Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim)

FEMA Policy FP 104-009-19

BACKGROUND

Under the President Donald J. Trump's March 13, 2020, Coronavirus (COVID-19) emergency declaration[1] and subsequent major disaster declarations for COVID-19, state, local, tribal, and territorial (SLTT) government entities and certain private nonprofit (PNP) organizations are eligible to apply for assistance under the FEMA Public Assistance (PA) Program.[2]

PURPOSE

This interim policy defines the framework, policy details, and requirements for determining the eligibility of work and costs under the PA Program to ensure consistent and appropriate implementation across all COVID-19 emergency and major disaster declarations. Except where specifically stated otherwise in this policy and other disaster specific COVID-19 policies, assistance is subject to PA Program requirements as defined in Version 3.1 of the *Public Assistance Program and Policy Guide* (PAPPG).[3]

This interim policy supersedes the FEMA Fact Sheet dated March 19, 2020: *Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures*, for work performed on or after September 15, 2020. This interim policy will be updated or revised as required by changes in the status of the COVID-19 pandemic.

PRINCIPLES

A. FEMA remains committed to providing support to meet emergency needs during the COVID-19 pandemic, specifically those critical actions that are necessary to save lives and protect public health and safety.
B. FEMA will implement this policy and any assistance provided in a consistent manner through informed decision making and review of an applicant's supporting documentation.
C. FEMA will engage with interagency partners, including the U.S. Department of Health and Human Services (HHS) Office of the Assistant Secretary for Preparedness and Response (ASPR), the Centers for Disease Control and Prevention (CDC), the Centers for Medicare and Medicaid Services (CMS), and the Health Resources and Services Administration (HRSA); the U.S. Department of Agriculture (USDA), and the U.S. Department of Housing

[1] http://www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration.
[2] See https://www.fema.gov/assistance/public/program-overview for more information.
[3] Version 3.1 of the PAPPG is applicable to all COVID-19 declarations and is available on the FEMA website at www.fema.gov/sites/default/files/2020-03/public-assistance-program-and-policy-guide_v3.1_4-26-2018.pdf.

and Urban Development (HUD) among others, to ensure any assistance is provided in a coordinated manner without duplicating assistance.

REQUIREMENTS

A. APPLICABILITY

Outcome: To define the declarations, eligible applicants, and work to which this interim policy applies.

1. This policy applies to:

    a. All Presidential emergency and major disaster declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq*. (the Stafford Act), as amended, issued for the COVID-19 pandemic.
    b. This policy does not apply to any other emergency or major disaster declaration
    c. Eligible PA applicants under the COVID-19 emergency declaration or any subsequent COVID-19 major disaster declaration.[4]
    d. Work performed on or after September 15, 2020. Prior to this date, policies in place when the work was completed apply.

B. GENERAL ELIGIBILITY CONSIDERATIONS FOR COVID-19

Outcome: To define the overarching framework for all eligible work related to COVID-19 declarations.

1. Legal Responsibility:

    a. To be eligible for PA, an item of work must be the legal responsibility of an eligible applicant.[5] Measures to protect life, public health, and safety are generally the responsibility of SLTT governments.
    b. Legally responsible SLTT governments may enter into formal agreements or contracts with private organizations, including PNP organizations, when necessary to carry out eligible emergency protective measures in response to the COVID-19 pandemic. In these cases, PA funding is provided to the legally responsible government entity, which would then pay the private entity for the provision of services under the formal agreement or contract.
    c. In limited circumstances, essential components of a facility are urgently needed to save lives or protect health and safety, such as an emergency department of a PNP hospital. In these cases, PNPs that own or operate an eligible facility and perform eligible work, such as providing emergency, medical or custodial care services, may be eligible for reimbursement of costs as a PA applicant. For these PNP facilities and for COVID-19 declarations only, FEMA is waiving the primary use and primary ownership policies normally applicable to PNP

[4] See *Coronavirus (COVID-19) Pandemic: Private Nonprofit Organizations* (April 2, 2020), www.fema.gov/fact-sheet/coronavirus-covid-19-pandemic-private-nonprofit-organizations, for more information on PNP applicant eligibility.
[5] 44 C.F.R. § 206.223(a)(3).

entities that own or operate mixed-use facilities.[6]

2. To be eligible, claimed costs must be necessary in order to respond to the COVID-19 pandemic and be reasonable pursuant to federal regulations and federal cost principles. A cost is considered reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.[7] All costs are subject to standard PA program eligibility and other federal requirements.[8]

C. WORK ELIGIBILITY

Outcome: To establish parameters for eligible work for COVID-19 declarations.

1. In accordance with sections 403 and 502 of the Stafford Act, emergency protective measures necessary to save lives and protect public health and safety, may be reimbursed under the PA program.

2. All work must be required as a direct result of the emergency or major disaster in accordance with 44 C.F.R. § 206.223(a)(1).

3. Only work associated with the performance of emergency protective measures specifically listed in this policy is eligible for PA in COVID-19-declared events.

4. FEMA may provide assistance only for the following emergency protective measures in response to COVID-19 declared events[9]:

    a. Medical care, in accordance with COVID-19 specific policy or subsequent updates.[10]
    b. Purchase and distribution of food, in accordance with COVID-19 specific policy or subsequent updates.[11]
    c. Non-congregate medical sheltering, in accordance with COVID-19 specific policy or subsequent updates.[12]
    d. Operation of Emergency Operations Centers to direct and coordinate resources and response activities for COVID-19 declarations.[13]

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[6] See PAPPG V3.1 (2018), at page 16.
[7] 2 CFR § 200.404.
[8] See PAPPG V3.1 (2018), 2 CFR Part 200, and https://www.fema.gov/grants/procurement for additional guidance.
[9] See www.fema.gov/media-collection/public-assistance-disaster-specific-guidance-covid-19-declarations for all COVID-19 related PA policies and other guidance.
[10] Stafford Act, Section 403(a)(3)(B). For COVID-19 specific policy, see *Coronavirus (COVID-19) Pandemic: Medical Care Costs Eligible for Public Assistance (Interim)*, FEMA Policy FP 104-010-04 (May 9, 2020) and *Coronavirus (COVID-19) Pandemic: Alternate Care Site (ACS) "Warm Sites"* Fact Sheet (May 12, 2020).
[11] Stafford Act, Section 403(a)(3)(b). For COVID-19 specific policy, see *Coronavirus (COVID-19) Pandemic: Purchase and Distribution of Food Eligible for Public Assistance*, FEMA Policy FP 104-010-03 (April 11, 2020).
[12] See *Public Assistance: Non-Congregate Sheltering Delegation of Authority Fact Sheet* (March 19, 2020), and *Coronavirus (COVID-19) Pandemic: Non-Congregate Sheltering Frequently Asked Questions* (March 31, 2020).
[13] PAPPG, V3.1 (2018), at page 62.

e. Communications to disseminate public information regarding health and safety measures and provide warnings about risks and hazards.[14]
f. Mass casualty management, including storage of human remains and mass mortuary services, as necessary to manage fatalities caused by COVID-19.[15]
g. Purchase and distribution of Personal Protective Equipment (PPE)[16] that is directly related to the performance of otherwise eligible emergency work,[17] or is provided to healthcare workers, patients with confirmed or suspected COVID-19 infection, and first responders.[18]
    i. Funding for stockpiling a supply of eligible PPE is limited to a supply that is projected for up to 60 days from date of purchase.
    ii. Funding for storing eligible PPE is limited to what is necessary to store a projected 60-day PPE supply.

5. FEMA may provide assistance for the following activities in response to COVID-19-declared events only when necessary to perform otherwise eligible emergency work listed in C.4:

    a. Purchase and distribution of face masks,[19] including cloth facial coverings, provided to persons conducting eligible emergency work and/or in facilities where eligible emergency work is performed.
    b. Temperature scanning, including purchase and distribution of hand-held temperature measuring devices and associated supplies, in facilities where eligible emergency work is performed.
    c. Disinfection, in accordance with CDC guidance,[20] in facilities where eligible emergency work is performed, including purchase and provision of necessary supplies and equipment, and in excess of current operating costs.
    d. Acquisition and installation of temporary physical barriers, such as plexiglass barriers, in facilities where eligible emergency work is conducted.

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[14] Stafford Act, Section 403(a)(3)(F) and (G), and PAPPG V3.1 (2018), at page 58.
[15] See PAPPG V3.1 (2018), at page 58. For information on COVID-19-related fatality management see https://asprtracie.hhs.gov/technical-resources/129/covid-19-fatality-management-resources/99.
[16] For this policy, PPE is defined to include items such as N95 and other filtering respirators, surgical masks, gloves, protective eyewear, face shields, and protective clothing (e.g., gowns).
[17] PAPPG V3.1 (2018), at pages 21 and 63.
[18] See www.fema.gov/fact-sheet/addressing-ppe-needs-non-healthcare-setting, https://www.cdc.gov/coronavirus/2019-ncov/hcp/using-ppe.html, https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/firefighter-EMS.html, and https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-law-enforcement.html. For this policy, the definition of first responder includes: emergency public safety, fire, law enforcement, emergency response, emergency medical, and related personnel that may interact with individuals infected with, or suspected to be infected with, COVID-19.
[19] For this policy, face masks, such as cloth face coverings, that are not regulated by the U.S. Food and Drug Administration (FDA) are not considered PPE. Per FDA guidance, these face masks are not PPE, but may be used to prevent or slow the spread of COVID-19. See https://www.fda.gov/medical-devices/personal-protective-equipment-infection-control/n95-respirators-surgical-masks-and-face-masks and https://www.fda.gov/medical-devices/emergency-situations-medical-devices/faqs-emergency-use-authorization-face-masks-non-surgical.
[20] Work should be consistent with current PAPPG and public health guidance as it relates to disinfection recommendations. CDC provides disinfection guidance online at https://www.cdc.gov/coronavirus/2019-ncov/community/clean-disinfect/index.html.

e. Law enforcement and security.
f. Training and technical assistance specific to the declared event.
g. Reimbursement for force account overtime costs, costs related to hiring temporary employees, and contract labor costs associated with performance of eligible emergency protective measures.[21]
h. Movement of equipment and supplies, including transportation and storage.
i. Other work and costs delineated within COVID-19 policies referenced in C.4.

D. COORDINATION OF FUNDING

Outcome: To provide information on coordinating PA and other sources of federal funding.

1. Congress to date has authorized over $3 trillion to multiple federal agencies to address the effects of the COVID-19 pandemic.

    a. FEMA is closely coordinating with other federal agencies about the eligible uses of various COVID-19 funding resources and will continue to provide guidance to eligible applicants about where they can seek funding[22].
    b. A list of federal funding for COVID-19 is available at: https://www.usa.gov/coronavirus. General information about available federal funding needs may be found at www.grants.gov.

2. FEMA may provide PA funding to applicants for eligible work under the COVID-19 declarations that may also be eligible for funding under another federal agency's authorities.

    a. Potential PA applicants may have the flexibility to determine which source of funding to use for their costs, subject to the purpose and eligibility requirements of each of the federal programs and funding sources.
    b. If an eligible applicant applies for PA funding and then determines it will instead seek funding from another federal agency, the applicant should notify FEMA as soon as possible.
        i. If FEMA has not awarded PA funding, the applicant should withdraw or amend their PA project application.
        ii. If FEMA has already awarded PA funding, the applicant should request an updated version to their project worksheet to amend their PA project.
    c. PA funding should not be considered funding of last resort. It is advisable that PA funding is considered concurrently with other federal agency programs and sources.

3. For certain types of work that may be eligible for funding under another agency's authorities, FEMA, in coordination with other federal agencies and after close examination of available CARES Act funding, has determined that it will not provide reimbursement through the PA program.

[21] See PAPPG V3.1 (2018) at pages 23-26 for more on FEMA's labor policies.
[22] FEMA has posted a COVID-19 Resource Summary Report that is a list of resources provided by the federal government since the start of the response to COVID-19. This list is provided as a point of reference and partners should directly consult with each agency to verify the applicability of a specific program.

a. For example, COVID-19 contact tracing may be an emergency protective measure otherwise eligible for PA funding. However, in coordination with other federal agencies, FEMA has determined that PA is not the appropriate source of funding for COVID-19 contact tracing and there are other more appropriate sources of funding.[23]

4. Section 312 of the Stafford Act prohibits all federal agencies from duplicating benefits for disaster relief.

   a. Multiple agencies having authority to expend funds for the same purpose is not, by itself, a duplication of benefits under Section 312.[24] However, all federal agencies are prohibited by Section 312 from paying applicants for the same work twice.
   b. Recipients and subrecipients are ultimately responsible for ensuring that they do not receive payment for the same item of work twice. FEMA applicants must certify in the PA application process that assistance is not being duplicated.

E. TIME LIMITATIONS

Outcome: To provide time limitations for the completion of eligible work.

1. For all COVID-19 declarations, FEMA has extended the deadline in accordance with regulatory timeframes for emergency work at 44 C.F.R. § 206.204(d) beyond six months of the date of the declaration and will make notification 30 days prior to establishment of the deadline.

Keith Turi
Assistant Administrator, Recovery Directorate

September 1, 2020
Date

[23] See the CDC Epidemiology and Laboratory Capacity for Prevention and Control of Emerging Infectious Disease (ELC) at https://www.cdc.gov/ncezid/dpei/epidemiology-laboratory-capacity.html.
[24] See FEMA Fact Sheet *Coronavirus Disease 2019 (COVID-19) Public Health Emergency: Coordinating Public Assistance and Other Sources of Federal Funding* (July 1, 2020) at https://www.fema.gov/media-collection/public-assistance-disaster-specific-guidance-covid-19-declarations for more information.

ADDITIONAL INFORMATION

REVIEW CYCLE

FEMA Policy #104-009-19, *Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance* (Interim), will be reviewed and evaluated regularly throughout the duration of the COVID-19 pandemic. The Assistant Administrator for the Recovery Directorate is responsible for authorizing any changes or updates. This policy will sunset with the closure of the national emergency declaration for COVID-19 and any subsequent major disaster declarations for COVID-19.

AUTHORITIES and REFERENCES

Authorities

- Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121-5207, as amended
- Title 44 of the Code of Federal Regulations, Part 206, Subpart H
- Title 2 of the Code of Federal Regulations, Part 200

References

- *Public Assistance Program and Policy Guide*, Version 3.1

DEFINITIONS

To establish consistent terminology for purposes of implementing this policy, the following definitions are provided below. These definitions are specific to this policy and **may differ from definitions prescribed for the same or similar terms in other policies.**

1. **Personal Protective Equipment (PPE)**: PPE refers to items such as N95 and other filtering respirators, surgical masks, gloves, protective eyewear, face shields, and protective clothing (e.g., gowns).

2. **First Responder**: First responder refers to emergency public safety, fire, law enforcement, emergency response, emergency medical, and related personnel that may interact with individuals infected with, or suspected to be infected with, COVID-19.

MONITORING AND EVALUATION

FEMA will closely monitor the implementation of this policy through close coordination with regional and field staff, as appropriate, as well as interagency partners and SLTT stakeholders.

QUESTIONS

Applicants should direct questions to their respective FEMA regional office.