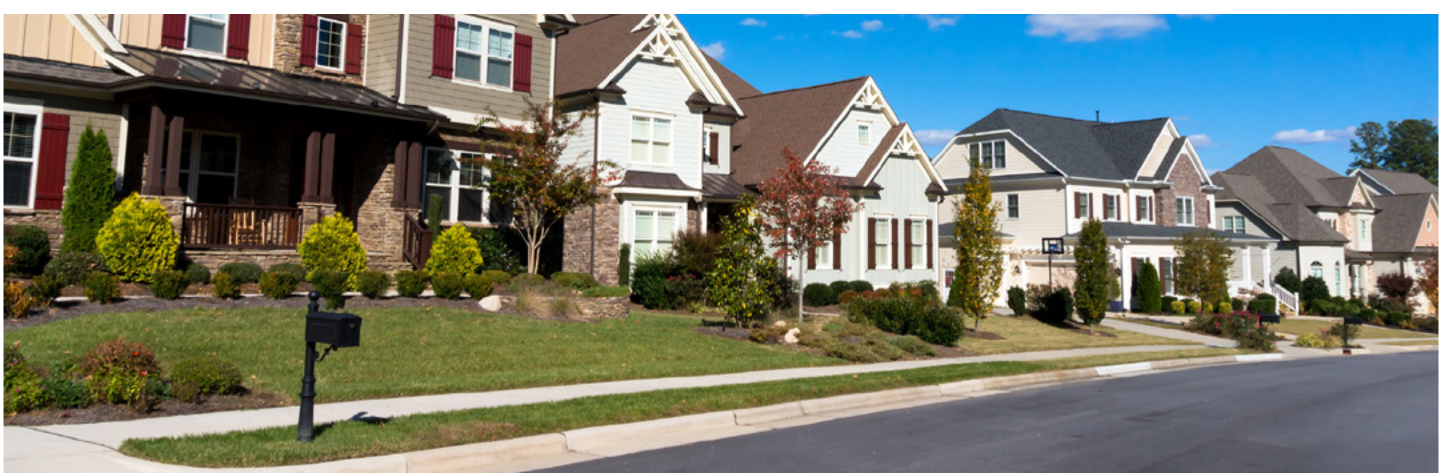
Insurance and FEMA regulations: how to get (and keep) federal funding

By Susan T. West, ICF

The world watched as 2018 became one of the costliest years in history for natural disasters, including wildfires, tsunamis, hurricanes, tornadoes, earthquakes, and floods. According to MunichRe, a major provider of reinsurance, "the second half of the year saw an accumulation of billiondollar losses from floods, tropical cyclones in the US and Japan, wildfires, and earthquakes. The overall economic impact was US$ 160bn, of which US$ 80bn was insured."[1]

[1] https://www.munichre.com/topics-online/en/climate-change-and-natural-disasters/natural-disasters/the-natural-disasters-of-2018-in-figures.html



Those of us who work in disaster recovery know the costs – both physical and emotional—all too well. And we understand that when a natural disaster strikes, you need to get help quickly. But before you secure federal relief funds for your state or local government, you should be aware of federal insurance compliance regulations. This guide explains the relationship between FEMA regulations and insurance benefits—and breaks down the legislation so that you can make sure you're prepared for whatever natural disasters might come your way.

Insurance, not the federal government, plays a primary financial role in disaster recovery

Natural disasters are hitting harder and more often than ever before. The devastation – homes destroyed, families displaced, storefronts underwater—is a burden too big for any one entity to shoulder. It takes a coordinated effort among individuals, businesses, and governments alike to recover from natural disasters.

While the federal government may step in to assist families and communities—dispersing funds and coordinating relief efforts—it should not be relied upon as a primary source of funding. That was never its responsibility; insurance was always intended to play a primary financial role in the recovery from catastrophic losses.

Disaster assistance provided by FEMA is intended to supplement financial assistance from other sources.[2]

The relationship between insurance and federal disaster assistance is spelled out in the law, but it can be challenging to unpack the compliance regulations if you're not fluent in insurance standards and coverage inclusion and exclusion language.

In the sections that follow, I'll highlight two primary groups within FEMA's regulations that pertain to insurance coverage and walk you through some considerations that will help you evaluate your level of risk and exposure.

The Stafford Act: FEMA's legislative backbone

President Jimmy Carter created the Federal Emergency Management Agency in 1979, but it was the Robert T. Stafford Disaster Relief and Emergency Assistance[3] Act that established the system by which a presidential declaration of emergency triggers financial and physical aid from FEMA. The Stafford Act, which was signed into law on November 23, 1988, makes FEMA responsible for coordinating government-wide relief efforts. It is designed to bring order to chaos—helping state and local governments carry out their responsibilities to aid citizens via an organized and systemic approach to federal disaster assistance.

In addition to establishing federal assistance programs for disaster-related losses, the Stafford Act was created to prod states and localities to develop comprehensive disaster preparedness plans, invest in insurance coverage, and boost intergovernmental coordination—so that they'd be ready when the storms hit.

Insurance coverage is a critical ingredient in the disaster recovery mix. With the financial drain on the federal infrastructure, communities cannot depend upon the federal government to finance their recovery. Businesses and communities are expected to have insurance coverage that will fund property damaged by a catastrophic disaster. The Stafford Act makes this insurance coverage requirement explicit—and constitutes the statutory authority for most federal disaster response activities, especially those that pertain to FEMA and FEMA programs.

In other words, if you hope to receive federal disaster relief funds for your state or local government, you need to make sure your insurance coverage meets the requirements—or else FEMA will deny your request.

[2] https://www.fema.gov/pdf/government/grant/pa/9580_3.pdf
[3] https://www.fema.gov/disaster/stafford-act

How FEMA and insurance co-exist: connecting the dots

FEMA has two primary groups for repair and restoration: Emergency Protective Measures and Permanent Work. While both groups can be impacted by Duplication of Benefits, only the Permanent Work group will be affected by FEMA's Obtain and Maintain insurance requirements.

Emergency Protective Measures (Categories A & B)	
Category A	Debris removal
Category B	Emergency protective measures
Permanent Work (Categories C – G)	
Category C	Roads & Bridge Systems (includes road signs)
Category D	Emergency Protective Measures
Category E	Buildings and equipment (includes content)
Category F	Utilities
Category G	Parks, recreation and other

Duplication of benefits: Section 312 of the Stafford Act

FEMA cannot provide aid for disaster-related losses that duplicate benefits available to an applicant from another source, including insurance. This requirement impacts all FEMA-eligible categories of work (A through G in the table above).

To clear the duplication of benefits hurdle as a funding applicant, you will need to provide FEMA with information about any actual or anticipated insurance settlement or recovery you are entitled to for the property at stake. FEMA will then reduce your assistance by the amount of the actual or anticipated insurance proceeds. In the immediate aftermath of a disaster, FEMA will adjust the project amount based upon what your insurance should pay. Once a settlement with insurance is reached, FEMA will review the settlement for reasonableness, which is not readily defined in the regulations. Assuming the settlement is "reasonable," FEMA will adjust the project amount based upon the actual amount received by your insurance company.

While FEMA will reduce funding based upon anticipated or actual insurance proceeds, the good news is that FEMA will fund a retained risk, such as a deductible or self-insured retention, but will only do that once for a similar loss. There is one basic exception which relates to facilities located in a Special Flood Hazard Area. FEMA will reduce assistance by the lessor of: 1) the value of the property at the time of the disaster; or 2) the maximum amount of insurance proceeds that a Standard Flood Insurance Policy would provide for a building and its contents.

Obtain and maintain: Section 311 of the Stafford Act

Also spelled out in the Stafford Act are the Obtain and Maintain provisions. These insurance requirements apply to Project Worksheets in FEMAeligible categories C through G (Permanent Work). The Obtain and Maintain provisions are based upon the peril (flood or non-flood) that causes the loss, often referred to by FEMA as **Type**. FEMA further defines how much insurance a sub-recipient will need in order to meet the Obtain and Maintain insurance requirements. The language below sets forth the amount required, often referred to by FEMA as **Extent**. Note: The Stafford Act uses the terminology Grantee (aka Recipient) and Sub-Grantee (aka Sub-Recipient). Further, in accordance with the Stafford Act, there are distinct differences between the insurance requirements for facilities damaged by flood and facilities damaged other than flood as noted below.

Insurance requirements for facilities damaged by flood: The reference to the Stafford Act noted in 44 CFR, 206.252 states the following: "The grantee or sub-grantee is required to obtain and maintain flood insurance in the amount of the **eligible disaster assistance**, as a condition of receiving federal assistance that may be available." The requirement to purchase flood insurance is waived when eligible costs for an insurable facility do not exceed $5,000.

Insurance requirements for facilities damaged by disasters other than flood: The reference to the Stafford Act noted in 44 CFR, 206.253 states the following: "Assistance under Section 406 of the Stafford Act will be approved only on the condition that the grantee obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future loss to such property from the types of hazard which caused the major disaster. The extent of insurance to be required will be based on the **eligible damage that was incurred to the damaged facility because of the major disaster.**"

What does all this mean for the business or community that receives federal disaster funds?

You must procure insurance to meet the Obtain and Maintain provisions set forth above, and these provisions must be met at the time of grant approval. FEMA will deny or de-obligate (take back) assistance in the current disaster and deny future assistance for your facility if you fail to adhere to the Obtain and Maintain provisions.

Reflections from the field:

In the aftermath of Hurricanes Irma and Maria, the Commonwealth of Puerto Rico sustained unimaginable loss, both in human life and property. Landslides impacted several communities, but the primary damage resulted from Category V winds (157+ mph) and localized flooding. Roads were at times impassable and reaching those impacted was a huge challenge. The stories shared by many locals who experienced first-hand a direct impact – long months without electricity and difficulties obtaining necessities – has been both heartbreaking and uplifting. In the face of adversity, the Puerto Rican people have shown great courage, strength, and positivity. They are truly an inspiration!

Unfortunately, for communities, the local insurance market was unprepared for the catastrophic onslaught created by two storms which occurred within days of each other. The delay in assessing property damage by catastrophic insurance adjusters, coupled with the failure of insurance companies to make timely payments, resulted in numerous legislative changes directed at the local insurance market. Also, the local market's lack of response created an undue financial strain on many communities and continues to delay their ability to recover.

The ICF insurance team has worked with numerous applicants to provide strategic guidance and to identify the most appropriate way to maximize funding. We have educated leaders on federal regulations related to insurance and provided guidance on parametric insurance and other risk financing solutions, including layered insurance plans and retention of loss. We strive every day to make a positive impact on the lives and communities affected by natural disasters.

If you are unable to comply with fema's obtain and maintain provisions, do you have any recourse?

The answer is possibly. FEMA will not require greater types and amounts of insurance than are certified as reasonably available, adequate, or necessary by the state insurance commissioner. To make a compelling case, you will need to tell your unique story and include documentation to support your position.

If you are unable to comply with FEMA's O&M requirement, you should provide your request or application to the insurance commissioner and include supporting documentation. This documentation should provide an overview of the insurance market, including competition and volatility, and should also address reasonable risk practices based upon your function, size, and budget.

Make sure to include any information related to the hazard that caused the damage and the policy limits available. The insurance commissioner may require several years of audited financials and certified policies at the time of the event and at the time of the request, as well as the insurance marking efforts taken by the insurance broker.

Stay vigilant: risk assessments help you get ahead of the storm

We may not be able to prevent natural disasters from occurring, but we can prepare for them—and, in doing so, lessen the devastation they rain down. Preparation for any catastrophic event requires risk assessment and capability and performance analysis, and this work begins well before the onset of any disaster.

Identifying your community's specific risk factors requires a full assessment of those events which are probable, and which will result in the greatest loss of life or property. There are many ways to manage risks, including transfer (i.e. contractor, insurance), retain (i.e. assumption of risk), segregate (i.e. multiple manufacturing plants), and separate/avoid (i.e. turn down a project). Stay tuned for more on this important topic.

About the authors

Susan T. West

Susan West brings more than 30 years of Risk Management and Insurance expertise to the ICF Disaster Management team. Susan is currently serving as the insurance lead for the Disaster Recovery initiative in Puerto Rico where she is successfully navigating the insurance complexities associated with a liquidated insurance company and a volatile insurance market. Susan provides strategy recommendations for the application of insurance proceeds to maximize FEMA Public Assistance funding. She previously worked for the State of Louisiana as a state risk administrator and was instrumental in the state's recovery from multiple disasters. Her leadership skills and knowledge of disaster regulations and insurance policies provides clients with expert guidance on risk financing, continuity of operations, risk analysis, coverage related matters and FEMA regulations, including the federal requirements related to Obtain and Maintain insurance provisions. Susan is a leader, having served as the vice president of an insurance agency and as the chief executive officer of a large insurance program. Susan has a Master of Business Administration and is a Certified Insurance Counselor and Certified Risk Manager.

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About ICF

ICF is a global consulting services company, but we are not your typical consultants. We help clients navigate change and better prepare for the future.

Our team helps communities prepare for, respond to, and recover from natural disasters. As an established leader, we bring deep on-the-ground experience from nearly every major natural disaster in recent U.S. history. Over the last two decades, we've successfully supported recovery efforts in New Jersey, New York, Georgia, Louisiana, Puerto Rico, Texas, and more, often exceeding project requirements. From over 20 years of partnership with HUD and FEMA to our many state and local partners, we are well-known and trusted for our ability to process hundreds of thousands of applications and assist grantees in awarding over $12 billion to affected property owners over the years. Learn more at icf.com/disaster-management.