

PUBLICATION

CORONAVIRUS: Recent Policy and Guidance Updates on FEMA Public Assistance

Authors: Danielle M. Aymond, Wendy Huff Ellard

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Building upon our prior alerts for the COVID-19 Pandemic, including guidance on eligible medical care costs and alternate care sites, the FEMA streamlined application and specific tips for hospitals and other medical providers applying for FEMA funds, we now provide an update on recent developments that impact consideration of a claim to the FEMA Public Assistance (PA) program.

First, [Treasury](#) has now confirmed that Coronavirus Relief Funds (sometimes referred to as State CARES Act funds) may be used to satisfy the non-federal match requirement for the COVID-19 cost share on FEMA PA grants (currently still set at 25 percent). This confirmation was published on June 24, 2020, as part of an update to the Treasury's Frequently Asked Questions publication, stating in pertinent part:

May funds be used to satisfy non-federal matching requirements under the Stafford Act?

Yes, payments from the Fund may be used to meet the non-federal matching requirements for Stafford Act assistance to the extent such matching requirements entail COVID-19-related costs that otherwise satisfy the Fund's eligibility criteria and the Stafford Act. Regardless of the use of Fund payments for such purposes, FEMA funding is still dependent on FEMA's determination of eligibility under the Stafford Act.

Applicants will need to keep a detailed and well-documented accounting of costs. FEMA applies the cost share at each individual project level – applicants may not simply apply the Coronavirus Relief Funds across multiple projects. Additionally, applicants must be able to show that the use of funds meets all requirements applicable to both Coronavirus Relief Funds, as well as FEMA PA funds. Applicants should check with their respective state recipients in order to receive further guidance on implementation and requirements.

While this is welcome confirmation for many, there remains a non-federal cost share for some applicants that do not have adequate Coronavirus Relief Fund allocations – or any at all – as may be the case with certain non-profit applicants. In either case, applicants should [continue](#) to maximize use of donated resources for cost share off-set. Recall that FEMA considers unpaid individuals who volunteer their labor to the applicant to be third-party even if they are officially members or employees of the applicant organization. Tracking of other donated items or services can also be a valuable tool to offset the non-federal match, even for applicants with direct Coronavirus Relief Funds, as these funds can then be used for other eligible purposes.

Another important update applicants should be aware of, FEMA has published a new Public Assistance Program and Policy Guide (PAPPG). This is Version 4 of the PAPPG with the last version (V 3.1) published April 2018. **For the COVID-19 disaster, applicants will still be required to use V 3.1**, as V.4 is only applicable to disasters declared on or after June 1, 2020. This version is the most significant update to the PAPPG since its original publication as it supersedes 17 FEMA policies, fact sheets, guidance and memorandums. This will undoubtedly also create confusion, with 57 COVID-19 declarations and now an already active hurricane season. Remember to always use the correct guidance document applicable to your event.

Finally, FEMA has continued to periodically update their COVID-19 publications including adding recently a Fact Sheet on Historic Preservation Compliance for Emergency Protective Measures and an Interim Policy for FEMA Emergency Non-Congregate Sheltering during the COVID-19 Public Health Emergency, FP 104-009-18. This Interim Policy on Non-Congregate Sheltering is written for the upcoming hurricane season rather than the COVID-19 disaster as it applies to all Stafford Act declarations declared between June 1, 2020 and December 31, 2020. However, it is written in "recognition of the unique circumstances posed by COVID-19" and thus "additional work items may be eligible," such as:

Cleaning and disinfection of non-congregate shelter facilities to avoid the spread of COVID-19, including necessary disinfection supplies and equipment.

Face coverings, as recommended by the Centers for Disease Control and Prevention, to help slow the spread of COVID-19.

Other items necessary to protect public health and safety during the COVID-19 pandemic. Refer to applicable public health authorities and/or FEMA guidance specific to the COVID-19 pandemic for guidance on what items may be necessary and appropriate.

In this Interim Policy, FEMA continues the theme we have seen in the COVID-19 materials to specifically highlight the requirement that applicants must include a termination for convenience clause in all contracts, regardless of the emergency procurement exception. However, a big change from prior non-congregate sheltering guidance is that pre-approval of non-congregate sheltering is not required.

Baker Donelson continues to monitor coronavirus developments and we will provide updates on guidance from FEMA as it becomes available. If you have any questions regarding this alert or the impact of the coronavirus (COVID-19) on your organization, please contact the authors or any member of Baker Donelson's [Disaster Recovery Team](#). Also, please visit the [Coronavirus \(COVID-19\): Navigating the Path Ahead information page](#) on our website.