)
    • Personal Property, Transportation & Other Needs (financial)

• Financial Assistance is capped at $33,300/household/declaration for FY 17.
General Eligibility Criteria for IHP

• U.S. citizen, non-citizen national, or qualified alien status;

• Necessary expenses and serious needs directly related to a declared disaster; and

• Insurance or other forms of disaster assistance cannot meet the disaster-related needs—this is part of the “sequence of delivery”, 44 CFR 206.191, https://www.fema.gov/pdf/about/regions/regioni/sequence2008.pdf
Registration Process (via phone/app/online)

• Identity Verification
• Execution of the Declaration and Release Form (FF 009-0-3)
• Occupancy Verification for HA, Personal Property, Moving/Storage, Misc/other expenses
• Ownership Verification for Repair/ Replacement/PHC, Transportation
• Insurance Coverage: all HA and ONA except for Misc/other
Privacy Act Protected System of Records


• An applicant will be assigned a unique registration number for their file.

• An applicant’s legal representative will need to provide a records release request signed by the applicant for access to the applicant’s file.
Award Processing

• FEMA’s IHP award letters are generated through FEMA’s National Emergency Management Information System (NEMIS).

• An applicant may receive various letters from FEMA.

• A Cover Letter will be provided explaining IHP.

• A subsequent award letter will be provided explaining what assistance will be provided, conditions of the grant, and appeal rights.
IHP Appeals Process

- An IHP eligibility determination including the amount of the award may be appealed within 60 days of the date of the notification letter.

- The applicant or their representative must send in a written appeal, sign it, and give the reasons for an appeal. If the representative files the appeal, the applicant must provide a statement giving that person the authority to do so.

- The Regional Administrator (or designee) has the authority to make the appeal decision unless the appeal is regarding ONA and the State/Tribe is administering ONA.

- After FEMA receives the appeal, FEMA reviews the letter and the applicant’s file to determine if there is sufficient documentation to change FEMA’s determination. If more information is needed in order to make a determination, FEMA takes one or more of the following actions:
  - Sends a letter requesting additional information with a deadline of 30 days to submit the additional information.
• After FEMA receives the appeal, FEMA reviews the letter and the applicant’s file to determine if there is sufficient documentation to change FEMA’s determination. If more information is needed in order to make a determination, FEMA takes one or more of the following actions:
  • Sends a letter requesting additional information with a deadline of 30 days to submit the additional information
  • Contacts a third party, such as a contractor, insurance company, or mechanic in order to verify submitted information
  • Schedules an appeal inspection

• The appeal decision should be rendered within 90 days of receipt of the appeal and will represent the Agency’s final determination.
IHP Recoupment Process

- FEMA may take action to recovery improper payments whether made in error or obtained by fraud.
- In addition, applicants who received funds for items covered by insurance, or who spent the funds inappropriately may be required to pay back the funds.
- FEMA collects overpayments through a process called recoupment.
<table>
<thead>
<tr>
<th>Steps</th>
<th>Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identifying Potential Debt</td>
<td>FEMA staff review cases to identify potential debts and submit the case for additional review and validation.</td>
</tr>
<tr>
<td>Verifying Debt</td>
<td>Each case is assigned to another FEMA staff member who reviews to ensure the decision to request an applicant return funds to FEMA is absolutely necessary. All reasonable efforts are made to identify assistance the applicant was eligible to receive and does not need to be returned. FEMA may contact applicants at this stage to give them an opportunity to provide additional documentation to resolve the issue.</td>
</tr>
<tr>
<td>Potential Debt Notification and Appeal</td>
<td>Multiple FEMA managers are required to review each case and concur on the type and amount of assistance that must be returned. FEMA managers also review the case to ensure all appropriate steps to resolve the issue were taken. When FEMA managers determine the assistance must be returned, a written notice is sent to the applicant notifying them of their potential debt, the reason the applicant is not eligible for the assistance provided, and information regarding how they may appeal and/or request an oral hearing.</td>
</tr>
<tr>
<td>Establishing Debt</td>
<td>If an applicant does not appeal the decision or their appeal is not granted, FEMA staff validate the debt and forward the debt to the FFC to implement debt collection activities.</td>
</tr>
<tr>
<td>Debt Compromise, Suspension, and Termination</td>
<td>Once a debt has been established, applicants may work with the FFC to make payment arrangements. In limited circumstances, the FFC may suspend or terminate debt collection.</td>
</tr>
<tr>
<td>Transfer of Debt to U.S. Treasury</td>
<td>If the debt is not paid within 120 days, FEMA refers the debt to Treasury for collection.</td>
</tr>
</tbody>
</table>
For the New York City Bar Association

Presenter: Christopher Page, Branch Chief, Appeals, Attorney Advisor, Federal Insurance and Mitigation Legal Division, Federal Emergency Management Agency, (202) 674-6451, christopher.page4@fema.dhs.gov

Benjamin Rajotte, Attorney Advisor, Federal Insurance and Mitigation Legal Division, Federal Emergency Management Agency, (202) 431-8497, benjamin.rajotte@fema.dhs.gov

Date: November 20, 2017
Reminder

• This presentation is synthesizing a lot of information into a handful of slides. The NFIP/SFIP and associated agency documents and requirements control if there is any potential of conflict with this presentation.
• FEMA may be issuing Bulletins concerning some of these topics that need to be consulted. This presentation is not to limit, expand, predict, prejudice, etc. future Bulletins.
• This presentation is by lawyers, not adjusters.
• This presentation is for information only, not legal advice.
Statutory Authority

- Biggert Waters Flood Insurance Reform Act of 2012 (Biggert Waters), Pub. Law No. 112-141; 126 Stat. 916 (2012)
Over 28 Findings and Purposes for the NFIP

- Provide affordable flood insurance
- Encourage sound land use measures in the floodplain
- Identify flood hazards and disseminate the information
- Protect Federal investment in the floodplain
- Risk sharing
- Encourage risk sharing between Federal government and Policyholders
- Role of lenders
- Role of State and local governments
- Role of private insurance industry
- Carrot and stick
Reauthorization of the NFIP

• The NFIP operates under statutory authority that Congress must periodically renew

• The program’s current authority will expire at midnight on December 8, 2017, 42 U.S.C. 4026; this means FEMA cannot sell policies unless Congress extends the date

• FEMA’s authority to pay claims on existing policies is not affected by the reauthorization, and FEMA will continue to pay claims
Regulations

• Definitions for the Program -- 44 C.F.R. 59.1
• NFIP Community Eligibility -- 44 C.F.R. 59.21-59.29
• Floodplain Management Regulations -- 44 C.F.R. Pt. 60
• Insurance Coverage Amounts and Rates -- 44 C.F.R. 61.1-61.14
• Standard Flood Insurance Policy Forms -- 44 C.F.R. Pt. 61, App. A(1)-(3)
• Appeals and Judicial Review -- 44 C.F.R. 62.20-62.22
• Write Your Own Program -- 44 C.F.R. 62.23
• Mapping Flood Hazards -- 44 C.F.R. Pts. 65-75
NFIP Insurance

Incentives
Flood grants
Community Rating System

Flood Insurance Rate Maps

Floodplain management
Authority to Carry out the Program – 42 U.S.C. 4011

- **Flood insurance** “against loss resulting from physical damage to or loss of real property or personal property related thereto arising from any flood occurring in the United States”

- **Coverage for Increased Cost of Compliance.**
  - To comply with local floodplain ordinances affecting repair or reconstruction after a covered flood loss (Substantial damage)
  - Limited to $30k
## Statutory and Regulatory Coverage Limits

<table>
<thead>
<tr>
<th>USE</th>
<th>Building</th>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single family residential (1-4)</td>
<td>$250,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>Multi-family</td>
<td>$500,000</td>
<td>$100,000</td>
</tr>
<tr>
<td>Non-Residential</td>
<td>$500,000</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

42 U.S.C. 4013(b)
42 U.S.C. 4012(d)
44 C.F.R. 61.6
Sale of Flood Insurance

The NFIP provides affordable, federally backed flood insurance in participating communities.

The NFIP sells flood insurance in 2 ways:
(1) Directly from a servicing agent, and
(2) From flood insurers participating in the Write Your Own (WYO) Program, 44 C.F.R. 62.23.

- Individuals may purchase flood insurance from either FEMA directly or through a participating WYO.
- FEMA Direct policies make up approximately 20% of all flood polices in effect.
- WYO carriers adjust and defend against lawsuits on policies they issue, 44 C.F.R. 62.23.
How to Purchase an NFIP Policy

You should discuss the purchase of flood insurance with your insurance agent

- If your insurance agent does not sell flood insurance, you can contact the NFIP Referral Call Center at (888) 379-9531 to request an agent referral

- There is typically a 30-day wait period between when you buy a flood insurance policy and when it goes into effect (42 U.S.C. 4013), however there are exceptions
  - If the building is newly designated in the high-risk Special Flood Hazard Area (SFHA) and you purchase flood insurance coverage for it within the 13-month period following a map revision, there is a 1-day waiting period
  - If you purchase flood insurance in connection with making, increasing, extending, or renewing your mortgage loan, there is no waiting period
  - If you select additional insurance as an option on your insurance policy renewal bill, there is no waiting period
  - If a property is affected by flooding on burned federal land and the policy is purchased within 60 days of the fire-containment date, there may be no waiting period; waiving of the waiting period is determined at the time of claim
Terms and Conditions of Insurance

By statute, FEMA is required to promulgate by regulation the terms and conditions of insurability, exclusions, and deductibles

- To comply, FEMA has codified into regulations the Standard Flood Insurance Policies, 44 C.F.R. Pt. 61, App. A(1)-(3)
- FEMA’s deductibles are codified at 61.5(d), and FEMA’s guidelines
Understanding the SFIP

• Overview
• Claims handling
• Proof of Loss
• Appeals
• Please contact us
### Three SFIPs

This presentation is generally citing to the **Dwelling Form**, although the General Property and RCBAP Forms also contain such requirements including Proof of Loss and documentation.

<table>
<thead>
<tr>
<th>Dwelling Form</th>
<th>General Property</th>
<th>RCBAP (Residential Condominium Building Association Policy)</th>
</tr>
</thead>
</table>
| • Building designed for use as a residence for 1 to 4 families  
• Also for unit holders in a condominium for limited building and contents coverage  
• Tenants can get Personal Property coverage  
• Replacement Cost (for certain Building property) – all elements below are required:  
  • Single family dwelling,  
  • Principal residence (lived in the home ≥ 80% of the time), and  
  • Insured to ≥ 80% of full replacement cost, or to max NFIP coverage limits = Replacement Cost  
• Otherwise Actual Cash Value (factoring depreciation); this also always applies to certain Building Property in homes eligible for Replacement Cost, other Dwelling Form buildings, and Personal Property | • For certain other buildings that fall outside the other two SFIPs.  
• Includes non-residential and multi-family (≥ 5 families)  
• Actual Cash Value – No Replacement Cost | • For Residential Condo. Assoc.’s – for buildings under a condominium form of ownership  
• Insures the whole building  
• Separately, a unit holder can get a Dwelling Form for limited building and contents coverage  
• For claim pay out, if the building is not insured for ≥ 80 percent of its replacement cost, a co-insurance penalty will apply  
• Eligible for Replacement Cost (for certain Building property) |
Note on Depreciation

Actual Cash Value (ACV) Loss Settlement

• The cost to replace an insured item of property at the time of loss, less the value of its physical depreciation, taking into account factors including age and condition

Replacement Cost (RC or RCV) Loss Settlement

• The cost to replace property with the same kind of material and construction without deduction for depreciation

For Hurricanes Harvey and Irma, Bulletins w-17035, w-17043, w-17058

• For applying depreciation to contents, “[t]he adjuster can use IRS Depreciation Tables as a guide; however, the adjuster should use their judgement to determine fair and reasonable depreciation and base the depreciation on the age and condition of the item at the time of loss”
Claims Handling

What is the SFIP?

• The SFIP is governed by Federal statute and regulation
• The NFIP and SFIP are not regulated by States, and are not subject to State law causes of action
• The SFIP is based on the principle of indemnification for “proved and approved” covered and non-excluded direct physical loss by or from flood to insured property. See 42 U.S.C. 4019 & 4072, 44 C.F.R. Pt. 61, App. A(1), SFIP Dwelling Form I, II(B)(12), III(A)-(B), V, VII(J)-(K), (M), (V)
• It is not an “all peril” or a “valued” policy, see 44 C.F.R. Pt. 61, App. A(1), SFIP Dwelling Form I, II(B)(28); it only covers certain direct physical loss by or from flood to insured property and does not cover wind, rain, wind/rain-driven damage, flood damage to landscaping, etc.
Understanding the SFIP

What is my SFIP?

- While the “policy” is the same, Policyholders may have different housing types and ages of construction, different coverage types (basement vs. post-FIRM, etc.), and different limits of liability
- The SFIP includes the applicable SFIP Form, declarations page, and application, see SFIP Dwelling Form I, II(B)(21)
- The SFIP is organized to include:
  - Section III – Property Covered
  - Section IV – Property Not Covered
  - Section V – Exclusions
  - Section VII – General Conditions including requirements in case of loss
- Additional agency resources:
  - NFIP Bulletins, https://nfip-iservice.com/nfip_docs.html; or to search, go to http://www.nfipiservice.com/bulletinsearch/ – review past and monitor for new Bulletins
Document

As soon as they can **safely** be taken, photographs (video in addition) of the loss and property damaged, and especially because the loss and property may change over time. Do not attempt to drive around barricades, climb on the roof, use a ladder, or take other dangerous action.

**Capture waterlines and damage to property both inside and outside.** You may include a measuring tape.

**Stages to document:** (1) pre-loss baseline, (2) immediately after the loss, (3) during all stages of repair and replacement, and (4) Once complete. Document all stages of repair/replacement to the best of your ability.

**Make an inventory** of all damaged contents including its location, description, replacement cost, and if possible an estimate of depreciation for its Actual Cash Value. Identify all damaged building property that you are able to.

**Take a photograph of the make, model, and serial number** for items like washers and dryers, hot water heaters, kitchen appliances, televisions, and computers. This information should be provided to the adjuster.

**Date and identify your photographs** by room before you remove anything.

**Contractor documentation** as detailed as possible in order to aid the adjuster to determine covered vs. uncovered work. Get, keep, and provide your adjuster with information, including contractor estimates and invoices, including when you pay in
Document

Separate damage from undamaged personal property

Photograph exterior and interior water lines

Photograph and record make, model and serial numbers of mechanicals and appliances
Prevent Further Damage

We understand that some people were not able to return to their homes immediately. Avoid delay in preventing damage. Remove flood damage items that might spread mold or cause more damage if left in place.

• Inform your adjuster of what you are doing, especially if your adjuster has not yet arrived at your home.

• Do your best to take photographs in all stages and before removal:
  ▪ Building items (e.g., flooring); retain samples such as carpet, wallpaper, and drapes for your adjuster’s inspection.
  ▪ Contents (i.e., personal property); separate the damaged items from undamaged items for your adjuster’s inspection.
  ▪ Health risks – After photographing, immediately throw away items posing a health risk, such as perishable foods, clothing, cushions, pillows and the like.

• Water, Moisture, Mildew, or Mold Damage – When this damage occurs in connection with a covered direct physical loss by or from flood, it will be covered unless there is clear evidence of the Policyholder’s failure to inspect and maintain the insured property, where it was feasible to do so,” 44 C.F.R. Pt. 61, App. A(1), SFIP Dwelling Form I, II(B)(12), III(A)-(B), V(D), Bulletins w-04020, w-13009.
Work with Your Adjuster

What is an Independent Adjuster (IA), and how are they different from Public Adjusters (PA) or an Individual Assistance FEMA inspector?

**IAs** – Are claims professionals hired to adjust your loss on behalf of your flood insurer

- FEMA provides training to IAs
- They are a “window to an Examiner” who works for the flood insurer; the flood insurer is responsible for payment of proved and approved losses based on reviewing the claim including the IA’s Final Report, 42 U.S.C. 4019
- It is important to work cooperatively with your adjuster

**PA** – A PA is retained by the Policyholder and regulated by State law

**FEMA Individual Assistance inspector** – A FEMA inspector may visit your home if you applied for disaster grant assistance under FEMA’s Individuals and Households Program (IA or IHP); their findings are under different standards and include different items than under the SFIP
Work with Your Adjuster

Your adjuster should do the following

• Show you their official identification (Driver’s License and Company ID or Flood Control Number (FCN card))
• Provide you with their contact information, such as their name, email, phone number, and the name of their adjusting firm and telephone number
• Discuss with you the NFIP flood claims process
• Inspect your property and scope your loss by taking measurements and photos
• (Continued on next slide)
Work with Your Adjuster

- Explain what an Advanced Payment is
- Work with you during the process to help you show your loss to your insurance carrier
- Ask for a current mailing address and phone number if you are displaced
- Discuss if you may be eligible for Increased Cost of Compliance under Coverage D (next slides)
- The insurance carrier, not the adjuster, has the authority to approve your claim and issue payment
- **Note:** The adjuster should never ask you for money or collect your deductible amount
How you can help

- Thoroughly identifying and providing documentation of the scope of loss and flood-damaged property is key – we expect an ongoing dialogue between the Policyholder and adjuster
- Work cooperatively with the adjuster and insurance representatives, SFIP Dwelling Form VII(J)(6)

What the adjuster looks at

- Is damaged property eligible for coverage. If so, is coverage under Coverage A (Building) or Coverage B (Personal Property)? See 44 C.F.R. Pt. 61, App. A(1), SFIP Dwelling Form III(A)(7), (B)(2).
- Covered and non-excluded? Examples: Was there direct physical loss by or from flood and is it covered? Do any exclusions or coverage limitations apply – eg, limitations of coverage for basements and certain post-FIRM elevated buildings? Code upgrades or expanded scopes of work, etc. that would not be covered? See 44 C.F.R. Pt. 61, App. A(1), SFIP Dwelling Form II(B)(5), (12), (14), III(A)-(B), (B)(3), V, VII(J)-(K), (M), (V).
- Elements of an adjustment: (1) scope – nature and extent of the loss and damage, including quality of materials damaged, (2) dimensions/units/quantities, and (3) price.
Expect Additional Outreach During the Recovery

A number of individuals will be in contact with you to obtain additional information to ensure you receive the help you need. You may have visits from:

- Other insurance adjusters regarding your homeowner’s policy and/or your auto insurance policy
- A FEMA housing inspector, if you apply for FEMA Individual Assistance
  An inspector from the U.S. Small Business Administration, if you apply for an SBA loan
- Other volunteers from agencies offering help such as food and shelter
- An inspector from your community performing preliminary damage assessments

**Note:** Your adjuster and your flood insurance company should be your one trusted source for information on your flood insurance claim
Understand What Your Community Requires

Contact your community building department and floodplain administrator if you have any questions about whether your home requires elevation— for instance, if the community determines that a home in a SFHA is substantially damaged, any repairs and replacement will require elevation above the BFE.

Having to undo or redo repairs or replacement because of the need to elevate later on can be costly, and those costs for undoing or redoing prior, pre-elevation work are not covered by the SFIP.
Local Official Role in ICC

Local Official Role in Substantial Damage Determination

- Determine whether the 50 percent threshold of pre-flood market value is met
- Ensure that market value estimates are reasonably accurate and that the cost estimate reasonably reflects the actual costs to fully repair the damage
- Provide property owner a SD declaration and remind the owner that ICC coverage could help offset compliance costs
- Provide property owner a repetitive loss declaration and remind the owner that ICC coverage could help offset compliance costs

Regulate all development in the designated SFHA and ensure compliance of local floodplain ordinances; ensure completed work is compliant with local floodplain management ordinance
**Increased Cost of Compliance**

When may a Policyholder be eligible for ICC coverage (Coverage D)?

It applies to eligible:

- Floodproofing for certain non-residential structures
- Relocation
- Elevation
- Demolition
- Or a combination of these activities
- Additional requirements apply
- $30,000 total in ICC coverage, limited by the maximum statutory limits of Building coverage not exceeding $250,000

What If I Disagree with My Insurance Company?

FEMA directed WYOs to exercise their option to pay based on approval of an IA’s report – if you disagree with that amount

- Contact your adjuster or flood insurer, make sure you understand how the loss was valued, and provide all documentation that might be helpful to show what you have identified

- Submit a POL for Hurricanes Harvey, Irma or Maria 365 days (one year) from the date of loss, Bulletins w-17030, w-17040, and w-17057 (The SFIP provides that Proof of Loss is ordinarily due within 60 days after the loss, however FEMA extended this deadline for these three hurricanes, 44 C.F.R. Pt. 61, App. A(1), SFIP Dwelling Form VII(J))

- POL is your statement of the amount you are claiming under the SFIP signed and sworn to by you, which furnishes relevant information including supporting documentation. Policyholder-signed POL, including supporting documentation, is required for payment of additional funds

- Timely and compliant POL including supporting documentation is required before filing a lawsuit, see 44 C.F.R. 62.20; 44 C.F.R. Pt. 61, App. A(1), SFIP VII(J), (R); Bulletin w-13069
Flood Insurance Is Appeal-ing

Applicable FEMA regulation, 44 C.F.R. 62.20

- Three goals: (1) give Policyholders the opportunity to voice concerns, (2) make the program more transparent and understandable, and (3) readjust claims and settlements when necessary
- FEMA has revamped its appeals process – we would like Policyholders to know about it
- Applies to both SFIPs issued by NFIP Direct and WYO companies
Elements of and How to File an Appeal

Elements
1. Copy of the denial letter
2. Written basis for the appeal
3. Any other documentation that supports the basis

How to File
1. Submit within 60 days of the date of the denial letter via mail or email
2. Include a letter of representation that comports with the DHS regulations implementing the Privacy Act of 1974, if applicable
3. See https://www.fema.gov/flood-claim-appeals-and-guidance for more information
Appeal Do’s and Don’ts

**DO:** Make sure you’ve been denied. FEMA can’t review a claim that is in progress. FEMA also cannot review a claim on appeal once litigation has been filed.

**DO:** Submit documentation that supports the appeal.

**DO:** Continue to cooperate with the IA and the flood insurer.

**DON’T:** Expect an adversarial process.
Lawsuits

42 U.S.C. 4072

• “[U]pon the disallowance by the Administrator of any such claim, or upon the refusal of the claimant to accept the amount allowed upon any such claim, the claimant, within one year after the date of mailing of notice of disallowance or partial disallowance ..., may institute an action against the Administrator on such claim in the United States district court for the district in which the insured property or the major part thereof shall have been situated ....”

The lawsuit must be filed timely, in the appropriate Federal Court. These requirements, including submitting a compliant and timely Proof of Loss, and the separate deadline of one year after the first denial to file a lawsuit, apply to all 3 SFIPs. They also apply to NFIP lawsuits filed against WYO carriers. See 44 C.F.R. Pt. 61, SFIP Dwelling Form VII(R), Bulletin w-13069. Items such as awards of attorney fees, treble damages, or State law claims or remedies do not apply to Federal SFIP lawsuits.
Additional Agency Resources

The OFIA’s Mission

*The Office of the Flood Insurance Advocate (OFIA) advocates for the fair treatment of policyholders and property owners by providing education and guidance on all aspects of the NFIP, identifying trends affecting the public, and making recommendations for program improvements to FEMA leadership.*

For Additional Help Understanding the Claims Process ...

- **Important contacts**
  - Your insurance agent
  - Your insurance adjuster
  - NFIP Support Call Center 1-800-621-3362 (choose the flood insurance option – Option 2)
  - FEMA Flood Insurance POCs (first slide)
Please Contact Us

• We are Partners in recovery
• We want your ongoing feedback
• Please do contact your FEMA (FIMA) POCs if you have a question or if you are encountering any issues
• Contact info. on first slide
FEMA Appeals, Recoupment, and Other Issues for Disaster Survivors

November 2017

William Friedman, Esq.
Training Outline and Goals

• A review of the appeals process from the applicant’s perspective

• The most common reasons for denials and the most effective way to challenge

• Recoupments and other related issues

• General FEMA advocacy advice and best practices
NYLAG’s Storm Response Unit

• After Sandy hit in October 2012, NYLAG mobilized a legal aid disaster relief program to help victims of the storm:
  • Intake hotline and email account.
  • On-site client assistance in partnership with local community organizations.
  • Mobile Legal Help Center (law office on wheels).

• Assisting clients in NYC and on Long Island:
  • More than 13,000 legal matters.
  • More than $59,000,000 in monetary benefits to clients.

• Services are comprehensive:
  • FEMA applications, appeals and recoupments; SBA loans; other disaster relief;
  • Landlord-tenant and other housing;
  • Homeowner’s and flood insurance;
  • Mortgage foreclosure prevention;
  • Consumer matters; and
  • CDBG-DR Programs (Build it Back and NY Rising).
FEMA Denials

FEMA assistance is not immediately paid out upon receipt of an application, and negative decisions can be issued. Individuals have the right to appeal the following decisions:

- The denial of eligibility for benefits
- The amount or type of assistance offered
- The denial of continuing assistance
- The rejection of a late application
- The cancellation of an application
- Or any other eligibility related decision
Appealing a FEMA IHP Denial or Inadequate Grant

- Decision letter is generally sent within 30 days of application
  - If approved for some assistance, notice should specify which categories of assistance (THA, TSA, HA, etc.), but it will not, or has not traditionally, specified in the vast majority of cases what assistance exactly (e.g., how many months of rental assistance, what personal property) FEMA is providing.

- If denied, notice should specify a reason (listing a denial code) and contain information about where and how to appeal
  - Denial codes: [www.fema.gov/why-am-i-not-eligible-assistance](http://www.fema.gov/why-am-i-not-eligible-assistance)
Denial Advocacy

• Step 1: view all accessible information about the claim and the denial
  - Disaster.gov account
  - Take note of any applicable deadline

• Step 2: contact FEMA by phone

• Step 3: obtain FEMA file

• Step 4: contact FEMA by phone again

• Step 5: submit written appeal
FEMA IHP – Application Problems

• If a FEMA problem cannot be resolved quickly, obtain a full copy of the applicant’s FEMA file by submitting a request that satisfies both the Privacy Act and FOIA identity-verification and request requirements.

• No specific FEMA file request form; request must include the:
  • Applicant’s full name;
  • Applicant’s damaged address; and
  • Applicant’s date and place of birth (see DOLR, p. 9-9);
  • Comprehensive description of records being requested (the more specific the better);
  • An address for where the file will be mailed; and
  • Be signed and notarized, OR include a copy of applicant’s photo identification, OR include the language “I declare under penalty of perjury that the foregoing is true and correct,” with applicant’s signature (this is the 28 USC § 1746 alternative to notarized statements, which is also useful for completing NFIP flood insurance claim documents).

• The request should also include the:
  • Applicant’s Mailing Address;
  • Applicant’s Phone Number;
  • Applicant’s Last Four Digits of SSN;
  • Applicant’s FEMA Application ID; and
  • FEMA Disaster Number.
The Written FEMA Appeal

- The appeal should include:
  - A signed representation letter for third parties’ submissions (often we included this in file request form).
  - A statement by the applicant describing why FEMA’s decision was wrong.
    - The appeal should include an affirmation/affidavit or other statement by the applicant that is notarized OR sworn-to under 28 USC § 1746.
  - A “brief” providing any additional advocacy arguments
  - All possible supporting evidence relied on in the appeal arguments
- Appeals should be clear and concise, properly labeled, and easily followed- target audience are not lawyers
- Focus on factual issues, but do not waive legal arguments
Common Eligibility Issues

• Primary residency and ownership
  • Household presumption
  • Complicated or non-traditional households

• FEMA non-compliance

• Storm damage vs. deferred maintenance

• Need for assistance
  • Ongoing need

• Insurance coverage
FEMA IHP Denial Due to Ownership/Occupancy

- FEMA assistance is only available for the applicant’s primary residence
  - Renters are eligible, but not for housing repairs

- FEMA definition of primary residency is fairly restrictive, and is not necessarily the same standard as other programs

- Ownership and occupancy are not always easy to establish, especially for low-income households
  - Proof of ownership
  - Proof of occupancy

- FEMA household presumption
  - Owners vs. renters
  - Non-traditional housing compositions

- Challenging the FEMA determination
Denial Due to FEMA Non-compliance

• A declared major disaster (DR-4337) unlocks FEMA IA funds, but it also triggers an overlooked and misunderstood requirement. As explained by DOLR (6-26):
  • “A flood insurance ‘obtain and maintain’ requirement is generated when disaster assistance for flood-damaged real and personal property is provided to applicants whose flood-damaged property is located within an SFHA.” This is 42 USC § 4012a, and affects:
    1. Recipients of Small Business Administration disaster loans;
    2. Recipients of IHP assistance;
    3. Recipients of HUD Community Development Block Grant Disaster Recovery funds, which will likely be the major source of funding; and
    4. Property owners with federally insured (Fannie, HUD, VA) mortgages.
• Non-compliance will **PRECLUDE RECEIPT OF ANY FUTURE FEDERAL ASSISTANCE.**
  • Big issue after Sandy for people who received FEMA IHP assistance following Hurricane Irene.
FEMA IHP Denial Due to no Storm Damage

• Not surprisingly, an individual must suffer a disaster loss to be eligible for FEMA benefits

• Most people apply right away, but some do not, or inspections can be delayed
  • As more time passes, the less obvious the disaster impact

• Deferred maintenance or disaster damage?

• Challenging the FEMA determination
FEMA IHP Denial for Lack of Need

- FEMA assistance, be it for repairs, rent or personal property, is only for serious needs to return a household to a safe and sanitary environment
  - Issues sometimes arise over the severity of a specific loss

- Common issues:
  - Level of repairs
  - Vehicles

- If an applicant is receiving ongoing assistance (e.g. rent), the continued need for these funds must be demonstrated

- Challenging the FEMA determination
FEMA IHP Denial Due to Property Insurance Coverage

• If an applicant has property insurance, has not received a settlement in excess of the IHP maximum at the time of an application denial, and the denial ground is that coverage, the denial is best seen as an opportunity to reapply with clarifying information about the lack of a (disqualifying) settlement. See 44 CFR 206.113(a)(3).
  • FEMA presumes that applicants with insurance will have all of their Home Repair/Replacement needs met by insurance and will therefore be ineligible for IHP assistance.
  • However, if the insurance claim is denied, or if the applicant receives an insurance settlement less than the FEMA IHP max and still has unmet need, the FEMA IHP denial can be appealed.
  • Applicants have 12 months to submit information to FEMA about the result of their insurance claim.
  • Applicants can also get FEMA IHP funds while their insurance claim is being processed.
    • Applicants should consider this type of payment a loan, to be paid back once insurance proceeds are received
    • Duplication of insurance proceeds was one of the main grounds for FEMA seeking recoupment of IHP grants to Sandy survivors.
FEMA IHP Recoupments

- FEMA, like all agencies, is required to look for overpayments, and may seek repayment or recoupment of a specific IHP grant if FEMA believes that the:
  - Grant was provided erroneously/applicant was ineligible (regardless, as with many government assistance programs, if the fault lies with the applicant, a third party, or FEMA itself);
  - Applicant spent the funds for an unauthorized purpose;
  - IHP funds were duplicative of other benefits, for example, property insurance proceeds.

- We began to see significant post-Sandy recoupments in September 2014, 22 months after the storm.

- Some may be familiar with The Disaster Assistance Recoupment Fairness Act of 2011 (DARFA), which provided a time-limited hardship waiver to a claim. No similar law has been passed for Sandy.
FEMA IHP Recoupments, cont’d.

• Common Recoupment Issues:
  • Duplication of benefits (44 CFR § 206.110);
  • Damaged dwelling was not primary residence (206.111 for definition and 206.113(b)(1));
  • Failure to prove occupancy;
  • Failure to utilize alternative rent-free housing (206.113(b)(2)-(3));
  • Flood insurance purchase requirement (44 CFR § 206.110(k));
  • Overpayment;
  • Replacement housing to a renter;
  • Misspent or fraudulently obtained funds (206.116(b))

• Note that there is no statute of limitation on FEMA efforts to recoup allegedly improperly paid funds (see 31 USC § 3716 (e)(1) and DOLR, p. 6-106).
Other Possible Significant Issues

- **Insurance**: Sandy implicated homeowner's insurance for wind damage (regulated by state) and the National Flood Insurance Program (NFIP), part of FEMA, for flood damage.
- **Mortgage** issues and foreclosure prevention.
- **Landlord-tenant** disputes: repairs; abatements for inhabitability or lack of essential services; vacature of leases; and return of security deposits.
- **Consumer** issues: contractor/home improvement contract disputes and debt management.
- **CDBG-DR** programs: in New York State these were the Build it Back (NYC) and NY Rising (outside NYC) programs.
FEMA Advocacy Best Practices

• Have clients sign appropriate releases early on

• File requests take a long time, if there is any potential need for a file, send out the request immediately

• Try calling FEMA; problems can be resolved on the phone

• “HUCA”- hang up and call again

• Appeals should be clear and easy to follow- target audience should be non-lawyers
FEMA Advocacy Best Practices, cont.’d

• If a deadline is missed, advocate for additional time

• Generally 3 appeals will be considered, but still try if there is legitimate new information

• Be mindful that recoupments will eventually happen

• Clients are victims of a trauma; soliciting information and collecting documentation will be more difficult than a standard case

• The sooner a lawyer gets involved, the better
Monday, November 20
FEMA Appeals Training
at the City Bar

VOLUNTEER OPPORTUNITIES

If your firm is an APBCo member, contact your Pro Bono Coordinator to volunteer directly with a Texas legal services provider to provide full representation on post-hurricane issues related to FEMA. Appear as attorney of record on cases referred by the Texas legal services provider.

If you are a City Bar member, volunteer at a City Bar FEMA Appeals Clinic, to be held on Monday nights from December through February, to provide brief service representation to hurricane survivors from Texas, Florida and Puerto Rico who are appealing their FEMA claims. Interview a client by telephone or Skype and fill out an online FEMA appeal, which the client will file pro se. Attorneys will work with a large group in a clinic setting. Sign up to volunteer at www.citybarjusticecenter.org/do-pro-bono/individual-volunteers/.

Assist the Legal Help Desk at the East Harlem Disaster Recovery Center serving displaced survivors from Puerto Rico. Work with legal services providers to assist with FEMA appeals and general legal information. Make appointments for clients with FEMA appeals to go to the City Bar's Monday night FEMA Appeals Clinics. Spanish language speaking attorneys needed. Schedule will be determined by the local legal services programs.

Co-Sponsoring Organizations: Chief Judge's Task Force on Hurricane Relief, Association of Pro Bono Counsel, City Bar Justice Center, and Ayuda Legal Huracán María