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April 10, 2000

Rules Docket Clerk
Office of the General Counsel
Federal Emergency Management Agency
C Street, S.W., Rm. 840
Washington, D.C. 20472

Re: Advance Notice for Proposed Rulemaking Insurance Requirements for the Public Assistance Program

Gentlepersons:

The University of California appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking dated February 23, 2000, concerning insurance requirements.

The University of California is supportive of efforts to encourage applicants to effectively reduce potential disaster risks through insurance and prevention. However, we are strongly opposed to the proposed rulemaking for the following reasons:

1. We are not satisfied that FEMA has authority to make the proposed rule.

The Advance Notice of Proposed Rulemaking correctly observes that the preamble to the Stafford Act (42 U.S.C.A. § 5121(b)(4)) states that it is "the intent of the Congress to encourage individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance." This Congressional intention is fulfilled through the provisions of the Act itself. Section 311 of the Act (42 U.S.C.A. § 5154(a)(1)) authorizes the President to require that an applicant for assistance obtain insurance on the property to be "replaced, restored, repaired, or constructed with such assistance." Thus, the authority of FEMA to require insurance is expressly allowed only after an applicant seeks assistance following a disaster. This intention is made even more clear by the following provision that insurance may be required only if "reasonably available, adequate, and necessary to protect against *future* loss to such property."

The Act further limits the ability of FEMA to determine insurance is available, adequate and necessary by stating that "the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance." Thus, the proposed attempt to require *pre-disaster* insurance and without regard to an assessment of reasonableness by the appropriate state insurance commissioner is well beyond the authority of FEMA.

2. We are not satisfied that sufficient information has been obtained to support the proposition that insurance will be available and adequate at reasonable cost to meet the new requirements.

The primary hazard facing the University of California is earthquake. Unlike other disasters earthquakes happen unpredictably and, when they do occur, the damage can be catastrophic. Thus, the private insurance market has difficulty in assessing the risk. The University of California maintains approximately $12 billion of insurable value for its current buildings. This only begins to approximate the actual cost of reconstruction; however, even assuming coverage for only the insurable value and assuming that insurance were available for public buildings at the same cost we now understand it is available for private buildings, the cost of insurance would be $12 to $16 million per year. We are informed, however, that should FEMA require insurance this cost could dramatically increase, and could well exceed the premium limits of thirty cents per one hundred dollars found in the proposed rule. At this level the University's cost of coverage would be as much as $36 million per year. To illustrate, the University suffered no major earthquake damage from the time of the 1971 San Fernando quake until the 1989 Loma Prieta quake, and insurance premiums at these levels would have totaled well over $600 million dollars during that period.[1] Moreover, recent experience has suggested that in a catastrophic earthquake disaster the private insurance market may not be up to the task. Before FEMA promulgates a rule premised upon an assumption that earthquake insurance is reasonably available, we believe it should conduct a more thorough study of the availability and cost of earthquake insurance and of the likely effects of the FEMA requirement itself on the cost of such insurance. The University of California also believes that a closer look at alternatives should be taken. For example, the enormous amounts required to provide insurance, even if available, might well be better spent by direct payments to FEMA. FEMA could then pool this money for use in a disaster. FEMA might even consider whether earthquake hazards should be subject to a separate pool.

3. The proposed regulation is insufficiently flexible to satisfy the objectives of the Stafford Act. It elevates one means of achieving those objectives (insurance) while ignoring an equally important means (hazard mitigation).

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1 We note that the damage to UC property in the 1971 earthquake was modest and it might be more appropriate to refer to the 1906 San Francisco earthquake and fire to find a major disaster in the order of Loma Prieta in 1989.

The objective of the Stafford Act is "to provide an orderly and continuing means of assistance by the federal government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from . . . disasters." (42 U.S.C.A., § 5121(b).) One means of achieving these purposes is "*encouraging* . . . insurance coverage." (Id., at (b)(4).) Equally significant, however, to the achievement of the Congressional purpose is "*encouraging hazard mitigation measures to reduce losses from disasters . . .*" (id., at (b)(5)). The proposed rule gives no credit for hazard mitigation measures and relies entirely on an insurance requirement, thus incentivizing the expenditure of large sums on private insurance coverage, especially problematic in connection with earthquakes as we have noted. This in spite of the fact that the costs of prevention are far less than the costs of repair, and that the costs of insurance will inevitably reduce the money available for prevention. And, most importantly, in spite of the fact that the public safety is served by hazard mitigation – every dollar spent on premiums rather than hazard mitigation increases the risk of injury and damage. We suggest that, even if FEMA had authority to require predisaster insurance without regard to a determination of reasonableness by the state insurance commissioner, there must be some means of rewarding prevention efforts as well as insurance. One way to do this would be to debit, but not eliminate, support for applicants without insurance and to credit prevention efforts.

We note, by way of background, that the University of California, in cooperation with the state, has undertaken a phased and expensive seismic correction program for its 224 most seismically hazardous facilities. Since 1975 seismic correction projects totaling more than $450 million have been completed on 93 facilities across the state, and 57 facilities are now progressing with design or construction for seismic repairs. These projects represent over $966 million of seismic correction work currently under way. Such an effort would not have been possible if similar sums had been diverted to insurance premiums.

Thank you for considering our views.

Sincerely,

A. Scott Sudduth

A. Scott Sudduth
Assistant Vice President
Federal Government Relations

Bsb

cc: President Richard C. Atkinson, University of California
Chancellors
California Congressional Delegation
Washington Office of Governor Gray Davis