

MICHIGAN STATE POLICE
PUBLIC ASSISTANCE
APPLICANT BRIEFING 4547-MI



DISASTER DECLARATION FEMA-4547-MI



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- Please make sure to include your name, agency, and an email or telephone number into the chat box so we are able to contact you, and you get credit for attending the applicant briefing. (Usually we have a sign-in sheet)
- The presentation will be posted on the MSP/EMHSD web site.
- Questions and answers at the end of the presentation; around the hour mark we will leave the chat open for 15 minutes.
- Enter your questions into the chat box, and we will be sure to answer them either today, or we will get back to you.

AGENDA

Objective: Provide overview of the delivery of the Public Assistance (PA) Grant Program

- Introduction/Disaster Information
- PA Eligibility
- PA Process
- Additional Considerations
- Procurement
- Post-Award Grants Management
- Next Steps
- Questions

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- FEMA makes the final decision on eligibility and funding
- FEMA will not duplicate assistance provided by insurance or any other Federal assistance

DECLARATION SUMMARY

- Number: FEMA-DR-4547-MI
- Declaration Date: July 9, 2020
- Incident Period: May 16-22, 2020
- Type: Severe Storms and Flooding
- Designated Areas*: Arenac, Gladwin, Iosco, Midland, and Saginaw Counties
- Cost Share: 75% Federal, 25% Non-Federal

*Pursuant to section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207

MSP/EMHSD – RECOVERY UNIT

Manager – Matt Schnepf
State Hazard Mitigation Officer (SHMO)

- Individual Assistance (IA)
 - Sara MacRae, State IA Officer
- Public Assistance (PA)
 - Tiffany Vedder, State PA Officer
 - Marisela Shellenbarger, Deputy State PA Officer
- Hazard Mitigation
 - Dan Metiva, Hazard Mitigation Analyst
 - Scott Stockert, Hazard Mitigation Analyst



- Newly formed unit of MSP/EMHSD
- Please feel free to contact any one of us at any time. We would be happy to assist with any of your recovery questions or concerns.

FEMA Public Assistance

FEMA's Public Assistance Program provides supplemental grants to state, tribal, territorial, and local governments, and certain types of private non-profits so that communities can quickly respond to and recover from major disasters or emergencies.

More detailed information can also be found in the [*FEMA Public Assistance Program and Policy Guide*](#).



FEMA



The program provides funding for emergency assistance to save lives and protect property, and assists with funding for permanently restoring community infrastructure affected by a federally declared incident.

\$4.7 billion per year on average in assistance - 51% of FEMA grant dollars

- PA provides disaster **assistance**; FEMA, the state (as the Recipient) and the applicant work together to restore community infrastructure
- Must request and receive a DECLARATION from the President to access this funding source

****New Version (Version 4) of the PAPPG for disasters declared June 1, 2020 (do not confuse with the PAPPG for COVID-19)**

PUBLIC ASSISTANCE PROGRAM

- Assists in the restoration of community infrastructure to **pre-disaster conditions**
- Provides supplemental cost **reimbursement** with specific eligibility requirements
- FEMA provides funds to the **State (Recipient)** who reimburses **eligible** applicants

TERMINOLOGY: Recipients, Subrecipients, and Applicants

FEMA Quick Guides and Other Tools

- **Recipients** - are states, tribes, or territories that receive and administer Public Assistance Federal awards.
- **Applicants** - are state, local, tribal, or territorial governments or private non-profit entities that submit requests for assistance under a Recipient's Federal award.

Grants Portal

- **Recipients** - are states, tribes, or territories that receive and administer Public Assistance Federal awards.
- **Subrecipients** - are state, local, tribal, or territorial governments or private non-profit entities that submit requests for assistance under a Recipient's Federal award.

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When an entity applies for PA funding, it is the **Applicant**. Once the Applicant receives funding, it is either the **Recipient, pass-through entity** or a **Subrecipient**. For simplicity, FEMA uses the term Applicant when referring to the responsible entity for a project rather than making distinctions between an entity as the Applicant, Recipient, pass-through entity, or Subrecipient. FEMA uses the terms Recipient and Subrecipient when necessary to differentiate between the two entities.



PUBLIC ASSISTANCE ELIGIBILITY

PUBLIC ASSISTANCE ELIGIBILITY STRUCTURE



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- Four basic components of PA eligibility
- FEMA refers to these as the building blocks of an eligibility pyramid
- Each must be considered eligible beginning from the foundation “Applicant” of the pyramid
- All four must be met

****The Applicant is responsible for providing documentation to support each component.**

APPLICANT ELIGIBILITY

State, Tribal, Territorial and Local Governments

- State Agencies
- Tribes
- Counties, Cities, Townships, and Villages
- Local public authorities
- School districts
- Special districts established under state law

Certain Private Non-Profit (PNP) Organizations

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FEMA must determine if the Applicant is eligible before evaluating the Applicant's claim

PRIVATE NON-PROFIT ORGANIZATIONS

Critical Services

Private Non-Profit (PNP) facilities that provide the following critical services are eligible for PA:

- Fire/Emergency Rescue
- Medical Treatment
- Power, Water, and Sewer Utilities
- Communications Systems
- Educational Institutions



- Upon submitting an RPA, the PNP must provide documentation substantiating the PNP is a non-revenue producing, nonprofit entity organized or doing business under State law.
- Private entities are not eligible for assistance from FEMA under Public Assistance. However, state, local, tribal, and territorial government entities may contract with private entities to carry out eligible emergency protective measures. In these cases, FEMA will reimburse the eligible applicant for the cost of eligible work, and the applicant will then pay the private entity for the provision of services.

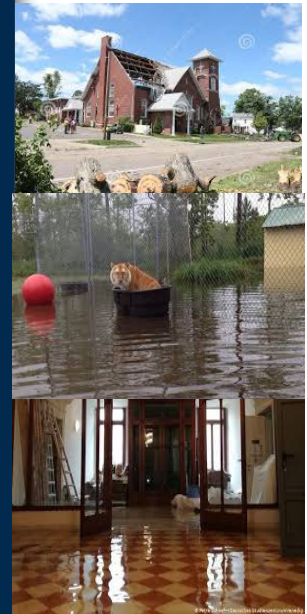
PRIVATE NON-PROFIT ORGANIZATIONS

Essential Services

PNP facilities that provide essential services are eligible for PA:

- Community Centers
- Houses of Worship
- Homeless Shelters
- Custodial Care
- Museums, Libraries, Zoos

Other facilities that provide health and safety services of a government nature



****Measures to protect life, public health, and safety are generally the responsibility of state, local, tribal, and territorial (SLTT) governments; to be eligible for PA reimbursement, work must be the legal responsibility of an eligible applicant.***

These PNP's must apply to the Small Business Administration (SBA) for a disaster loan for permanent repair work. FEMA only provides PA funding for eligible Permanent Work that an SBA loan will not cover for those facilities.

Examples of Health and Safety services of a government nature include:

- Alcohol and drug treatment
- Assisted living
- Rehabilitation

The PAPPG provides charts and a more detailed explanation of eligible PNPs beginning on page 43.

FACILITY ELIGIBILITY

Eligible Facilities are:

- Buildings, works, systems, or equipment, built or manufactured, or an improved and maintained natural feature
- In active use at the time of the disaster

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An example of a system that qualifies as facility is a water distribution system. Mechanical, electrical, plumbing, and other systems that are components of a facility in which they operate are considered part of that facility

A natural feature is improved and maintained if it meets all of the following conditions:

- The natural feature has a designed and constructed improvement to its natural characteristics, such as a terraced slope or realigned channel
- The constructed improvement enhances the function of the unimproved natural feature
- The Applicant maintains the improvement on a regular schedule to ensure that the improvement performs as designed
- Only the section of a natural feature that meets this criteria is eligible. For example, if only 150 linear feet of a natural channel bank is armored with rip rap and maintained, only the 150 linear foot section would be eligible.

WORK ELIGIBILITY

To be eligible, work must:

- ✓ Required as a result of the declared incident;
- ✓ Located within the designated areas (**Arenac, Gladwin, Iosco, Midland, or Saginaw Counties**);
- ✓ Not fundable by another Federal agency, and
- ✓ Legal responsibility of an eligible Applicant.

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To determine legal responsibility for Emergency Work, FEMA evaluates whether the Applicant requesting the assistance either had jurisdiction over the area or the legal authority to conduct the work related to the request at the time of the incident.

TYPES OF WORK

Emergency Work

- A – Debris Removal
- B – Emergency Protective Measures

Permanent Work

- C – Road and Bridge Systems
- D – Water Control Facilities
- E – Public Buildings/Equipment
- F – Public Utilities
- G – Parks, Recreational, and Other Facilities



- FEMA breaks work up by category to facilitate the process of PA funding.
- Work is separated into two categories: Emergency Work, which addresses an immediate threat, and Permanent Work, which is for restoration of eligible public facilities.

EMERGENCY WORK

Category A – Debris Removal

- Eliminates an immediate threat to life, health, and safety
- Eliminates an immediate threat of significant damage to improved property
- Ensures economic recovery of the community and provides a benefit for the community-at-large



- Track quantities and from where it started to where it ended
- EGLE (formerly DEQ) requirements (i.e., Permits) must be followed
- **Private property debris removal is not eligible** Legal responsibility issue (private property)

FEMA has several tools on line to assist you with debris management:

- FEMA Debris Removal Fact Sheet – Tips
- FEMA Private Property Debris Removal Fact Sheet
- FEMA Debris Management Handbook, which also includes, a DEBRIS MANAGEMENT PLAN TEMPLATE

EMERGENCY WORK

Category B – Emergency Protective Measures

- Saves lives
- Protects public health and safety
- Protects improved property, or
- Eliminates or lessens an immediate threat of additional damage



Examples: sandbagging, pumping, barricades for road closures or public safety, fire and law enforcement services, search and rescue, medical care and transport, evacuation and sheltering, EOC-related costs

Only category separating out straight time and overtime (budgeted and non-budgeted)

PERMANENT WORK

Work Categories C-G

- Must repair, restore, or replace disaster-damaged facilities
- Must restore to pre-disaster design, capacity, and function in accordance with applicable codes and standards
- Must be required as a result of the disaster
- In conformity to current codes and standards
- May include cost-effective hazard mitigation measures

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- Most cost effective way to put it back to the condition it was before the incident
- Capacity (generators, pumps, etc.) to what you had before

COST ELIGIBILITY

To be eligible for reimbursement, costs must be:

- Incurred from **eligible** work and adequately **documented**;
- **Reduced** by insurance proceeds, salvage value, or other credits;
- **Authorized and permitted** under Federal, State, Tribal, or local government laws or regulations;
- Consistent with the Applicant's **internal policies**, regulations, and procedures; and
- **Necessary** and **reasonable** to accomplish the work properly and efficiently.

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To be eligible, Costs must be:

- Directly tied to the performance of eligible work;
- Adequately documented;
- Reduced by credits, such as insurance proceeds or salvage value;
- Authorized and not prohibited under Federal, State, Tribal, or local government laws or regulations;
- Consistent with the Applicant's internal policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the Applicant; and
- Necessary and reasonable to accomplish the work properly and efficiently.

COST ELIGIBILITY – REASONABLE COSTS

The Applicant is responsible for providing documentation to demonstrate that claimed costs are reasonable.

FEMA determines **reasonable cost** by evaluating whether the cost is recognized as necessary for type of work. For more information, refer to the *Public Assistance Reasonable Cost Evaluation Job Aid*.

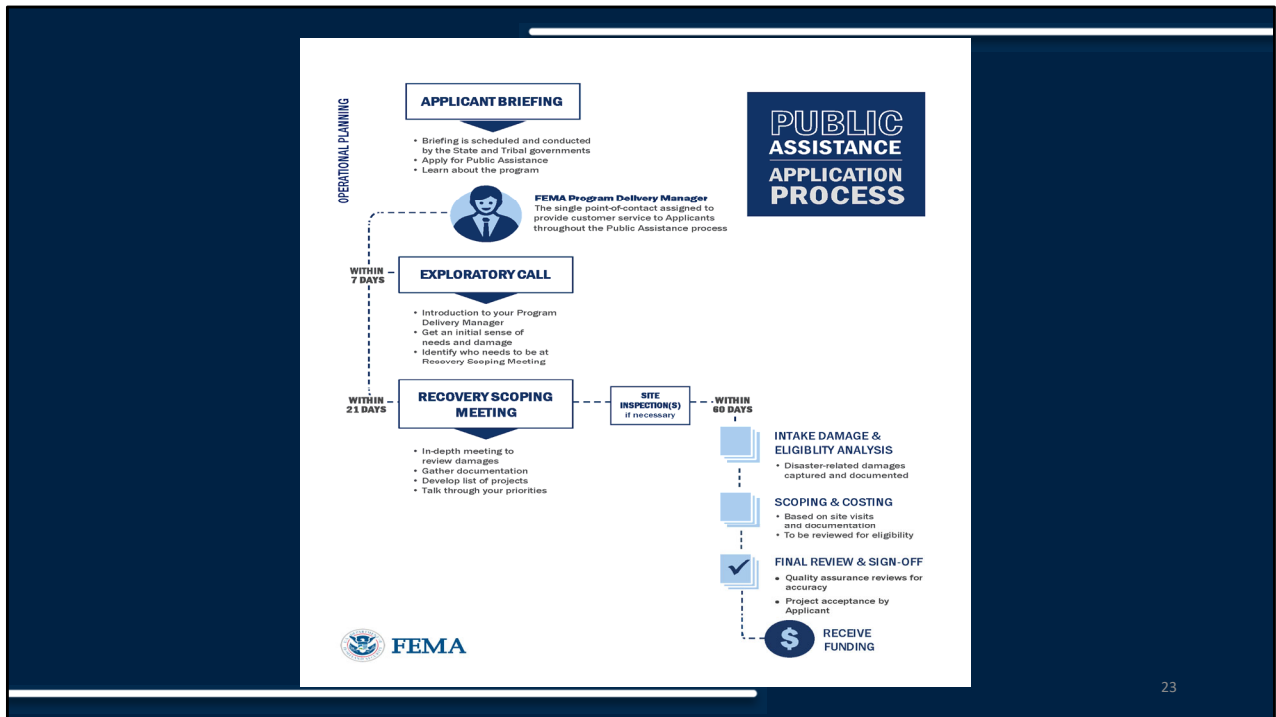
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FEMA determines reasonable cost by evaluating whether:

- Cost is of type generally recognized as ordinary and necessary for the type of work
- Applicant participated in ethical business practices
- Exigent or emergency circumstances exists, FEMA evaluates the length of time the circumstances existed compared to the length of time costs were incurred
- Cost is comparable to current market price (based on historic data, average costs in area, etc.)
- Applicant deviated from its established practices and policies
- Applicant complied with procurement requirements
- Cost compare with other Applicant's project Cost



PUBLIC ASSISTANCE PROCESS



- FEMA developed a new model for PA Program delivery and implemented beginning in 2018.
- Phased approach to the process for better transparency and tracking.
- This disaster is the second time Michigan is using the new PA model.
- The process used for this disaster will be this phased approach and not the process used for COVID-19.

New PA Program Delivery Model

Goal: Better grants management and fiscal responsibility from beginning to end.

Four phases of delivery:

- Phase I – Operational Planning
- Phase II – Intake Damage and Eligibility Analysis
- Phase II – Scoping and Costing
- Phase IV – Reviews

FEMA will continue to update and improve the new delivery model as it is implemented. Additional information is available on the new delivery model at <https://www.fema.gov/new-public-assistance-delivery-model>.

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Phase I – Operational Planning

- Assign PDMG, conduct exploratory call (**within 7 days**) and recovery scoping meeting (**within 21 days**).

Phase II – Intake Damage and Eligibility Analysis (within approximately 60 days)

- Work that is already completed will be compiled by the PDMG, in coordination with the applicant, to ensure all supporting documentation is provided.
- The PDMG will forward projects to the **Consolidated Resource Center (CRC)** for compliance and quality assurance reviews.
- The PDMG will contact the applicant via PA Grants Portal, as necessary, for any outstanding issues, requests for information, and for project concurrence and signature.
- **Work that is still to be completed will be scheduled for a site inspection.** Standard and specialized inspections are arranged by the FEMA Site Inspection Task Force Leader, in coordination with the PDMG and the applicant. ***Normally these are onsite; however, most of these will be virtual with the possibility of onsite inspections for some of the most damaged sites.***
- Site inspection results are forwarded to the PDMG to ensure the essential elements of information have been gathered.

- The PDMG will forward projects ready for submissions to the CRC.

Phase III – Scoping and Costing

- Projects are processed and reviewed by CRC specialists, in coordination with the PDMG.
- The PDMG will contact the applicant via PA Grants Portal, as necessary, for any outstanding issues, requests for information, and for project concurrence and signature.
- Signed projects are returned to the CRC for quality assurance and compliance reviews.

Phase IV – Reviews

- Quality assurance teams ensure the PW signed by the applicant matches data in EMMIE, which is the official system of record for obligation.
- The recipient and FEMA representative conducts a review of the PW in EMMIE.
- A determination letter is issued when FEMA obligates the PW.

Exploratory Call (normally within 7 days)

Program Delivery Manager (PDMG) Introduction

- Federal Representative from FEMA
- Single point-of-contact
- Guide throughout entire Public Assistance process
- Get an initial sense of the needs and damage
- Identify Recovery Scoping Meeting participants

Recovery Scoping Meeting (RSM)

(normally within 21 days)

Be prepared and organized!

- In-depth meeting to review damages
- Gather documentation
- Develop list of projects
- Talk through priorities

❖ **DEADLINE – Applicant has 60 days from RSM to identify additional damages**

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The more you have prepared for this meeting, the quicker and easier the process will go, and the quicker you'll receive your funding.

DEADLINE: Applicant has 60 days from the Recovery Scoping Meeting to identify additional damages.

Projects

Small vs. Large Projects

PA projects are processed as either small or large projects

Small Projects	Large Projects
\$3,300 to \$131,100	>\$131,100
Federal cost share is paid as soon as possible upon project approval	Federal cost share is paid as work is accomplished upon request of Applicant
Funding is based on initial cost <u>estimates</u>	Final assistance is based upon <u>actual costs</u> or estimates using the Cost Estimating Format (CEF)

Projects

Small vs. Large Projects

For work completed, regardless of obligation status, ALL documentation is due to FEMA within **90 days** of completion or RSM – whichever is later

NO DOCUMENTATION, NO ELIGIBLE COSTS!!!

For small projects, certification form in lieu of documentation

Estimates for Completed AND To Be Completed Work

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Both found in PAPPG, page 185

For work completed, regardless of project worksheet (PW) obligation status, all documentation is due to FEMA within 90 days of completion or RSM – whichever is later. FEMA makes the eligibility determination based on that documentation, so if a subrecipient does not submit anything – they would not have eligible costs

For small projects, FEMA uses applicant certification (see attached) in lieu of documentation; therefore, estimates can be used for both completed and to be completed work.

The two forms will be added to our web site:

- 1) Subrecipient Certification for Small Projects With Completed Work, Category B
Emergency Protective Measures
- 2) Subrecipient Certification for Small Projects With Completed Work, Category C-G
Permanent Work

Projects

Project Completion Deadlines

Time limits for project completion begin on the disaster declaration date (**July 9, 2020**).

- **Emergency work** must be completed within **6 months**
- **Permanent work** must be completed within **18 months**

For extenuating circumstances or project requirements beyond the Applicant's control, the Recipient may extend the emergency work deadline an **additional 6 months** and the permanent work deadline an **additional 30 months** on a project-by-project basis.

FEMA may also extend the time limits when sufficient justification is submitted.

Improved Projects

Applicants performing restoration work on a damaged facility may make improvements to the facility while restoring the facility to its pre-disaster condition.

****Improvements *must* be approved by the Recipient prior to construction****

The **Applicant is responsible for the cost of the improvements**. Federal funding is limited to the cost of restoration.

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Any project that results in a significant change from the pre-disaster, such as a different

- **Location**
- **Footprint**
- **Function**
- **Size**

MUST coordinate with FEMA to ensure compliance with federal regulations

Alternate Projects

When restoration of a damaged facility or function does not serve the public welfare, an applicant may use a PA grant for another public facility.

The alternate project:

- **Must** be approved by FEMA **prior** to construction.
- May require an environmental assessment.

Federal funding is limited to 75% of the federal share of the original project estimate or actual alternate project cost (whichever is less).

DONATED RESOURCES

Applicants can use Donated Resources to offset the non-Federal cost share for eligible work costs. The Applicant must track all donated resources in order to do so.

Donated resources include:

- Volunteer Labor
- Donated Equipment
- Donated Supplies and Materials
- Logistical Support

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FEMA does not provide PA funding for donated resources; however, the Applicant may use the value of donated resources to offset the non-Federal share of its eligible Emergency Work projects and DFA.

If asked, additional details on examples of donated resources:

- **Volunteer Labor:** based on the same hourly labor rate and fringe benefits as a similarly qualified person in the Applicant's organization who performs similar work
- **Donated Equipment:** based on equipment rates
- **Donated Supplies or Materials:** based on current commercial rates
- **Logistical Support:** Reasonable logistical support for volunteers doing eligible work may be eligible either for funding or as a donations credit

PA MANAGEMENT COSTS

Management costs (under Category Z) may be claimed for administering and managing PA awards as follows:

- For Recipients, up to 7% of the total award amount (based on actual costs)
- For **Subrecipients**, up to **5%** of the Subrecipient's **total award amount** (based on actual costs)

Eligible activities may include, but are not limited to, meetings regarding the PA program or claim, preparing correspondence, reviewing PWs, collecting, copying, filing, or submitting documents to support a claim, and training

Additional information is available in FEMA's interim policy, [FEMA Recovery Policy FP 104-11-2, Public Assistance Management Costs](#) and [FEMA's Public Assistance Management Costs Standard Operating Procedures](#)

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Additional information is available in FEMA's interim policy, [FEMA Recovery Policy FP 104-11-2, Public Assistance Management Costs](#) and [FEMA's Public Assistance Management Costs Standard Operating Procedures](#)

Time Limits

Important Deadlines

Applying for a PA Grant

- Applicant must submit a Request for Public Assistance (RPA) form within **30 days** of the designation of the declared disaster area

Identification of Damage

- **60 days** from Recovery Scoping Meeting (RSM) to identify damage

Work Completed **(NEW)**

- Documentation received by FEMA within **90 days** of completion or RSM, whichever is later

Appeals

- Any determination related to Federal assistance may be appealed. The appeal must be submitted to the grantee within **60 days** of receipt of notice of action which is being appealed

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RPA's due in Grants Portal by August 8, 2020



PUBLIC ASSISTANCE ADDITIONAL CONSIDERATIONS

Special Considerations

Special considerations are issues, other than program eligibility, that could affect the scope of work and funding of a project. These issues include:

- Insurance
- Hazard Mitigation
- Environmental Protection
- Floodplain Management
- Historic Preservation and Cultural Resources

Special Considerations

Insurance

Actual or anticipated insurance proceeds will be deducted from the eligible project costs for insured facilities.

As a condition of PA funding, all applicants are required to obtain and maintain insurance coverage on all insurable facilities.

For flood damaged facilities located within a Special Flood Hazard Area that are not covered by flood insurance, Federal assistance will be reduced by the maximum flood insurance proceeds that would have been payable had the facility been insured.

Special Considerations

Hazard Mitigation

Section 406 of the Stafford Act authorizes Public Assistance Hazard Mitigation

Cost effective measures that reduce or eliminate the potential for damages to a facility from a future event.

For a hazard mitigation proposal to be eligible for funding under PA, the measure must apply to the damaged elements of the eligible facility.



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FEMA recognizes that after a disaster, the best time to protect a facility from future, similar damage is during the recovery period.

Mitigation projects done during recovery reduce overall cost and construction efforts associated with retrofitting a repaired facility.

If you qualify for repairs through FEMA's Public Assistance (PA) Program (Robert T. Stafford Disaster Relief and Emergency Act, Section 406), you may also be eligible for additional funding to protect your facility. ***(406 hazard mitigation as not to be confused with the 404 Hazard Mitigation Grant Program (HMGP) which Matt Schnepf will discuss in a bit)***

During the recovery process, FEMA will assist you with assessing damage, developing a Hazard Mitigation Proposal, and evaluating the cost-effectiveness of mitigation projects. For this event Victor Carrion, engineer at FEMA RV, will be the main point of contact for PA mitigation. (TX 202-455-9659, Email victor.carrion-Dominguez@fema.dhs.gov) Jennie Grobe is the 406 Team Coordinator.

Special Considerations

Hazard Mitigation

How Can Public Assistance Mitigation Benefit You?

- 1) Prevents or reduces loss of function for public services
- 2) Helps avoid repetitive damage from disasters
- 3) Provides a long-term solution to a problem

Special Considerations

Hazard Mitigation

Examples of Mitigation Projects Funded by Public Assistance:

- 1) Replace drainage structure with a larger structure
- 2) Install submersible pumps in water or wastewater plants
- 3) Elevate equipment above the base flood elevation
- 4) Anchor storage tanks to prevent movement
- 5) Install shut-off valves on underground pipes
- 6) Dry floodproof buildings

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Examples of cost-effective PA hazard mitigation measures are listed in the **Public Assistance Program and Policy Guide, Appendix J, PAPPG, p 142** that protect infrastructure:

Other examples shown in FEMA's brochure:

- 1) Flood door to provide facility dry floodproofing mitigation
- 2) Heat pump elevated 4 feet above ground to prevent flooding damage
- 3) Steel reinforced concrete and waterproofed flood walls around a building to protect facility from the horizontal pressure of flood water
- 4) Concrete wingwalls around a culvert to prevent road erosion

Special Considerations

Hazard Mitigation

Tests of Cost Effectiveness:

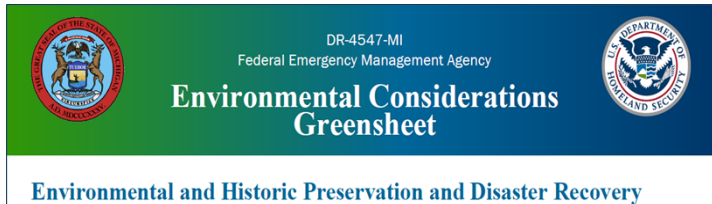
- 1) Demonstrate the project is cost-effective with FEMA's Benefit-Cost Analysis (BCA) toolkit
- 2) The cost of the mitigation measure does not exceed 15% of the damaged facility's repair cost to which mitigation measures apply
- 3) Must specifically be listed in **Appendix J: Cost-Effective Hazard Mitigation Measures** AND the cost does not exceed 100% of the damaged facility's repair cost to which the mitigation measure applies

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PA hazard mitigation measures must meet one of the following tests of cost-effectiveness to be eligible

Special Considerations

Environmental and Historic Preservation (EHP) Compliance



CONTACT: Dan DiGiuseppe
FEMA EHP Advisor
536 S Clark St Ste 600
Chicago, IL 60605
daniell.digiuseppe@fema.dhs.gov
202-615-4815

- Environmental and Historic Preservation and Disaster Recovery
- Environmental Laws and Project Requirements
- Tribal Consultation Requirements
- Floodplains, Wetlands, and the Coastal Zone
- Waterways, Culverts, and Bridges
- Historic Preservation
- Debris Disposal and Hazardous Materials
- Protected Species and Habitats

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This FEMA developed EHP brochure presents an overview of a number of environmental and historic preservation laws. FEMA must document compliance with these and other laws and executive orders before funding for Public Assistance projects can be obligated.

It includes contact information for individuals from FEMA, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, MI National Flood Insurance Program (NFIP), MI DNR, MI EGLE Debris, Water Management Specialist, and the MI Coastal Management Program, who can provide more information on EHP requirements, as well as guidance on environmental and historic preservation review, permitting, and approval processes.

Dan DiGiuseppe is the FEMA EHP Advisor, and his contact information is provided.

Areas addressed within the brochure include those listed on your slide.

The brochure will be posted on our web site.

Special Considerations

Environmental and Historic Preservation (EHP)

All FEMA funded projects require some level of environmental review:

- **Most projects are easily and quickly reviewed by EHP Specialists**
 - Many types of emergency actions or debris removal/disposal in licensed facilities
 - Repairs exactly to pre-disaster condition or temporary repairs
- **Some require detailed review by Floodplain, Wetland, Endangered Species or Historic Specialists**
 - Debris disposal in areas not previously permitted
 - Projects that change the pre-disaster condition of the facility
 - Repairs that include hazard mitigation to facilities over 45 years old
 - Projects located near bodies of water, wetlands, or floodplains

Special Considerations

Environmental and Historic Preservation (EHP)

(CONTINUED...)

- Some projects require consultation with state or federal agencies

- Projects with significant mitigation actions
- Improved or alternate projects
- Projects that include new ground disturbance

***Failure to comply could jeopardize or delay funding. Questions, contact FEMA's Public Assistance or EHP staff as soon as possible to avoid compliance issues and funding delays.**

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****In all cases, failure to comply with applicable environmental and historic preservation laws and other requirements could jeopardize or delay funding. If you have questions, be sure to contact FEMA's Public Assistance or EHP staff as soon as possible to avoid compliance issues and funding delays.**

Special Considerations

Environmental Laws and Project Requirements

Critical Federal Laws and Executive Orders:

- National Environmental Policy Act (NEPA)
- National Historic Preservation Act
- Endangered Species Act
- Clean Water Act
- Rivers and Harbors Act of 1899
- Coastal Zone Management Act
- Executive Order 11988: Floodplain Management
- Executive Order 12898: Environmental Justice



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The National Environmental Policy Act (NEPA) is the primary environmental law that directs federal agencies to consider the environmental effects of their actions, such as funding disaster recovery projects. In addition to NEPA, a number of major environmental and historic preservation laws and executive orders apply when rebuilding or replacing infrastructure.

Some complex projects need very detailed reviews, including consultation with state and federal regulatory agencies, before construction begins. Others require some consideration for environmental and historic preservation compliance before funding is approved. Many activities with minimal impacts can proceed before environmental or historic review is complete.



PUBLIC ASSISTANCE PROCUREMENT

Procurement

Full Procurement Regulations: 2 CFR §§ 200.317 – 200.326

Know the Rules

There are different sets of procurement rules that apply depending on whether you are a state or a non-state entity.

Learn/Follow Rules that Apply to Entity Type

- 1) Public Assistance Contracting Requirement Checklist
- 2) State Entity Federal Procurement Under Grants Requirements
- 3) Key Points for Non-State Entities on How to Avoid Top 10 Mistakes

[Procurement Disaster Assistance Team \(PDAT\)](#)

online provides tools and resources

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*****Failure to follow Federal contracting and procurement requirements puts non-state entities at risk of not receiving reimbursement or not being able to use FEMA grant funds for otherwise eligible costs.***

Procurement Disaster Assistance Team (PDAT) web site has many resources regarding procurement including:

- Fact Sheets regarding Procurement
- Contracting Template
- Key points on how to avoid the top 10 Procurement Under Grants Mistakes

Procurement under Exigency or Emergency (E&E) Circumstances

Non-state entities must follow the procurement requirements found at 2 C.F.R. §§ 200.317 – 200.326

Noncompetitive procurements (exception) under certain circumstances, including when a non-state entity determines that **immediate actions required** to address the public exigency or emergency **cannot be delayed by a competitive solicitation**, FEMA approval not required

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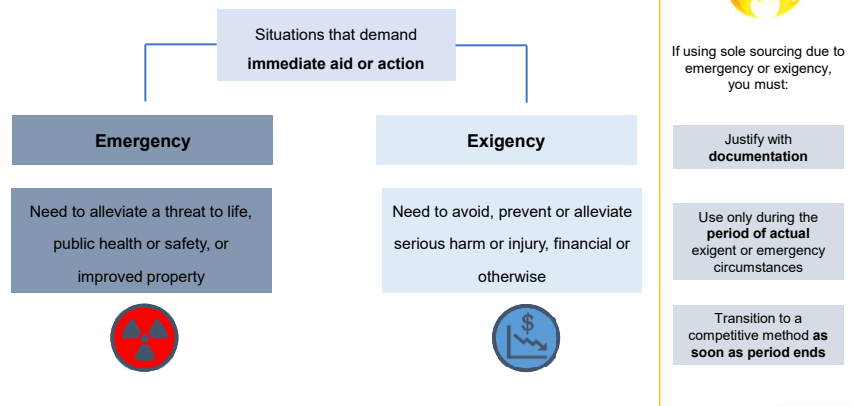
What is the exigency or emergency exception?

Non-state entities must follow the procurement requirements found at 2 C.F.R. §§ 200.317 – 200.326. However, Federal regulations allow for noncompetitive procurements under certain circumstances, including when a non-state entity determines that immediate actions required to address the public exigency or emergency cannot be delayed by a competitive solicitation. This represents an exception to requirements for full and open competition. FEMA approval is not required for use of noncompetitive.

Procurement Under Grants Conducted Under Exigent or Emergency Circumstances procurements under the emergency or exigency exception; however, the non-state entity must document its justification for using noncompetitive procurements and must still comply with other procurement requirements and ensure that costs are reasonable.

For more information please see the *Fact Sheet: Procurement Under Grants Conducted Under Exigent or Emergency Circumstances*

Sole-Source Procurement Under E&E



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FEMA only allows exceptions to full/open competition for a limited time period during the exigent and emergency period of a disaster incident.

Exigency or Emergency Circumstance: The public exigency or emergency will not permit a delay resulting from the full and open competition process.

- The use of an exception to full and open competition is limited and only permissible during the period of actual exigency or emergency. Once this period ends, the non-state applicant must transition to a procurement compliant with the requirements of full and open competition.
- Although the terms are often used interchangeably, “exigency” and “emergency” are not necessarily the same.

Emergency: an unexpected and unusually dangerous situation that calls for immediate action or an urgent need for assistance or relief. E.g. threat to life, public health or safety, improved property, and/or some other form of dangerous situation.

- Example: A severed power line remains live and is dangling near an apartment

building. If not addressed immediately, this live wire poses a risk of igniting the building on fire or causing bodily harm. The emergency would not extend to repair and restoration of the city's power lines beyond resolution of this limited dangerous situation.

Exigency: something that is necessary in a particular situation that requires or demands immediate aid or action.

- Example: Augusta, GA using a noncompetitive procurement in advance of The Masters Golf Tournament to remove debris blocking the roadways. If not removed immediately, the debris threatened to force cancellation of this major economic activity for the region. The exigency only existed up until the day that the tournament started. Full and open competition was required for procurements after the commencement of the tournament.

Important Considerations while using this exception:

- The applicant needs to document the justification for using the emergency or exigency exception. The justification will be fact-based. Even if procurement by a noncompetitive proposal was necessary initially due to an exigency or emergency, that exception is not indefinite. Once that exigency or emergency ends, the applicant should transition to a competitively awarded contract when competition becomes feasible. Accordingly, it is very important to start PLANNING for one of the other procurement methods as soon as that initial contract is awarded.
- In some cases a state, local, or tribal law allows for the waiver of procurement requirements when an emergency is declared; however, those laws only allow for the waiver of the applicable state, local, or tribal procurement rules. An applicant must still abide by the Federal procurement standards under 2 C.F.R. sections 200.317 through 326.

When does the exigency or emergency exception apply and for how long?

Use of the public exigency or emergency exception *is only permissible during the actual exigent or emergency circumstances*. Exigency or emergency circumstances will vary for each incident, making it difficult to determine in advance or assign a particular time frame when noncompetitive procurements may be warranted. Exigent or emergency circumstances may exist for two days, two weeks, two months, or even longer in some cases. Non-state entities must ensure that work performed under the noncompetitively procured contracts is specifically related to the exigent or emergency circumstance in effect at the time of procurement. Importantly, because the exception to competitive procurement is available only while the exigent or emergency circumstances exist, non-state entities should, upon awarding a noncompetitive contract, immediately begin the process of competitively procuring similar goods and services in order to transition to the

competitively procured contracts as soon as the exigent or emergency circumstances cease to exist.

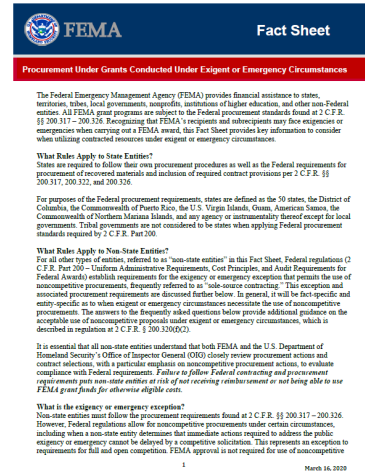
FEMA may review a non-state entity's justification that exigent or emergency circumstances warrant an exception to competitive procurement. If the agency determines that exigent or emergency circumstances did not exist or did not preclude a non-state entity from adhering to competitive procurement requirements, FEMA may disallow all or part of the non-state entity's cost related to the contract or take other actions permitted by statute and regulation. (*See* 2 C.F.R. § 200.338).

What documentation is required to support the use of the exigency or emergency exception?

While FEMA approval is not required for a non-state entity to use noncompetitive procurement proposals under the emergency or exigency exception, non-state entities must document and provide justification for the use of the exigent or emergency exception. A list of elements that non-state entities may wish to include as part of their written justifications can be found at the end of this Fact Sheet. The justification must be included in the non-state entity's records for each FEMA award, subaward, or project

Procurement Contracts Exigency or Emergency (E&E) Circumstances

- Conduct cost or price analysis
- Include bonding requirements
- Include required contract clauses
- Follow T&M contract requirements if applicable
- NOT enter into CPPC contracts. They are prohibited
- Award contract to a responsible contractor
- Follow documentation, oversight, conflict of interest requirements



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Non-state entities must comply with the following requirements even when exigent or emergency circumstances exist:

- The non-state entity must complete a cost or price analysis to determine that the cost or price of the contract is fair and reasonable if the contract exceeds or is expected to exceed the Federal simplified acquisition threshold (2 C.F.R. § 200.323(a) and (b)).
- Contracts exceeding the Federal simplified acquisition threshold must include the Federal bonding requirements if the contract is for construction or facility improvement (2 C.F.R. § 200.325).

What if the non-state entity wants to use a pre-awarded or pre-existing contract in an exigency or emergency and that contract does not comply with the Federal procurement requirements?

If a pre-awarded or pre-existing contract is not in compliance with the Federal procurement requirements (e.g., the contract was not fully and openly competed (see 2 C.F.R. §§ 200.319, 200.320), the six affirmative socioeconomic contracting steps were not completed (2 C.F.R. § 200.321), there is a conflict of interest involved (2 C.F.R. § 200.318)), it may still be possible to use the contract for the duration of the exigency or emergency. FEMA recommends that non-state entities review the list of procurement

requirements above and take actions to modify pre-awarded or pre-existing contracts where applicable. In addition, non-state entities must prepare the appropriate documentation to justify the use of a noncompetitively procured contract.

Non-state entities must comply with the following requirements even when exigent or emergency circumstances exist:

- Contracts must include the required contract clauses (2 C.F.R. § 200.326 & Appendix II) (also applicable to states).
- Use of time and materials contracts must comply with 2 C.F.R. § 200.318(j).
- The use of cost-plus-percentage-of-cost contracting is prohibited (2 C.F.R. § 200.323(c)).
- Contracts must be awarded to a responsible contractor (2 C.F.R. § 200.318(h)).
- The non-state entity must follow documentation, oversight, and conflict of interest requirements among other general procurement requirements in 2 C.F.R. § 200.318. If a conflict of interest is unavoidable due to the exigent/emergency circumstances, the non-state entity must explain that in the procurement documentation.

What if the non-state entity wants to use a pre-awarded or pre-existing contract in an exigency or emergency and that contract does not comply with the Federal procurement requirements?

If a pre-awarded or pre-existing contract is not in compliance with the Federal procurement requirements (e.g., the contract was not fully and openly competed (see 2 C.F.R. §§ 200.319, 200.320), the six affirmative socioeconomic contracting steps were not completed (2 C.F.R. § 200.321), there is a conflict of interest involved (2 C.F.R. § 200.318)), it may still be possible to use the contract for the duration of the exigency or emergency. FEMA recommends that non-state entities review the list of procurement requirements above and take actions to modify pre-awarded or pre-existing contracts where applicable. In addition, non-state entities must prepare the appropriate documentation to justify the use of a noncompetitively procured contract.

Procurement – Top 10 Grant Mistakes

- 1) Restricting Full and Open Competition
- 2) Not Performing a Detailed Price or Cost Analysis for Procurements Above \$250,000
- 3) Improperly Engaging in Sole-sourcing (Non-competitive) Procurement
- 4) Continuing to Work under a Sole-source Contract After the Urgent Need Has Ended
- 5) Not Making and Documenting Efforts to Take All Socioeconomic “Affirmative” Steps
- 6) Improperly Awarding a “Time-and-materials” (T&M) Contract
- 7) Not including the Required Contract Clauses
- 8) Awarding a Prohibited “Cost-plus-percentage-of-cost” or “Percentage-of-construction-cost” Contract
- 9) Awarding a Contract to Contractors that Were Suspended or Debarred
- 10) Not Properly Documenting All Steps of a Procurement

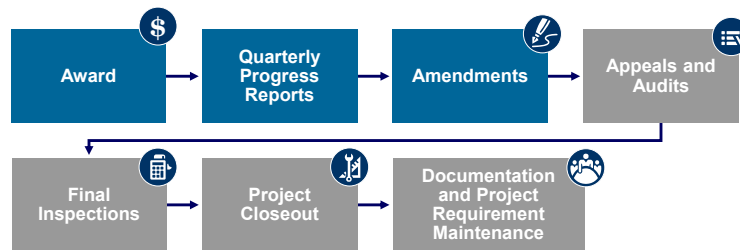


POST-AWARD GRANTS MANAGEMENT

After a Subgrant is Awarded

After an initial subgrant has been awarded and obligated, FEMA will work with the Recipient and Applicant to:

- Ensure federal laws are followed with all documentation and process requirements, and
- Update project information as needed before the grants are closed.



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Post award activities:

- Quarterly project reports are required to be submitted to MSP/EMHSD PA staff for all large projects over \$131,100
- Any amendments (scope of work changes or time extensions) to projects must be requested through MSP/EMHSD
- Subrecipients have the right to appeal any decision of FEMA or the MSP/EMHSD (see PAPPG, beginning on p 39 for information)
- Both Recipients and Subrecipients are subject to federal and nonfederal audits
- In some cases inspections may be conducted by MSP/EMHSD to ensure scope of work
- Project closeout for Emergency Work projects is to be completed within 6 months of the disaster declaration

Quarterly Reports, Closeout, Appeals, and Audits

Quarterly Progress Reports

A tool for FEMA and the Recipient to track the progress of open Large Projects on a quarterly basis

Project Reconciliation and Closeout

The purpose of closeout is for the Applicant to certify that all work has been completed

Appeals

Applicants may appeal any FEMA determination related to an application for, or the provision of, assistance under the PA Program.

Audits

Recipients and Subrecipients are subject to Federal and non-Federal audits.



FEMA



Documentation and Record Keeping

Stafford Act Section 705 - Imposes a three (3) year limit on FEMA's authority to recover payments made to State, Tribal, or local government Recipients and Subrecipients unless there is evidence of fraud

- The Applicant must maintain all original documentation supporting project costs claimed.
- The Recipient and the Applicant must keep all financial and program documentation for 3 years after the date of the Recipient's final Financial Status Report (FSR).
- Records are subject to audit by State auditors, FEMA, the U.S. Department of Homeland Security Office of Inspector General, and the U.S. Government Accountability Office.



FEMA





PUBLIC ASSISTANCE NEXT STEPS

FUTURE COMMUNICATIONS

After FEMA and MSP/EMHSD final project approval:

- FEMA obligates funds to MSP/EMHSD
- Information letter sent to Applicant
 - Grant Agreement
 - Risk Assessment Certification
 - Audit Certification and IRS W-9 Form
 - Quarterly Report Form



NEXT STEPS - APPLICANTS

- Submit Request for Public Assistance (RPA) in Grants Portal
 - ❖ **DEADLINE: August 8, 2020**
- FEMA Program Delivery Manager (PDMG) will conduct 1st Exploratory Call
- Recovery Scoping Meetings begin
- Virtual site inspections (if necessary for projects to be completed)
- Final approvals on projects

NEXT STEPS – RECIPIENT

MSP/EMHSD:

- Participate with FEMA and Applicant to formulate, review and approve projects for obligation of funding
- Prepare Grant Agreement packages for Subrecipient review and signature when FEMA obligates funding for projects
- Work with Applicant to process any project amendments including scope changes, time extensions, etc.
- Process reimbursements upon receipt of signed Grant Agreements and Project Completion and Certification Reports (P.4)

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Upon obligation of a subrecipient's first project, MSP/EMHSD will send out Grant Agreements for signature BEFORE reimbursement

FEMA Resources

Other Helpful Resources

- FEMA PA Grants Portal - Grants Manager YouTube Channel: [youtube.com/channel/UCIJp91Ds2laVIR1t8uXcEKg](https://www.youtube.com/channel/UCIJp91Ds2laVIR1t8uXcEKg)
- Technical and training support at FEMA's PA Grants Portal Hotline: **(866) 337-8448**
- Grants Portal inbox: FEMA-Recovery-PA-Grants@fema.dhs.gov

MSP/EMHSD Resources

Other Helpful Resources

- MSP/EMHSD online at https://www.michigan.gov/msp/0,4643,7-123-72297_60152---,00.html
- MSP/EMHSD inbox: MSP-EMHSD-DisasterPA@Michigan.gov



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Keep in mind when using resources that the process for this disaster is not the same COVID, so no direct project applications for example. You will be working with your PDMG to formulate projects.

Grants Portal related instructions are provided in the two guides: *Applicant Quick Guide: Grants Portal Account and Request for Public Assistance* and *Applicant Quick Guide: Grants Portal Account and Request for Public Assistance*.

Requests for Public Assistance (RPAs) are the official mechanism to apply for PA funding. FEMA's regulatory deadline for receipt of RPAs is 30 days from the date the respective area was declared.

OTHER PA GUIDANCE

Below is a list of other PA Guidance:

1. 44 C.F.R. § 206.204-209, 2 C.F.R. Part 200
2. [FEMA's Public Assistance Program and Policy Guide \(PAPPG\)](#)
3. [FEMA's Program Management and Grant Closeout SOP](#)
4. [Public Assistance Reasonable Cost Evaluation Job Aid](#)
5. [FEMA Recovery Policy FP 104-11-2, Public Assistance Management Costs](#)
6. [FEMA's Public Assistance Management Costs Standard Operating Procedures](#)

HAZARD MITIGATION GRANT PROGRAM

- Funding for communities following a disaster declaration to implement risk reducing activities
- Helps avoid repetitive disaster damages
- Different than mitigation through PA
- HMGP Examples – Elevation of flood prone houses, acquisition and demolition of flood prone houses, infrastructure improvements
- Local governments and tribes are eligible applicants but individuals are not
- 75% federal share and 25% match

ACQUISITION/DEMOLITION PROJECTS

- Post flood opportunity for communities to buyout flood damaged homes
 - Eliminates the risk of future flooding at those homes and makes the community more resilient
 - Helps the individual recover from the flood
- How it works
 - Community implements the grant
 - Homes are appraised based on pre-event value
 - Homeowner decides regarding purchase offer (100% voluntary)
 - Buildings are demolished and property remains open space
- Time is of the essence
 - Contact Matt Schnepf 517-256-1512
 - Or MSP-EMHSD-Hazard-Mitigation-Grants@michigan.gov



Contact Information

Ms. Tiffany Vedder

State Public Assistance Officer

Tel: 517-284-3944

Cell: 517-599-5333

veddert@michigan.gov

Ms. Marisela Shellenbarger

Deputy Public Assistance Officer

Tel: 517-284-3949

Cell: 517-512-9676

shellenbarger@michigan.gov

Public Assistance Mailbox: MSP-EMHSD-DisasterPA@Michigan.gov

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We look forward to working with you!