

§ 79.8

must submit appropriate evidence, documentation, or data to support this claim.

(v) The property owner relied upon FEMA Flood Insurance Rate Maps (FIRMs) that were current at the time the property was purchased, and the effective FIRM and associated Flood Insurance Study (FIS) did not indicate that the property was located in an area having special flood hazards. The property owner must produce the dated FIRM and FIS in effect at the time the property was purchased to support this claim.

(vi) An alternative mitigation activity would be at least as cost effective as the offered mitigation activity. The property owner must submit documentation of the costs for a technically feasible and eligible alternative mitigation activity based on estimates from qualified appraisers, professional engineers, or registered architects, and information and documentation demonstrating the cost effectiveness using a FEMA approved methodology to support this claim.

(2) The FEMA Regional Administrator will conduct an initial review of each appeal that is filed on a timely basis to determine if the appeal complies with this section and includes sufficient documentation to be evaluated. The Regional Administrator may reject an appeal on initial review if it is made on a basis other than those listed in paragraph (d)(1) of this section; if the property owner does not provide sufficient documentation, including, if applicable, supplemental information requested by the Regional Administrator by the deadline established by the Regional Administrator, which shall not exceed the timeframe described in paragraph (d) of this section; or if the appeal otherwise fails to comply with this section.

(3) If, upon initial review, the Regional Administrator determines that the basis for the offered mitigation activity was erroneous on its face and the appeal can be resolved in favor of the property owner, the appeal will be closed and no insurance increase will apply to the property. All other cases will be referred to the Administrator for assignment to an independent third party for review. The independent third

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party shall make a final determination on each appeal within 90 days of the date on which FEMA receives the appeal. As a low cost option, the property owner may request that the Administrator substitute a reviewer from FEMA's Alternative Dispute Resolution Office for the independent third party.

(4) A property owner who brings an appeal will be responsible for paying his/her attorneys' fees and costs to gather the necessary documentation and data to demonstrate the ground(s) for the appeal. Attorneys' fees and costs cannot be awarded by the independent third party.

(5) If the property owner prevails on appeal, the independent third party shall require the Administrator to charge the risk premium rate for flood insurance coverage of the property at the amount paid prior to the mitigation offer, as adjusted by any other premium adjustments otherwise applicable to the property. If the independent third party hearing the appeal is compensated for such service, the NFIF shall bear the costs of such compensation.

(6) If the property owner loses the appeal, the Administrator shall promptly increase the chargeable risk premium rate for flood insurance coverage of the property to the amount established pursuant to paragraph (c) of this section, and shall collect from the property owner the amount necessary to cover the stay of the applicability of such increased rates while the appeal was pending. If FEMA does not receive the additional premium by the date it is due, the amount of coverage will be reduced to match the amount of premium payment received. If the independent third party hearing the appeal is compensated for such service, the property owner shall bear the costs of such compensation.

§ 79.8 Allowable costs.

(a) *General.* General policies for determining allowable costs are addressed in §§ 13.4, 13.6, and 13.22 of this chapter. Allowable costs are explained in this paragraph.

(1) *Eligible Management Costs—(i) Grantee.* States are eligible to receive

management costs consisting of a maximum of 10 percent of the planning and project activities awarded to the State, each fiscal year under FMA and SRL, respectively. These costs must be included in the application to FEMA. An Indian tribal government applying directly to FEMA is eligible for management costs consisting of a maximum of 10 percent of grants awarded for planning and project activities under the SRL and FMA programs respectively.

(ii) Subgrantee. Subapplicants may include a maximum of 5 percent of the total funds requested for their subapplication for management costs to support the implementation of their planning or project activity. These costs must be included in the subapplication to the State.

(2) *Indirect costs.* Indirect costs of administering the FMA and SRL programs are eligible as part of the 10 percent management costs for the grantee or the 5 percent management costs of the subgrantee, but in no case do they make the recipient eligible for additional management costs that exceed the caps identified in paragraph (a)(1) of this section. In addition, all costs must be in accordance with the provisions of part 13 of this chapter and Office of Management and Budget Circular A-87.

(b) *Pre-award costs.* FEMA may fund eligible pre-award planning or project costs at its discretion and as funds are available. Grantees and subgrantees may be reimbursed for eligible pre-award costs for activities directly related to the development of the project or planning proposal. These costs can only be incurred during the open application period of the respective grant program. Costs associated with implementation of the activity but incurred prior to grant award are not eligible. Therefore, activities where implementation is initiated or completed prior to award are not eligible and will not be reimbursed.

(c) *Duplication of benefits.* Grant funds may not duplicate benefits received by or available to applicants, subapplicants and project participants from insurance, other assistance programs, legal awards, or any other source to address the same purpose. Such individual or entity must notify

the grantee and FEMA of all benefits that it receives or anticipates from other sources for the same purpose. FEMA will reduce the subgrant award by the amounts available for the same purpose from another source.

(d) *Negligence or other tortious conduct.* FEMA grant funds are not available where an applicant, subapplicant, other project participant, or third party's negligence or intentional actions contributed to the conditions to be mitigated. If the applicant, subapplicant, or project participant suspects negligence or other tortious conduct by a third party for causing such condition, they are responsible for taking all reasonable steps to recover all costs attributable to the tortious conduct of the third party. FEMA generally considers such amounts to be duplicated benefits available for the same purpose, and will treat them consistent with paragraph (c) of this section.

(e) FEMA grant funds are not available to satisfy or reimburse for legal obligations, such as those imposed by a legal settlement, court order, or State law.

§ 79.9 Grant administration.

(a) The Grantee must follow FEMA grant requirements, including submission of performance and financial status reports, and shall follow adequate competitive procurement procedures. In addition, grantees are responsible for ensuring that all subgrantees are aware of and follow the requirements contained in part 13 of this chapter.

(b) During the implementation of an approved grant, the State POC may find that actual costs are exceeding the approved award amount. While there is no guarantee of additional funding, FEMA will only consider requests made by the State POC to pay for such overruns if:

(1) Funds are available to meet the requested increase in funding;

(2) The amended grant award meets the cost-share requirements identified in this section; and

(3) The total amount obligated to the State does not exceed the maximum funding amounts set in § 79.4(a)(2).

(c) Grantees may use cost overruns from ongoing subgrants to offset overruns incurred by another subgrant(s)