



Federal Insurance and Mitigation Administration

Waiver of Duplication of Programs under the Disaster Recovery Reform Act

March 2, 2020

Section 1210(b) of the Disaster Recovery Reform Act (DRRA) of 2018 provides that FEMA may use Hazard Mitigation Grant Program (HMGP) funds (Section 404 of the Stafford Act) to fund mitigation construction activities within the scope of a United States Army Corp of Engineers (USACE) federally-authorized water resources development project. This creates an exception to the prohibition under Hazard Mitigation Assistance (HMA) programs that FEMA will not provide financial assistance for activities FEMA determines another federal agency has more specific authority to conduct.¹ This possible overlap of two federal agencies' authority for the same or similar activities is referred to as Duplication of Programs (DOP). For instance, if the USACE had authority to fund a levee in a particular area, FEMA would not fund a levee in the area, as it deferred to USACE's more specific authority.

At the direction of Congress, the USACE implements water resource development activities. As part of these activities, USACE develops civil works projects principally to improve navigable channels, reduce flood and storm damage, and restore aquatic ecosystems. Congress directs the USACE through legislation that authorizes USACE to perform water resource development activities, and generally appropriates funding for USACE to perform them.

The purpose of FEMA's HMGP is to help communities implement hazard mitigation measures following a Presidential Major Disaster Declaration in the areas of the state, tribe, or territory requested by the Governor or Tribal Chief Executive. The key purpose of this grant program is to enact mitigation measures that reduce the risk of loss of life and property from future disasters.

This new provision in DRRA, Section 1210(b) means HMGP recipients (states, federally-recognized tribes, or territories) may now choose to prioritize and submit risk reduction applications for projects normally under the primary purview of the USACE. These projects require coordination with USACE (through FEMA) and they may be subject to certain conditions such as Section 408 permits and USACE standards, if applicable.

¹ 44 CFR §206.434 (f) and (g) and HMA Guidance (2015), Part III, D.4, p. 31. This restriction derives from appropriations law that prohibits augmentation of a federal agency's purpose, i.e., expanding into another federal agency's jurisdiction or area of authority. FEMA characterizes this issue as "duplication of programs" or "DOP."

Frequently Asked Questions

1. *What specifically does 1210(b) authorize?*

- This provision authorizes FEMA to use HMGP for mitigation construction activities within the scope of a federally-authorized USACE water resources development project. These include smaller projects which Congress has granted USACE continuing authority to construct (such as under section 205 of the 1948 Flood Control Act (33 USC 701s), section 103 of the 1962 River and Harbor Act (33 USC 426g), and under other similar flood protection acts) as well as larger projects which Congress has specifically authorized for construction (such as in a Water Resources Development Act, which is periodically reauthorized). These projects can address a variety of needs, including structural and non-structural flood risk reduction, coastal storm risk reduction, and other water resources development purposes. The local USACE District can assist in confirming whether a proposed activity might qualify as a federally-authorized water resources development project under USACE's various statutory and program authorities.
- FEMA's HMGP funding for a federally-authorized water resources development project must be an eligible HMGP activity. For example:
 - Eligible project examples may include:
 - Pump station retrofits to increase capacity
 - Raising the level of protection for a floodwall or levee
 - Ineligible activities include:
 - Repairs;
 - Temporary measures such as inflatable bladder dams.
- Section 1210(b) applies notwithstanding Section 312 of the Stafford Act, which prohibits a duplication of benefits (DOB) except in very limited circumstances (i.e., when a DOB waiver will not result in waste, fraud, or abuse, and is in the public interest).
- This provision does not waive the federal identity of HMGP or USACE funding for cost share purposes. The HMGP grant provides up to 75 percent federal cost share with a 25 percent non-federal cost share requirement. FEMA's federal cost-share must be applied toward the federal share of the project, and the non-federal cost-share applied to the non-federal share of the project. The cost share for a federally-authorized water resources development project remains unaffected.
- This provision does not affect the responsibilities of a non-federal interest with respect to the project, including those related to the provision of lands, easements, right of ways, dredge material disposal areas, and necessary relocations.
- Once HMGP funding is applied to construction of the federally-authorized water resources development project, no further federal funds may be provided for the project's construction. This prohibition is an important consideration when choosing to apply for HMGP assistance. However, the prohibition does not apply to subsequent modifications and repairs, which may be funded and implemented by USACE or other federal agencies.

2. *How should I coordinate interest in a potential project?*

- HMGP recipients (states, federally-recognized tribes, or territories) have the primary responsibility for prioritizing, selecting, and administering state and local hazard mitigation projects. Although individuals may not apply directly to the recipient for assistance, local governments may sponsor an application on their behalf.

- HMGP funding is limited; therefore, recipients and local government officials must make difficult decisions as to the most effective use of grant funds. Not all projects may be selected.
- Individuals and communities should contact their respective State Hazard Mitigation Officer to explore mitigation opportunities.
- FEMA will contact the respective USACE District Office to identify the HMGP project potentially qualifying under USACE authority for awareness and appropriate federal coordination.

3. How can a project be frontloaded or streamlined?

- Addressing the following HMGP program requirements at the earliest stage possible in the decision-making process is important because it can lead to enhanced project scoping and development and prevent delays later:
 - Mitigation Planning;
 - Technical Feasibility and Effectiveness;
 - Floodplain Management and Protection of Wetlands;
 - Environmental Planning and Historic Preservation Review and Compliance;
 - Cost-Effectiveness; and
 - Cost Review

4. What are helpful links or resources?

- [Hazard Mitigation Assistance Guidance: www.fema.gov/media-library/assets/documents/103279](http://www.fema.gov/media-library/assets/documents/103279)
- [Hazard Mitigation Grant Program: www.fema.gov/hazard-mitigation-grant-program](http://www.fema.gov/hazard-mitigation-grant-program)
- [Unified Federal Environmental and Historic Preservation Review: www.fema.gov/unified-federal-environmental-and-historic-preservation-review-presidentially-declared-disasters](http://www.fema.gov/unified-federal-environmental-and-historic-preservation-review-presidentially-declared-disasters)
- [State Hazard Mitigation Officers: www.fema.gov/state-hazard-mitigation-officers](http://www.fema.gov/state-hazard-mitigation-officers)
- [USACE Division and District Offices: www.usace.army.mil/Locations.aspx](http://www.usace.army.mil/Locations.aspx)
- [USACE Section 408 Permits: www.usace.army.mil/Missions/Civil-Works/Section408/](http://www.usace.army.mil/Missions/Civil-Works/Section408/)

Questions

For questions concerning the DOP provisions for 1210(b) of the DRRRA, please contact HMAProgram@fema.dhs.gov.

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