



Individual Assistance for Housing Cooperatives and Condominium Associations

May 24, 2016

Fiscal Year 2016 Report to Congress



Homeland
Security

Federal Emergency Management Agency

Message from the Administrator

May 24, 2016

I am pleased to submit the following report, “Individual Assistance for Housing Cooperatives and Condominium Associations.”

The Federal Emergency Management Agency (FEMA) prepared this document in response to a requirement in House Report 115-215, which accompanies the *Fiscal Year 2016 Department of Homeland Security Appropriations Act* (P.L. 114-113). The report provides implementation considerations that FEMA will need to address if granted the authority to provide financial assistance to housing cooperatives and condominium associations to address disaster-caused damage to common areas.



Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable John R. Carter
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Hoeven
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jeanne Shaheen
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries related to this report may be directed to me at (202) 646-3900 or to the Department's Deputy Under Secretary for Management and Chief Financial Officer, Chip Fulghum, at (202) 447-5751.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Craig Fugate', with a long horizontal flourish extending to the right.

W. Craig Fugate
Administrator
Federal Emergency Management Agency



Individual Assistance for Housing Cooperatives and Condominium Associations

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I. Legislative Language

This report responds to the language set forth in House Report 114-215, which accompanies the *Fiscal Year (FY) 2016 Department of Homeland Security (DHS) Appropriations Act* (P.L. 114-113), and includes the following requirement.

House Report 113-91 directed FEMA to submit a report describing options for making housing cooperative and condominium associations eligible for Federal disaster assistance, including statutory recommendations for making such entities directly eligible for assistance based on disaster-related damages to common areas. In its May 2014 report, FEMA stated that it was “exploring the program implications surrounding Stafford Act changes that would authorize FEMA to provide federal assistance directly to housing cooperatives and condominium associations.” The Committee directs FEMA to provide an updated report to Congress on the status of its exploration, including options for statutory changes to the Stafford Act and associated changes to regulations or guidance that would be required to make housing cooperatives, condominium associations, and community associations eligible for disaster assistance.

II. Background

When Individual Assistance (IA) is authorized for a presidentially declared disaster, a variety of disaster assistance programs is made available to survivors in the declared area. One of these IA programs, the Federal Emergency Management Agency's (FEMA) Individuals and Households Program (IHP), provides financial assistance to eligible individuals and households¹ for the repair of uninsured or underinsured disaster-caused damage to an owner's primary residence.² As described in this report, FEMA may provide financial assistance to owner-occupants or renter-occupants of housing cooperatives and condominiums. However, Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5174, currently does not give FEMA the authority to provide financial assistance directly to owner-occupants or housing cooperatives and condominium associations to address damage to common areas (e.g., roof, stairwells) that is a result of a disaster.

As a result of Hurricane Sandy, the New York housing infrastructure was severely damaged. Some of this infrastructure included housing cooperatives and condominiums, which are prevalent in the New York area. Subsequently, in the *FY 2014 DHS Appropriations Act* (P.L. 113-76), FEMA was asked to review its authority to determine what types of assistance that owner-occupants, renter-occupants, and housing cooperatives and condominium associations may receive to repair their disaster-damaged dwellings.

FEMA provided a response on May 22, 2014, in its "Individual Assistance for Cooperatives and Condominiums" report to Congress. In the 2014 report, FEMA outlined that federal law does not provide the Agency with the authority to award grants to housing cooperatives and condominium associations to repair common-area damage as they are not, by any definition, individuals or households and are considered business associations. FEMA also stated that the Agency is currently exploring program implementation issues surrounding Stafford Act changes that would authorize FEMA to provide federal assistance directly to housing cooperatives and condominium associations. This report will provide information regarding IHP and how it would interplay with housing cooperatives and condominium associations if the Stafford Act were amended to provide this authority to FEMA. Further, this report will outline the challenges that such a change likely would present to various aspects of IHP, to include eligibility determinations, inspections, insurance, and the maximum amount of assistance for which the applicant may be eligible.

¹ A household means all persons (adult and children) who lived in the pre-disaster residence who request assistance under this subpart, as well as any persons, such as infants, spouse, or part-time residents who were not present at the time of the disaster, but who are expected to return during the assistance period. 44 C.F.R. § 206.111.

² Primary residence means the dwelling where the applicant normally lives during the major portion of the calendar year; or the dwelling that is required because of proximity to employment, including agricultural activities, that provides 50 percent of the household's income. 44 C.F.R. § 206.111.

III. Discussion

FEMA works individually with disaster survivors to ensure that they are provided all assistance for which they are eligible under the law. Section 408 of the Stafford Act authorizes FEMA to provide assistance to individuals and households. This includes individuals or households who reside in housing cooperatives and condominiums. Assistance under Section 408 includes housing assistance comprised of temporary housing, repair, replacement, and permanent or semi-permanent housing construction, and other needs assistance including medical, dental, funeral, child care, transportation, personal property, and assistance for miscellaneous items.

Historically, FEMA has never provided IHP to a business, homeowners association, housing cooperative, or condominium association. As written, the Stafford Act does not provide to FEMA the authority to award assistance to housing cooperatives and condominium associations for repair to common areas; therefore, FEMA has never provided IHP assistance to owner-occupants or residents for such damages. Specific to this discussion, Sections 408(c)(2) and (c)(3) of the Stafford Act provide the following:

(2) Repairs –

(A) IN GENERAL – The President may provide financial assistance for –

- (i) the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access route) damaged by a major disaster to a safe and sanitary living or functioning condition; and
- (ii) eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.

(B) RELATIONSHIP TO OTHER ASSISTANCE – A recipient of assistance provided under this paragraph shall not be required to show that the assistance can be met through other means, except insurance proceeds.

(3) Replacement –

(A) IN GENERAL – The President may provide financial assistance for the replacement of owner-occupied private residences damaged by a major disaster.

(B) APPLICABILITY OF FLOOD INSURANCE REQUIREMENT – With respect to assistance provided under this paragraph, the President may not waive any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of Federal disaster assistance.

Under FEMA's current interpretation of the Stafford Act, owner-occupants may be eligible for FEMA assistance up to the maximum amount of assistance for their individual units.³ Generally, an owner-occupant who lives in a housing cooperative or condominium is responsible for damage within the unit from the sheetrock on the inside face of exterior walls or adjoining units into the unit. However, FEMA will evaluate the proprietary lease or occupancy agreement, which stipulates the responsibility of owner-occupants to determine items that are their responsibility. Based on this information, FEMA may provide repair assistance to owner-occupants for any disaster-caused damaged items that are their responsibility and assistance for other needs, such as personal property. Even though FEMA is authorized to provide assistance for the individual, owner-occupied unit, FEMA is not authorized to provide assistance for any damaged items or common areas that are the responsibility of the housing cooperative or condominium association and that are typically covered by a master insurance policy.

The owner of a share in a housing cooperative or owner of a condominium unit who has rented his or her unit is not eligible to receive FEMA repair or replacement assistance for any disaster-caused damage. An owner must occupy the unit as his or her primary residence to be eligible for repair or replacement assistance. Consequently, the renter-occupant of the unit may only be eligible to receive FEMA temporary housing assistance and assistance for other needs, such as personal property.⁴

If Congress grants to FEMA the authority to provide financial assistance to housing cooperatives and condominium associations to repair disaster-caused damage to common areas, there are a significant number of considerations that FEMA must address prior to implementation. In order to accurately capture these issues, this section will address each issue by following FEMA's sequence of delivery of financial assistance.

a) Application

There are many technical systems in place to ensure that FEMA only provides assistance to eligible applicants. For instance, FEMA's system of record, the National Emergency Management Information System (NEMIS),⁵ verifies an applicant's identity and ensures that duplicative applications are identified as needing manual review. Therefore, if a housing cooperative or condominium association were to apply for assistance as a

³ 42 U.S.C. § 5174(h) specifies, "[n]o individual or household shall receive financial assistance greater than [\$31,900] under this section with respect to a single major disaster." See 78 FR 6452 (Oct. 29, 2013) (establishing \$33,000 limit for disasters after Oct. 1, 2015).

⁴ While FEMA does not have the authority to provide assistance for damaged items or common areas that are the responsibility of the housing cooperative or condominium association, if damage to a common area is preventing an owner-occupant or renter-occupant from entering and residing in the damaged dwelling, FEMA may provide the owner-occupant or renter-occupant with temporary housing assistance to find adequate, alternative housing.

⁵ NEMIS is an electronic database that houses pertinent applicant information and helps to ensure that applicants do not receive a duplication of benefits from FEMA or other sources. NEMIS also maintains the registration, inspection, and processing of assistance to disaster applicants.

separate entity or in the name of one of its residents, it would trigger processing issues within NEMIS, as currently designed, and cause delays in delivering assistance.

b) Insurance/Other Assistance

Under Section 312 of the Stafford Act, FEMA cannot duplicate assistance from other sources, such as insurance. Therefore, the housing cooperative or condominium association must first file a claim with its insurance provider. Once the housing cooperative or condominium association receives an insurance settlement or denial letter, it will need to submit the documentation to FEMA for review.

i) Insurance Settlement Review

Under FEMA's IHP, when a homeowner submits his or her insurance documentation, FEMA will note the insurance settlement amount. If the net insurance award amount is greater than the financial assistance limit, the applicant is determined to be ineligible for repair or replacement assistance. The only exception to this standard is for uninsurable items, such as a septic tank or well. FEMA will need to determine whether this standard also should be applied to housing cooperatives and condominium associations.

ii) Additional Funds

At times, housing cooperatives and condominium associations set aside funds that they have assessed from their owner-occupants for the general repair of the building's common areas. FEMA will need to determine whether the housing cooperative or condominium association will be required to deplete these funds prior to being considered for disaster assistance to repair the building's common areas.

c) Inspection

Once the housing cooperative or condominium association's insurance settlement or denial letter is submitted, FEMA will review the insurance documentation to determine if an inspection of the building is warranted.

i) Essential Common Areas

If an inspection of the building's common areas is ordered, FEMA will need to determine what areas will be considered essential. FEMA's IHP is meant to assist an applicant in restoring his or her damaged property to a safe, sanitary, and functional condition; it is not intended to restore the dwelling to its condition before the disaster (44 C.F.R. § 206.117(b)(2)(i)). Furthermore, FEMA's IHP is mandated to provide financial assistance for necessary expenses and serious needs (408(a)(1) of the Stafford Act and

44 C.F.R. § 206.110(a)). Therefore, FEMA must determine what qualifies as a necessary expense and serious need within a housing cooperative or condominium.

ii) Pricing and System Update

Since FEMA's IHP has not previously addressed damage to common areas, FEMA will need to determine a standard price for repairing each commercial component of the essential common areas and what "code" to designate it as in NEMIS. These new pricing standards and codes will need to be integrated into NEMIS.

iii) Inspector Training

FEMA inspectors are qualified to inspect privately owned homes and personal property in apartments. However, they currently are not qualified to identify the repairs needed to meet the necessary codes and standards for essential common areas of a housing cooperative or condominium (e.g., elevators and shared stairwells). Consequently, FEMA may consider utilizing third-party inspections from certified engineers, providing additional training to FEMA's inspectors through the current Housing Inspections Services contract, or utilizing Public Assistance inspectors as they are equipped to provide inspections of commercial areas.⁶

d) Financial Assistance

i) Types of Assistance

FEMA will need to determine the types of IHP assistance for which a housing cooperative or condominium association will be eligible. Some types of IHP assistance clearly will not apply to a housing cooperative or condominium association, e.g., financial assistance to rent alternate housing accommodations or payment of utilities and Other Needs Assistance categories, such as medical, dental, or funeral. However, other types of assistance beyond repair and replacement assistance, such as permanent or semi-permanent housing construction and assistance for miscellaneous items, would need to be evaluated to determine whether housing cooperatives or condominium associations may be considered for them.

ii) Delivery of Assistance

As multiple individuals within a housing cooperative or condominium may apply for FEMA assistance, FEMA will need to ensure that any assistance provided directly to the housing cooperative or condominium association is

⁶ If FEMA were to utilize a third-party inspector, FEMA would need to determine the verification required to confirm that the proposed repair costs are strictly disaster-caused and do not include upgrades.

not duplicated with assistance provided to individuals or households located within the housing cooperative or condominium.

iii) Maximum Amount of Assistance

Per 42 U.S.C. § 5174(h), the maximum amount of financial IHP assistance provided to eligible individuals or households under a single disaster is adjusted each fiscal year based on the U.S. Department of Labor Consumer Price Index. The maximum amount of IHP assistance available for disasters declared in FY 2016 is \$33,000. If FEMA was granted the authority to provide assistance to housing cooperatives and condominium associations, then they also would be limited to this amount.

iv) Environmental and Historical Preservation (EHP) Review

Federal EHP laws and Executive Orders provide the basis and direction for the implementation of Federal EHP review requirements for FEMA-funded efforts, such as the repair of multi-family buildings. FEMA will need to determine whether activities to repair the common areas to a housing cooperative or condominium need to satisfy environmental and historic preservation compliance review requirements as established by 44 C.F.R. Part 9 and 10, the National Historic Preservation Act, the Endangered Species Act, and all other applicable legal requirements. If the repair of the housing cooperative/condominium were to need an EHP review, then the housing cooperation or condominium association will need to comply with any conditions developed as a result of the EHP review process. They also will be responsible for obtaining all necessary federal, state, and local permits, as mandated by law.

e) Flood Insurance

In instances where a dwelling is damaged by flood, a National Flood Insurance Reform Act (NFIRA) requirement will be generated if federal disaster assistance for flood-damaged real and personal property is provided to a homeowner whose flood-damaged dwelling is located within a special flood hazard area. This means that the current homeowner, and any future owner of the dwelling, must purchase and maintain flood insurance coverage at the address of the flood-damaged property for as long as the address exists. Any dwelling that fails to comply with the NFIRA requirement for any reason will not be eligible for federal disaster assistance for flood-damaged real and person property. FEMA will need to determine how this requirement will impact housing cooperatives and condominium associations as a whole as well as owner-occupants.

IV. Options for Statutory Changes

As previously stated, in order for FEMA to make housing cooperatives and condominium associations directly eligible for IHP, Section 408 of the Stafford Act and implementing regulations found at 44 C.F.R. § 206.117 would need to be amended. Currently, Section 408 of the Stafford Act only authorizes financial assistance for repair and replacement to individuals and households and not to business entities.⁷ Specifically, Sections 408(c)(2) and (c)(3) of the Stafford Act provide the following:

(2) Repairs –

(A) **IN GENERAL** – The President may provide financial assistance for –

- (i) the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access route) damaged by a major disaster to a safe and sanitary living or functioning condition; and
- (ii) eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.

(B) **RELATIONSHIP TO OTHER ASSISTANCE** – A recipient of assistance provided under this paragraph shall not be required to show that the assistance can be met through other means, except insurance proceeds.

(3) Replacement –

(A) **IN GENERAL** – The President may provide financial assistance for the replacement of owner-occupied private residences damaged by a major disaster.

(B) **APPLICABILITY OF FLOOD INSURANCE REQUIREMENT** – With respect to assistance provided under this paragraph, the President may not waive any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of Federal disaster assistance.

Based on the foregoing language in the Stafford Act, in order for housing cooperatives and condominium associations to be considered for assistance for damages incurred to common areas, Section 408(c)(2) would need to be amended to include additional language.

⁷ 44 C.F.R. 206.111 defines household as all persons (adults and children) who lived in the pre-disaster residence who request assistance under this subpart, as well as any person, such as infants, spouse, or part-time residents who were not present at the time of the disaster, but who are expected to return during the assistance period.

To make common areas of housing cooperatives and condominium associations eligible for assistance, there must be consideration given to whether the financial cap for assistance should be amended under 408(h) of the Stafford Act.

Because of the policy and implementation concerns identified in this report, FEMA likely would oppose strongly any such amendments that would authorize assistance to housing cooperatives and condominium associations.

V. Conclusion

Section 408 of the Stafford Act currently does not provide FEMA with the authority to award financial assistance directly to housing cooperatives and condominium associations to address disaster-caused damage to common areas. In order for FEMA to make housing cooperatives and condominium associations directly eligible for IA, various parts of Section 408 of the Stafford Act would need to be amended. Without an amendment, FEMA does not have the authority to provide this type of assistance directly to a housing cooperative or condominium association. FEMA would oppose such an amendment. Additionally, if granted this authority, FEMA will have to address many timely and costly implementation considerations that range from how FEMA would process financial assistance to developing the capability to properly and accurately inspect commercial buildings.

Appendix: Abbreviations

Abbreviation	Definition
C.F.R.	Code of Federal Regulations
DHS	Department of Homeland Security
EHP	Environmental and Historical Preservation
FEMA	Federal Emergency Management Agency
FY	Fiscal Year
IA	Individual Assistance
IHP	Individuals and Households Program
NEMIS	National Emergency Management Information System
NFIRA	National Flood Insurance Reform Act