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Managing Through Natural Disasters: Pre/Post Loss Guidance on Handling FEMA Claims

By Joseph J. Mascali, Vice President - Procor Solutions



Each year, a growing concern for public entities and insureds across the country is how to manage through a natural disaster effectively. Depending upon the type of entity, various funding sources may become available to assist in the reimbursement and recovery efforts following damages sustained during an event.

Arguably the most notable source of funding - outside the traditional forms of insurance - is the Federal Emergency Management Agency (FEMA), which provides funding for eligible applicants through the Public Assistance Program (PA).

This article focuses on key strategies eligible applicants should consider, both prior to and following, a natural disaster to ensure maximum reimbursement and a streamlined claims process.

Introduction

Since 2017, a total of 11 major hurricanes - which are defined as a Category 3 windstorm or higher - have impacted public entities throughout the United States, USVI, and Puerto Rico. Hurricanes Dorian (2019), Michael (2018), Maria, Irma, and Harvey (all 2017), are among the largest hurricanes ever recorded, causing billions of dollars in damages¹. Many public entities still are managing through complex, and time-exhaustive claims with insurance providers and FEMA.

Unfortunately, the outlook for the 2020 Hurricane Season is much of the same - high activity. Current projections for 2020 are 18 named tropical storms, resulting in 9 hurricanes with 4 becoming major hurricanes². With claims possibly still open from past disasters, and future claims on the horizon, it is important for public entities to begin to implement strategies and plans for both pre and post disaster to better prepare themselves for a FEMA claim, should FEMA funding become authorized.

Developing plans prior to an event, to better understand exposures and the claims process, will allow organizations to effectively manage when disaster strikes. This in turn will ensure a more streamlined and organized claim, resulting in greater likelihood for maximum reimbursement through the various funding sources (e.g. NFIP, insurance, FEMA, State, CBDG, etc.).

Pre-Disaster Planning

Pre-disaster recovery planning provides a unique opportunity for public entities to enact measures that reduce risk and mitigate potential loss. To reduce operational risk and expedite the recovery process, organizations need to reflect upon past experiences, both good and bad, and determine what actions / processes should be implemented moving forward. Below are some items to consider prior to an event to help better position your organization when disaster strikes:

Reduce Exposure & Vulnerability Points

1. Review organization / operation to determine exposures and vulnerability points;
2. Determine both short-term and long-term mitigation opportunities that can be implemented to make organization / operation more resilient based upon exposures identified;
3. Integrate recovery / mitigation goals and policies into other Federal, State, Regional, and Community Plans (if applicable);
4. Discuss exposures with risk management / insurance team to offset risks through available insurance coverage (e.g. risk manager, broker).

Disaster Operational Considerations

1. Determine if your organization is eligible for FEMA funding;
2. Appoint an internal disaster team tasked with managing and responding to an event;
3. Pre-negotiate contracts for remediation services, emergency repair / protective measure services, and consulting services;
4. Frequently review insurance policies, insurance schedule of values, and FEMA's policy and guidelines.

Understanding the FEMA Public Assistance Program

As noted previously, public entities should frequently educate themselves on the FEMA PA Program prior to the next disaster. The PA Program is forever changing and is constantly evolving following lessons learned from each prior disaster. Understanding the program will help the 'Applicant'³ better position itself for a successful outcome, resulting in accurate and expeditious reimbursements. When making a FEMA claim, the following are some of the important considerations:

1. FEMA's PA Program is designed to be a backstop for eligible Applicants and is not intended to be the primary source of funding. Simply put, FEMA is the payer of last resort. FEMA's program is designed for Applicants to work through their insurance program alongside the FEMA claim;
2. The PA program is not designed to make an organization whole. This is emphasized by FEMA's "cost share" approach which will never be lower than 75% of an eligible expense and can be as high as 90% depending upon the magnitude of the disaster;⁴
3. FEMA does not require an applicant to have settled its insurance claim prior to eligibility determinations. It is a common misconception that FEMA requires an applicant to have resolved its insurance claim prior to obligation of funds. As the 'payer of last resort' for categories of work where both insurance and FEMA provide funding, FEMA will reduce its gross-obligated amount by any insurance proceeds to avoid a duplication of benefit. However, when an insurance claim is on-going, FEMA can apply an 'anticipated' insurance reduction based upon FEMA's internal insurance teams review of the applicable policies. Therefore, FEMA can in fact obligate a project while an insurance claim is open. Any modifications to insurance reductions will be handled at the project's close-out;
4. The State (i.e. the Recipient) administers the money for reimbursement, and therefore will perform its own independent review of the amounts determined to be eligible by FEMA.

Post Disaster Measures

Considering the nuances of the FEMA PA Program, when disaster strikes, public entities must activate a streamlined and coordinated effort to address current damages and organizational operations. This can include costs-measures to initiate temporary repairs, or reimbursement for extra expenses incurred to maintain business operation. FEMA can provide reimbursement for these types of activities, which are defined by FEMA as emergency protective measures or Category B expenses.

Effective planning allows for timely repairs which can mitigate further damages and reductions to revenues. Below are some items to consider following an event to help promote reimbursement and overall claims handling.

Resources / Response Services

1. Activate any pre-negotiated or awarded contracts to address immediate repairs, possible remediation and debris removal services;
2. Activate disaster team and ensure responsibilities are properly assigned to the effectively manage the disaster response;

Documentation / Claims Handling

3. Coordinate with contractors to ensure documentation provided is properly formatted (e.g. make sure documentation is compliant with insurance and FEMA policy);
4. Create a disaster specific cost-code to track all expenses incurred;
5. Track all internal labor daily, with detailed descriptions for all work performed - descriptions should include the “who, what, when, where and why”;
6. Take photos, video, 3D scans, aerial photographs / drone footage, capturing damages sustained;
7. Develop a detailed cost-tracker identifying all expenses and recommendations received by insurance, FEMA, or other various funding sources;
8. File a claim with insurance carriers (if applicable);
9. File a Request for Public Assistance (RPA) with FEMA;
10. Develop strong lines of communication with insurance carrier representatives, FEMA, and the State Representatives (e.g. weekly conference calls / meetings).

The past three years have been record breaking in terms of damages sustained by public entities from natural disasters. Developing plans, evaluating strategies, and reflecting on past lessons learned will allow for a more streamlined claims process for the next disaster. As Benjamin Franklin warned, “by failing to prepare, you are preparing to fail.”

¹ <https://www.iii.org/fact-statistic/facts-statistics-hurricanes>

² <https://weather.com/storms/hurricane/news/2020-04-15-atlantic-hurricane-season-april-outlook-the-weather-company-ibm>

³ FEMA may also refer to an ‘Applicant’ as a ‘Sub-Recipient’.

⁴ Please note, there is opportunity for FEMA to pay 100% of an eligible expense, however this is certainly the ‘exception’ to the ‘rule’. for further information on 100% eligibility determinations, please refer to the FEMA PA Policy.

Joseph J. Mascali has extensive experience in large property losses, especially large, complex losses arising out of Superstorm Sandy and Hurricanes Harvey, Irma and Maria. His experience includes preparing, documenting and quantifying both insurance and FEMA claims on behalf of insureds and eligible applicants. Other projects and experience include grant management support, litigation support and embezzlement cases. During his tenure at Procor Solutions, dating back to 2013, Mr. Mascali has worked his way up from Analyst to Vice President, where he now manages Procor’s West Coast operation and supports numerous clients - both private and public - throughout the country.

Procor Solutions is a leading risk management firm that specializes in assisting organizations prepare for, respond, and recover from disasters and disruptions. Procor’s services include: disaster planning and response; risk assessments; property / business interruption claims; loss mitigation; and FEMA Public Assistance consulting. Procor is comprised of seasoned risk management professionals, forensic accountants and construction experts who support clients globally. Procor has offices located in New York, NY, Lake Mary, FL, Portland, OR and Los Angeles, CA. For more information on Procor Solutions please visit - www.procorllc.com