

**FEDERAL EMERGENCY
MANAGEMENT AGENCY****44 CFR Part 206****Disaster Assistance; Insurance
Requirements for the Public
Assistance Program**

AGENCY: Federal Emergency
Management Agency (FEMA).

ACTION: Notice of findings for the
advance notice of proposed rulemaking.

SUMMARY: We (FEMA) published an Advance Notice of Proposed Rulemaking (ANPR) on February 23, 2000 on insurance requirements, procedures and eligibility criteria with respect to buildings under the Public Assistance Program. The ANPR described a range of problems with the insurance element of the Public Assistance Program, listed possible options to address them, and finally, included several specific questions about how the Program could be improved. The overwhelming majority of comments responded to an aspect of insurance coverage for which our preferred option (referenced in the ANPR as Option 3) would condition Public Assistance grants for buildings on adequate property insurance being in place at the time of the disaster. Comments on other approaches to the insurance issues were received as well.

The deadline for comments was April 10, 2000. We received nearly 300 responses to the ANPR. The purpose of this notice is to provide a summary of these responses and an update on our process of developing a proposed rule on insurance requirements for the Public Assistance Program.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:**I. Background**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (Stafford Act), authorizes the President to pay at least 75 percent of the costs to repair public and certain eligible private non-profit infrastructure and buildings damaged by a presidentially declared major disaster. The Public Assistance Program provides grants to applicants—including State and local governments, Native Americans or authorized tribal organizations, Alaskan Native villages and organizations, as well as certain eligible private non-profit organizations—for emergency protective measures, for debris removal, and for disaster-damaged infrastructure and buildings.

We published the ANPR in the **Federal Register** at 65 FR 8927, February 23, 2000. As discussed in the ANPR, we believe that our current program regulations, 44 Code of Federal Regulations (CFR), Part 206, Subpart I—Public Assistance Insurance Requirements, are inadequate in meeting the insurance considerations of the Stafford Act, in particular, with respect to buildings. The ANPR was intended to surface what we consider to be the important issues, and to seek commentary and advice for program improvements. The issues address two major considerations. First, there is the matter of how best to encourage proactive risk management: this is where we discuss property insurance against major natural hazards for public buildings as a pre-disaster program eligibility requirement. And second, there is the failure of our current program regulation to adequately address:

- Guidance for State insurance commissioners' waivers of the post-disaster insurance purchase requirement;
- Whether the Public Assistance Program will fund insurance deductibles for buildings, and if so, how much do we fund; and
- How we define insurance (or what qualifies as insurance), among other issues.

The ANPR was entirely successful in meeting its objectives, and we are very grateful to the many respondents who provided needed information and thoughtful perspectives on the issues.

The substance and quantity of the ANPR comments were remarkable, and are cause for a full and deliberative analysis before continuing to the next stage of developing a proposed rule. Therefore, we wanted to give you an idea as to the nature of the ANPR responses, and advise you of where we stand in the analytical process.

II. ANPR Findings

We received 291 comments representing 32 States (including Guam and Puerto Rico). The distribution of responses is: 63 percent from California; 7 percent from Washington; 4 percent from Florida; and 26 percent representing the remaining 29 states that submitted comments.

The respondents offered a variety of perspectives, but many of them prefaced their comments with a statement to the effect that they agreed with the Public Assistance program's objective of seeking aggressive risk management on the part of public and private non-profit building owners.

While the comments address many issues, most are captured in the following topics.

Adequate Insurance

This area deals with the reasonableness of our schedule of eligibility criteria with respect to insurance.

The majority of comments focus on earthquake coverage. Many of these contend that the private insurance market does not have the capacity to provide adequate coverage, and that, because of the unpredictable and potentially catastrophic nature of earthquakes, insurance companies tend to exact high prices for their coverage. The result is that some entities can only get very limited coverage, and some find that the coverage that they can get makes little economic sense given the high premiums and deductibles required.

Earthquake coverage is separate and apart from all other property coverage. The insurance industry has trouble offering coverage for perils such as earthquakes that have no known probable frequencies; therefore, the insurance industry has limited its exposure in this area. The public entities tend to have little confidence that insurance companies will be willing or able to provide service at an acceptable price and shared concerns that the market will have the capacity to provide coverage to the levels outlined in the ANPR.

Over half of the comments were from California, and virtually all of these tell us that an eligibility requirement involving earthquake insurance is unreasonable. Some contend that money spent on earthquake premiums would reduce money available for seismic retrofits, and that the net effect would be counterproductive. Several writers suggest that our schedule of eligibility criteria in earthquake insurance coverage is biased against small entities, because those with less valuable buildings would need to have a higher percentage of them insured. (Note that this concern is expressed by the larger entities on behalf of the smaller entities; we received a very low number of responses from smaller entities.) Several also suggest that the \$125 million cap is too high: it is hard to get that much coverage even in today's soft market for all but a few of the largest entities and pools.

We hear that, based on past experience, few insurers will be able to

fully indemnify earthquake policyholders after a major quake.

There was a suggestion that a requirement for an eligibility criterion on earthquake insurance would be viable only if FEMA were to promote a nationwide pool for earthquake coverage for public entities. This suggestion rests on the presumption that the commercial insurance market does not have the capacity to deal with the scope of the coverage needed. Along these lines, other writers suggest that we establish a National Earthquake Program, similar to the National Flood Insurance Program.

Other than the comments on earthquake insurance, there were questions about the meaning of "highest-valued single location." There was also the suggestion that we provide for a cap on all risk insurance, just as we do for wind and earthquake in our insurance schedule.

Premium Thresholds

There was broad agreement with the need for a safety net provision in the form of a premium threshold. While some find it to be reasonable, most writers tell us that the \$.30 per \$100 is far too high, based on what they currently pay. For example, some entities are telling us that they pay just a few pennies per \$100 for their hazard insurance. Many writers also point out that by using an absolute dollar threshold, insurance companies will quickly price their products to meet that threshold.

Quite a few writers suggest that a threshold based on a percentage of an entity's operating budget would be a better way of offering a safety net. No writer suggested an actual percentage to be used in this regard.

Self-Insurance

There is a lot of interest in this area. All comments support the idea that self-insurance be an option for all entities. Several writers suggest that there should be specific, stringent requirements for self-insurance—for example, the retention of a dedicated fund—but, most simply state that the self-insurance should be an option to commercial insurance. In many cases, writers felt that self-insurance is a more sensible risk management technique than commercial insurance.

In this context, quite a few writers speak to the "all or nothing" provision of Option 3. They refer to the notion that a failure to have adequate insurance in force would result in zero aid for a damaged building—the "all or nothing" provision. They suggest that this would be unreasonable, particularly for a very

low probability hazard. The remedy put forth is to treat an uninsured building as self-insured, which would disqualify it for Public Assistance below our schedule of eligibility criteria coverage, but would allow it to remain qualified for Public Assistance above that amount.

Deductibles

This is one area where we received opposing viewpoints.

Some writers tell us that deductibles are, by their very nature, the responsibility of the insured, and should not be funded by FEMA. They point out that the size of the deductible is a major factor for the premium amount, and is a calculated business decision on the part of the building owner. It is their expression of risk tolerance or risk aversion, and should be their issue, not FEMA's. Other, more numerous writers are not only comfortable with the concept of deductibles being funded under the program, but offered suggestions for increasing the amounts. One person suggests increasing the deductible for blanket flood coverage from \$25,000 to \$100,000 if the loss limits exceed 150 percent of the NFIP maximum coverage. The suggestion is that this would encourage building owners to carry higher limit flood policies, and that it would better correspond to the actual deductibles associated with most blanket flood policies. Another person suggests that we eliminate the deductible cap of \$100,000 for wind coverage, but reduce the amount that we would fund from 5 percent to 2 percent, which, the commenter tells us, is the industry standard.

The writers express concerns that if they had a higher deductible than the amount we would fund they would not be eligible for FEMA assistance. This misconception caused concerns similar to the concerns related to the "all or nothing" provision.

Incentives

There is strong support for some form of incentive regarding a provision to condition future Public Assistance on insurance being in place at the time of the disaster. Fifty-two respondents favor incentives for purchasing insurance. However, the vast majority limit their comments to broad statements in support of the concept, rather than spell out specific ways of implementing an incentive arrangement.

Administrative Burdens

Many respondents are concerned that an eligibility criterion for pre-disaster insurance will result in added delays

and problems in obtaining Public Assistance grants. The thought is that FEMA would have to determine whether adequate property insurance is in effect on an applicant's buildings at the time of the disaster. This would require insurance experts, and would slow and complicate the process of awarding grants. Further, some respondents suggested that smaller Public Assistance applicants may not presently have property insurance on their buildings. A pre-disaster insurance eligibility criterion would necessitate them buying property insurance for the first time, and that, in so doing, they would encounter significant administrative burdens.

III. Next Steps

While we have received many valuable comments on this subject, we are still seeking information on the feasibility of encouraging new or expanded property insurance coverage as a means to improving risk management analysis and decisions about public and certain private non-profit buildings. For this reason, and in order to assist us in the evaluation of options, as well as to establish a benchmark for whatever criteria are eventually implemented, we plan to perform a study of public entity building insurance coverage.

Dated: September 20, 2000.

James L. Witt,

Director.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96-45; FCC 00-332]

Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rules.

SUMMARY: In this document, the Commission seeks additional comment on how to extend the enhanced Lifeline and Link Up measures to qualifying low-income consumers living in areas or communities that are "near reservations." Specifically, the Commission seeks comment on how to define geographic areas that are adjacent to the reservations, consistent with our