

## FEMA plans to give 144,000 Sandy flood claimants option to reopen their cases

MICHAEL FEELY | Posted: Friday, April 3, 2015 9:45 am

BRIGANTINE—Representatives of FEMA recently discussed with New York and New Jersey legal advocates and disaster assistance representatives various means to resolve some of the now well-publicized problems with flood insurance companies underpaying flood claims.

Reports indicate the discussion was very positive and interactive, with input from many advocates as well as direct responses from FEMA.

FEMA expressed a desire to get input directly from disaster assistance advocates and long-term recovery groups as it continues to work on better means to resolve and settle the claims of thousands of Sandy survivors. It is estimated that Sandy resulted in 144,000 flood insurance claims.

Since the program is interactive and FEMA has emphasized the need to "get it right," it may yet take some time for the process to be finalized.

There was discussion during the meeting of a possible pilot program involving a sample of Sandy survivors to see how the process works in practice. During the meeting, FEMA administrators and representatives emphasized the need for a fair and equitable approach, but also one that starts first with those claims that relied upon engineering reports, which numbered about 16,000. News reports, particularly a story by "CBS 60 Minutes," brought to light the flawed and/or fraudulent engineering reports that are at the heart of Sandy litigation.

### Letters going to all flood claimants

Once the claims review program is finalized, FEMA intends to send out letters to Sandy survivors with flood claims in segmented fashion, starting with those whose adjusters employed engineering reports. Flood claimants would have the option to choose whether or not they would like their flood claim reopened. No one's claim would be reopened if the claimant does not want it reopened, making it an "opt- in" program.

Alexander F. Hersonski, attorney for South Jersey Legal Services, Inc., has been an advisor to BrigStrong and assisted on many Sandy recovery issues. He has analyzed the FEMA discussions



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and offered the following information. He cautions that much of the initiative is yet to be worked out.

“Every one of the 144,000 people who filed claims will be receiving a letter in the mail regarding the option to have their claim reviewed and re-opened,” Hersonski said. “How these letters will be sent out and their timing will depend upon several factors, such as the type of evidence used by adjusters (those with engineering reports may be prioritized). However, everyone will have the option to have their claim reviewed and will receive a letter.”

### **Toll-free number planned**

FEMA intends to announce a toll-free number soon for people who have issues with their claims. It will only be for Sandy claimants who would like their claims reopened.

Initially, callers would discuss their case with intake personnel. FEMA envisions that the review will be a "one-on-one case management process."

During this process, FEMA expects to contact the “write your own” insurers handling the original claim and a liaison for this purpose. FEMA also emphasized that the case review process is intended to have "consistency, fairness, and empathy."

“There was much discussion about what specialists or experts would review reopened flood claims. One possibility is that independent adjusters will be retained by FEMA to evaluate individual claims, and will reevaluate the property damage. This process is still in the development stages,” said Hersonski.

### **Passage of time poses challenge**

There will be challenges, including how to handle homes that have changed dramatically since Sandy.

“How will an expert know what was caused by Sandy, now going on three years since the storm?” he said.

FEMA has also acknowledged potential problems with reopening a claim on a loss going back more than 2½ years. FEMA emphasized that it is willing to accept feedback on what types of evidence and documentation may be used in those circumstances where the home is no longer in its post-Sandy state.

FEMA anticipates that about 16,000 of the 144,000 claims involve complex engineering issues. The remainder will have to do with a number of other aspects of the claim, such as the scope of loss for the inside of the home and the valuation of various building materials. These aspects might be standardized to some degree, allowing FEMA to settle claims even where much time has

passed and evidence is limited. The key consideration will be fairness and consistency across various claims, especially where there is minimal documentation available to substantiate a loss.

### **There could be paybacks**

Some homeowners were awarded state grants to repair or rebuild their home. A possible problem might develop that requires such homeowners to pay back their grant if they get additional money from FEMA, for example RREM moneys.

“The issue here is that federal dollars – whether from FEMA or Community Development Block Grants or the SBA or another source, may end up duplicating an existing benefit,” said Hersonski. “By law, where a benefit is found to be duplicative, the agency providing assistance might try to recoup that money.”

During the conversation on March 25, advocates emphasized that this process might end up creating more problems than it resolves. Another observer noted that many people have incurred significant rental and other costs, and inquired as to whether flood money could be used for "unmet" needs not recouped by RREM or another programs.

FEMA emphasized that any flood insurance money can only be for the purpose of resolving a flood claim, not additional costs or unmet needs. However, FEMA indicated it is willing to work with HUD, which helps administer many grant assistance programs, in order to ensure a forthright and transparent process.

### **No double dipping**

It was emphasized by advocates that FEMA letters should discuss the possibility of a duplication of benefits and recoupment, so claimants can make informed decisions as to whether they want their claims reopened.

An issue of concern to some has to do with FEMA determining that some claimants may owe FEMA money through the re-opening process whether FEMA can ask for the money back.

FEMA says that only about 2 percent of existing appeals end up resulting in a lower settlement claim than initially offered. However, there is a possibility that a claim that is reopened might result in the claimant having to pay back some of the original settlement.

Asked if FEMA will require claimants to file another proof of loss, Hersonski said it was unclear.

The proof of loss deadline, after several extensions, expired Oct. 29, 2014. However, FEMA is working on a process regarding what types of documentation are required to evidence a flood loss, analogous to the filed proof of loss document. It is possible that FEMA would require a signed and sworn claimant certification, among other documentation, such as receipts and estimates.

According to FEMA, of the 144,000 Sandy flood claims, there were about 4,400 appeals. Of those appeals, 15 percent were overturned. FEMA anticipates that participation in the new claims process will be about 10 to 20 percent of the 144,000 Sandy claimants.

Also raised was the question of what happens if an adjuster or FEMA claims specialist discovers some irregularity upon reopening a file, such as an altered engineering report. Can the claimant use that to sue the flood insurer?

### **No appeals for litigated claims**

FEMA's position is that in reopening thousands of flood claims, it will help resolve some of the problems that have been brought to light in recent flood litigation, although a claimant always has the right to sue their insurance company. However, once this happens, the appeals or re-evaluation process will terminate.

FEMA did not state whether the statute of limitations period for the time during which a claimant can file suit would be extended. However it is FEMA's position that a flood lawsuit must be filed within one year of a complete or partial disallowance of a flood claim. The one year deadline to sue commences from the first written partial or complete denial.

FEMA intends to set up a flood insurance advocate, as well as liaisons between legal and disaster relief agencies and FEMA and the National Flood Insurance Program. At this point, FEMA states that it is willing to listen to advocates who worked with Sandy survivors in the "frontlines" and envisions working closely together with them in drafting the new flood claims review program.

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