



High Hazard Potential Dam Rehabilitation Grant Program FEMA Policy 104-008-7

BACKGROUND

The National Dam Safety Program Act (Pub. L. 92–367), as amended, 33 U.S.C. § 467f-2, authorizes FEMA to provide High Hazard Potential Dam (HHPD) Rehabilitation Grant Program assistance to eligible states for pass through to non-Federal governmental organizations or nonprofit organizations for the rehabilitation of dams that fail to meet minimum dam safety standards and pose unacceptable risk to life and property.

PURPOSE

The purpose of this policy, inclusive of FEMA’s *Rehabilitation of High Hazard Potential Dams Grant Program Guidance (June 2020)*, is to establish the framework and requirements to implement the HHPD grant program.

PRINCIPLES

The HHPD grant program provides technical, planning, design, and construction assistance for eligible rehabilitation activities that reduce dam risk and increase community preparedness.

The HHPD grant program supports FEMA Strategic Goal 1: Build a Culture of Preparedness and Presidential Policy Directive 8: Build and Sustain National Preparedness. Specifically, the HHPD supports Objective 1.1 of Strategic Goal 1 to incentivize investments that reduce risk, including pre-disaster mitigation, and reduce disaster costs at all levels.

The 2014 Quadrennial Homeland Security Review (QHSR) has identified strengthening national preparedness and resilience as one of the basic Homeland Security missions. This initiative supports this mission by providing grant assistance for high hazard potential dams that pose an unacceptable risk to the public.

The Objectives of the HHPD Grant Program include:

1. Provide financial assistance for repair, removal, or rehabilitation of eligible high hazard potential dams.
2. Protect the federal investment by requiring operation and maintenance of the project for the 50-year period following completion of rehabilitation.
3. Encourage state, local, and territorial governments to consider all dam risk in state and local mitigation planning.
4. Promote community preparedness by requiring recipients to develop and implement floodplain management plans that address potential measures, practices, and policies



to reduce loss of life, injuries, damage to property and facilities, public expenditures, and other adverse effects of flooding in the area impacted by the project; plans for flood fighting and evacuation; and public education and awareness of flood risks.

5. Reduce the potential consequences to life and property of high hazard potential dam incidents.
6. Incentivize states to incorporate risk-informed analysis and decision making into their dam safety practice.
7. Reduce the overall number of high hazard potential dams that pose an unacceptable risk to the public.
8. Promote a program of Emergency Action Plan (EAP) implementation, compliance, and exercise for high hazard potential dams.
9. Reduce costs associated with dam rehabilitation through the deployment of innovative solutions and technologies.

REQUIREMENTS

A. APPLICABILITY

Outcome: This policy is inclusive of FEMA's *Rehabilitation of High Hazard Potential Dams Grant Program Guidance (June 2020)*, and FEMA and states will implement the HHPD grant program based on the applicable standards outlined below.

1. This policy and FEMA's *Rehabilitation of High Hazard Potential Dams Grant Program Guidance (June 2020)* applies to the HHPD Grant Program starting in fiscal year 2020.
2. All statutory, regulatory, and programmatic requirements apply, including but not limited to this policy and FEMA's *Rehabilitation of High Hazard Potential Dams Grant Program Guidance (June 2020)*.

B. APPLICANT AND SUBRECIPIENT ELIGIBILITY

Outcome: Potential applicants can discern their eligibility for the HHPD grant program.

1. Eligible applicants are limited to states that have a state dam safety program authorized by state legislation. State Applicants must meet the following criteria to be eligible:
 - a. The state applicant must submit a list of all eligible high hazard potential dams in their state with the application. The state applicant must submit an official assurance statement (signed by the State Dam Safety Officer or Governor's Authorized Representative [GAR]) that all dams included on the list of eligible high hazard potential dams are regulated by the state dam safety program and meet the HHPD criteria for eligible high hazard potential dams.
 - b. The state applicant must have in place (by the application deadline and at the time of obligation of grant funds) a FEMA-approved state hazard mitigation plan that includes all dam risks and complies with the Disaster Mitigation Act of 2000 (Public Law 106–390; 114 Stat. 1552). If an HHPD applicant does not have a state mitigation plan that includes all dam risks, the applicant may request an extension to meet this requirement. The applicant's state hazard mitigation plan will be assessed against 44



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C.F.R. Part 201, Mitigation Planning, to determine if the plan complies with the requirement.

- c. The state applicant must use a risk-based prioritization method to identify eligible high hazard potential dams for which grants may be made to subrecipients.
2. Eligible subrecipients are limited to non-federal governmental organizations (other than the designated applicant) and nonprofit organizations. Subrecipients must meet the following criteria to be eligible:
 - a. Act in accordance with the state dam safety program and the project dam must be regulated by the state dam safety program. All activities must be approved by the state dam safety agency. Any engineering studies, plans, or design drawings and specifications must be approved, signed, and stamped by a qualified design professional registered in the state in which the project is located.
 - b. Participate in, and comply with, the National Flood Insurance Program (NFIP);
 - c. Commit to provide operation and maintenance of the project for the 50-year period following completion of rehabilitation;
 - d. Subrecipients must have in place at the time of obligation of subgrant funds a local FEMA-approved hazard mitigation plan that includes all dam risks and complies with the Disaster Mitigation Act of 2000 (Public Law 106–390; 114 Stat. 1552). Nonprofit organizations that are subrecipients must be located in a local jurisdiction with a FEMA-approved hazard mitigation plan that includes all dam risks and complies with the Disaster Mitigation Act of 2000 (Public Law 106–390; 114 Stat. 1552). If an HHPD subrecipient does not have a local mitigation plan that includes all dam risks, the subrecipient may request an extension to meet this requirement. The subrecipient's local hazard mitigation plan will be assessed against 44 C.F.R. Part 201, Mitigation Planning, to determine if the plan complies with the requirement.
 - e. Carries out activities relating to the public in the area around the dam in accordance with the hazard mitigation plan.
 - f. Complies with section 5196(j)(9) of title 42 of the U.S. Code (as in effect on December 16, 2016) with respect to projects receiving assistance under this section in the same manner as recipients are required to comply in order to receive financial contributions from the Administrator for emergency preparedness purposes.
 - g. Complies with chapter 11 of title 40; Selection of Architects and Engineers. The language can be viewed at:
<http://uscode.house.gov/view.xhtml?path=/prelim@title40/subtitle1/chapter11&edition=prelim>.
 - h. Have in place (or will be developed not later than 1 year after the date of execution of a project agreement and implemented not later than 1 year after the date of completion of construction of the project) a floodplain management plan to reduce the impacts of future flood events in the area impacted by the project. The floodplain management plan must address:
 - i. potential measures, practices, and policies to reduce loss of life, injuries, damage to property and facilities, public expenditures, and other adverse impacts of flooding in the area protected by the project;
 - ii. plans for flood fighting and evacuation; and



- iii. public education and awareness of flood risks.

- 3. See the *Rehabilitation of High Hazard Potential Dams Grant Program Guidance (June 2020)* for specific requirements.

C. FUNDING – DETERMINATION

Outcome: FEMA makes funding determinations based on the formula:

- 1. Equal distribution
 - a. One-third of the available funding will be distributed equally among states in which the projects for which eligible applications are submitted are located.
- 2. Need-based
 - a. Two-thirds of the available funding will be distributed among states in which the projects for which eligible applications are submitted are located based on the proportion that:
 - i. the number of eligible high hazard potential dams in the state; bears to
 - ii. the number of eligible high hazard potential dams in all such states.

D. ELIGIBLE ACTIVITIES

Outcome: Potential applicants can discern eligibility of activities for HHPD grant program.

- 1. Eligible activities include the repair, removal, or rehabilitation of eligible high hazard potential dams. For the purposes of the HHPD Grant Program, rehabilitation means the repair, replacement, reconstruction, or removal of a dam that is carried out to meet applicable state dam safety and security standards.

E. INELIGIBLE ACTIVITIES

Outcome: Potential applicants can discern eligibility of activities for HHPD grant program.

- 1. Federal funds provided under the HHPD cannot be used to:
 - a. Rehabilitate a federal dam.
 - b. Perform routine operation or maintenance of a dam.
 - c. Modify a dam to produce hydroelectric power.
 - d. Increase water supply storage capacity.
 - e. Make any other modification to a dam that does not also improve the safety of the dam.

F. APPLICATION PERIOD

Outcome: Applications and submission timelines are clearly defined.

- 1. Application and Submission Information is provided in the HHPD Grant Program Notice of Funding Opportunity.

G. PERIOD OF PERFORMANCE

Outcome: The Period of Performance is defined.

- 1. The Period of Performance is 36 months and begins on the date of award.



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Date



ADDITIONAL INFORMATION

REVIEW CYCLE

This policy and FEMA's *Rehabilitation of High Hazard Potential Dams Grant Program Guidance (June 2020)* will be reviewed, reissued, revised, or rescinded within 4 years of the issue date.

AUTHORITIES and REFERENCES

Authorities

National Dam Safety Program Act (Pub. L. 92-367), as amended, 33 U.S.C. § 467f-2
Robert T. Stafford Relief and Emergency Assistance Act, as amended by the Disaster Mitigation Act of 2000 (Public Law 106-390; 114 Stat. 1552)

References

- A. The Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) FY 2020 Rehabilitation of High Hazard Potential Dams (HHPD)
- B. Federal Insurance Mitigation Administration (FIMA) Rehabilitation of High Hazard Potential Dams Grant Program Guidance (June 2020)
- C. Title 44 Code of Federal Regulations (C.F.R.) Part 201, Mitigation Planning
- D. Federal Insurance Mitigation Administration (FIMA) Local Mitigation Plan Review Guide (2011)
- E. Federal Insurance Mitigation Administration (FIMA) Policy FP 302-094-2, State Mitigation Planning Review Guide (2015)

DEFINITIONS

All Dam Risk: For the purposes of the HHPD program, all dam risk includes the incremental risk, non-breach risk, and residual risk associated with each eligible high hazard potential dam, as well as the reason(s) the state has determined the dam is an eligible high hazard potential dam.

Applicant: The entity (i.e., the state under this grant program) applying to the Federal Emergency Management Agency (FEMA) for a Federal award that will be accountable for the use of the funds. Once funds are awarded, the applicant becomes the recipient or pass-through entity or both.

Dam:

- (A) any artificial barrier that has the ability to impound water, wastewater, or any liquid-borne material, for the purpose of storage or control of water, that—
 - (i) is 25 feet or more in height from—
 - (l) the natural bed of the stream channel or watercourse measured at the downstream toe of the barrier; or



- (II) if the barrier is not across a stream channel or watercourse, from the lowest elevation of the outside limit of the barrier;
to the maximum water storage elevation; or
- (ii) has an impounding capacity for maximum storage elevation of 50 acre-feet or more; but
- (B) does not include—
 - (iii) a levee; or
 - (iv) a barrier described in subparagraph (A) that—
 - (I) is 6 feet or less in height regardless of storage capacity; or
 - (II) has a storage capacity at the maximum water storage elevation that is 15 acre-feet or less regardless of height;

Eligible High Hazard Potential Dam:

- (A) a non-federal dam that—
 - (i) is located in a state with a state dam safety program;
 - (ii) is classified as “high hazard potential” by the state dam safety agency in the state in which the dam is located;
 - (iii) has an emergency action plan approved by the relevant state dam safety agency; and
 - (iv) the state in which the dam is located determines—
 - (I) fails to meet minimum dam safety standards of the state; and
 - (II) poses an unacceptable risk to the public.
- (B) Exclusion: The term “eligible high hazard potential dam” does not include—
 - (i) a licensed hydroelectric dam; or
 - (ii) a dam built under the authority of the Secretary of Agriculture.

Expected life of the dam: Estimated number of years the rehabilitation will be effective. For example, major infrastructure typically have a 50-100 year expected life.

Interim Risk Reduction Measures: Effective, interim actions taken to reduce flood risk while longer term solutions are planned and implemented. Interim risk reduction measures are a critical part of responsible, adaptive flood risk management.

Official Regulatory Notice: A specific Dam Safety Deficiency (meeting the NID definition) is recognized and cannot be resolved with routine maintenance. The state dam safety agency has issued an official regulatory notice to the dam owner that includes all of the following elements:

1. The dam owner is notified of the specific deficiency and a regulatory requirement to immediately implement risk-reduction measures. (Required risk-reduction measures may include activities such as hiring an engineer to conduct risk-based failure mode studies, design of risk-reduction measures, construction of risk-reduction measures, or other actions.)
2. The regulatory notice indicates whether temporary risk-reduction measures (such as reservoir restrictions) are required.



3. The regulatory notice indicates a specific time allowance for the completion of the risk-reduction measures.
4. The regulatory notice includes a statement of the state dam safety's authority to issue regulatory actions and/or specific regulatory enforcement actions for failure to comply.

Pass-through Entity: A non-federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Period of Performance (POP): The time during which the non-federal entity may incur new obligations to carry out the work authorized under the federal award. The federal awarding agency or pass-through entity must include start and end dates of the POP in the federal award.

Recipient: A non-federal entity that receives a federal award directly from a federal awarding agency to carry out an activity under a federal program. The term recipient does not include subrecipients.

Rehabilitation: The repair, replacement, reconstruction, or removal of a dam that is carried out to meet applicable state dam safety and security standards.

Routine Operation and Maintenance: Activities performed to prevent deterioration of structures and equipment to keep a dam in a safe and functioning condition throughout the expected life of the dam. These activities can be a scheduled or recurring action outlined in the operation and maintenance plan or performed after an inspection reveals an unusual observation that requires corrective restoration. Identifying and correcting problems before they become serious is an important part of routine operation and maintenance. Typical routine operation and maintenance activities can include (but are not limited to) mowing, removal of woody vegetation, addressing erosion, repairing concrete structures, replacement of equipment and gates, and servicing gates.

Risk: The product of the likelihood of a structure being loaded, adverse structural performance, (e.g., dam failure), and the magnitude of the resulting consequences

State: The term "state" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

State Dam Safety Agency: The term "state dam safety agency" means a state agency that has regulatory authority over the safety of non-federal dams.

State Dam Safety Program: The term "state dam safety program" means a state dam safety program approved and assisted under section 467f(e) of this title



Subaward: An award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient: A non-federal entity that receives a subaward from a pass-through entity to carry out part of a federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.

Unacceptable Risk to the Public: For purposes of the HHPD, the determination of unacceptable risk to the public is to be made by the state dam safety program, the agency of the state that is authorized by state statute to manage the state participation in the National Dam Safety Program.

A dam poses unacceptable risk to the public when the dam requires remediation or risk reduction measures due to deficiencies caused by inadequate dam design, construction methods, or the results of inadequate operation and maintenance.

For a dam to be considered an unacceptable risk to the public for funding under the HHPD, it must meet all the following conditions:

1. Does not meet the minimum dam safety standards of the state (not including routine operations and maintenance actions)
2. State dam safety program has documented the deficiencies at the dam that must be reduced, eliminated or mitigated
3. Official Regulatory Notice (see definition) of the determination of the documented deficiency (s) has been communicated to the dam owner to address the unacceptable risk to the public to implement interim risk reduction measures until permanent risk reduction measures are implemented in a manner that is acceptable to the state. Official Regulatory Notice must be on official state or state dam safety program letterhead and may include official citations issued from the state dam safety program to the dam owner.

MONITORING AND EVALUATION

No later than December 31, 2021, and bi-annually thereafter, FEMA shall submit a report to Congress that describes the status of the Program, under Section 10(b) of the National Dam Safety Program Act (codified at 33 U.S.C. § 467f), including progress and recommendations for legislative and any other actions that FEMA considers necessary.

QUESTIONS

Direct questions to the HHPD Grant Helpline at FEMA-NDSP-HHPDGrants@fema.dhs.gov.