

March 11, 2002

Memo to: Rules Docket Clerk
Office of the General Counsel
FEMA

From: Dale W. Shipley, Executive Director
Ohio EMA

Subject: Comments on FEMA Disaster Assistance Rule, 44 CFR Part 206; Draft Federal Memorandum of Understanding (MOU); and Assistance to Individuals and Households Support Guide

Following are comments on key sections/issues related to the proposed rule for the implementation of section 206 of the Disaster Mitigation Act of 2000, Disaster Assistance: Federal Assistance to Individuals and Households, the draft FEMA-State Memorandum of Understanding and FEMA's assistance to Individual Support Guide.

Following are our comments on the proposed rule for section 206 of the **Disaster Mitigation Act of 2000 (DMA2K), Subpart D-Federal Assistance to Individual and Households:**

Section 206.101:

(c) *Multiple types of assistance.*: FEMA needs to share the criteria that will be used to determine the type of housing assistance that may be provided to individuals. FEMA also needs to clearly define what is meant by "unwarranted refusal" especially in light of FEMA basing the decision on "convenience to the individuals and households, which are subjective not objective criteria.

FEMA also needs to provide States with criteria, contractual agreements and any such related information that is provided to the FEMA Habitability inspectors. The inspection that is conducted by these individuals using pre-established criteria is truly the basis for initial program eligibility for both the Disaster Housing Operations Program(DHOPS) and the Other Needs Program.

Recommendation: FEMA needs to provide States copies of the Habitability contract and associated information that is used to determine initial program eligibility based on inspections for the DHOPS and Other Needs Programs. FEMA needs to develop objective eligibility criteria and provide to States for determining types of housing assistance to be provided.

(i) *Cost-sharing: Disaster Housing Operations (DHOPS)*. The State may be obligated to fund group site development in the event there is this requirement without reimbursement from FEMA, regardless of which option the State chooses. This is a major departure from the former 75/25% cost-share relationship of FEMA and the State. However, the section mentions that FEMA may do so, "only where we determine necessary." The regulations under 206.101(i) *Cost Sharing* state that the federal share of eligible costs will be 100%. This needs to be clarified. Also, FEMA needs to identify what will be used to make such a determination.

Recommendation: FEMA should identify the criteria or "trigger-mechanism" that will be used to determine the need for mobile home group sites.

(j) *Application of the Privacy Act*. There is conflict between how FEMA can use and disseminate applicant information and how States can use the information. FEMA needs to clearly identify agencies and organizations such as the American Red Cross, crisis counseling groups being funded by FEMA disaster assistance and appropriate long-term recovery committees such as VOAD that meet the definition of routine use.

Recommendation: Rewrite this section to recognize the need to share applicant information by FEMA and the States with appropriate voluntary agencies as well as providing supplemental assistance not provided through DHOPS or the Other Needs Programs.

(k) *Flood Disaster Protection Act requirement*. There are several issues related to this subject. The requirements to purchase and maintain flood insurance as it relates to an award under DHOPS is consistent with the NFIRA and should remain. This requirement should be placed on anyone, State, Agency, etc. that purchases a housing unit owned by FEMA and places it in a special flood hazard area.

The regulations remain silent regarding the requirement of applicants receiving repair funds for items damaged by flooding that could be insured under the NFIP. FEMA should review and ensure all forms of assistance provided under the DHOPS and Other Needs Programs are both consistent with the NFIP/NFIA.

The next issue relates to Flood Insurance/NFIRA is the proposed elimination of the Group Flood Insurance Program (GFIP) with the mandate to purchase and maintain flood insurance. There must be a compromise offered for the most vulnerable of the disaster population, those that have uninsured losses, disaster damages.

We would recommend retaining the GFIP as it currently exists with the purchase of a flood insurance policy to the maximum grant level for \$200 for 3 years. This

is a reasonable approach to mandating compliance with the Flood Insurance Act and NFIRA; it gives the applicant time to identify funding when the GFIP expires; and it allows the applicant to assume responsibility to protect themselves from future losses by having the flood insurance.

We would further recommend a refinement of the GFIP by having verification of the post-disaster location of residence of renters confirmed prior to the issuance of a GFIP. Historically, GFIPS are automatically issued for renters whose pre-disaster address was located in the special flood hazard zone and the cause of damage was due to flooding, regardless of whether the renter remains at that address after receiving personal property award. Rather than automatically issuing a GFIP, we recommend confirming the renters post-award address, checking the location to determine whether it is in the special flood hazard zone then issuing the GFIP if it is. If it is not, there is no reason to issue the GFIP, thus for the cost of a phone call and a few minutes of staff time, the \$200 would be saved.

Recommendation: 1. FEMA should require all purchasers of FEMA-owned housing units to purchase and maintain flood insurance, if applicable based on NIFP/NFIRA compliance. 2. FEMA must ensure consistency between the DHOPS and Other Needs Program with regards to NFIP/NFIRA. 3. Retain the Group Flood Insurance Program. Prior to awarding a renter a GFIP, the location of the rental unit should be checked to determine the necessity of purchasing a GFIP.

Section 206.102 Definitions.

Recommendations:

Household. FEMA needs to expand this definition to specifically include non-dependent members of the pre-disaster household if this is the intent of the definitions as currently written.

Primary residence. Expand the definition to include location where applicant pays taxes.

Section 206.104 Eligibility Factors.

(a)(5) FEMA needs to define the criteria that will be used to determine "when the individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance." This is far too broad and totally subjective.

Recommendation: Define the criteria that will be used to determine eligibility throughout this entire section.

(b)(4) *Conditions of ineligibility.* FEMA should review the denial of assistance for housing costs that are incurred as a direct result of mandatory evacuations by local officials. If the evacuation order occurs during the incident period and is confirmed to have been ordered by local officials with that legal authority FEMA should see this as a housing expense that is caused by the declared disaster and reimburse the housing expenses. Temporary shelters may not be opened based on this type of need, thus emergency shelters may not be available. There is no reimbursement currently available from any other sources for this type of disaster-related expense. No assistance should be provided in the event the appropriate local officials did not order it.

Recommendation: FEMA should consider requests for disaster assistance when costs are incurred due to mandatory evacuation by local officials, given that criteria for the need is defined.

Section 206.107 Recovery of Funds.

(a)-(c) FEMA has not completed the development of financial management information to include recoupment of funds, outstanding checks and warrants and closeouts. FEMA must complete the guidance for these critical issues.

Additionally, FEMA has been requested to provide a legal opinion regarding whether FEMA has the legal authority to "spend" State funds as well as recover State funds. FEMA must get a legal opinion for these issues.

FEMA also needs to provide the criteria that will be used to recover refunds or the process for refunds. While FEMA identifies the action may be required there is no guidance that describes how FEMA will go about collecting refunds especially for those that do not intend to comply with the request by FEMA.

Recommendation: FEMA must complete the financial management guidance; provide legal opinions regarding their authority to spend and recover State funds; and provide the collection of refunds criteria.

Section 206.108 Housing Assistance.

(b)(ii) *Direct Assistance.* (E)(3)-(4). FEMA needs to provide the criteria or provide the "trigger mechanism" that will be used to determine when mobile home group sites are necessary and when the costs for such development are assigned to the State and when FEMA will assume the costs.

Also, FEMA needs to clarify what is meant in (E)(3) by "then Federal assistance may be authorized for such actions." It is unclear whether this is alluding to FEMA reimbursing the States for the costs of mobile home group site development. This expense is an ineligible cost according to the MOU and Support Guidance.

Recommendation: Clarify what expenses are eligible regarding the development of mobile home group sites and define the criteria FEMA will provide the State when such an action is required.

(2) Repairs.

(iv). The \$5000 cap applies to both repairs to owner-occupied residences and hazard mitigation measures. This cap needs to be increased to \$10,000. Based on unique situations caused by disasters, the Regional Director or designee should also have the ability to raise the \$10,000 cap to the maximum grant of \$25,000 available under the Federal Assistance to Individual and Households Program, dependent upon the applicants verified losses and needs. For example, the cost of repairs to homes, private access bridges and roads typically exceeds the current \$5000 cap.

The cost to provide direct assistance, i.e., travel trailers or mobile homes for up to 18 months while the applicants seek alternate funding to repair these types of damages could easily exceed the \$10,000 cap and the provisions of alternate housing in lieu of repairs would not be cost-beneficial to FEMA.

This recommendation would also apply to the incorporation of hazard mitigation actions under the repair option form the homeowners as well. It is logical and practical to offer mitigation actions within the home-repair grant. The cost may be less at this time and certainly more feasible to be accomplished during initial repair rather than waiting for a community to apply for, develop, be approved by FEMA and implement a hazard mitigation grant program. Furthermore, individuals may accomplish hazard mitigation through this program whether their community receives a grant from the Hazard Mitigation Grant Program.

Recommendation: FEMA needs to raise the cap to \$10,000 with the Regional Director or designee having the authority to raise the cap to the maximum amount of \$25,000 for home repairs and mitigation actions.

(4) Permanent housing construction. This section is silent regarding whether this \$5000 cap as currently written is applicable to applicants in the insular areas outside the continental United States.

While disasters in insular areas outside the United States cause the need for unique approaches to housing needs, the law should be consistently applied to all applicants, regardless of whether they are within or outside the continental United States. Rather than having different eligibility standards and programs available due to whether damages occur within or outside the continental US, perhaps FEMA should transfer this form of assistance to another Federal Agency.

Recommendation: FEMA should apply the same criteria to insular area declarations as to the continental United States.

Section 206.110 Financial Assistance to Address Other Needs, (a)-(c) and Section 206.111 State Participation in the Section 408 Program, (a) State Administration of Other Needs program.

Other Needs Program. There are four (4) options offered to the State regarding the implementation of this Program. Option 1. FEMA does all the processing with minimal State involvement; option 2. FEMA processes this Program with some input from the State; option 3 the State primarily administers the Other Needs Program with FEMA input; and the State completely administers the Other Needs program with no input or assistance from FEMA.

Unless the State chooses option 4, total State management of this Program, FEMA strongly encourages the process of auto-determining eligibility. This severely reduces State involvement in the eligibility determination process. Under the Other Needs program FEMA determines eligibility based on the fact that the FEMA Habitability inspector identifies the items damaged that meet the eligibility criteria initially. This also significantly reduces the role of the State regardless of the fact the State provides 25% of the funds for options 1-3.

Again there is a question relating to the legality of FEMA "spending" State funds which is the situation in options 1 and 2 since FEMA processes the Other Needs categories with minimal input from States. Does FEMA have the legal authority to authorize grant awards then "charge" States their 25% of the award?

Also, does FEMA have the legal authority to recover State-provided funds in the event there is a need to do so under the Other Needs program?

Finally, it would seem these financial commitments would be more appropriate in the FEMA/State agreement and not in an administrative plan or rule.

Recommendation: FEMA must reconcile the legal and fiscal issues related to FEMA "charging" States their share of the Program and revenue recovery of State funds. FEMA must complete the fiscal sections of this Program before seeking comments that refer to fiscal issues.

(b)(2). States do not have the legal authority to hold harmless nor indemnify the federal government and should not be required to do so.

Recommendation: Delete this requirement.

(c) *FEMA-State Memorandum of Understanding.* Detailed response to this section may be found in this document under the heading, "FEMA-State Memorandum of Understanding."

Reference to "SUPPLEMENTARY INFORMATION: Executive Order 13132, Federalism. While FEMA consulted with various State and local representatives regarding this proposed regulation and met one section of the Executive Order, there are issues with the statement that State authority and responsibility is not affected. The mandate from FEMA that a State must commit to a Memorandum Of Understanding (MOU) annually does directly affect a State especially with regards to the distribution of responsibilities. This is especially true "if both parties do not execute an MOU by January 1" and "FEMA will administer all assistance under the section for that year. States will be charged the 25% non-federal share for the Other Needs Program. Even with a signed MOU all eligibility decisions are controlled by FEMA through habitability inspections and the auto-determination process, thus State responsibility and authority are limited.

FEMA also proposes to recover funds issued erroneously to applicants under the Other Needs Program. This again is a direct presumption by FEMA of State responsibility.

Recommendation: These regulations do have direct impact on States and their authority and responsibilities. The statement that it does not needs to be revisited.

FEMA-State Memorandum of Understanding (MOU):

(c) General:

There is no flexibility once FEMA and the State have negotiated the MOU, regardless of whether it is the annual or disaster-specific mou. This limitation does not allow either party to change within the year regardless of events that may significantly impact FEMA or the State.

Recommendation: The MOU must be written to allow either or both parties to re-negotiate and change the annual implementation procedures. Changes must be justifiable.

(1) The MOU should not be a planning document as stated by FEMA. The MOU should be a written, negotiated agreement that identifies the implementation procedures that FEMA or the State will use to administer the Other Needs program. If it is a planning document then there is no need for other plans.

(d) FINANCIAL:

(1) Financial Reimbursement:

(A) FEMA advises either a grant or cooperative agreement will be used to reimburse States for eligible costs and administrative costs.

Recommendation: FEMA needs to identify which reimbursement method will be authorized or the criteria that will be used to determine which method will be authorized. There should only be one method authorized.

(B)(1) FEMA should be more specific with State compliance to grant administration requirements and also identify the ramifications for non-compliance. Also, the MOU as currently written fails to allow for change regarding the implementation procedures, i.e., whether FEMA, the State or a combination administers the Other Needs Program. FEMA would not be able to prohibit a State from administering the Program if it failed to comply with applicable grant administration procedures.

Recommendation: FEMA needs to rewrite the MOU to allow for changes following the annual agreement. Also, FEMA needs to specify how it will address States that fail to comply with appropriate grant administration requirements.

(ii) It is imperative that FEMA complete all financial aspects related to DMA2K changes. FEMA can not provide the necessary fiscal guidance and States can not be expected to commit to fiscal decisions that have not been made by FEMA. FEMA needs to specify whether it will reimburse States via a grant or cooperative agreement. Additionally FEMA must identify all "other relevant forms," not just leave as a vague reference. Finally, FEMA refers to "secondary recipient." If FEMA is referring to sub-grantee, then FEMA should clearly identify this as well since there are appropriate guidelines already established for sub-grantees.

Recommendation: FEMA *must* complete all fiscal activities immediately and be specific regarding fiscal/financial forms to be used. This must be completed *before* States are made to negotiate the annual MOU.

(2) Funding Mechanisms.

This section conflicts with the **General** section. This section states that FEMA may determine funding mechanisms due to "extenuating circumstances" yet the **General** section fails to provide such flexibility since the MOU can only be negotiated annually. (This applies to (3) **Cost Share** section too.)

(A) Grant Agreement. FEMA needs to clarify this section if it is criteria that FEMA will use to determine the reimbursement mechanism for States. FEMA needs to refer to implementation options and specific details rather than to vague references such as "substantial resources."

FEMA needs to specify which program this applies to, Disaster Housing Operations (DHOPS) or Other Needs program since the mou is for both. As written, this conflicts with the DHOPS guidance since FEMA pays 100% of eligible costs. Since there is no share for the State for the DHOPS program FEMA should clarify that this section is applicable only to the Other Needs program.

(B) Cooperative Agreement. The discussion under the preceding section applies to this section.

Recommendation: (A) and (B). FEMA needs to identify specific criteria for reimbursing States that is well-defined and specific; FEMA guidance should also be dependent upon implementation option; FEMA must be able to provide details for the four (4) implementation options before States are required to negotiate the mou; FEMA should clarify that this section pertains to the Other Needs program and not to DHOPS; and FEMA needs to identify the criteria that will be used to determine which funding mechanism will be used and the basis for the selection.

(3) Cost Share:

(A) Disaster Housing Operations (DHOPS). FEMA makes reference to "reasonable" program and administrative program costs. FEMA must define "reasonable" and the criteria that will be used to determine the eligible costs.

(B) Financial Assistance to Address Other Needs (Other Needs). DMA2K allows States up to 5% of the federal share of the approved Other Needs grants. There is an omission of any reference to the allowable administrative costs throughout this entire document although prior iterations of the proposed FEMA MOU recognized this allowance. The MOU must include this eligible cost, per the DMA2K, section 408 (f)(1)(B).

FEMA is silent in this section regarding the financial obligation States will have if there is a need to develop mobile home group parks. This is not cost-shared and will be a 100% financial obligation for State and local governments, regardless of whether FEMA or the State administers DHOPS. FEMA needs to identify this obligation.

Recommendation: FEMA must define eligibility criteria for determining program DHOPS; FEMA needs to develop guidance related to the DMA2K 5% administrative allowance; the 5% allowance must be included in the mou; and FEMA should include all potential financial obligations and "trigger mechanisms" for DHOPS and Other Needs programs.

(e) **REPORTS**

FEMA needs to state if there are separate reporting requirements for each program, i.e., DHOPS and Other Needs, implementation option and for financial and performance categories. As currently written, this is unclear. Obviously there should not be any reporting requirements for States if FEMA is administering the DHOPS program and options 1 and 2 for the Other Needs program. However, FEMA reports should be identified and frequency should be included in the MOU.

Recommendation: FEMA needs to rewrite this section to identify reporting responsibilities for DHOPS and the four (4) options under the Other Needs program and the types of reports required to meet financial and programmatic criteria. FEMA should also identify the reports and frequency when FEMA administers both programs.

(f) **ROLES AND RESPONSIBILITIES**

(1)(B) FEMA needs to clarify this section. There are two (2) programs, DHOPS and Other Needs in section 408. In the mou, there are no functional elements listed for the Other Needs program, only for DHOPS. The commitment of FEMA to not task States with responsibilities other than those agreed upon in the MOU is appropriate.

(Note: This section in the MOU conflicts with the MOU Support Guidance document; comments to be provided later in this document.)

Recommendation: Rewrite this section to be consistent with section 408 for DHOPS and Other Needs programs; ensure Support Guidance is appropriate and consistent with the MOU; and ensure there are no additional tasks determined after the MOU has been negotiated.

(D) FEMA needs to clarify this section for DHOPS and Other Needs programs. If States choose to administer either DHOPS and/or Other Needs then States have the responsibility to determine eligibility. FEMA has also written this section based on the assumption that all initial decisions will be auto-determined. FEMA needs to recognize that not all

initial decisions can be auto-determined and factor that into this section.

Recommendation: FEMA needs to identify eligibility determination roles for DHOPS and Other Needs programs and write this section consistent with whether decisions are auto-determined or manual.

(2)(A) **Recommendation: FEMA needs to specify which program(s) and options being referenced to in this statement.**

(B) Compliance with laws, regulations, procedures, etc. will differ dependent upon which option is chosen for the DHOPS and/or Other Needs programs.

Recommendation: FEMA must include all applicable Federal laws, regulations, etc. as an addendum to the MOU.

(C) This is inconsistent with the MOU GENERAL section because FEMA does not allow for the re-negotiation of the MOU, except annually. Also, in the MOU, only DHOPS has functional elements. If FEMA intends to allow for the re-negotiation of the MOU it should be for both DHOPS and Other Needs program.

Recommendation: FEMA must rewrite the MOU to allow for extenuating circumstances to cause the need to re-negotiate processing options for either FEMA and the State and both DHOPS and Other Needs.

(D) States may have eligibility criteria dependent upon State law or regulations that differ from FEMA for Other Needs categories such as "transportation." FEMA needs to recognize that manual determinations will occur and must be based on federal and state laws and regulations if States opt to administer the Other Needs program under options 3 or 4.

Recommendation: FEMA must include the State's obligation to compliance with federal and state law as the basis for determining applicant eligibility for manual determinations.

(F) **Recommendation: Ensure this section is consistent with the GENERAL section of the MOU.**

(g) **STATE MANAGEMENT PLANS:**

Per FEMA, the purpose of the MOU is to be a planning document. Based on this purpose, there should not be a need for a separate management plan. Following a declaration, the State and/or FEMA should provide disaster-specific details for negotiation, if needed.

If FEMA intends to retain this requirement then FEMA needs to provide sample plans or a crosswalk of management plans. FEMA also needs to review the 5-day turnaround for submitting management plans. This is an unreasonable requirement especially following a disaster declaration. FEMA must also provide their response time that should be realistic and parallels that of the State.

FEMA must identify by program, DHOPS and Other Needs, rather than by "options" and "functional elements" as minimums are identified.

Recommendation: Delete the requirement of a separate management plan to be included with the annual document; clearly identify which program is being discussed; and determine reasonable turnaround times for both FEMA and the State to submit and approve MOUs.

(1) The mandate of FEMA that States provide detailed information pertaining to the functions of each State and local agency is unrealistic and inconsistent with 44 CFR part 13.11, State plans. This section clearly identifies the content of State plans. Also, FEMA and the State sign a FEMA/State agreement that identifies key positions and individuals. There is no such requirement under OMB grant management circulars or 44 CFR part 13 for such detail. Unless a State has been determined "high-risk" based on failure to administer other grants in accordance with law, regulation, policy, etc. there is no basis for this "minimum" requirement.

It is not the responsibility of FEMA to approve or deny the methodology a State uses to comply with its commitments especially if the State has opted for FEMA to administer the DHOPS and Other Needs program and/or does not have a history of non-compliance with grant management requirements.

This does have strong implications of "federalism" which FEMA should recognize and be cognizant not to violate.

Recommendation: Rewrite this "minimum" to include key management positions in the MOU and FEMA/State agreement and to which programs they are applicable, i.e., DHOPS and/or Other Needs and delete the requirement for a management plan.

(2) This is seemingly directed to States opting to administer DHOPS since there is existing guidance from 44 CFR part 13 and OMB circulars for the Other Needs program, options 3 and 4 and there are categories included that do not pertain to the "Other Needs" program. FEMA can not interchange nor develop generic minimums for these programs.

DMA2K section 408.(f)(1)(B) specifically recognizes administrative costs for program management by the State for the Other Needs program, options 3 and 4. It does not recognize administrative costs for States administering DHOPS. FEMA needs to ensure compliance with DMA2K as it develops guidance for the administration of these two programs.

Procedures for estimating proposed budgets for the Other Needs program should be based on the outcome of the joint preliminary damage assessment.

Recommendation: Develop specific guidance and requirement based on two separate programs, DHOPS and Other Needs.

(3) There is no basis for FEMA mandating organization, staffing, contracting, financial management and record retention within the minimum plan requirements. Again, 44 CFR part 13.11 and OMB circulars provide regulatory requirements consequently the requirement is redundant and unnecessary. Also, FEMA does not designate which Program(s) these minimum requirements relate. If FEMA administers DHOPS and options 1 or 2 for Other Needs program, States have no implementation responsibilities thus there is no need for the requirement.

Recommendation: Delete this minimum requirement.

(4) FEMA and the State already commit to nondiscrimination in federal disaster programs in the FEMA/State agreement thus this minimum is redundant and should be deleted. Audit procedures are already included in 44 CFR part 13 and OMB circulars. This is also not needed as a separate mandate and should be eliminated. Again, if FEMA is administering the DHOPS and Other Needs programs, States have no responsibilities with these issues and they should be eliminated.

Recommendation: Delete this separate minimum requirement.

(5) There is no #5; (6) should be renumbered to (5).

(6) This requirement should be eliminated. The State and FEMA commit to the annual MOU, whose purpose is to be a planning document. FEMA's State management plan minimum requirements, 44 CFR part 13, applicable OMB circulars and the FEMA/State agreement all provide compliance guidance. If FEMA does allow States to submit proposed amendments to the MOU, see (f) Roles and Responsibilities, (2) (F), then this is not necessary and should be eliminated.

Recommendation: Eliminate this requirement.

(h) STATE MANAGEMENT OPTIONS:

(1) **Part One:** FEMA needs to include the obligation to State and local governments for the costs of mobile home group sites if required under DHOPS. Per guidance received February 13, 2002, FEMA does not reimburse any administrative funds for DHOPS if States choose to implement. This reference should be deleted.

(A) If States elect not to administer DHOPS under option 1 or not sign the MOU, then there is no need for the requirement of a State Management Plan for DHOPS.

Recommendation: Include the financial obligation to State and local governments for the development of mobile group sites regardless of DHOPS option selected. Any reference to FEMA reimbursing States DHOPS administrative costs should be deleted.

(B) Functional Elements (i-v): The functional elements need to be explained in more detail, the lists are far too brief. (B)(v) FEMA has devolved the development of mobile home group sites to State and local governments. This section further expands that responsibility to include the design. FEMA needs to ensure that if the design and development, both, are the responsibility of State and local governments, then this must be consistently referenced to throughout the entire MOU.

Recommendation: Consistently refer to the financial obligation of State and local governments for the design and development of mobile home group parks.

(2) **Part Two:** This section appears to be a summary of sections 408 (e) and (f). However, FEMA omits the 5% administrative costs that are eligible for reimbursement under DMA2K. FEMA needs to include this eligible cost in this section. Also, prior iterations and guidance stated FEMA would reimburse reasonable travel costs for States that choose option 1 or 2. This reimbursement was to enable States to travel to the FEMA processing centers. It was not offered for options 3 and 4 since the 5% administrative costs would be automatic. FEMA's silence causes concern that the current proposed mou no longer allows for the 5% administrative cost reimbursement for option 3 and 4 and the elimination of reimbursement for appropriate State travel associated with options 1 and 2.

Recommendation: FEMA must specify that 5% administrative costs are eligible for options 3 and 4. FEMA must clearly state what, if any, reasonable administrative costs are eligible under options 1 or 2.

(A)(i) FEMA has not completed the financial management guidance relative to the DMA2K. FEMA has also not issued legal opinions regarding FEMA directly administering State funds and/or recovering State funds, which would occur if States choose options 1 or 2. These issues have been raised through every commenting opportunity yet FEMA has not responded with financial guidance or legal opinions.

Recommendation: FEMA must provide complete financial guidance and legal opinions prior to States being obligated to negotiate the annual MOU.

(A)(ii) **Recommendation: FEMA needs to define the State's role under this option.**

(B)(ii) and (iii) FEMA needs to specifically identify which HELPLINE the State will be required to operate. The MOU needs to clearly identify whether FEMA intends to have responsibility for a DHOPS HELPLINE. This section only refers to the Other Needs program and this requirement should only apply to options 3 and 4 under section 408 (e) and (f). FEMA must develop and provide detailed closeout guidance for options 2-4 prior to expecting States to negotiate the annual MOU.

Recommendation: FEMA must provide closeout guidance and define the HELPLINE responsibilities dependent upon which option the State chooses.

Stafford Act Section, 408, Federal Assistance to Individuals and Households Support Guide, Calendar Year -2002.

c) **Expedited Assistance.** The MOU makes no reference to the provision of "Expedited Assistance" (EA) yet the Guidance document does. If this is a consideration for States and FEMA expects States to determine whether to choose the option, then FEMA must include it in the MOU.

The "EA" form of assistance as proposed by FEMA provides up to \$500 without documentation or justification. While this is an option for States to consider, there must be accountability for the use of State funds.

Recommendation: FEMA must include the category of "Expedited Assistance" in the MOU.

4) **FINANCIAL MANAGEMENT.** FEMA must provide States current applicable guidance based on the DMA2K changes before States are expected to negotiate the annual MOU. As FEMA indicates under the "Authorities" section, Recoupment, Outstanding Checks and Warrants and Closeout policies are "yet to be developed".

Recommendation: FEMA must develop all sections yet to be finalized prior to the negotiation of the annual MOU.

4)a) **Direct Assistance.** The MOU states that FEMA "shall" pay 100% of eligible costs for DHOPS yet the Guidance document states FEMA "may" pay these costs. There is a difference between "shall" and "may."

Recommendation: FEMA must determine whether "shall" or "may" will be consistently used.

4)2) FEMA needs to clarify "tracking" State administrative costs. 44 CFR part 13 and other OMB circulars clearly identify eligible administrative costs that must be documented and may be claimed for reimbursement. This claim should be documented as part of the Closeout package to justify the State's administrative costs being claimed.

Unless this is a different or new requirement by FEMA, there is no need for "FEMA" to track State administrative costs.

Recommendation: Either eliminate this section or explain the need for it. This must be clarified before States are required to negotiate the annual MOU.

4) c). Based on this section, every time the State files a Quarterly Report the State is expected to transfer the State's share via SMARTLINK to FEMA. This requirement should only occur under options 1 and 2, not all options for the Other Needs program. Also, if FEMA does administer the Other Needs program under option 1 or 2, the MOU does not allow for the reimbursement of administrative costs.

This section also conflicts with Guidance document chapter 3, 1)a) and 3)a). Chapter 3 states that FEMA shall determine the method and timeframes for paying the 25% State share. This section clearly identifies the process to be used. FEMA needs to determine which process will be implemented and be consistent throughout the Guidance document.

Recommendation: FEMA must reconcile the Guidance document with the MOU, regulations and DMA2K.

6)b)iii) Processing Timelines. FEMA must define "timely" manner. States are mandated to comply with the Cash Management Improvement Act (CMIA) of 1990, PL 101-453 that clearly states that grant disbursement will be within 3-5 days from the time States make drawdowns from the SMARTLINK account. FEMA should be required to comply with the same law and OMB circulars.

Recommendation: FEMA should comply with the Cash Management Improvement Act of 1990, OMB Circulars and the Guidance document should reflect this law and mandatory compliance by FEMA and States.

6)b)vii) FEMA needs to clearly define whom the "appropriate authority" is referring to in the event of fraud and/or misapplied funds. Most States are required to attempt debt collection of State-issued funds, which has been an issue for FEMA. Also, FEMA needs to identify the purpose or result of reporting these cases.

Recommendation: FEMA should state the purpose of reporting fraud and misapplied funds cases and recognize States have the legal obligation to attempt recovery of such funds prior to submitting to FEMA for debt collection. FEMA must provide a legal opinion on this issue prior to States negotiating the annual MOU.

6)c)v) FEMA specifically references to a " DHOPS cooperative agreement and Operational Annex" that will be completed within five (5) days after the disaster declaration. The MOU does not address this requirement in any section. FEMA needs to be consistent between the MOU and the Guidance document. If there is to be cooperative agreement reimbursement methodology then the MOU must state this. If not, the Guidance document must reflect accurately the methodology to be used.

Recommendation: FEMA must be consistent between the and the Guidance document regarding the reimbursement methodology.

6)d) Program Review. **Recommendation: FEMA must develop and provide States with the Performance Review guidance.**

6)d)v) **Recommendation: FEMA should complete the number of days that problems identified in the Performance Review are resolved.**

7) **AUTHORITIES:** There are FEMA policies that have not been provided to the States and are not available on the internet that are listed under this section. Also, there are policies referred to that FEMA has not developed.

Recommendation: FEMA must develop all applicable guidance and provide current policies and manuals applicable to the Individual and Households Program to States before requiring States to sign the annual MOU.

Please contact Kay Phillips at 614-889-7176 or Libby Wiegel at 614-889-7177 if you have any questions.