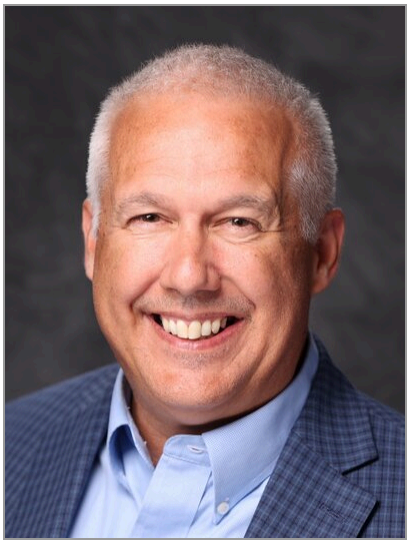
LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Back-To-Back Storms Expose Outdated NFIP Holes, Pro Says

By **Eli Flesch**

Law360 (October 10, 2024, 3:41 PM EDT) -- The one-two punch of hurricanes Helene and Milton should give policymakers another reason to bolster the country's leading flood insurer and rethink water risks, according to Chad Berginnis, executive director of the Association of State Floodplain Managers.



Chad Berginnis

Here, Law360 talks to Berginnis, a leading figure among flood loss reduction professionals, on how the back-to-back storms lay bare the country's flood risks.

Berginnis believes the National Flood Insurance Program, the U.S.' largest flood insurance provider, can play a critical role in protecting people from flood losses, while also informing people of their potential for those losses. But the program, administered by the Federal Emergency Management Agency, is hobbled by old maps and limited coverage, creating a situation where much of the nation is flying blind, he says.

Meanwhile, much more needs to be done to rebuild to stronger standards, and the government must play a role in limiting building in the most dangerous areas, Berginnis says. At the same time, he expressed hope the storms could spur positive change.

Note: This conversation took place before Hurricane Milton made landfall in Florida on Wednesday evening. The interview has been edited for length and clarity.

Following these storms, what are the biggest challenges to recovery?

I think that has evolved a little bit as we've seen some of the political landscape unfolding. But perhaps one of the greatest challenges is going to be consistent and sustainable funding of the Disaster Relief Fund. Years ago, you could kind of assume that Congress would, by and large, do the right thing and get the needed amount of money done quickly. These days more and more often FEMA has had to transition into what's called the immediate needs funding, which is just for response activities.

In the life cycle of a disaster, once response is over, you start short-term and then long-term recovery and mitigation. Those projects take from six months to three or four years, and that funding is dealing with stops and starts, because we've had very inconsistent funding with the Disaster Relief Fund.

That's probably one of the big things that's on my mind right now, but certainly not the only thing. Helene in particular, and especially where it hit southern Appalachia, you have low flood insurance penetration, and you probably do not have great coverage of flood mapping either. If we want to boost the number of folks that carry flood insurance, we've got to produce the maps and data that show that there are flood hazard areas.

ASFPM for a lot of years has advocated to Congress to get the job done flood mapping the country. And we've not done that yet. We've not gotten the appropriation to do that.

In the short term, we need some very rapid recovery maps with sufficient data level to help guide recovery. In the long term, we need to finish the job mapping the country. We have the technology, we know how to do it, we just don't have the resources to do it.

Another thing would be, we need to seriously rethink our standards when it comes to rebuilding. There are a few things coming down the road that are going to be helpful in that regard. A couple of federal agencies have adopted a federal flood risk management standard. That standard for [the Department of Housing and Urban Development] and FEMA, looks at not only today's floodplain, but the future conditions.

That's preferred, but we haven't developed the data approach yet to do that, so in the meantime, we should either look at the 500-year level or a freeboard, like 2 feet above the 100-year flood level, for at least federally funded projects.

We've got to do everything possible to speed up mitigation projects. Averaging anywhere from three to five years is simply not is not acceptable. I don't lay this just at the feet of FEMA. At the local and state level, we've got to speed up mitigation. For flood that is going to be elevating homes, buying them out, relocating them.

What issues do communities deal with as far as adopting stronger standards, stronger building codes, better zoning regulations in the wake of disasters?

I think the No. 1 obstacle is the empathy — sometimes a little misguided — that happens in some communities where to ease the burden on people, there's a relaxing of standards. It almost goes in the opposite direction. I remember, after a number of disasters, going to council meetings, when I worked in Ohio, urging the council not to relax its standards and instead, maybe even strengthen those. We need to stop and think about the risk and rebuild in such a way that's resilient to the next event.

People get the wrong idea in their head. They think: It's happened. It's not going to happen again. But that next event could happen next week. And the folks in Tampa Bay now are living that horror, because you're going to be hit with back-to-back events.

So many people after Helene also reported flooding in areas where they had never seen flooding before, or at least a major flood event. What role do you think the NFIP in particular has to play in helping people understand their risk?

The primary role, far and away, is having good, updated and comprehensive flood maps and data. I constantly remind congressional offices and policymakers that the NFIP is one of the worst name programs in the country. It has far more benefits than just flood insurance, and probably one of the biggest is that it generates our flood map inventory.

That's what people look at. That's what people can go online and type into the National Flood Hazard Layer and find flood risk data. The problem is we have 1/3 of the country mapped right now. More problematically is that in the last 15, 20 years, the phenomena of urban stormwater flooding, or rainfall-based flooding, or too much rain in one area — that type of flooding is not shown on those maps at all, and we need to show all of it.

Concerning urban flood risk mapping issues — I'm curious whether that implies that the NFIP's flood purchase requirements don't extend to many urban areas?

I would say, by and large, that's correct. Lots of urban areas don't have riverine or stream or creek flooding. Those areas may be channelized, piped or buried. But when you have too much rain and stormwater systems can't handle it, you're going to flood.

One of the costliest floods in the state of Michigan's history was an urban Detroit flood. In almost all of the flooded area, there were no FEMA floodplains identified, because historically, FEMA flood maps have only identified river and coastal floodplains.

Also regarding the NFIP — I've talked to some folks recently who have been concerned that perhaps the program's maximum coverage limits of $250,000 for structures and $100,000 for contents are perhaps insufficient, given today's risk. Is that a view that you share? Is that something that's concerned you at all?

Yeah, absolutely. And let's just pivot to the insurance piece of this, because I think more precisely your initial question was how does the NFIP help people understand risk. Let's talk about how it protects against risk, because that's the insurance component.

Absolutely, coverage limits have got to be increased, including the limit for increased cost to compliance. That's the extra coverage that kicks in to comply with those codes if you've been substantially damaged. But in addition to coverage limits, we really do need to rethink our mandatory purchase requirement. Flood insurance is only required in the Special Flood Hazard Area, or the 100-year flood plain. But FEMA already maps out to at least out to the 500-year flood plain. Future flood risk data shows more flood plains.

Should we not consider expanding that mandatory purchase requirement? Because, unfortunately, probably the hardest part of the whole equation is how we affect human behavior? What sociologists tell us is that human behavior in dealing with high-impact, low-frequency events is typically irrational, and we don't think it will happen again.

It's safe to say there are also some other coverages that private policies have that the NFIP should look at, like business interruption, for example.

You mentioned the politics of disaster recovery at the beginning of this interview. Given NFIP's recent history of short term reauthorizations, do you think there will now be greater interest in a long-term reauthorization with bigger reforms?

As a professional in this field now for over 30 years, I'm always reminded that what typically has motivated Congress to step up and make some reforms are big disaster events. It is hard for me to think that after a one-two punch like Helene and Milton, that we couldn't find some common ground somehow and get some reforms done.

I will continue to try to be hopeful that we can do that, and in the meantime, you know, we're just going to continue to offer some of these different solutions.

Are there areas now that are so at risk of flooding that any kind of building is dangerous or irresponsible?

Absolutely. I think any floodplain manager worth their salt would say: There are floodplains and there are floodplains. For the longest time — let's say inland, for example — the highest hazard part of that floodplain is called a floodway.

That channel is where a lot of your fastest-moving water and debris is. Floodways should pretty much be off limits for building, period. Sometimes you're going to need to put some infrastructure there. In coastal areas you have velocity zones where you have a lot of wave action. Those are definitely areas that we need to stay out of.

But I'll point out that while on the coasts, we have pretty good coverage nationwide, inland we probably have two-thirds of our streams and rivers not yet mapped. That means we don't know the floodway, we don't know the floodplain, we don't know any of it, and so we're flying blind in a lot of respects.

And new subdivisions in this country are built in areas that don't have existing risk. And it's areas of

existing risk that FEMA historically has prioritized for flood map funding. So you can see the disconnect right there. We're building in areas probably where we have a lot more likelihood that we don't have good flood data. That's a huge problem, right?

--Editing by Nick Petruncio.
