

Federal Emergency Management Agency (FEMA)

FEMA administers three climate grants under its Hazard Mitigation Assistance (“HMA”) grant program. The authority for this program originates in Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The Hazard Mitigation Grant Program (“HMGP”) helps local and state governments implement long-term hazard mitigation measures following a Presidential major disaster declaration.¹ The Pre-Disaster Mitigation (“PDM”) Program offers annual funds for hazard mitigation.² The Flood Mitigation Assistance (“FMA”) Program provides funds so that state and local governments reduce or eliminate flood risks for buildings already insured under the National Flood Insurance Program (“NFIP”).³ FMA funds are not discussed because they are not dependent on state climate change policy.

FEMA directs funding for these programs to applicants, who then allocate funds to subapplicants, who then provide funds to individual homeowners, private non-profits, and businesses.⁴ Applicants must be states, federally recognized tribes, or territories.⁵ Because of this, municipalities and homeowners rely on states to apply for funds. As the primary applicant, a state has the responsibility to prioritize the applications it receives from sub-applicants based on specific criteria that align with its mitigation strategy.⁶ If a state does not comply with the application requirements, or prioritizes certain climate-focused projects below others, it can prevent local governments and homeowners from preparing for climate change.

¹ *Hazard Mitigation Assistance*, FEMA, <https://www.fema.gov/hazard-mitigation-assistance>, 2016.

² *Id.*

³ *Id.*; See also *The National Flood Insurance Program*, FEMA, <https://www.fema.gov/national-flood-insurance-program> 2016 (The National Flood Insurance Program provides flood insurance to property owners in the 100-year floodplain at a reduced cost so that property owners enhance their flood protection measures through implementation strategies like increasing freeboard, elevating utilities, and installing breakaway walls).

⁴ See *Hazard Mitigation Assistance*, FEMA, <https://www.fema.gov/hazard-mitigation-assistance>, 2016; *Pre-Disaster Mitigation Grant Program*, FEMA, <https://www.fema.gov/pre-disaster-mitigation-grant-program>, 2016; *Flood Mitigation Assistance Grant Program*, <https://www.fema.gov/flood-mitigation-assistance-grant-program>, 2016.

⁵ *Id.*

⁶ *Hazard Mitigation Assistance*, *supra* at 6.

HMA funds may be used to fund up to 75 percent of the eligible activity costs, and the remaining 25 percent must come from non-federal sources, except when funds are provided under the Community Development Block Grant from HUD.⁷

a) ***HMGP***

In order for a state to receive funding under the HMGP, the President must declare a major disaster in the area, and the state must have a pre-existing State Hazard Mitigation Plan (“SMP”).⁸ FEMA determines grant amounts based on the total mitigation costs and whether or not the state has an SMP or an Enhanced State Mitigation Plan (“ESMP”) that has been approved within the last five years.⁹

SMPs must include a description of the hazard mitigation planning process, identification of specific hazards of the state, identification and ranking of mitigation actions available, and a description of the process to implement mitigation strategies in the state.¹⁰ SMPs do not expressly require states to consider climate change impacts, but must discuss the probabilities of future hazard events and future conditions.

ESMPs must demonstrate that a State has developed a comprehensive mitigation program, that the State effectively uses available mitigation funding, and that it is capable of managing the increased funding.¹¹ This can be accomplished through FEMA’s Benefit-Cost Analysis (“BCA”), which allows applicants to weigh climate mitigation, among other considerations, against the project cost.

⁷ <http://www.fema.gov/hazard-mitigation-grant-program>

⁸ 42 U.S.C. §5165

⁹ 44 C.F.R. § 206.432(b).

¹⁰ https://web.law.columbia.edu/sites/default/files/microsites/climate-change/files/Publications/Students/SHMP%20Survey_Final.pdf

¹¹ 44 C.F.R. § 201.5(a) (“The Enhanced State Mitigation Plan must demonstrate that a State has developed a comprehensive mitigation program, that the State effectively uses available mitigation funding, and that it is capable of managing the increased funding. In order for the State to be eligible for the 20 percent HMGP funding, FEMA must have approved the plan within 5 years prior to the disaster declaration”); 44 C.F.R. § 201.5(b).

Without an ESMP, assistance from FEMA does not exceed 15 percent for the first \$2 billion of total FEMA funds provided, no more than 10 percent for amounts between \$2 billion and \$10 billion, and no more than 7.5 percent for total FEMA funds estimated to be between \$10 billion and \$35.333 billion.¹² States with an ESMP receive up to 20 percent of costs from FEMA, so long as the total mitigation is no more than \$35.333 billion.¹³ Altogether, FEMA will provide up to 75 percent eligible activities.¹⁴

i) Indiana Compliance

Indiana does not have an ESMP.¹⁵ The most recent Presidential Disaster declaration in Indiana was in 2014, resulting from a severe winter storm. The federal government allocated \$9,630,412.64 to the state of Indiana, which was about 73 percent of the total estimated disaster assistance of \$13,185,000.¹⁶ Had Indiana produced an ESMP, FEMA would have likely provided the state an additional \$258,337 to help it achieve 75 percent assistance.

Indiana briefly lost all standard HMGP funds because the state used HMA funds to purchase land in the 100-year floodplain for the purpose of constructing a baseball stadium. FEMA does not authorize federal funds to be used to construct facilities in the 100-year floodplain without an extensive review process, and cancelled HMGP funding. FEMA reinstated funding to the rest of the state shortly thereafter, but required the city of Kokomo to bring the stadium project into compliance before reinstating funds.

¹² 44 C.F.R. § 206.432(b)(1).

¹³ 44 C.F.R. § 206.432(b)(2).

¹⁴ http://www.fema.gov/media-library-data/1424983165449-38f5dfc69c0bd4ea8a161e8bb7b79553/HMA_Guidance_022715_508.pdf (the federal share is 75 percent, unless the affected area is impoverished or considered a repetitive loss area, in which case the federal share can increase to 100 percent).

¹⁵ *Hazard Mitigation Plan Status*, FEMA, <http://www.fema.gov/hazard-mitigation-plan-status>, 2016 (As of March 31, 2016, states with ESMPs include: California; Florida; Georgia; Kentucky; Missouri; Iowa; Nevada; North Carolina; Ohio; Oregon; Washington; Wisconsin).

¹⁶ <https://www.fema.gov/disaster/4173>

HMGP funds are non-competitive, but Indiana remains ineligible to receive full funding because of its climate change policies, and puts its population at risk in the event of a natural disaster.

b) ***PDM***

PDM funding, unlike HMGP funding, is a competitive grant program intended to help applicants prepare for natural-hazard mitigation prior to a disaster.¹⁷ By implementing strategies that reduce the risk to individuals and property from natural disasters, the grant program intends to reduce the amount of federal assistance applicants receive after disasters.¹⁸ The program is structurally identical to HMGP, in that states, U.S. territories, federally recognized tribes, and local governments are all eligible to receive funds, but local governments are considered sub-applicants, and must apply through their respective states.¹⁹

For the FY 2016, \$25 million were allocated to PDM, and FEMA supplemented the program with an additional \$5 million.²⁰ FEMA received applications totaling \$83.6 million, but because of the competitive nature of the program, not all applicants were funded. Under FY 2016 total funds increased to \$90 million, and all applicants are eligible to receive up to \$15 million.²¹

i) Indiana Compliance

While FEMA does not require that applicants address climate change in its applications, the volume of applications FEMA receives requires it to prioritize projects for selection.²² FEMA places “Climate Resilient Mitigation Activities” as its first priority for allocating funds.²³

¹⁷ <https://www.fema.gov/pre-disaster-mitigation-grant-program>

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ <http://www.fema.gov/pre-disaster-mitigation-program-fy-2015-subapplication-status>

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²² http://www.fema.gov/media-library-data/1455711373912-17d561db31cc299667dc5c60811165d1/FY16_PDM_Fact_Sheet.pdf

²³ *Id.*

Because Indiana is reluctant to address climate change, it has been appropriated less funds than other states with climate-focused legislation.

In FY 2015, Indiana applied for four grants, totaling \$2,594,841.78.²⁴ FEMA only identified one of the applications for further review, leaving the state with only \$249,749.25 towards disaster preparedness for the year.²⁵ Conversely, California, a state with extensive climate change policy, applied for ten PDM grants, totaling \$2,868,620.24.²⁶ FEMA identified each for further review. It is possible that Indiana's applications were not selected because they did not address climate impacts, as FEMA is only able to fund the most thorough projects, forfeiting the state up to \$2,345,092.

²⁴ <http://www.fema.gov/pre-disaster-mitigation-program-fy-2015-subapplication-status>

²⁵ *Id.*

²⁶ <http://www.fema.gov/pre-disaster-mitigation-program-fy-2015-subapplication-status>