



An Introduction to FEMA for Government Entities and Eligible Nonprofits

Gallagher
Public Sector
Practice



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Introduction

We help our clients manage risk and purchase insurance. At no time is that more critical than when an entity has suffered from a catastrophic disaster. Gallagher works with thousands of public entities and nonprofit agencies: cities, counties, parishes, villages and townships; public, charter and nonprofit independent K12 schools; state governments; special districts; pools and a wide variety of nonprofit agencies. All of these organizations need to understand the risk and insurance implications before, during and after a natural disaster, and that requires understanding FEMA and the Stafford Act.

A basic understanding of the Stafford Act is important to begin to appreciate the nuances of the Federal Emergency Management Agency (FEMA) and its response to a federally declared disaster. This document was not created as a technical outline of either the Stafford Act or FEMA, but it is intended to help you understand the implications of both upon your operations. Based on our experience of responding to many disasters over the past decades, in combination with what we've learned from our public sector and nonprofit clients, we can provide recommendations for pre- and post-event actions that will protect and prepare your entity. FEMA's website is strong in content and one of the best tools available. Please review it to understand the framework from which to plan before a disaster occurs and to seek the most recent updates to the rules and regulations.

The basis for disaster assistance provided by FEMA is contained in key provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended, and 44 CFR 206.250, 206.252 and 206.253. This law establishes the process for requesting and obtaining a Presidential disaster declaration, defines the type and scope of assistance available from the Federal government, and sets the conditions for obtaining that assistance.

FEMA is part of the Emergency Preparedness and Response Directorate of the Department of Homeland Security (EPR/DHS). At the time of this publication, its mission includes preparation for and response to all hazards and disasters.¹ FEMA responds to other federal agencies; state, tribal and local officials; the private sector; nonprofits and faith-based groups; and the general public. This document will deal solely with the Stafford Act and FEMA as they relate to governmental entities (state and local) and eligible nonprofit agencies.

Eligibility and Types of Aid

To be eligible for FEMA assistance, the President must formally declare the disaster. "Upon the declaration of a major disaster or an emergency, the Governor, acting for the State, and the FEMA Regional Administrator or his/her designee, acting for the Federal Government, shall execute a FEMA-State Agreement. This FEMA-State Agreement states the understandings, commitments, and conditions for assistance under which FEMA disaster assistance shall be provided. This Agreement imposes binding obligations on FEMA, States, their local governments, and private nonprofit organizations within the States in the form of conditions for assistance which are legally enforceable."²

An individual state is the grantee. Accordingly, the majority of you (counties, school districts, cities, etc.) will be considered a subgrantee of the State. FEMA has a direct financial relationship only with the State (grantee). However, the obligations of the grantee under Federal law, including regulations, executive orders, and other conditions under the FEMA-State Agreement specific to Public Assistance funding, continue downward from the grantee to the subgrantees.³

Each state is assigned a separate "Disaster Identification Number" for each disaster. This number is important for Requests for Public Assistance (RPAs) and it will be referenced throughout the process, until formal closeout.

There are three categories of disaster aid (the applicable categories will be specified in each declaration):

1. Individual Assistance, for individuals and households. This aid may include short-term disaster housing, disaster grants for expenses not covered by insurance, and low-interest disaster loans. The Small Business Administration (SBA) provides these loans to repair or replace damaged property not covered by insurance and to provide working capital. SBA loans and RPAs are not mutually exclusive. If both are available, a nonprofit should apply first for Public Assistance and immediately follow with a request for an SBA loan.
2. Public Assistance, for public and certain private, nonprofit entities. This aid is available for emergency services and the repair or replacement of disaster-damaged facilities. The parent organization of a nonprofit or a public entity/scholastic pool is not generally eligible for FEMA assistance as the "parent". Individual members must each apply for assistance.

¹One Team, One Mission, Securing Our Homeland," U.S. Department of Homeland Security Strategic Plan Fiscal Years 2008-2013; http://www.dhs.gov/xlibrary/assets/DHS_StratPlan_FINAL_spread.pdf

²44 CFR 206.44 - FEMA-State Agreements

³Field manual—public assistance grantee and subgrantee procurement requirements under 44 c.F.R. Pt. 13 And 2 c.F.R pt. 215



3. Hazard Mitigation Assistance which is funding for measures designed to reduce future losses to public and private property.

FEMA CATEGORIES	ASSISTANCE DESCRIPTION
A	Debris removal and cleanup (Vegetative)
B	Emergency protective measures
C	Road systems and bridges
D	Water control facilities
E	Property buildings, contents, vehicles
F	Public utility operations
G	Parks, recreational and other

Categories A and B are different from the remaining categories because they are temporary in nature.

Reimbursement Process

FEMA does not routinely provide 100% reimbursement for declared disasters. One known exception was Hurricane Katrina. The percentage of reimbursement varies based on factors such as the magnitude of the event and the size of the population affected. The determination can change over time. Hurricane Sandy was originally defined as a 75% cost-share event, which eventually increased to 90%. For Hurricane Sandy, insurance recoveries and other offsets were applied before FEMA reimbursed 90% of eligible expenses. The remaining % (whatever it may be) is the responsibility of the applicant – or possibly the state in which the applicant is located.

As was true for Hurricane Sandy, it is possible that the political environment may influence the original percentage reimbursement decision as well as the final outcome. This could be perceived as hopeful news for applicants; however, keep in mind the challenges connected to accounting differences if those percentages change over time. Those computations can be complicated.

Your entity will be required to provide lots of data and information (and often redundantly) throughout the process. Some of our clients reported sending FEMA the same information (multiple boxes worth) over 20 times. Further complicating matters (and no surprise to those who have had a FEMA event), the FEMA representatives assigned to manage your data are not assigned on a permanent basis. The FEMA representatives “on the ground” change often. That may mean that interpretation of the requirements and data needs will change, as well.

If you or your entity has never experienced a declared disaster, you may be surprised to learn that states with federally declared disasters are responsible for oversight of FEMA funds. Within each state, EPR/DHS is responsible for the process at the state level.

FEMA makes Disaster Recovery Centers (DRC) available following a declared event. These are often mobile centers, established near the storm-impacted areas. They are available to answer questions and provide status updates regarding FEMA and other disaster programs which may be available. In the event of a disaster, you can locate a DRC and register for assistance online at www.disasterassistance.gov or by calling 1.800.621.FEMA (3362).

If your organization is allowing use of your facilities as a Red Cross shelter, you will be eligible for related cost reimbursement from FEMA. Some states have statutes providing immunity to the local entity related to liability exposure as a result of such use. FEMA is not responsible for the liability exposure experienced by the entity.

To be Eligible for Reimbursement

Flood

First and foremost, The Stafford Act, Section 406(d) (42 USC 5172(d)), states that facilities located in Special Flood Hazard (SFH) zones must be insured by flood insurance. **Failure to carry flood insurance coverage on SFH properties** which are then damaged in a federally declared event will result in FEMA reducing assistance by the lesser of:

1. The value of the building 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.

The Act clearly states that when a facility that received assistance is damaged by the same hazard in a subsequent disaster, if the Applicant failed to maintain the required insurance from the previous disaster, then the facility is not eligible for assistance in *any*⁴ subsequent disaster.

Often, due to budget constraints or other (sometimes political) considerations, public bodies and nonprofits choose to ignore this basic requirement of the Stafford Act because they mistakenly believe that FEMA will cover the damage, without consequence for failure to carry the required National Flood Insurance Program (NFIP) coverage.

It's important to determine whether your community is eligible for NFIP. NFIP offers flood insurance in communities that choose to participate in NFIP. Participating communities agree to adopt and enforce ordinances that meet or exceed FEMA requirements to reduce the risk of flooding.

For more detailed information, visit <https://www.fema.gov/national-flood-insurance-program>

Business Interruption Insurance is not part of the FEMA process whatsoever. It is not eligible for reimbursement. It is not part of any Obtain and Maintain discussion.

Obtain and Maintain Requirements

Concerning Obtain and Maintain: Failure to obtain and maintain the minimum limit of required insurance will result in FEMA denying or de-obligating assistance in not only the current disaster but also for any future assistance to that facility.



Eligibility for recovery differs between individual facilities that have **not** had a previous FEMA-eligible disaster and those facilities that **have** had a previous FEMA-eligible disaster. In the event a facility has been damaged in a previous FEMA related disaster, as a condition of receiving future FEMA disaster assistance on the same impacted facility(ies), the Stafford Act requires that the Applicant Obtain and Maintain (O&M) “such types and extent of insurance...as may be reasonably available, adequate, and necessary, to protect against future loss to such property.” 42 U.S.C. 5154 (a)(1). However the Stafford Act specifically provides that in “making a determination with respect to availability, adequacy and necessity... the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance.” 42 U.S.C. 5154 (a)(2).

The States’ Insurance Commissioners (who may be known by a title other than ‘Commissioner’) do not have the authority to waive any Federal Insurance requirements or any requirements of any sort concerning flood insurance—regardless of whether the property is in SFH zones or non-SFH zones. Any request for special consideration concerning flood insurance must be made to the Federal Insurance Administrator.

Wind Example

For wind losses, the applicant must carry insurance at least in the amount of previous wind damages (insured and non-insured). The insurance requirements apply on a per-building, per-hazard basis.

Example: School District ABC had wind damages to their central office in a previous storm totaling \$46MM:

Item	Total
Deductible	\$10MM
Insurance Recovery	\$20MM
Uninsured Damages	\$ 3MM
FEMA Payment	\$13MM
Total Wind Damages Previous Storm	\$46MM

The Obtain and Maintain wind insurance requirement for School District ABC for this one facility is \$46MM. In a subsequent wind event to the same building, FEMA will not consider cost share reimbursement until damages exceed \$46MM.

Flood Example

The Obtain and Maintain requirement for flood losses is simple. In addition to the basic mandate of requiring flood insurance on facilities located in SFH zones, entities and nonprofits must also carry flood insurance on any facility previously damaged by flood in at least the amount **of previous federal aid received for the facility for flood damage**. As an example, assume that

⁴Emphasis added.

a City Hall has a \$48MM **uninsured** loss caused by flood, that it was the **first flood loss** to this building and that the City Hall **was not** located in a SFH zone (therefore, carrying NFIP coverage was not a mandate at the time of the first loss). FEMA has determined that this disaster will be reimbursed at 75% of total eligible expenses:

\$48,000,000	Value of loss (first flood loss to this facility)
<u> x .75</u>	(the 75% reimbursement %)
\$36,000,000	Potential FEMA flood payment

In this example, to be eligible for future FEMA payments, the Obtain and Maintain flood insurance requirement for the next

The 2015 Recovery Policy allows public entities (and state governments) to self-insure their risks if they meet certain Stafford Act requirements. The FEMA Recovery Policy:

- Requires that a request to self-insure must be made in writing to FEMA
- Details the minimum requirements of the self- insurance plan necessary to be considered for approval
- Clarifies that for any property located in a SFH zone, FEMA will only consider approving a self-insurance plan for these properties once the applicant has otherwise met the flood insurance purchase requirements of NFIP

Failure to obtain and maintain this minimum limit of insurance will result in FEMA completely denying or de-obligating assistance in not only the current disaster and but in future assistance to that facility.

flood event for this building is \$36,000,000 (the amount of previous federal aid received). **Failure to obtain and maintain this minimum limit of insurance will result in FEMA completely denying or de-obligating assistance in not only the current disaster and but in future assistance to that facility.**

In many regions, the flood insurance necessary to meet the Obtain and Maintain requirement isn't available in the limits needed. And as experienced in previous hard markets, wind coverage can be difficult to place as well due to capacity and/or pricing issues.

Consider the peril of earthquake. Few entities along the western coastline of the U.S. insure for earthquake. Following an earthquake disaster, obtain and maintain FEMA requirements will apply. The insurance marketplace response to such an event will most likely include not only difficult pricing, but limited capacity as well. This would be further complicated if the earthquake causes flooding. The peril of "flood" would be considered separately within the declared disaster.

As stated earlier, if an entity is unable to Obtain and Maintain the required insurance limits because of factors such as affordability, budget or market constraints, **with the exception of the peril of flood**, the Commissioner within each State's Department of Insurance is authorized to consider granting a certification of reasonableness to the Obtain and Maintain requirements. The June 29, 2015 FEMA Recovery Policy addresses waivers and certifications as follows: "A State insurance commissioner certification regarding an applicant's property *only*⁵ applies to the current declared event. FEMA does not consider prior certifications when establishing insurance requirements in a subsequent disaster." This has always been the intent; so this policy is not a change but a statement of clarification.

⁵Emphasis added.

The 2015 Recovery Policy stated that FEMA will accept insurance pools as a valid insurance program. Self-insured retentions and deductibles are allowed as part of an acceptable insurance program as well.

The Obtain and Maintain insurance requirements apply on a per-building and per-hazard basis, and they also apply to the certification waiver process. None of this is done in the aggregate. What is critical to consider is that the specific requirements of Obtain and Maintain tie back directly to the data collected and documented at the very beginning of the process.

Project Worksheets and Procurement

Following the application for Public Assistance, FEMA will assign a team to inspect damages on a building-by-building basis. Project Worksheets (PWs) will be generated following that inspection. PWs will have multiple versions as information changes throughout the process—such as changes to the cost of damage repair, insurance offsets or the determination of the cause of loss. It is important to manage the PWs carefully. PWs are critical documents that track expenses and allocations for each building. ***Any duplicated funds received will be owed back to FEMA.*** Should additional damages be found during the recovery period, it is imperative to include this information immediately on the PW. It is difficult to change the damage dollar value at the end of the process.

It is imperative that at the time of loss, you create a detailed estimate of the cost of damages and recovery work by building and by type of loss. This may include photographs, a description of mitigation efforts, multiple scopes of work, restoration estimates, labor (contract, force labor and in-kind), extra expense costs and cleanup estimates.

This may seem simple at the onset. However, it can become complicated and multi-layered very quickly. For example, initially, it can be difficult to determine whether the loss was caused by wind or flood. In the aftermath of a disaster, it is extremely difficult to control all of the “moving parts,” including the many individuals involved in recovery efforts. Emergency measures, emergency responders, mitigation efforts, restoration companies, contractors who bill by the job (and not per building) will all complicate matters. Our first recommendation is that you prepare an RFP for a disaster project manager and establish data management protocols before the disaster occurs.

FEMA requires that the Federal procurement process assuring a competitive process is followed **from the first day of the event response** in order for those expenses to be considered for reimbursement. There is no exception to this requirement.

<https://www.fema.gov/media-library-data/1412181205354-9d21f3021c48bf7a9f3705779be27822/OCC%20Pocket%20Guide%20PDAT%20Local%20Government%20Requirements.pdf>

On January 1, 2016, the “Public Assistance Division” (PA) published a new policy and program guide which is effective for all emergencies and major disasters declared on or after January 01, 2016. [The PA Policy and Program Guide \(PAPPG\)](#) supersedes the vast majority of 9500 series policies which are now located on the [PA Archived Policy Page](#) and are still applicable to disasters declared prior to January 01, 2016. PA Standard Operating Procedures (9570 series) and a few fact sheets (9580 series) have not been superseded by the PAPPG and can be found in the attached link: <https://www.fema.gov/public-assistance-policy-and-guidance#>

Insurance and FEMA

Following a disaster, the information needed by your insurance carrier is different than the details mandated by FEMA. FEMA’s job is to follow the Stafford Act. The carrier’s job is to pay for covered losses as allowed by the contract of insurance (or Memorandum of Coverage, for pool members). After insurance has paid for losses, FEMA will need to see the details of the insurance payments to determine any applicable offsets. In reality, the adjusting process and FEMA review work may occur simultaneously, but the process requirements differ. Loss information, eligibility and recovery triggers are all different. FEMA will require information from the insurance provider, but not vice versa, and FEMA closeouts can take years depending on the severity and geographic spread of the disaster.

Insurance providers often provide advance money to “kick start” the loss mitigation process. Keep in mind that all of those payments will eventually be reviewed in detail by FEMA, even if it is 10 years later. The adjusters’ loss details and resulting contractor charges, building by building, must be documented and preserved, along with the payments to your entity, including advance payments.

As part of our commitment to our clients, and in partnership with a well-known IT firm, Gallagher recently rolled out an on-line platform designed to manage a Declared Disaster. The platform aggregates all of documentation needed by FEMA and for insurance claims. Information can be provided from multiple sources and mobile devices. Information is tracked by disaster, location, category, PW, building and site. Property schedules and contact information will be pre-loaded (before the disaster occurs), to ease the data burden. Once a disaster occurs, you “turn on” the system to engage its full functionality (the cost of which is reimbursable by FEMA). Even better, the information will be stored in perpetuity, solving the on-going problem of frequent and redundant transfer of data to FEMA. For more information on this system, please check with your Gallagher representative.

Audits

From the start, prepare for audits. Expect that audits will be conducted by various parties, including FEMA, the Office of Inspector General, DHS, the State’s representatives and others. Sometimes, these audits take place years after the disaster. To save time and frustration, we recommend that you utilize a data management system.

Because audits can be conducted years after the event, they are often done by individuals who have no personal knowledge of the environment at the time of the loss. At the time of audit, after everyone’s memories have faded, it may be difficult to remember the most relevant issues and reasons for decisions at the time of loss. We recommend that you designate a historian, an individual charged with documenting decisions and circumstances at the time of loss and during the recovery process.

For example, immediately following a disaster, prices may be inflated due to lack of availability, fuel may be limited; housing for critical workers may be lacking; direct access to certain areas may be denied; communication challenges may impede mitigation efforts; extra expenses may need to be incurred just to conduct daily business. You may be asked years later to document the environment that existed at the time of loss. Having this information will be invaluable. We recommend that you watch

closely and document damages in the first 30 to 60 days following the event. Remember that FEMA has funds available for hazard mitigation, depending on the size of damage. These funds are in addition to the Public Assistance money and they are important. Mitigation dollars can potentially save both your entity and FEMA future damage costs. Some types of mitigation measures serve a double duty, improving both the building's damage resistance and improving other measures, such as security.

Disaster Applicants' Responsibilities— and Our Recommendations

1. Register for Federal assistance timely online at www.disasterassistance.gov. Failure to register within the timelines allowed will disqualify you from eligibility for funds.
2. Identify each damaged building and structure (individually) and document insurance coverage in place at the time of disaster, noting the limits and deductibles for each. Much further along in the process, FEMA's Public Assistance officer will require documentation of the insurance, including Statements of Loss, for each building damaged. We strongly recommend that you keep impeccable records.
3. Identify all damaged buildings that previously received FEMA funding (in another disaster). Note that failure to Obtain and Maintain insurance as required will render the facility ineligible for future funding (unless the appropriate certification or waiver is obtained from the State Insurance Commissioner or Federal Insurance Administrator).
4. Pursue insurance recovery aggressively and insist that actual insurance figures be included in FEMA's documentation.
5. Identify all buildings located in a SFH Zone and have available NFIP insurance information on each. Remember that if the SFH building is not insured or is underinsured, FEMA will reduce or even deny Public Assistance.



Summary

In closing, managing a massive event is intense. Not only are you dealing with your entity's losses and community's recovery, but you may be dealing with personal loss as well. It is important to prepare and have critical contracts in place prior to the disaster. Keep in mind that Federal Insurance procurement requirements must be followed even on the pre-loss placed contracts. Prior to any major loss, assigning responsibilities and developing your documentation process is imperative.

If you are reading this following a Disaster Declaration, know that there are many who have been in your shoes, and we are ready to help. Recovery can be long lasting and intense. As your broker, Gallagher has the resources and experience to support you through every stage.

Important links and sources used for this writing:

<https://www.regulations.gov/document?D=FEMA-2014-0029-0002>

<https://www.fema.gov/media-library-data/1412181205354-9d21f3021c48bf7a9f3705779be27822/OCC%20Pocket%20Guide%20PDAT%20Local%20Government%20Requirements.pdf>

<https://www.fema.gov/public-assistance-policy-and-guidance#>

Data Collection Checklist

It is imperative that documentation is done from day one of the loss on a "per facility" basis:

- A. Photos
- B. Damage estimates
- C. Mitigation costs
- D. Extra Expense costs
- E. Budgets
- F. Actual invoices for work done and materials received
- G. Purchase orders
- H. Copies of checks documenting all payments
- I. Labor
 - a. Contract Labor
 - b. In-kind Labor
 - c. Force Labor
- J. Detailed labor records necessary
 - a. Copies of pay checks
 - b. Daily Activity Logs
 - i. Each individual (no matter what type of labor) should complete these daily, detailing where they worked, how many hours and type of work etc.)

- c. Copies of union contracts
 - i. Providing hourly rates
 - ii. Overtime rules/rates
- d. Keep pay records by individual—without personal identifying information (such as Social Security numbers)
- K. Legal assistance (Keep hourly records)
 - a. Must be reasonable and related specifically to disaster management
- L. FEMA consultative assistance (keep hourly records)
- M. Contracts, such as:
 - a. Emergency Remediation
 - b. Repair
 - c. Mitigation
 - d. New Construction
 - e. Project Manager
 - f. Consultative Services
- N. Insurance policies and Statements of Values—have copies available
 - a. Property
 - b. Flood, including NFIP
 - c. DIC
 - d. Builders Risk
 - e. Inland Marine
 - f. Auto Physical damage
 - g. Any other applicable property policies
- O. Evidence of insurance payments as they are received
 - a. Proofs of loss
 - b. Checks received
 - c. Potentially, loss runs
- P. Engineering reports
- Q. Scopes of damage detailed for each building
- R. Remediation reports and invoices
- S. Rental equipment (such as generators, dehumidifiers, etc.)
 - Track the need and use of the machinery and invoices for each, detailed by facility.
- T. Environmental related services and assessments including invoices, payments, contracts
- U. Additional utility costs to continue operations (will need past bills to document the increased usage)
- V. Costs spent in providing additional security—either for the entity itself or its constituents.



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About the Author

Nancy Sylvester is a Managing Director of Gallagher's Public Sector Practice, Gallagher's largest practice. Nancy has earned the CPCU and ARM-P designations. Having devoted her career to public risk management, first as a practitioner, then a Director of Risk Management for a national public entity insurance carrier, and now as a leader in Gallagher's support for its public housing, education and public sector clients, Nancy has been recognized for her work by several leading industry organizations and has received multiple awards for her work including: Multi-year Power Broker by *Risk and Insurance*; Leadership Award by Liberty Mutual/*Risk and Insurance*; Women to Watch by *Business Insurance*; and others. Nancy speaks regularly at national and state conferences on the topics of PHA risk management, FEMA, insurance, and leadership.

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