U.S. Department of Homeland Security
FEMA Region 6
800 N. Loop 288
Denton, TX 76209

FEMA

June 10, 2020

The Honorable Andrew S. Friedberg
Mayor of Bellaire
7008 S. Rice Avenue
Bellaire, TX 77401

RE: National Flood Insurance Program

Dear Mayor Friedberg:

In a Community Assistance Contact (CAC) letter dated January 16, 2020 we requested copies of Bellaires's floodplain development repair permits and other documents related to substantial damage determinations for 86 addresses which were damaged during Hurricane Harvey. Based on submittals from Bellaire, we have not been able to verify National Flood Insurance Program (NFIP) compliance for the entire set of properties. With this letter, we are closing the CAC with a notation of "Community Assistance Visit (CAV) needed."

Based on our CAC findings, we feel that more formal assistance through a CAV is warranted. A main goal for the CAV is to help Bellaire address its NFIP programmatic deficiencies and be well prepared for NFIP compliance matters during the 2020 hurricane season. Particularly, we encourage robust administrative capabilities pertaining to the NFIP's substantial damage requirement. Understanding that large flood events cause a significantly increased workload for local permit departments, we hasten to mention that the Federal Emergency Management Agency (FEMA) may be able to help with some of the increased expenses. Please find enclosed, a copy of the DRAFT FEMA Recovery Policy for Building Code and Floodplain Management Administration and Enforcement.

The NFIP paid 452 claims with a 2017 date-of-loss in Bellaire which appeared to have been substantial damage. Historically, NFIP claims data reports 668 apparent substantial damage claims in your community, yet only 72 claims for Increased Cost of Compliance (ICC) have been paid. We fear that policyholders have not been able to access the full value of their NFIP policies, namely ICC claim payments, due to a lack of substantial damage determinations. It is our hope that the CAV will assist Bellaire in identifying mitigation funding opportunities, present and future, to help your citizens break the cycle of repeat flooding.

Brian Bartley, FEMA Floodplain Management & Insurance (FMI) Specialist, will in a few weeks' time contact your Floodplain Administrator, ChaVonne Sampson, to schedule the initial CAV discussion. I thank you and your staff for your attention to NFIP matters. FEMA truly believes that NFIP participation and compliance lead to reduced future flood damages and overall community resilience. If you have any questions regarding this information and/or the

enclosed policy paper, please feel free to contact Mr. Bartley at (940) 383-7207, or via email at brian.bartley@fema.dhs.gov.

Sincerely,

Lisa Jennings
for

Charles Cook
FMI Branch Chief

Enclosure: DRAFT FEMA Recovery Policy for Building Code and Floodplain Management Administration and Enforcement

cc: Yi Chan, Texas NFIP State Coordinator
ChaVonne Sampson, Bellaire Floodplain Administrator

Building Code and Floodplain Management Administration and Enforcement

DRAFT FEMA Recovery Policy [POLICY NUMBER]

BACKGROUND

Sections 402 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended by Section 1206 of the Disaster Recovery Reform Act of 2018 (DRRA), authorizes FEMA to provide assistance to state and local governments for building code and floodplain management ordinance administration and enforcement, including assessments for substantial damage compliance.

PURPOSE

This policy defines the framework and requirements for consistent and appropriate implementation through the Public Assistance (PA) Program of the DRRA 1206 amendments. The intent of this policy is to provide communities with the resources needed to effectively administer and enforce state and locally adopted building codes and floodplain management ordinances for a period of no longer than 180 days after the date of the major disaster declaration.

PRINCIPLES

1. Increase the overall speed of recovery by providing assistance to conduct building inspections, review disaster-related development in the floodplain, review applications for permits, and issue permits to adequately administer and enforce adopted building codes and floodplain ordinances.
2. Enhance compliance with state and local building codes and floodplain management ordinances by providing state, tribal, territorial, and local governments additional resources to carry-out required activities after a disaster.

REQUIREMENTS

A. APPLICABILITY

Outcome: To establish the applicability and retroactive implementation of this policy.

1. This policy applies to Major Disaster Declarations for PA declared on or after August 1, 2017.

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2. For major disasters declared on or after the publication date of this policy, eligible costs will be reimbursed under the provisions of this policy.

3. For major disasters declared after August 1, 2017 and before the publication of this policy, eligible costs will be reimbursed under the provisions of this policy, provided the Applicant identifies and submits all supporting documentation within 90 days from the Recovery Scoping Meeting or 90 days from the date of publication, whichever is later. An example submission can be found in Appendix A of this policy.

4. FEMA will not fund activities under this policy in a community that is suspended from or has been sanctioned for not participating in the National Flood Insurance Program.

5. Work under this policy is not eligible for participation in the PA Alternative Procedures Pilot Program for Permanent Work or for alternate projects.

B. POLICY IMPLEMENTATION

Outcome: To identify key implementation guidelines for this policy.

1. Generally, costs associated with this policy will be obligated via a Category G: *Parks, Recreation, and Other* project worksheet.

2. The exception to B.1 is assistance provided directly by FEMA under its Substantial Damage Data Collection Contracts as described in Section E below.

3. Costs will be funded at the permanent work cost-share applicable to the disaster.

C. DESCRIPTION OF ELIGIBLE AND INELIGIBLE WORK

Outcome: To identify eligible and ineligible activities.

1. Eligible work: All building code and floodplain management ordinance administration and enforcement activities must relate to the repair, replacement, or retrofit of disaster-damaged public, private, and residential structures. Eligible activities under this policy include, but are not limited to:

    a) Building Code Administration:
        i. Review and process applications for building permits; certificates of occupancy; certificates of compliance; and the associated plans, specifications, and construction documents for compliance with federal, state, and municipal building, housing, and life-safety codes and standards applicable to disaster-related repair, replacement, or retrofit.
        ii. Process requests for building code variances.
        iii. Collect fees.

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iv. Hire, train, supervise, certify, and license staff, as required to conduct eligible activities.
v. Contract for services.
vi. Provide training and outreach to the public on building code and building permit requirements applicable to the repair, replacement, or retrofit of disaster-damaged buildings.
vii. Establish plan review and inspection processes, procedures, and instructions for permit holders.
viii. Collect data and conduct assessments to verify disaster-damaged areas.
ix. Monitor impacted areas for unpermitted construction activities.
x. Coordinate building code administration and enforcement with floodplain management ordinance administration and enforcement, as appropriate.

b) Code Enforcement:
i. Inspect structures under construction for compliance with approved plans, specifications, and all requirements of applicable codes, laws, and ordinances.
ii. Identify and carry out corrective action in cases where construction, design, and occupancy does not comply with codes and ordinances.
iii. Conduct and process condemnation determinations.
iv. Review elevation certificates.
v. Investigate complaints and assist in preparation of materials for abating violations of building codes and related ordinances.

c) Floodplain Management Ordinance Administration and Enforcement:
i. Determine whether proposed disaster-related development activities are in areas regulated by the community's floodplain management ordinance or building code.
ii. Hire, train, supervise, certify and license staff, as required to conduct eligible activities.
iii. Contract for services.
iv. Provide training and outreach to the public on floodplain permit requirements applicable to the repair, replacement, or retrofit of disaster-damaged buildings.
v. Review development proposals to ensure compliance with the requirements of applicable floodplain management ordinances.
vi. Process permits for disaster-related development in the floodplain associated with the declared disaster.
vii. Inspect all disaster-related development in in areas regulated by the community's floodplain management ordinance or building code to ensure compliance.
viii. Process requests for floodplain management ordinance variances.
ix. Process, maintain, and track temporary occupancy permits and inspect temporary occupancy buildings.
x. Provide information on flood hazards, floodplain map data, advisory flood data and compliance to residents and property owners.

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xi. Conduct inspections to ensure the removal of temporary fill and related materials used in flood fighting.
xii. Coordinate floodplain management ordinance administration and enforcement with building code administration and enforcement, as appropriate.
xiii. Monitor impacted areas for unpermitted construction activities.
xiv. Take corrective action necessary to ensure compliance with Federal, State, and Local floodplain regulations
xv. Enforce or administer new standards for development according to community floodplain management regulations.

d) Substantial Damage Determinations: For existing buildings located in areas regulated by the community's floodplain management ordinance or building code, eligible work may include work to:
i. Conduct initial field surveys to determine extent of damage and establish damage trends to identify areas to focus building-specific assessment efforts.
ii. Prepare cost information on repairs and pre-disaster market value estimates for substantial damage estimates.
iii. Hire, train, supervise, certify and license staff, as required to conduct eligible activities Collect field data for damage assessments.
iv. Enter administrative data into the Substantial Damage Estimator.
v. Track cumulative substantial damage and repetitive loss for communities, if required.
vi. Conduct damage inventory of structures.
vii. Inform property owners of damage determination and provide compliance requirements.
viii. Perform inspections to ensure compliance with repair and substantial damage construction requirements.
ix. Determine whether proposed improvements are "substantial improvements" and trigger requirements for compliance, including a building permit.
x. Review, adjudicate, and resolve substantial damage determination appeals.

2. Ineligible Work:

a) Activities associated with non-disaster damaged buildings or non-disaster-related development.

b) Activities to update a community's laws, rules, procedures, or requirements. Examples include:
i. Adopting new or updating current building codes or floodplain management ordinances,
ii. Adopting or updating zoning laws and requirements, or
iii. Developing new land use plans or requirements.

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D. ELIGIBLE COSTS

Outcome: To establish costs eligible for reimbursement under Section 1206 of the DRRA.

1. Work described in Section C will be eligible for reimbursement for a period no longer than 180 days after the date of the major disaster declaration.[1]

2. This policy does not change the eligibility criteria for PA permanent work projects. Activities to administer and enforce building code and floodplain ordinances authorized by this policy are eligible regardless of whether the building code or floodplain ordinance in question meets PA's regulatory eligibility criteria for permanent work.

   Example scenario: After a disaster is declared, a community decides to update its building code to require a four-foot freeboard for all buildings in the special flood hazard area. Work associated with administering and enforcing the four-foot freeboard for disaster-damaged buildings in the community is eligible under this policy. However, PA would not fund the physical repairs to an eligible elementary school to meet the new four-foot freeboard requirement since the code was adopted after the date of the disaster declaration and therefore ineligible according to PA regulation and policy.

3. Reimbursement for work under this policy will be subject to Emergency Work Labor Eligibility as described in the Public Assistance Program and Policy Guide (PAPPG). Straight-time for budgeted employees is not eligible.

4. Other costs associated with extra hires or contracted support may be eligible for reimbursement. This includes costs for travel, accommodations, and per diem, as appropriate.

5. The purchase of additional supplies and equipment necessary to effectively execute activities described in this policy are subject to requirements established in the PAPPG and 2 CFR part 200.

6. Costs associated with reimbursement for mutual aid or Emergency Management Assistance Compact (EMAC) will be reimbursed according to provisions established in the PAPPG.

7. Costs associated with legal proceedings related to code and floodplain management ordinance enforcement are eligible for reimbursement.

8. To be eligible for reimbursement under this policy all costs incurred must adhere to PA's requirements under the PAPPG, including evaluation of cost reasonableness.

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[1] *Other sources of FEMA funding may be available to applicants that can demonstrate a need for services that extend beyond the eligibility of this policy. For example, FEMA's Hazard Mitigation Grant Program may be available to fund extraordinary post-disaster code enforcement costs not covered by this policy and activities to promote disaster-resistant codes.*

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9. Revenue collected by the applicant (including fees and fines) for the performance of eligible work funded under this policy is considered program income. The project worksheet will be reduced accordingly during closeout. FEMA will deduct income from total project costs as specified in 2 CFR Section 200.80 and 200.307. If the applicant waives fees or fines following the disaster, FEMA will still reduce the eligible costs by the amount that the fees or fines would have been.

E. Direct Assistance

Outcome: To describe the process for assistance under FEMA's Substantial Damage Data Collection Contract.

1. For substantial damage data collection work described in section C.1.d(i-vi) of this policy, FEMA's Substantial Damage Data Collection Contract may be available to support communities in cases where the State and local government lack the capability to perform or contract for eligible substantial damage data collection-related efforts due to the extreme catastrophic nature of an event or a demonstrated lack of resources.

2. Local governments that seek assistance through FEMA's Substantial Damage Data Collection Contract must submit a request in writing to the State, which will review and, if warranted, submit the request to the Regional Administrator which shall include:

   a) A statement as to the reasons the State and local government cannot perform or contract for performance of the requested work;

   b) Agreement that the State will: hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work; and

   c) Agreement that the State will provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of this policy and the FEMA-State Agreement;

3. If the Regional Administrator approves the request, the work must be completed within 180 days of the date of the disaster declaration.

4. Once the Substantial Damage Data Collection Contract is approved and activated for a local government, FEMA will only provide assistance described in section C.1.d to that local government through the Contract. Work under C.1.d performed prior to the date of activation of the Contract will be eligible subject to the terms of this policy.

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F. OTHER DOCUMENTATION REQUIREMENTS

Outcome: To establish documentation requirements for this policy.

1. To receive funding, applicants must submit the following to FEMA, as applicable:

   a) All supporting documentation necessary to demonstrate the work completed.

   b) All documentation associated with work that was completed through an EMAC resource request or intrastate/interlocal mutual aid request.

   c) If work was performed by contract labor, the applicant will submit to FEMA all documentation demonstrating federal procurement rules in 2 CFR Part 200 were followed.

2. FEMA may require that the applicant provide documentation demonstrating that the eligible activities are in support of the community's legally adopted building code or floodplain management ordinance. This may include floodplain management ordinance administration and enforcement documentation; disaster-related development inspections; and substantial damage inspections, determinations, letters, and appeals.

RESPONSIBLE OFFICE
Office of Response and Recovery
Recovery Directorate
Public Assistance Division

_____
Keith Turi
Assistant Administrator
Recovery Directorate

_____
Date

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ADDITIONAL INFORMATION

REVIEW CYCLE

This policy will be reviewed, reissued, revised, or rescinded within four years of the issue date, and will be incorporated into the PAPPG update that follows the publication of this policy.

AUTHORITIES

Section 324, 402 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5165b, 5170a and 5172, as amended.

Sections 324, 402 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5165b, 5170a and 5172, as amended. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

DEFINITIONS

Substantial Damage (SD)[2] – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred.

Substantial Improvement (SI)[3] – Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed.

QUESTIONS

Direct questions to FEMA-Recovery-PA-Policy@fema.dhs.gov

[2] *44 CFR Part 59.1*
[3] *Ibid.*

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Appendix A: Opt-in Notification for Building Code and Floodplain Management Administration and Enforcement

In accordance with the Federal Emergency Management Agency (FEMA) Recovery Policy [**INSERT FP and** Title] *(Policy)*, Applicants that meet the criteria below may elect to opt-in to the Policy. **Applicants wishing to participate must make their election no later than either:**

- **[INSERT DATE] (90 days from date of Policy publication), or**
- **90 days after the date of the Recovery Scoping Meeting (RSM) for Applicants that have not yet participated in their RSM**

This notification does not apply to Applicants in declarations on or after the date of Policy publication**.**

Applicant must identify the disaster number and declaration date.

We, _____(name of Applicant)_____, elect to seek reimbursement for activities eligible under Recovery Policy [**INSERT TITLE AND FP NUMBER**] for _____(Disaster number and date)_____.

_____

Signature of Subrecipient's Authorized Representative and Title (Printed) Date

_____

Subrecipient Name PA ID Number

_____

Signature of Recipient's Authorized Representative and Title (Printed) Date

_____

Recipient Name Name of State or Tribe

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