This update is being sent to ALL Subgrantees. If you have already signed and returned a commitment letter, please consider the below email informational only, as there is no need for anything additional to be sent.

If you are a State Agency, College/University, or other entity covered by the State Risk Management Insurance Plan, your FAQs will follow this email but under separate cover.

1. What is going on – why did this come out?

FEMA Region IV is complying with the requirements of the recommendations from the Department of Homeland Security (DHS) Office of Inspector General’s (OIG) audit of the insurance review process in Florida during the nine storms of the 2004-2005 hurricane seasons. The FEMA Disaster numbers are: DR-1539; 1545; 1551; 1561; 1595; 1602 and 1609. FEMA has already developed a Corrective Action Plan, in conjunction with the DHS-OIG, in order to appropriately address their concerns.

Of great concern was the now defunct “reasonableness” letter program facilitated by the Florida Division of Emergency Management (FDEM), as these letters were provided to the Subgrantees in an attempt to “confirm” that they were meeting their insurance requirements, however these letters were A) never waivers, but confirmation that the Subgrantee’s insurance was reasonably available and B) never sent to FEMA for review and assessment.

To protect the Federal funds invested in the restoration of disaster-damaged facilities and to prevent against future loss for the useful lifetime of repairs, FEMA requires, as a condition of receiving FEMA Public Assistance (PA) funding, that entities receiving subgrants must obtain and maintain insurance. Coverage must at least equal the amount of the eligible damage (prior to reductions) to the facility receiving Federal assistance (this may be higher than the amount actually received).

To date, Subgrantees have been divided up into four groups. The letter you received should clearly delineate which category you fall into.

- Subgrantees with insurance provided by the insurer who had open large projects at the time of the Audit entrance call, have been asked for all of the applicable insurance information necessary to complete an insurance review and reconciliation of all the Subgrantee’s projects to ensure FEMA has not funded a duplication of benefits for the years 2003-2006 (storms hit during these three insurance coverage years).
- Subgrantees with insurance provided by the insurer that do not fall within the first group are being notified there are not approved insurance waivers on file and are being asked to review and sign a commitment letter documenting that they understand the grant requirements to obtain and maintain insurance at this time. Their commitment letter was accompanied by a list of all of their C-G project worksheets with dollar amounts, as required by the DHS-OIG audit.
Subgrantees whose obtain and maintain requirement could not be verified at the time of the exit call have been asked to provide a copy of their current (only current) insurance policy as well as review and sign a commitment letter documenting that they understand the grant requirements to obtain and maintain insurance.

Subgrantees whose obtain and maintain requirement was confirmed up to or after the Audit exit call are only being asked to review and sign a commitment letter documenting that they understand the grant requirements to continue to obtain and maintain insurance.

2. So what came out on Friday (August 19, 2016)?

The email sent out by FDEM was a notification that further correspondence was to be sent to you from FEMA. This gave Subgrantees an opportunity to ensure their Floridapa.org accounts were accessible.

3. So this was an audit of FEMA right? How does this affect us?

This audit was conducted by DHS-OIG as a means of accomplishing two goals: 1) to instruct FEMA to revisit the insurance reviews conducted and ensure that they were conducted properly and 2) to ensure that all Subgrantees who received permanent work funding were made aware of the fact that none of their insurance requirements have been “waived”, as may have been stated in their project worksheets or implied by the “reasonableness” letters forwarded to them from FDEM over the past several years.

If a Subgrantee had damage to an insurable facility (as defined in FEMA’s Policy on Insurance sent to you via email) in the past, and a future event of the same type was to be declared, the funding paid to you by FEMA in the past will be deducted from future eligible funding as it is identified as prior loss. If a Subgrantee chooses not to obtain and maintain insurance, the consequence of non-compliance is that the Subgrantees will jeopardize their potential to be eligible Subgrantees in future storms. FEMA and FDEM want Subgrantees to understand the consequences of non-compliance on an insurable facility/insurable property’s eligibility for future Federal grant funding.

Regardless of whether or not your entity chooses to sign a commitment form, please ensure that your property insurance is sufficient to cover any damages in the event of a future named windstorm. We want to ensure Florida Subgrantees are aware they must obtain and maintain insurance, as the goal is to ensure they have adequate insurance coverage for future disasters.

4. Could this result in a deobligation for my town/county/entity?

While there is a potential for future deobligations, these funds will fall into one of two categories: 1) funding that is owed to you by your insurance carrier for returning your facility to true pre-disaster condition or 2) funds deobligated because you have not obtained or maintained the insurance required as a condition of receiving funding.

5. Will more information be coming out on this?

As of today, you should have already received correspondence from FEMA with the new insurance policy, a copy of the commitment letter template for you to print and sign, and (if required of you) a request for just your most recent insurance policy. We ask that you continue to send all of your questions to both FEMA-PA-F9-REQUEST@fema.dhs.gov and FDEM.PA.Actionitem@em.myflorida.com.
We are asking that you not seek out additional information via telephone or by another source, as both FEMA and FDEM are tracking questions and responses. Telephone calls increase the potential for misinformation and do not allow for visibility between both agencies. Additionally, having responses to your questions in a written format should increase your confidence in the information relayed as well as give you a point of reference in the future. Our goal is to respond to your questions as soon as they are received.

Before you send your questions and concerns, please take note of the following:
1) If you were a recipient of only debris removal (Category A) funding and/or emergency work (Category B) funding, there is no need to sign a commitment letter. Please utilize the insurance policy as a reference guide for future storms only.

2) If there was no permanent work (Categories C-G) project worksheet written and made eligible for facilities over $5,000.00 for the storms as referenced, there is no need to sign a commitment letter. Please utilize the insurance policy as a reference guide for future storms only.

3) If you are unsure as to which category you fall into, please utilize floridapa.org to review your accounts before sending in a question, as that will allow you to determine whether or not you fall into either #1 or #2. Please note that Categories C-G have the potential for an insurance requirement. Instructions for how to access this information in Floridapa.org will be provided upon request. This link has also been posted on Floridapa.org.

4) Small projects can have an insurance requirement on them! Any permanent work PW over $5,000 has the potential for an insurance requirement.

Floridapa.org can be accessed at [http://floridapa.org/](http://floridapa.org/). If you have not logged into your account in the last 60 days, your account has been locked. If you would like your account unlocked, go to the home page of floridapa and click on the access requested link under the login field. Then complete the form, making sure to enter your name prefix and the reason for the requested access (Account Locked). Finally, scroll to the bottom of the page and click Register.

6. Doesn’t 705(c) of the Stafford Act prevent deobligations after the Regional Administrator has obligated or otherwise signed off on a PW version?

Section 705 (c) of the Stafford Act (c) does not apply to de-obligations related to this audit. The reason for this is that Section 705 (c) is not applicable if a Subgrantee either fails to comply with the grant condition to obtain and maintain insurance or if a duplication of benefits exists because the funds provided by FEMA were owed by the insurance carrier. In the event that there is a de-obligation of funding, the reason for that de-obligation will be clearly provided in an effort to provide an opportunity for resolution (i.e. – the appropriate declination of coverage letter from the carrier or the submittal of the applicable insurance coverage as proof of meeting the obtain and maintain requirement).
7. **Great – so can’t we just get the State Insurance Commissioner to do a blanket letter stating that the levels of required insurance are not reasonably available?**

The Insurance Commissioner’s Office advised in 2015 that they will not be issuing any retroactive waiver reviews. As the damages for these storms occurred over ten years ago, any request for a waiver for the 2004-2005 storms will not be reviewed for consideration. Additionally, the Insurance Commissioner’s Office has also advised that it will no longer issue “reasonableness” letters, which were once perceived as waiver letters (or a means to secure future funding without risk of prior loss deobligations). Any request to the Insurance Commissioner’s Office for a modification of a requirement to obtain and maintain insurance for a facility must be: facility specific, peril specific and dollar amount specific. A request for modification to a facility’s obtain and maintain requirement cannot be done pre-emptively.

It should be noted that the Regional Administrator is the only person who has the power to set aside, or otherwise modify, the requirement to obtain and maintain according to the Stafford Act (this power is granted to the President and passed down the chain to each Regional Administrator). The State Insurance Commissioner does not have the power to waive a Federal requirement under the Stafford Act or 44 CFR §§ 206.250-253. The Commissioner may provide FEMA with a finding that such insurance is not reasonably available in the marketplace, which FEMA could use in determining whether or not to waive or modify an insurance requirement, but for future declared storms only.

8. **What if we have additional questions?**

Below is a list of general information regarding PA and Insurance. If the information below is not what you were looking for, please reply all to FEMA-PA-F9-REQUEST@fema.dhs.gov and FDEM.PA.Actionitem@em.myflorida.com with your questions and concerns.

Again, we are asking that you not seek out additional information via telephone or by another source, as both FEMA and FDEM are tracking questions and responses. Telephone calls increase the potential for misinformation and do not allow for visibility between both agencies. Additionally, having responses to your questions in written format should increase your confidence in the information relayed as well as give you a point of reference in the future. You may be contacted via telephone if absolutely necessary.

9. **Do I have to sign this letter?**

Before you ask that question, it is best that you understand why the letter was sent. By signing the letter, the Subgrantee is saying, “I’ve reviewed the information referenced documents and I understand how the O&M works. Per Federal regulations, not complying with the O&M requirement renders the facility/property ineligible for FEMA PA Funding in a future event and may result in future de-obligation of funding previously awarded to the Subgrantee.” Signature or not, the regulations will still be enforced. A signature confirms your understanding of that, which will be assumed in a future storm whether or not a commitment letter is on file.

10. **What did the Audit say?**

FEMA Region IV is complying with corrective actions to address the findings in the Department of Homeland Security (DHS) Office of Inspector General’s (OIG) audit of the insurance review process in Florida during the nine storms of the 2004-2005 hurricane seasons.
The DHS OIG determined the insurance reviews were not adequate to maximize the insurance coverage available under Subgrantee’s policies and to ensure that duplication of benefits didn’t occur. In addition, the FEMA Insurance Specialists who performed the reviews waived the requirement to obtain and maintain insurance without the authority to do so.

FEMA is working with Florida, the Grantee, to make Subgrantees aware they should check their projects for and obtain and maintain insurance requirements and that any waiver(s) of this requirement cited in project worksheet(s) was done so without authority.

At this time, based upon the DHS OIG audit FEMA must:

- Notify the Subgrantees that FEMA does not have any approved waivers on file and the Subgrantee is required to obtain and maintain insurance.
- Conduct an insurance review with the remaining Subgrantees that had open large projects at the time of the Audit entrance conference.
- Request copies of current insurance policies from the Subgrantees who do not have policies on file with the Grantee to ensure they have obtained and maintained.

11. Do I have to go out and get insurance?

Neither FEMA nor FDEM can make a Subgrantee purchase insurance to comply with an Obtain and Maintain requirement. However, FEMA and FDEM want Subgrantees to understand the consequences of non-compliance on an insurable facility/insurable property’s eligibility for future Federal grant funding, along with the possibility of future deobligations of previously awarded funding.

The DHS-OIG Audit is requiring FEMA to make sure Florida’s 2004-2005 Subgrantees understand the PA Grant funding requirements for eligible insurable items. The requirement to obtain and maintain is a grant condition. It is the Subgrantee’s decision whether or not to comply with the condition. It’s very important to understand the consequence of non-compliance is the loss of eligibility of future Federal funding for that facility/property.

12. Where can I read about FEMA’s insurance rules?

FEMA issued FP 206-086-1 on insurance in July 2015 which provides further guidance regarding insurance and its role in FEMA’s Public Assistance Grant Program. The policy on insurance provides insurance definitions including definitions of self-insurance and blanket policy.

13. What is an Obtain and Maintain insurance requirement?

To protect Federal resources invested in the restoration of disaster-damaged facilities and to prevent against future loss for the useful lifetime of repairs, FEMA requires, as a condition of receiving FEMA PA funding, that Subgrantees receiving subgrants must obtain and maintain insurance. Coverage must at least equal the amount of the eligible damage to the facility receiving Federal assistance. This is referred to as the obtain and maintain (O&M) requirement. If a Subgrantee does not obtain AND maintain insurance, FEMA will not provide assistance for that facility in future disasters.
While the purpose of the O&M requirement is to protect against future loss from the same type of peril, it has implications for a current disaster. Title 44 of the Code of Federal Regulations (44 CFR) 206.253 (f) indicates that if the requirement to purchase (obtain) insurance is not met, FEMA may deobligate (take back) funds provided for damage sustained in the current disaster and any previous disasters where the facility wasn’t O&M compliant.

There are some circumstances when a Subgrantee is exempt from the O&M requirement, such as where eligible damage is less than $5,000, OR the facility is a temporary facility.

14. **What Categories of Work can have Obtain and Maintain Insurance requirements?**

Categories C-G.

15. **Can small projects have an Obtain and Maintain Insurance requirements?**

Yes.

16. **What is duplication of benefits?**

Section 312 of the Stafford Act and 44 CFR §§ 206.250(c) and 206.253 (a) prohibits FEMA/Public Assistance Program from duplicating benefits. FEMA is required to reduce the amount of assistance for eligible work by the amount of any actual or anticipated insurance proceeds available for that work depending upon when a project is reviewed by FEMA’s insurance team.

17. **What is the Commitment to Obtain and Maintain (O&M) letter and what does it mean?**

You, as a Subgrantee, received money from the Federal Public Assistance Program from one or more of the Federally declared disasters in Florida in 2004-2005. A condition of receiving the money for insurable facilities with eligible damages over $5,000 was that, as the Subgrantee, you would obtain and maintain insurance on building, contents and/or other eligible insurable property. This may have been the case even if you had insurance and all FEMA funded was your deductible.

As part of the required corrective action by DHS-OIG of FEMA, FEMA and FDEM are working together to let Subgrantees know any waivers were unauthorized and the obtain and maintain insurance requirements are in place. FEMA’s e-mail, the Commitment to O&M letter template, a copy of the audit report and FEMA’s policy on insurance (FP 206-081-1) have been provided so the Subgrantees understand all the aspects of FEMA’s insurance requirements, not just the insurance O&M requirement.

18. **What is an Insurance Commissioner’s Certification of Modification of an Obtain and Maintain Insurance Requirement?**

Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), the Subgrantees must obtain and maintain (O&M) insurance coverage which is reasonably available, adequate or necessary to protect against future loss to an insurable facility for the useful life of repairs. If a Subgrantee believes the insurance is not reasonably available, inadequate, or unnecessary, the Subgrantee can request an Insurance Commissioner’s Certification (ICC) that modification of the requirement is needed. An ICC is disaster, facility, peril and dollar specific and only
applies to the current disaster. Should another disaster strike, resulting in a need for additional Stafford Act assistance, a new application for an ICC applicable to the new disaster is required.

This modification request can only be made after a Federal declaration and must address specifically the facility/facilities, the peril, and the dollar amount(s) of the requirement and must have documentation and information to support the Subgrantee’s position. Once the Subgrantee provides documentation that they believe evidences that the type and extent of insurance required by the FEMA PA Program is not reasonably available, adequate, or necessary to protect the facility from future loss the Insurance Commissioner can review the documentation and, at their discretion, issue an ICC. FEMA will review the ICC for concurrence and may or may not modify or waive the O&M insurance requirement addressed in the ICC.