

DISASTER RECOVERY

Adjusters International Disaster Recovery Consulting — FEMA Recovery Issues for Decision-Makers and Leaders **TODAY**



EDITOR'S NOTE

Once again we are pleased to welcome a new author to the Disaster Recovery Today editorial board. For this, our 12th edition, Robert Wright examines how the FEMA Public Assistance Program affects the decision to repair, replace or relocate a damaged facility.

Mr. Wright has extensive experience working for clients following numerous federally declared disasters. This experience provides the basis for his knowledge of this important subject.

Readers are encouraged to use the enclosed postage-paid reply card to comment on this issue, request previous editions or be included in our mailing list for future issues of Disaster Recovery Today, which will be sent to you free of charge.



— Sheila E. Salvatore, Editor

Rebuilding Under the FEMA Public Assistance Program: Repair? Replace? Relocate?

Robert J. Wright

In a previous edition of *Disaster Recovery Today* (Issue 4) we discussed a disaster recovery-rebuilding plan and how understanding funding options — within FEMA's Public Assistance Program — are vital to a successful disaster recovery. Once the applicant, the state and FEMA have determined that a facility is eligible for Public Assistance, an evaluation is required to determine

what actions must be taken to bring the facility back to its pre-disaster condition. In this issue, we will concentrate on the various options for accomplishing this.

Disasters result from a wide range of hazards. In this article, we will use flood damage to explore the correct path for ensuring that all funding options are explored and the proper one is selected.



Before any decisions can be made, the damaged facility must be stabilized. Along with your insurance carrier, FEMA requires that you make all reasonable attempts to minimize damage (pumping water, dehumidifying, etc.) that it categorizes as emergency protective measures. In doing so, while there are obvious damages caused by floodwaters, you must also be aware of potential aftereffects — such as toxic contamination (air, soil, water), mold growth, scouring or weakening of foundations (buildings, bridges, roadways and more) and interruption of vital services (electrical, water, sewer). Even before the floodwaters have receded, you should contemplate these aftereffects and try to minimize their effects.

How are Repair Costs Determined?

Once facilities are stabilized, the next step is to assess the damages and determine what repairs are needed to return them to pre-disaster function and capacity. The Code of Federal Regulations, Title 44, §206.226(f)(1) states: *“A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its pre-disaster condition and it is feasible to repair the facility so that it can perform the function for which it was being used immediately prior to the disaster.”*

To estimate the repair cost, an assessment of all components damaged by the flood must be



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made — using FEMA’s criterion of *“putting it back the way it was”* (pre-disaster) or *“returning the facility to its original form, function and design.”* This assessment should result in a comprehensive scope of work detailing damages and related repairs. If possible, the scope of work should be broken into standard Construction Specifications Institute divisions, since FEMA also uses this method:

- Division 1: General Requirements
- Division 2: Site Work
- Division 3: Concrete
- Division 4: Masonry
- Division 5: Metals
- Division 6: Woods and Plastics
- Division 7: Thermal and Moisture Protection
- Division 8: Doors and Windows
- Division 9: Finishes
- Division 10: Specialties
- Division 11: Equipment
- Division 12: Furnishings



Division 13: Special Construction
 Division 14: Conveying Systems
 Division 15: Mechanical
 Division 16: Electrical

Once a comprehensive scope of work has been developed, the next step is to estimate what the project will cost to repair. FEMA has developed the Cost Estimating Format (CEF) to help with articulating repairs needed and estimating the total project cost. Its use is required for all large projects (above \$63,200¹ for fiscal year 2010). The CEF estimate, when accurately populated, helps develop a more thorough and accurate estimate, ensuring that applicants as well as FEMA have an accurate budget to work with.

Do the Repairs Exceed 50 Percent of Replacement (“The 50 Percent Rule”)?

Once the estimated cost to repair the facility is established, it is time to consider whether it may be eligible for replacement. To do this, you must develop a cost to completely replace the facility to the same form, function and design as it existed prior to the triggering event. This replacement cost estimate is then compared to the repair cost estimate as follows²:

1. In accordance with 44 CFR §206.226(f), a facility is eligible for replacement when the repair cost exceeds 50 percent of the replacement cost. The comparison

of repair costs with replacement costs results in a fraction that expresses repair as a percentage of replacement.

2. *The numerator of the fraction is the cost of repairing disaster damage only and includes costs associated with codes and standards upgrades that apply to the repair of the damaged elements only. The numerator does **not** include costs associated with:*

- a. *Upgrades of other elements triggered by codes and standards;*
- b. *Design associated with upgrades;*
- c. *Demolition of the entire facility (demolition essential to the repair only of the damaged elements may be included in the numerator);*

“A facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its pre-disaster condition and it is feasible to repair the facility so that it can perform the function for which it was being used immediately prior to the disaster.”



¹Adjusted annually for inflation.

²Disaster Assistance Policy 9524.4.



“The CEF estimate, when accurately populated, helps develop a more thorough and accurate estimate, ensuring that applicants as well as FEMA have an accurate budget to work with.”



- d. Site work;
- e. Applicable project management costs;
- f. Contents; and/or
- g. Hazard mitigation measures.
3. The denominator of the fraction is the cost of replacing the facility on the basis of its pre-disaster design and in accordance with applicable codes and standards. These codes may relate to structural elements such as seismic resistance, mechanical or electrical systems, or the size of a structure. For example, a code may require a greater amount of space per student in a school, or wider lanes on a bridge. The use of a code related to size is limited in that the replacement facility must have the same capacity as the original facility (even though the physical size of the structure may be greater) (see 44 CFR §206.201(h)).
- a. When circumstances require a greater capacity for the replacement facility (e.g., a school designed for 400 students now serves a population of 600 students), the costs to increase the capacity are not eligible and are not included in the denominator. In this example, the eligible replacement facility would be one with a capacity of 400 students at a size required by the current space-per-student code.
- b. The denominator does **not** include demolition, site work, applicable project management costs, contents, and/or hazard mitigation measures.
4. The table on page 6 illustrates eligible-costs determinations.
- Substantial Damage Under FEMA’s National Flood Insurance Program (NFIP)**
For structures that are located in a Special Flood Hazard Area (SFHA), another consideration will
- If your damaged facility is determined to be eligible for replacement, the replacement facility can be built on the same property, or you can request a voluntary relocation (improved project). Bear in mind that any new facility (i.e., “replacement”) also requires a thorough Special Consideration review, to include floodplain management and the National Environmental Protection Agency (NEPA).



“... substantial damage determinations are not made by you, the state or FEMA. They are made by the local floodplain management official ...”

be whether or not the damages constitute *substantial damage*:

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.³

If a structure meets this definition, then it must be flood-proofed to or above the Base Flood Elevation (BFE) and meet other applicable NFIP requirements. The importance of such a determination goes back to the previous discussions regarding repair versus replacement:



“... the BFE will be used to calculate the replacement cost. However, if replacement is thereby indicated, the Advisory Base Flood Elevation will be used to design the replacement facility and to determine eligible costs. If the calculation indicates repair, and the cost to repair disaster-related damages to the structure plus the cost to elevate or flood-proof the

structure equal or exceed the cost of a new structure, we will cap total eligible project cost at the replacement cost.”⁴

In short, even if a facility does not meet the 50 Percent Rule, in cases of substantial damage, replacement might still be the most cost-effective option. Also, in those

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³CFR 44 §59.1.

⁴Memorandum prepared by David Garratt, Acting Assistant Administrator, Disaster Assistance Directorate – April 26, 2007.



Conditions

Eligible Costs

1. The repair cost does not exceed 50 percent of the replacement cost and no upgrades are triggered —

Repair of eligible damage only.

2. The repair cost does not exceed 50 percent of the replacement cost. However, upgrades to undamaged elements are triggered by codes and standards. The total of the two items is greater than 50 percent but less than 100 percent of the estimated replacement cost —

Repair of eligible damage plus mandatory upgrade cost.

3. The repair cost does not exceed 50 percent of the replacement cost. However, upgrades to undamaged elements are triggered by codes and standards. The total of the two items is greater than 100 percent of the estimated replacement cost —

Repair of eligible damage plus mandatory upgrade cost, but total eligible costs capped at the estimated replacement cost. In this case, the applicant may elect to replace the facility, but total eligible costs are capped at the estimated replacement cost.

4. The repair cost exceeds 50 percent of the estimated replacement cost —

The facility's actual replacement cost is eligible. In accordance with 44 CFR §206.226(f) (2), the applicant may elect to repair the facility in conformity with applicable codes and standards. In this case, eligible costs are limited to the estimated costs of repair or replacement, whichever is lower.





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instances when a facility cannot be adequately flood-proofed or elevated, replacement becomes the only option.

It is important to understand that substantial damage determinations are not made by you, the state or FEMA. They are made by the local floodplain management official, thus it is important to coordinate with him/her as quickly in your recovery as possible.

Who determines which structures are “substantially damaged”?

Local government officials make “substantial damage” determinations based on the data that is collected.⁵

To assist in the determination of *substantial damage*, it may be necessary to prepare a comprehensive damage estimate as described above.

How About Relocation?

If your facility is eligible for replacement, the next step is determining if it can be replaced at the same location. FEMA funds the permanent relocation⁶ of a facility when:

- An applicable federal, state or local standard, such as a floodplain management regulation, requires that a damaged facility be relocated away from a hazardous area;
- The original facility is and will be subject to repetitive heavy damage;

- The approval is not barred by other provisions of policy; and
- The overall project, including all costs, is cost-effective.

If relocation is required, eligible work includes land acquisition and the construction of ancillary facilities such as roads and utilities⁷, in addition to work normally eligible as part of a facility reconstruction. For relocation to be cost-effective, the eligible costs associated with relocating the damaged facility must not exceed the cost of replacing the facility at its original location. Further guidance for relocations

⁵ www.fema.gov.

⁶ CFR 44 §206.226(g).

⁷ Land and ancillary activities will not be eligible for funding if the relocation is voluntary.



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can be found in FEMA Fact Sheet 9580.102, Permanent Relocation.

Summary

As you can see, there are numerous things to consider before restoring a facility. In some cases, you may qualify for a new facility or perhaps even a new facility relocated to a safer location.

Regardless of whether you are going to repair, replace or relocate — you must present a detailed scope of work (and estimate if possible) for returning the facility

to pre-disaster condition, as that serves as the first step in all three potential scenarios. It is equally important to engage your local codes officials — including the floodplain administrator — in the process early on to ensure that all required work is contemplated.

The FEMA Public Assistance Program provides applicants with numerous options and opportunities, especially for those who understand the program well enough to adequately advocate for and defend their position(s).



Robert J. Wright



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