



**United Policyholders**  
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September 18, 2014

DHS FEMA - FOIA Office  
Records Management/Disclosure Branch  
1800 S. Bell St., Fourth Floor, Mail Stop 3005  
Arlington, VA 22202

**VIA EMAIL:** [FEMA-FOIA@dhs.gov](mailto:FEMA-FOIA@dhs.gov)

Re: FOIA Request and Fee Waiver

Dear FOIA Officer:

Please accept this Freedom of Information Act (FOIA) request on behalf of United Policyholders (UP). *5 U.S.C. §552*. The instant FOIA request is a new request. It supplements a FOIA request submitted by our organization on March 12, 2014; FEMA 2014-FEFO-00537 (Exhibit A, "Request #1"). The instant request seeks additional information on the NFIP's process for accepting, evaluating and reaching determinations on claim-related appeals by policyholders.

#### Scope of Request

UP hereby requests that DHS FEMA release all relevant, available, non-exempted, and non-privileged information pertaining to the National Flood Insurance Program (NFIP) appeals process responsive to the questions below. *44 C.F.R. §62.20*. Neither Request #1 nor the instant request relate to appeals by policyholders on rate classification or zoning of their properties.

In the National Flood Insurance Act and its 2004 Amendments, Congress mandated that the DHS FEMA implement and administer a consistent and fair appeal process. *Pub. L. 108-264, 42 U.S.C. 4011*. Basic principles of administrative law and due process require that DHS FEMA track appeals and outcomes to ensure consistency and fairness. According to the Privacy Impact Assessment for the NFIP Appeals Procedure (February 9, 2006) has DHS FEMA has, in fact, "implemented an electronic system to main *all records* concerning these appeals." (emphasis added) (See [https://www.dhs.gov/xlibrary/assets/privacy/privacy\\_pia\\_fema\\_nfipappeals.pdf](https://www.dhs.gov/xlibrary/assets/privacy/privacy_pia_fema_nfipappeals.pdf)).

In DHS FEMA's August 7, 2014 response to Request #1; FEMA 2014-FEFO-00537 (Exhibit B, "Response #1"), certain questions were left unanswered. In response to questions 2, 5, 7, 8, 9, and 10, DHS FEMA stated "we do not have this information." However, subsequent to Request #1 and DHS FEMA's response, DHS FEMA officials publicly stated that, according to "FEMA Examiners" "10-13%" of NFIP denials had been overturned by appeals process" See transcript of U.S. Senate hearing convened by Senator Robert Menendez of New Jersey (THE FLOOD INSURANCE CLAIMS PROCESS IN COMMUNITIES AFTER SANDY: LESSONS LEARNED AND POTENTIAL IMPROVEMENT, before the Housing, Transportation, and Community Development Committee, July 30, 2014) Moreover, Response #1, specifically responses to questions 1, 3, 4, and 6 from Request #1 suggest that the requested information is indeed available.

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For example, in response to question 4, DHS FEMA identifies 2,647 properly filed appeals since October 2012. By way of background, Request #1 asked for "any and all" information including existing records sufficient to show the information requested in questions 2, 5, 7, 8, 9, and 10. Questions 7-10 requested, generally speaking, information about the success rate of NFIP appeals. These 2,647 appeal records are responsive and/or contain responsive information. Accordingly, we seek responsive information relating to, and/or the disclosure of, these records. The above facts suggest that DHS FEMA *does* indeed have the documentation and/or data relevant and responsive to requests made in our March 12 2014 FOIA and the requests below.

Specifically, UP requests the following data and documentation:

- (1) The total number of instances since the appeal process was established in 2006 where FEMA and/or the Federal Insurance Administrator (FIA) reversed, rejected, remanded, overruled or otherwise altered the determination(s) that gave rise to an appeal and where FEMA/FIA's action resulted in a re-adjustment or payment on the claim at issue;
- (2) The total number of appeals received by the NFIP since October 2012 that resulted in the issuance by the Federal Insurance Administrator of a letter to a policyholder requesting more information;
- (3) The total number of appeals processed since October 2012 of claims administered by WYO carriers in which the FIA reversed, rejected, remanded, overruled or otherwise altered the determination(s) that gave rise to the appeal;
- (4) The total number of appeals received since October 2012 of claims administered by NFIP Direct that resulted in a decision by the FIA that reversed, rejected, remanded, overruled or otherwise altered the determination(s) that gave rise to the appeal;
- (5) The total number of appeals processed by the NFIP since October 2012 of claims processed by a WYO carrier where the FIA agreed with or otherwise upheld the determination(s) that gave rise to the appeal;
- (6) The total number of appeals processed by the NFIP since October 2012 of claims processed by NFIP direct where the FIA agreed with or otherwise upheld the determination(s) that gave rise to the appeal; and
- (7) Any FEMA/FIA internal guidance, memoranda, or white paper interpretation of the procedures set forth in 44 C.F.R. §62.20 that are not already publically available and relevant specifically to claims handing directives from DHS FEMA to NFIP Direct Servicing Agents or WYOs.

#### Purpose of Request

UP educates the public on insurance issues and policyholders' rights and duties. For purposes of providing long-term recovery support after natural disasters, UP is seeking data on the NFIP claim and appeal processes. After communicating with numerous NFIP personnel and federal elected officials intimate with the NFIP, we have reason to believe that the data we are requesting (or similar thereto) is available for release.

#### Fee Waiver

Under the FOIA, a fee waiver is proper when "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

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For the reasons set forth above and below, UP meets the requirements for a fee waiver as outlined by the U.S. Justice Department and affirmed by the federal courts. See U.S. Department of Justice, FOIA Guide 2009 – Fees and Fee Waivers (available at [http://www.justice.gov/oip/foia\\_guide09/fee-waivers.pdf](http://www.justice.gov/oip/foia_guide09/fee-waivers.pdf)); See also, e.g., *Project on Military Procurement v. Department of the Navy*, 710 F. Supp. 362 (D.C.D. 1989).

UP is a non-profit 501(c)3 organization founded in 1991 that is a voice and an information resource for insurance consumers in all 50 states. Through an Advocacy and Action program, UP advocates for policyholders legal rights by filing amicus curiae briefs in courts across the U.S. and working with elected officials in legislative and regulatory proceedings. Through the Roadmap to Recovery program, UP gives individuals and businesses free tools and resources to help solve insurance problems that can arise after a disaster, accident, loss, illness, or other adverse event. Through the Roadmap to Preparedness program, UP promotes disaster preparedness and insurance literacy through outreach and education in partnership with civic, faith based, business and other non-profit associations. UP does not sell insurance or accept funding from insurance companies.

UP regularly publishes information for use by insurance consumers on its website ([www.uphelp.org](http://www.uphelp.org)), through mail and email, including claims handling tips and legal analysis of trends in insurance litigation. UP has over 9,000 subscribers to its monthly newsletter and maintains an online forum where subject-matter expert volunteers answer consumer questions. The requested information will help UP's consumer audience better understand the NFIP appeal process through relevant statistical data.

Although the burden of proving the necessity of the fee waiver is on the requesting party, Congress, in passing the FOIA, understood that "a requester is likely to contribute significantly to public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government." *132 Cong. Rec. H9464*.

The federal courts have also recognized that "the waiver provision was added to FOIA 'in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,' in a clear reference to requests from journalists, scholars and, most importantly for our purposes, *nonprofit public interest groups*." *Better Gov. Ass'n v. Dep't of State*, 780 F.2d 86, 93 (D.C. Cir. 1986) (emphasis added).

Accordingly, UP respectfully requests that the fee waiver for this FOIA request be granted.

#### Exemption

Should FEMA decide to exempt any records or information in whole or part, we ask that you identify any specific records or groups of records withheld or redacted, including: (1) the request number(s) to which the record is responsive, name and subject, author(s) and recipient(s), and dates was made or revised; and (2) a description and explanation for the withholding or redaction and the exemption invoked.

Thank for you in advance for your prompt attention on this matter.

Sincerely,



Amy Bach, Esq.  
Executive Director

Dan Wade, Esq.  
Staff Attorney