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**MISSISSIPPI DEPARTMENT OF INSURANCE GUIDELINES FOR
DETERMINATIONS RELATING TO FEDERAL INSURANCE REQUIREMENTS:
HURRICANE KATRINA DISASTER ASSISTANCE**

The Department of Insurance ("Department") has been working with the Federal Emergency Management Agency (FEMA) and the Mississippi Emergency Management Agency (MEMA) regarding school districts and other entities ("Applicant" or "Applicants") that, because of Hurricane Katrina damage, may be entitled to federal disaster assistance through FEMA. This disaster assistance is generally contingent upon the Applicant obtaining flood or other types of insurance in an amount equal to the federal disaster assistance. However, per federal regulations, the FEMA Regional Director "shall not require greater types and amounts of insurance than are certified as reasonable by the State Insurance Commissioner." 44 CFR Part 206, Subpart I, Insurance Requirements.

Because of difficulties in meeting the federally-mandated insurance requirement relating to the availability and affordability of coverage, many Applicants have expressed an interest in having the Commissioner of Insurance ("Commissioner") make a "reasonableness" determination for them to use in obtaining waivers from FEMA. The purpose of these Guidelines is to identify the information needed to make the appropriate determination. A primary concern is that there be sufficient grounds to support a determination that the required coverage is not reasonably available to an Applicant. This is particularly important given the possibility of a subsequent federal audit of the Applicant.

In researching this issue, the Department has worked with FEMA and MEMA, and has reviewed the process set up by other state insurance departments. These Guidelines are based on the best information available about establishing a legally-sufficient, workable process.

The first consideration is that there can be no broad, across-the-board determinations. Such determinations may subsequently be disputed in audits, and any assistance based thereon could be disallowed. Consequently, determinations must be done on a case-by-case basis. Applicants requesting determinations may include more than one project in a single request, but each project must be identified and dealt with separately.

With regard to flood coverage that may be required, the Department has been advised that FEMA requires Applicants to obtain whatever coverage that is available through the National Flood Insurance Program (NFIP) for both structures and contents. FEMA takes a firm position that NFIP coverage is nonwaiverable. Therefore, if a given project is subject to a flood insurance requirement, NFIP coverage must be obtained for each structure and the contents therein. Consequently, requests

for determinations will only relate to flood coverage requirements over and above NFIP limits, which necessarily means flood coverage from the commercial insurance market.

Essentially, the Applicant must make a good faith effort to obtain the federally-required coverage. As for specific information, requests for a determination must include the following:

1. The project to be funded by federal disaster assistance. A copy of the FEMA Project Worksheet Report which shows the date of obligation by FEMA for each project must accompany the request.
2. The cause (i.e., wind, flooding, etc.) and extent of the damage, and the total monetary loss sustained.
3. The type and amount of insurance coverage that was in place on the facility at the time of the loss. Also include the name of the insurer and agent or agency.
4. The type and amount of insurance coverage required by the federal regulation and any coverage that the Applicant has obtained which satisfies any part of that requirement.
5. The type and amount of insurance coverage required by the applicable federal regulation that the Applicant does not have and the reason(s) why.

Also, the Applicant must have obtained a minimum of two or more quotes and/or declinations from insurers that normally write the type and amount of the coverage needed. Further, the Applicant must have consulted an insurance agent or agency that routinely places the type and amount of coverage needed. Documentation of the Applicant's efforts in this regard should be included with the request. This should include a statement from the Applicant's agent or agency indicating his due diligence in attempting to find the required coverage.

Further, any relevant information that impacts the Applicant's ability to obtain the federally-mandated coverage will be considered. Such information may include, but is not limited to, the financial ability of the Applicant to pay for the coverage regardless of cost, and the existence of other financial commitments that may take priority. Again, any relevant information will be considered, and Applicants are encouraged to include this in their requests.

The Department believes that the information requested herein is of the type that would already be available to every Applicant as the result of their own due diligence in conducting business. A single-page worksheet is provided with these Guidelines to assist Applicants in making their requests.

Questions about making a request for a determination should be directed to:

Legal Division
Mississippi Department of Insurance
P.O. Box 79
Jackson, MS 39208-0079
601-359-3577
Fax- 601-359-2474
legal@mid.state.ms.us

Otherwise, requests for determinations should be directed to:

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