U.S. Department of Homeland Security
500 C Street, SW
Washington, DC 20472

JUN 5 2007

FEMA

MEMORANDUM FOR: FEMA Regional Administrators
Regions I - X

ATTENTION: Response and Recovery Division Directors

FROM: David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

SUBJECT: Disaster Assistance Fact Sheet DAP9580.3
Insurance Considerations for Applicants

The purpose of this memorandum is to announce the issuance of the attached final Disaster Assistance Fact Sheet DAP9580.3, Insurance Considerations for Applicants. The intent of the fact sheet is to highlight insurance considerations for the Applicant that will influence their Public Assistance grant.

If you have any questions about this fact sheet, please contact Lu Juana Richardson, Public Assistance Division, via email at LuJuana.Richardson@dhs.gov, facsimile (202) 646-3304, or phone (202) 646-4014.

Attachment

FEMA DISASTER ASSISTANCE

FACT SHEET DAP9580.3

INSURANCE CONSIDERATIONS FOR APPLICANTS

Overview

Insurance is an important element of the Public Assistance (PA) Program. The purpose of this Fact Sheet is to highlight for you, the Applicant, insurance considerations that will influence your PA grant.

Three key provisions in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended, and 44 Code of Federal Regulations (CFR) §§ 206.250, 206,252, and 206.253 guide our insurance policies and procedures:

1. Disaster assistance provided by FEMA is intended to supplement financial assistance from other sources. Disaster assistance will not be provided for damage or losses covered by insurance. Insurance coverage must be subtracted from all applicable PA Grants in order to avoid duplication of financial assistance. When PA funds are inadvertently obligated for work that is covered by insurance, FEMA must de-obligate the funds. (Stafford Act, Sections 101(b)(4) and 312(c)).

2. The Applicant must obtain insurance on damaged insurable facilities (buildings, equipment, contents, and vehicles) as a condition of receiving PA grant funding. In addition, the Applicant must maintain insurance on those facilities in order to be eligible for PA funding in future disasters. (Stafford Act, Section 311).

3. FEMA will reduce the amount of eligible PA funding for flood losses in the Special Flood Hazard Area (SFHA) (Stafford Act, Section 406(d)). If an eligible insurable facility damaged by flooding is located in a SFHA that has been identified for more than one year by the Administrator and the facility is not covered by flood insurance (or is underinsured) on the date of such flooding, FEMA will reduce PA funding by the maximum amount of insurance proceeds that would have been received had the buildings and contents been fully covered under a National Flood Insurance Program (NFIP) standard flood insurance policy.

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Applicant Responsibilities

You, the Applicant, need to:

1. Identify all damaged facilities that were covered by insurance at the time of the disaster and the type and amount of coverage (including deductibles and policy limits) for each.

2. Identify all damaged facilities for which PA funding was received previously and for which you were required to purchase insurance. Failure to maintain the required insurance for the hazard that caused the disaster will render the facility ineligible for PA funding.

3. Provide all pertinent insurance information (policies, declarations, insuring agreements, conditions, exclusions, and "Statements of Loss") for each insured damaged facility to the State Public Assistance Officer (PAO) as soon as possible.

4. Pursue payment under your insurance policies to maximize potential benefits, thereby avoiding risk of delays or loss of Federal Assistance.

5. Identify all facilities (buildings, equipment, contents, and vehicles) located in the SFHA. If an eligible insurable facility and contents damaged by flooding are located in a SFHA that has been identified for more than one year by the Administrator and the facility is not covered by flood insurance (or is underinsured) on the date of such flooding, FEMA will reduce PA funding by the maximum amount of insurance proceeds that would have been received had the facility and its contents been fully covered under a National Flood Insurance Program (NFIP) standard flood insurance policy.

Insurance Requirements

Further, you, the Applicant:

1. Must purchase and maintain insurance coverage on facilities – buildings, equipment, contents, and vehicles - for the hazard that caused the damage in order to receive PA funding. Such coverage must, at a minimum, be in the amount of the eligible project costs. FEMA will not provide assistance for that facility in future disasters if the requirement to purchase and maintain insurance is not met.

2. Must document insurance coverage by an insurance policy or binder and submit it to FEMA before project approval.

3. Are exempt from this requirement for projects where the total eligible damage is less than $5,000.

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Frequently Asked Questions (FAQs)

1. **Are there pre-disaster insurance requirements for facilities that have not had any prior disaster assistance?**

   No. State and local governments, Indian Tribal governments, and private nonprofit (PNP) organizations are not required to purchase insurance prior to a disaster. Note that Stafford Act, Section 406(d) reductions will apply to the facilities located in the SFHA.

2. **If the Applicant had insurance but certain items are not covered, will the PA Program provide funding for these items?**

   Any eligible work not covered by an insurance policy may qualify for a PA grant, including non-recoverable depreciation and items exceeding the policy limit, but excluding items for which there was an insurance purchase requirement.

3. **Where eligible and ineligible damage is insured in one policy, how will the insurance settlement proceeds be apportioned?**

   - If the Applicant's insurance policy specifies the amount of coverage for each type of loss, the proceeds will be apportioned according to the policy limits.
   - If the insurer provides a Statement of Loss that specifies the amount of proceeds per type of loss, that will be used to determine the proceeds for eligible damage.
   - If the Applicant's insurance covers eligible and ineligible damage (for example, property damage and business interruption losses respectively) without specifying limits for each type of loss, the proceeds will be apportioned based on the ratio of the Applicant's eligible to ineligible damage. For example, if the Applicant's total losses are 60 percent property damage and 40 percent business interruption, then 60 percent of the insurance proceeds would be applied to offset the eligible damage, since business interruption losses are not eligible for reimbursement under the PA Program.

4. **Does the PA Program fund deductibles?**

   Yes. FEMA deducts the total insurance proceeds received or anticipated from the total eligible cost of the project. The remaining amount is reimbursed, which usually includes deductibles, non-recoverable costs, or uninsurable losses. However, a deductible is not eligible for the same facility in a subsequent disaster of the same type.

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5. **Where the deductible covers both eligible and ineligible damage, how will the deductible be apportioned?**

   Deductibles are apportioned in the same manner as insurance proceeds described in #3 above.

6. **What facilities or items require the purchase of insurance as a condition of receiving PA funding from FEMA?**

   Insurance is required for damage to buildings, equipment, contents, and vehicles exceeding $5,000.

7. **Does the post-disaster insurance purchase requirement apply to a building that is outside of the Special Flood Hazard Area and damaged by flooding?**

   Yes. Prior to the approval of a PA grant, the Applicant must commit to obtain and maintain insurance to protect against future loss of a property whether the property is inside or outside the SFHA. Federal assistance will not be provided for any facility for which the Applicant has previously received Federal assistance, unless all insurance required as a condition for that assistance has been obtained and maintained.

8. **Can self-insurance be used to satisfy the insurance purchase requirement?**

   Yes, however, self-insurance is an option only for States. The State must submit an established plan of self-insurance to be approved by FEMA's Assistant Administrator of the Disaster Assistance Directorate. Local and Indian Tribal governments and eligible private non-profit organizations may not satisfy the insurance purchase requirement with self-insurance. For flood disasters, State self-insurance plans must follow the standards established in 44 CFR §75.11. These standards will serve as the model for non-flood disaster self-insurance plans as well.

9. **What if the Applicant cannot obtain insurance because the facility was destroyed by the disaster?**

   When a facility is damaged beyond the point of repair, and funding is needed for replacement of the damaged facility, an insurance commitment letter must be submitted by an Applicant to document the outstanding insurance requirement for the replacement facility. The Applicant must provide proof of insurance, for the rebuilt facility, to the State as soon as possible after the insurance is purchased. A project cannot be closed out without proof of purchase (either through policy or binder) of required insurance coverage.

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10. Can the insurance requirements be waived?

Yes. If the State Insurance Commissioner certifies that the type and extent of insurance required is not reasonably available, the Regional Administrator may waive the requirement in conformity with the certification. The certification will be effective until the next major disaster. An insurance waiver should:

a. Be based on a type or class of facility or on a facility-by- facility basis prior to project approval;
b. Include the applicant's request for exemption, stating the reasons insurance is not reasonable;
c. Provide information concerning the commercial availability of insurance based on types of risks, classification of facilities, extent of coverage limits, and related premium costs;
d. Provide justification for certifying that the type and/or extent of insurance is not reasonable for the facility or facilities and hazard in question.

11. What are the consequences of not maintaining insurance on a facility as required by the Stafford Act?

The facility will be ineligible for Federal disaster assistance under the PA Program in future disasters.

12. If an Applicant's insurer is insolvent and is unable to make a full settlement of claims, will the Applicant's eligible damage still be funded by FEMA?

FEMA will fund all eligible costs minus actual or anticipated insurance recoveries. You are expected to take appropriate measures to recover payments owed by the insurer. If the insurer is determined to be legally insolvent, FEMA will consider this when determining PA funding.

13. Is there a requirement to purchase insurance beyond the NFIP maximum?

Yes. Regardless of the NFIP maximum policy amount (currently $500,000), insurance is required at least up to the amount of eligible damage. Commercial flood insurance policies are readily available for this excess coverage.

6/4/07

David Garratt
Acting Assistant Administrator
Disaster Assistance Directorate

Date