

**STATE OF NEW JERSEY • DEPARTMENT OF COMMUNITY AFFAIRS •
SANDY RECOVERY DIVISION**

SUBJECT: Mitigation Assistance Program Policy

NUMBER: 2.10.102

EFFECTIVE: December 2020

FEMA Flood Mitigation Assistance

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APPROVAL:



Samuel R. Viavattine
Director

SECTION 1: OVERVIEW

1.1 Program Description

The Mitigation Assistance Program (“MAP” or “Program”) is designed to ensure that fewer property owners become victims of natural disasters by providing them with the means to implement proven mitigation measures, such as the elevation of at-risk buildings. Such measures reduce the long-term risk of severe impact to people and property from natural hazards, resulting in safer communities that can withstand future disasters.

FEMA’s Flood Mitigation Assistance (FMA) program provides States with the opportunity to compete annually on a national level for mitigation funding to assist communities that repeatedly flood in achieving resilience against the next storm. The New Jersey Department of Community Affairs (“NJDCA”), Sandy Recovery Division (“Division”) partners with communities in need to develop an application. If successful, the NJDCA, acting as the Grant’s subrecipient, is responsible for administering the grants for elevation and supporting property owners in the elevation of their home. The New Jersey Office of Emergency Management (“NJOEM”) acts as the Grantee for FEMA funds and is responsible for ensuring program management methodologies and compliance with FEMA’s guidelines.

This policy has been written in compliance with FEMA’s [Hazard Mitigation Assistance Guidance](#) and [Addendum](#) (February 27, 2015), which provide the federal policy guidelines. In the following document, the Division has provided program policies associated with the setup, application, management, and closeout of the elevation grants.

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1.2 Program Administration

The Division administers the MAP, which includes operational management, procurement and ensuring compliance with FEMA and State mandates.

Program Management for the Division will advise on policy matters and oversee each application's development, submittal, budget, and timeline.

The Division's Operations Section is responsible for accepting applications, determining eligibility, and corresponding with property owners throughout the process.

Division Construction Managers oversee the management of the assigned builder(s) to complete the elevation and related construction work and ensure that the quality of the work is completed in accordance with the program requirements.

1.3 MAP Application Process

1.3.1 Identifying Application Pool

The Division first selects a community based on community support, vulnerability to future disasters, the number of properties participating in the National Flood Insurance Program ("NFIP") and the number of properties designated as Repetitive Loss ("RL") or Severe Repetitive Loss ("SRL") by FEMA, among other considerations.

In compliance with FEMA's program structure, the Division then identifies potential applicants based on FEMA's eligibility criteria and invites those Property Owners to participate in the application process, while ensuring the State's application is as competitive as possible. At minimum, participating properties must be:

- Within the community the Division is engaging for this application cycle;
- Within a Special Flood Hazard Area (SFHA) or designated by FEMA as SRL/RL; and
- Covered by a current NFIP insurance policy.

The Division will send a letter to each potential applicant, providing the necessary documentation for each application. This letter also informs Property Owners of the application deadline and any upcoming town hall events where more information can be received.

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The Division reserves the right to accept or reject any application.

The Division may choose to limit potential applicants to those designated by FEMA as RL or SRL to ensure the federal application is competitive. RL and SRL properties meet the following criteria:

- A “Severe Repetitive Loss” property is a structure that:
 - o Is covered under a contract for flood insurance made available under the NFIP that:
 - o Has incurred flood related damage –
 - For which four or more separate claims payments (includes building and contents) have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claim payments exceeding \$20,000; or
 - For which at least two separate claims payments (includes only building) have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.
- A “Repetitive Loss” property is a structure that:
 - o Is covered by a contract for flood insurance made available under the NFIP that:
 - o Has incurred flood-related damage on two occasions, in which the cost of the repair, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and
 - o At the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance (“ICC”) coverage.

1.3.2 Application and Town Hall Meeting

Once the group of potential applicant properties have been identified and provided an application, DCA may host a town hall meeting for that community.

Town hall events, that may be virtual, as circumstances warrant, address questions submitted by community members and provide a presentation on the outline of the program, including the roles and responsibilities of both the State and the property owner, eligible construction-related activities, and the period of performance.

Interested property owners are asked to submit an application which includes:

- Voluntary Participation Agreement (VPA), which supplies information about potential property restrictions and to submit other required documentation by the application deadline;

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- Right of Entry (ROE) form, which provides the Program staff and contractors access to the property for specific reasons;
- Declaration and Release form, which provides federally required information; and
- Model Acknowledgement of Conditions, which identifies deed restrictions upon grant signing.

The required application documentation will include, but is not limited to, proof of current NFIP flood insurance and four photographs depicting each side of the property.

The Division will review completed applications after the application deadline and, if necessary, request additional documentation from the owners with a new deadline.

1.3.3 Property Selection

From the pool of interested property owners, the Division selects the properties that will be included in the State's application to FEMA. In making this decision, DCA considers technical feasibility, cost and cost-effectiveness, environmental and cultural resource effects, impact to the federal application scoring, and community resilience.

Homes to be included in each annual application will be prioritized based on several of the following criteria:

- Reoccurring Property Damage
 - o Properties that are on FEMA's RL and SRL list and have maintained NFIP eligibility
- Location of Properties
 - o Properties that are in proximity to one another
 - o Distance from all nearby permanent structures or property lines
- Property Use and Type
 - o Properties that are residential and not connected to other buildings
 - o Buildings that are structurally sound and capable of being elevated safely.
- Cost Effectiveness

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- An assessment of the construction cost in comparison to other properties in the annual application cycle
- A review of the construction cost in relation to program allowable costs which impact the FEMA Benefit Cost Assessment (BCA)
- Feasibility of Construction
 - The ability of the program to conduct elevation work on the property

Depending on the number of applications received, the Division may deem some applicants as “primary” and some may be deemed as “alternates”. The Division will base its decisions on a number of considerations, including cost efficiencies in construction. Alternate properties may be selected for elevation if those designated as primary are no longer able or willing to continue participation in the program.

At minimum, projects must conform to applicable requirements at 44 CFR Part 79.6, which provides, in part, that projects must conform with the State Hazard Mitigation Plan, be technically feasible, cost effective, reduce the risk of future flood damage and not duplicate benefits available from another source for the same purpose.

The Division will notify Property Owners of their application results prior to the submission of federal grant application to FEMA.

1.4 Property Owner Obligations

Following FEMA’s approval, the State executes a formal Grant Agreement with each Property Owner that codifies the roles and responsibilities of each party. The agreement will also require Property Owners to assign duplicative benefits such as ICC to the State to reduce the cost of elevation.

Once the Grant Agreement is signed, the State will file the necessary deed restrictions on the property. Deed restrictions require that property owners refrain from converting the areas below the base flood elevation to livable space for human habitation and to ensure that flood insurance is maintained on the property, regardless of any transfer of ownership.

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1.4.1 Maintaining Flood Insurance

Property Owners must maintain flood insurance for the life of the structure, through any transfer of title. The notice includes the name of the current property owner, a legal description of the property, and the following notice of flood insurance requirements:

This property has received Federal hazard mitigation assistance. Federal law requires that flood insurance coverage on this property must be maintained during the life of the property regardless of transfer of ownership of such property. Pursuant to 42 U.S.C. 5154a, notwithstanding any other provision of law, no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property. The property owner is also required to maintain this property in accordance with the floodplain management criteria of 44 CFR Section 60.3 and any city/county ordinance.

1.4.2 Maintaining Property Below Base Flood Elevation

The Property Owner must maintain all structures in accordance with local, State, and Federal codes, including flood plain management criteria set forth in 44 CFR Part 60.3 as the Property Owner holds title to the property. It is the intent of the Program to reduce or eliminate enclosed spaces below Base Flood Elevation (BFE). The following conditions apply to any space that remains below BFE:

- The enclosed areas below Base Flood Elevation (“BFE”) will only be used for parking of vehicles, limited storage, or access to the building;
- All interior walls and floors below BFE will be unfinished or constructed of flood resistant materials;
- No mechanical, electrical, or plumbing devices will be installed below the BFE; and
- All enclosed areas below BFE must be equipped with vents permitting the automatic entry and exit of flood water.

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1.4.3 Duplication of Benefits

Federal funds cannot duplicate funds received by or available to applicants from other sources for the same purpose. These sources include insurance claims, other assistance programs, legal awards, or other benefits associated with properties or damage that are subject of litigation.

Federal statute requires the State of New Jersey to conduct a duplication of benefits (“DOB”) analysis to ensure that (1) applicants do not receive more Federal funds than needed for a single purpose, and (2) program funds are used to meet an existing need of the property owner.

Property owners are responsible for providing a list of any DOB as part of the grant signing process which includes other benefits received, any applications for other assistance, the availability of insurance proceeds, or the potential for other compensation, such as from pending legal claims for damage relating to the property.

Property owners are required to assign to the State duplicative third-party financial aid they receive towards eligible program funded work. This includes, but is not limited to, funds from both flood and property owner’s insurance, Increased Cost of Compliance (“ICC”), FEMA assistance, loans from the Small Business Administration (“SBA”), and any assistance from other government or private non-profit sources.

If the applicant receives DOB funds after their grant award signing, funds may need to be assigned to the Program.

1.4.4 Complying with Programmatic Requirements

To remain in compliance with the Program after signing the Grant Agreement, the Property Owner must meet the following criteria:

- Supply requested documentation by Program required deadlines;
- Comply with the Grant Agreement’s terms and conditions;
- Inform the Program and assign to the Program any DOB received in conjunction with the property;
- Permit an engineer to enter the subject property to perform pre-construction geotechnical analysis;
- Vacate the subject property as required by the Program and within the timeline identified by the Program;

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- Stay removed from the subject property during construction without prior approval; and
- Respond to the Program and contractors in a manner that allows the Program to conduct necessary activities in a timely manner.

1.4.5 Homeowner Communication

The Program will provide regular updates on the property owner's application status which may include the FEMA Grant application status and timeline.

Before design activities begin: If after 90 days of attempted communication with the applicant, the Program is not successful, the applicant may be withdrawn.

After design activities begin: If after 30 days of attempted communication with the applicant, the Program is not successful, the applicant may be withdrawn.

1.4.6 Program Funding

1.4.6.1 Cost Sharing

The State's total cost to complete the project is generally funded by a combination of sources, including both federal and private funds. FEMA may contribute up to 100% of funds for severe repetitive loss properties, up to 90% for repetitive loss properties, and up to 75% for properties that are NFIP-insured in a SFHA but do not meet the repetitive loss or severe repetitive loss definitions under the FMA program. Multiple sources can make up the remaining cost share, including allowable federal matching funds, State funds, or private funds. ICC coverage may be used to contribute to the nonfederal cost share requirement.

Pursuant to the State's CDBG-DR Action Plan Amendment #35, the Division may choose to use Community Development Block Grant – Disaster Recovery (CDBG-DR) funds to match, where necessary, FEMA Flood Mitigation Assistance. In such instances, the Division would ensure that the project meets the applicable CDBG-DR requirements.

As described above, however, federal funds provided for the same purpose are considered duplicative and must be assigned to the State prior to the start of the project.

Private funds may include contributions of cash or third-party in-kind services or materials. Non-federal funds must be recorded, reasonable, allowable, allocable and necessary under the Program and must comply with Federal requirements and regulations, including 2 CFR 200.29, 200.306, and 200.434.

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1.4.6.2 Funding Disbursements

The Program will document, review, and approve all funding requests prior to disbursement and disburse funds in compliance with federal regulations.

SECTION 2: PRE-CONSTRUCTION

2.1 Environmental Reviews

FEMA ultimately has the responsibility to ensure that a project is compliant with Federal laws related to the environment and historic preservation. As such, FEMA may identify additional Environmental Historic Preservation (“EHP”) compliance review activities necessary to facilitate project approval, such as the completion of environmental impact statements, environmental assessments, Phase I environmental site assessments, biological assessments, archeological or standing structures surveys and documentation, wetlands delineations, and air quality conformity analyses or determinations. Costs may be incurred for significant EHP compliance review activities and/or EHP mitigation measures. FEMA may determine that some costs for significant EHP compliance review activities or EHP mitigation measures are reimbursable. In other instances, FEMA may remove projects from funding consideration. For more information on FEMA’s review of the State’s application, please see FEMA’s Hazard Mitigation Assistance Guidance (2015).

The Division will facilitate cooperation among Property Owners, the municipality, and the selected Contractors as necessary to verify and obtain environmental clearances.

2.2 Design and Engineering Services

Upon receiving notice of FEMA’s intent to award, the State will procure engineering services required to bid the design, elevation, and construction work in accordance with State policy on procurement.

Engineering Contractors review each property, providing a structural and geotechnical feasibility analysis. Since buildings must be structurally sound and capable of being elevated safely, only those deemed feasible will be assigned a design contractor.

Design Contractors will provide architectural plans along with conforming environmental and structural requirements necessary to fulfil the MAP requirements. Once the Program reviews and approves the final design, the Program will issue a Notice to Proceed (“NTP”) to begin the structure’s elevation.

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SECTION 3: CONSTRUCTION

The State will procure licensed elevation and/or construction contractors and will manage construction on behalf of the Property Owner, that includes site visits to monitor construction process, making sure that milestones are achieved on schedule and issuing payments pursuant to contractual terms.

Once a construction firm is assigned, they will be responsible for pre-construction work, local permits and inspections.

All construction activities are required by Federal statute and regulation to be cost effective or be in the interest of the National Flood Insurance Fund. The Program will review all costs to ensure that they are necessary, reasonable, and allocable, as consistent with the provisions of 2 CFR Part 200. This review is conducted at various times throughout the grant process.

The Division will manage the construction of the subject property which may include but is not limited to:

- Site Inspections
- Construction related property owner interactions
 - o Touch points with operations related to construction progress
 - o Documenting property owner interactions
 - o Receiving construction documents from property owners
 - o Hosting information sessions
 - o Identifying and reporting significant issues with projects
- Permits/Inspections
 - o Municipal inspections
 - o Environmental inspections
 - o Working with the municipality, contractors, and property owners to resolve permit or inspection disputes
- Grant Management
 - o Tracking forecasted expenses by project
 - o Tracking construction expenses by project
 - o Tracking temporary housing expenses by project
 - o Identifying over-budget projects

Upon receiving all necessary permits, construction may begin with small groups of homes simultaneously to reduce unnecessary risk and cost and increase efficiency.

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The construction period begins with the NTP and ends after a successful Final Inspection and issuance by the municipality of a Certificate of Elevation (“COE”) and a Certificate of Occupancy (“CO”) or equivalent, with limited exceptions. During this period, property owners are unable to enter the subject property without the consent of the program.

3.1 Elevation Requirements

Elevation will be conducted in accordance with the FEMA Hazard Mitigation Guidance Addendum and will include eligible elevation costs included therein.

Elevations must be consistent with 44 CFR Part 60, including but not limited to:

- This program elevates the lowest floor of the structure to three feet above the Base Flood Elevation (at the time of the application). Upon completion of the elevation a Certificate of Elevation (FEMA Form 81-31) verifying “as built” elevations are completed to ensure the structure complies with the local floodplain and NFIP floodplain management and HMA requirements.
- Elevation projects are designed and adequately anchored to prevent flotation, collapse, and lateral movement of the structure due to hydrodynamic and hydrostatic loads, including the effects of buoyancy. An engineer certifies that the design elevation will withstand the depth and velocity of 100-year flood events (hydrostatic and hydrodynamic loads), any potential increase in wind load, or any other relevant load factors.
- For elevation projects in Zone V with open foundations (piles, piers, posts, or columns), the space below the lowest floor is free from obstructions or constructed with non-supporting breakaway walls, open wood lattice-work, or screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
- For elevation projects on continuous foundation walls with fully enclosed areas below the lowest floor, the area must be used solely for parking vehicles, building access, or storage.
- Elevation projects on continuous foundation walls must be designed to automatically equalize hydrostatic flood forces of exterior walls by allowing for the entry and exit of floodwaters. Designs to meet these criteria must be certified by a registered Professional Engineer or meet or exceed the criteria in 44 CFR 60.3(c)(5).

Structural elevation generally involves physically raising an existing structure to an elevation at Base Flood Elevation (“BFE”) or higher. This may be achieved through a variety of methods including elevation on

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continuous foundation walls; elevating on open foundations, such as piles, piers, posts, or columns; and elevating on fill. The program requires elevation to BFE, plus three feet. The elevation of the property is specific to each home and will be based on an engineering report for that particular property.

3.2 Ineligible Elevation Costs

In compliance with federal requirements, certain elevation activities and associated costs are not eligible for grant funding, including, but not limited to:

- Elevating structures not in compliance with current NFIP standards;
- Costs related to building additions or auxiliary structures;
- Construction of new decks or porches and replacement of existing decks or porches that cannot safely be elevated (beyond what is necessary for ingress and egress);
- Any improvements for purely aesthetic reasons, unless required by EHP compliance;
- Costs to replace or repair utility service components that are undersized, inadequately designed, or unsafe, unless required by code (except utility rooms deemed eligible);
- Exterior finish on the exposed foundation of the elevating building, unless required by EHP compliance or local code;
- Additional landscaping or ornamentation beyond what existed on the site prior to construction of the project; and
- Any scope not deemed reasonable or necessary by the Program.

For additional information please see the FEMA Hazard Mitigation Assistance Guidance at page 42 and the Addendum, page 78.

Ineligible construction activities requested by the property owner will be reviewed by the Program Manager. Review of these ineligible activities must at a minimum consider the ability for the property owner to service the area of the home after construction is complete, if the activity has an impact to the construction timeline, and if the activity would increase the scope of the project or is a material upgrade already included in the project's scope. Ineligible construction costs requested by the property owner and approved by the Program must be fully funded by the property owner before construction begins.

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3.3 Site Inspections

Home sites may be inspected throughout the application, design, construction, and closeout phases of the grant. Inspections will be coordinated with the property owner. When possible, the property owner will be provided advanced notice of a scheduled inspection.

Non-scheduled inspections are typically conducted from the outside of the home and may include photographs. These inspections are to ensure an accurate assessment of measurements, base flood elevation, foundation type, and other factors that may impact the home's elevation.

Interior inspections will be scheduled with the property owner in advance of the inspection date.

3.4 Lead-based Paint Risk Assessment

The construction or elevation contractor will be responsible to assess suspected lead to be disturbed and remedy the lead concern as required by federal and State regulations.

3.5 Mold Assessment and Remediation

Mold assessment and/or testing of the existing structure are not performed on projects unless determined to be required by the Program.

3.7 Asbestos Survey Requirements

The construction or elevation contractors will be responsible to assess suspected Asbestos-Containing Materials (ACMs) to be disturbed and remedy the asbestos concern as required.

If asbestos should become apparent once construction begins, procedures aligned with State and local abatement procedures, as well as FEMA and the Environmental Protection Agency (EPA) will be followed.

3.8 Temporary Rental Assistance (TRA)

The Program provides Temporary Rental Assistance ("TRA") as a portion of the grant funding. The TRA is specific to each property considering the complexity of the project, the size of the family, and the anticipated project timeline.

In general, the Program may be able to pay up to, but not exceed, the GSA per-diem rate per property. The Program will not provide funding for non-rental assistance expenses such as security deposits, storage, movers, pets, or any other expenses not identified as eligible temporary rental assistance during the

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construction period. The Program will verify the TRA payee and confirm residency of the Property Owner prior to authorizing a payment schedule.

Property owners are responsible for requesting TRA ahead of the construction phase. If approved, funds are provided for a term deemed necessary by the Program during construction; typically this term is ninety (90) days. Temporary living costs are reimbursed to the homeowner upon providing the following documentation: (1) Rental Agreement; and (2) Invoice for each month's payment or receipt of payment certified by landlord; or (3) Cancelled check for paid rent by month.

SECTION 4: CLOSEOUT

The Division will coordinate receipt of all required documentation with property owners and contractors necessary for verification of project completion to program requirements and maintain for proper record keeping.

The Division conducts an inspection to verify the property was elevated in accordance with program standards, that all awarded funds were spent in a manner consistent with the approved Scope of Work, that all environmental compliance conditions were implemented and documented as required, and that the project was completed in a manner consistent with the grant award agreement. As part of this process, the State will also document final project costs including Federal share, non-Federal share, administrative costs, and cost underruns or overruns.

The State will conduct the closeout in accordance with FEMA's Closeout Toolkit: Checklist for Hazard Mitigation Grant Program Subawards

SECTION 5: DCA POLICIES

Pursuant to CDBG-DR Action Plan Amendment #35, the Division may choose to use CDBG-DR funding allocated under P.L. 113-2 as the match, where necessary, to FEMA's Hazard Mitigation Assistance. To the extent CDBG-DR funds are used, the Division adopts the existing CDBG-DR policies such as the Special Revolving Loan Fund Policy, as well as necessary policies under 2 CFR 200 for the operation of this FEMA program consistent with federal requirements.