




**FEMA**

July 1, 2020

MEMORANDUM FOR: Regional Administrators  
FEMA Regions I-X

FROM: Keith Turi   
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Recovery Directorate

SUBJECT: Waiver of Private Nonprofit Primary Use and Primary Ownership  
Facility Policies Under the Coronavirus (COVID-19) Pandemic  
Declarations

The purpose of this memorandum is to clarify the facility eligibility requirements for private nonprofit (PNP) entities under COVID-19 declarations, and to waive the primary use and primary ownership policies normally applicable to PNP entities regarding mixed-use facilities and facilities used by multiple entities.

### **Background**

Under the COVID-19 emergency declaration, and subsequent major disaster declarations, certain PNP organizations are eligible to apply for funding through FEMA's Public Assistance program. In accordance with sections 403 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"), eligible emergency protective measures taken to respond to the COVID-19 emergency at the direction or guidance of public health officials may be eligible for reimbursement under category B of FEMA's Public Assistance program. Emergency work is that which is necessary to save lives or protect public health and safety. To be eligible, work must be the legal responsibility of an eligible applicant.

Measures to protect life, public health, and safety are generally the responsibility of state, local, tribal, and territorial governments. In some cases, a government entity may be legally responsible to provide services and enter into an agreement with a PNP to provide those services (e.g., sheltering or food distribution). In these cases, Public Assistance funding is provided to the legally responsible government entity, which then pays the PNP for the cost of providing those services under the agreement.

In limited circumstances, essential components of a PNP facility are urgently needed to save lives or protect health and safety. In these cases, PNPs that perform eligible work, such as providing emergency, medical, or custodial care services for which they are legally responsible in response to the COVID-19 incident, may be eligible for reimbursement of costs for emergency protective measures as a Public Assistance applicant.

### **Mixed-Use Facility—Primary Use Requirement**

For a PNP to be an eligible applicant, it must own or operate an eligible facility. For PNPs, an eligible facility is one that provides an eligible service. PNP facilities that provide both eligible and ineligible services are considered mixed-use facilities. Eligibility of mixed-use PNP facilities is dependent on the primary use of the facility, which is determined by the amount of physical space dedicated to eligible and ineligible services. “Primary use” is the use for which more than 50 percent of the physical space in the facility is dedicated. FEMA evaluates the entire structure when determining primary use; it does not separately address individual areas, such as floors, basements, or wings. If FEMA determines that 50 percent or more of physical space is dedicated to ineligible services, the entire facility is ineligible. Additionally, in cases where a PNP applicant shares use of a facility, in order to be eligible, the facility must be primarily owned by the PNP applicant and meet the primary use requirement.

### **PNP Mixed-Use and Shared Facilities Under COVID-19 Declarations**

PNPs may own or operate eligible facilities and provide emergency protective measures, such as emergency, medical, or custodial care services for which they are legally responsible, but not meet the primary use or primary ownership requirements. For example, a medical PNP may provide medical care on one floor that it leases, or operates, in a five-floor building that is not otherwise used for eligible services. To address the public health and safety needs caused by the COVID-19 pandemic, FEMA is waiving the primary use and primary ownership policies<sup>1</sup> for PNPs that own or operate eligible PNP facilities and perform eligible emergency work in response to the COVID-19 pandemic. For the COVID-19 pandemic incident only, a PNP may be eligible for assistance even if less than 50 percent of its facility is used for eligible services. In addition, for the COVID-19 pandemic incident only, a PNP may be eligible for assistance even if owns or operates only a portion of the facility.

Emergency protective measures for which PNPs may be eligible for reimbursement are included in the Public Assistance *Coronavirus (COVID-19) Pandemic: Eligible Emergency Protective Measures* Fact Sheet and COVID-19 policies found at <https://www.fema.gov/media-library/assets/documents/187108>. If you have any questions about this guidance, please contact Traci Brasher, Acting Director of the Public Assistance Division, at [Traci.Brasher@fema.dhs.gov](mailto:Traci.Brasher@fema.dhs.gov).

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<sup>1</sup> See *Public Assistance Program and Policy Guide* [PAPPG], FP-104-009-2, April 2018 at pages 15 and 16 for more information. This version of the PAPPG is applicable to COVID-19 declarations.