

Closer look at flood insurance, FEMA's reforms, lessons learned after Sandy missteps

The Advocate

If the Federal Emergency Management Agency dealt itself a black eye with the poor job it did responding to Hurricane Katrina in 2005, the horror stories that came out of the flood insurance claims process after Superstorm Sandy gave the agency another nasty shiner seven years later.

And for tens of thousands of victims of this month's Louisiana floods who actually had flood insurance coverage, the reports of widespread denials and low-balling of claims, altered engineering reports and a Kafkaesque appeals process that came out of New York and New Jersey after Sandy are hardly encouraging as they begin trying to collect for damages.

FEMA, however, points to new leadership at the National Flood Insurance Program and a series of reforms either enacted or underway as evidence that it has learned valuable lessons from the experience that still has some Sandy victims seething.

"We are working closely with survivors to make sure they are paid and that every dollar that is owed is paid out," FEMA spokesman Rafael Lemaitre said. "We are committed to that, and that applies to Louisiana as well."

The NFIP, which is now part of FEMA, was created in 1968 after decades of flood losses caused private insurers to exclude flood coverage from the typical homeowner's policy and later drove them out of the market almost entirely.

About 80 percent of the country's 5.1 million flood insurance policies are so-called "write your own" policies that originate with and are serviced by private insurers, who were kicked out of the program in the 1970s but came back in in the 1980s. Even those policies that are purchased directly from the NFIP are farmed out to contract companies.

Essentially, the government holds the bag and is responsible for the program, but it uses the private sector to market, write and service the policies.

But the underlying economics of flood insurance remained deeply flawed, and the NFIP took a giant hit from Hurricanes Katrina and Rita in 2005, forcing it to borrow \$17 billion from the U.S. Treasury.

Then Sandy cost the program another \$7 billion, and as the claims process for that storm began, consumer complaints and news reports about problems began to emerge.

Adjusters were invoking an obscure clause in flood policies known as the “earth movement” exclusion and using it to deny claims based on cracks in foundations and in basements that they said were evidence of structural problems before the storm.

Some adjusters’ reports were found by an NPR “Frontline” investigation to have been edited by managers who simply inserted the word “not” before “covered” in their conclusions, and some former adjusters spoke of pressure to deny claims to keep the losses down.

Exasperated policyholders said they filled out the same forms multiple times and repeatedly had to start over with the various representatives who took their calls. Thousands of cases ended up in court.

FEMA has avoided publicly getting into the reasons why there were problems with the program, but it denies they were as widespread as news reports suggested.

Roy Wright, who was promoted to director of the program in June 2015, has only gone so far as to characterize some of the work by Sandy adjusters, who report to the private insurers, as “sloppy.” FEMA spokesman Lemaitre stressed last week that most of the Sandy claims were handled fairly, a point he said was validated by a review by the Senate Banking Committee.

He also said the program’s financial straits are neither a threat to policyholders’ chances of getting paid what they’re entitled to nor an incentive to underpay claims.

“The answer is unequivocally ‘no,’ ” Lemaitre said about that question, noting that FEMA has \$3 billion cash on hand to deal with disasters. “There is a \$23 billion debt. But that does not preclude FEMA from paying every dollar of every claim.”

Nevertheless, Lemaitre said FEMA is clear-eyed about the fact there were problems after Sandy.

“People were underpaid, yes,” he said. “I’ll leave the legal stuff to the courts, but what I can tell you is that after Hurricane Sandy, there were people who were underpaid by their insurance company.”

Lemaitre said FEMA has stepped up its efforts to make changes to the program and make sure the private insurance companies that participate in the program “share our values and put policyholders and survivors first.”

When Wright came in as director, allegations of wrongdoing were referred to the appropriate state attorneys general, and the agency began settling the more than 1,500 lawsuits it was still facing for underpayment of claims.

FEMA set up a claims review process to invite any of the 144,000 flood insurance claimants to challenge their awards. About 20,000 came forward, and FEMA has worked through about 91 percent of those

reviews and has paid out another \$93.8 million.

It has settled 1,618 of the 1,632 suits and paid out another \$163.9 million, though some Sandy victims have complained they still don't have enough to rebuild and resent that FEMA paid the legal bills of insurers but not of policyholders.

Lemaitre said FEMA has taken several steps to right those wrongs.

He said it has increased its scrutiny over contract engineers, whose bills used to be paid automatically but now must first be reviewed and approved. It launched a hotline for policyholders who had issues with their insurer, and it hired a full-time flood insurance advocate who works directly with private insurers to "make sure they share our values," Lemaitre said.

In May, FEMA overhauled the appeals branch and separated it from the claims branch in order to make it more independent and transparent, he said.

Wright also has begun the process of trying to make FEMA's arrangements with private insurers easier to alter, add oversight provisions and generally keep up with changes since private insurers came back into the system in 1983.

However, Amy Bach, director of the consumer advocacy group United Policyholders, said that while FEMA has instituted some reforms since Sandy, "there have not been any of the kind of deep reforms that are needed to make the flood program more fiscally efficient."

She said the flood insurance advocate is a good idea but should be far more than a single position, and that there should be penalties for companies that underpay claims.

Lemaitre pointed to the response to floods in Texas, West Virginia and South Carolina since Sandy as evidence that things have gotten better. "We have not seen widespread challenges with regard to flood insurance claims in those disasters," he said.

In South Carolina, the state's Department of Insurance and its Department of Natural Resources, which includes the agency that handles flood mitigation, said they didn't hear many complaints of denied or low-balled claims stemming from the major flooding around Columbia last fall.

"I'm usually the first one who is skeptical about federal involvement, and I know about the debacle and the experiences people had) with Sandy," state Insurance Commissioner Ray Farmer said. "I was prepared for that. What I was not prepared for was the excellent service we got for our consumers. As far as the NFIP, there were no coverage issues that arose, and whatever was a covered claim was a covered claim."

Lemaitre said that for the March flooding that hit more than 30 Louisiana parishes, the NFIP has paid 5,000 claims a total of \$228 million, an average of about \$46,000.

Louisiana Insurance Commissioner Jim Donelon, who said he remembers watching a particularly damning post-Sandy report on “60 Minutes,” said he has met with NFIP Director Wright and was assured claims here would be handled properly. He said he asked whether backwater flooding might not be covered and was told that it would be.

“Call me naïve,” he said, “but I just don’t believe that our federal government would take advantage of victims of these events for the alleged purpose of diminishing the costs of the program.”

Donelon said that while his department doesn’t regulate flood insurance, “if we find there are any violations, we will certainly report them.”