

## **Chapter 10 Federal Emergency Management Agency (FEMA)**

The Federal Emergency Management Agency, commonly known as FEMA, was originally an independent agency that became part of the new Department of Homeland Security in March of 2003. It is the responsibility of FEMA to respond to disasters, whether it happens to be a hurricane, an earthquake, or even terrorism. Any disaster that has physical and/or financial consequences will fall under FEMA's authority. It is FEMA's responsibility to lead the efforts to prepare the nation for all hazards and effectively manage federal response and recovery efforts following a disaster. They also have the responsibility of managing the National Flood Insurance Program.

FEMA has statutory authority. Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 100-707, signed into law November 23, 1988 amended the Disaster Relief Act of 1974, PL 93-288. This act constitutes the statutory authority for most Federal disaster response activities, especially as they pertain to FEMA and FEMA programs.

FEMA has more than 2,600 full time employees working at FEMA headquarters in Washington D.C., at regional and area offices, the Mount Weather Emergency Operations Center, and the National Emergency Training Center in Emmitsburg, Maryland. There are additional 4,000 or so standby assistance employees who are available for deployment following a disaster. FEMA may work in partnership with other organizations that are part of the nation's emergency management system. This would include state and local emergency management agencies and the American Red Cross. The general contact address for FEMA is 500 C Street SW in Washington D.C. 20472.

FEMA was created from the Congressional Act of 1803, which is considered the first piece of disaster legislation. It provided assistance to a New Hampshire town following an extensive fire. Successive legislation (more than 100 of them) followed in response to hurricanes, earthquakes, floods, and other natural disasters.

Eventually, a federal approach to such disasters became favored by most of the population. By the 1930s, The Reconstruction Finance Corporation was given authority to make disaster loans for repair and reconstruction of certain public facilities following an earthquake. Eventually this also covered other types of disasters. In 1934, the Bureau of Public Roads was given authority to provide funding for highways and bridges damaged by natural disasters. The Flood Control Act was passed that gave the U.S. Army Corps of Engineers greater authority to implement flood control projects, such as dams. It eventually became evident that the piecemeal approach to disaster assistance needed something to pull all pieces of legislation together, so the President was authorized to coordinate activities between federal agencies.

The 1960s and early 1970s brought massive disasters requiring major federal response and recovery operations by the Federal Disaster Assistance Administrations, established within the Department of Housing and Urban Development (HUD). There were both hurricanes and earthquakes: hurricane Carla in 1962, Hurricane Betsy in 1965, Hurricane Camille in 1969, and Hurricane Agnes in 1971. Earthquakes in 1964 in Alaska and one in San Fernando in Southern California in 1971 caused severe damage in addition to the hurricanes. In 1968, the National Flood Insurance Act gave new flood protection to homeowners. In 1974 the Disaster Relief Act established the process of Presidential disaster declarations.

Historically the Federal government has tried to control the flow of the nation's waterways by using structural methods such as dams, levees, and dikes. While there was some success with these methods they could not prevent other types of flooding disasters such as Hurricane Katrina brought. Every time a hurricane or other disaster occurred, they brought with them severe financial losses, which had to be at least partially covered by Federal disaster assistance programs.

These problems were compounded by the fact that flood insurance was not readily available to people in the private sector. The insurance industry was reluctant to provide coverage for the peril of flood since it was catastrophic in nature and it also tended to produce an adverse selection of risk. Obviously, flood insurance was likely to be purchased by those most prone to flooding rather than those who were unlikely to experience the event.

## **Community Participation**

While community can mean many things, as it relates to flood insurance, it means a political entity that has the authority to adopt and enforce floodplain management ordinances for its jurisdiction. Therefore, community would mean a town, city or rural jurisdiction such as a county, borough, or parish.

The floodplain management requirements include the requirement of community evaluation of the building site prior to a building being erected. The evaluation would include the location of the building site in relation to the floodplain or floodway. Since there is no federal law regulating enforcement of flood building codes, enforcement of floodplain management rules are the responsibility of the different communities. Each state delegates enforcement authority to the various types of communities within its jurisdiction.

Flood insurance is not necessarily available everywhere; availability is tied to mitigation and floodplain management by the community. Once a community determines their potential for flooding and their need to make flood insurance available to those who live there, it contacts FEMA and requests admission to the NFIP. Anyone wishing to see if a particular community participates in the National Flood Insurance Program can go to <http://www.fema.gov/fema/csb.shtm>. Community participation determines whether buildings are eligible for Regular Program coverage limits, reduced limits if in the Emergency Program, subject to surcharge if on Probation or if the policy will be non-renewed should the community be suspended.

## **Emergency Program**

Once a community agrees to adopt and enforce minimum floodplain management ordinances, it will likely be admitted into the NFIP Emergency Program. Acceptance is the first stage of the Program.

In the Emergency Program there is a limited amount of flood insurance available for all insurable buildings and their contents and, if appropriate, a map identifying known floodplains will be issued. Rates are broken down into either (1) Residential or (2) Non-residential.

During the Emergency phase, FEMA will perform a Flood Insurance Study. This study includes an in-depth evaluation of the community's flood hazards. It will identify the floodway and floodplain, and establish a Base Flood Evaluation, called a BFE.

The Flood Insurance Study will provide information for a Flood Insurance Rate Map, called FIRM. This map shows greater detail regarding the floodplain and identifies the various flood risk zones. Both the Flood Insurance Study and the Flood Insurance Rate Map are presented to the community for approval. If the community agrees with the conclusions of the two, it may adopt them as they are written. Or, if the community does not completely agree with them, it may provide additional scientific data to amend them.

When FEMA and the community agree with the Flood Insurance Study and the Flood Insurance Rate Map the community must then decide if it wishes to continue participating in the NFIP. It is possible to withdraw at this time if the community wishes to. On the other hand, if the community decides to continue it must formulate and adopt more comprehensive FEMA floodplain management ordinances and agree to enforce them.

At this point, the community must establish a building permit system. No construction, including remodeling, is permitted unless the contractor or owner first obtains a building permit from a designated floodplain administrator or community official.

Before issuing the building permit, the community official must determine if the proposed building site is inside or outside of a Special Flood Hazard Area. If the building site is outside of the area, no flood mitigation restrictions will apply. If the building site is located within a Special Flood Hazard Area, however, the community official or administrator will require the building to be elevated or flood proofed if it is a commercial building to the standards required in the community's floodplain management ordinance.

This system helps to accomplish the mitigation goals of the program. It allows the community to control construction in flood prone areas. At the very least it requires that buildings be elevated or flood proofed above the anticipated depth of water in a base flood event.

## **Regular Program**

Once a community adopts the floodplain ordinances, it qualifies for admission into the National Flood Insurance Program (NFIP) Regular Program. The regular phase of the Program allows for increased amounts of insurance coverage.

It is necessary for the community to continue to enforce its floodplain ordinances if it wishes to remain in good standing in the NFIP. There will be periodic visits from FEMA and the state floodplain management coordinators to verify that enforcement of the ordinances is occurring. Should the community be unable or unwilling to enforce the ordinances it could be placed on probation. During the probationary period, the community is given an opportunity to correct any deficiencies that were cited. When a community is placed on probation, all new and renewal policies are subject to a \$50 surcharge.

If the deficiencies have not been corrected by the end of the probation period the community could be suspended from the NFIP by FEMA. When a community is suspended, in force policies become non-renewable and new policies may not be written.

The Flood Disaster Protection Act of 1973 and the NFIRA of 1994 limits the availability of loans and disaster assistance for buildings located in Special Flood Hazard Areas (SFHA) unless the borrower purchases and maintains flood insurance coverage on the buildings for the term of the loan. If it is a disaster grant, the borrower must maintain flood insurance coverage for as long as

they own the property. Flood insurance would not be available for buildings located in non-participating communities so participation is desirable. If a participating community is suspended from the NFIP, it then becomes non-participating so building owners could no longer be eligible for federal disaster assistance, federally guaranteed or federally regulated loans. It is not surprising therefore, that suspension can adversely affect the community. An individual that wishes to find out if his or her community participates may go to the Community Status Book (which lists participating and mapped non-participating communities) by state at [www.fema.gov](http://www.fema.gov). It is available at that web address through the FEMA Map Service Center.

## **Community Rating System**

The National Flood Insurance Program (NFIP) Community Rating System (CRS) is not mandatory; it is a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum NFIP requirements. The premium for flood insurance is discounted since there is reduced flood risk as a result of community actions aimed at meeting the Community Rating System goals of:

- Reducing flood losses;
- Facilitating accurate insurance rating; and
- Promoting the awareness of flood insurance.

An individual wishing to gain additional information concerning the community's CRS status and premium rates may go to <http://fema.gov/nfip/crs.shtm>.

## **Building Eligibility**

Even when a community is participating in the National Flood Insurance Program, all buildings will not necessarily be insurable. Buildings in violation of floodplain management ordinances, new construction located in coastal barrier resource areas, buildings built over water, container type buildings, and buildings partially underground may not qualify. Buildings that are in compliance will have met specific requirements. Exact criteria may be accessed in the Flood Insurance Manual.

Many types of buildings can be eligible, including manufactured homes and travel trailers located in high flood risk areas, as long as they meet the criteria that applies to them. The eligibility or ineligibility of buildings depends upon meeting specific criteria as set down by the NFIP for flood insurance qualification. A building's status can be determined by comparing the specific building risk factors with the underwriting criteria in the General Rules Section of the Flood Insurance Manual. Additional assistance can be obtained from the underwriting department of the Write Your Own Company or Direct Side Facility, if applicable. Most buildings will be eligible if they are constructed in compliance with the community's building requirements and are located in an NFIP participating community.

## **Coastal Barrier Resources System and Other Protected Areas**

There are specific areas where development is discouraged. The Coastal Barrier Resources Systems (CBRS) and Other Protected Area (OPA) boundaries were mapped out and established by the Department of Interior and the U.S. Fish and Wildlife Service (FWS). Flood insurance may not

be available for buildings and their contents located in these locations. Such areas are designated by Congress to protect the coastline. The Coastal Barrier Resources System (CBRS) hopes to discourage development in those specially designated areas. An individual may not purchase a flood policy in the CBRS unless the structure was built prior to the area designation. These areas are shown on Flood Insurance Rate Maps (FIRMs) with backward slating diagonal lines patterns, both solid and broken, and are commonly referred to as "CoBRA Zones." Agents writing flood insurance policies must take special care for any location within these areas. Agents may consult the Community Status Book in NFIP Flood Insurance Manual's listing of communities (which have identified OPAs and CBRS areas) at <http://fema.gov/fema/csb.shtm>.

These designations are not just about protecting property located in flood zones. FEMA mitigation measures, such as the elevation of buildings, can offer some protection from flood, but the damage done to fragile coastlines by development has little to do with flooding. Aquatic habitats, wetlands, marshes, estuaries, and inlets experience unavoidable damage when human populations move in. These areas are home for wild life and ecosystems that support local fishermen and provide recreational use; they can be lost forever if they are not properly protected. Coastal barriers are unique landforms that also serve as the mainland's first line of defense against the impacts of coastal storms and erosion. While older structures may exist in such areas, it is not likely that new construction would be allowed there. In fact, by law, Federally regulated mortgage lending and Federal disaster assistance is not available in these areas. This includes federally backed flood insurance for new construction or substantial improvements in CFRS or OPAs.

There are some exceptions to the availability of federally backed flood insurance in CFRS and OPAs. Eligibility for Federal flood insurance depends upon whether the community where the building is located has Coastal Barriers Resources Act of 1982 (CBRA) or the Coastal Barrier Improvement Act of 1990 (CBIA) designated areas. Under the 1982 Act a building in a CBRS area is eligible for coverage if the following requirements are met:

1. A legally valid building permit for the construction was issued prior to October 1, 1983; and
2. The building was built (walled and roofed) prior to October 1, 1983; and
3. The building was not substantially improved or substantially damaged on or after October 1, 1983.

Eligibility under the 1990 Act for buildings in a CBRS area or Other Protected Areas requires:

**For CBRS areas:**

- A legally valid building permit for the construction of the building that was issued prior to November 16, 1990; and
- The actual start of construction of the building was prior to November 16, 1990; and
- The building was not substantially improved or substantially damaged on or after November 16, 1990.

**For OPAs:**

- A legally valid building permit for the construction of the building that was issued prior to November 16, 1991; and
- A building in the OPA was built (walled and roofed) no later than November 16, 1991; and
- The building was not substantially improved or substantially damaged after November 16, 1991.
- Or, the building is used in a manner consistent with the purpose for which the area is protected, regardless of the date of construction.

Neither of these prevents private development, financing or private flood insurance, if it is available in these areas. Of course, any development is subject to all applicable state and local laws, regulations and building codes.