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FEMA

MEMORANDUM FOR: FEMA Regional Administrators
Regions I-X

ATTENTION: Recovery Division Directors

FROM: Deborah Ingram
Assistant Administrator
Recovery Directorate

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

As a result of issues raised in ongoing disaster events, as well as second appeal considerations, the Recovery Directorate has recently reviewed and evaluated its guidance related to insurance considerations for Public Assistance applicants. Based on this review and evaluation, I am rescinding Disaster Assistance Fact Sheet DAP9580.3, *Insurance Considerations for Applicants*, dated May 5, 2008 (DAP9580.3). Until a new policy related to insurance requirements is issued, please continue to refer to relevant provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5206, as amended (particularly 42 U.S.C. 5154, 5155, and 5172), and 44 Code of Federal Regulations (CFR) (particularly part 206, subparts G, H, and I), as well as guidance found in the *Public Assistance Guide* (FEMA 322/June 2007). The three key provisions related to insurance considerations for Public Assistance applicants are:

1. **Duplication of Benefits.** FEMA will not provide assistance for damage or losses covered by insurance. Actual and anticipated insurance proceeds must be subtracted from otherwise eligible costs in order to avoid a duplication of financial assistance. If Public Assistance funds are obligated for work that is subsequently determined to be covered by insurance, FEMA must de-obligate the funds. (Stafford Act, Section 312, 44 CFR §§206.250(c), 206.252(c), 206.253(a).)
2. **Obtain and Maintain.** As a condition of receiving assistance under Section 406 of the Stafford Act, an applicant must obtain and maintain the types and extent (amounts) of insurance as may be reasonably available, adequate and necessary, to protect against future loss. This insurance is required as a condition of the grant. In a subsequent major disaster, no assistance under Section 406 will be provided for any facility for which the applicant has previously received FEMA assistance unless all insurance required as a condition for the previous assistance has been both obtained and maintained. (Stafford Act, Section 311, 44 CFR §§206.252(d), 206.253(b), 206.253(f).)

3. **Reduction of Assistance in Special Flood Hazard Area (SFHA).** FEMA will reduce the amount of eligible assistance under Section 406 for flood losses in the SFHA. 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 Public Assistance 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. If the facility owner fails to obtain and maintain flood insurance as a condition of the grant, and the facility is damaged by a subsequent flood event, it is not eligible for Federal disaster relief assistance. (Stafford Act, Sections 311 and 406(d), 44 CFR §§206.250(d), 206.252(a).)

In addition, please note that in DAP9580.3, "Frequently Asked Questions," question 4 asks, "Does the PA Program fund deductibles?" The answer states, in part, "... a deductible, up to and including the amount of eligible damage incurred in a previous disaster, is not eligible for the same facility in a subsequent disaster of the same type." This answer provides a policy statement that is no longer applicable. Consistent with the key provisions related to insurance, including Section 312(a) of the Stafford Act, FEMA deducts the total insurance proceeds received or anticipated from the total eligible cost of the project. FEMA will not further reduce eligible costs by an insurance deductible.

DAP9580.3, *Insurance Considerations for Applicants*, dated May 5, 2008, is no longer in effect for major disasters and emergencies declared on or after the date of this memorandum. In addition, effective immediately, FEMA will not reduce eligible costs by an insurance deductible. This applies to any open projects or for determinations that the applicant has the opportunity to appeal in accordance with 44 CFR §206.206(c). Projects that do not fall into one of these categories will not be re-examined or otherwise adjusted based on the rescission of DAP9580.3.

If you have questions about this guidance, please contact me or have your staff contact William Roche (William.Roche@fema.dhs.gov) at 202-646-3683.