



FEMA'S NEW PA POLICY ON INSURANCE

**RECOVERY SUBJECT #2
OCTOBER 7, 2015**

INTRODUCTION

- On June 29, 2015, FEMA issued their Updated PA Policy on Insurance
 - The policy # for this is: FP 206-086-1
 - This guidance applies to all PA disasters declared after that date
 - A copy can be downloaded from:
<http://www.fema.gov/media-library/assets/documents/107564>

POLICY CHANGES

- FEMA has said that this updating of the PA Policy on Insurance is just that; not as much of a change, but a mere codification of what has been existing practice
- As we move forward in this presentation, you will see that there are bullets or other text passages in **RED** type. These issues remain unsettled or unclear as of the date this presentation was prepared
- *** As we go through this presentation, the discussion will revolve around property insurance (not flood insurance), applicable to properties outside of Special Flood Hazard Areas

OBTAIN & MAINTAIN (O&M)

- The Stafford Act has always had a goal of moving risks from public coverage to the private insurance market. In the realm of PA, this has taken the form of an “Obtain and Maintain” requirement, for any PA funds that were paid out by FEMA
 - This theoretically applies to an Permanent Work (categories C through G)
 - FEMA applies the requirement to buildings, contents, equipment & vehicles
 - This requirement does not apply to temporary facilities
 - This requirement applies to any eligible costs (prior to reductions for existing insurance coverage) are less than \$5k
 - **What about Roads?**



WHO SETS THE O&M AMOUNT?

- FEMA will calculate the Obtain & Maintain amount using actual eligible costs prior to any reductions taken (i.e. – any insurance proceeds that you could claim), including the federal and non federal shares.
 - EX: The community center in a town is damaged by wind, with \$100k in damage being done to the facility. There is a \$50k insurance policy on the facility as the result of a previous PA claim in a storm that occurred 5 years ago. Assume a 75%-25% federal/non-federal cost share for this new event.
 - Actual eligible costs before reductions = \$100k
 - If a PA claim is made on this new facility in the new event, we ignore everything else for the time being, except for the total amount of eligible PA damage, and the new PA Obtain & Maintain requirement for the facility will be \$100k



WHO SETS THE O&M? (CTD.)

- FEMA cannot require greater types and amounts of insurance than are certified as reasonably available, adequate or necessary by the State Insurance Commissioner
 - Don't call this a "waiver"! The State Insurance Commissioner cannot waive federal insurance requirements, but he/she can set a lower amount than FEMA would otherwise require as being "reasonable"
 - The "Legacy Program" of OIR Reasonableness Certifications that the state has run since 2006 is deficient for two reasons:
 - Having the OIR certify that a procured insurance portfolio of coverage is "reasonable" only addresses that specific portfolio. A "reasonableness" determination of that type cannot be extended to say that everything else is "unreasonable"
 - Under the new PA Policy for insurance, a certification is event-specific. FEMA will not consider prior certifications when establishing insurance requirements for a later disaster
 - Really, these are event and fact specific appeals



WHAT HAPPENS IF I REFUSE...

- There are many consequences to failing to Obtain & Maintain Insurance (on a facility) in accordance with a commitment under this PA Policy on Insurance:
 - If the failure is to obtain insurance for damages in the current disaster:
 - FEMA can deny/deobligate PA funding for that facility in the current disaster, and
 - FEMA can deny PA funding for that facility in any future disaster (used to only be for same type of disaster; new policy holds extends this to any future disaster)
 - If the failure is to obtain insurance for damages in a past disaster:
 - Both of the consequences above still hold, and
 - FEMA can deobligate PA funding for that facility in that past disaster (and every disaster in between as well)
 - Under the new 705(c) policy, an O&M commitment goes to answer the question “was the purpose of the grant fulfilled”



HOW CAN I MEET MY O&M?

- There are many ways that An O&M commitment can be met:
 - Purchase commercially available property insurance for that facility
 - Purchase commercially available “blanket policy” insurance, with that facility as a named covered facility
 - Purchase commercially available insurance under an “insurance pool,” with that facility as a named covered facility
 - Self-insure
 - Local governments can now self insure
 - However...
 - FEMA must pre-approve the plan to meet the O&M commitment
 - FEMA essentially reads this as “have the cash locked away in the bank”



HOW HIGH CAN THE DEDUCTIBLE BE?

- FEMA refers to the level of the Deductible as “retained risk,” and states that this is a matter for the Subrecipient to determine
 - Some important points to consider:
 - If you did not have an O&M commitment on the damaged facility, FEMA will pay eligible costs minus any insurance proceeds you receive. In this case, FEMA will pay your deductible
 - Once you have any sort of O&M commitment on the damaged facility, FEMA will only pay any costs above the O&M, regardless of how much your deductible was
 - In either case above, anything paid out by FEMA goes to set the new O&M that results after this current disaster

THE BASIC FORMULA

- To see how much you will get back from FEMA:

PA Recovery =

Total Eligible PA Damage

- (The larger of: Insurance Policy Limits or prior O&M commitment)

+ (Insurance Deductible for facilities with no prior O&M commitment)

EXAMPLE 1

- Example 1 – Building is worth \$1 million (fmv), and is insured for \$300k with a \$50k deductible. Hurricane Heather comes through and does \$200k of eligible PA damage to the facility. There has never been a PA claim made for this facility before. What is the result?
 - This is within the building's insurance that is already being paid for... why would you make a PA claim?

EXAMPLE 2

- Example 2 – Same facts as before, but let's raise the eligible PA damage to \$500k. Assume there has still never been a PA claim made for this facility before. What are the results?
 - First, apply to the insurance company and collect the policy limits of \$300k - \$50k deductible = \$250k
 - Then, apply to FEMA for:
 - \$500k in eligible PA damage
 - the larger of {\$300k ins. policy limits or \$0 prior O&M commitment}
 - + \$50k ins. Deductible since there was no prior O&M commitment
 - = Total PA funding from FEMA in this disaster: $\$500k - \$300k + \$50k = \mathbf{\$250k}$
 - O&M commitments are determined prior to any deduction, based off of the eligible PA damage, which here is \$500k



EXAMPLE 3

- Example 3 – The next year, Tropical Storm Warren hits the same area and does \$800k in eligible PA damage to the facility. Assume that after the previous year's storm, the affected government upped the insurance coverage on the building to \$500k with a \$100k deductible. What are the results?
 - First collect from the insurance company: $\$500k - \$100k = \$400k$
 - Then, apply to FEMA for:
 - \$800k in eligible PA damage
 - the larger of {\$500k ins. policy limits or \$250 prior O&M commitment}
 - = Total PA funding from FEMA in this disaster: $\$800k - \$500k = \mathbf{\$300k}$
 - O&M commitments are determined prior to any deductions, and are based off of the eligible PA damage, which from this point forward will be \$800k



EXAMPLE 4

- Example 4 - The year after that... Tropical Storm Liam hits the same area, and does \$900k in damage to the facility. Assume that after the previous year's storm, the affected government upped the insurance coverage on the building to \$850k, but with a \$500k deductible. What are the results?
 - First collect from the insurance company: $\$850k - \$500k = \$350k$
 - Then, apply to FEMA for:
 - \$900k in eligible PA damage
 - the larger of {\$850k ins. policy limits or \$800 prior O&M commitment}
 - = Total PA funding from FEMA in this disaster: $\$900k - \$850k = \mathbf{\$50k}$
 - O&M commitments are determined prior to any deductions, and are based off of the eligible PA damage, which from this point forward will be \$900k



HELLO

- Example 5 - The year after that... Tropical Storm Elizabeth hits the same area, and does \$1 million in damage to the facility. But... assume that after the previous year's storm, the affected government left their insurance where it had been prior to Tropical Storm Liam (\$850k with a \$500k deductible). What are the results?
 - They are not meeting their O&M commitment (of \$900k) from the previous year...
 - First collect from the insurance company: $\$850k - \$500k = \$350k$
 - They get **nothing** from FEMA, because they did not meet the O&M requirement (and their recovery from T.S. Liam is in jeopardy too!)
 - **O&M commitment stays where it was, at \$900k**



OTHER RULES

- Other rules of interest that apply (not an exhaustive list!):
 - Duplication of benefits still not allowed
 - Subrecipients must still collect insurance proceeds they are entitled to under their policy:
 - “Settlement” is a bad word !!!
 - Make sure that prior to closeout, an statement of actual insurance recovery is submitted, to update the statement of anticipated insurance recovery
 - For properties located in a Special Flood Hazard Area (SFHA) that has been identified as an SFHA for more than 1 year, where NFIP insurance is available, and which are damaged by flooding... FEMA has mandatory deductions that will be made from otherwise-eligible PA costs
 - Goal is to push these properties to having NFIP insurance!



QUESTIONS FOR FEMA

- There are still many questions that FEMA has yet to answer:
 - How do we know what previous insurance commitments were?
 - How does an O&M commitment get parsed out under a blanket policy (or an insurance pool)?

QUESTIONS?

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