

### § 209.3

### 44 CFR Ch. I (10–1–03 Edition)

*Substantial Damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred;

*Uninhabitable* means that properties are certified by the appropriate State or local official normally empowered to make such certifications as meeting one or more of the following criteria:

(1) Determined by an authorized local government official to be substantially damaged, according to National Flood Insurance Program criteria contained in 44 CFR 59.1;

(2) Have been red- or yellow-tagged and declared uninhabitable due to environmental contamination by floodwaters, or otherwise determined to be uninhabitable by a State or local official in accordance with current codes or ordinances; or

(3) Have been demolished due to damage or environmental contamination by floodwaters.

*We, our, or us* means FEMA.

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001]

#### § 209.3 Roles and responsibilities.

The following describes the general roles of FEMA, the State, local communities or other organizations that receive grant assistance, and participating homeowners.

(a) *Federal*. We will notify States about the availability of funds, and will allocate available funding to States that received major disaster declarations during the period covered by the supplemental authority. Our Regional Directors will verify project eligibility, provide technical assistance to States upon request, make grant awards, and oversee program implementation.

(b) *State*. The State will be the Grantee to which we award funds and will be accountable for the use of those funds. The State will determine priorities for funding within the State. This determination must be made in conformance with the HMGP project identification and selection criteria (44 CFR 206.435). The State also will provide technical assistance and oversight to applicants for project development and

to subgrantees for project implementation. The State will report program progress and results to us. The States also will recover and return to us any funds made available from other sources for the same purposes. When Native American tribes apply directly to us, they will be the grantee and carry out “state” roles.

(c) *Applicant (pre-award) and subgrantee (post-award)*. The applicant (a State agency, local government, or qualified private nonprofit organization) will coordinate with interested homeowners to complete an application to the State. The subgrantee implements all approved projects, generally takes title to all property, and agrees to dedicate and maintain the property in perpetuity for uses compatible with open-space, recreational, or wetlands management practices. The subgrantee will receive, review and make final decisions about any appraisal disputes that are brought by participating homeowners. The subgrantee is accountable to the State, as well as to us, for the use of funds.

(d) *Participating homeowners*. The participating homeowners will notify the community of their interest to participate; provide necessary information to the community coordinator about property ownership, disaster damage, and other disaster benefits received or available; review the offer made from the community; and accept it or request a review appraisal.

#### § 209.4 Allocation and availability of funds.

(a) We will allocate available funds based on the number and value of properties that meet the eligibility criteria and whose owners want to participate in an acquisition or elevation project.

(b) We may reallocate funds for which we do not receive and approve adequate applications. We will obligate most available funds within 12 months following the deadline for submitting applications, unless extenuating circumstances exist.

#### § 209.5 Applicant eligibility.

The following are eligible to apply to the State for a grant:

(a) State and local governments;

(b) Indian tribes or authorized tribal organizations. A tribe may apply either to the State or directly to us; and

(c) Qualified private nonprofit organizations.

**§ 209.6 Project eligibility.**

(a) *Eligible types of project activities.* This grant authority is for projects to acquire floodprone properties and demolish or relocate structures per § 209.10(i), or to elevate floodprone structures. Approved projects must meet the following criteria and comply with all other program requirements described in this rule;

(b) *Eligibility criteria.* To be eligible, projects must:

(1) Be cost effective. The State will complete an analysis of the cost-effectiveness of the project, in accordance with our guidance and using a methodology that we approve. We will review the State's analysis;

(2) Include only properties that:

(i) For acquisition, the owner agrees to sell voluntarily;

(ii) Are within the 100-year floodplain based on best available data or as identified by a FIRM or FEMA-approved Disaster Recovery Map;

(iii) Were made uninhabitable (as certified by an appropriate State or local official) by the effects of a declared major disaster during federal fiscal years 1999 or 2000;

(iv) For acquisition, had a pre-event fair market value of less than \$300,000 just before the disaster event. Properties submitted for buyout under Pub. L. 106-113 (the original Hurricane Floyd supplemental buyout program) are exempt from this policy, with the limitation that in no case does the Federal share or offer for any such property exceed \$225,000; and

(v) Served as the principal residence for the owner. For multifamily units such as condominium buildings, all units within the structure should be principal residences of the owners and not sublet.

(3) Conform with 44 CFR part 9, Floodplain Management and Protection of Wetlands; 44 CFR part 10, Environmental Considerations; and any applicable environmental and historic preservation laws and regulations.

(c) For acquisition projects, an owner who is not a United States citizen or qualified alien may receive current fair market value for his or her property. He or she may not receive additional amounts for pre-event fair market value.

(d) Funds available under Pub. L. 106-113 (the original Floyd supplemental appropriation) are limited to use for acquisition purposes only.

**§ 209.7 Priorities for project selection.**

(a) It is the State's responsibility to identify and select eligible buyout projects for funding under the supplemental grant program. All funded projects must be consistent with the State Hazard Mitigation Plan. The mitigation planning process or any other appropriate means may identify buyout and elevation projects.

(b) States will set priorities in their State mitigation plan to use as the basis for selecting projects for funding. The State's priorities will address, at a minimum, substantially damaged properties, repetitive loss target properties, and such other criteria that the State deems necessary to comply with the law. States and subgrantees are to give priority consideration to projects for acquisition or elevations of repetitive loss properties, and must include all eligible repetitive loss properties in the projects submitted to us for funding.

(Approved under OMB control number 3067-0212).

[66 FR 32669, June 15, 2001; 66 FR 49554, Sept. 28, 2001]

**§ 209.8 Application and review process.**

(a) *General.* This section describes the procedures to be used by the State in submitting an application for funding under the Supplemental Property Acquisition and Elevation Assistance program. Under this program, the State is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR part 13 and this part.

(b) *Timeframes.* We will establish deadlines for States to submit applications, and States will set local application deadlines. States may begin forwarding applications to us immediately upon Notice of Availability of