



FEMA

Duplication of Programs and FEMA Hazard Mitigation Assistance (HMA)

Frequently Asked Questions (FAQ)

What is a “Duplication of Programs”?

The doctrine of duplication of programs (DOP) prohibits FEMA, or any Federal agency, from using its assistance to fund projects or programs if funding for similar activities is available under a more specific Federal authority.

Federal agency funds for programs or projects are made available through the Congressional authorization and appropriation process. Understanding whether another Federal agency or program has a more specific authority to carry out a project may require HMA applicants and subapplicants to consult with other Federal agencies regarding their authorities. DOP is most often dealt with on a case-by-case basis, based on the type of activity in question, the purpose of the activity, and period of availability of assistance. This document provides some general DOP guidelines that applicants and sub-applicants can follow before applying for an HMA grant.

This document is intended to address common HMA questions concerning DOP. If applicants or subapplicants have other project-specific DOP questions, they should contact their FEMA Regional HMA program officer.

Questions Concerning Duplication of Programs

1. What are FEMA’s HMA programs authorized to fund?

Flood Mitigation Assistance (FMA) program authorities are provided by Section 1366 of the National Flood Insurance Act of 1968, as amended (NFIA) (42 U.S.C. § 4104c) to use amounts made available from the National Flood Mitigation Fund (NFIF) for planning and carrying out activities designed to reduce the risk of flood damage to structures covered under contracts for flood insurance. Eligible mitigation activities for National Flood Insurance Program (NFIP) insured properties, provided they are consistent with



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requirements for FMA mitigation planning, technical feasibility and cost-effectiveness, include: the acquisition, elevation, relocation, demolition or floodproofing of structures in special flood hazard areas (SFHAs) or other areas of flood risk; the acquisition of properties substantially damaged by flood; the elevation, relocation, or floodproofing of utilities (including equipment that serves structures); minor physical flood mitigation efforts; the development or update of State, Tribal government or community mitigation plans; technical assistance by States to communities and individuals to conduct eligible mitigation activities; and any other activities specified by regulation.

The Hazard Mitigation Grant Program (HMGP) and the Pre-Disaster Mitigation (PDM) program authorities are provided by sections 404 and 203 of the Stafford Act (42 U.S.C. §§ 5133; 5170c, respectively) and program regulations at 44 CFR §§ 206.430-206.440 (HMGP). These programs provide assistance to State, tribal and local governments for hazard mitigation activities that are cost-effective and which substantially reduce the risk of future losses from major disasters. Major disaster means any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, affecting any part of the United States.¹

2. What other Federal agencies or programs have the potential to duplicate HMA activities?

Federal agencies and programs with natural hazard mitigation authorities have the potential to duplicate HMA activities. Examples include the flood hazard reduction programs under the U.S. Army Corps of Engineers (USACE) and the Natural Resources Conservation Service (NRCS) and wildfire hazard reduction programs under the U.S.

¹ Sec. 102, Definitions (42 U.S.C. § 5122), Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, April 2013



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Forest Service (USFS) and other Federal land management agencies. However, other Federal authorities are rarely identical to HMA authorities in terms of the agency's specific mission, program purpose and the intended benefits of the protective measure. Due to the many variables involved, DOP is generally determined on a case-by-case basis, though some general principles apply.

3. What Types of Flood Risk Reduction Activities May Constitute a DOP?

HMA assistance for flood risk reduction measures is intended to complement and not duplicate, substitute, or replace the flood risk reduction efforts of other federal agencies, such as USACE and NRCS. Prior to submission of the grant application, the applicant should ensure that DOP with these or other potential Federal funding sources will not occur. The following represent the most common DOP situations:

- a. If the USACE or NRCS is authorized to complete a specific structural flood risk reduction project, FEMA may not fund a structural flood risk reduction project of a similar nature in the area identified in the USACE or NRCS project plan. A DOP exists regardless of whether funds have been appropriated for the project.
- b. If the USACE or the NRCS are authorized to perform a flood risk reduction study with the goal of exploring options for structural flood protection systems in a specified area, FEMA generally may not provide HMA funds for projects of a similar nature in the same area. When the other Federal agency has completed the study and selected a project alternative – as indicated by a public record of decision – the study no longer presents a DOP. At that point, generally only the selected project elements indicated in the public record of decision represent a DOP.



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- c. There is generally no DOP presented by FEMA performing property acquisition for open space, elevation, or minor localized measures within a USACE or NRCS flood risk reduction project or study area. However, FEMA regulations require subapplicants to coordinate with USACE to assure that no levee projects are planned in areas proposed for HMA property acquisition for open space activities (44 C.F.R. §80.13(b), Consultation Regarding Other Ongoing Federal Activities).
 - d. FEMA may not use HMA funds to mitigate a portion of a flood risk reduction project owned or operated by another Federal agency. However, if a flood protection project is only regulated by another Federal agency for a purpose other than flood risk reduction, the structure is still eligible for HMA. For example, dams regulated by the Environmental Protection Agency for water quality may be eligible for HMGP and PDM program flood protection improvements.
 - e. FEMA may not fund a project where there is a statute stating that another Federal agency has exclusive jurisdiction to construct flood risk reduction structures in a specified part of the United States.
- 4. Is there a potential for DOP between HMA activities and activities funded under the U.S. Department of Housing and Urban Development (HUD)'s Community Development Block Grant Program (CDBG)?**

In the absence of any conflicting authorizing language for specific projects, HUD CDBG funds are generally not a source of DOP, even though they may fund similar post-disaster mitigation activities such as property acquisition and structure elevation. Both HUD and FEMA authorities allow for a wide range of



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hazard mitigation activities. Additionally, HUD CDGB funds are often available as a source of match for HMA grants.

5. Can FEMA Fund HMA Mitigation Activities on Leased Federal Land?

FEMA will not fund HMA mitigation projects located on Federal lands. Federal lands are managed by a number of Federal bureaus, agencies or other congressionally chartered authorities. These authorities are responsible for all activities on Federal lands including natural hazard mitigation.

6. Can a State, Local, Tribal or Territorial government use HMA mitigation planning assistance to support hazard risk assessment and mitigation strategies under a separately sponsored planning activity, such as a HUD-funded comprehensive community development plan?

This question pertains to duplication of benefits, which is distinct from DOP. FEMA may not use HMA funds to pay for an activity already financed by another source. For example, if a community received HUD CDBG funds to develop a flood hazard risk assessment as part of a comprehensive community development planning grant, the community cannot also use HMA planning funds to pay for flood hazard risk assessment. However, if HUD's comprehensive planning assistance does not pay for for hazard-related planning activities, the community may use HMA planning grant funds to integrate risk and mitigation strategy data from the HMA plan into the HUD-sponsored comprehensive plan. However, the community remains obligated to fulfill all HMA planning grant requirements.



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7. How is “Packaging of Programs” as identified in 44 C.F.R. § 206.434(g) distinct from “Duplication of Programs” as identified in 44 C.F.R. § 206.434(f)?

With respect to hazard mitigation, packaging of programs occurs when two or more Federal agencies work together to contribute to a comprehensive mitigation solution, provided that each contribution fulfills each agency’s own individual program requirements and does not duplicate funding for the same project or supersede the other agency’s authority to perform a project.

Example: Packaging of Programs

USACE funds a flood protection levee in one portion of a flood risk area. FEMA uses HMA funds to separately acquire structures for open space within a different portion of the same area. The two actions function independently under each agency’s individual authorities but each contributes to a comprehensive solution to flooding.

8. Can a subapplicant use HMA funds for property acquisition and structure elevation projects that fall within the scope of a USACE or NRCS flood control study/investigation?

Property acquisition and structure elevation generally do not constitute a DOP with USACE or NRCS structural flood risk reduction projects or studies related to such projects. FEMA has the authority to elevate structures for flood protection and to acquire, demolish, or relocate structures with conversion of the underlying property to deed restricted open space. Subapplicants must consult with USACE to ensure that there are no levee or other structural flood risk reduction projects are planned in areas where property acquisition for open space will occur, in accordance with 44 C.F.R. § 80.13(b), Consultation Regarding Other Ongoing Federal Activities.



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9. Is there a significant potential for DOP with other Federal agencies involving property acquisition and relocation?

No. The HMGP and FMA programs are expressly authorized to perform property acquisition and relocation for open space to eliminate flood hazards. The PDM program has broad authority to mitigate against the risk of future hazards which encompasses property acquisition for open space as a flood hazard mitigation measure

10. Is there a significant potential for DOP with other Federal agencies involving structure elevation?

No. The same reasons for low potential for DOP under FAQ #8 apply to elevation as well as to acquisition and relocation projects. HMA funds used for structure elevation have a specific purpose of protecting lives and property from future disaster losses and reducing payouts from the National Flood Insurance Fund or the Disaster Relief Fund. Other Federal agencies that may fund structure elevation such as USACE or HUD do not have this same purpose which precludes a DOP occurrence.

11. HMA guidance states that Federal land managing agencies under the U.S. Department of Agriculture (USDA) and U.S. Department of Interior (DOI) have wild land fire management responsibilities on both Federal and adjacent non-Federal lands. Are wildfire mitigation projects eligible under the HMA if none of these agencies have a current or planned wildfire reduction project?

There is a low potential for DOP involving defensible space and ignition-resistant construction activities under the HMA. The primary concern is with hazardous fuels reduction activities. While USDA and DOI agencies typically operate only within federally-managed lands, Congress also authorizes hazardous fuels reduction activities on adjacent non-Federal lands. However, this authority is limited to Wildland Urban



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Interface (WUI) areas.^[1] WUI areas are built areas in the vicinity of undeveloped wildland vegetation that are at high risk from wildfire. The DOI – including the Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (USFWS), National Park Service (NPS), and Bureau of Reclamation (BOR) – and the USDA Forest Service maintain shared Federal records of existing and proposed hazardous fuels reduction projects.

If structures proposed for FEMA HMA hazardous fuels reduction are located in a WUI area, the applicant can check for potential duplication by contacting a local office of any of these bureaus or agencies for information. HMA applicants are therefore expected to be aware of any current or proposed hazardous fuels reduction projects under the DOI or USDA Forest Service and should provide an assurance to FEMA that there is no DOP. If a project is already under consideration for funding by another agency, the community should await the outcome of that decision before applying for an HMA grant. If an agreement is already in place with another agency to perform hazardous fuels reduction but there is a delay in funding, HMA funds cannot be made available to substitute or replace other assistance. If Congress has specifically authorized another Federal agency to perform a project, there is a DOP and HMA funds cannot be used regardless of whether there is a current appropriation.

^[1] WUI areas are established under a number of vehicles including the Healthy Forests Recovery Act, the list of WUI areas provided on pages 751-777 of Federal Register notice dated January 4, 2001, pursuant to Title IV of the FY 2001 Appropriations Act for the Department of the Interior and Related Agencies (Public Law 106–291) or a community wildfire protection plan (CWPP) or its equivalent.



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12. What about the potential for DOP relating to other specific hazards – such as seismic, wind, hurricane, tsunami, or landslide – or other project-specific measures, such as the utility protective services?

Because of the wide range of existing Federal programs, new legislation, Congressional earmarks, and for other reasons, the potential for DOP exists when FEMA approves a grant or project for other specific hazards including seismic, wind or for other hazard-specific measures. Other Federal agencies with disaster-related functions not mentioned in this FAQ generally provide for emergency assistance, temporary services, or repair assistance following a disaster, not for the permanent mitigation of future risk. However, if other Federal agencies' disaster-related activities appear to have the same purpose as HMA activities, the potential for DOP exists. FEMA may review the circumstances of a potential DOP on a case-by case basis to prevent a DOP from occurring.