



## *Coronavirus (COVID-19) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance (Interim)* FEMA Policy 104-21-0003, Version 2

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### **BACKGROUND**

This interim policy supersedes version 1 of the *Coronavirus (COVID-19) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance (Interim)* published on April 5, 2021, and extends the applicable period of eligibility to the beginning of the incident period and the period of 100 percent federal cost share from the beginning of the incident period to December 31, 2021.

Under the March 13, 2020, COVID-19 nationwide emergency declaration<sup>1</sup> 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.<sup>2</sup> On January 21, 2021, the President issued the “Memorandum to Extend Federal Support to Governors’ Use of the National Guard to Respond to COVID-19 and to Increase Reimbursement and Other Assistance Provided to States,”<sup>3</sup> which authorized FEMA to provide funding to all PA Applicants for the safe opening and operation of eligible facilities. Such assistance “may include funding for the provision of personal protective equipment and disinfecting services and supplies.” On August 17, 2021, the President issued the “Memorandum on Maximizing Assistance to Respond to COVID-19,”<sup>4</sup> which directed FEMA to “provide a 100 percent Federal cost share for all work eligible for assistance under PA Category B, pursuant to sections 403 (42 U.S.C. 5170b), 502 (42 U.S.C. 5192), and 503 (42 U.S.C. 5193) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 et seq. (Stafford Act) , including work described in section 3(a) of the Presidential Memorandum of January 21, 2021.

### **PURPOSE**

This updated interim policy retroactively extends the period of work eligibility to the beginning of the incident period. It also specifies that work conducted from the beginning of the incident period through December 31, 2021 will be reimbursed at a federal cost share of 100 percent. Work conducted after December 31, 2021 will be reimbursed at the federal cost share established at that time.

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<sup>1</sup> [www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration](http://www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration).

<sup>2</sup> See [www.fema.gov/assistance/public/program-overview](http://www.fema.gov/assistance/public/program-overview) for more information.

<sup>3</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/extend-federal-support-to-governors-use-of-national-guard-to-respond-to-covid-19-and-to-increase-reimbursement-and-other-assistance-provided-to-states/>

<sup>4</sup> <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/17/memorandum-on-maximizing-assistance-to-respond-to-covid-19/>



This interim policy also defines the framework, policy details, and requirements for determining the eligibility of safe opening and operation work and costs under the PA program. The purpose of this policy is to ensure consistent and appropriate implementation across all COVID-19 emergency and major disaster declarations.

## PRINCIPLES

- A.** FEMA will provide support to meet emergency needs during the COVID-19 pandemic.
- 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 Administration for Children and Families (ACF), the Centers for Disease Control and Prevention (CDC), the Centers for Medicare & Medicaid Services (CMS), the Health Resources and Services Administration (HRSA); the Indian Health Service; the U.S. Department of Agriculture (USDA); the U.S. Department of Housing and Urban Development (HUD); and the U.S. Department of Education, among others, to ensure any PA assistance is provided in a coordinated manner without duplicating assistance.

## REQUIREMENTS

### A. APPLICABILITY

Outcome: To define the declarations, eligible Applicants, and work to which the safe opening and operation provisions of this interim policy applies.

1. This policy applies to:
  - a. All emergency and major disaster declarations under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121 *et seq.* (Stafford Act), as amended, issued by the President for the COVID-19 pandemic.
  - b. Eligible PA Applicants under the COVID-19 emergency declaration or any subsequent COVID-19 major disaster declaration.<sup>5</sup>
  - c. Work conducted from the beginning of the incident period until the end of the period of performance. See section E, Work Completion Deadlines, of this policy for more information.
2. This policy does not apply to any other emergency or major disaster declaration.
3. This policy applies to safe opening and operation work conducted from the beginning of the incident period through the end of the period of performance, notwithstanding Section C.3 of FEMA Policy 104-009-19 *Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance (Interim)* (effective September 15, 2020).
4. Assistance for eligible costs will be provided at a federal cost share of 100 percent from

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<sup>5</sup> See *Coronavirus (COVID-19) Pandemic: Private Nonprofit Organizations* (April 2, 2020), [www.fema.gov/fact-sheet/coronavirus-covid-19-pandemic-private-nonprofit-organizations](http://www.fema.gov/fact-sheet/coronavirus-covid-19-pandemic-private-nonprofit-organizations), for more information on PNP Applicant eligibility.



the beginning of the incident period through December 31, 2021. Work conducted after that date will be subject to the cost share established at that time.

5. Work that is otherwise eligible under FEMA Policy 104-009-19 *Coronavirus (COVID-19) Pandemic: Work Eligible for Public Assistance* (Interim) remains eligible for assistance.
6. 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 FEMA Policy 104-009-2 *Public Assistance Program and Policy Guide* (PAPPG).<sup>6</sup>

## B. ELIGIBILITY CONSIDERATIONS

Outcome: To define the overarching framework for eligible work related to safe opening and operations in COVID-19 declarations.

1. **Legal Responsibility:** To be eligible for PA, an item of work must be the legal responsibility of an eligible Applicant.<sup>7</sup>
  - a. 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. For PNP facilities and for COVID-19 declarations only, FEMA is waiving the primary use and primary ownership policies normally applicable to PNP entities that own or operate mixed-use facilities.<sup>8</sup>
2. **Allowability of Costs:** To be eligible, claimed costs must be allowable under 2 C.F.R. Part 200.<sup>9</sup> In considering the allowability of costs, FEMA will evaluate, among other factors:
  - a. Whether the cost was necessary and reasonable to respond to the COVID-19 pandemic. 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.<sup>10</sup>
  - b. Whether the cost conforms to standard PA program eligibility and other federal requirements.<sup>11</sup>

<sup>6</sup> Version 3.1 of the PAPPG is applicable to all COVID-19 declarations and is available on the FEMA website at [https://www.fema.gov/sites/default/files/documents/fema\\_pappg-v3.1-archived\\_policy\\_5-4-2018.pdf](https://www.fema.gov/sites/default/files/documents/fema_pappg-v3.1-archived_policy_5-4-2018.pdf).

<sup>7</sup> 44 CFR § 206.223(a)(3).

<sup>8</sup> See PAPPG V3.1 (2018), at page 16.

<sup>9</sup> 2 CFR § 200.403.

<sup>10</sup> 2 CFR §§ 200.403(a) and 404.

<sup>11</sup> See 2 CFR §§ 200.403(b),(d),(e),(f) and (h) and PAPPG V3.1 (2018), and [www.fema.gov/grants/procurement](http://www.fema.gov/grants/procurement) for additional guidance.



- c. Whether the Applicant followed its established policies and procedures that apply when federal funding is not available, including standard billing and fee collection.<sup>12</sup>
  - d. Whether the cost is documented with sufficient detail for FEMA to evaluate its compliance with federal laws, rules, and other PA program requirements.<sup>13</sup>
3. Equitable Pandemic Response and Recovery
- a. As stated in the [Executive Order on Ensuring an Equitable Pandemic Response and Recovery](#), dated January 21, 2021, COVID-19 has a disproportionate impact on communities of color and other underserved populations, including members of the LGBTQI+ community, persons with disabilities, those with limited English proficiency, and those living at the margins of our economy.
  - b. As a condition of receiving this financial assistance, Recipients and Subrecipients must focus the use of FEMA funding on the highest-risk communities and underserved populations as determined by established measures of social and economic disadvantage (e.g., the CDC Social Vulnerability Index)<sup>14</sup>. Recipients and Subrecipients must prioritize resources to ensure an equitable pandemic response. Failure to adhere to this policy could result in funding reductions and/or delays.
  - c. FEMA will monitor compliance with this grant condition in conjunction with the stipulations set forth in 44 C.F.R. part 7 and Title VI of the Civil Rights Act of 1964 that no person on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from FEMA; and the requirement of Stafford Act Section 308 (42 U.S.C. § 5151, 44 C.F.R. § 206.11) that distribution of disaster relief be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, limited English proficiency, or economic status.

### C. WORK ELIGIBILITY

Outcome: To establish parameters for eligible safe opening and operation work under 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 CFR § 206.223(a)(1).
3. All work must be done in accordance with CDC guidance or that of an

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<sup>12</sup> 2 CFR § 200.403(c).

<sup>13</sup> 2 CFR § 200.302(a).

<sup>14</sup> <https://www.atsdr.cdc.gov/placeandhealth/svi/index.html>



appropriate public health official available at the time the work was completed.

4. Safe Opening and Operation work performed from the beginning of the incident period:
  - a. FEMA may provide assistance to all eligible PA Applicants, including SLTTs and eligible PNPs, for the following measures implemented to facilitate the safe opening and operation of all eligible facilities in response to COVID-19 declared events:
    - i. Purchase and distribution of face masks<sup>15</sup>, including cloth face coverings, and personal protective equipment (PPE).<sup>16</sup>
    - ii. Cleaning and disinfection, including the purchase and provision of necessary supplies and equipment in excess of the Applicant's regularly budgeted costs.<sup>17</sup>
    - iii. COVID-19 diagnostic testing.<sup>18</sup>
    - iv. Screening and temperature scanning, including, but not limited to, the purchase and distribution of hand-held temperature measuring devices or temperature screening equipment.
    - v. Acquisition and installation of temporary physical barriers, such as plexiglass barriers and screens/dividers, and signage to support social distancing, such as floor decals.
    - vi. Purchase and storage of PPE and other supplies listed in this section should be based on projected needs for the safe opening and operation of the facility.

## D. COORDINATION OF FUNDING

Outcome: To provide information on coordinating PA and other sources of federal funding and ensure FEMA avoids any duplication of benefits.

1. Congress has authorized funding to multiple federal agencies to address the effects of the COVID-19 pandemic.
2. FEMA is coordinating closely with other federal agencies about the eligible uses of various COVID-19 funding resources and will continue to provide guidance to eligible

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<sup>15</sup> 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>.

<sup>16</sup> 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). Eligibility includes necessary training for proper use of PPE.

<sup>17</sup> 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>.

<sup>18</sup> A diagnostic test determines if an active coronavirus infection is present and if an individual should take steps to quarantine or isolate from others. <https://www.fda.gov/consumers/consumer-updates/coronavirus-disease-2019-testing-basics>.



Applicants about where they can seek funding.<sup>19</sup>

- a. A list of available federal funding for COVID-19 support is located at: [www.usa.gov/coronavirus](http://www.usa.gov/coronavirus). General information about available federal funding programs may be found at [www.grants.gov](http://www.grants.gov).
3. 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 and no later than 30 days from the date the decision to seek funding from another federal agency is made. Failure to notify FEMA accordingly may result in de-obligation of funding or collections owed.
    - i. If FEMA has not awarded PA funding, the Applicant should withdraw or amend its PA project application as soon as possible and no later than 30 days from the date the agency decides to seek funding from another federal agency.
    - ii. If FEMA has already awarded PA funding, the Applicant should request an updated version of its project application to amend its PA project as soon as possible and no later than 30 days from the date the agency decides to seek funding from another federal agency.
  - c. PA funding should not be considered funding of last resort. PA funding should be considered concurrently with other federal agency programs and sources.
4. For certain types of work that may be eligible for funding under multiple agencies' authorities, but most appropriately funded under a specific source of funding, FEMA, in coordination with other federal agencies and after close examination of available funding (including the Coronavirus Aid, Relief, and Economic Security Act, American Rescue Plan Act, and other supplemental appropriations for COVID-19), has determined that it will not provide reimbursement for such work through the FEMA PA program.

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 as there are other more appropriate sources of funding.

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<sup>19</sup> 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. Additional information on COVID-19 supplemental resources is available at [www.fema.gov/disasters/coronavirus/supplemental-resources](http://www.fema.gov/disasters/coronavirus/supplemental-resources). FEMA also developed [COVID-19 Resource Roadmaps](#) to assist stakeholders in navigating some of the challenges and resources available to address the COVID-19 pandemic.



5. 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.<sup>20</sup> However, all federal agencies are prohibited by Section 312 from paying Applicants for the same work twice.
  - b. Recipients and Applicants 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. WORK COMPLETION DEADLINES

Outcome: To provide for future deadlines for the completion of eligible work.

1. For all COVID-19 declarations, FEMA has extended the deadline for completing emergency work indefinitely and will make notification of changes to this (i.e. establishing a deadline) no later than 30 days prior to the deadline.

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9/8/21

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Date

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<sup>20</sup> 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 104-21-0003 *Coronavirus (COVID-19) Pandemic: Safe Opening and Operation Work Eligible for Public Assistance (Interim), Version 2*, 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 7 and Part 206, Subpart H
- Title 2 of the Code of Federal Regulations, Part 200

#### **References**

- FEMA Policy 104-009-2 *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).

### **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.