Building Code and Floodplain Management Administration and Enforcement

FEMA Policy FP 204-079-01

BACKGROUND

The Disaster Recovery Reform Act of 2018 (DRRA), amended Sections 402 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), and authorized FEMA to "provide assistance to state and local governments for building code and floodplain administration and enforcement, including inspections for substantial damage compliance"[1] and "base and overtime wages for extra hires to facilitate the implementation and enforcement of adopted building codes for a period of not more than 180 days after the major disaster is declared." [2] This policy enacted through FEMA's Public Assistance (PA) Program implements section 1206 of DRRA by leveraging the amendments to Section 402 and Section 406. While the provisions of this policy apply only to the PA Program, assistance under section 1206 of DRRA may be available under other FEMA programs, such as FEMA's Federal Insurance and Mitigation Administration's (FIMA) Substantial Damage Data Collection Contracts, described in more detail in Section D below.

PURPOSE

This policy defines the framework and requirements for consistent and appropriate implementation of section 1206 of DRRA through the PA Program. The intent of this policy is to provide communities with the resources needed to effectively administer and enforce state and locally adopted building codes and floodplain management ordinances for a period of no longer than 180 days after the date of the major disaster declaration.

PRINCIPLES

1. Increase the overall speed of recovery by providing assistance to conduct building inspections, review disaster-related development in the floodplain, review applications for permits, and issue permits to adequately administer and enforce adopted building codes and floodplain ordinances.

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[1] *Section 402* Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as Amended.
[2] *Section 406* Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as Amended.

2. Enhance compliance with state and local building codes and floodplain management ordinances by providing state, tribal, territorial, and local governments additional resources to carry out required activities after a disaster.

REQUIREMENTS

A. APPLICABILITY

Outcome: To establish the applicability and retroactive implementation of this policy.

1. This policy will go into effect on November 1, 2020.

2. This policy applies to major disaster declarations for PA declared on or after August 1, 2017.

3. For major disasters declared on or after November 1, 2020, eligible costs will be reimbursed under the provisions of this policy.

4. For major disasters declared between August 1, 2017 and November 1, 2020, eligible costs will be reimbursed under the provisions of this policy, provided the Applicant notifies FEMA that it intends to seek reimbursement within 90 days from the Recovery Scoping Meeting or 90 days from the effective date of this Policy, whichever is later. An example opt-in form can be found in Appendix A of this policy.

5. Work that is eligible under this policy cannot be used as the basis of a request for an Alternate Project[3] or for participation in the PA Alternative Procedures Pilot Program for Permanent Work.

6. FEMA will not fund activities under this policy if a community has been suspended from the National Flood Insurance Program (NFIP) or has otherwise been sanctioned for not participating in the NFIP though a flood risk has been identified.

B. DESCRIPTION OF ELIGIBLE AND INELIGIBLE WORK

Outcome: To identify the types of activities are eligible and ineligible under this policy.

1. All building code and floodplain management ordinance administration and enforcement activities must be performed, in a designated area of the major disaster declaration and relate to the repair, replacement, or retrofit of disaster-damaged structures in the jurisdiction of the Applicant.[4] This may include public, private, and residential structures.

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[3] *See Stafford Act Section 406(c) (42 U.S.C. § 5172) and 44 C.F.R. § 206.203(d)(2).*
[4] *44 CFR § 206.223*

2. FEMA will determine the eligibility of actions based on whether the work falls within the general parameters described below in Section B.3 and is consistent with the work that is normally done to administer and enforce building codes.

3. Eligible Work. The following list provides examples of eligible activities under this policy. Activities not on this list will be evaluated on a case-by-case basis.

   a) Building Code Administration:

      i. Review and process applications for building permits; certificates of occupancy; certificates of compliance; and the associated plans, specifications, and construction documents for compliance with federal, state, and municipal building, housing, and life-safety codes and standards applicable to disaster-related repair, replacement, or retrofit.

      ii. Process requests for building code variances.

      iii. Collect fees.

      iv. Hire, train, supervise, certify, and license staff, as required to conduct eligible activities.

      v. Contract for services (e.g., contract planning, initiation, solicitation, evaluation, and award).

      vi. Provide training and information to staff, contractors, and the public on unique considerations for repair of disaster-damaged historic buildings.

      vii. Provide training and outreach to the public on building code and building permit requirements applicable to the repair, replacement, or retrofit of disaster-damaged buildings.

      viii. Establish construction plan review and inspection processes, procedures, and instructions for permit holders.

      ix. Monitor impacted areas for unpermitted construction activities.

      x. Coordinate building code administration and enforcement with floodplain management ordinance administration and enforcement, as appropriate.

b) Code Enforcement:

  i. Inspect structures under construction for compliance with approved plans, specifications, and all requirements of applicable codes, laws, and ordinances.

  ii. Identify and carry out corrective action in cases where construction, design, and occupancy do not comply with codes and/or ordinances.

  iii. Conduct and process condemnation determinations.

  iv. Review and issue elevation certificates.

  v. Investigate complaints and assist in preparation of materials for abating violations of building codes and related ordinances.

c) Floodplain Management Ordinance Administration and Enforcement:

  i. Enforce or administer standards for development according to community floodplain management regulations.

  ii. Determine whether proposed disaster-related development activities are in areas regulated by the community's floodplain management ordinance or building code.

  iii. Hire, train, supervise, certify and license staff, as required to conduct eligible activities.

  iv. Contract for services (e.g., contract planning, initiation, solicitation, evaluation, and award).

  v. Provide training and outreach to the public on floodplain permit requirements applicable to the repair, replacement, or retrofit of disaster-damaged buildings.

  vi. Provide training and information to staff, contractors, and the public on unique considerations for repair of disaster-damaged historic buildings.

  vii. Review disaster-related development proposals to ensure compliance with the requirements of applicable floodplain management ordinances.

  viii. Process permits for disaster-related development in the floodplain associated with the declared disaster.

  ix. Inspect all disaster-related development in the applicable jurisdiction.

  x. Monitor impacted areas for unpermitted construction activities.

  xi. Process requests for floodplain management ordinance variances.

xii. Process, maintain, and track temporary occupancy permits and inspect temporary occupancy buildings.

xiii. Provide information on flood hazards, floodplain map data, advisory flood data and compliance to residents and property owners.

xiv. Conduct inspections to ensure the removal of temporary fill and related materials used in flood fighting.

xv. Take corrective action necessary to ensure compliance with Federal, State, and Local floodplain regulations.

xvi. Coordinate floodplain management ordinance administration and enforcement with building code administration and enforcement, as appropriate.

d) Substantial Damage Determinations: For existing buildings located in areas regulated by the community's floodplain management ordinance or building code, eligible work may include work to:

i. Conduct initial field surveys to determine extent of damage.

ii. Establish damage trends to identify areas to focus building-specific assessment efforts.

iii. Prepare cost information on repairs and pre-disaster market value estimates for substantial damage estimates.

iv. Hire, train, supervise, certify and license staff, as required to conduct eligible activities.

v. Collect field data for damage assessments.

vi. Enter damage inventory administrative data into the Substantial Damage Estimator[5] or comparable data collection software.

vii. Track cumulative substantial damage and repetitive loss for communities, if required.

viii. Conduct damage inventory of structures.

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[5] *The FEMA-developed Substantial Damage Estimator tool assists State and local officials in estimating Substantial Damage for residential and non-residential structures in accordance with the requirements of the National Flood Insurance Program (NFIP) as adopted by the communities.* https://www.fema.gov/media-library/assets/documents/18692.

ix. Inform property owners of damage determination and provide compliance requirements.

x. Perform inspections to ensure compliance with repair and substantial damage construction requirements.

xi. Determine whether proposed improvements are "substantial improvements" and trigger requirements for compliance, including a building permit.

xii. Determine if damaged structures have been designated as historic or that may be eligible for such designation.

xiii. Review, adjudicate, and resolve Substantial Damage Determination appeals.

4. Ineligible Work:

a) Activities associated with non-disaster damaged structures or non-disaster-related development.

b) Activities to update a community's laws, rules, procedures, or requirements. Examples include:

   i. Adopting new or updating current building codes or floodplain management ordinances.

   ii. Adopting or updating zoning laws and requirements.

   iii. Developing new land use plans or requirements.

C. ELIGIBLE COSTS

Outcome: To establish costs eligible for reimbursement under Section 1206 of the DRRA.

1. Eligible costs under this policy will be funded at the Permanent Work cost-share applicable to the disaster.

2. Costs to perform eligible work described in Section B.3 will be eligible for reimbursement for a period no longer than 180 days after the date of the major disaster declaration.[6] FEMA will not extend assistance beyond 180 days.

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[6] *Other sources of FEMA funding may be available to applicants that can demonstrate a need for services that extend beyond the eligibility of this policy. For example, FEMA's Hazard Mitigation Grant Program may be available to fund extraordinary post-disaster code enforcement costs not covered by this policy and activities to promote disaster-resistant codes.*

3. This policy does not change the eligibility criteria for PA Permanent Work projects. Activities to administer and enforce building code and floodplain ordinances authorized by this policy are eligible regardless of whether the building code or floodplain ordinance in question meets PA's regulatory eligibility criteria for Permanent Work.

   Example scenario: After a disaster is declared, a community decides to update its building code to require a four-foot freeboard for all buildings in the special flood hazard area. Work associated with administering and enforcing the four-foot freeboard for disaster-damaged buildings in the community is eligible under this policy. However, PA would not fund the physical repairs to a school building to meet the new four-foot freeboard requirement since the code was adopted after the date of the disaster declaration and therefore ineligible according to PA regulation and policy.[7]

4. In accordance with the amendments made by DRRA to Section 406 of the Stafford Act, only overtime for budgeted employees and straight-time and overtime for extra hires are eligible. FEMA cannot reimburse labor costs associated with straight-time for budgeted employees.

5. Other costs associated with extra hires or contracted support may be eligible for reimbursement. This includes costs for travel, accommodations, and per diem, as appropriate.

6. The purchase of supplies and equipment necessary to effectively execute activities described in this policy are subject to requirements established in the PAPPG and 2 CFR part 200.

7. Costs associated with reimbursement for mutual aid or Emergency Management Assistance Compact (EMAC) will be reimbursed according to provisions established in the PAPPG.

8. Costs associated with legal proceedings related to code and floodplain management ordinance enforcement are eligible for reimbursement.

9. All claimed costs must be necessary and reasonable and are subject to program eligibility and other Federal requirements, including those related to procurement and contracting.[8]

10. Pursuant to Section 312 of the Stafford Act, FEMA is prohibited from providing financial assistance where such assistance would duplicate funding available from another program, insurance, or any other source for the same costs.[9]

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[7] FEMA would fund the repair work to meet the minimum code requirements as described in Chapter 8.3.B of the PAPPG and 44 CFR Part 9.11.
[8] See PAPPG and 2 CFR part 200.
[9] 42 U.S.C. § 5155.

11. Revenue collected by the applicant (including fees and fines) for the performance of eligible work funded under this policy is considered program income. The project worksheet will be reduced accordingly during closeout. FEMA will deduct income from total project costs as specified in 2 CFR Section 200.80 and 200.307. If the applicant waives fees or fines following the disaster, FEMA will still reduce the eligible costs by the amount that the fees or fines would have been.

D. Direct Assistance through FEMA's Federal Insurance and Mitigation Administration

Outcome: To describe the process for assistance under FEMA's Federal Insurance and Mitigation Administration's Substantial Damage Data Collection Contract.

1. Work described in this section is funded through FEMA's Substantial Damage Data Collection Contract, which is currently funded as a task order under the Production and Technical Services Contract administered by the Risk Management Directorate of FEMA's Federal Insurance and Mitigation Administration. Refer to the relevant State NFIP Coordinator or FEMA Regional Floodplain Management and Insurance Branch Chief for more information on the contents of this section.

2. For substantial damage data collection work described in section B.3.d(i-xiii) of this policy, FEMA's Substantial Damage Data Collection Contract may be available to support communities in cases where the State, Tribal, Territorial and local government lack the capability to perform or contract for eligible substantial damage data collection-related efforts due to the extreme catastrophic nature of an event or a demonstrated lack of resources.

3. Assistance provided through FEMA's Substantial Damage Data Collection Contract for disasters declared on or after the effective date of this Policy will be subject to the Permanent Work cost-share applicable to the disaster.

4. Local governments that seek assistance through FEMA's Substantial Damage Data Collection Contract must submit a request in writing to the State, which will review and, if warranted, submit the request Regional Administrator which shall include:

    a) A statement as to the reasons the State, Tribal, Territorial, or local government cannot perform or contract for performance of the requested work;

    b) Agreement that the State, Tribe, or Territory will hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work; and

c) Agreement that the State, Tribe, or Territory will provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of this policy and the FEMA-State Agreement.[10]

5. If the Regional Administrator approves the request, the work must be completed within 180 days of the date of the disaster declaration.[11]

6. Once the Substantial Damage Data Collection Contract is approved and activated for a local government, FEMA will only provide assistance described in section B.3.d(i-xiii) to that local government through the Contract. Work under section B.3.d(i-xiii) performed prior to the date of activation of the Substantial Damage Data Collection Contract will be eligible subject to the terms of this policy.

7. Assistance for work provided under FEMA's Substantial Damage Data Collection Contract cannot also be reimbursed through the PA program.

E. OTHER DOCUMENTATION REQUIREMENTS

Outcome: To establish documentation requirements for this policy.

1. To receive funding, applicants should submit the following to FEMA, as applicable:

   a) All supporting documentation necessary to demonstrate the work completed and the location of the work.

   b) All documentation associated with work completed through an EMAC resource request or intrastate/interlocal mutual aid request.

   c) If work was performed by contract labor, the applicant will submit to FEMA all documentation demonstrating federal procurement rules in 2 CFR Part 200 were followed.

2. FEMA may require that the applicant provide documentation demonstrating that the eligible activities are in support of the community's legally adopted building code or floodplain management ordinance. This may include floodplain management ordinance administration and enforcement documentation; disaster-related development inspections; and substantial damage inspections, determinations, letters, and appeals.

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[10] *44 CFR § 206.208(b)*
[11] *Section 406* Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as Amended.

RESPONSIBLE OFFICE
Office of Response and Recovery
Recovery Directorate
Public Assistance Division

_____
Keith Turi
Assistant Administrator
Recovery Directorate

    10/15/20
_____
Date

ADDITIONAL INFORMATION

REVIEW CYCLE

This policy will be reviewed, reissued, revised, or rescinded within four years of the issue date, and will be incorporated into the PAPPG update that follows the publication of this policy.

AUTHORITIES

Section 324, 402 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5165b, 5170a and 5172, as amended.

Sections 324, 402 and 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5165b, 5170a and 5172, as amended. The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

DEFINITIONS

Substantial Damage (SD)[12] – Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred. Note: this should not be confused with the FEMA Public Assistance Repair versus Replacement Rule, which utilizes a different calculation to determine Public Assistance eligibility for repair and replacement.

Substantial Improvement (SI)[13] – Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed.

QUESTIONS

Direct questions to   FEMA-Recovery-PA-Policy@fema.dhs.gov

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[12] *44 CFR Part 59.1*
[13] *Ibid.*

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Appendix A: Opt-in Notification for Building Code and Floodplain Management Administration and Enforcement

In accordance with the Federal Emergency Management Agency (FEMA) Recovery Policy FEMA Policy FP #204-079-01, Building Code and Floodplain Management Administration and Enforcement *(Policy)*, Applicants that meet the criteria below may elect to opt-in to the Policy.

Applicants wishing to participate must make their election no later than either:

- **February 1, 2021 (90 days from effective date of the Policy), or**

- **90 days after the date of the Recovery Scoping Meeting (RSM) for Applicants that have not yet participated in their RSM**

This notification does not apply to Applicants in declarations on or after the effective date of this Policy**.**

By signing below, the Applicant elects to seek reimbursement for activities eligible under FEMA Policy FP #204-079-01, *Building Code and Floodplain Management Administration and Enforcement* and affirms the following is true and correct:

1. The disaster declaration under which reimbursement is sought was signed on or before **November 1, 2020**.

2. This election is made no later than **February 1, 2021** – or – this election is made no later than 90 days after the date of the Recovery Scoping Meeting (RSM) for Applicants that have not yet participated in their RSM.

_____

Signature of Applicant's Authorized Representative and Title (Printed)   Date

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Applicant Name