FEMA Public Assistance's "Obtain and Maintain" Insurance Requirements

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Why You Need to Understand FEMA's Public Assistance "Obtain and Maintain" Requirements is Important

VLCT members need to know about the important insurance requirements that apply when their organization accepts FEMA Public Assistance (PA) funds for "permanent work"(opens in a new tab) to correct the loss of an uninsured "facility"(opens in a new tab) so that they can plan accordingly. FEMA's PA requirements are challenging, especially when the recipient is still recovering from the disaster. We hope this webpage will help PACIF members understand the insurance-related elements of what to expect when seeking FEMA PA funds now and in the future.

FEMA PA insurance requirements(opens in a new tab) (also known as "obtain and maintain" or O&M requirements) apply to losses from various types of disaster. This webpage focuses on flood because it is the disaster type of primary concern in Vermont.

VLCT PACIF had a professional consulting firm that specializes in FEMA response present on this topic at VLCT's Flood Recovery Check-In on June 18, 2024. If you missed the meeting, find the video and slides in **the June 18 entry** on our Flood Recovery Check-In Recordings and Resources webpage.

Introduction

A condition of receiving FEMA PA(opens in a new tab) funding for permanent work (opens in a new tab) to replace, restore, repair, reconstruct, or construct a facility (opens in a new tab) after a federally declared disaster is that the applicant must agree to **obtain and maintain in perpetuity a specific amount of insurance coverage for each individual facility** (whether a building, contents, equipment, or vehicle) **for losses from the specific hazard that caused the damage** (such as Vermont's 2023 flooding). Meeting this condition helps ensure that the applicant will (a) be eligible to

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receive PA funds for these facilities if they are damaged in future federally declared disasters and (b) avoid clawback of PA funds already received for them.

PACIF staff can discuss your specific situation with you if that would be helpful. If you have any questions about the "obtain and maintain" requirements or would like to explore getting quotes for additional flood coverage, please email **underwriting@vlct.org**(opens in a new tab) or call 800-649-7915 to speak with a team member.

Requirements

The Official FEMA PA Policy on Insurance(opens in a new tab)

FEMA's required insurance coverage limit must be **equal to or exceed the amount of PA funding that FEMA provides** for that facility (buildings, contents, equipment and vehicles). If the damage was caused by any disaster other than flood (wind, fire, hail, etc.), the minimum coverage commitment must be equal to the eligible project costs indicated by FEMA's "permanent work" project worksheets. If damages were caused by **flood**, **then the required insurance coverage limit is based on the amount of eligible disaster assistance.** Please note: this approach is not always applied consistently by FEMA and sometimes will include the gross amount *including* insurance proceeds.

Once the PA "permanent work" project is "obligated(opens in a new tab)" by FEMA, their regulations require the applicant to **maintain** such coverage **in perpetuity**. If there is a coverage lapse or coverage is not maintained, FEMA can deny PA funding in any future disaster involving the same type of hazard, and, potentially, claw back funds provided for the original disaster.

It is critical that affected applicants verify with FEMA whether their current coverage complies with FEMA's "obtain and maintain" insurance limit

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requirements. Validation of FEMA's insurance requirement typically occurs during closeout of the "permanent work" project with Vermont Emergency Management (VEM). VEM will confirm that the applicant complies with FEMA's "obtain and maintain" insurance requirement. Once an applicant receives their closeout package from FEMA through VEM, PACIF recommends that the applicant forward it to their insurer for assistance in meeting this requirement.

The Requirements are Facility-Specific

For each facility, FEMA will specify an "obtain and maintain" requirement that is based on the facility's amount of eligible disaster assistance (damage repairs/expenses). In **this example of a FEMA project report**(opens in a new tab), pages 10-19 provide FEMA's assessment of insurance, and the "obtain and maintain" requirements are summarized on pages 19-20**. These are the amounts of coverage that the applicant must commit to** obtaining as a condition for **receiving FEMA monies** and maintaining uninterrupted in perpetuity to **qualify for future FEMA PA funds** if another disaster strikes the same facilities.

The "obtain and maintain" requirement does not apply to

- Debris Removal (Category A) or Emergency Protective Measures (Category B) projects or
- Permanent repairs to roads and bridges – because they do not meet FEMA's definition of facility and are uninsurable municipal infrastructure.

PACIF Coverage

For 2024, PACIF provides $1 million of coverage limit per member, per occurrence (and in the aggregate) of Flood Zone A coverage, subject to a $10 million fund-wide

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annual aggregate limit. **PACIF's coverage is not facility-based**. It is an aggregate limit for all covered properties of the members. In addition, there is a fund-wide aggregate limit which could result in members receiving less than their individual $1 million limit if a major disaster affects multiple members ***and*** exceeds the $10 million fund-wide aggregate limit. PACIF increased the fund-wide aggregate limit from $5 million to $10 million for 2024 to provide better coverage for members with property in FEMA Special Hazard Flood Areas. However, it's important for members to recognize that **even with the increased limits, PACIF's coverage may be insufficient to meet FEMA's "obtain and maintain" requirements**.

Facilities located outside of either FEMA-designated Flood Zone A or prefixed with A have a higher member limit and fund-wide annual aggregate. At this time, PACIF believes that its flood coverage for properties in these zones will easily meet any "obtain and maintain" requirement. Again, **once the member knows their specific "obtain and maintain" requirements, PACIF recommends the member check with their agent or PACIF about the limits on their policy and then confirm with FEMA whether their current flood coverage and limits meet FEMA's insurance requirements.**

NFIP Coverage

It is widely known that flood coverage has become increasingly difficult to purchase due to the increased number of severe weather events that have occurred nationally over recent years. While PACIF has increased its flood coverage within Special Hazard Flood Areas, we recognize that those limits may still not be adequate for some members who will need to meet FEMA's facility-specific "obtain and maintain" insurance requirement.

One source of readily available flood insurance coverage is the National Flood Insurance Program(opens in a new tab) (NFIP), which is managed by FEMA. **NFIP**

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coverage is only available for applicants that have adopted and implemented local floodplain management regulations that comply with FEMA's regulations. However, NFIP policies provide **limited** coverage. **NFIP's maximum coverage limit is $500,000 in property damage and $500,000 in contents**, with many below-grade items excluded from coverage. **NFIP's policies are written on a per-facility basis and can be costly** to obtain; however, such coverage **seems to be the most practical way** for members to meet the "obtain and maintain" requirements. PACIF also continues to explore alternative flood insurance coverage for properties in Special Hazard Flood Areas. Whether PACIF is successful in developing an alternative flood coverage option or NFIP policies are used to meet the "obtain and maintain" requirement, the costs for these additional flood insurance policies would be borne by individual members as both would be separate from PACIF coverage.

The Waiver Option

An alternative approach for members to consider is FEMA's insurance certification waiver process. A member can apply for a waiver through the Commissioner of the Vermont Department of Financial Regulation (DFR) **if the amount of required insurance is not reasonably available, adequate, or affordable**. FEMA has specific steps that must be followed to pursue a waiver. PACIF can assist members by connecting them with consultants that specialize in this process if they would like help applying for a waiver. Please note: there is a fee to work with these consultants and members will be responsible for the cost of their services.

Disclaimer: This resource was created by Municipal Operations Support (MOS) staff of non-legal professionals with expertise of the subject matter. It is only intended to provide information and does **NOT** constitute legal advice. Readers with legal questions are encouraged to contact an attorney. The use or downloading of this resource does **NOT** create an attorney-client relationship and will not be treated in a

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