



## RECOVERY POLICY

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- I. **TITLE: Public Assistance Policy on Insurance**
- II. **DATE OF ISSUANCE:**
- III. **PURPOSE:** This policy guides decision making and interprets statutes and regulations related to insurance requirements under FEMA's Public Assistance program.
- IV. **SCOPE AND EXTERNAL AUDIENCE:** This policy applies to major disasters declared on or after the date of publication of this policy. The policy is intended for personnel administering the Public Assistance program, as well as Public Assistance applicants.
- V. **AUTHORITY:** Section 102, **Definitions**, Section 311, **Insurance**, Section 312, **Duplication of Benefits**, Section 406, **Repair, Restoration, and Replacement of Damaged Facilities**, Section 422, **Simplified Procedure**, and Section 428, **Public Assistance Program Alternative Procedures** of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §§ 5154, 5155, 5172, 5189, and 5189f, respectively; Section 102, **Flood Insurance Purchase and Compliance Requirements and Escrow Accounts**, and Section 202, **Nonparticipation in Flood Insurance Program** of the Flood Disaster Protection Act of 1973, 42 U.S.C. §§ 4012a, 4106, respectively, and 44 C.F.R. § 206.250, **General**, § 206.251, **Definitions**, § 206.252, **Insurance Requirements for Facilities Damaged by Flood**, § 206.253, **Insurance Requirements for Facilities Damaged by Disasters Other Than Flood**.
- VI. **DEFINITIONS:**
  - A. **Applicant:** A State agency, local government, tribal government, or eligible private nonprofit organization that submits an application for assistance. FEMA also applies the term "applicant" to "subgrantee," which is the entity receiving assistance. (See 44 C.F.R. §§ 206.201(a) and (o))
  - B. **Blanket Policy:** A single insurance policy that covers multiple properties.
  - C. **Building:** A walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. (See 44 C.F.R. § 206.251(b))
  - D. **Contents:** Generally, portable property located within a building. Contents may include items that are otherwise defined as "equipment and furnishings" or "library books and publications." (See 44 C.F.R. §§ 206.226(h) and (i); and 44 C.F.R. §§ 13.32 and 13.33. See also definition of "contents coverage" in 44 C.F.R. § 59.1 related to National Flood Insurance Program.)
  - E. **Coverage:** The amount of risk or liability covered by insurance.
  - F. **Deductible:** An amount of retained risk the policyholder assumes. The insurer will deduct this amount from the loss before it pays up to the policy limit. Generally, either a specified dollar amount or a percentage of the insured amount.
  - G. **Equipment:** Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

- H. Grantee:** The grantee is the government to which FEMA awards a grant. The grantee is accountable for the use of funds provided. Generally, the grantee refers to the government of the State where the President declares a major disaster. However, the term may also refer to an Indian Tribal government when the Chief Executive requests the declaration or when it chooses to act as grantee. (See Stafford Act §§ 401(b) and 501(c) and 44 C.F.R. § 206.201(e))
- I. Hazard:** For the purpose of this policy, FEMA uses the term “hazard” as a synonym for peril, meaning the cause of the loss.
- J. Insurance:** Risk transfer from the insured to an insurer, where the insured agrees to pay a premium to the insurer, and in return the insurer agrees to reimburse the insured for covered losses to a property or properties if the losses are caused by designated hazards or perils. Insurance may also generally refer to this system of risk transfer.
- K. Insurable Facilities:** For the purpose of this policy, FEMA uses the term “insurable facilities” to mean buildings, contents, equipment, and vehicles, and uses it synonymously with “property.”
- L. Insurance Pools:** A group of insurance companies or other organizations that pool assets and share risks. Insurance pools are not subject to the control of a single insured.
- M. National Flood Insurance Program (NFIP):** The program of flood insurance coverage and floodplain management administered under the National Flood Insurance Act of 1968, as amended, and applicable Federal regulations promulgated in 44 C.F.R., Subchapter B (Parts 50-149).
- N. Policy Limit:** The maximum amount provided for a type of loss under an insurance policy.
- O. Self-Insurance Plan:** A formal means to manage risk through dedicated self-funding rather than through commercially available insurance. FEMA distinguishes a self-insurance plan from non-insurance, “rainy-day funds,” or other forms of risk retention through evidence of fixed contributions and a formalized plan or system to pay losses as they occur.
- P. Self-Insured Retention:** The amount of loss a policyholder retains before an additional layer (or layers) of coverage is available. With a self-insured retention, the insured retains responsibility for paying covered claims up to a set threshold. Upon meeting the threshold, the insurer offering the additional layer(s) (i.e., the excess insurer) assumes liability. FEMA does not consider self-insured retentions to constitute self-insurance plans.
- Q. Special Flood Hazard Area (SFHA):** An area identified by FEMA as having special flood, mudflow, or flood-related erosion hazards. (See 44 C.F.R. § 59.1)
- R. Standard Flood Insurance Policy (SFIP):** The flood insurance policy issued by the Federal Insurance Administrator or an insurer pursuant to an arrangement with the Federal Insurance Administrator pursuant to Federal statutes and regulations. (See 44 C.F.R. § 59.1)
- S. Temporary Facility:** A facility that houses an essential community service while the facility where the essential service is normally performed is repaired, restored, or replaced.
- T. Vehicle:** For the purpose of this policy, FEMA uses the term “vehicle” to mean a mechanized device used for carrying passengers, goods, or equipment.

**VII. POLICY:****PART 1: Insurance Requirements Relating to Repair, Restoration, and Replacement of Damaged Facilities (Section 311 of the Stafford Act)**

- A. The Requirement to Obtain and Maintain Insurance.** When FEMA provides an applicant assistance to replace, restore, repair, reconstruct, or construct a facility, the applicant must insure that facility against future loss. FEMA refers to this as the requirement to “obtain and maintain” insurance, or, the “insurance requirement.”
1. By law, applicants must comply with this requirement as a condition of FEMA assistance.<sup>1</sup>
  2. This requirement applies to buildings, contents, equipment, and vehicles, also referred to as insurable facilities or property.
  3. **Exceptions:** FEMA does not require applicants to obtain and maintain insurance for temporary facilities, or when the assistance provided to replace, restore, repair, reconstruct, or construct an insurable facility is less than \$5,000.<sup>2</sup>
- B. Types and Extent of Insurance Required.** The Stafford Act requires that applicants insure facilities with the “types and extent” of insurance that is reasonably available, adequate, and necessary to protect against future loss to the property. Types refers to the hazard(s) that caused the disaster-related damage and extent refers to the amount of insurance required.<sup>3</sup>
1. Applicants must insure against future losses from the hazard(s) that caused the damage to the property in an amount based on the assistance provided to replace, restore, repair, reconstruct, or construct the property.<sup>4</sup>
  2. FEMA requires insurance to protect against future loss to buildings, contents, equipment, and vehicles for which an applicant receives assistance, having determined this insurance is reasonably available, adequate and necessary.
  3. The assistance FEMA provides to an applicant to replace, restore, repair, reconstruct, or construct the property is the baseline for determining the amount of insurance required, whether based on actual or estimated costs.
    - a. FEMA will calculate the amount of insurance required using eligible costs prior to any reductions (for example, reductions by insurance proceeds or based on a previous insurance requirement) and including both the Federal and non-Federal cost share.
    - b. If FEMA provides assistance that covers costs related to replacing, restoring, repairing, reconstructing, or constructing items that are not buildings, contents, equipment, and

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<sup>1</sup> 42 U.S.C. § 5154; 44 C.F.R. §§ 206.251(a), 206.252(d), and 206.253(b)(1). Assistance is any form of Federal grant under sections 406, 422, and 428 of the Stafford Act to replace, restore, repair, reconstruct, or construct a facility and/or its contents as a result of a major disaster.

<sup>2</sup> 44 C.F.R. §§ 206.252(d) and 206.253(d).

<sup>3</sup> 42 U.S.C. § 5154(a); 44 C.F.R. §§ 206.252(d) and 206.253(b)(1).

<sup>4</sup> 42 U.S.C. § 5154; 44 C.F.R. §§ 206.252(d) and 206.253(b)(1).

vehicles, FEMA will subtract costs related to these items from the amount of required insurance.

4. Special provisions related to types and extent of insurance:
  - a. The applicant may reduce future risk through hazard mitigation measures, in which case, FEMA may alter the insurance requirement.<sup>5</sup>
  - b. When multiple hazards cause damage to a property, the applicant must insure against each hazard. The applicant must base its coverage amount for each hazard on the damages caused by each hazard.
  - c. In some cases, an applicant may need to purchase an all-hazards policy in order to obtain insurance for the specific hazard(s) that caused damage to the property. This does not affect the insurance requirement. In other words, FEMA will require insurance against the hazard(s) that caused the damage, regardless of whether that means the applicant must purchase additional coverage.
  - d. If an applicant relocates a facility outside of a Special Flood Hazard Area (SFHA), FEMA will not require the applicant to obtain and maintain flood insurance, but will require an all-hazards or other appropriate policy to protect against future loss.<sup>6</sup>
5. Prior to project approval, FEMA will notify applicants of their initial insurance requirement(s) and identify the types and extent of insurance required.

**C. Complying with the Insurance Requirement.** Applicants may comply with the insurance requirement for both flood and non-flood hazards with coverage available through commercial property insurance, which may include blanket policies; standard flood insurance policies; insurance pools; or a combination of these sources. In some cases, and with FEMA approval, applicants may comply with the insurance requirement using a self-insurance plan.

1. Retained Risk: Applicants will usually retain some reasonable amount of risk, for example through a deductible or self-insured retention, because generally no insurer will accept 100 percent risk transfer. FEMA does not prescribe a reasonable amount of retained risk.
2. Self-Insurance: An applicant may request using a self-insurance plan to comply with the insurance requirement. The request must be made in writing to FEMA through the grantee, and include a self-insurance plan for FEMA's approval at the time the applicant accepts assistance or subsequently as described in this policy (see Section VII, Part 1(F)).<sup>7</sup>
  - a. The applicant's self-insurance plan must be acceptable to FEMA in order to comply with the insurance requirement. The applicant's self-insurance plan should specify:
    - i. The authority for developing, implementing, and enforcing the plan;

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<sup>5</sup> 44 C.F.R. § 206.253(d).

<sup>6</sup> FEMA will reduce assistance for the facility in the SFHA pursuant to Section 406(d)(1) of the Stafford Act, as appropriate. See Section VII, Part 2(B) of this policy.

<sup>7</sup> 42 U.S.C. § 5154(c).

- ii. The financial arrangement used to fund the plan and pay for losses, which includes a system for fixed contributions and a formalized plan to pay losses as they occur;
  - iii. How funds will be distributed;
  - iv. The hazards/perils covered;
  - v. Commercial property insurance, including blanket policies; standard flood insurance policies; insurance pools; or a combination of these sources that provide additional coverage; and
  - vi. An inventory of property covered by the plan, which includes the location of individual properties and an estimate of the current replacement costs of the properties.
- b. For properties located in an SFHA:
- i. For the purposes of complying with the requirements of Section 311 of the Stafford Act and this policy, FEMA will only consider approving a self-insurance plan for any property located in an SFHA once the applicant has otherwise met the flood insurance purchase requirements of the National Flood Insurance Act.
  - ii. Only the Federal Insurance Administrator has the authority to approve self-insurance plans to meet the statutory requirement to purchase flood insurance up to the maximum limit of coverage provided by the NFIP for State-owned structures and their contents in an SFHA.
  - iii. Determinations from the Federal Insurance Administrator that a State's plan of self-insurance exempts it from the flood insurance purchase requirement of the National Flood Insurance Act do not constitute approval of a self-insurance plan:
    - 1) For any other hazard, or
    - 2) In order to meet the requirements of Section 311 of the Stafford Act and this policy.
3. As part of its grant approval procedures, FEMA will determine whether an applicant's insurance coverage complies with the requirement.

**D. Modifying the Insurance Requirement.** An applicant may request that FEMA modify the insurance requirement if the applicant attempts to comply with the requirement and believes that: the required insurance is not reasonably available; an alternative to the insurance requirement provides adequate protection against future loss to the property; or the required insurance is not necessary to protect against future losses to the property.

- 1. The applicant should submit its written request to modify the insurance requirement to FEMA through the grantee. The request should include supporting documentation.
- 2. In its supporting documentation, the applicant should identify and provide relevant evidence, such as:
  - a. Whether insurance coverage for the hazard or category of property exists, the conditions under which insurers offer coverage, or whether like-situated parties have substantially similar coverage;
  - b. Whether the applicant can obtain the amount of insurance coverage (for example, if the amount of insurance FEMA requires exceeds the value of the property);

- c. The likelihood of repetitive damage, including whether hazard mitigation measures reduce future risk to the property;
  - d. The affordability of the types and extent of insurance, including the amount of retained risk required as part of available insurance policies, and the cost of insurance in relation to the applicant's operating budget; and
  - e. The possibility of renewing an existing insurance policy.
3. In its request, the applicant should also specify the types and extent of insurance it suggests are reasonably available, adequate, and necessary to protect against future loss, based on the supporting documentation provided.
  4. FEMA will consider the request provided by the applicant and work with the applicant and grantee to determine whether it is appropriate to modify the insurance requirement.
- E. State Insurance Commissioner Certifications.** If an applicant has requested that FEMA modify its insurance requirement as described in Section VII, Part 1(D) and FEMA, the grantee, and the applicant are unable to reach an agreement regarding the insurance requirement, the applicant may seek a certification from its State insurance commissioner. The State insurance commissioner cannot waive Federal insurance requirements, but may certify the types and extent of insurance reasonable to protect against future loss to an insurable facility.<sup>8</sup>
1. In a certification, a State insurance commissioner should identify the facility or facilities that the certification applies to and certify the types and extent of insurance reasonable to protect against future loss to the property or properties. The certification should include supporting information regarding the availability, adequacy, and necessity of insurance such as:
    - a. Insurance market conditions, including market competition and the relative size of voluntary and residual markets within the State and declared area;
    - b. Reasonable risk management practices based on the applicant's function, size, and operating budget; and
    - c. Additional information related to the hazard(s) and class(es) of property for which the applicant must obtain insurance, the extent of policy limits for each insured property, and related premium costs.
  2. A State insurance commissioner cannot certify that flood insurance—up to the maximum amount of coverage available through an SFIP—is not reasonably available for properties insurable under the NFIP.
  3. A State insurance commissioner certification regarding an applicant's property only applies to the declared event and not to future disasters. FEMA does not consider prior certifications when establishing insurance requirements in a subsequent disaster.

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<sup>8</sup> 42 U.S.C. § 5154(a)(2); 44 C.F.R. §§ 206.252(d) and 206.253(c).

- F. Timeframes for Obtaining Insurance.** FEMA will only approve assistance under the condition that an applicant obtains and maintains the required insurance.<sup>9</sup>
1. The applicant must document its commitment to comply with the insurance requirement with proof of insurance.
  2. If an applicant cannot practically insure a facility prior to grant approval (for example, if a building is being reconstructed), the applicant may provide a letter of commitment, followed at a later date by proof of insurance once it is obtained. In these cases, the applicant should insure the property at the earliest opportunity, which may be:
    - a. When the applicant resumes use of or legal responsibility for the property (for example, per terms of construction contract or at beneficial use of the property); or
    - b. When the scope of work is complete.
  3. FEMA and the grantee will verify proof of insurance prior to grant closeout.<sup>10</sup>
  4. An applicant should notify FEMA—in writing through the grantee—if it changes any aspect of its insurance after it provides proof of insurance to FEMA, including changes related to self-insurance. If an applicant fails to do this, FEMA may de-obligate assistance and not provide assistance in a future disaster.<sup>11</sup>
- G. Consequences of Non-Compliance (Failure to Obtain and Maintain Insurance).** If an applicant does not comply with the insurance requirement in accordance with this policy and applicable legal authorities,<sup>12</sup> FEMA will deny or de-obligate assistance in the current disaster and may deny future assistance.<sup>13</sup>
- H. Subsequent Assistance.** When a property that received assistance is damaged by the same hazard in a subsequent disaster:
1. If the applicant failed to maintain the required insurance from the previous disaster, then the property is not eligible for assistance in the subsequent disaster.<sup>14</sup>
  2. Upon proof that the applicant maintained its required insurance, FEMA will reduce assistance in the subsequent disaster by the amount of insurance required in the previous disaster, regardless of:
    - a. The amount of retained risk (including deductibles or self-insured retentions) the applicant assumed;
    - b. The method of coverage the applicant chose in order to comply with the requirement (for example, commercial property insurance, which may include blanket policies;

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<sup>9</sup> 42 U.S.C. § 5154(a)(1); 44 C.F.R. §§ 206.252(d) and 206.253(b)(1).

<sup>10</sup> 44 C.F.R. § 13.50.

<sup>11</sup> 42 U.S.C. §§ 5154(a)(1) and (b); 44 C.F.R. § 13.43(a).

<sup>12</sup> See Section V, Authorities.

<sup>13</sup> 42 U.S.C. §§ 5154(a) and (b); 44 C.F.R. §§ 206.250(a), 206.252(d), and 206.253(e) and (f).

<sup>14</sup> 42 U.S.C. § 5154(b).

- standard flood insurance policies; insurance pools; an approved self-insurance plan; or a combination thereof);<sup>15</sup> or
- c. Whether the policy provides coverage for ineligible losses also incurred as a result of the disaster (for example, business interruption).
3. If the applicant's anticipated or actual insurance proceeds are higher than the amount of insurance required in the previous disaster, FEMA will reduce assistance by that amount in accordance with Section VII, Part 2 of this policy.

## **PART 2: Other Insurance-Related Provisions. (Sections 312 and 406(d) of the Stafford Act)**

**A. Duplication of Benefits.** FEMA cannot provide assistance for disaster-related losses that duplicate benefits available to an applicant from another source, including insurance.<sup>16</sup>

1. Before FEMA approves assistance for a property, an applicant must provide FEMA with information about any actual or anticipated insurance settlement or recovery it is entitled to for that property.<sup>17</sup>
2. FEMA will reduce assistance to an applicant by the amount of its actual or anticipated insurance proceeds.<sup>18</sup>
3. Applicants must take reasonable efforts to recover insurance proceeds that they are entitled to receive from their insurer(s).
  - a. *Insolvent Insurer:* If an applicant is unable to recover insurance proceeds owed by an insurer because the insurer is found to be legally insolvent due to the disaster event, FEMA will not reduce assistance by the amount of insurance proceeds the applicant was entitled to receive from the insurer.<sup>19</sup>
  - b. *Legal Fees:* If an applicant incurs legal fees in an effort to recover insurance proceeds from an insurer, FEMA will subtract the cost of reasonable legal fees from the insurance proceeds before reducing assistance.
4. When an applicant receives proceeds for losses ineligible for FEMA assistance (for example, business interruption), FEMA will calculate a relative apportionment of insurance proceeds before reducing assistance. FEMA will apportion insurance proceeds as follows:
  - a. Based on the proceeds per type of loss as specified by the applicant's policy or settlement documentation;
  - b. Based on policy limits for categories of loss as specified in the applicant's policy; or
  - c. Based on the ratio of total eligible losses compared to total ineligible losses.

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<sup>15</sup> 42 U.S.C. §§ 5154(b) and (c); 44 C.F.R. §§ 206.250(a) and 206.253(b)(2).

<sup>16</sup> 42 U.S.C. § 5155.

<sup>17</sup> 44 C.F.R. §§ 206.252(c) and 206.253(a).

<sup>18</sup> 44 C.F.R. §§ 206.250(c), 206.252(c), and 206.253(a).

<sup>19</sup> If the insurer is found to be legally insolvent for any other reason, FEMA will make a determination regarding reductions on a case-by-case basis.

5. Exception: If an applicant has an insurance requirement from a previous event:
  - a. FEMA will reduce assistance by the amount of its actual or anticipated insurance proceeds when the applicant's anticipated or actual insurance proceeds are higher than the amount of insurance required in the previous disaster.
  - b. FEMA will only consider insolvent insurers, legal fees, or apportionment of proceeds as described in Section VII, Part 2 (A)(3) and (4) when the applicant's anticipated or actual insurance proceeds are higher than the amount of insurance required in the previous disaster.

**B. Properties Located within Special Flood Hazard Areas.** For properties located in a Special Flood Hazard Area (SFHA), applicable law may require FEMA to reduce assistance.

1. The reduction of assistance applies to:
  - a. Property located in an SFHA where FEMA has identified the area as an SFHA for more than one year;
  - b. Property damaged by flooding; and
  - c. Property uninsured for flood loss.<sup>20</sup>
2. FEMA will reduce assistance by the lesser of:
  - a. The value of the property at the time of the disaster; or
  - b. The maximum amount of insurance proceeds that an SFIP would provide for a building and its contents.<sup>21</sup>
3. Exception: For private nonprofit applicants in communities that do not participate in the NFIP, FEMA will not reduce assistance as described in Section VII, Part 2(B). However, in order for FEMA to approve assistance for the private nonprofit applicant, the community must agree to participate in the NFIP within six months of the declaration, or the private nonprofit must obtain and maintain flood insurance from another source.<sup>22</sup>
4. For property located in an SFHA that is covered by flood insurance:
  - a. FEMA will reduce assistance by the amount of actual or anticipated insurance proceeds.<sup>23</sup>
  - b. If the property is not insured through an SFIP and the amount of actual or anticipated proceeds is less than what would be provided through an SFIP, then FEMA will reduce assistance by the maximum amount of insurance proceeds that an SFIP would provide.
5. If an applicant believes that a property is not located in the identified SFHA, as indicated by the current Flood Insurance Rate Map (FIRM), the applicant may request a Letter of Map

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<sup>20</sup> 42 U.S.C. § 5172(d)(1).

<sup>21</sup> 42 U.S.C. § 5172(d)(2); 44 C.F.R. §§ 206.250(d) and 206.252(b).

<sup>22</sup> 42 U.S.C. § 5172(d)(3); 44 C.F.R. § 206.252(b).

<sup>23</sup> 42 U.S.C. § 5155.

Amendment (LOMA) or Letter of Map Revision (LOMR) to FEMA within six months of the disaster declaration.

- a. It is the sole responsibility of an applicant to request a LOMA or LOMR if it believes that its property is not located in the identified SFHA as indicated on the current FIRM.<sup>24</sup>
- b. FEMA will not reimburse costs incurred in pursuit of a LOMA or LOMR.<sup>25</sup>
- c. FEMA will reduce assistance as described above (Section VII, Part 2(B)) until and unless the applicant obtains a LOMA or LOMR.

**VIII. RESPONSIBLE OFFICE:** Recovery Directorate, Public Assistance Division.

**IX. SUPERSESSION:** This policy supersedes all previous guidance on this subject, including Disaster Assistance Policy (DAP) 9530.1, *Retroactive Application of a Letter of Map Amendment (LOMA) or a Letter of Map Revision (LOMR) to Infrastructure Grants*, dated January 2, 2009.

**X. REVIEW DATE:** This policy will be reviewed 3 years from the date of issuance in accordance with FEMA Directive 112-12.

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Brad Kieserman  
Assistant Administrator  
Recovery Directorate

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<sup>24</sup> 44 C.F.R. §§ 65.4 and 70.3.

<sup>25</sup> 44 C.F.R. § 206.223.