

PUBLICATION

FEMA Seeks Public Comment on Proposed Public Assistance COVID-19 Policy on Deadlines and Overlapping Sources of Funding

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April 29, 2022

FEMA is now accepting public comment on its draft *Coronavirus (COVID-19) Pandemic: Public Assistance Programmatic Deadlines* policy.

With respect to **DEADLINES**, the policy would, among other things:

- Confirm all Requests for Public Assistance (RPA) must be submitted by July 1, 2022. Applicants must submit an RPA to be considered for Public Assistance (PA) eligibility, and July 1, 2022 will be the cutoff for all new applicants that performed COVID-19 work before July 1, 2022 (see extension discussion below).
- Confirm that no later than December 31, 2022 applicants must submit to the Grants Portal all Project Applications for work completed through July 1, 2022. Please note states may set deadlines for this action before December 31, 2022 to allow the state recipient time to review materials before submission to FEMA. Applicants should check with their state to see if an earlier deadline applies.
- Confirm the deadline for the completion of Emergency Work and the deadline for submitting Project Applications for Emergency Work completed after July 1, 2022 will remain open. FEMA commits to notifying applicants no less than 30 days before establishing the deadline for submittal.
- Proposes to require an amendment to the expedited funding project to define all work activities through July 1, 2022 along with an updated cost estimate, for incomplete expedited funding projects. The proposed policy states that FEMA will work to ensure continuance of expedited funding that is still justifiably needed, but recipients are cautioned to limit advance payments to "the 'minimum amounts needed' and timed based on the 'actual, immediate cash requirements' to perform eligible work."
- Clarifies FEMA will apply a 100 percent cost share to all costs for work performed and items used from the beginning of the incident period (January 20, 2020) through 11:59 p.m. on July 1, 2022. Proposes to apply this deadline as follows:
 - Employee Labor: Costs for hours worked prior to July 2, 2022.
 - Purchased Supplies: Costs to purchase supplies used prior to July 2, 2022. Any personal protective equipment (PPE) or other supplies purchased for a 60-day timeframe prior to July 2, 2022 are eligible for 100 percent federal funding only if the items were also used before July 2, 2022.
 - PPE or other supplies purchased for a 60-day timeframe prior to July 2, 2022, but not used until on or after July 2, 2022 will have the 90 percent cost share.
 - Purchased Equipment: Costs to purchase equipment that was used prior to July 2, 2022 and the cost for usage prior to July 2, 2022.
 - Leased Equipment and Facilities: Lease costs prior to July 2, 2022. Proposes to calculate cost based on a proration of time, and provides an example of a six-month lease with monthly rate. In the example, FEMA would apply the 100 percent cost share for the days of the lease up to and including July 1, and a 90 percent cost share for the days of the lease July 2 and beyond. The

policy reminds readers that FEMA only provides funding for storage that is necessary to store 60 days of PPE and other necessary supplies.

- Contract Costs: Costs for work performed prior to July 2, 2022. If costs cannot be distinguished by date performed, FEMA may prorate costs based on the percentage of work completed prior to the deadline versus the percentage of work remaining. The draft policy encourages applicants to work with contractors to delineate dates associated with work.
- Proposes to require applicants to delineate costs for work performed and items used prior to July 2, 2022 from costs for work performed and items used on or after July 2, 2022.
- Proposes to allow applicants to use the value of donated resources to offset the 10 percent non-federal cost share for eligible work performed on or after July 2, 2022.
- Proposes to apply the project thresholds for small and large projects (as defined in Chapter 3 of the PAPPG) to each individual streamlined Project Application.
- Confirms that certification of completion for all subrecipient small projects must be submitted by the subrecipient to the recipient within 90 days of the date the subrecipient completes the work on all of its small projects, and that the recipient must submit the documentation to FEMA within 180 days of the date the subrecipient completes the work on all of its Small Projects.
- Confirms that subrecipients, and recipients with their own large projects, must submit to the recipient all actual cost documentation for each large project within 90 days of the work completion date or the date of obligation, whichever is later. Within 180 days of the work completion date or the date of obligation, whichever is later, the recipient must submit to FEMA its certification of the subrecipient's completion of each large project with the final claim for PA funding and all supporting documentation.
- Proposes to make eligibility determinations and process projects based on the documentation received within the deadline. In other words, FEMA would not consider documentation filed after the deadline. It is unclear whether additional information would be accepted on appeal.
- Confirms the deadlines for recipients to claim management costs as established in the PA Management Costs Interim Policy (FP 104-11-2), but because the policy states that the latest deadline for emergency declarations is two years from the declaration date, the policy proposes to extend the management cost deadline to the end date of the incident period for COVID-19 emergency declarations. The policy does not appear to close the incident period. Given the uncertainty regarding the end of the incident period and the fact that the President also issued a nationwide major disaster declaration for COVID-19 on March 13, 2020, this could create confusion. Unless the policy is changed, as proposed the latest date anyone could incur reimbursable management costs will be March 13, 2028 for the major disaster declaration or two years from the end of the close of the incident period for the emergency declaration.
- Proposes subrecipient deadlines for management costs that follow those provided for recipients.
- Confirms that time extension requests will still be considered if routed through the recipient to FEMA, and proposes the following guidance:
 - RPA Time Extensions: FEMA Regional Administrators (RAs) may extend the RPA deadline for up to 90 days after July 1, 2022 when the request is justified based on extenuating circumstances beyond the recipient or applicant's control. RAs may approve extensions beyond 90 days only after concurrence from the Assistant Administrator, Recovery Directorate at FEMA Headquarters. An example of an extenuating circumstance that may justify a time extension is when an applicant did not conduct any COVID-19 work until after July 1, 2022.
 - Project Application Submittal Extensions: RAs may extend the RPA deadline for up to 90 days after December 31, 2022 when the request is justified based on extenuating circumstances beyond the recipient or applicant's control. RAs may approve extensions beyond 90 days only after concurrence from the Assistant Administrator, Recovery Directorate at FEMA Headquarters. Examples of such extenuating circumstances are when the applicant has insufficient personnel

due to active incident response activities on non-COVID-19 declarations or when the applicant has an overwhelming quantity of project applications for which the deadline applies.

- Project Completion Certification and Closeout Extensions: Confirms that FEMA RAs may extend project completion and certification deadlines when the request is justified based on extenuating circumstances beyond the recipient's or subrecipient's control. Examples of such extenuating circumstances are projects with open and active correspondence pending that is related to the scope or cost of the project; when the subrecipient or recipient has insufficient personnel available to process project closeout and documentation reviews due to active incident response activities; or when the respective subrecipient or recipient has a significant amount of project closeouts due simultaneously.

With respect to **OVERLAPPING SOURCES OF FUNDING**, the policy would, among other things:

- Acknowledge multiple agencies having authority to expend funds for the same purpose is not, by itself, a duplication of benefits under Section 312 of the Stafford Act.
- Clarify "for COVID-19 declarations, FEMA's PA policy is that if an Applicant does not receive funding from another source for the same exact cost item that PA funding is provided, FEMA will not consider it to be a duplication of benefits." If an applicant receives funding from another source "for the same exact cost item that FEMA funded" FEMA will reduce the eligible amount to prevent a duplication of benefits. "FEMA will only consider it a duplication of benefits if the Applicant uses the other sources funding for the same exact work and costs that were eligible and claimed to FEMA for PA funding."
- Clarify "FEMA will not deny a PA eligible cost under a COVID-19 declaration solely because that cost may be eligible under another federal agency's authorities. As federal agencies are prohibited by Section 312 from paying [State, Local, Tribal, and Territorial Governments] for the same cost twice, applicants must ensure they do not receive FEMA PA funding for the same item of cost funded by another federal agency. If this occurs, applicants must return the duplicated amount to FEMA."
- Confirm "Applicants must provide documentation to show actual medical care revenue received, including insurance proceeds and revenue from direct billing to patients, and the types of work and costs covered, including but not limited to labor, supplies, and equipment, as well as costs that are ineligible under the PA Program." Clarify "this supporting documentation may include an Applicant's audited financial statements or other accounting documentation."
- Confirm FEMA reduces eligible costs by the amount of actual or anticipated amount of insurance proceeds or other patient care revenue. Clarify if an applicant received funding from FEMA and then bills and receives funding from a patient or a patient's insurance for the same costs, FEMA must reduce its assistance by the amount of funding received from the patient or the patient's insurance. It had been rumored that FEMA had engaged a contractor to try to develop a percentage or algorithm to determine how much of a payment from a patient's insurance (which is based on diagnosis, not equipment) would be attributed to equipment costs. However, this guidance is silent as to whether the agency is continuing that effort or whether it has abandoned that approach.
- Proposes to require applicants to certify in the Project Application that assistance has not and will not be duplicated.

Comments will be accepted **through 5 p.m. Eastern on May 24, 2022**. If you would like assistance preparing and submitting comments to this policy, or have questions regarding this or any other FEMA Public Assistance Policy, please contact [Erin J. Greten](#) or any member of Baker Donelson's [Disaster Recovery Group](#).