

PUBLICATION

Coronavirus: FEMA Simplifying the Public Assistance Process to Expedite Payment

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While communities that regularly experience natural disasters like hurricanes, tornadoes, and earthquakes are familiar with FEMA's Public Assistance process, the President's recent declaration of a nationwide emergency under the Stafford Act encompasses every state, including tens of thousands of eligible applicants (if not more) for disaster assistance, many of which are navigating unfamiliar territory. Recognizing the logistical and bureaucratic challenges this unprecedented response effort will bring, FEMA is actively working to develop a simplified application and funding process. In this alert, we provide an overview of the Public Assistance process for COVID-19 – for new and experienced applicants.

What is the Public Assistance program? The Public Assistance program (sometimes referred to as the "PA" program) is a program under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq. that authorizes the President to provide federal financial assistance as outlined therein. Funding authority is largely delegated to FEMA, and is made through grants administered by state "recipients."

Who is eligible for Public Assistance? State, territorial, tribal, and local governments and certain private non-profits may apply as eligible "subrecipients." "Local governments" include, e.g., counties, municipalities, school districts, and local public authorities. Eligible private non-profits (PNPs) include critical service providers like schools, colleges, utilities, clinics, laboratories, hospitals, long term care facilities, and emergency services providers. PNPs may also be non-critical service providers like community centers, assisted living centers, child care facilities, food assistance programs, houses of worship, and senior centers, among others.

Can for-profit entities receive Public Assistance? No, not directly. However, for-profit entities (such as hospitals and nursing homes) may be able to enter into agreements with eligible entities such as state or local agencies under which they receive payment for otherwise eligible work and costs. Key considerations include that an eligible entity have legal responsibility for the work, request the for-profit entity to assist, and have an agreement covering the assistance to be provided. Care should be taken to assure that the work performed is otherwise eligible, i.e. for this event that it is done at the direction or guidance of the applicable public health official, and that the agreement either qualifies as mutual aid or meets applicable requirements for contracts funded by the Federal Government.

What is eligible for reimbursement with Public Assistance grants? Under the President's national emergency declaration, Public Assistance is available for "emergency protective measures," which is also referred to as "Category B" work. This includes work such as disinfection of eligible public facilities, emergency medical transport, medical sheltering, movement of supplies and persons, purchase of personal protective equipment, and government force account overtime cost, among others. FEMA published a [Fact Sheet](#) providing guidance as to what emergency protective measures may be considered eligible and a separate [Fact Sheet](#) on eligible sheltering costs.

How does an eligible entity apply for a Public Assistance grant? Eligible entities can apply for Public Assistance by completing a Request for Public Assistance through FEMA's web-based platform, [Grants Portal](#).

First time applicants must contact their local or state emergency management department to get access to the portal.

How does the funding flow once a grant is approved? FEMA Public Assistance dollars flow through the recipient to the eligible state agencies and instrumentalities, local governments, and PNPs in its jurisdiction (the "subrecipients") pursuant to a subgrant agreement. An applicant's eligible work and costs are organized into "projects," which are captured in a "Project Worksheet" or "PW" – the form FEMA uses to document and approve reimbursements.

What will the process be like for COVID-19 and how will it differ from previous FEMA-eligible disasters? Because the COVID-19 emergency declaration limits reimbursement to Category B emergency protective measures and does not involve the repair or replacement of buildings or infrastructure, [FEMA is working to simplify the process](#) to the greatest extent possible. FEMA intends to keep many steps in the reimbursement process the same, including the initial application process, development of scopes of work and cost estimates, compliance reviews, and eligibility reviews. However, due to the enormous breadth of the disaster, FEMA has taken the extraordinary step of reducing documentation requirements. For the COVID-19 pandemic, FEMA's program will be administered as follows:

1. *Attend virtual applicant briefing.*
2. *Log on or create account in PA Grants Portal.* Experienced applicants will be able to access the COVID-19 emergency (or disaster for jurisdictions where a Major Disaster has been declared) in the Grants Portal using their current accounts. New users will need to contact their local or state emergency management departments to obtain access.
3. *Submit Request for Public Assistance (RPA).* An RPA is a relatively simple form that begins the Public Assistance process. It includes information about the applicant's location, authorized agent, and type of organization. Applicants must submit an RPA within 30 days of the emergency or disaster declaration. For the nationwide emergency declaration, this is 30 days from March 13, 2020. Later-declared Major Disasters will have different deadlines, including the one declared in New York on March 20, 2020.
4. *Submit COVID-19 PW.* It remains to be seen how FEMA will streamline the project formulation process, but it is "developing a simplified online form applicants can complete, and on which they may explain work activities, answer basic questions, provide limited supporting documentation, and provide a cost estimate." At this point, we know that the form will ensure the U.S. Department of Health and Human Services and Centers for Disease Control and Prevention are not duplicating the funding and that it will require minimal documentation to support eligibility based on the project's risk of providing ineligible funding and emergency need:
 - Expedited Projects: Limited documentation but funded at 50 percent.
 - Small Projects (greater than or equal to \$3,300; maximum \$131,100): Limited documentation and self-certified as to basic eligibility requirements.
 - Large Projects (greater than \$131,100): Limited documentation but full FEMA review based on amount of funding provided.
5. *FEMA and recipient review documents.* FEMA's statement that only "limited documentation" is required is an ambiguous standard at this time. We would recommend that where possible, applicants (or for-profit entities acting pursuant to agreements with applicants) keep records of (a) purchases and other costs incurred for medical supplies and equipment, (b) daily summaries of the emergency

work performed by employees, and (c) for each major procurement, maintain a procurement file demonstrating steps taken in selecting the contractor, and also specifying the efforts taken by the applicant to control costs. FEMA has to be able to show to auditors that it sought, even in this emergency environment, to assure work and costs were eligible and reasonable. FEMA will "follow up with limited requests for additional information if necessary."

6. *Sign final grant.*
7. *Receive funding.* As noted above, all funding flows from FEMA through the recipient to the subrecipient. FEMA has said this process is designed to get funding to local officials more quickly and that funding is immediately available where expedited assistance is needed.

We understand that simplified application processes will be implemented within two to three weeks, and the Grants Portal will have direct application capability in six to eight weeks.

Baker Donelson continues to monitor coronavirus developments and we will provide updates on Disaster Relief Funding as they become available. If you have any questions regarding this Alert or the impact of the coronavirus (COVID-19) on your organization, please contact [Ernest B. Abbott](#), [Wendy Huff Ellard](#), [Michelle F. Zaltsberg](#), or any member of [Baker Donelson's Disaster Recovery Team](#). Also, please visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.