



FEMA

SEP 14 2015

MEMORANDUM FOR: FEMA Regional Administrators
Regions I - X

ATTENTION: Recovery Division Directors

FROM: Alex Amparo
Assistant Administrator
Recovery Directorate

A handwritten signature in blue ink, appearing to read "Alex Amparo", written over the typed name and title.

SUBJECT: Recovery Policy 9524.4 *Repair vs. Replacement of a Facility under 44 CFR §206.226(f) (The 50 Percent Rule)* – Policy Clarification; and Cost Estimating and Review Requirements

On August 7, 2014, the Department of Homeland Security's Office of Inspector General (OIG) published its findings regarding FEMA's progress in clarifying its "50 Percent Rule," in Audit Report Number OIG 14-123-D. In response to this report and feedback received from stakeholders, FEMA is clarifying the existing policy language of Recovery Policy 9524.4. These clarifications are delineated below and will be included in the Public Assistance (PA) unified guidance document currently under development and scheduled for publication by January 1, 2016. FEMA is also implementing new cost estimating and review requirements related to the evaluation of the eligibility of repair versus replacement using the 50 Percent Rule **for all disasters declared on or after the date of this memorandum.**

Clarifications to the 50 Percent Rule policy

The current policy states the numerator of the fraction is the cost of repairing disaster damage only. It specifically excludes codes and standards that apply to non-damaged elements, but does not reference local floodplain management ordinances specifically as codes and standards to be excluded. Additionally, it does not specify exclusion of all soft costs and emergency protective measures in the calculation.

The following clarifies the policy and will be included in the PA unified guidance document. For the purposes of the 50 Percent Rule:

1. The cost of compliance with floodplain management ordinances requiring upgrades to the entire facility is not included in the repair cost (numerator) for the purpose of evaluating the eligibility of replacement. These costs are included in the replacement cost (denominator).

2. Neither the repair (numerator) nor replacement (denominator) cost includes soft costs. Soft costs are defined as those costs not considered direct construction costs, including architectural costs, engineering costs, and other pre-/post-construction expenses.
3. The cost of any Emergency Work is not included in the repair cost (numerator).
 - a. Emergency Work includes, but is not limited to, extracting water and removing mud, silt, or debris and mold remediation performed in a facility to address an immediate threat of additional damage or to provide access to a facility for assessment.
 - b. Emergency Work does not include extracting water and removing mud, silt, or debris and mold remediation performed in conjunction with restoring a facility. These measures are Permanent Work and are included in the repair cost (numerator).
4. The costs excluded from the 50 Percent Rule calculation may be eligible for PA funding even though they are excluded from the calculation.
5. A floodplain manager's Substantial Damage determination, which is part of the National Flood Insurance Program eligibility process, is separate and distinct from FEMA's eligibility determination of repair or replacement under the 50 Percent Rule. A Substantial Damage determination does not trigger eligibility for replacement.

Review Procedures

The review procedures detailed below establish standards and a comprehensive process for reviewing requests for replacement and 50 Percent Rule calculations and related cost estimates.

• Applicant Request for Replacement

- FEMA will encourage Applicants to submit requests for replacement through the Grantee to the appropriate field or regional office within one year of the major disaster declaration.
- The request should include both repair and replacement cost estimates with supporting documentation, prepared and signed by a licensed engineer/architect with cost estimating expertise or a certified cost estimator. In lieu of a license or certification, the cost estimates may be prepared and signed by an individual with professional experience and proficiency in the field of cost estimating. FEMA will validate the applicant's estimates.
- If the applicant lacks the resources, it may request technical assistance from FEMA to develop the cost estimates.

• FEMA Review of Requests

- FEMA's review of an applicant's request for replacement shall be conducted by a licensed engineer/architect with cost estimating expertise or a certified cost estimator.
- If requested by the applicant, FEMA may develop cost estimates to evaluate the eligibility of replacement. It is recommended that FEMA utilize a licensed engineer/architect with cost estimating expertise or a certified cost estimator to develop those estimates. If a sufficient number of staff with these credentials are not available, the estimates should be prepared by an individual with professional experience and proficiency in the field of cost estimating and then reviewed by a licensed engineer/architect with cost estimating expertise or a certified cost estimator. FEMA field offices should identify resource needs to support the implementation of this review process early in the recovery process. The PA Division will facilitate resourcing any

gaps through available, qualified reservists and the use of Technical Assistance Contractors. Further, the PA Division will work to build additional FEMA estimating capacity within its cadre.

- **USACE Review of Repair and Replacement Estimates**

- For any replacement request over \$5 million, the United States Army Corps of Engineers (USACE) Center for Excellence for Cost Engineering will perform an additional review of the repair and replacement estimates. Further, at FEMA's request, USACE may also assist with requests under \$5 million. When this additional review would be beneficial, Regional and JFO staffs are encouraged to utilize this resource for any repair and replacement estimate. FEMA retains the final authority in determining the repair and replacement estimates. FEMA has an existing agreement with USACE for these services which can be modified for any disaster operation. Regional or JFO staff should contact Kim Callan, Chief, USACE Center for Excellence for Cost Engineering at kim.c.callan@usace.army.mil to initiate a Mission Assignment.

Placing these controls on repair versus replacement eligibility determinations will allow for thorough review by qualified individuals; increase accuracy of the estimates; and provide an independent review of estimates by USACE.

If you have questions, please contact Hunter Clark at hunter.clark@fema.dhs.gov or (202) 212-5297.